







### Excerpt from the book:

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**Cautionary note:** The terms 'child prostitution' and 'prostituted children' are used in this text to denote children that are sexually exploited and sexually trafficked. The connotative manner in which these definitions are perceived and analyzed may differ due to linguistic, cultural, and perceptual differences.

## SPAIN

	<b>POPULATION</b> 46,4 million		<b>GDP PER CAPITA</b> 28,156.8 USD
	<b>POLITICAL SYSTEM</b> Constitutional Monarchy		<b>HUMAN DEVELOPMENT INDEX</b> 27 <sup>th</sup> rank among 187 countries
	<b>GENDER INEQUALITY INDEX</b> 15 <sup>th</sup> rank among 147 countries		<b>CORRUPTION PERCEPTIONS INDEX</b> 42 <sup>nd</sup> rank among 180 countries

In 2017, Spanish NGOs, including the *Asociación para la Prevención, Reinserción y Atención a la Mujer Prostituida (APRAMP)*, estimated there to be 200,000 to 400,000 prostituted persons in Spain. Although these numbers have remained steady over the last few years, the nature of prostitution in Spain has changed since the late 1980s. Today, 80% of prostituted people are foreigners, often residing in Spain under illegal circumstances. Most are from Latin America (Brazil and Paraguay), China, Eastern Europe (Romania), or Africa (Nigeria). More than 90% of these migrants are suspected to be victims of human trafficking for sexual exploitation purposes (UNODC, December 2016).

Although prostitution in Spain is part of an underground economic system, it generates considerable revenue: about 12 to 18 billion euros (EUR) (USD 13,4 to 2,01 billion) each year (*Municipality of Madrid*, 2016). The scale of this phenomenon, worsened by the 2007

economic crisis, can also be explained by its normalization; it is estimated that 39% of Spanish men bought the services of a prostituted person (APRAMP, 2011), and that some spend around EUR 1,530 (USD 1,714) a year, which is EUR 127.50 (USD 142) per month, for paid sexual acts (*Fondation Scelles*, 2012). Spain thus is the third largest consumer of prostitution in the world after Thailand and Puerto Rico (*Marie-Claire*, November 15, 2013). Sex buyers tend to be younger, especially in the brothels of La Jonquera (in Catalonia), a border city to France, where using a prostituted person is considered as a rite of passage to adulthood and proof of heteronormative virility among certain young adults (Harlé *et al.*, 2013).

Spanish prostitution comes in different forms. The indoor sex trade (in bars, clubs, apartments, massage parlors, karaokes, brothels, hotels, hair salons, and industrial ships; 1,500 clubs are said to be home to prostitution “businesses”), is mainly composed

of prostituted women; the outdoor sex trade (in streets, forests, parks, and roads), is composed of prostituted people of all genders; victims in both indoor and outdoor prostitution are children or adults (*Europa Press*, 2017). Other forms of prostitution include student prostitution and sex tourism, both of which affect mainly women. Soliciting often takes place through the internet, notably through online advertisements and escort or “cam-girl” websites.

Prostitution can also happen within the context of human trafficking for sexual exploitation purposes, which is the main form of human trafficking in Spain, for example being of a higher significance than human trafficking for the purpose of forced labor. Trafficking networks are generally organized around two leaders surrounded by a number of Spanish or foreign accomplices who are from the same country as the victims. Sex trafficking mainly takes place in three geographical areas: the Mediterranean coast with Valencia and the Balearic Islands, northeast of Spain with Catalonia and mostly Barcelona, and the center of Spain with Madrid, due to a high density population, tourism, and migratory flows.

### **Spain, a leading country in regards to ending violence against women...**

Since the end of the 1980s, Spain has been a leading country in regards to ending violence against women. In fact, it was one of the first European countries to have conceived and acted on the principle of gender-based violence, notably by adopting the expression “gender-based violence” (*violencia de genero*) and “macho violence” (*violencia machista*). The Spanish lawmaker has stated as a result that violence against women was no longer viewed as an isolated and unfortunate phenomenon; rather, that it is an indicator of a larger social phenomenon, arising from

a global context of unequal gender relations and male domination.

The Spanish process was spearheaded by the passing of the Organic Law LO 1/2004 on December 28<sup>th</sup>, 2004 (*Ley orgánica de medidas de protección integral contra la violencia de género*), which implemented measures that protect women from gender-based violence. This national initiative was also supported locally; on April 24<sup>th</sup>, 2008, Catalonia passed the Local Autonomy Law LA 5/2008 on women’s rights to the eradication of macho violence (*Ley del derecho de la mujeres a erradicar la violencia machista*)

This work against gender-based violence has continued with the 2013 to 2016 National strategy for the elimination of violence against women (*Estrategia nacional para la erradicación de la violencia contra la mujer 2013-2016*), which was renewed for the 2017 to 2020 period in a second part focusing on young audiences and social media (*II Estrategia nacional para la erradicación de la violencia contra la mujer 2017-2020*).

Even more recently, the State Pact against gender-based violence (*Pacto de estado contra la violencia de género*) was passed in 2017 (RTVE.es/EFE, September 28, 2017). This nonpartisan act adopted nearly 200 measures and provides for EUR 1 billion (USD 1,12 billion) over the course of five years, or about EUR 200 million (USD 2,24 million) each year. Concerning sexual exploitation, the Act intends to reinforce prevention, notably of human trafficking, through the introduction of identification programs for teaching staff and interdisciplinary modules on sexual violence during professional training.

### **... yet not in regard to ending prostitution**

While ending gender-based violence in any form is, of course, welcome, it is

nevertheless unfortunate that eliminating prostitution does not seem to stand among the legislators' priorities. According to article 1 of the LO 1/2004, gender-based violence is defined as any physical or psychological violence, including "attacks on sexual freedom" against women by their present, or past, husbands or partners. Thus buying sexual acts and procuring are not considered violence against women and the Spanish definition of gender-based violence is limited to domestic violence, notably marital.

Prostitution, however, is gender-based violence in and of itself, and may lead to an increased chance of physical (beatings), sexual (rapes), and psychological violence (post traumatic stress disorders). Between 2010 and 2015, out of 678 femicides in Spain, 31 were committed because of the links with the prostitution activity of the victim. Seven of these murders were committed in Catalonia, eight in the region of Valencia, and eight in Andalusia. Victims are most often stabbed or beaten to death, oftentimes due to a conflict over price (*Femicidio.net*, March 31, 2016).

### **An abolitionist system...**

Spain is an abolitionist country. It ratified the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of December 2<sup>nd</sup>, 1949, although prostitution was criminalized until the 1995 new Penal Code (*Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*).

Today, only the procuring of prostitution and human trafficking for sexual exploitation purposes are illegal (though procuring shortly was depenalized between 1995 and 2003 - *Ley Orgánica 11/2003, de 29 de septiembre, de medidas concretas en materia de seguridad ciudadana, violencia doméstica e integración social de los extranjeros*).

According to articles 187 and 188 of the Spanish Penal Code, procuring can take two forms. The first form uses violence, intimidation, dishonesty, and/or an abuse of power dynamics to force someone to enter or stay in the system of prostitution. The second involves, more broadly, taking advantage of the sexual exploitation of others, regardless of the consent of the victim. Sexual exploitation is presumed in cases of personal or economical vulnerability, or in cases of a practice of prostitution that involves severe, disproportionate or abusive circumstances. Penalties incurred by perpetrators were strengthened by the March 30<sup>th</sup>, 2015, LO 4/2015, known as the protection of civil security (*de protección de la seguridad ciudadana*). Under this law, perpetrators may be punished more severely if they are in a position of authority, if they belong to a criminal organization, if they put a prostituted person's life or health at risk, or if they exploit a child or other vulnerable person.

However, contrary to the French system, the Spanish Penal Code doesn't consider brothel ownership illegal, under the conditions that the manager does not receive financial profits by employing the prostituted people themselves, and that the prostituted people are adults and are not victims of human trafficking (*European Parliament*, January 2014). There even exists a Union of brothel landlords called ANELA (*Asociación nacional de empresarios de locales de alterne*).

Furthermore, Autonomous communities (first territorial subdivision of the country) have some legal autonomy which allows them to adopt derogatory local legislation. Catalonia in particular has turned away from national regulations regarding prostitution since their August 1<sup>st</sup>, 2002 decree 217/2002, which facilitated the apparition of "mass prostitution" in "puticlubs" (strip clubs) (*Multitudes*, June 2012).

Human trafficking only became a specific legal offence in Spain with the LO 5/2010 of June 22<sup>nd</sup>, 2010, which incorporated in the domestic law, precisely into Title VII (art.177bis and subsequent) of the Penal Code, the Council of Europe Convention on Action against Trafficking in Human Beings, also known as the “Warsaw Convention,” dated of May 16<sup>th</sup>, 2005. Until then, prosecutions and convictions of those involved in human trafficking were rather based on legislations relating to aiding illegal immigration or on labor laws, for example by punishing false hiring promises.

On the other hand, neither the prostituted person nor the sex buyer is, in principle, penalized. However, solicitation may be punished under LO 4/2015 when it happens in a public place near children, such as schools and parks, or when it represents a risk to road safety. This law, known as the *Ley Mordaza*, was heavily criticized during its adoption, as it prioritized safety over the protection of prostituted persons and the penalization of sex buyers, whose demand perpetuates the system of prostitution (Fondation Scelles, 2016).

Purchasing sexual acts under such circumstances is punishable by a fine of up to EUR 30,000 (USD 33,607). Buying sexual acts from children is also punished, but with that being said, Spain does not align itself with the abolitionist Nordic model, founded in Sweden, which penalizes all purchases of sexual acts. For this reason, “non-legality” (*alegalidad*) concerning prostitution in Spain is frequently discussed: it is neither entirely lawful nor unlawful (Municipality of Madrid, 2016).

This legal uncertainty is the source of distinct debates in Spain concerning the abolitionist model. Different Spanish organizations (composed of prostituted persons) or political parties that uphold

“sex work” are in favor of a regulatory model.

### **...centered on human trafficking for sexual exploitation purposes**

Spanish penal law focuses on prostitution in the context of human trafficking for sexual exploitation purposes. Spain is a party to a number of international treaties regarding this thematic, such as the United Nations Convention against Transnational Organized Crime of November 15<sup>th</sup>, 2000, and its additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, known as the “Palermo Protocol”. Other treaties include the United Nations Convention on the Rights of the Child of November 20<sup>th</sup>, 1989, also known as the “New York Convention”, as well as the United Nations Convention on the Elimination of all Forms of Discrimination Against Women of December 18<sup>th</sup>, 1979.

At the European level, Spain is bound by the directive 2011/36/UE of the European Parliament and of the Council, of April 5<sup>th</sup>, 2011 and on preventing and combating trafficking in human beings, and protecting its victims.

At a national level, Spain created an official Integral Plan against human trafficking and sexual exploitation for the 2009-2012 period. A second plan was implemented to focus on the trafficking of women and girls (*Plan integral de lucha contra la trata de mujeres y niñas con fines de explotación sexual*), for the 2015-2018 period and in the context of the Social forum on combating human trafficking for sexual exploitation purposes. This specific plan takes a multidisciplinary approach, with several stakeholders: several different governmental ministries, Public Prosecutor’s Departments, Autonomous communities, and

specialized NGOs. The plan aims to coordinate policies that aid and protect victims, to develop the skills of participants.

Promoting public awareness of the general public: official telephone hotlines are in place since 2013 and make it possible for one to report possible human trafficking cases. In addition to those, the 2015 to 2018 Integral Plan aims to discourage the demand of prostituted persons, notably through several dedicated days such as the European Union Anti-Trafficking Day (October 18), and campaigns like “#tomaconciencia” (#become aware) (GRETA, February 24, 2017). There are more targeted campaigns in schools.

To a larger degree, Spain tries to change women’s image in the media through projects like *Novicom*, which deals with different media materials (TV, papers, etc) and reaches a large audience (GRETA, February 24, 2017). The government also wishes to put an end to escorting advertisements in newspapers, including those in the national newspapers like *El Mundo* and *El Pais*, as well as advertisements for prostitution training classes, such as those given for EUR 100 (USD 112) in Valencia, with “guaranteed employment” at the end (*L’Obs avec Rue89*, September 23, 2012).

## Protection

In Spain, there are several components for the protection of victims of human trafficking for sexual exploitation purposes.

The first component is on victims’ identification. To identify a potential victim, two protocols are applied: the “Framework protocol” and the “SGIE protocol” (GRETA, February 24, 2017). Both are founded upon three bases: collecting information about the potential victims, interviewing with them, and transmitting this information to the police and specialized NGOs, which

play a major role in this process. Authorities reported the identification of 114 victims of sexual exploitation over an eight-month period in 2017 (73 in 2016 and 65 in 2015) (*US Department of State*, June 2018).

Although the care and protection of child victims falls under the authority of Autonomous communities, it can be shared with specialized NGOs. Underage victims benefit from reinforced legal protection, notably under the July 22<sup>nd</sup>, 2015 LO 8/2015, which modified the system of protection for children and adolescents (*Ley de modificación del sistema de protección a la infancia y adolescencia*). The law allows assuming minority until proved otherwise, and the appointment of an *ad hoc* civil servant in the event of suspected human trafficking. The rule is always to insure the best interests of the child that shall be a primary consideration. A second National Plan for children and youth 2013-2016 (*II Plan estratégico nacional de infancia y adolescencia*, PENIA) was established in response to the increasing issue of unaccompanied minors.

The second component is on providing support for victims. A 2016 state budget was dedicated to helping and protecting human trafficking victims. This budget reached EUR 4,9 million (USD 5,5 million), out of which EUR 2 million (USD 2,2 million) were shared among 40 specialized NGOs (GRETA, February 24, 2017). In addition, the State now finances the repatriation of the human trafficking victims to their country of origin.

Victims in the country illegally may receive a residence permit in two cases. The first one is when their personal situation justifies it. The second one is when they collaborate with authorities, even if the collaboration does not bear fruit, provided that it is not in a deceitful or dishonest manner. According to LO 4/2000 of

January 11<sup>th</sup>, 2000, which concerns the rights and freedom of foreigners in Spain (*Ley sobre Derechos y libertades de los Extranjeros en España*), better known as the “Law of Foreigners” (*Ley de Extranjera*), such victims have a 90 days period of reflection during which they cannot be expelled from the country.

In addition, through NGOs, funds and lodging are available to victims with children.

The third component is to ensure the effectiveness of victims’ rights. In Spain, victims must have access to information regarding their rights (the lawyer assistance, access to complaint procedures and protective measures, the ability to claim compensation, and the right to an interpreter) as well as information regarding the resources available to them, communicated in a language they understand within a reasonable amount of time.

They are also entitled to free, unrestricted legal aid, during both the investigation and the trial, with access to a complete copy of the proceedings and to information on the course of events.

Victims may receive damages from their abusers, which is financed by an account provisioned by traffickers’ confiscated property. The public prosecutor must in principle require that a victim receives compensation unless the victim has formally renounced it. Victims may ask for compensation even after having returned to their home country.

The 4/2015 Act of April 27<sup>th</sup>, 2015 on the status of victims of an offense (*Act del Estatuto de la víctima del delito*) provides for the possibility to lengthen the appeal period of the decision to dismiss, discharge, or acquit a trafficker, and grants victims the right to appeal decisions to release traffickers on parole.

The final component concerns victims’ protection. Victims benefit from the principle of immunity, as established by Article 177bis

of the Spanish Penal Code. They cannot be condemned for an offence committed in the context of exploitation, when it is the direct result of the violence, intimidation, and abuse to which they were subjected to, provided that the act is proportionate.

Victims are also protected from their traffickers. Their personal data (such as their identity or address, or any other key data that may identify them) may be kept confidential during the penal proceedings, through methods like voice modification, two-way mirrors or pseudonyms.

More recently, the 4/2015 act also ensures that victims’ rights are protected during proceedings. This includes: the right to avoid any contact with the offender (using video-conference or closed hearings); the right to be accompanied by a person of their own choice and their lawyer; the right to questionings as short and as unrepeatable as possible; the right to medical exams when necessary; and the right to hearings in a room adapted to their needs, led by one trained agent of the same gender.

## Repression

The office of the Public Prosecutor announced that they had investigated 135 new files concerning human trafficking in 2017 (compared to 272 in 2016 and 344 in 2015). The Public Prosecutor initiated the criminal prosecutions of 60 defendants on grounds of human trafficking for sexual exploitation purposes in 2017 (compared to 37 in 2016 and 30 in 2015). The same year, Spanish courts condemned 26 traffickers for sexual exploitation (compared to 22 in 2016 and 58 in 2015 (*US Department of State*, June 2018)).

Although the Spanish government has not provided precise data on the subject, it is estimated that in 2016, sentences handed down to traffickers were up to 34 years’ imprisonment and EUR 80,000 (USD 89,618) of damages awarded to victims. On

average, traffickers served 75% of their sentences before being released on parole (US Department of State, June 2017).

Spain has worked to improve its investigations on human trafficking for sexual exploitation purposes. Firstly, prosecution services have closely collaborated with other partners, whether domestic, such as the Minister of the Interior and Spanish NGOs, or foreign, during international investigations. For instance, in 2018, the Spanish National Police collaborated with British and Nigerian authorities to arrest 89 members of an international prostitution network, rescuing 39 Nigerian victims (US Department of State, June 2018).

Secondly, the LO 13/2015 modifying penal proceedings, for the reinforcing of procedural guarantees and the regulation of technological enquiry techniques (*Ley de modificación de la ley de enjuiciamiento criminal para el fortalecimiento de la garantías procesales y la regulación de la medidas de investigación tecnológica*), passed on October 5<sup>th</sup>, 2015, reinforced police's ability to use special enquiry techniques, such as phone call interceptions, photo captures, and computer data captures. However, because these methods particularly infringe on suspects' privacy, they must only be used in accordance with the principles of exceptionality, necessity, specialty and relevance, in other words legal guarantees (GRETA, February 24, 2017).

Lastly, in order to more effectively fight against sex tourism, Spanish courts can prosecute crimes committed on Spanish ground (known as "territorial jurisdiction"), as well as those committed outside the territory when the offender is a Spanish citizen or resident (known as "passive personal competence").

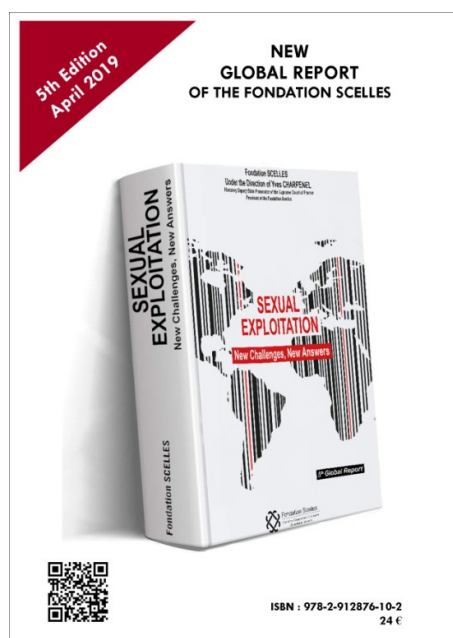
Spanish NGOs have also requested greater protection for witnesses, since fear of retaliation is often a hindrance in human trafficking prosecutions.

In conclusion, since the passing of LO 1/2004, Spain has served as an example of a working multidisciplinary legislative framework in the fight to eradicate violence against women. However, these initiatives still focus primarily on marital abuse and human trafficking as a whole, and major elements of the phenomenon of prostitution escape the legal framework. In addition, Spain's abolitionist position at the national level is weakened by certain regulatory areas such as Catalonia. This ambiguous situation thus contributes to a lack of social consensus on prostitution. The decline of prostitution in Spain depends above all on essential educational work, as the phenomenon has become commonplace, notably among the youth. This is one of the major approaches of the medium and long-term work developed by the last multiannual plans on combating macho violence and human trafficking. Those initiatives must be further encouraged in order to be reinforced and successful.

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The Global Report is produced by the International Observatory on Sexual Exploitation, in collaboration with internal and external experts (magistrates, lawyers, social workers, NGO leaders...), and the support of local NGO correspondents or international researchers.



The **Fondation Jean et Jeanne Scelles**, recognized as a public utility since 1994 and as a consultative status with ECOSOC, is an independent, non-profit organization based in Paris (France) dedicated to fight the system of prostitution and the exploitation of prostituted persons, through information, analysis, advocacy, trainings, awareness initiatives and legal actions. The **Fondation Jean et Jeanne Scelles** is a co-founding member of the Coalition for the Abolition of Prostitution (CAP International) which was launched in 2013 and today brings together 28 abolitionist NGOs from 22 countries.

The **International Observatory on Sexual Exploitation** (Observatoire international de l'exploitation sexuelle) is a worldwide hub which allows for information exchange on the system of prostitution. The hub is regularly consulted by French and foreign experts including NGOs, institutions, journalists, lawyers, researchers and those involved in the defense of human rights. The goals of the **International Observatory on Sexual Exploitation** are:

- to analyze all the aspects of the phenomenon: prostitution, sex tourism, procurement, child pornography, sex buyers, human trafficking for the purpose of commercial sexual exploitation...
- to encourage reflection and to take a stand
- to inform the public who are interested in these issues

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