

**Detection as a form of protection. The process of detection of women potential victims of sex-trafficking and their access as such to international protection at the Andalusian coast borders:
An investigation of its institutionalization under the
Human Rights perspective.**

An exploration on the victim-detection process in Andalusia (Spain) of adult sub-saharan women potential victims of sex-trafficking who undertake the Western Mediterranean route by foot and sea to the Andalusian coasts

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To all women who seek a better future and cross borders;
to the aim of the recognition of their rights

To all (frontline) practitioners and researchers,
who work with the only focus of Human Rights
and thus the radical importance of each life

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This project is to all women who cross borders

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1 Introduction

Traditionally, women from Sub-Saharan Africa travel to Spain through the Western Mediterranean route, at high risks of becoming victims of sex-trafficking. In this project I seek to explore whether the role of proactive detection – the first step in the victim-identification process - is developed under a Human Rights perspective in the Andalusian coasts in Spain. The role of detection is understudied, and this study argues that detection is the key for effective protection of women potential victims of sex-trafficking arriving at the coastal borders of Spain and in accordance with their needs.

The reason why I consider victim-detection or detection on the coasts is the key for effective protection is because: It offers immediate and adequate protection to the necessities derived from the victim of sex-trafficking condition and from their access to international protection for grounds on being a victim of sex-trafficking, when concurs. Following, it opens the path of a possible continuation of the identification process in other phases, and thus to other protection measures. Lastly, since victims of sex-trafficking who arrive to the coasts do not have to have been previously sexually exploited, timely detection when arriving may mean cutting the cycle of trafficking¹, since exploitation has not occurred, which is the purpose of human trafficking.

The research focuses on the availability of adequate mechanisms for effective detection. For such an aim, I hold that derived from the intrinsic relationship between human trafficking and Human Rights, the Human Rights provide protection and a victim-centered approach, which contain the adequate tools for an effective detection. The form in which it does it is that a victim-centered approach places the potential victim - women with risk-factors or vulnerabilities within the detection process -, their rights and needs at the center of the detection process. The elements of which the victim-centered approach is configured are the gender, vulnerabilities, cultural, and trauma-oriented focuses. I hold that such elements or focuses shall be included for the aim of an effective and adequate detection, in the formation of the practitioners, the fostering of the trustworthy relationship with the potential victim, and with the indicators to use for identifying her as such.

Such theory is supported at the international level for interactions with potential victims and in concrete for the detection process. (It is derived from the legal international and European pillars on human trafficking (‘Palermo Protocol’, ‘Warsaw Convention’ and ‘2011/36/UE Directive’), from reports of the GRETA, UN, etc and from practice as well.) However, as the UNHCR states, it is not enough that there exists a legal and policy framework on human and

¹ Key informant 5

sex-trafficking, but it shall include the adequate mechanisms to guarantee it and it shall be materialized in practice².

Derived in the same manner from the Human Rights, I hold that are the States the ones who, through their obligation of due diligence, shall guarantee it. For such a motive, I have decided to explore whether on the basis of the Human Rights perspective, there are adequate mechanisms at the (international, European), Spanish, and Andalusian legal and policy framework, and in any case, whether and how such perspective is materialized in the Andalusian practice on coasts. Such has generated the necessity of finding whether adequate mechanisms are in place and how the victim-detection process is carried out on the Andalusian coasts.

The reason why I choose Spain as the case focus through its detection process in Andalusia responds to the following reasons: On the one hand, both are habitual locations of transit and destination -for the exploitation- of victims of human trafficking. Further, it is part of the legal international and European pillars on human trafficking, it incorporates its own legal framework where it uses the same definition of victim of human trafficking as the international laws do, and it develops a domestic legal and policy framework with specific strategies and policies on human trafficking and protection of victims of sex-trafficking. On the other hand, however, it is reported that the amount of potential or possible victims (those within the victim-detection process) and presumed victims (those already positively detected) is lower than the real current numbers. Further, it is reported that the detection process on coasts shall improve, which complements the lack of academic literature on the detection process practice, which is in its majority covered by reports.

For such motives, I argue that the value of this project to be scientific, theoretical, social and practical. The reason is that it assumes to guarantee the protection of the women victims of sex-trafficking through the exploration of the Human Rights perspective, through the protection and victim-centric approach, and in this manner deep down in the knowledge of whether such is the current reality in the detection in the Andalusian coasts, through the policy and legal framework and the practice. Besides, using this same focus, it takes concepts such as the victim one and updates it with the intention of incorporating a protection approach.

In this manner, the project defends first (block 1) why it is necessary the Human Rights perspective, in what protection and a victim-centered approach consists of, and ultimately, how protection is generated through detection and why it is relevant on coasts. Such theory will serve to observe next (block 2) whether the Spanish State fosters a proactive detection in this sense: Whether the Human Rights perspective is included in the legal and policy Spanish and Andalusian framework, whether they develop adequate mechanisms with such perspective, and how detection produces in practice.

² UNHCR, HCR/GIP/06/07, '*Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*', 7 April 2006, paras 21-22

1.1 Methodology

The research question is *‘Is the protection and victim-centric approach from the Human Rights perspective institutionalized, i.e in the legal and policy framework and practice, during the victim-detection process in the Andalusian coasts?’* It is principally evaluatory since it defends the Human Rights perspective, through its key concepts of protection and of victim-centered approach, as the form to reach an effective or adequate detection, and it observes whether such concepts are implemented in practice.

To answer it, it uses mixed methods, both legal and social sciences methods, with the objective of justifying from both instruments the Human Rights perspective and then be able to compare between them to observe whether such perspective is implemented. The first block mostly refers to the international and European levels, thus the legal and social sources correspond to such levels. However, Spanish social sources are also mentioned to sustain that they also support the theory. The second block refers to the Spanish level, thus the legal and social sources are mostly Spanish and Andalusian. Still, international and European legal sources are used to observe the mechanisms and practices hand in hand with Spanish and Andalusian legal sources and social sources. Since sex-trafficking is a form of human trafficking and detection is the first phase of the victim-identification process, the sources mentioned refer to all where appropriate:

With respect to legal methods, the first block principally uses international and European legal sources to justify, from such levels the duty of due diligence of the States through protection and the victim-centered approach. The principal instruments are the ‘Palermo Protocol’, ‘Warsaw Convention’ and ‘Directive 2011/36/UE’, since they are the fundamental legal sources at both levels on human trafficking and also provide a protection and victim-centric perspective. The second block uses the aforementioned sources as well as Spanish legal and policies sources, to compare with and observe whether adequate policy mechanisms are in place. In front of the lack of a human trafficking law in Spain, the fundamental Spanish policies sources observed to compare with are the ‘Framework Protocol’, ‘PENTRA’ and the ‘Andalusian Strategy for women and girls victims of sex-trafficking’. The reason is that they are the specialized instruments for human trafficking where mention is made to protection, victim-centric theory and the identification-detection procedure.

With regards to the social science methods, they are used to sustain the Human Rights perspective, and they also provide the practice to observe whether they are incorporated. The project uses the following sources:

Academic literature, which is foremost used for the justification of the Human Rights perspective. The reason is that, as mentioned, there exists a lack of it in regards to the victim-detection practice at the Spanish and Andalusian coasts.

Reports and guide manuals for practitioners, derived from international organizations (UN, GRETA, UNODC, UNHCR, etc), national organizations (RECTP, Diaconia, Cruz Blanca, Amnesty International, CAST, etc), official representatives (Spanish Ombudsman). They have been chosen based on that they offer a Human Rights perspective for the detection and identification of potential victims of human and sex-trafficking, offer recommendations and collect the current practice of detection in Spain. Both international and Spanish reports are used throughout the project to justify that both support a Human Rights perspective, and to observe whether it is implemented.

Lastly, I have used a qualitative method with semi-structured interviews. For such an aim, interviews have been prepared in attention to the profile of the participants, allowing them to develop new topics and reflections to obtain a more holistic approach on the necessity of a Human Rights perspective and its practical implementation. Professionals from different fields with direct experience or knowledge in human trafficking, sexual trafficking and detection in Spain and Andalusia have been chosen, and depending on the topics of which they were experts (migration, data collection...). The relevance of the interviews is that they allow to bring a coherent overview of the legal and policy human trafficking framework in Spain, the interaction between the State, Andalusia and the practitioners and researchers who work with a practical focus, they provide direct information on the current victim-detection process followed in Andalusia, its challenges and good practices in the form of examples to bring a better overview of the current practice.

In total, there have been conducted 10 interviews with a total of 11 interviewees (which wished not to be anonymized):

- 4/10 interviews to 4 specialized organizations on human and sex-trafficking which detect on the Andalusian coasts (1 interviewee) and in the territory (1 interviewee), and 2 anonymized (3 interviewees)
- 1/10 Organization Human Rights defender
- 3/10 Universitarian researchers with practical experience on assistance, protection and/or elaboration of practical tools for victim-detection
- 1/10 Consultant on human trafficking, migrations, gender and Human Rights
- 1/10 Procurator of Andalusia

Aside, there have also been conducted 2 informal interviews for background purposes. The interviews have the ethical assessment approval. Annex I contains the association of each key informant with a number for practical reasons, the reasons that motivated to interview them, the date and form of conduction of the interviews, whether online or writer, and the form of recording, if required.

In regards to the practice, the project observes the detection process by hand of the NGOs, since they are the ones who report more detections. The detection process in Andalusia, is composed of three phases which it shares with the arrival and reception of migrants in general: First arrival to the coasts, from their disembarkation, where frontline practitioners

provide a health triage. Next, referral to Temporary Shelter Centers (CATE) where they are at police disposal for a maximum of 72 hours. Lastly, their release to 'humanitarian provisions' where they are provided by other carings³. The NGOs are present at the arrival to the coasts and they are who provide the 'humanitarian provisions'. Thus, practice is explored in relation to these two phases through reports, and at all time, by hand of the Red Cross, as the only entity in Spain that attends first arrivals at the coasts and has humanitarian provisions, and of the other specialized anonymized organizations.

Thus, the work is foremost empirical since its principal aim is to observe the current practice. To do so, it draws on the legal and policy framework in comparison with previously developed theory and it uses the experience of practitioners and reports on the subject as a form of fact accumulation where relevant. The objective is to obtain key findings and conclusions on whether the Spanish State complies with the duty of protection under the Human Rights perspective within the victim-detection process in the Andalusian coasts.

³ Key informant 10

BLOCK I. DETECTION AS A FORM OF PROTECTION

‘The identification of victims of human trafficking is a prerequisite for their access to assistance and protection’⁴.

Section 2 provides the context of human and sex-trafficking within the framework of the sub-saharan women who undertake the migratory journey using the Western Mediterranean route by foot and sea. In this aim, it develops the concepts of human (subsection 2.1.1) and sex-trafficking (subsection 2.1.2) in accordance to the international and European legal pillars on human trafficking, and it provides the definition of a key element in the project: the vulnerabilities or risk-factors that predispose women from sub-saharan countries to become victims of sex-trafficking. To do so, it firstly gives a definition on vulnerabilities (subsection 2.1.1), and following it explores: on the one hand, the intrinsic risk-factors or preconditions that predispose a women to become a victim of sex-trafficking (subsection 2.1.2), and on the other hand, the added risk-factors derived from the migratory journey in origin and in transit for those women who undertake the Western Mediterranean route by foot and sea.

The exploration on the vulnerabilities or risk-factors explored will sustain further that the victim-centric perspective uses such risk-factors as indicators to detect women potential victims of sex-trafficking, and it provides tools for the interactions with them. In this manner, section 2 provides the basis for a conceptualization of human and sex-trafficking and explores the vulnerabilities that will serve to further develop the victim-centric approach.

Section 3 gets immersed in the proactive actuation of the States. In such aim, it firstly (subsection 3.1) develops the phases in which the victim-identification and detection process consists of when initiated by hand of practitioners - in a proactive manner -, and provides particularities of the timings in detection on coasts, generally short, which serves to strengthen the idea that the victim-centric approach shall be present continuously. Further, it also provides a definition of victims of sex-trafficking, complementary to the legal one, according to both the stages of the identification process and its conceptualization in general.

Next, subsection 3.2 develops the linkage between the State and Human Rights: Firstly, (subsection 3.2.1) it sustains that the State has the duty of due diligence in human trafficking, and thus it is responsible to the carried out activities, including the ones from private entities, such as NGOs. Secondly (subsection 3.2.2), it observes how this obligation is materialized through the ‘3 P’ (prevention, protection and persecution). In it, it emphasizes the role of protection, its linkage with detection from a legal and social level, and how protection interacts with the other two P regarding the same matter. Finally, it sustains that protection leads to the use of a victim-centered approach and it develops such an approach: it answers why it is necessary in general and specifically on the coasts, for which elements or focuses it is conformed (a gender, vulnerabilities, cultural and trauma-oriented focuses), and where do

⁴ UNODC, *International Framework for Action To Implement the Trafficking in Persons Protocol*, 2009, Vienna, 10

these focuses have to be present in a detection-process so that it is efficient (formation of the practitioners - NGOs, indicators used and fostering of a trustworthy relationship).

Lastly, subsection 3.3 summarizes the previous exposition and focuses on sustaining why detection on coasts under this Human Rights perspective is of special relevance. Besides, it mentions non-refoulement as an immediate protection measure derived from being a potential or presumed victim of sex-trafficking and access to international protection. Further, since referring to the case of the coasts, develops access to international protection.

2 HUMAN TRAFFICKING, SEX-TRAFFICKING AND THE MIGRATORY PHENOMENON THROUGH THE WESTERN MEDITERRANEAN ROUTE BY FOOT AND SEA: CONCEPTUAL FRAMEWORK AND AN EXPLORATION OF THE DERIVED VULNERABILITIES

2.1 Human and Sex-Trafficking

2.1.1 Human Trafficking

Currently there exist three supra-legal regulations on human trafficking that configure the legal pillars on human trafficking and its victims protection at the international and European level⁵. They are the following:

First of all, at the international level and derived from the United Nations, there is the ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children’, adopted by General Assembly resolution 55/25 of 15 November 2000⁶, hereinafter ‘Palermo Protocol’. With respect to this project, this Protocol highlights the need for preventing, protecting, combating human trafficking and attending the victims adequately (article 2). Secondly, at the European level, there is the ‘Council of Europe Convention on Action against Trafficking in Human Beings’ from 2005⁷, hereinafter ‘Warsaw Convention’. Its relevance rests, among other aspects, in that it provides a ‘victim-centric’ approach, giving a comprehensive legal framework fostering the prevalence of the protection of the victim (Chapter III). Finally, at the Union European level, there is the ‘Directive 2011/36/EU of the European Parliament and the Council on preventing and combating trafficking in human beings and protecting its victims’, from 2011⁸, hereinafter ‘Directive 2011/36/EU’ where rigorous prevention and protection of victims rights, are the major objectives (paragraph 7).

⁵ Trabe, Institute of Human Rights Bartolomé de las Casas and Foundation Fernando Pombo, *Trata de seres humanos con fines de explotación sexual ('Sex-trafficking: A comparative legal study on the detection and identification of victims')*, June 2019, 8

⁶ *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, supplementing the United Nations Convention against Transnational Organized Crime Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000, hereinafter referred as ‘*the Palermo Protocol*’ <https://www.ohchr.org/sites/default/files/ProtocolonTrafficking.pdf>

⁷ *Council of Europe Convention on Action against Trafficking in Human Beings*, Warsaw, 16.V.2005, hereinafter referred as ‘*the Warsaw Convention*’ <https://rm.coe.int/168008371d>

⁸ *Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims*, hereinafter referred as ‘*Directive 2011/36/EU*’ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:en:PDF>

Aside from providing a victim-centric and protection approach, to the effects of this section, they give a consolidated⁹ and widely accepted between countries' definition of human trafficking and victims of human trafficking.

To explore the definition of human trafficking, the following paragraphs develop its definition as provided by these instruments and complement it using other sources to provide a more complete concept.

Therefore, the aforementioned legal instruments provide a definition by dividing between three constitutive and interlinked elements that configure it¹⁰: an act, a medium and the purpose of exploitation:

An act ('what is done')¹¹ refers to the action of recruiting, transporting, transferring, and/or receiving a person¹². A medium ('how it is done')¹³ refers to the use of the situation of vulnerability of the victim, deceit, violence, coercion or abuse of power over that person. The forms of mediums are complementary to each other, thus they can concur in different moments over time¹⁴. The finality or purpose of exploitation¹⁵ ('why it is done')¹⁶ configures the typology of human trafficking, and it is manifested through different forms of exploitation, where it can be mentioned among others sex-exploitation, labor exploitation, organ extraction, forced marriage, etc¹⁷.

Generally, the process of human trafficking is conformed by three stages: recruitment, transfer and exploitation¹⁸ which can be carried out by different traffickers¹⁹. In any case, the intention

⁹ It is used by different instruments and actors. As seen following, it is legally consolidated at the international and Spanish national level. Alongside, the United Nations High Commissioner for Refugees (hereinafter, UNHCR) echoes its definition (UNHCR, HCR/GIP/06/07, '*Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*', 7 April 2006, paras 8 and 9) as well as different NGOs (Trabe, CEAR, etc)

¹⁰ Trabe, Institute of Human Rights Bartolomé de las Casas and Foundation Fernando Pombo, '*Sex-trafficking: A comparative legal study on the detection and identification of victims*', June 2019, 8 and UNHCR, HCR/GIP/06/07, '*Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*', 7 April 2006, para 9

¹¹ OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, '*Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Protect, Combat Human Trafficking*', November 2011: 33

¹² OSCE, '*Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach*', SPMU Publication Series Vol. 10, June 2011, Vienna: 24

¹³ OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, '*Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Protect, Combat Human Trafficking*', November 2011: 33

¹⁴ Esperanza Jorge, Inmaculada Antolinez, Araceli Alonso, '*The construction of silence: Narrative of Nigerian women crossing into Europe*', UNESCO Chair on Gender, Wellbeing and a Culture of Peace 4W Initiative, University of Wisconsin-Madison, March 2020: 17-19

¹⁵ Trabe, Institute of Human Rights Bartolomé de las Casas and Foundation Fernando Pombo, '*Sex-trafficking: A comparative legal study on the detection and identification of victims*', June 2019: 9

¹⁶ OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, '*Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Protect, Combat Human Trafficking*', November 2011, p 33

¹⁷ UNODC, '*Global Report on Trafficking in Persons 2020*', 2020, New York: 34

¹⁸ IOM, Luis Fernando Centeno M, '*Glosario de términos. Trata de Personas. Derecho aplicado*' ('*Glossary of terms in trafficking in persons. Applied law*'), 2010, San José (Costa Rica): 26

¹⁹ *Ibid*, 27

to exploit the individual concerned is what underpins the entire process²⁰ independently of whether the exploitation has finally occurred or not.

Further, it can occur within a State or across countries, hence being transnational, for which victims of human trafficking can cross countries using them as a transit or as a destination for their exploitation²¹. Thus, victims of human trafficking can be nationals or third nationals²². To the effects of this project, it focuses on third-country nationals that transnationally, use Spain and Andalusia as transit or destination.

To a conceptual and practical extent, human trafficking shall be distinguished to human smuggling, often confused with, to delimitate the differences between both: Despite both can be transnational, the fact that both human and smuggling traffickers often use the same routes and methods for transporting the victims, and that they can be firstly smuggled and secondly human trafficked, human smuggling does not involve their exploitation²³.

Regarding victims of human trafficking, the constitutive elements provided by the legal pillars to conceptualize human trafficking also give the definition of victim of human trafficking (article 4(e) Warsaw Convention). Thus, a victim of human trafficking is a person who by an act of recruiting, transporting, transferring and/or receiving a person, using her situation of vulnerability, deceit, violence, coercion or abuse of power, has the intention to exploit her.

A central aspect of this project is the vulnerability that victims of human trafficking face. Both the vulnerability and the abuse of vulnerability as a medium have been commonly reported in practice among them²⁴. The term vulnerability can be defined as those factors that increase the chances of a person to become a victim of trafficking²⁵, also named 'risk-factors'²⁶. Such vulnerability generates in many occasions that the medium used to be recruited is through the abuse of vulnerability²⁷, which is the situation 'in which a person does not have another real or acceptable alternative except to be abused'²⁸ (article 2(2) Directive 2011/36/UE). Consequently, the consent of the victims to possible exploitation shall be regarded in any case as irrelevant (article 3(a) Palermo Protocol, article 4(b) Warsaw Convention).

²⁰ UNHCR, HCR/GIP/06/07, '*Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*', 7 April 2006: para 10

²¹ IOM, Glosario de términos. Trata de Personas. Derecho aplicado ('*Glossary of terms in trafficking in persons. Applied law*'), 2010, San José (Costa Rica): 27

²² Ibid

²³ UNODC, *Human trafficking FAQs*, <https://www.unodc.org/unodc/en/human-trafficking/faqs.html>

²⁴ UNODC, '*Issue paper: Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons*', April 2013, New York: 3

²⁵ Ibid, 12

²⁶ Safe Houses, '*Guide: Victim-centered approach. For frontline professionals working with trafficking in human beings*', 7

²⁷ UNODC, '*Issue paper: Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons*', April 2013, New York: 12-14

²⁸ IOM, Luis Fernando Centeno M, '*Glossary of terms in trafficking in persons. Applied law*', 2010, San José (Costa Rica): 24

Although it is true that anyone can become a victim of sex-trafficking²⁹, there exist certain pre-conditions, vulnerabilities or risk-factors that when interacting between each other, increases the risks of a person to become it³⁰, since traffickers can take advantage of it³¹. It will be observed intrinsic to sex-trafficking ones and derived from the migratory journey.

This project does not focus on whether the medium is met or not, but rather in that the existence of these vulnerabilities generate a specific proactive action by hand of State practitioners: Firstly, (subsection 3.2.3) take into account these possible vulnerabilities as on the one hand, risk-factors that may predispose a woman to be a potential victim of sex-trafficking and therefore as indicators to determine a potential and presumed victim, and on the other, they shall interact with the potential victims in attention to them. Lastly, that since they are particular vulnerable group³², a correct detection as potential and presumed victims shall generate adequate protection measures (subsection 3.3).

2.1.2 Sex-Trafficking

Human trafficking for the purpose of sexual exploitation or sex-trafficking is the case studied here. It is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act³³. Its purpose of sexual exploitation includes forcing an individual to engage in commercial sex acts, as prostitution or the production of pornography³⁴.

The intrinsic pre-conditions or vulnerabilities that predispose a woman to become a victim of sex-trafficking are gender and other vulnerabilities. Due to the weight of gender in sex-trafficking, this project, following different lectures, decides to distinguish between both. Hence, hereinafter, they will be referred separately:

Gender is a key precondition factor. It is estimated that the 77% of adult women victims of human trafficking are for purposes of sex-exploitation³⁵. Gender feeds this type of human trafficking which can be attributed to the demands of prostitution and pornography among the population, whose performance has traditionally been attributed to women³⁶.

²⁹ Safe Houses, 'Guide: Victim-centered approach. For frontline professionals working with trafficking in human beings', 7

³⁰ UNICEF Regional Office for Europe and Central Asia, *Identification of Victims/ Persons 'At-Risk' of Trafficking in Human Beings, Practical Guide for Frontline Responders*, 2022, 16

³¹ Laurence E. Cohen and Marcus Felson, 'Social change and crime rate trends: A routine activity approach' *American Sociological Review* 44(4), (1979) <https://doi.org/10.2307/2094589>: 588-608

³² Vladislava Stoyanova, *Human Trafficking and Refugee Law*, Research Handbook on International Refugee Law (Lund: Edward Elgar Publishing, 2019): 7; Nancy Fraser, Rethinking recognition, *New Left Review* n 4 (2000), 1065

³³ Child Welfare Information Gateway, *Definitions of human trafficking*, 2020, Washington DC: 2

³⁴ *Ibid*, 1

³⁵ *Ibid*, 33

³⁶ Rosa Cobo Bedia, 'Prostitution at the heart of the capitalism', La Catarata, 2017, 33

Indeed, sex-trafficking is internationally recognized to be gender violence³⁷, and as a sex-based discrimination³⁸. The reasons are that it is directed against women for their condition as such, and thus it affects them disproportionately: it includes acts that inflict physical, mental or sexual harm or suffering³⁹ and specific gendered types of harm and consequences derived from sex-trafficking, such as rape or forced abortions⁴⁰.

But gender does not determine by itself whether a person is at risk of being a victim of sex-trafficking, but rather it does in its interaction with other vulnerability factors⁴¹:

Such vulnerabilities can be divided between personal (gender, age, disability and ethnicity), contextual (discriminatory laws, policies and social norms, crisis, etc) and situational (destitution, temporary illness, unemployment, legal status(es)⁴², escaping human rights violations, persecution, violence or abuse⁴³, etc) factors.

2.2 The linkage between sex-trafficking and the migratory phenomenon: The relevance of the coasts and the added vulnerability created through the journey

It is relevant to concretize the migratory phenomenon because the vulnerabilities are linked to the characteristics of the countries of origin and the migratory path followed⁴⁴. The route studied here to reach Europe from Africa is the Western Mediterranean route by foot and sea crossing from Morocco and Algeria to the Spanish peninsula⁴⁵, and regarding the profile of sub-saharan women nationals from Nigeria, Cameroon, Mali and Guinea as such are the countries from where more women come to Andalusia using that route.

Regarding the derived vulnerabilities in origin and transit that these women may encounter that predispose them to become victims of sex-trafficking:

³⁷ UN CEDAW, *CEDAW General Recommendation No. 19*, Eleventh Session 1992, para 14; UN General Assembly, World Conference on Human Rights (A/CONF.157/24), *Vienna Declaration and Programme of Action*, Vienna, 14-25 June 1993, para 18; UN General Assembly, *In-depth study on all forms of violence against women*, Report of the Secretary General, 61st Session (A/61/122/Add.1), para 5

³⁸ OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, '*Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Protect, Combat Human Trafficking*', November 201, 20-21

³⁹ UN CEDAW, *CEDAW General Recommendation No. 19*, Eleventh Session 1992, para 6

⁴⁰ OHCHR, *Comment on Principles and Directions recommended about Human Rights and Human Trafficking*, 2010, 63

⁴¹ Cruz Blanca NGO, *Factores de riesgo ante la trata en España como país de tránsito o destino para personas migrantes ('Risk-factors for human trafficking in Spain as a transit or destination country for migrants')*, October 2022, 22

⁴² UNICEF Regional Office for Europe and Central Asia, *Identification of Victims/ Persons 'At-Risk' of Trafficking in Human Beings, Practical Guide for Frontline Responders*, 2022, 18

⁴³ OSCE, '*Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach*', SPMU Publication Series Vol. 10, June 2011, Vienna, 52

⁴⁴ Key informant 2

⁴⁵ European Council, *Migration routes on the Western routes*,

<https://www.consilium.europa.eu/en/policies/eu-migration-policy/western-routes/#:~:text=The%20Western%20Mediterranean%20route%20refers.and%20Melilla%20in%20Northern%20Africa.>

In origin, the general circumstances that back-up these women to increase their vulnerabilities is that they usually come from highly degraded social structures that lead to high levels of violence and corruption that particularly harm vulnerable populations, worsening the living conditions of the women in particular⁴⁶.

Thus, to many of them to leave their country is an alternative to improve their life and/or family conditions⁴⁷. Hence, they usually decide to emigrate to Europe⁴⁸ to get out of the situation of poverty, lack of opportunities, sexual abuse, gender and intrafamilial violence⁴⁹. Seeking to fulfill this desire and in front of the absence of legal and safe entry routes - irregular routes - to Europe⁵⁰, they get recruited in their countries of origin by trafficking nets in the promise of a way out of their situation in an European country. Thus, they are recruited in their countries of origin, transported and often sexually exploited during their migration journey to Spain⁵¹.

In transit, the migratory routes that both victims of sex-trafficking in origin and migrant women take are usually long and full of difficulties. They usually derive from the harshness of the migration journey using irregular routes and their condition as women who lead them to experiment certain forms of violence: limitation on access to food, drinking water, medicines and medical assistance⁵², to cross borders of different countries, cross the sea, linked to death⁵³. Besides, for women ‘undertaking a migratory process without suffering sexual violence almost inevitable’⁵⁴, having to go in many occasions through pregnancy and/or abortion⁵⁵.

⁴⁶ Gloria Fernández-Pacheco Alises and María del Mar García Navarro, *What are the risk factors for human trafficking among African women? A pilot study in Spain*, Spanish Journal of Criminological Investigation Article 5, Volume 18(2) (2020), 10

⁴⁷ Nuria Cordero Ramos and Rafael Cáceres Feria (2020) *Mujeres africanas en Situación de Trata: Diversidades, resistencias y oportunidades* (*African Women in Trafficking Situation: Diversities, resistances and opportunities*). Journey of the Iberoamerican Lab on the Socio-historical study of the sexualities, 04 art. 10 (2020), 192–206. <https://doi.org/10.46661/relies.5103>, 196 ; CEAR NGO, 10 recomendaciones para informar sobre la trata con fines de explotación sexual desde el derecho de asilo (*10 recommendations to report on sex-trafficking from the right of asylum*), 2018, Bilbao, 7-8

⁴⁸ Ibid, 7

⁴⁹ Nuria Cordero Ramos and Rafael Cáceres Feria (2020) *African Women in Trafficking Situation: Diversities, resistances and opportunities*, Journey of the Iberoamerican Lab on the Socio-historical study of the sexualities, 04 art. 10 (2020), 192–206. <https://doi.org/10.46661/relies.5103>, 196

⁵⁰ CEAR NGO, *10 recommendations to report on sex-trafficking from the right of asylum*, 2018, Bilbao, 7

⁵¹ Key informant 4

⁵² IRIDIA and NOVACAT, *Vulneración de derechos humanos en la Frontera Sur del Estado español 2021 - 2022. Racismo institucional, fronteras y política migratoria* (*Violation of Human Rights on the Southern border of the Spanish State 2021 - 2022. Institutional racism, borders and migratory politic*), May 2023, 102

⁵³ Esperanza Jorge, Inmaculada Antolinez, Araceli Alonso, *The construction of silence: Narrative of Nigerian women crossing into Europe*, UNESCO Chair on Gender, Wellbeing and a Culture of Peace 4W Initiative, University of Wisconsin-Madison, March 2020, 17

⁵⁴ CEAR NGO, *10 recommendations to report on sex-trafficking from the right of asylum*, 2018, Bilbao, 7 and Charlotte Ludt, Margunn Bjørnholt and Birgitta Niklasson, ‘Speaking the Unspeakable: Disclosures of Sexual and Gender-based Violence in Asylum Credibility Assessments’, *Nordic Journal of Human Rights*, 40:3 (2022), 442

⁵⁵ Esperanza Jorge, Inmaculada Antolinez, Araceli Alonso, *The construction of silence: Narrative of Nigerian women crossing into Europe*, UNESCO Chair on Gender, Wellbeing and a Culture of Peace 4W Initiative, University of Wisconsin-Madison, March 2020, 17

Such conditions affect women physically and psychologically, and increase the vulnerability of those who have not been already recruited by sex-traffickers to be so⁵⁶, who take advantage of the high situation of vulnerability by hand of abuse of power, violence and the different means⁵⁷.

In any case, the migratory journey to any person reverts of hardness and difficulty, and in the case of women, it is increased due to the sexual abuse, rapes and recruitment by sex-trafficking nets they get exposed due to their gender. Thereby, sub-saharan women are recruited at origin or in transit through different procedures that have a common element: taking advantage of the need to reach Europe and the vulnerabilities they face⁵⁸.

The forms in which these women arrive on the Andalusian coast usually occurs as follows:

On the one hand, they usually arrive in mixed migration flows⁵⁹, formed by different profiles including victims of human and sex-trafficking, asylum-seekers, smuggled people, economic migrants, etc⁶⁰. A reason for which they come within them is that traffickers are aware of such groups, and that within them, women compose a special marginalized group⁶¹ so they join these routes for recruiting them⁶². Within mixed migration flows, each group has different protection needs and entitlements although some overlap⁶³.

On the other, following the irregular routes, usually also enter into Spain in an irregular manner⁶⁴ and are in an irregular administrative situation, which means that they do not have a visa or residence permit as third nationals⁶⁵. Sometimes, derived from immigration control measures that penalize irregular border crossings also penalize these women, increasing their vulnerability⁶⁶.

⁵⁶ CEAR NGO, '*10 recommendations to report on sex-trafficking from the right of asylum*', 2018, Bilbao, 7

⁵⁷ Esperanza Jorge, Inmaculada Antolinez, Araceli Alonso, '*The construction of silence: Narrative of Nigerian women crossing into Europe*', UNESCO Chair on Gender, Wellbeing and a Culture of Peace 4W Initiative, University of Wisconsin-Madison, March 2020, 17

⁵⁸ CEAR NGO, '*10 recommendations to report on sex-trafficking from the right of asylum*', 2018, Bilbao, 7- 8

⁵⁹ European Parliamentary Research Service, '*Detecting and protecting victims of trafficking in hotspots. Ex-post evaluation*', July 2019, 5

⁶⁰ Ibid, 4

⁶¹ Paola Degani and P de Stefani, 'Addressing Migrant Women's Intersecting Vulnerabilities. Refugee Protection, Anti-trafficking and Anti-violence Referral Patterns in Italy', *Peace Human Rights Governance* 4(1) (2020), p 114

⁶² Spanish Government, '*Comprehensive plan to combat trafficking in Human beings for the purpose of sexual exploitation*', 7

⁶³ UNHCR, '*Migrant definition*', Emergency Handbook, 4th Edition, 2019, 3

⁶⁴ CEAR NGO, '*Refugees and migrants in Spain: The invisible walls beyond the southern border*', 2017, Madrid, 19, and Diaconia, Informe de análisis de la situación de las víctimas de trata de personas en necesidad de protección internacional en España (*Analysis report on the situation of victims of human trafficking in need of international protection in Spain*), December 2022, 15-18

⁶⁵ FRA, European Union Agency for Fundamental Rights, Los derechos fundamentales de los inmigrantes en situación irregular en la Unión Europea (*The fundamental rights of immigrants in an irregular situation in the European Union*), p 1

⁶⁶ Amnesty International, Cadenas invisibles: Identificación de víctimas de trata en España (*Invisible chains: Victims of trafficking identification in Spain*'), October 2020, 15

In general, the profile of these sub-saharan women who reach the Andalusian coasts, it is said to be ‘more hermetic’⁶⁷. Derived from origin factors and the migratory journey, they are usually found in a very poor physical and mental condition, many times they have suffered grave sexual violence⁶⁸.

3 DETECTION AS A FORM OF PROTECTION

3.1 The victim-identification process: emphasis on detection and the conceptualization of the victims

The proactive victim-identification process is defined through its purpose and procedure: It is the process through which an individual is identified as a victim of human trafficking by practitioners in the course of their work⁶⁹. It consists of two distinguished phases: the preliminary identification or detection firstly, and the conclusive or formal identification following when there is a positive outcome. Both phases provide a victim status according to the stage in which they are.

Thus, identification is a process, rather than a moment, where different stages may follow each other and which may have different durations. The duration of the detection process may vary, on the one hand, due to the characteristics of the person increased by the context. For example, *detections of arrivals at coasts tend to occur more quickly due to the immediacy of the arrival and the need for attending the variety of profiles that may exist*⁷⁰.

With respect to the procedure of the identification process, the sequence follows the above described:

First, the detection stage consists of the use, by hand of the practitioners, of indicators to estimate whether a person may be a victim of human trafficking⁷¹. Indicators are a non-exhaustive indication tool based on signals that arise through observing, interacting or speaking with the individual⁷² that help practitioners report suspicion, rather than a determination, of that a person may be a victim of human trafficking⁷³.

⁶⁷ Key informants 3 and 7

⁶⁸ IRIDIA and NOVACAT, ‘*Violation of Human Rights on the Southern border of the Spanish State 2021 - 2022. Institutional racism, borders and migratory politic*’, May 2023, 100

⁶⁹ Rebecca Surtees and Laura S. Johnson (2021) *Trafficking Victim Identification: A Practitioner Guide*. Regional Support Office of the Bali Process (RSO) (Bangkok) and NEXUS Institute (Washington DC), 2021, 2

⁷⁰ Out of the comparison between the testimonies of Key informants 7 in the coasts and 3 who detects victims already being exploited in burdels or brothels within the territory

⁷¹ OSCE, *National Referral Mechanisms. Joining efforts to protect the rights of trafficked persons. A practical Handbook*, Second Edition, 2022, 188-189

⁷² Rebecca Surtees and Laura S. Johnson (2021) *Trafficking Victim Identification: A Practitioner Guide*. Regional Support Office of the Bali Process (RSO) (Bangkok) and NEXUS Institute (Washington DC), 2021, 2

⁷³ UNICEF Regional Office for Europe and Central Asia, *Identification of Victims/ Persons ‘At-Risk’ of Trafficking in Human Beings, Practical Guide for Frontline Responders*, 2022, 24

Through this detection phase, the person enters into the category of being a ‘potential victim of sex-trafficking’, which refers to those persons at risk of being trafficked⁷⁴. In case the indicators that help suspect the practitioner are met, the person is considered to be a ‘presumed victim of sex-trafficking’⁷⁵.

Second, once the woman is recognized as a presumed victim, it starts the formal or conclusive identification process⁷⁶. In it, the competent national authorities⁷⁷ have collate further information concerning the presumed victim using a pro-active, investigative approach and issue a conclusive identification decision⁷⁸. If it has a positive outcome, it provides the status of being a ‘formal victim of trafficking’⁷⁹.

As foreseen, each of the ‘victim statuses’ locate them in a certain stage of the identification process and as it will be seen, it provides them with different protection measures. Thus, the terms ‘potential’ and ‘presumed’ victim correspond to the ones immersed in the victim-detection process.

On its behalf, the term ‘victim of sex-trafficking’ in general, is holded here that corresponds to all women where an act, medium and the purpose of exploitation whether consumed or not, independently of whether they are immersed in a victim-detection process. The relevance lies in that conceptualizing the term in this manner, women victims of sex-trafficking are also the missed identified (unidentified by practitioners) and the mis-categorized as an irregular or smuggled migrant or involved in illegal activities⁸⁰. In this way, the concept provides more guarantees⁸¹ and allows for a better further evaluation.

⁷⁴ Ibid, 8-10

⁷⁵ OSCE, ‘*Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach*’, SPMU Publication Series Vol. 10, June 2011, Vienna, 44

⁷⁶ OSCE, *National Referral Mechanisms. Joining efforts to protect the rights of trafficked persons. A practical Handbook*, Second Edition, 2022, 190

⁷⁷ The Croatian Red Cross, France terre d’asile, ‘*the Asylum Migration and Integration Fund of the European Union The identification of victims of human trafficking in transit and destination countries in Europe, A practical guideline for frontline officers*’, February 2019, p 16

⁷⁸ OSCE, *National Referral Mechanisms. Joining efforts to protect the rights of trafficked persons. A practical Handbook*, Second Edition, 2022, 202-203

⁷⁹ Ibid, 201

⁸⁰ Rebecca Surtees and Laura S. Johnson (2021) *Trafficking Victim Identification: A Practitioner Guide*. Regional Support Office of the Bali Process (RSO) (Bangkok) and NEXUS Institute (Washington DC), 2021, 2

⁸¹ Key informant 6

3.2 Human Rights and States: The obligation of due diligence to protect through a victim-centered approach during the victim-detection process

‘Safeguarding the human rights of victims of human trafficking should be at the center of all efforts to prevent and combat trafficking and to protect, assist and provide redress⁸².

3.2.1 The linkage between sex-trafficking, Human Rights and the obligation of due diligence of the States

Through States and within States, women victims of sex-trafficking are continuously recruited, transported and exploited, at the same time that human traffickers adapt to continue with their activity. For such a reason, the actuation of the States shall not be sporadic or irregular, but continued over time and it has to take necessary measures to identify, detect victims of sex-trafficking, and protect them according to their necessities.

For States to take an active part in this situation, to activate secondary rules of responsibility and introduce special measures, including protection measures, it is necessary to firstly understand Human trafficking as a crime and to understand it as a violation of Human Rights⁸³:

Regarding the first requisite, human trafficking is internationally legally agreed to be a crime. International and regional legislation prohibits trafficking in human beings outright, as several international instruments such as the article 5(3) of the EU Charter on Fundamental Rights, article 6 CEDAW establish.

With respect whether human trafficking is a violation of Human Rights, it has been called in several occasions that ‘the very existence of human trafficking is a violation of human rights’ itself⁸⁴ since its existence entails the violation of a large number of Human Rights⁸⁵.

As there exists a close relationship between Human trafficking and Human Rights, States are bound to take action in the form of ‘the principle of due diligence’. It means that although they are not responsible for the acts of third parties, they are responsible for the duties of protection, respect, promotion and guarantee of the rights⁸⁶. Consequently, one of the fundamental objectives of the laws and policies shall be the protection and adequate attention

⁸² OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, para 1

⁸³ OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, ‘*Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Protect, Combat Human Trafficking*’, November 2011, 21-22

⁸⁴ *Ibid*, 21

⁸⁵ There can be named: arts 2, 3, 4, 5 UDHR, art 5 CEDAW, art 11 ICCPR, etc

⁸⁶ *Ibid*, 79

to the victims with due diligence (article 28 UDHR)⁸⁷, and specifically to non-citizens victims of human trafficking within their borders⁸⁸. In the same manner, States are also responsible for exercise due diligence when functions within their borders are carried by public private entities, such as NGOs, since they interfere with such rights⁸⁹.

Thus, the principle of due diligence obliges States to actively participate to prevent and protect against violations of the rights of victims. Otherwise, they can breach their Human Rights duties on account of a lack of answer in front of rights vulnerations⁹⁰.

3.2.2 The 3 P: An emphasis on Protection

The duty of due diligence of the States translates into the ‘triple P’: prevention of the crime, protection of the victims and persecution of the felon⁹¹. They are the objectives assumed by the State when adhered to the Palermo Protocol, the Warsaw Convention and the 2011/36/UE Directive⁹².

Their meaning, as derived from the 2011/36/EU Directive articles is: Prevention of the crime, has the aim of impending future acts of human trafficking from occurring (article 18). Prosecution of the felon means that States shall take the necessary measures to ensure that effective investigative tools are available to the responsible for investigating or prosecuting the offenses (article 9(4)). Protection of the victims (articles 11-17) binds States to provide all necessary measures to provide assistance and support (article 11(1)).

Detection is considered as protection, when it binds States to take ‘the necessary measures to establish appropriate mechanisms aimed at the early identification’ (article 11(4)) to ensure assistance and support before, during and after the identification process (article 11(1)). In other words, early identification is the precondition to ensuring the exercisement of victims’ rights. Otherwise, the failure to identify a victim of trafficking on time is likely to result in a further denial of that person’s rights⁹³.

To delimit the concept of protection in relation to detection, it is relevant to do so with the other Ps:

⁸⁷ Ibid, 53

⁸⁸ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2010, 57-60

⁸⁹ OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, ‘*Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Protect, Combat Human Trafficking*’, November 2011, 22

⁹⁰ Ibid ; OHCHR, *Principios y directrices recomendados sobre los Derechos Humanos en las fronteras internacionales* (‘*Recommended principles and guidelines on Human Rights at international borders*’), 7

⁹¹ OHCHR, *Commentary on the Recommended Principles*, 2010, 75-81

⁹² OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, ‘*Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Protect, Combat Human Trafficking*’, November 2011, 20-24

⁹³ OHCHR, *Commentary on the Recommended Principles*, 4

First, protection and prevention in the context of detection is close. The prompt detection has been recognized as ‘the cornerstone of preventing and combating human trafficking and protecting victims’⁹⁴. The reason is that detection hinders the exploitation of those already recruited and, despite not the case analyzed here, the recruitment of new victims at the borders⁹⁵. In the same manner, trainings for practitioners and the recollection of numbers on border victim detection are both forms of protection and prevention, since complementarily, they allow implement and observe whether the detection process is carried out effectively and it allows its measurement⁹⁶.

Second, prosecution of the crime shall be differentiated from prosecution of the potential victim. The criminalization of victims of human trafficking is often tied to a failure in correct victim identification, which leads to a miscategorization⁹⁷. Further, as previously mentioned, the consent of the victim shall be regarded as irrelevant when any of the mediums is met (article 2(4) 2011/36/UE Directive), and they shall not be prosecuted or imposed with penalties for their involvement in criminal activities (article 8 EU Directive). Otherwise, they are at risk of being prosecuted, detained or deported on ground of irregular migration, labor status or involvement in illegal labor practices, which when returned to their origin country may result in their prosecution⁹⁸.

3.2.3 The victim-centered approach

‘If since the first moment of arrival there is a detection group with a victim-centered focus present in their actuations, there are possibilities that an adequate detection will happen’⁹⁹.

To adequately protect -assist- victims of sex-trafficking, it is necessary to refer to the aforementioned concept of vulnerability, which as risk-factors, predispose them to suffer it¹⁰⁰. To adequately protect them in view of their vulnerabilities, the use of the victim-centered approach is supported here, as derived from the international laws on human trafficking, and specialized organizations on the matter. The reason is that it is a methodology for practitioners specialized for working with victims of violence and especially vulnerable groups, such as victims of sex-trafficking. It includes a holistic approach, through its elements, that pays attention to the victim's personalized vulnerabilities, that it uses to detect risk-factors and to attend to them adequately with the purpose of their adequate protection¹⁰¹.

⁹⁴ Ibid, 49

⁹⁵ Key informant 5

⁹⁶ UNODC, *International Framework for action to Implement the Trafficking in Persons Protocol*, 2009, Vienna, 7 and 44

⁹⁷ OHCHR, *Comment on Principles and Directions recommended about Human Rights and Human Trafficking*, 2010, principle 7, p 129

⁹⁸ OSCE, *Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach*, SPMU Publication Series Vol. 10, June 2011, Vienna, 21

⁹⁹ Key informant 5

¹⁰⁰ UNODC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, Vienna, 67

¹⁰¹ Ibid, 11

Thus, this subsection aims to provide through this approach, mechanisms to guarantee an adequate detection on coasts. Thus, it defends that in attention to the gender, the vulnerabilities, culture and in a trauma-informed way, such approach shall be included in detection practitioners formation, indicators used and the fostered trustworthy relationship with the potential victims, with the aim to guarantee an adequate detection.

a) Relevance of a victim-centered approach in general and during the detection process

In general terms, the relevance of the victim-centered approach is that it centers the focus of the detection procedure on the victim. It means that it contemplates potential victims of sex-trafficking as right-holders instead as instruments for persecuting the crime¹⁰² and/or immigration control¹⁰³. Thus, it focus on their identification to provide them with adequate protection and prevent the violation of their rights¹⁰⁴, enabling to exercise them¹⁰⁵.

Thus, a victim-centric approach works with a focus on the vulnerabilities derived from their conditions as victims of sex-trafficking¹⁰⁶, in attention to the individual assessment of each woman profile and necessities as part of a vulnerable group with special necessities (paragraph 18 11/36/EU Directive)¹⁰⁷, and in the assurance that anti-trafficking measures do not adversely affect inter alia the right to international protection¹⁰⁸.

The reasons why this perspective reverts of special importance in the detection context responds to several reasons:

Firstly, not all women are conscious that they are victims of sex-trafficking, which often happens because they have not been already sexually-exploited¹⁰⁹. Thus, the proactive attitude of the practitioners is fundamental to guarantee it.

Secondly, the tools provided by this approach avoids their re-victimization, to fall in stereotypes, and it helps develop their well-being and collaboration during the detection process:

On the one hand, it avoid re-victimization of those women who have been subjected to abuse, rape, sexual exploitation and other factors by avoiding the unnecessary repetition of interviews (paragraph 20 11/36/EU Directive) or asking questions that may resurface the trauma.

¹⁰² OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, *Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Protect, Combat Human Trafficking*, November 2011, 26

¹⁰³ TRABE and Fernando Pombo Foundation, *An approach to the reality of sex-trafficked women. Diagnosis of the socio-legal barriers in the accompaniment of survivors of trafficking for the purpose of sexual exploitation*, June 2021, 10

¹⁰⁴ OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, *Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Protect, Combat Human Trafficking*, November 2011, 49

¹⁰⁵ Ibid, 26

¹⁰⁶ ECHR, O.M. v. Hungary, Application no. 9912/15, October 5 2016, para 53

¹⁰⁷ Ibid, para 53

¹⁰⁸ OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, *Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Protect, Combat Human Trafficking*, November 2011, 26 and Article 14 Palermo Protocol.

¹⁰⁹ Key informant 4

On the other hand, it avoids stereotypes since it contemplates and adapts to the individuality of the profiles¹¹⁰. It adapts to their behaviors without expecting the person to fall in a specific mold of victim, thus it understands that they may be unwilling or hesitant to answer questions or give ambiguous answers, provide inconsistent story, etc, since understanding that there may exist personal, effective, interpersonal power dynamics with the traffickers, or other reasons¹¹¹.

a) *The elements of a victim-centered approach: Gender-sensitive, in attention to vulnerabilities and cultural factors, trauma-oriented*

Here it is held that this victim-centric approach is conformed by different focuses with which the detection shall be embedded with: a victim-centered approach uses a gender-sensitive, vulnerabilities, cultural and trauma-oriented focus.

To be *gender-sensitive* is derived from articles 6(4) and 10(2) of the Palermo Protocol and article 10(1) of the Warsaw Convention, from the fact that sex-trafficking is a gender-specific phenomenon¹¹². Consequently, ‘during the identification process it shall be taken into account the specific situation of women victims’ (article 10(1) Warsaw Convention). It signifies to understand the similarities and differences between women and men in relation to vulnerabilities and violations, and that women are more likely to suffer from certain forms of trafficking, such as sex-exploitation¹¹³.

To be *in attention to the vulnerabilities* is derived from article 6.4 Palermo Protocol and paragraph 12 of the 2011/36/EU Directive. As noted, on women at risk of being victims of sex-trafficking usually concur a large number of vulnerabilities, both emanated from the intrinsically sex-trafficking risk factors or derived from the migratory journey. It entails an action in a double sense: On the one hand, it refers to prioritizing the victim's safety and well-being in all matters and procedures¹¹⁴. On the other hand, frontline practitioners have to detect vulnerabilities in their daily work since it may indicate a potential victim of sex-trafficking¹¹⁵. Such expected behavior increases during detection in coasts when there has probably been no prior contact with the person and different yet unknown vulnerabilities may concur.

¹¹⁰ OSCE, ‘*Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach*’, SPMU Publication Series Vol. 10, June 2011, Vienna, 44

¹¹¹ UNICEF Regional Office for Europe and Central Asia, *Identification of Victims/ Persons ‘At-Risk’ of Trafficking in Human Beings, Practical Guide for Frontline Responders*, 2022, 18

¹¹² OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, ‘*Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Protect, Combat Human Trafficking*’, November 2011, 20

¹¹³ OHCHR, *Human Trafficking. Joint UN Commentary on the EU Directive – A Human Rights-Based Approach*, November 2011, p 30

¹¹⁴ Rebecca Surtees and Laura S. Johnson (2021) *Trafficking Victim Identification: A Practitioner Guide*. Regional Support Office of the Bali Process (RSO) (Bangkok) and NEXUS Institute (Washington DC), 2021, 2

¹¹⁵ The Croatian Red Cross, France terre d’asile, ‘*the Asylum Migration and Integration Fund of the European Union The identification of victims of human trafficking in transit and destination countries in Europe, A practical guideline for frontline officers*’, February 2019, 16

To be *culturally appropriate* (article 6 Warsaw Convention and paragraph 18 of the 11/36/EU Directive) means to be take into account and respect the victim's cultural and religious beliefs, values, norms, practices and language¹¹⁶.

To be *trauma-informed* means to recognize the impact of trauma and the promotion of environments of healing and recovery¹¹⁷, avoiding re-traumatization¹¹⁸. This is especially important when referring to sub-saharan women who arrive to the coasts after the foot and sea journey explored, since as aforementioned, during the migratory journey there are a high possibilities of suffering different forms of abuse, rape, or have been exposed to events such as crossing the desert or spending days at sea, which have led to the generation of traumas.

All these characteristics that make up a victim-centered approach complement each other, so that, for example, *acting trauma-informed due to sexual abuses or rape generally associated with the gender where it may have occurred, mixes at the same time acting in a trauma-informed manner, with a gender approach and in attention to vulnerabilities*. Similarly, *understanding that sub-Saharan women tend to behave in a hermetic manner may be due to cultural factors, gender-based abuse, and other issues, thus cultural, gender, and trauma focus are interconnected*. Thus, in front of the first contact in coasts that detection implies, where the previous story of the potential victim is not usually known, and the fact that sub-saharan women potential victims of trafficking share more less vulnerabilities factors, all these perspectives shall exist and complement each other during the detection phase, and many times they will be materialized jointly.

b) The pillars that through a victim-centered approach generate an adequate detection: formation, indicators and trustworthy relationship

As a methodology of actuation, the elements of the victim-centered approach shall be included in the actuations of the practitioners. There are three pillars considered fundamental for the detection process:

Firstly, *formation* with a victim-centered approach to detect is one of the key factors to ensure effective detection (article 10.2 Palermo Protocol)¹¹⁹: Its relevance lies in that through it, professionals gain adequate tools to create a favorable situation so that the victim feels comfortable and decides to share the relevant aspects of their case¹²⁰ within the framework of an exceptional situation, such as the immediate arrival on the coast of a new country¹²¹. It also allows the assessment of the individual case in attention to the needs and vulnerabilities in

¹¹⁶ Rebecca Surtees and Laura S. Johnson (2021) *Trafficking Victim Identification: A Practitioner Guide*. Regional Support Office of the Bali Process (RSO) (Bangkok) and NEXUS Institute (Washington DC), 2021, 2

¹¹⁷ Ibid, 2

¹¹⁸ OSCE, *National Referral Mechanisms. Joining efforts to protect the rights of trafficked persons. A practical Handbook*, Second Edition, 2022, 112

¹¹⁹ This is echoed by along the CoE, *Compendium of good practices on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*. Council of Europe, 2016, reports, and most part of the interviewers of this project both organizations and researchers (Martina, Lluís, Gloria, The Andalusian Red Cross, Nuevo Hogar Betania)

¹²⁰ Amy Farrell, 'Policing labor trafficking in the United States' *Trends in Organized Crime* 23(1), 2020, p 10

¹²¹ Plan Estratégico nacional contra la trata y explotación de seres humanos, 2021-2023 (*Spanish National strategic plan against trafficking and exploitation of human beings (2021-2023)*, PENTRA), 5

order to offer them adequate protection. Therefore, to perform identification, States shall provide actors with trainings and qualification for detecting¹²², which encompass to become specialized entities and practitioners.

The term ‘specialized entities’ are entities sensitive to trafficking¹²³ where a Human Rights and victim-centered approach is used¹²⁴ to in front of different sizes and characteristics of masses of arrivals, detect in an easier but equally quality guaranteeing the specific needs.

Detection in hand of specialized NGOs is positively seen¹²⁵. The reason is that, ‘when the detections are made by specialized NGOs usually women get more psychologically recovered, are more aware of what they have lived, and in case the identification process continues, they are more prepared to face the different stages since they have worked with that entity on the story they are going to tell the police, they can make a coherent story and above all, they are accompanied by an entity that protects them from certain questions who may re-victimize them, sets limits and helps them focus the identification process’¹²⁶.

Secondly, through the detection process, a victim-centered approach requires the development of a *trustworthy relationship* with potential victims¹²⁷. Such atmosphere is created through the empathy in all interactions¹²⁸, which entails acting closely, and in a friendly manner to reinforce the creation of trust from the first contact with the practitioners. It also means the provision of information about their rights. they shall be referred to appropriate services and to be provided with information about their rights¹²⁹. In particular, in relation to access to international protection, it covers the provision of information regarding the possibility of accessing it. The reason is that it is understood as an appropriate service and part of the right to information to presumed victims, to be given when appropriate.

Lastly, *indicators*, shall be embedded by a victim-centered approach in the form of combining questions or observations coupled to the rhythms of the context, the woman and her individualized case¹³⁰. For example, *it is well recognized as a good practice, that the indicators that are observed as soon as there is an arrival to the shores, are mainly indirect observation instead of questions, due to the context of new arrival, agitation, fatigue, and other associated factors*¹³¹. Additionally, indicators should not be used as looking for a certainty, but as an indication that can be used to create a presumption in favor of the victim to

¹²² CoE, *Compendium of good practices on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*, 2016, 2

¹²³ Key informant 7

¹²⁴ Key informant 5

¹²⁵ Amnesty International, ‘*Invisible chains: Victims of trafficking identification in Spain*’, October 2020, 4

¹²⁶ Key informant 5

¹²⁷ OSCE, ‘*Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach*’, SPMU Publication Series Vol. 10, June 2011, Vienna, 27

¹²⁸ UNHCR/HCP/2020/04, *Policy on a Victim-Centred Approach in UNHCR's response to Sexual Misconduct, Sexual exploitation and abuse and sexual harassment*, 2020, 9

¹²⁹ OSCE, *Trafficking in Human Beings: Identification of Potential and Presumed Victims, A Community Policing Approach*, SPMU Publication Series Vol. 10, Vienna, June 2011, p 27

¹³⁰ Cruz Blanca NGO, ‘*Risk-factors for human trafficking in Spain as a transit or destination country for migrants*’, October 2022, 36

¹³¹ Ibid, along; Key informants 5 and 7

improve their access to assistance and protection¹³² and allow a further investigation in the identification procedure¹³³. In concrete, despite the is the accumulation of indicators what entails whether a woman is a presumed victim¹³⁴, to avoid stereotyping the victims, indicators should not be approached as a tick-list to complete, but they should rather adapt to the individual case itself¹³⁵

3.3 The relevance of detection at the coasts and immediate protection measures

Detection as a form of protection reverts of special importance on the coasts. There are some specific reasons worth mentioning foreseen in previous sections:

The vulnerability of the victims has been aggravated during the journey after the high probability of having suffered various forms of abuse and of concurring in it on many occasions, the need for various forms of protection, such as of victim of sex-trafficking or of international protection derived from that. Besides, many times victims do not self-identify as such.

Following, detection on the coast is particularly difficult: On the one hand, unlike detection in other places such as within the territory, at the borders, and in this case coasts, there exist two common victims profiles: the ones of the victims already exploited but who believe that once they enter Europe such exploitation will stop, and the ‘victims at risk of trafficking’ who are those victims who have been recruited but their exploitation has not yet occurred¹³⁶. Within them, the detection acquires a relevant value because an adequate protection entails the avoidance, prevention, of future exploitation¹³⁷. On the other hand, as mentioned, in arrivals through large migratory flows and mixed migratory flows, a large number of profiles with different protection needs are interrelated.

For the mentioned reasons, coastal detection is particularly complex since on the one hand, the indicators cannot be observed as clearly or directly as when the detection occurs within the territory where exploitation can be more easily observed, and on the other hand, people in the coasts do not respond in the same manner due to the journey taken, the awareness of their exploitation and the moment of exploitation in which they are.

¹³² UNICEF Regional Office for Europe and Central Asia, *Identification of Victims/ Persons ‘At-Risk’ of Trafficking in Human Beings, Practical Guide for Frontline Responders*, 2022, 15

¹³³ OSCE, *National Referral Mechanisms. Joining efforts to protect the rights of trafficked persons. A practical Handbook*, Second Edition, 2022, 187

¹³⁴ UNICEF Regional Office for Europe and Central Asia, *Identification of Victims/ Persons ‘At-Risk’ of Trafficking in Human Beings, Practical Guide for Frontline Responders*, 2022, 15

¹³⁵ Cruz Blanca NGO, ‘Risk-factors for human trafficking in Spain as a transit or destination country for migrants’, October 2022, 36

¹³⁶ Key informant 5

¹³⁷ Ibid

That is why 'it is essential to focus on the victim's vulnerability situation; understand the previous context that may have exposed her to a situation of sex-trafficking'¹³⁸. Therefore it is necessary to establish specific, simple and clear protocols¹³⁹ with its respect and to form practitioners, use indicators and foster a trustworthy relationship under a victim-centered approach to materialize their detection, and thus, their protection. In this manner, an effective detection is facilitated, 'cutting the cycle of trafficking before exploitation happens', and being the first step towards the provision of protective measures, avoiding the increase of the vulnerabilities and exploitation of the victims¹⁴⁰.

An effective detection leads to the provision of adequate immediate protection measures. Both of international and human trafficking are complementary¹⁴¹. The relevant one to this project since they will be further mentioned with respect being potential and presumed victims of sex-trafficking, and from the access to international protection on the same grounds and during the victim-detection process, is non-refoulement¹⁴². It is essential to both since it avoids suffering social ostracism or serious violations of their human rights, as well as the 're-trafficking' phenomenon, which consists in being re-recruited by traffickers¹⁴³.

3.3.1 How access to International Protection provides immediate protection to potential and presumed victims of sex-trafficking?

Women victims of sex trafficking can have multiple protection necessities¹⁴⁴. Women who have been subjected to trafficking through an international border, whether in transit or as a destiny, may need international protection in the basis on their experience¹⁴⁵. Thus, they can be victims of sex-trafficking as well as asylum applicants¹⁴⁶, and can access it during their victim-detection process¹⁴⁷.

Since the project analyzes the victim-detection process, it does not valorate whether the conditions for the recognition of international protection are met. Rather, it explores when the NGOs practitioners understand there exists a formulation for the application, and the moment in which the potential victims submit her application to the corresponding State offices to access it.

¹³⁸ Key informant 5

¹³⁹ Cruz Blanca NGO, '*Risk-factors for human trafficking in Spain as a transit or destination country for migrants*', October 2022, 33

¹⁴⁰ Ibid

¹⁴¹ UNHCR, Bhabha, J and Christina Alfirev (PPLAS/2009/03), *Legal and protection policies research series. Identification and referral of trafficked persons to procedures for determining international protection needs*, October 2009, para 5

¹⁴² OHCHR, '*Fact Sheet No. 36: Human Rights and Human Trafficking*', 2014, 29

¹⁴³ CEAR NGO, *10 recommendations to report on sex-trafficking from the right of asylum*', 2018, Bilbao, 10

¹⁴⁴ Frontex, *Practical Guide: Access to the Asylum Procedure*, 2016, 13

¹⁴⁵ UNHCR, *Trata de personas ('Human Trafficking')*,

<https://www.acnur.org/que-hacemos/salvaguardar-los-derechos-humanos/asilo-y-migracion/trata-de-personas>

¹⁴⁶ Frontex, *Practical Guide: Access to the Asylum Procedure*, 2016, 13

¹⁴⁷ OSCE, *National Referral Mechanisms. Joining efforts to protect the rights of trafficked persons. A practical Handbook*, Second Edition, 2022, 21

Beforehand, in general terms international protection is translated in the European context into the protection given to third-nationals on the basis of the refugee status or the subsidiary protection (Directive 2011/95/EU articles 2(a)(e)(g)¹⁴⁸). The legal instruments of human trafficking recognize the right to international protection for victims of sex-trafficking: The Palermo Protocol (article 14(1)), Warsaw Convention (articles 14(5) and 40(4)) and the 2011/36/UE Directive (paragraph 23 and article 6). Indeed, potential or presumed women victims of sex trafficking may be granted with international protection due to protection needs related to their status as such¹⁴⁹.

Since there exists the possibility of being granted with international protection for reasons of sex-trafficking, such an option shall be accessible to potential and presumed victims.

In the same way as for the victim-detection process, the role of these frontline practitioners shall be to be proactive in terms of identifying persons who may wish to request international protection. The practitioners are the same for both procedures, so the elements and pillars to foster a victim-centered approach exist for both cases. Even so, it is considered necessary to mention some particularities in the case of access to international protection. To do so, they shall act in the following manner:

Firstly, the fostering of a trust-relationship is of special relevance in this case, where women with these needs may have suffered mistreatment by different actors in their countries of origin or during their migratory journey, which may affect the way of interacting with the practitioners¹⁵⁰.

Secondly, practitioners shall offer pertinent information on the right to apply for asylum and refer them to the appropriate procedures¹⁵¹. This right to information purpose, which is framed within the fostering of a trustworthy relationship¹⁵², is to ensure that people who may be in need for it have effective access to its procedure and are able to make informed decisions on whether or not to apply for it. Therefore, the information shall be provided, in attention to the circumstances, in a timely and complete manner¹⁵³.

Finally, access to international protection can occur at any time during the process of detection as victims of sex-trafficking, and it consists in three steps: formulation, registration and presentation of the application, and its position in the asylum procedure¹⁵⁴. The three first steps correspond to the practitioners, meanwhile the latter correspond to the authorities. In

¹⁴⁸ Directive 2011/95/EU of the EP and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0095>

¹⁴⁹ Frontex, *Practical Guide: Access to the Asylum Procedure*, 2016, 13

¹⁵⁰ Ibid, 6

¹⁵¹ Ibid, 3

¹⁵² Key informant 7

¹⁵³ Frontex, *Practical Guide: Access to the Asylum Procedure*, 2016, 17

¹⁵⁴ Ibid, 4

particular, what mostly relevant here for future analysis regarding the first steps, is that the formulation shall be understood as any sign or manifestation of fear of being persecuted or of suffering serious harm if entry is denied, which can be expressed verbally or written¹⁵⁵. The underlying reason is that, using a cultural focus, third-country nationals can express their intention to request international protection in different manners¹⁵⁶. In any case, practitioners shall not valorate whether the requirements to be granted with international protection are met or not¹⁵⁷. No one can be denied access to the asylum procedure, even if they do not meet all the entry conditions and are 'irregular immigrants'¹⁵⁸. With regard to the position in the asylum procedure, it refers to when the applications are presented and later valued for their further processing¹⁵⁹.

¹⁵⁵ Ibid, 22 ; OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, *Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Protect, Combat Human Trafficking*, November 2011, 59

¹⁵⁶ Frontex, *Practical Guide: Access to the Asylum Procedure*, 2016, 22

¹⁵⁷ Ibid, 18

¹⁵⁸ Ibid, 22

¹⁵⁹ Spanish Government, *Información para solicitantes de protección internacional en España: derecho de asilo y protección subsidiaria ('Information for applicants for international protection in Spain: right to asylum and subsidiary protection')*, 3

BLOCK II. THE ANDALUSIAN VICTIM-DETECTION PROCESS ON COASTS UNDER THE LENSES OF A HUMAN RIGHTS PERSPECTIVE

As the UNHCR determines, to estimate whether a country have the capacity to protect potential victims of human trafficking, ‘It shall be valued whether there are established mechanisms to (...) protect and assist the victims, and whether such mechanisms function effectively in the practice’¹⁶⁰. However, in 2013, the Spanish Ombudsman contemplated early identification on coasts as a challenge to reinforce¹⁶¹. On its behalf, GRETA asked Spain to increase the real capacity for the detection of potential victims by the practitioners who may come into contact with them at the borders¹⁶².

Thus, this block analyzes on the basis of the sustained theory of the above block, whether Spain the proactive detection of sub-saharan women potential victims of sex-trafficking under the Human Rights perspective, thus, whether it uses a protection and victim-centered approach, is used in the Andalusian coasts. For such an aim, it explores whether the law and policy framework, as well as whether the practice, uses it.

To do so, it firstly develops the motives to choose the Spanish case (section 4), the general and legal policy framework (section 5) firstly developing the Spanish context (subsection 5.1) and further developing the specific relevant human trafficking and international protection instruments. Specifically, those that will be further analyzed to observe whether they contain a protection and victim-centric approach are: the 'Framework Protocol', 'PENTRA', and the 'Andalusian Strategy', since they contain references to the identification process. For the asylum part, it will also refer to the Asylum Law.

Section 6 observes whether they this Human Rights perspective is incorporated in practice, dividing between the formation, indicators, and trustworthy relationship pillars for the specific victim-detection process on the one hand, and the formation, information and formulation and position of the application, with regards the access to international protection on the same grounds, on the other hand. The sequence followed is similar to all: it observes the distance between the legal and policy framework at the international and Spanish and Andalusian level, and the practice, independently of whether provisions in that sense exist in the legal and policy framework.

¹⁶⁰ UNHCR, HCR/GIP/06/07, ‘*Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*’, 7 April 2006, paras 21-22

¹⁶¹ Spanish Network against Human Trafficking, Report of the Spanish Network against human trafficking for the GRETA, 26-27 February 2015, 15

¹⁶² GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain*, Second evaluation round, adopted 23 March 2018, para 57

Finally, section 7 observes the current consequences of non detection to shed light of the current situation on the detection in coasts, and also as a consequence, to justify even more why an effective detection is necessary.

4 WHY THE ANDALUSIAN COASTS? THE RELEVANCE OF THE SPANISH AND ANDALUSIAN VICTIM-DETECTION PROCESS

In general, Europe is a common place of transit and destiny for migration fluxes¹⁶³ and Western Europe is one of the most frequent destination areas for sex-trafficking¹⁶⁴. In particular in Spain, on contrary to other European countries, human trafficking is related to migrations: the majority of the victims of human trafficking are not nationals but third-national¹⁶⁵.

In 2022, the number of immigrants in irregular situation who acceded to the Spanish coasts was 28.930 persons aboard 1.704 vessels¹⁶⁶. Between 2017 and 2021, out of the total number of formal victims of human trafficking, 61% were of sex-trafficking. Out of them, 98% of victims were women¹⁶⁷. Abuse of vulnerability has been consolidated in recent years as the most frequent medium for sex trafficking, reaching 75% of the cases in 2020¹⁶⁸.

In particular, the reasons to analyze the implementation gap in Spain observing the process of detection in Andalusia respond to three main reasons:

First of all, their geographical position. Spain is a country positioned in the south west of Europe, between the Atlantic Ocean and the Mediterranean Sea. Such a strategic position turns it into a gateway to Europe where migratory and human trafficking routes use Spain as an entrance into Europe and the European Union¹⁶⁹, many times using Andalusia. Thereby, due to its geographical position, Spain, and the Andalusian territory, is a country of destination and transit to other countries of the European Union both for migrants and sex-trafficked persons.

¹⁶³ Relevant to mention is that within the EU, it is estimated that there are five to ten times more victims within the EU than reported. See: European Council, *The EU's work to combat human trafficking*, <https://www.consilium.europa.eu/en/eu-against-human-trafficking/>

¹⁶⁴ Spanish Government, *Comprehensive plan to combat trafficking in Human beings for the purpose of sexual exploitation*, p 7

¹⁶⁵ European Commission - Migration and Home Affairs, 'Data collection on trafficking in human beings in the EU', September 2020, 157

¹⁶⁶ Spanish Interior Ministry, Informe quincenal, Inmigración irregular 2022, Datos acumulados del 1 de Enero-31 de Diciembre (*Biweekly report, Irregular Immigration 2022, Accumulated data from January 1 to December 31*), 3

¹⁶⁷ Interior Ministry of Spain, *Trafficking situation in Spain*,

<https://www.interior.gob.es/openems/ca/servicios-al-ciudadano/trata/situacion-en-espana/>

¹⁶⁸ Plan Estratégico nacional contra la trata y explotación de seres humanos, 2021-2023 (*Spanish National strategic plan against trafficking and exploitation of human beings (2021-2023)*, PENTRA), 27

¹⁶⁹ TRABE and Fernando Pombo Foundation, 'An approach to the reality of sex-trafficked women. Diagnosis of the socio-legal barriers in the accompaniment of survivors of trafficking for the purpose of sexual exploitation', June 2021, 10

Secondly, their high numbers on sex-trafficking exploitation. According to estimations, in 2017, a third part of the victims of human trafficking in Spain are exploited in Andalusia¹⁷⁰. According to Spanish statistics between 2017 and 2021, the 61% of victims of human trafficking in Spain were for purposes of sex exploitation¹⁷¹. Out of it, the 98.5% of sexual exploitation took place in Andalusia¹⁷². In particular, the common form of sex exploitation in Andalusia is destined to prostitution¹⁷³, which agrees on the fact that Spain is the first country in Europe in consumption of prostitution, and the third in the world¹⁷⁴.

Thirdly, the numbers on victim-detection in Spain in general and Andalusia in particular are usually low and they vary depending on the consulted agency. If Spain and Andalusia are common transit and destination locations for victims of sex-trafficking, should not detection numbers be high in accordance?

To mention some Spanish official and common used records: On the one hand, according to the Fiscal Ministry, in 2021 there were 470 sexually-trafficked persons identified, 227 in serious-risk situation, and 95,53% out of them, women¹⁷⁵. However, according to researchers, those numbers would in reality only ‘contemplate the 5% of the real cases of victims of trafficking’¹⁷⁶. On the other hand, according to CICTO, in 2021 there were 4,704 persons in serious-risk situations within the state territory, where 1,059 were detected in Andalusia. However, these numbers only count identified cases while exercising prostitution¹⁷⁷, and therefore, it does not count the victims who arrived on the coasts. Consequently, GRETA and different human rights organizations note that such numbers do not reflect the real scale of the phenomenon in Spain¹⁷⁸.

Therefore, official detection numbers are biased: The numbers of victims of sex-trafficking do not include potential or presumed victims of trafficking detected by NGOs and other interventors, but only the formally identified victims¹⁷⁹. And the data on arrivals to the coasts does not differentiate between migrants and potential or presumed victims of sex-trafficking. Therefore, it is not known how many women arrive to the Spanish coasts irregularly, and how many of them were preliminary victim-identified¹⁸⁰.

¹⁷⁰ CITCO, (2018), Informe sobre la trata de personas en España en 2017 (*Report on human trafficking in Spain in 2017*), 10

¹⁷¹ Ministerio de Interior de España, Trafficking situation in Spain, <https://www.interior.gob.es/opencms/ca/servicios-al-ciudadano/trata/situacion-en-espana/>

¹⁷² Mujeres en Zona de Conflicto NGO (2016), Estrategia de Intervención con Víctimas y Supervivientes de Trata en Andalucía y Ceuta (*Intervention Strategy with Victims and Survivors of Trafficking in Andalusia and Ceuta*), 62

¹⁷³ Ibid, 37-38

¹⁷⁴ Europapress, España, tercer país en el ranking de demanda de prostitución, según datos de la ONU (*Spain, third country in the ranking of demand for prostitution, according to UN data*), 04 February 2022,

<https://www.publico.es/sociedad/prostitucion-espana-tercer-pais-consumo-prostitucion.html>

¹⁷⁵ *Report of the Spanish State Attorney General's Office for 2021. Chapter 3. Section 4.1.1*, 840

¹⁷⁶ Key informant 6

¹⁷⁷ CITCO (Intelligence Center against terrorism and organized crime), Interior Ministry, Trata y explotación de seres humanos en España. Balance estadístico 2017-2021 (*Trafficking and exploitation of human beings in Spain. Statistical balance 2017-2021*), 3-4

¹⁷⁸ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain*, Second evaluation round, adopted 23 March 2018, paras 16-17

¹⁷⁹ Ibid, paras 16-17

¹⁸⁰ Amnesty International, *Invisible chains: Victims of trafficking identification in Spain*, October 2020, 4

5 LEGAL AND POLICY FRAMEWORK: SPAIN AND ANDALUSIA

5.1 Territorial organization of Spain, competencies and normative hierarchy

The Spanish State is organized territorially, being the Autonomous Communities -as Andalusia- dependent on the State¹⁸¹. In Spain there is a normative hierarchy between the norms which provides revealing the priority between norms: at the top is the Spanish Constitution followed by Laws, which can be organic or general, where the first one contains more law protection guarantees and are reserved for special subjects. Following, there are the Regulations¹⁸². Policies and strategies, are not norms in stricto sensu, but road maps of actions to take at the level of the Public Administrations to improve or introduce changes in certain subjects¹⁸³.

International and European laws have an infra-constitutional rank but if conflict between a treaty and internal law or the Constitution, the latter shall be modified. Their norms do not need a transposition. Thus, once validly concluded and officially published in Spain, they form part of the internal legal system (article 96.1 Constitution).

Thirdly, Spain there exists a distribution of powers or competences between the territories (articles 149, 150 Spanish Constitution). Thus, they can be exclusive from the Autonomous Communities or the State (articles 149 and 150), or they can be shared. The relevance lies in that the territory with competence is in charge of legislating and ensuring compliance with the regulations on that subject¹⁸⁴. However, to the purpose of the duty of due diligence, since a concept from international law, is still claimed from the State from the international point of view:

Regarding international protection, the State has exclusive competencies over it (article 149.1.2 Spanish Constitution). Regarding human trafficking, it mixes State and autonomic responsibilities: Key informant 5, states that ‘Victim-identification is competency of the Immigration subject, and hence, it is an exclusive competence of the State (article 149.1.2 Spanish Constitution). Protection and assistance to victims is a competency of the Autonomous Communities, since they are the ones who have competency over the assistance to victims who are within their territory’¹⁸⁵. On his behalf, Key informant 8 states that ‘the idea of potential victims belongs to the helping and humanitarian actuation, which in a great part, is the responsibility of the Autonomous Communities’. Thus, regarding victim-detection

¹⁸¹ Spanish Government, *Spanish State powers and territorial organization*
<https://www.lamoncloa.gob.es/espana/organizacionestado/Paginas/index.aspx#:~:text=del%20Tribunal%20Constitucional.-,Organizaci%C3%B3n%20territorial.gesti%C3%B3n%20de%20sus%20respectivos%20intereses.>

¹⁸² *The legal hierarchy in Spain*, 2018

¹⁸³ Key informant 5

¹⁸⁴ Fernandez Navarro Lawyers, *The distribution of powers in Spain*,
https://www.fernandeznavarro.com/Blog/Entradas/2012/9/27_El_reparto_de_competencias_en_Espana_C.C.A.A_y_sus_Estados_de_Autonomia.html

¹⁸⁵ Ibid

in the coasts where it intersects humanitarian action, it seems that the State is competent on the victim identification, and the Autonomous Communities, in specific Andalusia, is also responsible since dealing with potential victims who arrive to their coasts as part of their helping and humanitarian actuation and because they are responsible on their protection and assistance.

5.2 National and Andalusian legal and policy framework for human and sex-trafficking

With respect to the international and European level, Spain is part of the Palermo Protocol, the Warsaw Convention, and the 36/2011/EU Directive. Spain ratified such instruments, and thus are directly applicable in all the Spanish territory, and hence, in Andalusia. Besides, Spain and Andalusia define human trafficking and vulnerability in the same terms as the such instruments (article 177(1) bis Spanish Penal Code and article 3 13/2007 Andalusian Law)

Human trafficking, using the legal hierarchy, emanates from the article 177(1) bis of the Spanish Penal Code and article 159 bis from the Organic Aliens Law. Derived from the latter, there are articles 140 and 146 on human trafficking. Neither of these instruments mentions identification or the victim-centric perspective. From the latter regulations, specific policies and strategies of Human Trafficking emerge:

Firstly, the 2011 Framework Protocol, relative to the Protection of Trafficking Victims entered into force. Following, there is the National strategic plan against trafficking and exploitation of human beings, hereinafter PENTRA, is in force for the period 2021-2023. It collects priorities that should guide the actions of the competent authorities based on due diligence¹⁸⁶. In respect to what concerns here, it equips detection and identification to protection¹⁸⁷, while it recognises the necessity for improving the mechanisms and tools for an early detection, ‘especially in the irregular arrivals at borders’¹⁸⁸.

Finally, at the Autonomic Andalusian level, there is ‘The Andalusian strategy for the fight against trafficking in women and girls for the purposes of sexual exploitation 2021-2024’¹⁸⁹ (hereinafter ‘Andalusian Strategy’). Axis two refers to the identification, detection, and comprehensive assistance to victims.

Regarding the specialized policies, they all explicitly recognize the victim-centered approach as defended in subsection 3.2 and in the international and European normative: VI.C.3 Framework Protocol, PENTRA p 5, Strategic Andalusian Plan p 38-42 respectively. In

¹⁸⁶ Plan Estratégico nacional contra la trata y explotación de seres humanos, 2021-2023 (PENTRA) (*National strategic plan against trafficking and exploitation of human beings*), 7

¹⁸⁷ PENTRA, 5

¹⁸⁸ Ibid

¹⁸⁹ The Andalusian strategy for the fight against trafficking in women and girls for the purposes of sexual exploitation, 2021-2024 <https://www.juntadeandalucia.es/iam/catalogo/doc/iam/2021/143637199.pdf>

addition, the Framework Protocol determines that victims, and specifically third nationals in an irregular administrative situation, shall be treated with a maximum protection focus. The PENRA equips detection to protection. The Strategic Andalusian Plan establishes that all acts by the practitioners will be fostered by a Human Rights and protection focus.

5.3 International Protection instruments and mechanisms

Spain is part of the Refugee Convention 1951¹⁹⁰. Protection is the competency of the State (article 149.1.2 Spanish Constitution) and there are unified instruments at the State level in this regard.

The applicable national instrument relevant here is the 12/2009 Law, of the 30th of October, relative to asylum law and subsidiary protection¹⁹¹, so-called Asylum Law. Those persons who apply for international protection can be therefore granted asylum or subsidiary protection¹⁹². Such an instrument is relevant for those victims of human trafficking susceptible of being beneficiaries of international protection¹⁹³ since it includes an express reference to the situation of vulnerability of victims of trafficking who request international protection and who shall be guaranteed differential treatment (article 46).

6 THE IMPLEMENTATION GAP IN THE VICTIM-DETECTION PROCESS: LEGAL AND POLICY FRAMEWORK AND NGOs PRACTICE

‘Instead of providing meaning to facts by processing them upward through theorization, I do the opposite; I take them down to their most basic elements in an effort to de-theorize them.

Through this des-theorization I can revisit inequality’¹⁹⁴

6.1 Who detects and is their formation Human Rights, victim-centered based?

6.1.1 Who detects on the Andalusian coasts

The Warsaw Convention establishes that the identification will be done by hand of ‘the competent authorities and of Organizations that play a support role’ (article 10(1)(2)).

In relation to the Spanish norms, the Framework Protocol signalizes the borders as a place for detection and it settles that any person can detect (V(A)) but does not concretize who are the persons responsible for it (Framework Protocol, V(E)). On its behalf, the Aliens Acts neither in its article 56 nor 56 bis, both referring to human trafficking, does it mention who are the

¹⁹⁰ *Convention relating to the Status of Refugees*, 28 July 1951, Geneva,

<https://www.unhcr.org/sites/default/files/legacy-pdf/3b66c2aa10.pdf>

¹⁹¹ 12/2009 Law, of the 30th of October, relative to asylum law and subsidiary protection, hereinafter, Asylum Law

<https://www.boe.es/buscar/pdf/2009/BOE-A-2009-17242-consolidado.pdf>

¹⁹² UNHCR, *Asilo en España (Asylum in Spain)*, <https://www.acnur.org/es-es/acnur-en-espana/el-asilo-en-espana>

¹⁹³ TRABE and Fernando Pombo Foundation, ‘*An approach to the reality of sex-trafficked women. Diagnosis of the socio-legal barriers in the accompaniment of survivors of trafficking for the purpose of sexual exploitation*’, June 2021, 15

¹⁹⁴ Saskia Sassen, *Brutality and complexity in the global economy*, Katz, Buenos Aires, 2015, 11

people in charge of detection. Thus, none of the Spanish human trafficking instruments determine who are the competent persons to detect possible victims of sex-trafficking.

On its behalf, the Strategic Andalusian Plan against sex-trafficking reflects on its action 2.1.1, that ‘the collaborating organisms for detection are civil society organizations’¹⁹⁵. But there exists no concretization on which civil organizations are in charge¹⁹⁶.

In practice, although any person can detect, there exist front-line practitioners who face this situation on an ongoing basis¹⁹⁷. In the case of detection on the borders, GRETA 2018 report to Spain and Amnesty International stress that the detection of victims of trafficking is an almost exclusive task ‘the collaborating organisms for detection’, thus, of specialized NGOs¹⁹⁸. However, they ‘do not have a recognized and formal role’ in the Framework Protocol¹⁹⁹.

The no concretization on who detects and a lack of funds from the institutions²⁰⁰, results in an irregular presence of such organizations and on irregular actions dependent on the number of people who have arrived, which usually generates no detections²⁰¹. Instead, in front of massive arrivals, out of the actors present, some state that ‘there is nothing to do in relation to the victims of trafficking’²⁰² affecting people with diverse profiles and needs.

In the case of the Andalusian Red Cross, they determined the necessity of detecting because within the framework of the humanitarian aid they provide on coasts, they started to detect a specific profile of persons associated with victims of human trafficking²⁰³. Currently, the attention program for arrival at the coasts and the humanitarian attention program are financed by the Ministry of Inclusion²⁰⁴.

¹⁹⁵ Andalusian Strategic Plan against sex-trafficking, 54

¹⁹⁶ Trata Andalucía, <https://trataandalucia.com/recursos-de-interes-recursos-organizaciones/>

¹⁹⁷ Spanish Interior Ministry, *How is it detected?*

<https://www.interior.gob.es/opencms/es/servicios-al-ciudadano/trata/como-se-detecta/#:~:text=Cualquier%20persona%20puede%20encontrarse%20con,en%20frontera%2C%20organizaciones%20y%20entidades>

¹⁹⁸ Amnesty International, ‘*Invisible chains: Victims of trafficking identification in Spain*’, October 2020, 4; GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain*, Second evaluation round, adopted 23 March 2018, para 57

¹⁹⁹ RECTP, Informe de la Red Española contra la trata de personas para la coordinadora Europea de lucha contra la trata. Visita oficial a España (*Report of the Spanish Network against human trafficking for the European anti-trafficking coordinator: Official visit to Spain*), 26-27 February 2015, 34

²⁰⁰ Amnesty International, ‘*Invisible chains: Victims of trafficking identification in Spain*’, October 2020, 24

²⁰¹ Ibid, 4

²⁰² Ibid, 31

²⁰³ Key informant 7: Andalusian Red Cross

²⁰⁴ Ibid

6.1.2 Formation of specialized detection NGOs

How does the strategy framework frame formation to detection entities, and does it refer to whether NGOs shall be specialized formed?

At the international and European level, the Palermo Protocol (article 10(2)) and the Warsaw Convention (article 10(1)) delegate the responsibility of formations to State Parties. But such training is only referred to authorities and civil servants, thus leaving civil society organizations outside their scope. The 2011/36/EU Directive, echoes the latter, adding that regular and mandatory training shall be promoted to different public officers and lawyers who are likely to get in contact with the victims, but does not mention Organizations (article 18(3) and paragraph 25). However, it mentions that the States shall work closely with the organizations in trainings (paragraph 6).

With reference to Spanish instruments, the Framework Protocol (V.E(1)) and Andalusian Strategy (action 3.4.1) determine training for the formal identification stage, but not for the detection one. that ‘once a possible victim has been detected on the border its identification will be done by agents with specific training’.

On its behalf, the PENTRA determines that to comply with the obligation of due diligence of the States in terms of protection, ‘continuous training must be promoted for the practitioners that intervene or may intervene in the detection’²⁰⁵. The reason given by PENTRA for aiming a continuous training is that ‘the complexity of the phenomenon of trafficking requires training to facilitate daily work’²⁰⁶.

In practice, there is a current lack of specialized organizations that detect²⁰⁷. However, there are some specialized organizations whose practice is further developed answering the next questions:

a) Is specialized formation provided to NGOs and who provides it?

When the Statal Protocol for identification and action in potential cases of THB for the purpose of sexual exploitation 2015-2018 was in force, the General Secretariat for Immigration and Emigration at the Ministry of Employment and Social Security facilitated training to professionals²⁰⁸. Nowadays, the number of initiatives and formation spaces is rising in general²⁰⁹

²⁰⁵ PENTRA, 7

²⁰⁶ Ibid

²⁰⁷ Key informant 1

²⁰⁸ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain*, Second evaluation round, adopted 23 March 2018, para 54

²⁰⁹ Amnesty International, ‘Invisible chains: Victims of trafficking identification in Spain’, October 2020, 23

With respect formations provided by the State or Andalusia, no formation has been reported²¹⁰. The specialized organizations create and use their own²¹¹. Indeed, in general, interviewees reported a large number of training courses created and promoted in collaboration with other expert organizations in trafficking or by themselves²¹².

b) *How are trainings with respect to their regularity, actualization and victim-centered content?*

Firstly, as the PENTRA determines, the trainings shall be continuous and actualized to respond adequately to the changing characteristics this phenomenon entails²¹³. The specialized organizations provide continuous and actualized training to their practitioners at a Statal, autonomic and local level²¹⁴ - ‘We provide them to all practitioners who may be in contact with the victims on the coasts: From the people we serve on the arriving boats to the secretaries of the reception centers. The idea is that everyone has the adequate tools to detect’²¹⁵.

Following, with respect whether they contain a victim-centered approach, and the PENTRA considerate in similar terms²¹⁶, trainings provided by the organizations include such focuses - ‘We have a formative plan on human trafficking, and because we work with populations with many types of vulnerabilities, thus our trainings intrinsically incorporate a Human Rights approach’²¹⁷.

c) *Are trainings provided sufficient?*

In general, Amnesty confirms that they have not been able to obtain data with respect the impact and efficiency of formations provided²¹⁸. Indeed, during the realization of this research, it has been revealed in two distinct and informal conversations with two delegations of the same organization which operate in different points of the Andalusian coasts, that despite being both in relevant arrival points and belonging to the same organization, they do not have the same formation on detecting: one argued their continuous specialized formation meanwhile the other alleged its non formation since ‘the usual number of detected victims is usually low’.

The specialized organizations state that ‘our level of specialization has evolved a lot in recent years. We have a very competent and formed team’²¹⁹.

²¹⁰ Key informant 5 commented she was unaware of the existence of these formations. Key informant 3 said they thought they were not provided.

²¹¹ Key informant 7

²¹² Key informants 3, 5, 7

²¹³ Veronica Teresi and Maria Sopena Vallina (2023). ‘Dealing with international human trafficking in Spain: between criminalization and a human rights approach’ *Cuadernos de Trabajo Social*, 36(1) (2022), 170

²¹⁴ Key informant 7

²¹⁵ Ibid

²¹⁶ PENTRA, 32

²¹⁷ Key informant 7

²¹⁸ Amnesty International, ‘Invisible chains: Victims of trafficking identification in Spain’, October 2020, 23

²¹⁹ Key informant 7

On the other hand, the PENTRA determines the existence of establishing follow-up indicators for the formation line of action in consultation with specialized organizations and entities of civil society²²⁰. In practice, it is reported that there exists ‘a Monitoring Commission which meets every 6 months using an Excel sheet that each Ministry has to fill out to keep a count, but the impact of the actual actions and the improvements is not really analyzed this way’²²¹.

6.2 Indicators and the building of a trustworthy relationship during the victim-detection under the Human Rights perspective

6.2.1 Building of a trustworthy relationship

As mentioned, all international, European, Spanish and Andalusian instruments refer to the use of a victim-centered approach, which are the preconditions for a trustworthy relationship to exist. The Framework Protocol determines the necessity of use during the identification process ‘a maximum protection criteria with the potential victim, and even more with third-nationals in an irregular administrative situation’ (VI.C.3). The PENTRA determines within its detection section, that it is necessary that they are placed ‘at the center of every process to achieve efficient results’²²². The Andalusian Strategic Plan highlights the necessity of fostering a trustworthy relationship when detecting²²³.

In practice, the specialized organizations put in practice the fostering of the trustworthy relationship in the same manner as comprehended by the Strategies and Plans: ‘since the sub-saharan profile tends to be more reserved, the trustworthy relationship becomes even more relevant. Therefore, the use of empathy and treating them in a kind and safe manner is enough, but we are aware of that knowing their language, traditions and cultural nuance facilitates the development of this relationship’²²⁴.

Besides, they foster it from the beginning so that ‘the idea is to create a trustworthy atmosphere so that they can count with us whenever they need it’.

²²⁰ PENTRA, 43

²²¹ Key informant 5

²²² PENTRA, 5

²²³ Andalusian Strategic Plan, 38

²²⁴ Key informant 10

6.2.2 Indicators and indicators lists

According to the practice, indicators should be ‘generalized and standardized’²²⁵ in indicators lists. Is the necessity of a victim-centered approach for the indicators and lists of indicators mentioned in the international, European, Spanish and Andalusian framework?

The Palermo Protocol, the Warsaw Convention are silent. The 2011/36/EU Directive determines that ‘general common indicators of the European Union for the identification of victims of trafficking’ should be developed through ‘the exchange of best practices between all the relevant actors, particularly public and private social services’ (paragraph 4).

The Framework Protocol (VI.C.1) and the Andalusian Strategic Plan (Axe 2) promote the use of indicators for the detection procedure but do not develop them²²⁶. In the case of the Framework Protocol, it can be derived from the section in which that state is made, that they should use a victim-centered approach. The PENTRA does not mention indicators in this sense.

In practice, currently there does not exist a common list of indicators promoted at the European, Spanish or Andalusian level neither common to all victim-detection procedures nor within the coasts²²⁷. On the contrary, ‘nowadays, the form of detecting and identifying depends on the sensitivity of the person’²²⁸ and ‘there exist indicators lists specific to specialized organizations’²²⁹.

Specialized organizations constantly adapt the indicators in the observation of new similar and repeated cases they begin to observe and communicate it to its own organization in other coastal points. The aim is that then we are all aware of the new trends and act in accordance²³⁰.

Regarding the attention to vulnerabilities focus, they adapt to the context, and consider observation indicators as relevant, even more when they are disembarking. ‘When the boats arrive, the first thing we do is a health and social triage to ensure they are in good condition. This is not a moment to look for indicators using in the form of questions. Rather, we use observation indicators. Then, we fill out a personal file for each one where we note the vulnerabilities of sex-trafficking observed upon arrival’²³¹.

²²⁵ Key informant 1

²²⁶ Both the Framework Protocol and the PENTRA (p 20) quote indicators ‘mentioned in Annex II of the Protocol’ (VI.C.1). Such Annex is not found when recurring to different sources, such as the Spanish Government one where the rest of Annex appear: <https://violenciagenero.igualdad.gob.es/gi/otrasFormas/trata/normativaProtocolo/marco/home.htm>

²²⁷ Key informant 1

²²⁸ Key informant 3

²²⁹ Key informant 1

²³⁰ Key informant 10

²³¹ Key informant 10

‘For example, sometimes traffickers give a child to women so as not to raise suspicions. When they disembark we observe the relationship between the mother and the child’²³². However, ‘we take into account different cultural factors that may intersect. For example, from an European culture, to know the size of our son’s feet is essential, thus not knowing such a factor would be an indicator of a possible filiation issue. But it is not the same for many sub-saharan women; they are maybe used to buy the clothes in flea markets, thus they do not have to know the number her son fits because instead they place the shoe on the child's foot to see whether it fits’²³³.

The use of observation indicators extends throughout the whole detection process: ‘when the indicators emerge the most is when you are in the humanitarian dispositions in the kitchen making food with the women and they tell you their story’²³⁴.

An indicator with a gender focus refer to that we take into account that ‘there are more possibilities of having suffered violence, rape and mis-treatment during their journey’ which increases the risk-factors to become a potential victim of sex-trafficking²³⁵.

6.3 Access to International Protection

The Asylum Law determines that formation will be granted to ‘persons dealing with applicants for international protection’ to which end formative programmes will be elaborated (Third Additional Provision).

Nowadays, the Ombudsman reported training deficiencies in international protection²³⁶. Indeed, the UNHCR, reports the necessity of providing continuous and specific trainings for frontline practitioners on access to international protection and its linkage with human trafficking²³⁷.

a) Right to information about access international protection

At the international and European level, there is silence by hand of the Palermo Protocol and the Warsaw Convention with respect to the provision of information on international protection and the languages to use. On its behalf, the Directive 2011/36/UE regulates the provision of information with respect to the possibility of granting international protection, where relevant (article 11.6). The Spanish Asylum law also remains silent.

²³² Ibid

²³³ Key informant 10

²³⁴ Key informant 7

²³⁵ Key informant 10

²³⁶ Spanish Ombudsman, ‘*Human trafficking in Spain. Invisible victims*’, 2012, 14

²³⁷ Government against gender violence, *Evaluation of the integral plan to combat trafficking in women and girls for sexual exploitation purposes 2015-2019*, 30 June 2020, Madrid, 176

Regarding practice, the Ombudsman and Amnesty International have reported the lack of provision of information on international protection²³⁸. Other entities echo such a situation: ‘It has been seen on the Andalusian coast that women potential victims of sex-trafficking with international protection needs have not been provided with information in such respect. Specialized practitioners are needed so that international protection information is provided’²³⁹. On their behalf, specialized organizations determine that information on international protection ‘shall always be provided, and we do so. Both when they first arrive at the coasts and when the humanitarian centers. The reason is that sometimes people are not aware of that they meet the requirements to be granted with it’²⁴⁰.

With respect the conditions in which the information is given, some report that it shall be provided after the health triage and a brief break, to recover after the journey²⁴¹, to ensure that information is well received. In practice, frontline practitioners often provide it while in the first contact in the bay²⁴².

Lastly, with respect to the language in which it is provided, the Andalusian Red Cross states that ‘our practitioners know the languages they usually speak: English, French, Arabic, Bambara... . But there are thousands of dialects. There are cases in which, for example, they speak a specific Cameroonian dialect, so we look for someone who speaks it to translate for us’.

b) Access to international protection: formulation and position on procedure

Regarding to the formulation of the application regarding the valuation of the requirements to apply for it, specialized organization state that ‘we do not get involved in assessing whether or not the requirements met to understand there is a formulation and facilitate them access to international protection’²⁴³.

Regarding the last, it is reported that potential and presumed victims of sex-trafficking present problems with their access due to low credibility they can face due to not fitting in stereotyping stories and the fact that some of them have not already been exploited²⁴⁴. The Ombudsman and Amnesty International have also reported issues in the same sense, declaring problems with their access to international protection²⁴⁵. On their behalf, specialist organization states that ‘we always accompany them to present the application. There are no difficulties for potential and presumed victims of sex-trafficking, since all applications are admitted for processing’.

²³⁸ Amnesty International, ‘*Invisible chains: Victims of trafficking identification in Spain*’, October 2020, 31

²³⁹ Cruz Blanca NGO, ‘*Risk-factors for human trafficking in Spain as a transit or destination country for migrants*’, October 2022, 34

²⁴⁰ Key informant 9

²⁴¹ Amnesty International, ‘*Invisible chains: Victims of trafficking identification in Spain*’, October 2020, 30

²⁴² Ibid

²⁴³ Key informant 9

²⁴⁴ Begoña Santos Olmeda, ‘Victims of trafficking in Spain: The international protection systems’, *Anuario CIDOB de la Inmigración 2019*, 164

²⁴⁵ Amnesty International, ‘*Invisible chains: Victims of trafficking identification in Spain*’, October, 2020, 31

7 CONSEQUENCES OF THE NON DETECTION UNDER A HUMAN RIGHTS PERSPECTIVE: UNIDENTIFICATION AND MISCATEGORIZATION

Many victims come into contact with detection practitioners at different trafficking stages but the lack of a Human Rights perspective, of protection and a victim-centered approach translates in their missed identification or mis-identification. As a consequence, they may not know they are entitled to assistance as a trafficking victim²⁴⁶. There is a low number of data regarding the path followed by women when they have not been detected as echoed by professionals²⁴⁷, and hence the information collected here emanates mostly from interviews with professionals in the field.

With respect those whose identification is missed and have been later found being sexually exploited, organizations report that ‘since there is a lack of specialized organizations in coasts, once victims arrived, they ‘get lost’, since they were not detected as such, so doing our research, we found them later in clubs and other places being exploited’²⁴⁸. ‘To the extent that they are not detected, the exploitation cycle does not cut-off, and hence, they arrive at their destination, whether or not it is Spain, and then exploitation occurs’²⁴⁹, thus, women previously exploited become exploited again and those at-risk who had not yet been exploited are finally exploited.

For those for which Andalusia and Spain is a transit spot, there are known routes that are followed: one of the common ones is the one that starts from the disembarkation in Andalusia, continues to Bilbao or Barcelona, and from there they depart to France. Cases of women who continue to the Netherlands or Germany where they are exploited have also been detected²⁵⁰, continuing in this way, the cycle of exploitation in Europe as a place of destination. The reason for knowing such routes is that organizations communicate with each other, and on many occasions, they find certainty, although not always absolute, that victims are being exploited in those places²⁵¹. For those for which Andalusia is the destination spot, organizations in the territory sometimes detect them when they go to common places of exploitation and prostitution like clubs or brothels²⁵².

In the event that they are exploited in Spain, the general rule is that they continue in an irregular administrative situation and without health care, which is considered essential for prostituted women, since they often suffer from certain health conditions such as depression, vaginal tears...²⁵³ Moreover, the psychological, physical and social impact on women who

²⁴⁶ Ibid ; EAR NGO, ‘*Refugees and migrants in Spain: The invisible walls beyond the southern border*’, 2017, Madrid, 34

²⁴⁷ Key informants 6, 5

²⁴⁸ Key informant 1

²⁴⁹ Key informant 5

²⁵⁰ Key informant 3

²⁵¹ Key informant 5

²⁵² Key informant 3

²⁵³ Key informants 3, 6

suffer exploitation is bigger: ‘there is found more post-traumatic stress, physical, sexual and reproductive issues, situations of social isolation...’²⁵⁴.

Among those that have not been identified or have been miscategorized under another category but finally acceded the international protection procedure, it has been detected asylum seekers with signs of being victims of trafficking, but who have not been detected at any time as such until reaching those resources²⁵⁵. This means that border practitioners are not detecting or referring trafficking cases to the asylum procedure²⁵⁶.

Finally, with respect to those who have been miscategorized as irregular migrants²⁵⁷ or as involved in irregular activities²⁵⁸, it is known of the existence of women victims of sex-trafficking with or without international protection needs for reasons derived from trafficking who have been returned to their countries of origin. There is no Andalusian data on the amount of women victims of trafficking who have been returned²⁵⁹. Some Andalusian organizations do make a recount, but the data cannot be added to one another ‘because on some occasions, the same case has been dealt with by different organizations, but they do not echo that in their own statistics, which causes problems to scrutinize’²⁶⁰. ‘Since we have a good record (in the Balear Islands we have an agreement on trafficking indicators) we estimate that in the Balear Islands there have been around twenty returned cases in the last four or five years. Therefore in Andalusia this data would probably be multiplied by ten’²⁶¹.

Out of victim testimonies, it is known that many times when they are returned, they get exposed to numerous risks: ‘they have the risk of being re-trafficked by the same trafficking net, starting the trafficking process again and suffering reprisals from the network during that process’. For those who do not get re-trafficked and return to their origin communities, they ‘may suffer rejection due to ‘their failure in the migratory process’ and therefore for not having been able to get where they were supposed to go and for not being able to send money to their family’. Besides, when they have been already sexually exploited and it is known, ‘such is another reason to suffer rejection, violence and aggression from their communities’²⁶².

²⁵⁴ Key informant 5

²⁵⁵ Diaconia NGO, Informe de análisis de la situación de las víctimas de trata de personas en necesidad de protección internacional en España (*‘Analysis report on the situation of victims of human trafficking in need of international protection in Spain’*), December 2022, 21

²⁵⁶ Ibid

²⁵⁷ Spanish Ombudsman, *‘Human trafficking in Spain. Invisible victims’*, 2012, 12

²⁵⁸ Key informant 6

²⁵⁹ Ibid, 5

²⁶⁰ Key informant 6

²⁶¹ Ibid

²⁶² Key informant 5

8 Conclusions

Throughout the evaluation on whether a Human Rights perspective through protection and a victim-centered approach is adopted in the Andalusian victim-detection process, I have brought up the followings key findings and principal contributions to answer it:

- I consider relevant that the victim-centered approach in Spain to be included in policies and strategies. On the contrary, human trafficking is, for the most part, regulated in immigration and criminal laws, from where, according to the law hierarchy, the other provisions on human trafficking emanate from. The relevance rests on that despite I consider it positive that Spain and Andalusia have created recent plans and strategies for human trafficking, they compose a short period of duration (around 2 or 3 years) and do not contemplate the incorporation of specific mechanisms for victim-detection. On the contrary, I consider it would be useful to implement a victim-centric perspective for identification in a human trafficking law, since it would bind the development of a victim-centric approach in all acts contemplated in other policies and strategies that could develop it.
- Emanated from the analysis, I consider that on the one hand, the theoretical level from laws and policies, and on the other hand, the demands from the practice, feed each other. That is, from practice are also derived expected specific mechanisms to implement which comply with a Human Rights perspective. Such is the case of a continuous, obligatory and practical formations and the fostering of improvals regarding the trustworthy atmospera in specific contexts. I consider the emanation of proposals from practice as a positive phenomenon. The reason is that practice knows the reality and the different contexts, and for these good practices to be homogenized, I consider it positive that the strategies and laws include it. Nowadays, this is not a reality and that is why wide recommendations and reports from past years are not concretized in the new, actualized strategies on human trafficking.
- Despite in general, policies and strategies comment on the use of a protection perspective when detecting and providing a victim-centered approach with a gender, vulnerabilities, cultural, and trauma-oriented focus, there is still a lack of concretization and put into practice mechanisms they can also consider relevant to exist. That is the case of the improvement of trainings and the creation of a generalized indicators list.
- As a result of the previous, the use of the protection approach and a victim-centered approach depends on the criteria of the organizations. The consequences of the above are the increase of non-specialized organizations and of irregularities in efficient detection, in front of a lack of victim-centered mechanisms provided. On the contrary, specialized organizations, in particular those studied, whose practice extends during

the whole detection on coasts process, create and foster adapted trainings, indicators and trustworthy relationships while they seek the homogenization of good practices with a human rights perspective among other organizations.

- In any case, the lack of reported trainings and generalized indicators in general terms, handicaps the access to immediate protection to victims of sex-trafficking and the access to international protection on such grounds. With reference to the latest, it is reported a lack of formation and information to potential victims, which difficulties in long term their possible access to international protection, since it has to be presented within 1 month since the entrance of Spain. On the other hand, in case the women decide to present the application of asylum on victims of sex-trafficking grounds, they often find barriers since many times, exploitation has not yet occurred.
- Thus, currently it is reported the denial of international protection applications on victims of sex-trafficking grounds since the exploitation has not occurred yet, and on the other hand, official data often only contemplate the formal victims. Under my point of view, I consider that the conceptualization of who is a victim of sex-trafficking under a protection perspective should be assured and unified.
- I consider that the lack of aggregated data on women who reach the coasts and the ones detected as potential or presumed victims on the coasts, should be recorded in the aim of their protection. Nowadays, in the absence of such a mechanism, there arises the question of how many women are not being efficiently detected and thus protected, to which there is still no concrete answer.
- The absence of these data makes it difficult to observe the gap between the women who enter Spain and the ones detected as potential or presumed victims, the efficiency of the detection process, and ultimately, whether they are receiving appropriate attention. Cases of miscategorization and unidentification are reported, although still without numbers. On the contrary, the majority of sub-Saharan women are found already sexually-exploited in Andalusia, Spain, or other places, where their personal vulnerabilities increase. In the same manner, women who were already being detected and within them concurred with international protection needs derived from it, have been returned to their countries of origin, where they run the risk of re-trafficking and increased vulnerability.

In the same manner as mentioned in the introduction, Spain is responsible as a coastal and entry country of victims of sex-trafficking, to cut the trafficking cycle, that is, avoid their exploitation and provide them with adequate protection measures.

The current mechanisms put in place contain in general terms a perspective of protection and victim-centric. However, there is a lack of concretization in terms of mechanisms, training, indicators and trust relationship, in this sense. This means that it is the organizations

themselves and their practitioners who develop specific mechanisms to protect them, using a victim-centric perspective that respects their rights. In this way, I consider that the State complies to a small extent with its obligation of due diligence, since it should include appropriate specific mechanisms and ensure its generalized - homogenized - compliance in practice. On the contrary, I would like to highlight the continuous, updated and specific work carried out by the organizations that detect the coasts, which promote continuous and updated trainings, indicators, and the fostering of a trustworthy relationship day by day to promote an efficient and individualized detection to satisfy the necessities of women derived from being victims of sex-trafficking.

With an eye on the future, it can be foreseen a tendency on the creation of new strategies and the creation of an Organic Law for human trafficking, with the objective to 'protect the Human Rights' which is in process. In any case, I consider positively the creation of new strategies and a Law on human trafficking that per se counts with the maximum legal guarantees of protection, since the intention is to attend them, and protect them.

With such provision on the creation of a new law on human trafficking in Spain, I would like then to explore again the practice in comparison to the theory provided by the Law, under the Human Rights lenses, and to be able to confirm that theory and practice feedback each other in that sense. And consequently, that the victim-detection mechanisms are adequate and reinforced in accordance with this Human Rights perspective, so that granting protection to women victims of sex-trafficking who reach the Andalusian coasts is not an option, but a guarantee.

9 Key Informants

| | Key informant number code and personal data | Motive for the interview | Date and conduction of interview |
|---|--|--|---|
| 1 | <u>Key informant 1</u> <i>Verónica Barroso Testillano</i> , Advocacy officer, Amnesty International Spain | - Amnesty International has recently developed researches on the identification and detection procedure of victims of human trafficking in Spain | March Online (AR) 1h 10min |
| 2 | <u>Key informant 2</u> <i>Rafael Caceres Feria</i> , Professor of the department of social anthropology, basic psychology and public health of the University of Pablo de Olavide (Sevilla) | - Researcher on the relationship between women who use the Western Mediterranean route by foot and sea and sex-trafficking | March Online (AR) 54min |
| 3 | <u>Key informant 3</u> <i>Celia Pontiga</i> , Coordinator of human trafficking and gender violence in Sevilla (Andalusia), NGO Nuevo Hogar Betania | - Specialized organization on detection of women victims of sex-trafficking once they are exploited within the Spanish territory | April Online (AR) 50min |
| 4 | <u>Key informant 4</u> <i>Gloria Fernandez-Pacheco Ulises</i> , Professor at the Department of Law and Criminology at Loyola University (Sevilla), Migration Research Group | - Former of the Project ODOS on providing assistance to women victims of human trafficking and their children in Cordoba (Andalusia) - Principal investigator of a research project on intervention with unaccompanied migrant minors, through a digital risk assessment tool (VRIME) | April Online (AR) 55min |
| 5 | <u>Key informant 5</u> <i>Martina Kaplun Asensio</i> , Consultant on gender, migrations and Human Rights | - Expert on gender, migrations, human trafficking and Human Rights - Wide experience on working with different Spanish organizations who research and work with victims of human and sex-trafficking (Red Cross, White Cross, Amnesty International or Diaconia) | April Online (AR) 1h 43min |
| 6 | <u>Key informant 6</u> <i>Lluís Ballester Brage</i> , Professor of educational research methods at the University of the Balearic Islands | - Expert in prostitution, pornography and human trafficking - Collaborator in the development of the Assessment (complete) through the University of the Balearic Islands | April Online (AR) 1h 05min |

| | | | |
|----|---|---|-----------------------------------|
| | | - Researcher on the adequate and unified data collection on the matter | |
| 7 | <u>Key informant 7</u> Spanish organization specialist on Human Trafficking (<i>anonymized</i>) | | May Online (no AR) 1h 20min |
| 8 | <u>Key informant 8</u> <i>Jesus Garcia Calderon</i> , Former Superior Prosecutor of Andalusia (2001-2016), Royal Academy of Jurisprudence and Legislation of Granada (Andalusia) | - Wide experience on immigration, duty of due diligence of the State and Human Rights within the Andalusian borders and from a Justice operator perspective | May Written |
| 9 | <u>Key informant 9</u> Spanish organization specialist on Human Trafficking (<i>anonymized</i>) | | May Written |
| 10 | <u>Key informant 10</u> <i>Aurora Rodriguez Martinez</i> , First response project for the Immigrant Population, Almeria Red Cross (Andalusia) | - Frontline practitioner on victim-detection on the coasts - Law graduate and expert in human trafficking and cultural mediation | May Online (AR) 1h 42min |

* Informal interviewees for background purposes are not mentioned here, although their contributions have been considered throughout the project.

* AR: Audio recording

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