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Modern Slavery: Sexual Trafficking Survivors on the Central Mediterranean Route

The Case Study of Italy

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ABSTRACT

This thesis explores the phenomenon of trafficking in human beings for the purpose of sexual exploitation in the very particular and complex context of the Central Mediterranean Route. Initially, I briefly discuss the concept of human trafficking and its intertwined relationship with the phenomenon of migration and smuggling as well as the international legal framework dealing with it. Subsequently, the focus turns to the ‘gender dimension’ of this transnational crime and the legal framework protecting and promoting the rights of victims based on a gender sensitive-approach. Having traced a contextualised understanding of this particular criminal form of exploitation, I concentrate on Italy. Italy constitutes the case study of this thesis, given the strategic geographical position that places the country at the forefront of migration on the Central Mediterranean route. I explore this particular phenomenon among migrants arriving by this route, analysing the national framework to combat human trafficking, the legal instruments in terms of migration, as well as the issue of prostitution. The focus then turns to the shortcomings and weaknesses of the legal system. Such an analysis is, in part, based on testimonies from and interviews with survivors of this crime and the professionals working in the field (details in Annex). Finally, I present conclusions and recommendations with the aim of promoting a more comprehensive response to such a crime, putting the human rights of the victims at the centre of every measure.

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Foremost, this thesis is devoted to all those victims and survivors of human trafficking and to all those thousands of people who risk their lives in the Mediterranean Sea every year, escaping from terror and misery or just seeking a better future.

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CAS – Centro di Accoglienza Straordinaria – Reception Centre or First Line Centre

CEDAW – The Convention on the Elimination of All Forms of Discrimination against Women

CIE – Centro di Identificazione ed Espulsione - Identification and Expulsion Centre

CoE – Council of Europe

CPSA - Centres of First Aid and Reception

CPT - Centro di Permanenza Temporanea - Detention Centre for Migrants

CRC - Convention of the Rights of the Child

CSO – Civil Society Organisation

DEO - Department for Equal Opportunities

EU - European Union

EURODAC - European Union Asylum Fingerprint Database

FRONTEX – The European Border and Coast Guard Agency

GRETA – Group of Experts on Action against Trafficking in Human Beings

IACS - Italian Agency for Development Co-operation

ILO – International Labour Organisation

IOM – International Organisation for Migration

JIT - Joint Investigation Teams

LCG - Libyan Coast Guards

LGBTI - Lesbian, gay, bisexual, transgender/transsexual and intersex.

NRM - National Referral Mechanisms

OHCHR - Office of the United Nations High Commissioner for Human Rights

SPRAR - Protection System for Refugees and Asylum Seekers

THB – Trafficking in Human Beings

UDHR – Universal Declaration of Human Rights

UNICEF - United Nations International Children's Emergency Fund

UNHCR - United Nations High Commission for Refugees

UNODC - United Nations Office on Drugs and Crime

UNSMIL - United Nations Support Mission in Libya

WRC - Women's Refugee Commission

INTRODUCTION

The commodification of persons has existed since ancient times. Despite its abolition, there are still crucial characteristics that lead us to compare the ‘old slavery’ with the phenomenon of ‘trafficking in human beings’. However, human trafficking is considered a form of ‘modern slavery’.

The primary difference between these two phenomena is that while the present is condemned and punished, the former was considered legal and endorsed by colonialism and imperialism. However, they share substantive commonalities such as the absolute control over individuals, the purpose of exploitation and the taking advantage of situations of vulnerability.

Trafficking in human beings is undoubtedly, a complex phenomenon with structural root causes, whose eradication seems almost unachievable.

Notwithstanding this, the several efforts at the international and regional level to tackle this commodification of human beings over history should be recognised, tracing back to the abolition of ‘old slavery’ to the adoption of the Palermo Protocol, which posed a milestone in this arena.

However, the arrival of globalisation has not just had an impact in the economic sphere but has also enhanced the development of this illicit trade in people. It has resulted in a global world seeking cheaper workforces and goods to remain or become competitive, as well as demanding easy and accessible sexual services. It makes the ‘business’ of human trafficking a profitable source of money, especially as human beings can be sold over and over again.

This, along with the disproportionate distribution of wealth, on-going armed conflicts, and the refugee crisis among other factors, has increased migratory flows and consequently the vulnerabilities of this group to falling into the hands of traffickers.

According to an International Organisation for Migration (IOM) study¹, there are 258 million migrants² around the world, of which an unknown number are also part of the estimated 40 million people living in modern slavery. In this vein, chapter I will provide the reader with a general background to this transnational crime as well as its intertwined relationship with the phenomenon of migration and smuggling. It will also cover the international legal framework thereof.

Subsequently, I will narrow the scope of this study by focusing on one of the main forms of this crime, ‘the trafficking in human beings for the purpose of sexual exploitation’.

According to the UNODC’s 2018 Global Report on Trafficking in Persons³, this typology of trafficking continues to be the most detected form of trafficking. Some 83% of women and

¹ IOM, *Migrants and their vulnerability to human trafficking, modern slavery and forced labour*, Geneva, 2019, Available at: <https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf>

² Refer to international migrants.

³ UNODC, *Global Report on Trafficking in Persons 2018*, P. 28, Available at: <https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf>

72% of girls are trafficked for the purpose of sexual exploitation, while for men and boys it is 10% and 27% respectively. Therefore, this phenomenon of trafficking is clearly gendered, with some forms affecting largely women, others largely men⁴.

Narrowing the scope, when it comes to Europe, sexual exploitation is the most common form found within the region. The last data available states that over two-thirds (68%) of registered victims in the period 2015-2016 were female (without including UK data, this percentage would rise to 77%)⁵. Chapter II deals precisely with the gender dimension of this phenomenon. It will also examine the main measures to protect and promote the rights of victims from a gender-sensitive approach.

Subsequently, the study utilise a case study of a very particular context that poses one of the current main humanitarian emergencies: ‘the Central Mediterranean route’ and the case of Italy. Such a route constitutes one of the major gateways for migrants to Europe that entails, at the same time, an extreme dangerous journey. It places Italy as one of the main countries that due to its strategic geographical position, has been at the forefront of migration over the previous decades.

This massive migratory flow has caused some paradoxical incongruences between anti-trafficking actions and policies aiming to stem irregular migration.

Consequently, it may have resulted in gross violations of human rights due to a lack of fulfilment of international obligations by some states.

In this sense, this study aims to build a more comprehensive and coherent approach to sex trafficking in a complex context with the human rights of victims at the centre of every measure.

Chapter III will explore the trends of this issue and its main characteristics with Italy as a case study, being this the main country of disembarkation on this dangerous route. It will encompass an examination of its national rules and legal practices in terms of migration as well as the issue of prostitution, analysing how these may affect potential victims of this crime.

Subsequently, chapter IV will go a step further to contrast the theoretical legal approach embraced in this study with its real application. This is to say, it will encompass the shortcoming and weaknesses of the system from the perspective of survivors of this crime and professionals working in the field. To achieve this purpose, I have conducted several interviews with survivors of this crime and professionals working in the field, which are presented in the Annex.

These testimonies, along with the gathered information about the legal instruments and practices in force, will provide a better understanding of the practical reality shaped by this phenomenon in such a concrete scenario.

⁴ Data collection on trafficking 2018 in human beings in the EU, Migration and Home Affairs, p.14, Available at: < https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_data-collection-study.pdf>

⁵ Ibid.

Finally, I will proceed with some conclusions and recommendations concerning the legal and the practical sphere of the phenomenon, with a special focus on the case of Italy as the core of the perilous migratory route.

CHAPTER I: TRAFFICKING IN HUMAN BEINGS

1.1 The phenomenon. From Slavery to Human Trafficking

The history of Humankind has witnessed multiple atrocities. Slavery was among them, constituting one of the grossest violations of human rights in history.

This phenomenon has existed since ancient times. Some features could be already found in the Mesopotamian '*Code of Hammurabi*'. Following this trend, slavery has been a legal practice in many societies and one that was later endorsed by imperialism and colonialism.

The widespread abolition of this practice meant a major step towards the recognition and defence of human rights, albeit that 'old slavery' continues in some parts of the world. However, the arrival of globalisation along with the development of a transnational world did not just make an impact on the economic sphere, but also on the 'globalisation of crime'.

It has benefited transnational crimes, bringing forward a new form of exploitation of human beings, known as 'modern slavery'.

While the term 'modern slavery' does not have a legal definition, the overlapping characteristics of 'human trafficking', 'forced labour' and 'slavery' have been studied and emphasised⁶. These concepts share several commonalities such as the emplacement within an exploitative situation against the will of person involved, the exerting of threats, coercion, deception, the abuse of power or other means, and the purpose of exploitation.

Under 'legal old slavery', enslaved people were considered as possessions. A common term to illustrate such a treatment was 'chattel slavery'. In the modern context, there are several elements that are equivalent to this approach, including the degree of control of the individual and her/his freedom of movement; the consent and understanding of the relationship between the parties; and/or the threat, violence and coercion exerted⁷. Therefore, human trafficking is deemed as a form of 'modern slavery'⁸.

This illicit trade of people degrades human beings, treating them as mere "goods". Those "goods" are actually defenceless people selling who are being sold in their destination countries, so it does not just constitute a national but a global social problem⁹.

Global figures estimate that 40.3 million people are victims of this form of 'modern slavery'¹⁰. This data illustrates that on a given day, there are 5.4 victims of modern slavery for every 1,000 people in the world who are forced to work under threat or are living in a forced marriage against their will¹¹.

⁶ IOM, *Migrants and their vulnerability to human trafficking, modern slavery and forced labour*, Geneva, 2019

⁷ OHCHR, Weissbrodt David and Anti-Slavery International, *Abolishing Slavery and its Contemporary Forms* Core international Law against Slavery, pg.7.

⁸ National Human Trafficking Hotline. See at: <https://humantraffickinghotline.org/national-hotline-overview>

⁹ Gebrewold, Kostenzer and Th. Müller, '*Human Trafficking and Exploitation. Lessons from Europe*', Taylor & Francis Books, 2018, p. 15.

¹⁰ ILO, *Global estimates of modern slavery: Forced labour and forced marriage*, International Labour Office (ILO), Geneva, 2017, pg. 9

¹¹ ILO, Facts and figures. < <https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> > Accessed 5th April 2020

The phenomenon presents several typologies: the most common ones are forced labour, sexual exploitation, forced marriage and domestic servitude. All of these have a similar aspect: the abuse of the inherent vulnerability of others.

The ILO in its report '*Global estimates of modern slavery*' emphasises how this phenomenon disproportionately affects women and girls, being those accounted for as 71% of the victims, of whom 99% are specifically recruited within the commercial sex industry. Therefore, sexual trafficking victims, especially females, are considered the tip of the iceberg of this transnational crime¹².

This complex crime is caused by many structural factors that encompass social, gender and political circumstances. Some of the root causes are: socio-economic and environmental (poverty, economic crisis, environmental crisis); political (conflicts or human rights violations in the country of origin) and socio-cultural issues such as ethnic-religious conflicts, gender violence or marginalization¹³.

In this light, it is worth emphasizing how globalisation has potentially contributed to the rise of this crime through enhancing the demand and supply thereof. In the current world seeking cheap workforces and goods to become or remain competitive, illegal trade can benefit a considerable number of people. It decreases the sensitization of the population to committing illegal activities and increases the chances of the most vulnerable to falling in the hands of traffickers.

Moreover, this inhuman "business" presents a very profitable financial side for criminal organisations and traffickers due to the low cost, minimal risks and the added advantage that human beings have over drugs: 'the fact that they can be sold over and over again'.

On the other hand, the supply is also enhanced by globalisation and the economic and demographic imbalance between the developing and developed world. People seek better living and economic conditions in a world full of disparities, which lacks secure global wide access to legal status and social protection including for people who flee from war, civil strife and violence.

In conclusion, slavery is a historical and unforgettable lesson from which the world may have learnt. Unfortunately, this phenomenon is still present in our days, just differently shaped.

"Slavery was, in a very real sense, the first international human rights issue to come to the fore. It led to the adoption of the first human rights laws and to the creation of the first human rights non-governmental organization. And yet despite the efforts of the international community to combat this abhorrent practice, it is still widely prevalent in all its insidious forms, old and new."

– Kofi Annan.

¹² Louise Shelley: *Human Trafficking. A Global Perspective*, (Cambridge University Press, 2010), 2-4.

¹³ Gebrewold, Kostenzer and Th. Müller, '*Human Trafficking and Exploitation. Lessons from Europe*', Taylor & Francis Books, 2018, p. 16.

1.1.1 The link between Migration, Human Trafficking and Smuggling

Migration is a historical phenomenon, tracing back to pre-modern history through to our day and is central to the human experience.

This global movement of people can be voluntary or involuntary. In the first case, it is normally motivated by a desire for personal improvement. The latter form, involuntary, might also include this kind of motivation but it is based on ‘forced displacement’, understood as ‘without the consent or will of the person concerned’, e.g. deportation or trafficking in human beings. War refugees and ethnic cleansing victims can be categorised as involuntary migrants.

The relationship between migration and criminal forms of exploitation have been widely studied. The IOM’s research, *‘Migrants and their vulnerability to human trafficking, modern slavery and forced labour’*, clearly suggests the strong connection between these two concepts.

It is estimated that there are 259 million migrants around the world, of which an unidentified number are part of the 40 million suffering modern slavery¹⁴. This crime can be easily hidden among the movement of people, due to the huge migration flows.¹⁵

Some of the major causes that motivate migration and make people especially vulnerable to this phenomenon are the lack of capacity, absence of applicable laws or simply the neglect of some states regarding the protection of their citizens. This can include people fleeing from armed conflict, the situation of violence, a lack of access to regular employment, social protection, legal status, so on¹⁶. All these issues, along with globalisation and its effect in the increase of disparities between the developing and developed world, have contributed to the flourishing and growth that represents a business for traffickers in human beings¹⁷.

Among the most vulnerable migrants, women and girls are particularly exposed to this cruel practice. The ‘issue of gender’ is relevant in this sense since they are considered a particular easy target for exploitation and a quick money-making source¹⁸.

In this context, it is important to notice that two concepts may cause certain controversy in this arena, ‘trafficking in persons’ and ‘smuggling’. These have diverse legal definitions. However, some important overlaps are palpable.

Looking back to the Palermo Protocol definition of ‘trafficking in persons’ in 2000, three main elements should apply in order to consider a person victim of human trafficking: activity, means and purpose of exploitation. The main legal instrument for smuggling of migrants that would enter into force a bit later, in 2004, is the *‘Protocol against the Smuggling of Migrants by Land, Sea and Air’*, with the concept defined as the ‘illegal, facilitation of movement of a person across an international border to make profits’ (directly or indirectly, financial or other material benefit). In this case, the consent of the person should be implicit. The

¹⁴ *Migrants and their vulnerability to human trafficking, modern slavery and forced labour*, IOM, Geneva, 2019

¹⁵ Moisés Naim, *Illicit: How Smugglers, Traffickers and Copycats Are Hijacking the Global Economy* (New York: Anchor Books, 2006), 88–91.

¹⁶ IOM, *Migrants and their vulnerability to human trafficking, modern slavery and forced labour*, Geneva, 2019

¹⁷ Shelley Louise: *Human Trafficking. A Global Perspective*, (Cambridge University Press, 2010), Pg 3.

¹⁸ Barrett David and Kukheueva Maria, *Global Trafficking in Women and Children*, (CRC Press by Taylor & Francis Books 2008), Pg. 4

smuggling constitutes a violation of State sovereignty: conversely, in the case of ‘trafficking’, is a gross violation of individual human rights.

Especially relevant in this sense is the final ‘purpose of exploitation’. Compared to human trafficking, smuggling does not involve the exploitation of servitude by the smuggler once the individual smuggled has arrived at the destination. Notwithstanding this, it may result in the migrant being forced to pay massive debts by exploitation and forced labour¹⁹.

However, this distinction can become blurred. Migrants can start their journey as smuggled and end up being victims of trafficking, due to the vulnerabilities to which they are exposed through such a context. Moreover, traffickers use smuggling schemes to recruit victims and transfer the individual to foreign countries, with the promise of better living opportunities. It is an easier and less risky way than abduction, use of force or threats.

Regarding the scope of the situation, smuggling is a crime that by its nature occurs across-borders: in this context, migrants are more vulnerable to their traffickers and the line between a contractual relationship and exploitation may be extremely fine.²⁰ Compared to this, trafficking in human beings can occur internally, within a country, or may also involve movement across borders. The fact that the latter is recognised as a transnational crime enhances even further the commonalities between these two concepts.

It is also worth noticing that the restrictions in immigration policies and border controls are generally not aligned with states’ efforts to address the demand for cheap and exploitable labour²¹, which may actually provide an incentive for the demand and supply of human trafficking and smuggling. The restrictive measures may paradoxically be a potential cause of the vulnerability of migrants to modern slavery²² as they may look for an illicit channel for movement and thus eventually fall into the hands of traffickers. In addition, it may lead to the criminalisation of victims of trafficking at borders, due to the difficulties in identifying them amongst undocumented migrants²³.

1.2 The International Legal Framework

Despite human trafficking being one of the grossest violations of human rights, little attention from the international legal and political sphere was paid to this phenomenon until the 20th century. According to Gallagher, this change of trend was triggered by a shift of approach from the human rights law to viewing it through a criminal perspective. Gallagher stated that ‘*no human rights treaty would have been able to set out detailed obligation for tackling corruption, evidence across national borders and seizing assets of offenders, due to the inherent political, legal and structural weaknesses that such a system presents*²⁴’.

¹⁹ Perri Benjamin, *Invisible Chains*, (Viking Canada, 2010).

²⁰ John Winterdyk, Benjamin Perrin and Philip Reichel; *Human Trafficking. Exploring the International Nature, Concerns, and Complexities*, Taylor & Francis Group, 2012 pg. 62

²¹ Kapur Ratna, *The "Other" Side of Globalization: The Legal Regulation of Cross-Border Movements*, Canadian Woman Studies/Les Cahiers de la Femme, 2003.

²² *Migrants and their vulnerability to human trafficking, modern slavery and forced labour*, IOM, Geneva, 2019, Pg 10.

²³ A. Farrell et al., *Police perceptions of human trafficking*, Journal of Crime and Justice, 2015.

²⁴ Gallagher, Anne T., *The International Law of Human Trafficking*, Cambridge: Cambridge University Press; 2010, Pg 4.

In this light, the United Nations Office on Drugs and Crime took the lead to pursue what would be the UN's first international instrument in the fight against this transnational crime, the 1949 *'Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others'*.

As it is well known, to effectively enforce law it is fundamental to reach an agreed definition and global understanding of the concept in question. Therefore the *'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children'* provided a cornerstone in the fight against trafficking in human beings. This protocol, from 2000, brought the first widely accepted definition of 'trafficking in human beings' and supplemented the *UN Convention against Transnational Organized Crime*.

It is worth mentioning other legal instruments that have been adopted at this point and that already contain provisions condemning human trafficking, such as *the First Convention against White Slavery; the Convention to Suppress the Slave Trade and Slavery* of 1926 and its *Supplementary Convention; The Covenant on Civil and Political Rights* of 1966 or even *the Universal Declaration of Human Rights* of 1948. However, these failed to meet an agreed and consistent definition at the time of their adoption.

The mentioned Protocol from 2000 defines 'human trafficking' as follows:

- (a) *"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*

It establishes three relevant elements: activity, means and purpose. The first one, "action", refers to the *'recruitment, transportation, transfer, harbouring or receipt of persons'*. It seems clear that recruitment and transportation are involved in this matter. However, it may be argued that situations when there is no 'preceding process' can be classified as human trafficking – for instance those situations when acceptable conditions in a working environment turn to exploitation²⁵.

The second element, 'means', encompasses a wide range of methods that potentially force a person against her/his will, from *coercion* to the *'abuse of position of vulnerability'*. The last one can be deemed as a wide concept open to interpretation that could cause controversy, as it is not specified by the definition. However, this term has been further analysed by "The Explanatory Report to the European Convention on Action against Trafficking", which defines it as *'abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse'*²⁶.

²⁵ Ibid. 31

²⁶ See: Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, CoE e Treaty Series - No. 197, para. 83

The last one, ‘purpose of exploitation’, entails the main difference between the legal definitions of human trafficking and smuggling. As mentioned before, the primary purpose of trafficking is the exploitation of human beings, while smuggled migrants are supposed to not be subject to exploitation, although they may suffer abuse, inhuman treatment and other forms of violence during their journey. This last component completes the definition and connects all the elements, understanding trafficking as actions taken by illicit means that lead to human exploitation.

Among the major achievements of the definition, it must be emphasized the fact that the consent of the victim is irrelevant if any of the means in the subparagraph (a)²⁷ are implemented. Moreover, in the case of children, it states “*the recruitment, transportation, harbouring or receipt of a child for the purpose of exploitation*” is considered ‘trafficking’²⁸, noting the power imbalance that exists between the trafficker and the victim.

This legal international instrument, also known as the ‘Palermo Protocol’, introduced a new approach focused on the three “Ps”: Prevention, Protection and Prosecution. In addition, it reflects a ‘victim centred approach’, discussed in the following chapters.

In this light, it is worth noticing that the adoption of such a Protocol gave rise to an endless feminist debate that is still going on. This is the broad discussion under which some scholars support the fact that ‘prostitution’ is *per se* a human right violation and thus falls under the scope of trafficking, while others consider that it might be considered as voluntary sex work and therefore the rights of those ‘workers’ should be recognised²⁹. Nevertheless, the United Nation’s approach in this sense, refers to the criminal organisations, which enslave women and children from a law enforcement perspective³⁰.

As previously discussed, women and children are the most disproportionately affected group within this phenomenon. Consequently, it is hard not to notice the particular approach that anti-trafficking legal instruments have towards this group, from the ‘*White Slavery Convention*’, addressing ‘female sexual exploitation’, to *The Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) as well as the *Convention of the Rights of the Child* (CRC). All of them introduced several articles on this regard.

At the regional level, several instruments have been adopted, including the Association of Southeast Asian Nations’ (ASEAN) ‘*Convention Against Trafficking in Persons, Especially Women and Children*’, and the 2002 South Asian Association for Regional Cooperation’s (SAARC) ‘*Convention on Preventing and Combating Trafficking in Women and Children for Prostitution*’.

However, this paper will mostly concentrate on the European context, given that this is the focus area of this study.

²⁷ See paragraph (b)

²⁸ See paragraph (c)

²⁹ For example: Kamala Kempadoo, *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work and Human Rights* (Boulder, CO: Paradigm, 2005)

³⁰ Louise Shelley: *Human Trafficking. A Global Perspective*, (Cambridge University Press, 2010),10

In this regional context, ‘trafficking in human beings’ is prohibited by the European Union (EU) Charter of Fundamental Rights (Article 5.3) and it is recognised as a form of organised crime by the 2009 Treaty on the Functioning of the European Union (TFEU)³¹.

The main legal instrument in this regard is *Directive 2011/36/EU* on combating and preventing trafficking in human beings and protecting its victims, coupled with the wider *EU Strategy towards the eradication of trafficking in human beings for the period 2012-2016*. The first of these is significant as it was the legislative act that established, coordinated and consolidated the efforts of the EU to combat this crime. The Directive has a victim-centred approach and issues provisions for the protection, assistance, and support of these.

Directive *2004/81/EC* and Directive *2012/29/EU* are also relevant. The first one deals with resident permits for third-country nationals, victims of trafficking, or individuals who have been the subject of an action to facilitate illegal immigration who cooperate with the competent authorities, while the second one provides minimum standards when it comes to the rights, protection and support of victims of crime³².

Concretely, Directive *2004/81/EC* establishes a period of reflection for victims, in which they cannot be expelled and should be granted the minimal resources to ensure their living conditions, including emergency medical treatment as well as special services if needed (such as psychological assistance). However, the Directive does not specify the length of such a period, which is left to Member States’ national legislation³³. Notwithstanding this, this Directive has been pointed at as an instrument to prevent migrant smuggling and trafficking (offering a residence permit as a compensation to victims who cooperate), rather than a tool to enhance and further safeguard the victims’ rights³⁴.

Last, but not least, the Council of Europe ‘*Convention on Action against Trafficking in Human Beings*’, adopted in 2005, presents a comprehensive approach focused on the protection of the human rights of victims to address the needs of these. Special reference should be made to its Chapter III, centred in the ‘*protection and promotion of the rights of victims guaranteeing gender equality*’, which presents a cornerstone for the assistance and re-integration of trafficking survivors and which covers the ‘gender issue’.

However, in spite of the efforts and the clarity of norms at the international and regional level to combat this organised crime, there are still persistent gaps in the implementation of these, especially when it comes to having a comprehensive approach from Member States from a migration, gender and criminal perspective.³⁵

³¹ Trafficking in Human Beings. Migration and Home Affairs. European Commission.

³² Ibid.

³³ COUNCIL DIRECTIVE 2004/81/EC, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0081&from=EN>

³⁴ Gallagher, Anne T., The EU Council Directive on Short-term Residency Permits, ‘*The International Law of Human Trafficking*’, Cambridge: Cambridge University Press; 2010, Pg. 100

³⁵ *International Instruments Concerning Trafficking in Persons*, Women’s Rights and Gender Section, OHCHR Research and Right to Development Division Rule of Law, Equality and Non-Discrimination Branch, 2014

CHAPTER II: HUMAN TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION

2.1 The Gender Dimension of Trafficking in Human Beings.

The gender specificity of this transnational crime has been widely studied. This has led to the assumption that victims of trafficking are gender specific depending on the final aim of exploitation³⁶.

Concretely, when it comes to trafficking for the purpose of sexual exploitation, women are significantly represented. According to an International Labour Organisation (ILO) report from 2017, women and girls accounted for 71% of the victims of ‘modern slavery’. It is estimated that they represent 99% of the victims of forced sexual exploitation and 84% of the victims of forced marriage³⁷, while men are mostly affected by forced labour exploitation and state-imposed forced labour.



Figure 2. ILO Global Estimates modern Slavery

The ‘gender perspective’ is integrated in the EU framework for combating human trafficking³⁸. It enhances the principle of gender equality as a fundamental ground for fighting against this phenomenon, as well as promoting a gender-sensitive approach when it comes to protection and (re-)integration of victims.

Trafficking in human beings is recognised as a complex transnational crime rooted in vulnerability. Regarding the ‘purpose of sexual exploitation’, some of the main vulnerabilities

³⁶ European Commission, ‘Study on the gender dimension of trafficking in human beings’, 2016.

³⁷ ILO Global Estimates of Modern Slavery: Forced Labour and Forced Marriage, 2017.

³⁸ See article 1 of Directive 2011/36/EU and the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016.

that women and girls present are their worldwide low social status and the lack of investment in them: furthermore they are categorised as ‘victimized’ from a global perspective³⁹. Concretely, the factors that contribute to this status of vulnerability can be classified into two groups: ‘push’ and ‘pull’ factors.

Regarding the first group, we may begin with ‘gender inequality’, which involves the ‘feminisation of poverty’; the lack of control over financial resources and/or the low access to education and skilled jobs; ‘gender-based violence’, a persistent social scourge that is still normalised and legitimised by cultural norms in many societies; as well as discrimination when it comes to labour and migration law and gender-blind policies. Conflict, post-conflict settings, and humanitarian crisis are also key points that make women potential victims of exploitation⁴⁰.

The general discrimination against women is another major causal factor that enhances the vulnerability of this group towards human trafficking⁴¹. Many underage girls are pulled out of school and forced to work from a very early age. This results in high rates of illiteracy and a lack of skills that makes them particularly vulnerable to traffickers⁴².

On the other hand, ‘pull’ factors include the desire for better living conditions, promises of better employment, and the increasing demand for slave labour as well as accessible sexual services, among others. These factors make the business of human trafficking a profitable source of money for which women and girls represent an easy target.

It can be considered a systematic cycle, since the more ‘push’ factors the victim experiences, the stronger the ‘pull’ factor will become. Therefore, in order to work towards the eradication of this phenomenon in general, both sides should be addressed.

The recruitment channels also play a fundamental role in what is considered the ‘gender dimension’ of this typology of human trafficking. As stated in the definition of the Palermo Protocol, traffickers use ‘means’ to have the control over victims, which can range from threats and use of force to the abuse of power, the taking advantage of a position of vulnerability, or of the giving or receiving of payments or benefits⁴³.

Nevertheless, the ‘trust’ is also a significant element of this process⁴⁴. In most cases, recruitment is associated with gaining the confidence of the victim. Amongst the common methods used are fake advertisements or promises of jobs and better living conditions. Traffickers target countries with social needs, such as with economic crises, a lack of opportunities and/or political strife, where people desperately seek better living opportunities: hence, the ‘richer destination countries’ may be appealing. Another method is the ‘lover boy’ tactic, which is based on seduction and romance to persuade and win the trust of victims, which then proceeds with their isolation to later coerce and force them into the

³⁹ Louise Shelley: *Human Trafficking. A Global Perspective*, (Cambridge University Press, 2010), 16

⁴⁰ *The Gender Dimensions of Human Trafficking*, ICAT, 2017

⁴¹ Louise Shelley, *op. cit.*, p.17

⁴² *Ibid.*

⁴³ See article 3 of Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

⁴⁴ Briefing: The gender dimension of human trafficking, European Parliament, EU, 2016.

sex-trafficking market. Sale by the family is another method⁴⁵. Moreover, in many societies, especially in the context of poverty, women and girls are seen as a source of money for their families. They are sent or sold to go abroad in order to remit the income earned back home.

Among other methods, it is also worth mentioning coercion by or abuse of religious beliefs, which have been considered as a very prominent issue in West Africa, especially in Nigeria. Recruiters use a method of coercion based on psychological bound harnessing of the victims' strong beliefs. They are subjected to taking an oath, also called 'juju' ceremonies, through which they swear to pay the debt to their traffickers for the transportation. Afterwards they are told if they were to break such a promise they would die, lose their minds, and even endanger their relatives' lives⁴⁶. This constitutes an effective way to enforce a "contract" and ensure compliance.

In this light, the role of internet and the development of new technologies cannot be underestimated. The emerging new 'cyber modus operandi' has a special relevance in the recruitment of victims for the purpose of sexual exploitation. It has provided new methods and an increased reach for trafficking connections and constitutes a useful instrument for the perpetrators of this crime. Traffickers use this tool to publish online fake job offers and educational or travel opportunities. Victims can also be advertised on some 'black websites' in the so-called Dark Web, where clients seek sexual services, performances, etc. Moreover, online methods can be used to control victims by blackmailing and/or threatening them, thus ensuring their transportation.

It is also worth noticing that women can also be facilitators of this crime. They may contribute to the business individually or as a collaborator of their partner. Often, there are women who have already worked in the 'sex-market' and get involved in the recruitment of the next generation⁴⁷. These are normally very well-organised networks where women play a significant role, such as in Eastern Europe or Nigeria.

The awareness of all these kinds of 'modus operandi', along with others like simple abduction, is crucial in order to understand the gender dimension of this typology of trafficking. As already mentioned, the methods of recruitment can differ depending on the sex of the victims and the purpose of exploitation.

Another important aspect to encompass in the gender dimension of trafficking for sexual exploitation is the relationship between prostitution and trafficking.

Prostitution and forced prostitution have been recognised as a gendered phenomenon⁴⁸. Women are more likely to be trafficked for the purpose of sexual exploitation, although men can also be its victims. As stated in the '*Study on the gender dimension of trafficking in human beings*' by the European Commission, the larger part of sexual exploitation happens through

⁴⁵Hannah Spruce, *Methods of Human Trafficking and Recruitment*, 2017. Accessed the 4th April 2020 <<https://www.highspeedtraining.co.uk/hub/methods-of-human-trafficking/>>

⁴⁶ Women's Link Worldwide organisation, 'Trafficking of Nigerian Women and Girls: Slavery across Borders and Prejudices', 2015. Pp. 20

⁴⁷ Usually called a 'Madam'.

⁴⁸ European Parliament resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)), pp. 4, A)

prostitution. It is therefore important to note the relationship between both concepts and the different responses to combat exploitation in this arena.

The main attempts to reducing trafficking for sexual exploitation have resulted in several models of regulation of this practice, as well as in its criminalisation.

This raises the controversial debate about legislation on prostitution. This matter has been widely discussed. Some scholars state that prostitution '*per se*' is not a violation of human rights but that the conditions under which women are involved in prostitution can be. Some assert that prostitution is in itself an abusive practice, which perpetuates women's inequality.

According to the 'UN Special Rapporteur on the Human Rights aspects of the victims of trafficking in persons, especially Women and Children', there are good reasons to believe that the majority of worldwide prostitution implies the use of at least one of the means of trafficking, such as use of force, coercion, abuse of power or a position of vulnerability, among others⁴⁹.

There are three main legal approaches to the legislation of prostitution, which are criminalisation, decriminalisation, and legalisation. The first one includes the total prohibition or ban on brothel-keeping, solicitation or purchase of sexual services: this is the case in many Middle Eastern countries. The 'decriminalisation' model comprises the removal of all the offences and penalties related to the sex-service, for instance as in New Zealand. Finally, 'legalisation' involves direct governmental regulation aimed to controlling 'legal prostitution' and preventing illicit activities that comprise exploitation, e.g. in the Netherlands. There are other models, such as that involving a 'partial criminalisation'. Another example could be the Nordic model, also known as the 'Swedish model', which aims to eliminate prostitution through end the demand for it: thus selling sex is not illegal but buying it is considered a criminal offence.

Notwithstanding this, none of the models are fully effective in ensuring the eradication of trafficking for sexual exploitation. Inevitably, all of them present advantages and disadvantages. Such disadvantages are especially reflected when it comes to migrant women (and particularly non-EU citizens), who are often more vulnerable and unprotected.

In this regard, policy reforms from a long-term migration, development and gender equality perspective should be addressed⁵⁰, an aspect that will be further discussed in the following chapters.

Supply and demand are fundamental aspects to analyse from a gender perspective of trafficking for sexual exploitation. These do not just exist due to the vulnerability of this group, but also due to the high demand for 'easy and accessible sexual services' in the global market.

⁴⁹ Special Rapporteur: Sigma Huda, *Integration of the Human Rights of Women and a Gender Perspective*, E/CN.4/2006/62, UN Economic and Social Council, 2006, pp 13

⁵⁰ Heli Askola, *Legal responses to trafficking in women for sexual exploitation in the European Union*, Oxford Portland Oregon, 2007, Pg 168

There is a controversial debate about the main potential cause of the expansion of this illicit market. Some claim that the major cause lies in the ‘supply’ while others focus on the ‘demand’. In this sense, it is important to interpret both concepts in a wide way.

The supply should include the economic, social and political factors that make women and girls more vulnerable. It would be a severe injustice to blame victims themselves for their participation in this illicit trade. On the other side, demand may include the traffickers, prostitute-users, and the economic, cultural, political and institutional conditions that oppress women and children worldwide. In this sense and taking a broad definition of the two concepts, as Sigma Huda⁵¹ suggests, both supply and demand drive the sex-trafficking market. Therefore, it is essential to address both sides to combat such a complex phenomenon.

Regarding the legal tendency to address the gendered nature of the phenomenon in its typology of ‘sexual exploitation’, some efforts could be already appreciated in some early international legal instruments. For instance, the UN Convention of 1949 for the ‘*Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*’, the CEDAW Convention of 1979, the Palermo Protocol and even the UN Declaration of 1993 on the *Elimination of Violence against Women* already included provisions condemning trafficking in women and forced prostitution as a form of violence against women⁵².

In the European context, as mentioned before, this gender perspective is also integrated within the legal framework in some of the EU’s core efforts to combat trafficking in human beings with a victim-centred approach, such as Directive 2011/36/EU and the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016.

In addition, several research efforts, reports and guidelines have been carried out to address the gender-related vulnerabilities of this phenomenon.⁵³

The gender dimension of human trafficking is therefore a fundamental factor that needs to be taken into account to combat and prevent this crime and protect victims thereof. Concretely, when it comes to trafficking for the purpose of sexual exploitation, it is important to note that there are still many cultural factors that legitimise gender-inequality and perpetuate discrimination against women.

Trafficking in human beings is one of the multiple ways in which women and girls are subjugated, subjected to violence, and violated in their human rights. It constitutes one of the main forms of gender violence against this group and it is both a cause and consequence of women’s lower status worldwide.

Therefore, the importance of ‘gender issues’ must be further enhanced, and the equal treatment and integration of women and girls should be in the spotlight to tackle this complex crime. Last but not least, preventing and combating human trafficking in general

⁵¹ Special Rapporteur: Sigma Huda, *Integration of the Human Rights of Women and a Gender Perspective*, E/CN.4/2006/62, UN Economic and Social Council, 2006, pp.14

⁵² See article 2 of UN Declaration of 1993 on the Elimination of Violence against Women.

⁵³ Such as: ‘High-risk Groups for Trafficking in Human Beings’, ‘The Gender Dimension of Trafficking in Human Beings’, ‘Guidelines for the Identification of Victims’, among many others.

and for the purpose of ‘sexual exploitation’ in particular requires a comprehensive international gender-sensitive approach. It must take place across the world, compressing destination and origin countries, and working together in a transnational way.

2.2 Measures to protect and promote the rights of victims. A gender-sensitive approach.

Concern towards the phenomenon of human trafficking for the purpose of sexual exploitation has significantly evolved in the last two decades, from a marginal to a pivotal position in the international agenda. However, it is debatable if measures that have been taken are comprehensive enough to prevent and tackle the root causes of this issue. It is a transnational phenomenon with a very complex and structural nature that makes the idea of its eradication almost a utopia. Nevertheless, a determination to create a ‘utopia’ may be a decisive drive in any effort the Human Rights struggle.

There are several international anti-trafficking instruments that condemn this crime. The Palermo Protocol, in particular, poses a cornerstone in this arena, encompassing three main areas: Prevention, Prosecution and Protection. However, while the provisions on prosecution are well defined and have a binding character, the ones on prevention and protection do not really impose obligations on states⁵⁴. As with many other previous instruments, they generally fail to address the typology of sexual exploitation in a comprehensive way or just simply make use of vague language when it comes to a victim-centred approach. An example can be found in article 6 of the Protocol that deals with the ‘assistance to and protection of victims’, which states: “*Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons*”.

Fortunately, the last decades have witnessed some new trends that are more focused on victims’ rights and gender equality. This has been the case especially in Europe, the region that has positioned itself as a strong defender of human rights.

Nevertheless, the ‘long term’ effectiveness of these measures, as well as European external policies in regard to third country nationals and the implications that these have in this issue, have been questioned⁵⁵. An example may be the ‘*EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings*’ (2005/C 311/01). Paragraph 3 recognises the importance of human rights and a victims-centred approach. However, it does not establish a minimum standard of obligations and consensus among the EU Member States in regards to the treatment of victims⁵⁶: “*Member states should, as appropriate and in line with national conditions and practice, provide protection and assistance to (...) victims as part of balanced effective prosecution*”⁵⁷. Moreover, it fails to understand that victims’ needs do not always go in line with

⁵⁴ Rosa Raffaelli, *The European Approach to the Protection of Trafficking Victims: The Council of Europe Convention, the EU Directive, and the Italian Experience*, Published online by Cambridge University Press: 06 March 2019

⁵⁵ Askola Heli, *Legal responses to trafficking in women for sexual exploitation in the European Union*, Oxford Portland Oregon, 2007, Pg 164.

⁵⁶ Ibid, pg 165

⁵⁷ See EU Plan, para 4(vii).

criminal prosecution. On the other hand, it is fair to say that it leaves space for taking victims' interests into consideration.

Regarding third country nationals, the effectiveness of these early provisions can be more controversial. According to Heli Askola⁵⁸, restrictive migration policies are just short-term 'cures', which cannot eradicate or even reduce a phenomenon of such a complex nature. In general, the current strict European approach when it comes to external migration policy does not really stop the migration flow but may contribute to the increase in illegal and exploitative ways in which migrants access the region. This, when combined with the difficulties entailed in the early identification of victims that this phenomenon poses, may lead to serious repercussions in the protection and safeguard of victims' rights.

In this context, Council Directive 2004/81/EC, which was issued in 2004, just one year before the EU Plan, already focused on the residence permit for third-country nationals. It established reasonable standards of protection for trafficking victims but at the same time emphasised cooperation with the competent authorities.

The Directive mentions especially important aspects, such as the right of victims to be informed (Art. 5), but it does not establish the implementation of concrete measures to strengthen efforts in the early identification of victims. An important aspect is the guarantee of a 'reflection period', which consists of a "breathing-space" in which victims can recover, escape the influence of their perpetrators, and decide if they want to cooperate with the authorities. Nevertheless, the Directive does not establish a minimum length of time for this and it is left to Member States to be determined according to national law⁵⁹. The Directive does not oblige them to provide psychological assistance among the basic treatments granted to victims during such a period, only *'where appropriate and if provided by national law, psychological assistance'*⁶⁰. This should be a fundamental service for the recovery of victims since in most cases they are severely traumatised. It may also encourage their cooperation with the authorities.

The present European Directive also calls on states to adopt rules to authorise victims' access to the labour market, education or vocational training: but how to implement this is left to states.

Regarding the issuing and renewal of the resident permit after the reflection period, victims may be granted with a short-term residence permit (six months), if they "*show a clear intention to cooperate*" as stated in article 8. This permit may be extended if it is considered opportune for the investigations or the judicial proceedings.

This approach has been widely criticised. Victims can often be reluctant to cooperate due to the fear of reprisals against themselves or their families, psychological traumas, etc. Therefore, this "legal approach" can violate the rights of potential victims, leaving them unprotected. The 'Group of Experts on Trafficking in Human Beings' stressed in its report the importance of granting a residence permit and protection measures to victims whether

⁵⁸ Askola Heli, *Legal responses to trafficking in women for sexual exploitation in the European Union*, Oxford Portland Oregon, 2007, Volume 14 in the series Modern Studies in European Law

⁵⁹ See Council Directive 2004/81/EC, Art 6

⁶⁰ See Council Directive 2004/81/EC, art 7. Paragraph 1

or not they are willing to cooperate with the competent authorities. Moreover, it stated that no less than three months should be given as ‘reflection period’ to be considered as a useful time for victims in their recovery⁶¹. All this gives the impression of a Europe more focused on the prosecution and the criminal side of the phenomenon than in the victim’s needs.

This tendency showed a change towards a more victims-centred approach just a year later, in 2005, with ‘*the Council of Europe Convention on Action against Trafficking in Human Beings*’, which finally entered into force on 1 February 2008, following the required 10 ratifications.

The difference between the EU and the Council of Europe (CoE) should be remembered. The former, as it is well known, is a political and economic union of 27 Member States and it is worth noticing its evolution in the field of human rights, since it has gone from an economic-focused common market to a grouping whose remit has spread, including into areas such as human rights. The latter is an international organisation set up to promote democracy, protect human rights and the rule of law in Europe, of which almost all European countries are member states.

The CoE’s Convention goes beyond the minimum standards seen in previous instruments. It is one of the international instruments that focuses more on victims’ protection and assistance than on the prosecution of traffickers. Moreover, it is the only Convention that has a monitoring mechanism to assess its implementation (through the signatories’ membership of the CoE). This is outlined in article 36, the so-called GRETA (Group of Experts on Action against Trafficking in Human Beings). Its main mandate is to conduct evaluation rounds among the state parties, carried out by questionnaires. Following this, GRETA is authorised to request all the relevant information needed, as well as to hold meetings with civil society and organise country visits. GRETA then authors a draft report regarding the implementation of the Convention in the concerned country, along with suggestions and proposals to the state. Eventually, the GRETA observations and conclusions, as well as the eventual comments of the state concerned, are published in a final report. This mechanism poses an effective form of evaluation: the fact that it is published strengthens the state’s commitment to fulfil the provisions enshrined in the Convention.

It is worth noticing, the evolution of some provisions towards a victim-centred approach within this instrument. The Convention stressed the principle of non-discrimination and gender equality from its Preamble onwards. Its purposes are to prevent and combat human trafficking and to protect the human rights of victims through a comprehensive approach while ensuring gender equality.

In this light, special mention should be given to chapter III of the CoE Convention, ‘*Measures to protect and promote the rights of victims, guaranteeing gender Equality*’. The Convention encourages state parties to implement efforts in the identification of victims, such as ensuring trained and qualified staff amongst their competent authorities for the early identification and support

⁶¹ Report of the Experts Group on Trafficking in Human Beings (Brussels, 2004), European Commission Pg 13, Accessed 9th April 2020, available at <https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/EU-Dokumente/report_of_the_experts_group_on_trafficking_in_human_beings_2004.pdf>

of victims, with a particular sensitive approach to victims, which can be seen in article 10: “*taking into account the special situation of women and children...*”⁶².

Article 12 provides a broader minimum standard of assistance to victims, compared to European Directive 2004/81/EC. It includes psychological assistance as well as access to education for children. Simultaneously, it encourages states to ensure that the pertinent services are of a consensual and informed basis to encompass the special needs of persons in a vulnerable situation, especially children. This emergency assistance is not conditioned by the victim’s willingness to cooperate with the competent authorities.

Another major achievement is the establishment of a minimum length of time for the ‘reflection period’, namely that it should be at least 30 days. Afterwards, the competent authorities may decide whether or not to issue and extend the residence permit based on their consideration of the case i.e. that it is necessary for the victim to stay due to her/his personal situation or for the purpose of their cooperation in the investigation and criminal proceedings (article 14). In other words, it is left to the interpretation of states to decide whether or not the person is in a significantly vulnerable position that remaining in the territory is required or if her/his stay is convenient to continue the prosecution of perpetrators.

It is worth emphasising that in the case of a residence permit for children, the Convention states that the decisions made should always be in accordance with the best interest of the child, in line with previous international instruments in this regard. The article specifies that those provisions should be implemented without prejudice to the right to seek and enjoy asylum.

Further, the Convention establishes for the first time ‘compensation and legal redress’ for victims. However, it is once again left to states’ interpretation according with their domestic law.

Repatriation and return of victims are also encompassed by the Convention, this time in a more comprehensive way. It states it should be with “*due regard for the rights, safety and dignity*”⁶³ of the person and “*shall preferably be voluntary*”. It also encourages states to implement reintegration programmes (education system, labour market, etc) with aim of avoiding re-victimisation. However, it does not impose an obligation on states to implement such measures.

Last, but not least, the provisions for protection and assistance of victims place an emphasises on the principle of gender equality, already mentioned in the Preamble. It stresses the aim is to promote gender equality in all the provisions of such a chapter (article 17).

From a gender sensitive perspective, the present instrument makes a significant contribution to promoting the human rights of the victims of this crime. Some major achievements are the emphasis on fundamental values such as gender equality; the establishment of a minimum ‘reflection period’; the incorporation of psychological support among the assistance services provided, as well as the creation of a monitoring body (GRETA). However, it still gives a

⁶² See art.10 of the Council of Europe Convention on Action against Trafficking in Human Beings.

⁶³ See article 16 of the Council of Europe Convention on Action against Trafficking in Human Beings

wide room for states' interpretation in the implementation of some fundamental provisions: for instance, the fact that the extension of the residence permit is still linked with the victim's willingness to cooperate with the competent authorities. In addition, it fails to address when the residence permit can be transformed into a permanent one, or the issue of family reunification, in case the victim would eventually remain in the territory.

The last decade has brought further developments in this area, especially in the EU context. One of the main achievements has been the adoption of Directive 2011/36/EU, which replaced the former Council Framework Decision 2002/629/JHA, and constitutes the main current EU legislative act to address the phenomenon of trafficking in human beings.

The Directive presents a gender-specific approach. It recognises in the Preamble the fact that women and men are often trafficked for different purposes as well as that 'push' and 'pull' factors may be different based on the sector concerned. Consequently, it highlights the necessity to address assistance and support measures in a gender-sensitive manner when appropriate. By doing so, it emphasises the gender dimension of this phenomenon⁶⁴.

This Directive focuses once again on three main pillars: Prevention, Prosecution and Protection. In the area of criminal offences, it is worth mentioning article 8, which deals with the non-prosecution or non-application of penalties to victims: it establishes the prohibition of prosecution of victims for criminal acts committed while they were under the influence of their traffickers. It constitutes a substantial accomplishment since the absence of this provision in the past could easily lead to an unfair criminalisation of individuals in a situation of vulnerability i.e. those who were subjected to coercion and other forms of abuse while committing illicit activities.

Article 11 deals with assistance and support for victims, presenting a broader scope than the previous EU Directive 2004/81/EC. It states that such an assistance and support should be provided '*before, during and for an appropriate period of time after the conclusion of criminal proceedings*'. Moreover, it clarifies, as is also said in the CoE Convention, that this should not be conditional on the victim's willingness to cooperate. Among measures to ensure the dignified living conditions of the victim, it includes psychological assistance and counselling as well as translation and interpretation when appropriate. In addition, Directive 2011/36/EU encompasses the vulnerabilities of the victims in a comprehensive manner, making special reference to persons with special needs, such as pregnant women, people with disability, mental or psychological disorders, or who may have suffered physical or sexual violence⁶⁵.

Notwithstanding, it fails again to specify the length of the reflection period (which should be understood as 'at least 30 days' according to the ratification of the CoE Convention). Some state parties had already implemented this length of time within their national legislation. However, it can differ from one country to another, for instance France or Sweden where the reflection period is strictly "the 30 days" or the Netherlands where it can be up to 90 days. The flexibility of this 'time frame' could be fundamental to enhancing the recovery of

⁶⁴ See Preamble Para 3 of the Directive 2011/36/EU

⁶⁵ See article 11, paragraph 7 of the Directive 2011/36/EU

victims, as well as impacting on their cooperation with national authorities. In some cases, the victims may need a longer period depending on her/his personal situation.

With regard to transgender victims, it may be said that little attention is paid to the situation of this group, which should also be considered vulnerable, since they are often subjected to discrimination, stigmatisation and violence. As stated by the Committee on Women's Rights and Gender Equality, EU Member States should provide adequate training to special officials who get in contact with this group⁶⁶.

On the other hand, among the positive achievements of this Directive it is worth noticing the special focus on the rights of child victims of trafficking. Several articles address this matter, concretely from article 13 to 16. The Directive issues provisions relating to special assistance, protection, and support for this vulnerable group, always taking account of the best interest of the child.

Another significant accomplishment is the introduction of a national monitoring system. It requires states to designate an independent national rapporteur to conduct assessments of trends and measure results of anti-trafficking actions. A measure along these lines was already included in the CoE Convention, albeit with a more vague vocabulary and no obligation on states: *'Each Party shall consider appointing National Rapporteurs or other mechanisms...'*⁶⁷. In contrast, the Directive poses a single article (19) that addresses this initiative and encourages cooperation with civil society, as well as the official publication of a report. This creates a significant synergy within the European context.

This instrument has triggered significant efforts in the European framework. It was followed by the *EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*, which focuses on concrete measures to support the transposition and implementation of Directive (2011/36/EU) and highlights the responsibility of Member States to address the phenomenon of human trafficking. Among its priorities, it emphasises the 'identification, protection and assistance of victims' and makes a call upon states to establish 'National and Transnational Referral Mechanisms' in order to improve procedures aimed at identifying, referring, protecting and assisting victims⁶⁸.

The EU has continued its efforts implementing anti-trafficking actions in the last decade. It has produced several guidelines, manuals, studies, and reports in this arena. In relation to victims' rights and from a gender-sensitive perspective, it is worth mentioning some of them, including: The European Migration Network' study, focused on 'Identification of victims of trafficking in human beings in international protection and forced return procedures', *The*

⁶⁶ Committee on Women's Rights and Gender Equality, Report on implementation of the Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims from a gender perspective (2015/2118(INI)), 2016

⁶⁷ See article 29, paragraph 4 of CETS 197 – Trafficking in Human Beings, 16.V.2005

⁶⁸ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, Accessed on 10th April 2020 < <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0286&from=EN>>

Gender Dimension of Trafficking in Human Beings, *the EU Rights of victims of THB* and *Guidelines for the Identification of Victims* by the European Commission⁶⁹, among others.

This positive evolution towards a victim-centred approach taking into account gender equality deserves to be recognised. However, there is still room for improvement, especially when it comes to the issue of migration in the current context.

The increasing tendency towards restrictive external migration policies in some Member States combined with the phenomenon of human trafficking may create substantial incongruences regarding the implementation measures for the protection and assistance of victims, especially when it comes to the gender dimension. The actual role of women in the international migration process should be contrasted with the legal framework around migration and the implications that the latter may have in the phenomenon of human trafficking⁷⁰.

⁶⁹ See: EU Anti-trafficking action 2012-2016 at a glance. Accessed on 10th April 2020 <<http://ec.europa.eu/anti-trafficking/>>

⁷⁰ Askola Heli, *Legal responses to trafficking in women for sexual exploitation in the European Union*, Oxford Portland Oregon, 2007, Pg 68.

CHAPTER III: THE CASE OF ITALY & THE CENTRAL MEDITERRANEAN ROUTE

To reach the core of this issue and gain deeper insight, this section will begin with the testimony of one of the victims of this gross violation of human rights, in the belief that giving voice to these survivors may encourage others who find themselves in similar situations.

Blessing⁷¹, THB victim for the purpose of sexual exploitation, arrived in Italy in 2017

I finished school and I left my village to work in Benin City in a lottery shop. One day a woman offered me to go to Libya to work and make good money to continue studying and to support my family. I did the 'juju' ritual and I have to pay a debt of 25.0000 euros. I did not know it was that much money. When I arrived in Libya, she told me I had to work in a connection house as a prostitute.

I refused and they beat me and threatened me with death. I had no choice. I did it...

Some months later, they sent some of us to take the boat. We arrived in Italy. She kept harassing me, saying that they will kill my family and me if I would not pay the debt. I decided to speak out and ask for help. I am still scared for my family and myself: if I would have the money, I will pay her. [sic]

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In an interview⁷⁴, he discussed how the current Italian legislation on irregular migration, 'Law 132/2018 on Migration and Public Security', could affect victims of trafficking in human beings for the purpose of sexual exploitation:

"The new law implies that a humanitarian permit cannot be converted into a 'special permit'⁷⁵. Indeed, THB victims were sometimes granted with such a permit before the entry into force of the 'Decree on Migration and Public Security'. This change in the asylum system means that victims whom had already obtained the humanitarian permit are left very unprotected. They could make a second appeal to [the] Commission but it is often a long and bureaucratic process and they do not have the means to do it if it is not with the support of CSOs.

⁷¹ The name has been changed to preserve the anonymity of the victim and for safety reasons.

⁷² Protection System for Refugees and Asylum Seekers

⁷³ Piam Onlus, (Project for the Integration and Welcoming of Immigrants), Official Website available at <https://piamonlus.org/en/home_en/>

⁷⁴ Telephone interview with the author, 15 April 2020

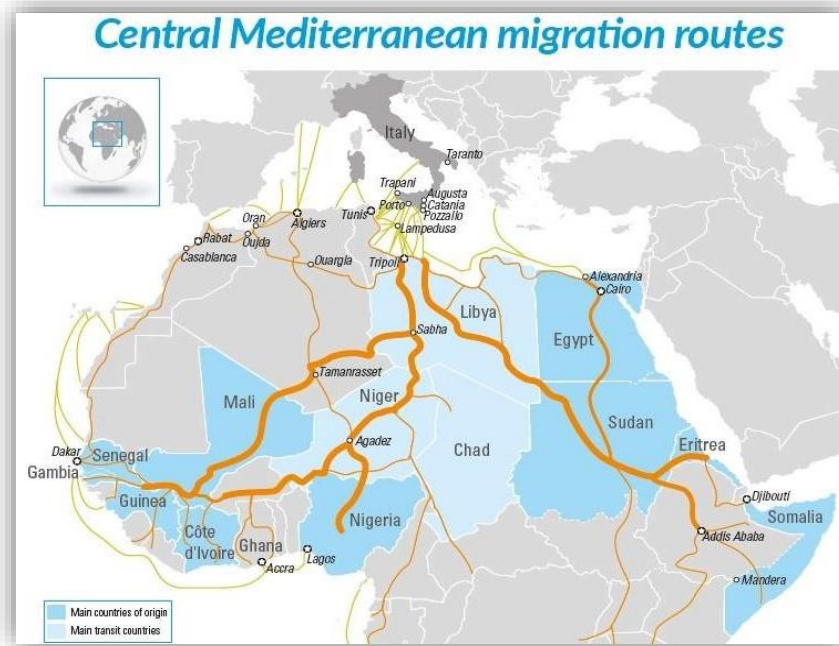
⁷⁵ The Law 132/2018 establishes a 'Special Permit' in the place of the previous 'Humanitarian permit' and THB victims may also fall under this category. However, if they obtained a humanitarian permit before the law entered into force, they cannot convert it. In this case, as Mossino explained, they would have to make an appeal to the Territorial Commission, which is a long and bureaucratic process.

“It leads victims to a very vulnerable situation since their only option it is to find a job to renew the permit. It is usually a difficult task since they are often low-skill workers and the present economic situation involves a high rate of employment even for Italian nationals.

“As a result, there is a whole illicit market for labour contracts. The victims pay money in return for a fake contract that allows them to renew the permit. In the worst cases, they can go back to their traffickers due to desperate situation in which they find themselves.”

3.1 Human trafficking for sexual exploitation among migrants arriving by the sea. The Central Mediterranean route.

Italy is one of the main gateways to Europe for migrants. Its strategic geographical position in the Mediterranean has placed the country at the forefront of migration flows in the last decades through the so-called ‘Central Mediterranean route’⁷⁶. This route poses an extreme dangerous journey in which thousands of refugees, THB victims, and migrants continue to risk their lives. As has been stated by the United Nations High Commission for Refugees (UNHCR) and some international NGOs, the Central Mediterranean route presents serious violations of human rights.



Source: Adapted from European Union, Emergency Response Coordination Centre (EERC), Refugee Crisis – Central Mediterranean Route: ECHO Daily Map, 4 November 2016, <http://erccportal.jr.ec.europa.eu/getdailymap/>

⁷⁶ While it should be noted that there is no singular ‘route’, rather several main routes across the central Mediterranean, the common convention is to use the singular rather than plural.

People undertaking such a dangerous journey have a diverse range of reasons such as fleeing persecution and human rights violations, seeking economic and/or employment opportunities, or being victims of human trafficking, amongst others.

The available data on this route shows that the main country of embarkation is Libya⁷⁷, with humanitarian organisations reporting increasing numbers of people who had previously been in this country before starting their journey across Mediterranean waters. Migrants in Libya suffer from extremely poor health conditions and face torture, trafficking, and sexual exploitation, among other forms of abuse⁷⁸. According to the testimony of people interviewed by UNHCR, these severe human rights violations are closely related to long periods of captivity in the hands of traffickers and smugglers⁷⁹.

In this context, it is important to note that the number of migrants arriving by sea has dropped over the last five years. In 2015, the total arrivals were 153,842; in 2016, the peak was reached at 181,436. Subsequently, Italy experienced a decrease of arrivals, with 119,369 in 2017; 23,370 in 2018; and 11,471 in 2019⁸⁰. In 2020 between 1 January and 29 February, the number of arrivals accounted for was 2,553. In addition, in 2018 alone, 1,279 deaths or persons missing were registered⁸¹.

Despite this “positive” change in the trend towards the decrease in arrivals, deaths and missing persons, there are no consistent grounds to believe that this is due to an improvement or positive developments in the living conditions of the source countries overall, nor to think that the phenomenon of human trafficking has stopped.

Instead, this progressive drop may reflect the efforts implemented by the EU to contain the phenomenon of migration, as the United Nations Support Mission in Libya (UNSMIL) and Office of the United Nations High Commissioner for Human Rights (OHCHR) Report on the human rights situation of migrants and refugees in Libya⁸² declares. This drop has been progressively caused by shifting the role of search and rescue operations to the Libyan Coast Guards (LCG)⁸³, as well as the support provided to the LCG for the restriction of unauthorised departures from its territory, as the “Memorandum of Understanding on migration between Libya and Italy” establishes⁸⁴. Moreover, the new Italian Decree No.53 of 2019 on “Urgent provisions on law and order and public security” (known as the Decree

⁷⁷ See the UNHCR, The UN Refugee Agency, ITALY Sea arrival dashboards in the last 5 years. Available at: <<https://data2.unhcr.org/en/situations/mediterranean/location/5205>>

⁷⁸ UNSMIL and OHCHR, Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya, 2018, , Available at: <<https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>>

⁷⁹ ‘Routes Towards the Mediterranean, Reducing Risks and Strengthening Protection’, UNHCR, 2019, P. 8

⁸⁰ Source: UNHCR Italy Sea arrivals dashboard, December 2019. UNHCR, The UN Refugee Agency, ITALY Sea arrival dashboards. Available at: <<https://data2.unhcr.org/en/documents/details/73536>>

⁸¹ UNHCR, The UN Refugee Agency, EUROPE Dead and missing at sea.

⁸² UNSMIL and OHCHR, Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya, 2018, , p. 13.

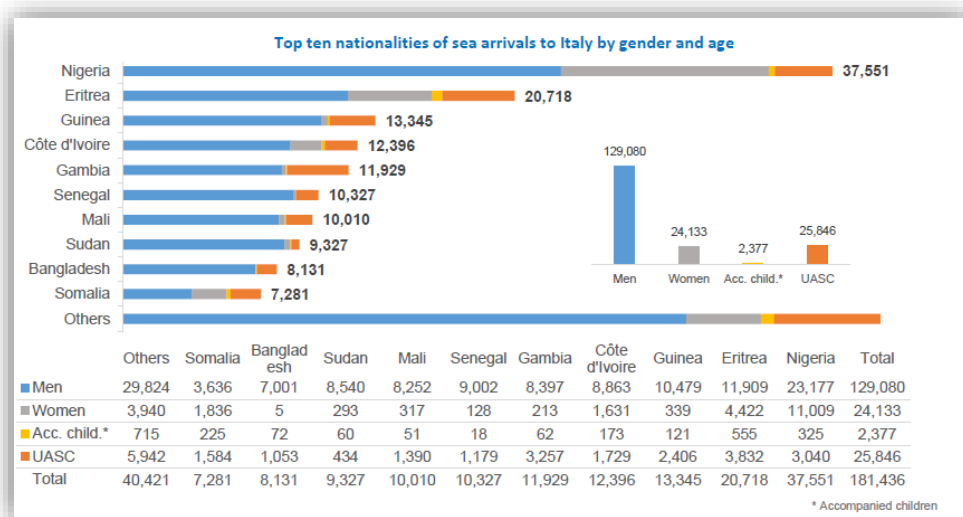
⁸³ *Ibid.*

⁸⁴ See above the Chapter III, section: ‘International, regional and bilateral cooperation’ and the ‘Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic’ Available at: <https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf>

on Public Security and Migration (Bis))⁸⁵ poses serious restrictions for the search and rescue activities of humanitarian organisations and even a prohibition to land on Italian shores⁸⁶.

Regarding trend in this phenomenon, it is worth analysing more deeply its evolution in the last four years, as well as the main characteristics of this migration flow.

In 2016, the main country of origin of migrants arriving by sea was Nigeria, followed by Eritrea and Guinea. The available data states that men predominant when it comes to arrivals by sea. This may be due to social-cultural factors and the fact that women and children may be more vulnerable in certain situations⁸⁷. Nevertheless, that year registered a singular increase in the number of women and non-accompanied children, particularly in the case of women from Nigeria, Somalia and Cameroon, who respectively accounted for 29%, 25%, and 25% of the nationals of these countries. The number of women from Nigeria arriving on Italian shores is particularly relevant, being 11,009, almost double that in 2015⁸⁸.



Source: UNHCR Italy Sea arrivals dashboard, December 2016. Available at: <https://data2.unhcr.org/en/situations/mediterranean?id=2374>

⁸⁵ Decreto- Legge (Decree Law) on 14th June 2019, n. 53, Italian Official Gazette. Available at: <https://www.gazzettaufficiale.it/eli/id/2019/06/14/19G00063/sg>

⁸⁶ Article 1 of the law establishes that the interior minister can prohibit seagoing vessels from entering, transiting, or stopping in Italian waters. Thus, their captains can be charged with “promoting illegal migration”. Article 2 stipulates punishments for rescue boat captains, including fines of between EUR 150,000 and one EUR 1,000,000 for entering in Italy’s territorial waters.

⁸⁷ IOM, Report on *Migrant Vulnerability to Human Trafficking and Exploitation: Evidence from the Central and Eastern Mediterranean Migration Routes*, 2017. The study maintains that both contextual and individual factors and their intersection in the different levels of vulnerability should be encompassed. This is to say that while children and women are more vulnerable in certain situations, the intersectional approach allows for any individual to be considered vulnerable, including men. It is in line with the European Directive on standards for the reception of applicants for international protection (Directive 2013/33/EU), which provides a non-exhaustive list of vulnerable persons.

⁸⁸ UNHCR, The UN Refugee Agency, ITALY Sea arrival dashboards, 2016.

In the following year, 2017, the main nationalities among arriving migrants were Nigerians, Guineans and Ivoirians. The previous year's trend was maintained when it came to gender, with men being predominant. Notwithstanding this, the UNHCR Sea Arrivals Dashboard in Italy states that around 5,400 Nigerian women arrived in 2017, which accounts for 30% of all the nationals of that country reaching Italian shores. Moreover, a high proportion of women from other nationalities have also been registered, with 26% of Cameroonians, 22% of Ethiopians and 19% of Eritreans and Syrians⁸⁹.

The following years showed a change of trend as well as a significant drop in arrivals. In 2018, there was a decrease on the sea arrivals coming from Libya, being those account by the 56% of arrivals, in contrast to the 91% registered the previous year. The three top countries of origin of migrants were Tunisia, Eritrea and Iraq, while in 2019 it was Tunisia, Pakistan and Côte d'Ivoire, with a 51% decrease in the number of sea arrivals from the previous year.

The proportion of women also progressively dropped, representing 13%, 11%, 10% and 9% respectively overall in 2016, 2017, 2018 and 2019. Regarding the number of separate or non-accompanied children, this remained more consistent, being between 13% and 15% of arrivals in each of the last four years⁹⁰.

This data is essential to analyse the phenomenon of human trafficking for the purpose of sexual exploitation in the Central Mediterranean route.

In 2017, the IOM carried out a flow monitoring survey to analyse the phenomenon of human trafficking and other exploitative practices among migrants arriving by the Central and Eastern Mediterranean routes⁹¹. It aimed at measuring the prevalence of human trafficking using several 'exploitative practices indicators' based on migrants own direct experience⁹². The IOM stated that on the Central Mediterranean Route 76% of male and 67% of female respondents answered positively to at least one of the four indicators measuring human trafficking, based on their own experience. In addition, 48% of males and 30% of females answered 'yes' to at least 2 out of these 4 indicators⁹³.

In this light, it is worth emphasising the role of IOM and its key findings regarding THB, particularly for the purposes of sexual exploitation. The IOM Italy is the main body when it comes to identification of THB victims in this context. It is present in all the hotspots of the country and provides support and assistance to migrants at points of disembarkation. The early identification of possible victims of this crime is among its main tasks since 2006, working in collaboration with the Department of Civil Liberties and Immigration of the Ministry of Interior and the Italian border police⁹⁴. The organisation provides victims with a

⁸⁹ UNHCR, The UN Refugee Agency, ITALY Sea arrival dashboards, 2017.

⁹⁰ See the UNHCR, The UN Refugee Agency, ITALY Sea arrival dashboards, 2018 and 2019.

⁹¹ IOM, Flow Monitoring Surveys: The Human Trafficking and other Exploitative Practices Indication Survey Male and Female Respondents Interviewed along the Central and the Eastern Mediterranean Routes in 2017 January 2018, Available at: <https://migration.iom.int/docs/FMS_CT_Analysis_male%20female_Central_Eastern_2017.pdf>

⁹² Such as: being held against one's will, being forced to work, having experienced physical violence, among others.

⁹³ *Ibid.*, p.3

⁹⁴ IOM, Report on victims of trafficking in mixed migration flows arriving in Italy by sea April 2014 - October 2015, p.4.

hotline number (the ‘Numero Verde’, an anti-trafficking line), as well as information about the rights that victims have in Italy.

Focusing on sexual exploitation as the final purpose of this trade in human beings, the IOM has estimated that 80% of the Nigerian women and girls who arrived in at the Italian coast in 2016 were likely to be victims of trafficking for sexual exploitation. It declared that women and unaccompanied Nigerian girls are one of the groups most potentially at risk of being trafficked for sexual exploitation, although this does not exclude migrants of other nationalities from being victims of this phenomenon for sexual purposes or other kind of exploitation⁹⁵. Notwithstanding, it is important to note that Nigeria is the main country of origin of victims of THB in Italy⁹⁶ and therefore the IOM has further studied this⁹⁷. It has identified several indicators of trafficking that can be easily connected with Article 601 of the Italian Penal Code: the ‘recruitment’, ‘transfer’ and ‘purpose of exploitation’.

Women and girls are normally recruited in the country of origin, Nigeria in this case. This can be done through several methods, such as fake promises (i.e. a better job and living conditions), the abuse of vulnerability (situation of poverty) or threats, amongst others. It is important to emphasise the use of religious voodoo rituals or ‘*juju*’, which has been also pointed out by the IOM as being a powerful method of coercion that establishes a psychological bind for victims towards their traffickers (to repay the debt incurred for the trip once they arrive in Italy). It constitutes the main *modus operandi* of these criminal networks. In this regard, the IOM’s report states that most of the time victims are not willing to report their traffickers due to these strong beliefs and the fear of the consequences that breaking such an oath will have for them and even their relatives in their country of origin⁹⁸.

The IOM has reported that this kind of voodoo ritual can affect victims at every level of education: as a result, it is a practice widely used in Nigeria as an element of subordination and psychological control⁹⁹. Notwithstanding this, it is worth nothing that recently religious leaders have condemned this practice, although there is no evidence that this has led to a decrease of this phenomenon¹⁰⁰.

⁹⁵ IOM, Ministero dell’Interno and the European Union, Human Trafficking through the Central Mediterranean Route: Data, stories and information collected by the International Organization for Migration, 2017, p.9

⁹⁶ GRETA Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Published on 30 January 2017, p.5, Available at: < <https://www.globallaveryindex.org/2018/findings/country-studies/italy/>>

⁹⁷ IOM, Human Trafficking Through The Central Mediterranean Route: Data, Stories And Information Collected By The International Organization For Migration, 2017, Available at:< https://italy.iom.int/sites/default/files/news-documents/IOMReport_Trafficking.pdf>

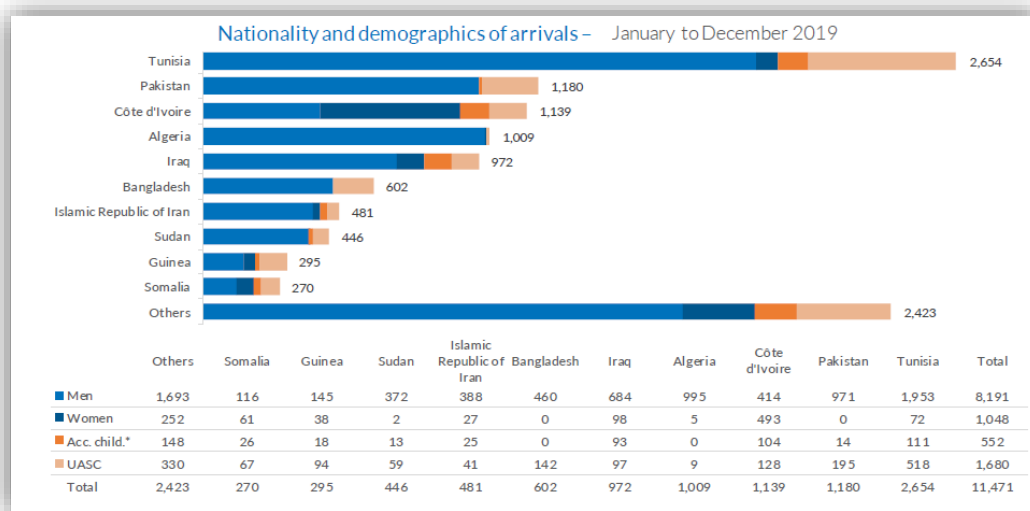
⁹⁸ IOM, Human Trafficking Through The Central Mediterranean Route: Data, Stories And Information Collected By The International Organization For Migration, 2017, p. 18, Available at:< https://italy.iom.int/sites/default/files/news-documents/IOMReport_Trafficking.pdf>

⁹⁹ *Ibid.*, p.26.

¹⁰⁰ Tricia Nwaubani Adaobi, A Voodoo Curse on Human Traffickers, The New York Times, Published on 24th March, 2018; Available at: < <https://www.nytimes.com/2018/03/24/opinion/sunday/voodoo-curse-human-traffickers.html>>

All these key findings confirm the existence and the potential of the phenomenon of human trafficking for the purpose of sexual exploitation among migrants arriving by the sea to Italian shores.

During the last three years (2017-2019), the IOM has continued its efforts in this area and has published a study focused on women from Côte d'Ivoire, due to the increasing number of arrivals of these nationals in such a period¹⁰¹. According to the UNHCR's Sea arrivals dashboard of Italy, in 2018, women accounted for 26% of the number of people arriving from Côte d'Ivoire, while, in 2019, they reached 43%, even higher than the number of men, given the non-accompanied children make up 11% in 2019 (compared to 16% in 2018)¹⁰².



Source: UNHCR Italy Sea arrivals dashboard, December 2019. Available at: < <https://data2.unhcr.org/en/documents/details/73536> >

The IOM observations are mostly concerned about the fact that those women have been trafficked to Tunisia and face a potential risk to be re-trafficked to Italy. Numerous testimonies collected from arrivals on Italian shores have declared that the phase of exploitation starts in Tunisia, as the main country of destination: in some cases, it can be also Libya.

In this line, the IOM states that Italy or Europe are not the final destination. Instead, victims arrive in the region with the intention of escaping exploitation. They are mostly trafficked for the purpose of domestic servitude and, in some cases, for sexual exploitation¹⁰³. The IOM staff present in the hotspots state that in some cases women and girls arrive pregnant as a result of the sexual abuse they suffered at the hands of their exploiters. Once they arrive in

¹⁰¹ IOM, Victims of trafficking in the central Mediterranean route: focus on women from Côte d'Ivoire, from the trafficking in Tunisia to the risk of re-trafficking in Italy. Available at: < https://italy.iom.int/sites/default/files/news-documents/IOM_Briefing_Victims_of_Trafficking.pdf >

¹⁰² UNHCR, Italy, Sea arrivals dashboard, Available at: < <https://data2.unhcr.org/en/documents/details/73536> >

¹⁰³ IOM, Victims of trafficking in the central Mediterranean route: focus on women from Côte d'Ivoire, from the trafficking in Tunisia to the risk of re-trafficking in Italy, p. 3 Available at: < https://italy.iom.int/sites/default/files/news-documents/IOM_Briefing_Victims_of_Trafficking.pdf >

Italy, they usually declared that they are no longer in touch with those who helped them during the journey. It is also remarkable that sometimes they arrive accompanied by alleged husbands with whom they subsequently deny having any family bound. It raises serious concerns about the risk of those victims in terms of being re-trafficked in Italy¹⁰⁴.

Separately, little attention has been paid to the sexual exploitation and abused suffered by migrant adolescent boys, young men, and persons belonging to the LGBTI group on this route. In Italy in particular the primary prevention of sexual exploitation and abuse of refugees has not been among the legal priorities: in fact, the new Law 132/2018 on public security and migration may increase the vulnerability of these groups to fall into this kind of exploitation.

The Women's Refugee Commission (WRC) recently published a study, *More Than One Million Pains: Sexual Violence against Men and Boys on the Central Mediterranean Route to Italy*¹⁰⁵, which aims to fill the research gap on the sexual abuse of men and boys in this context. It mainly focuses on the sexual violence experienced on the Central Mediterranean route to Italy, which includes rape, sexual slavery and/or trafficking, sexual harassment, sexual exploitation and/or abuse, amongst others. It states that serious human right violations, such as sexual violence, forced labour, trafficking for purposes of sexual exploitation among others, are systemic in Libya for refugees and migrants.

However, it does not address the phenomenon of trafficking for the purpose of sexual exploitation as the finality of the transfer of these migrants. Instead, it encompasses this form of violence as one of the multiple human rights violations that men, boys and the LGTBI group may suffer on the course of the route, particularly in Libya.

3.2 Criminalisation of irregular migration and the impact on trafficked persons

Migration is a hot issue in Italy. It has historically evolved from being a country of emigrants to becoming a destination or transit land. In the last decade, the political climate and public attention has focused on this issue, and most of the legislation implemented has followed a national security approach regarding migration.

Italian legislation distinguishes between the crime of smuggling and trafficking in human beings. In 2002, the Bossi-Fini Law n. 189¹⁰⁶ modified the previous legislation, the 'Turkish-Neapolitan Law' (Legge Turco-Napolitano), and prohibited irregular migration. It introduced stricter border control measures and gave a more powerful role to the Detention Centres for migrants (Centri di Permanenza Temporanea, CPI), establishing longer periods of detention as well as facilitating migrants' removals. It also reduced the duration of the temporary resident permit for migrants who were already in the country, from three to two

¹⁰⁴ Ibid., P. 6.

¹⁰⁵ Women's Refugee Commission (WRC), "*More Than One Million Pains: Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy*", 2019; Available at: <<https://reliefweb.int/sites/reliefweb.int/files/resources/Libya-Italy-Report-03-2019.pdf>>

¹⁰⁶ Law of July 2002, n.189, "Modifica alla normativa in materia di immigrazione e di asilo" (Modification in the field of migration and asylum), Official Gazette, accessed 29th April 2020, available <<https://www.gazzettaufficiale.it/eli/id/2002/08/26/002G0219/sg>>

years, and eliminated the sponsoring system previously established in the Turco-Napolitanian law, reducing it to a contract of residence (contratto di soggiorno), which makes working in Italy very difficult for extra-communitarian citizens¹⁰⁷.

The subsequently law followed the same trend. The Law No. 125/2008¹⁰⁸ introduced new penalty schemes for clandestine migrants and to those who encourage or help them to stay in the territory (including employers who hire irregular migrants). It also contained the measure to expel EU and non-EU migrants who are convicted of a crime with a penalty of more than two years in prison.

Introduced in 2009, Law No. 94/2009 also posited harsh measures against irregular migration. It increased the length of time for migrants in Detention Centres¹⁰⁹ to six months, and their consequent transfer to removal centres upon identification. It set up a new barrier at the economic level, not just for entry into the country, but also for ‘family reunification’ and the renewal of the residence permit¹¹⁰. The latter was deemed as the most restrictive legislative tool in terms of migration at its time of adoption. However, it was soon mitigated by the adoption of European Directive 2013/32/EU on common procedures for granting and withdrawing international protection¹¹¹.

In 2014, the Justice Commission of the Senate approved an amendment to the Bossi-Fini Law to abolish the crime of irregular migration. This finally passed by Chamber of Deputies, amending the Law No. 925/2014. As a result, such a crime is reclassified as an administrative offence and only the re-entrance in the territory after expulsion would be considered a crime¹¹².

Over the last five years, new legislation has been adopted in this regard. It is important to emphasise Law No. 46 of 2017, which aimed to speed up the processes in the migration field. It simplified and increased the efficiency of the judicial process to grant international protection. Moreover, it foresaw a less restrictive procedure to granting international protection and regarding the expulsion of migrants. Subsequently, Law No. 47 of 2017 focused on children’s rights, to guarantee their special protection in this regard.

This law may be recognised as the least strict legal tool in terms of irregular migration. Conversely, in 2018, the country witnessed one of the most restrictive measures in this field:

¹⁰⁷ La Legislazione Nazionale in Materia di Immigrazione (The National Legislation on migration), 2016, Organisation ‘Avviso Pubblico’, Enti locali e Regioni per la formazione civile contro le mafia. Available <<https://www.avvisopubblico.it/home/home/cosa-facciamo/informare/documenti-tematici/immigrazione/la-legislazione-nazionale-materia-immigrazione/>>

¹⁰⁸ It was the result of the conversion of Decree Law of 23 maggio 2008, n. 92 in law. See the Italian Official Gazette, available <<https://www.gazzettaufficiale.it/eli/id/2008/07/25/008G0149/sg>>

¹⁰⁹ CIE – Centri di identificazione ed espulsione – (Identification and expulsion centers)

¹¹⁰ Law of 15th July 2009, n. 94, (Disposizioni in materia di sicurezza pubblica), Italian Official Gazette.

¹¹¹ La Legislazione Nazionale in Materia di Immigrazione (The National Legislation on migration), 2016, Organisation ‘Avviso Pubblico’, Enti locali e Regioni per la formazione civile contro le mafia. Available <<https://www.avvisopubblico.it/home/home/cosa-facciamo/informare/documenti-tematici/immigrazione/la-legislazione-nazionale-materia-immigrazione/>>

¹¹² Pasca Elvio, Reato di clandestinità. Il Parlamento ha deciso: “Va cancellato” (The crime of irregular migration. The Parliament has decided: “it is cancelled”); *Stranieri in Italia*, 2nd April, 2014, Accessed on 29th April 2020, Available <<https://stranieriinitalia.it/attualita/attualita-sp-754/reato-di-clandestinita-il-parlamento-ha-deciso-qua-cancellatoq-sp-1567733247/>>

‘Decree 113/2018 on Immigration and Public Security’, implemented by Law 132/2018 on the asylum system¹¹³, also known as ‘Salvini’s Decree’ after the surname of Minister of Interior at that time. According to the government, such a law, as its name indicates, aimed to ensure the security of citizens in terms of migration and to combat the crime of human smuggling.

This law has been widely criticized by local NGOs, and even by the UNHCR, not just for the criminalisation of irregular migration but due to the destructive impact that these measures could have on access to protection for and the rights of asylum seekers and refugees, including THB victims.

The law establishes several provisions that both directly and indirectly concern victims of human trafficking, which will be further analysed in this study. It is worth noticing the main measures that this law implies. It establishes the abolition of the ‘humanitarian protection permit’, which also used to be granted to victims of human trafficking under some circumstances¹¹⁴. Consequently, it restricts access to accommodation in the Protection System for Refugees and Asylum Seekers (SPRAR), as well as decreases the state’s funding thereof. Instead, it provides more funding for repatriation¹¹⁵.

Furthermore, it suppresses civil registration for migrants¹¹⁶, which eliminates the possibility to eventually convert the ‘temporary residence permit’ into a permanent one. The law also declares that the stay in hotspots can be up to one month in order to verify migrants’ identity. At the same time, it extends the time of stay in the Detention Centres for Repatriation to up to 180 days (while it used to be maximum 90 days)¹¹⁷. Finally, the request for international protection can be cancelled or revoked if the person in question is simply accused of committing an offence, even if the sentence is not definitive¹¹⁸.

As stated by the CoE’s Commissioner for Human Rights, Dunja Mijatovic, “*it raises several concerns regarding the human rights of migrants and asylum seekers*”, specifically noting the restriction of reception and integration standards. Therefore, it directly affects victims of trafficking in human beings.

The harsh nature of these migration policies and the strong inclination towards prosecuting human smuggling has negative consequences for victims of trafficking¹¹⁹, which can be seen in all the different phases of the process, including identification, protection and social integration.

¹¹³ See law of 1st of December 2018, n. 132 in the Italian Official Gazette, Available < <https://www.gazzettaufficiale.it/eli/id/2018/12/03/18G00161/sg>>

¹¹⁴ It is estimated that in the last 10 years, (2008-2017), more than 100,000 migrants have obtained the ‘humanitarian permit’ in Italy. Just in 2017, 20,000 were granted with this permit out of 81,000 requests. Conseguenze abrogazione Protezione Umanitaria (Consequences of the abolition of the humanitarian permit), Europa Asilo, National Network for the right to Asylum. Accessed on 29th April 2020.

¹¹⁵ See Art. 6 of Decree Law 4th October 2018, n.113

¹¹⁶ See Art. 13 of Decree Law 4th October 2018, n.113

¹¹⁷ Ibid., See Art. 2 and 3

¹¹⁸ See Art. 10 of Decree Law 4th October 2018, n.113

¹¹⁹ Ngozi Ezeilo, Joy; Report of the Special Rapporteur on trafficking in persons, especially women and children, Italy, 2013

Victims of trafficking can be easily categorised as irregular migrants. They are normally unwilling to report abuse and exploitation since they may fear their traffickers, the fact of being charged with offences of ‘irregular entry’, or their eventual expulsion. Here, an example of this type of motivation – even under a less strict legal environment – can be given of the case of 19 Nigerian women who were expelled in 2015. The NGO BeFree conducted interviews with the respected women and published a report¹²⁰, while GRETA also analysed such a case in its report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the CoE Convention on Action against Trafficking in Human Beings¹²¹. According to this report, 66 women who arrived by the Mediterranean route were sent to the CIE Ponte Galleria in 2015. Subsequently, they were issued with expulsion and detention orders. According to the Vice-Minister of Interior, it was as they stated during the identification process that they came to Europe to work. Consequently, they applied for asylum and the Territorial Commission for Recognition of International Protection asked BeFree to conduct further interviews to verify if they were THB victims. BeFree stated that the women presented many signals of being trafficked, including being very young, illiterate, from extremely poor families, being very traumatised and finding it difficult to speak about their journey, especially through Libya, as well as the fact they had been given telephone numbers to call upon arrival in Italy. It clearly brought in light the possible involvement of criminal networks that had recruited and brought them to the country. After such interviews, 13 of the women were granted international protection. However, in spite of all this evidence and the fact they had made an appeal to reject the decision and the expulsion orders by the Territorial Commission¹²², 19 women were finally sent back on a forced return flight.

In this light, Italy’s legal propensity towards the prosecution of irregular migration is clear. It contributes to the potential criminalisation of THB victims and leads to gross violations of human rights.

Regarding the impact that Law 132/2018 implies in the protection and the rights of asylum seekers and refugees, it is worth noticing that THB victims can also fall into this category, since armed conflicts and natural disasters are among the push factors that may lead them to fall in the hands of traffickers. Moreover, they can be sometimes granted ‘humanitarian permit’ when they apply for asylum: this may happen due to victims failing to tell their genuine stories since they are scared of reprisals by their traffickers, among other personal reasons.

Victims are first hosted in Centres of Reception for asylum seekers and refugees (*Centri d’accoglienza straordinaria-Cas*) while waiting for the Territorial Commission to grant them the permit. Once obtained, they are sent into the SPRAR system. However, the present law establishes that the stay in those centres has to be exclusively for migrant holders of

¹²⁰ BeFree Cooperativa Sociale contro Tratta, Violenze, Discriminazione. INTER/ROTTE. Storie di Tratta, Percorsi di Resistenze’, 2016. Available at: <<https://www.befreecooperativa.org/wordpress/2016/05/interrotte-storie-di-tratta-percorsi-di-resistenze/>>

¹²¹ GRETA Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (2016), Published on 30th January 2017, para. 61, p.16.

¹²² The appeal does not automatically result in a suspension of the expulsion order. Instead, an order by the pertinent Court must be issued to suspend the expulsion.

international protection or non-accompanied minors and no longer for holders of the humanitarian permit (now called a “special permit”).

In this light, the law causes a detrimental impact on trafficked victims in terms of social protection and assistance. This restriction results in significant difficulties in living conditions and for social inclusion. Consequently, it can easily lead them becoming homeless or even to fall again into the hands of their traffickers, due to their lack of income and state support, which increases their vulnerability.

Therefore, the abolition of the humanitarian permit poses a strong threat to THB victims and their fundamental rights. The real case of Queen¹²³, detailed in the Annex, reflects the gravity that this legislation on migration poses for victims of human trafficking¹²⁴.

The situation is particularly worrying when it comes to children. During the identification process many underage victims follow the instructions of their traffickers who have warned them to say they are over eighteen. As a result, they may be unidentified as minors and end up in adult detention centres.

3.3 The International and National legal framework for combating trafficking in human beings

Italy has shown commitment to combat human trafficking. At the international level, the country has ratified the 2000 United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol).

In addition, the country is a state party of eight of the nine core human rights treaties, the exception being the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The ratified conventions include the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, as well as the 1951 Convention relating to the Status of Refugees. In addition, it has ratified other international instruments concerning human trafficking, such as the ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

At the regional level, Italy has acceded to the European Convention for the Promotion and Protection of Human Rights and Fundamental Freedoms, incorporating all the articles within its national legal framework. Moreover, as an EU Member State, it is bound by several European Directives, such as Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as

¹²³ Camilli Annalisa, ‘Con il decreto sicurezza le vittime di tratta finiscono per strada’- (The Decree on Security and Migrations leads THB victims to end in the Street); Internazionale; 14th December 2018; available < <https://www.internazionale.it/bloc-notes/annalisa-camilli/2018/12/14/decreto-sicurezza-vittime-di-tratta-prostitute> >

¹²⁴ See Annex the case of Queen THB victim for the purpose of sexual exploitation. See also above the fragment of the interview to Alberto Mossino in this regard.

persons who otherwise need international protection and the content of the protection granted; Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status; European Parliament and Council Directive 2008/115/EC on common standards and procedures for returning illegally staying third-country nationals; as well as Council Directive 2004/81/EC on the residence permit issued to non-EU member country nationals who are victims of trafficking in human beings and who cooperate with the competent authorities; and European Parliament and Council Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

With regards to the national legal framework, the national body in charge of promoting and coordinating action for the protection of trafficked persons is the Department for Equal Opportunities (DEO). It belongs to the Italian Presidency of the Council of Ministers. The Department operates at the national and international level and performs as the National Rapporteur or Equivalent Mechanism in Italy.

The country has made significant efforts to combat trafficking. In 1998, the country implemented the first instrument in this arena, the Italian Immigration Act (legislative decree No. 286/1998), which was a pioneer initiative in Europe to tackle this crime and guarantee the rights of the victims¹²⁵. It is worth emphasising article 18 of such a legislative tool, which embodies a victim-centred approach and lays down a mechanism to assist victims, giving them the possibility to obtain a ‘temporary residence permit’.

This article focuses on assistance to and the social inclusion of the victim. It establishes a six-months ‘residence permit’ for identified victims, which grants them social protection during this period. This can be renewed for one year and may even be converted into a long-term work or student residence permit. According to this provision, there are two ways to obtain the residence permit: the ‘judicial avenue’ and the ‘social avenue’. The former implies the victims’ cooperation with the competent authorities and legal prosecutors, which is followed by an investigation. The latter, however, does not involve cooperation with the authorities. In this case, social services should submit a statement on behalf of the victims that contains substantial evidence relating to the case. The foreseen duration of the programme is one year: however, it may be extended if necessary. In this light, the Italian legal framework provided comprehensive protection for victims compared to other European countries at the time, where the victims’ cooperation and testimony used to be a requirement to access a residence permit.

The next relevant development in this area was the adoption of the Palermo Protocol in 2003. Subsequently, the Italian government introduced a National Law against Trafficking in Human Beings (Law No. 228/2003). It acknowledged the definition of trafficking given by the Palermo Protocol and reinforced the Penal Code amending some provisions, such as Art. 600 “Reducing to or Keeping in Slavery or Servitude”, Art. 601 “Trafficking in Persons” and renewed the provision related to “Trading in Slaves”, Art. 602. It also increased the penalty related to these provisions from 8 to 20 years of imprisonment and from one third

¹²⁵ Ngozi Ezeilo, Joy; Report of the Special Rapporteur on trafficking in persons, especially women and children, Italy, 2013, p.7.

to a half more if the victims are minors, or when ‘reduction into slavery or servitude conditions’ was aimed at further sexual exploitation or removal of organs¹²⁶.

Regarding victims’ assistance, the new law also established a short-term protection programme and temporary residence. This consists of a three-months permit, which is extensible for another three and provides the possibility of continuing with the long-term programme (Art. 18) if required. It is worth noting that under both programmes, victims can benefit from accommodation, social assistance, and health care services. In addition, the long-term programme (Art. 18) provides high-level social protection measures, including education, vocational training, apprenticeships, and job placement.

In this light, it is important to emphasise that obtaining these temporary residence permits is not conditional upon the victim’s willingness to cooperate with the judicial authorities, which makes the level of protection more comprehensive when it comes to victims’ rights. Nevertheless, it should be noted that no. 228 Law of 2003 was mostly focused on non-EU citizens, leaving behind other potential EU victims. This was eventually changed in 2007 when Law 17/2007 turned Law Decree No. 300 of 28 December 2006 into law, extended the target group for Article 18, thus providing access to all victims of trafficking, regardless their nationality¹²⁷.

In 2010, Italy ratified the CoE Convention on Action against Trafficking in Human Beings with Law No. 108 of 2 July¹²⁸. Consequently, from 2011, the DEO has actively worked in the area of trafficking in human beings, by gathering documents, reports on THB, as well as providing access to data collected to NGOs and local authorities working in the field through a special database (*Sistema Informatizzato di Raccolta Informazioni sulla Tratta* – Computerized system for the collection of information on trafficking in human beings), which aims to improve the monitoring of this crime.

Then the country adopted Directive 2011/36/EU, which was transposed into national legislation by Legislative Decree No. 24/2014. This Directive, as discussed in the previous chapter, introduced common provisions, taking account of the gender perspective, with the aim of strengthening the prevention of this crime and the protection of victims.

The transposition of this European Directive brought new developments such as the amendment of articles 600 (“placing a person in a position of slavery”) and 601 (“trafficking in human beings”) of the Penal Code, with the aim of strengthening the punishments against perpetrators and embracing a more comprehensive definition of human trafficking in line with the present Directive.

Consequently, as enshrined in article 17 of the Directive, the Italian government also recognised the victims’ right to compensation. Moreover, this led to the unification of article 18 (long-term permit) and article 13 (short-term permit) into a single programme of

¹²⁶ Trafficking in Human Beings, Department for Equal Opportunities- Dipartimento per le Pari Opportunità, (DEO), Accessed on 25th April 2020, available <<http://www.pariopportunita.gov.it/component/content/article/70-traffico-di-esseri-umani-/2295-contro-la-tratta-di-persone>>

¹²⁷ Trafficking in Human beings, National framework, Italy, European Commission, EU

¹²⁸ Ibid., p. 4.

assistance and social integration of victims, with a view to avoiding duplication of effort and to widen the protection of victims¹²⁹. Furthermore, in compliance with Directive 2011/36/EU, the Italian government adopted a law concerned with ‘child victims of trafficking’, Law No. 47 of 7 April 2017 on “Provisions concerning the protection measures of third-country unaccompanied children” (known as the “Zampa Law”)¹³⁰, which provided for the setting up of an specific programme of assistance for those victims.

Legislative Decree No. 24/2014 also established the adoption of a National Anti-trafficking Action Plan. Consequently, in 2016, the country adopted the first National Action Plan against Trafficking in, and Serious Exploitation of, Human Beings (*Piano nazionale d’azione contro la tratta e il grave sfruttamento*). It encompasses four main pillars, the “4Ps” of prevention, prosecution, protection and partnership.

Among its main measures, the Plan includes provisions for prevention in the countries of origin, strengthening judicial co-operation and the multi-agency approach towards THB offences; the implementation of adequate mechanisms for the rapid identification of victims; as well as for assisted voluntary return to countries of origin; and the setting up of a single programme for the emergence, assistance and social integration of victims of trafficking.

However, the plan has already expired as it only covered 2016 to 2018. The Italian authorities have expressed their commitment to evaluating the Plan and adopting a new one, but they have not specified if the plan will be evaluated by an independent body in order to ensure neutrality and efficacy in the evaluation. In this regard, GRETA has stressed the importance of carrying out an independent evaluation while taking into account the 2018 GRETA report and recommendations, as well as the concerned stakeholders, including civil society¹³¹.

Currently, the DEO is planning to launch the second National Action Plan in 2020. The Italian Minister for Family and Equal Opportunities, Elena Bonetti, stated that it will be in compliance with GRETA’s recommendations and will once again be based on four main pillars: prevention and sensitisation; prosecution; protection and labour reinsertion¹³².

Last, but not least, Italy also has a National Referral Mechanisms approved by the National Commission for the Right to Asylum in 2016, following the recommendations of the EU in the area of trafficking¹³³. The ‘*Meccanismo Nazionale di Referral per le Persone Trafficate in Italia*’¹³⁴ aims to ensure that the human rights of trafficked persons are respected and to provide an

¹²⁹ Trafficking in Human beings, National framework, Italy, European Commission, EU

¹³⁰ GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, 2018.

¹³¹ Ibid., p.13.

¹³² Department for Equal Opportunities, Italian Presidency of the Council of Ministers, ‘*Tratta esseri umani, Bonetti convoca Cabina di regia: “Piano strategico entro 2020 e Comitato tecnico”*’, published on 2nd March 2020, available < <http://www.pariopportunita.gov.it/news/tratta-esseri-umani-bonetti-convoca-cabina-di-regia-piano-strategico-entro-2020-e-comitato-tecnico/>>

¹³³ The adoption of a National Referral Mechanisms in EU member states is expressly required in the document: “Action oriented paper on strengthening the EU external dimension on action against trafficking in human beings; Towards Global EU Action against Trafficking in Human Beings”, 2009.

¹³⁴ National Referral Mechanisms- *Meccanismo Nazionale di Referral per le Persone Trafficate in Italia*’, Available at: < <https://www.osservatoriointerventitratta.it/wp-content/uploads/2018/01/allegato-1-meccanismo-nazionale-referral.pdf>>

effective way to refer victims of trafficking to services. It focuses on several important areas that will be analysed below in this section, such as the identification of presumed trafficked persons, the support and protection services, as well as repatriation and social inclusion.

3.3.1 Identification

Italy has a strategic position on the Mediterranean route, making the country one of the main gateways to Europe. The country receives every year a high number of migrant arrivals and the distinction and early identification of victims of human trafficking is a difficult task.

The country lacks a global figure or official statistics about the number of identified victims. The available data is based on the number of victims who benefit from the protection programmes available (article 13 and 18), which does not provide a real figure of the number of trafficked victims that can exist within the country as some are likely undetected.

One of the main achievements in this area was the establishment of a national helpline for victims of trafficking, the so-called '*Numero Verde anti-tratta*'. It was created by DEO and constitutes one of the main channels victim identification. The line consists of an anonymous and free number that is available 24 hours-a-day, 7 days-a-week that offers multilingual assistance¹³⁵. It can be contacted by anyone, from the victims themselves to any type of organisations or citizens. The help line provides information about the rights granted to victims and orientation in this regard. Subsequently, the helpline report to the public institutions in charge to provide emergency assistance to victims. The last step is to refer victims to the professional unit in their respective areas¹³⁶.

The 'mobile units' constitute another main channel for identification. These consists of social services that conduct monitoring activities, provide information, and eventually report potential cases to the authorities and the national helpline. Civil society displays what it calls '*unità di strada*' (literally a 'road unit'). The methodology is to establish first contact with victims in the street, informing them of their rights and offering assistance and support to end the exploitation situation. This channel makes a significantly positive impact when it comes to the identification of victims. Nevertheless, it is mostly addressed to victims of trafficking for the purpose of sexual exploitation due to the nature of its methodology and it may miss victims of other forms of this crime¹³⁷.

Another important channel are the law enforcement agents. They work along with the National Helpline and the relevant organisations involved in the assistance of victims.

The system establishes that victims should meet social services before the authorities, to enhance trust and facilitate cooperation with the latter. However, this is not always the case.

¹³⁵ NUMERO VERDE ANTITRATTA: 800-290-290; Available at: <
<http://www.numeroverdeantitratta.org/>>

¹³⁶ Department for Equal Opportunities, Italian Presidency of the Council of Ministers, Trafficking in Human Beings, Numero Verde.

¹³⁷ SATIS. Sistema Antitratta Toscano Interventi Sociale, Azioni di primo contatto – Toscan Anti-trafficking System for Social intervention, First Contact, Accessed on 26th April 2020, available at <
<https://www.satistoscana.org/unita-di-strada/>>

It has been stressed by the UN Special Rapporteur in her visit to Italy¹³⁸ and contrasted also by interviews that this paper will further discuss, that police and law enforcement agents can be the first point of contact of victims. In some cases, they have to assess whether or not the person was a victim of this (or another) crime. Consequently, this procedure makes the protection and assistance conditional to the victims' willingness to cooperate (at least implicitly), which is contrary to what the law establishes. Such a sensitive decision should be taken by well-trained and professional staff in the field and always follow the special guidelines for the identification of victims.

Identification at borders is fundamental to reducing the impact of this phenomenon. Italy is concerned due to its geographical position on the Central Mediterranean route. From 2006, the country has been involved in a project with the UNHCR, IOM and the Italian Red Cross, known as *Praesidium*¹³⁹, which aims to enhance the capacity of the country to respond to mixed migratory flows. The system includes the monitoring and the strengthening of reception conditions, asylum seeker procedures, training and capacity building as well as placing a special focus on THB victims¹⁴⁰.

It is worth emphasising that IOM Italy is the organisation that centres on the assistance of trafficked victims. It is present at landing sites in Sicily and at the reception centres in Trapani, Caltanissetta, and Siracusa, where it provides information to migrants on their rights as well as interview victims of this crime with specific trafficking indicators¹⁴¹. The role that IOM performs with the early identification of victims is fundamental. However, it is not always successful, since sometimes victims are not willing to report their traffickers or they are severely traumatised and not able to talk.

On the other hand, it has been stressed that often asylum seekers are not given access to the assistance and protection measures available for victims of trafficking, and vice versa¹⁴². This, along with weak law enforcement capacity and victims' fear to cooperate leads to the misidentification of victims, who may be easily considered as undocumented migrants.

In this sense, the identification of victims poses a constant challenge. It will be further addressed in this study.

3.3.2 Protection

Legally, the protection and assistance of victims is mainly provided for by article 18 of Legislative Decree No. 286/1998 and article 13 of Law 228/2003, the measures of which eventually became a single programme of assistance, as previously discussed. A wide range of social services are offered, from accommodation in a specific shelter to free legal and

¹³⁸ Ngozi Ezeilo, Joy; Report of the Special Rapporteur on trafficking in persons, especially women and children, Italy, 2013, P. 13.

¹³⁹ UNHCR, Praesidium Project Recommendations and good practices in the management of mixed migratory flows by sea.

¹⁴⁰ UNHCR-Policy Development and Evaluation Service (PDES), Refugee protection and international migration: a review of UNHCR's operational role in southern Italy, 2009.

¹⁴¹ IOM in Italy, Official Website <www.iom.int>

¹⁴² Ngozi Ezeilo, Joy; Report of the Special Rapporteur on trafficking in persons, especially women and children, Italy, 2013, P. 13.

psychological assistance, as well as language lessons, educational activities, and job orientation. Moreover, it provides victims with a ‘social protection residence permit’ that is not conditional on the victims’ willingness to cooperate with the competent authorities.

Immediately after their identification, victims are transferred to appropriate shelters where they are provided with the required information about the legal options and conditions at their disposal. Afterwards, the competent social services conduct an evaluation of the necessity and the risks from which the victims may suffer. It assesses the urgency of each case and can differ depending on their personal situation, nationality, cultural background, etc.

The following step is the core of the protection system. The National Referral Mechanism defines it as ‘Long-term assistance and Social Inclusion’. It can be offered in the host country, as well as in the country of origin or in a third country. Once the victim decides to enter the assistance programme, she/he automatically also accepts a ‘programme of individual assistance’ in which the specific needs of the victim are analysed and addressed. It ensures the victims’ participation in the decision process, thus exercising their fundamental rights.

In this phase, victims are also given the option for voluntary return to their country of origin.

All this may occur within the first three months of their stay, the so called ‘reflection period’¹⁴³ in the European framework. Then, they are issued with the so called ‘long term residence permit’ under article 18. This is valid for six months and can be renewed for an additional year if needed.

During this period, victims are supplied with appropriate accommodation and all the mentioned social assistance, as well as with vocational and education training, and job orientation¹⁴⁴. The accommodation is normally based in drop-in centres or counselling centres where the victims receive all the assistance needed, including psychologic support. In addition, the Italian system offers another type of accommodation, also called a ‘confidential shelter’. It consists of a system of decentralized apartments that may offer a higher level of security compared to central buildings. This is also beneficial in ensuring suitable housing for different target groups: men, women, or children¹⁴⁵.

After this period, the permit can be converted into a residence permit for education or work. However, there is an implication that the victims may be studying or that they have obtained employment.

This is one of the main weaknesses of the system, given the economic climate in Italy, with a high rate of unemployment even among Italian nationals. This makes finding a job difficult, especially for low qualified people. As a result, the system does not provide long-term

¹⁴³ Despite the ‘reflection period’ is not specifically provided by Italian law, partial toleration of ‘illegal residence’ exists to allow victims to use the social support services, providing a period of consideration.

¹⁴⁴ Trafficking in Human Beings, Dipartimento per le Pari Opportunità, Department for Equal Opportunities (DEO),

¹⁴⁵ OSCE and ODIHR, ‘National Referral Mechanisms’, Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook, p.73

rehabilitation for victims and actually results in ample opportunity for social exclusion, especially taking into account the cultural and language barriers that victims may face.

Consequently, victims can become irregular migrants and risk deportation. It is a paradoxical point in the system, since after a long period of assistance, victims may fall back into the hands of traffickers or into other forms of exploitation in their desperate attempts to obtain a work permit.

With regard to family protection in the country of origin, families may be subjected to threat and pressure by the traffickers. However, the protection of these is generally beyond the scope of the Italian authorities¹⁴⁶.

3.3.3 (Re)-integration and repatriation

Repatriation and re-integration in the country of origin is often a sensitive and difficult process for trafficked survivors. They may face several difficulties including a variety of social, legal, and family problems, as well as social exclusion or stigmatisation as consequence of their return.

The Italian National Referral Mechanism (NRM) embraces this section of the process in a sensitive way. First, it states that such a decision should be based in the victim's willingness, a totally free choice. It shall also include protection, cooperation with the civil organisations in the country, as well as being a personalised process, taking account of the opinion and concerns of the victim.

This process is divided into several steps. Firstly, the victims must be properly informed of all the legal consequences that it may imply. Secondly, an evaluation of the risk regarding the situation of the country and the victim's social inclusion must be conducted. Afterwards, such information must be transmitted to the victim, informing her/him of the protective measures available in such a case. Then the local authorities, NGOs, and the family members in the country of origin should be contacted and informed of the situation. Subsequently, the pertinent documents would be issued to ensure that the person returns to her/his country under the pertinent legal conditions. Finally, a personalised programme of repatriation is set up, including transportation and assistance on arrival. It comprises contact and coordination with competent NGOs and the associations in charge to ensure that the victim is provided with suitable assistance and a programme for social inclusion. In the case of minors, accompaniment should be also guaranteed.

The Ministry of the Interior is the responsible institution for the implementation of such a programme and it works with the IOM, which usually accompanies the victims in the process of repatriation.

Regarding integration and social inclusion in the host country, article 18 provides a set of activities from which victims can benefit, such as educational opportunities, vocational

¹⁴⁶ Ngozi Ezeilo, Joy; Report of the Special Rapporteur on trafficking in persons, especially women and children, Italy, 2013, P. 15.

workshops, or job training. Nevertheless, as stated before, the system does not usually result in the complete integration of survivors due to its short length and lack of resources.

3.3.4 Redress for victims

Several regional instruments have called for a compensation scheme for victims of this crime. This can be seen in EU Directive 2004/80 relating to compensation for crime victims or in article 19 of European Parliament and Council Directive 2011/36/EU. It is also required in other relevant international instruments that the country has ratified, such as the Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings.

Following this, the Italian government included such a principle among its provisions in LD. 24/2014, through which Directive 2011/36/EU was transposed. It is concretely enshrined in Article 6¹⁴⁷, which modified article 12 of Law 228/2003, and established a common fund to redress victims of trafficking in human beings, providing the amount of EUR 1,500 for each victim. However, the article states that this would be conditional on financial availability. In the case of lack of funding, the requirement would be transferred to the next fiscal year.

Compensation for victims is also available under articles 74 and 75 of the Italian Criminal Code¹⁴⁸, which implies a civil claim. However, this requires a long and difficult judicial process, which usually does not have a successful end for the victims since most of the time traffickers are declared insolvent and the pertinent NGOs do not have a sufficient budget to cover this kind of legal claim.

Victims often also reject reporting their traffickers due to fear of reprisals, and the mentioned provision (article 6 of LD. 24/2014) has a substantial lack of funding. Therefore, redress for victims is uncertain and perfunctory under this framework.

3.3.5 International co-operation and co-operation with civil society

a) International, regional, and bilateral cooperation

The Palermo Protocol, which is a cornerstone in this area, already enshrined the importance of co-operation in its article 2 (c): *‘To promote cooperation among States Parties in order to meet those objectives’*.

Italy is part of this Protocol since 2006. In addition, the country has ratified several international instruments that are particularly relevant to combating trafficking, such as the Convention on the Elimination of All Forms of Discrimination against Women and the

¹⁴⁷ Decree Law 4 March 2014, n.24, Art. 6, Legislazione, Ministero dell’ Interno, Accessed 27th April 2020, available <
https://www1.interno.gov.it/mininterno/site/it/sezioni/servizi/old_servizi/legislazione/immigrazione/2014_03_17_DLGS_04032014_n24.html>

¹⁴⁸ Codice Penale, LIBRO PRIMO DEI REATI IN GENERALE, Art. 74, Art. 75.

Convention on the Rights of the Child, the Convention relating to the Status of Refugees (1951), amongst others already mentioned.

In the case of Italy, international co-operation is embodied in its National Action Plan against THB (2016-2018), in particular addressing prevention and action in countries of origin. Among the mentioned actions, it also refers to financial investigation in co-operation with Europol and Interpol¹⁴⁹.

It is worth highlighting that Italy, during its presidency of the UN Security Council in 2017, contributed USD1,000,000 to the UN Voluntary Trust Fund for the support of victims of THB¹⁵⁰. Moreover, the Italian Agency for Development Co-operation (AICS)¹⁵¹ funds several international projects that encompass the prevention of human trafficking. Among those are the “*Project of support to the protection of minor victims of human rights violations*” (PAPEV), implemented by OHCHR and the IOM Project “*Addressing Migrant Vulnerabilities to Prevent Human Trafficking and Protect Victims, Particularly Children, in Targeted Special Economic Zones and Economic Corridors Cambodia, Laos and Vietnam*” in 2017.

However, efforts at the international level have been proven to be insufficient. Therefore, further efforts in the regional sphere have been required along with a human rights-based approach.

Italy acceded to the CoE Convention on Action against Trafficking in Human Beings, which entered into force in the country in March 2011. International co-operation and co-operation with civil society is embodied in articles 32 and 35 of the Convention.

Regarding the European anti-trafficking framework, Italy has also transposed the EU’s Council Framework Decision 2002/465/JHA on joint investigation teams (JITs) into its legal framework. However, GRETA has stressed after the visit in the country in 2018 that the country had not yet taken part in a JIT with respect to human trafficking¹⁵².

Italy also adopted several bilateral agreements. In such agreements, Italy has committed to providing training equipment, while the concerned countries may take commit to taking specific actions to prevent the unauthorized departures of migrants, as well as the reception of these who are found in international and Italian waters¹⁵³. This approach has been widely criticised since such agreements do not provide safeguarding measures for the right of refugees and asylum seekers. It is worth emphasizing the “Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human

¹⁴⁹ See National Action Plan against THB - Piano nazionale d’azione contro la tratta e il grave sfruttamento 2016-2018 First Chart Azioni Penale (Penal Actions), Azioni (Actions), p. 31, Available < <http://www.pariopportunita.gov.it/wp-content/uploads/2017/12/Piano-nazionale-di-azione-contro-la-tratta-e-il-grave-sfruttamento-2016-2018.pdf>>

¹⁵⁰ See para. 273, GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, Second Evaluation Round, 2018,

¹⁵¹ Italian Agency for Development Cooperation (AICS), Open AICS, Public Database, Available at: < <https://openaid.aics.gov.it/en/>>

¹⁵² See para. 270, GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, Second Evaluation Round, 2018.

¹⁵³ Ngozi Ezeilo, Joy; Report of the Special Rapporteur on trafficking in persons, especially women and children, Italy, 2013, P. 18

trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic”¹⁵⁴, which raises serious concerns on the grounds of human rights and has been categorised as ‘the baseline of a policy approach aimed at closing all doors to Europe’.¹⁵⁵

Moreover, Italy has signed ‘Re-admission Agreements’ with Albania (1997), Romania (1997), and Nigeria (2000), all territories that maintain their position as countries of origin for THB victims. The agreements include labour inspections coordinated by authorities as well as a team to facilitate repatriations. In other words, if a citizen from such countries is found staying illegally in Italy, he/she may be immediately removed from the territory¹⁵⁶.

Against this background, the Ministry of Foreign Affairs has launched several projects in the countries of origin to raise awareness of THB. For example, the *‘Programme of Action against trafficking in minors and young women from Nigeria to Italy for the purpose of sexual exploitation’*, (2002-2004) incorporated three awareness-raising campaigns on trafficking for sexual exploitation, in collaboration with a coalition of six Nigerian non-governmental organisations¹⁵⁷.

In addition, Italy has taken part in regional dialogues and processes, such as the ‘Rabat Process’, which consists of a migration dialogue carried out between the EU and the countries of West and Central Africa to discuss and develop pragmatic and balanced approaches to dealing with migration and development¹⁵⁸. Italy hosted the 2014 meeting, which led to the adoption of the Rome Declaration and Programme¹⁵⁹. Subsequently, the Marrakesh Programme (2018-2020) has been adopted, which includes the prevention of irregular migration, trafficking of migrants and human trafficking, and fighting against these phenomena¹⁶⁰.

b) Co-operation with civil society

Civil society is a fundamental actor in the fight against trafficking. Co-operation with these non-governmental organisations is enshrined in article 35 of the CoE Convention on Action against Trafficking in Human Beings.

The Italian authorities have built close partnerships with civil society in this area over the years. In terms of providing assistance to the victims of trafficking, this is implemented by Civil Society Organisations (CSOs), including faith-based organisations such as Caritas

¹⁵⁴ Available at: < https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf>

¹⁵⁵ Palm Anja, The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe?, EU Immigration and Asylum Law and Policy Blog, Institute of International Affairs-Istituto Affari Internazionali (IAI), 2017, Available at: < <https://www.iai.it/en/pubblicazioni/italy-libya-memorandum-understanding-baseline-policy-approach-aimed-closing-all-doors>>

¹⁵⁶ Italy - 4. EU AND INTERNATIONAL COOPERATION, European Commission, Available at: < https://ec.europa.eu/anti-trafficking/member-states/italy-4-eu-and-international-cooperation_en>

¹⁵⁷ Ibid.

¹⁵⁸ Global Forum of Migration & Development, The Rabat Process – Euro-African Dialogue on Migration and Development.

¹⁵⁹ See the Second International Conference on Nutrition Rome, 19-21 November 2014, Available at: < <http://www.fao.org/3/a-ml542e.pdf>>

¹⁶⁰ See Marrakesh Political Declaration, Rabat Process, Available at: < https://ec.europa.eu/home-affairs/sites/homeaffairs/files/20180503_declaration-and-action-plan-marrakesh_en.pdf>

Italy. These CSOs have to make or respond to a public tender call and subsequently are selected by the Department of Equal Opportunities to develop programmes and projects.

However, it has been noticed by GRETA that these are normally small associations and the single project of assistance has a duration of just 15 months. In this sense, the sustainable implementation of a project is a difficult task for these organisations¹⁶¹. Consequently, they have to respond to a new call for tender to continue the project. Therefore, the short-term, project-based approach in this context constitutes a challenge for the effectiveness of the assistance to THB victims¹⁶². Moreover, CSOs have stressed the frequent delays in funding that they experience, which poses a notable challenge for the implementation and the effectiveness of the assistance projects¹⁶³.

The importance of NGOs and their close partnerships is also emphasised in the Italian National Action Plan against THB. Nevertheless, they are not part of the Steering Committee set up under such a plan. In its last Evaluation Round Report, GRETA stressed the importance of involving those associations as part of the implementation and assessment of anti-trafficking measures¹⁶⁴.

Recently, the country has implemented a new law of acute concern to NGOs undertaking rescue operation of migrants at sea. This is Decree Law n.53, converted into Law n.77 on 8th August 2019¹⁶⁵, also known as the Law on Immigration and Public Security (Bis). It establishes the adoption of a Code of Conduct for NGOs that undertake this kind of search and rescue operation in the Mediterranean Sea, limiting their possibilities of conducting this humanitarian work.

This law has been widely criticised since it has raised several concerns on the grounds of human rights. UNICEF stressed that these policies may present be a potential risk for children, including their possible return to Libya¹⁶⁶. The UN Special Rapporteur on trafficking in persons, especially women and children, emphasised the harmful effects of these restrictions for the protection of migrants¹⁶⁷. In addition, there is a potential detrimental impact on the identification of THB victims.

¹⁶¹ See para. 283, GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, Second Evaluation Round, 2018,

¹⁶² Ngozi Ezeilo, Joy; Report of the Special Rapporteur on trafficking in persons, especially women and children, Italy, 2013, P. 18

¹⁶³ See interview with Alberto Mossino, Annex.

¹⁶⁴ See para. 282, GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, Second Evaluation Round, 2018,

¹⁶⁵ Law n.77 on the 8th of August 2019, Urgent Disposition in terms of order and public security, Italian Official Gazette, Available at: < <https://www.gazzettaufficiale.it/eli/id/2019/06/14/19G00063/sg>>

¹⁶⁶ UNICEF, Mediterranean rescue vessels must not be prevented from saving refugee and migrant children at sea – 17th July 2017, Accessed on 29th April 2020, Available at: < https://www.unicef.org/media/media_96643.html>

¹⁶⁷ Giammarinaro Maria Grazia, Report of the Special Rapporteur on trafficking in persons, especially women and children, Human Rights Council-Thirty-eighth session, 2018, p. 5-6,

3.4 The Legal Framework addressing Prostitution

The phenomenon of prostitution and its legal framework is a fundamental issue to consider when it comes to human trafficking for the purpose of sexual exploitation.

As mentioned before, there are several models that regulate this practice. In the case of Italy, the country falls under the ‘abolitionist model’, which implies that outdoor and indoor prostitution are not prohibited, but neither are they regulated by the state.

The main law in this regard is L.75/1958, also known as the ‘Merlin Law’. It was adopted on 20th February 1958 to abolish the previous law of 1861. Consequently, the new law modified articles 531 and 536 of the Penal Code prohibiting the existence of brothels. It aims at tackling exploitation and the segregation of women who worked in such places. The law allows street prostitution and the prostitution of women in their own house. Nevertheless, the law does not consider prostitution as work and does not regulate the market.

Regarding the offences, Article 3 comprises a sequence of these, including recruitment, the induction or transport of people for the purpose of prostitution, as well as renting or managing a property for the purposes of prostitution. The penalties for offences are between two and six years of imprisonment and a fine from EUR500,000 to 20 million. Article 4 punishes grave offences, which implies a double penalty in cases of threats, deception used by the perpetrators, or when there are multiple victims. It worth noticing that despite the difference in the gravity of the mentioned offenses, the law establishes the same penalty for all these, with the exception of those under article 4.

Another relevant law in this area was Law n. 269 of 3rd August 1998, which embodied a set of rules and punishment against exploitation in prostitution, pornography, and sexual tourism concerning minors.

In 2005, the Bossi-Fini-Prestigiacomo bill proposal (Governmental Bill n. 3826/2003) tried to amend some provisions of the Merlin Law. According to opponents, it was considered discriminatory and not address the phenomenon of human trafficking. Under this proposal, victims could be re-victimised since their confinement in hidden place could lead to their deportation without properly verifying if they were trafficked victims or voluntary sexual workers. It would leave victims of sexual exploitation unprotected and without complying with the afore mentioned article 18. However, it never entered into force, and in 2019 the Constitutional Court confirmed the validity and legitimacy of the Merlin Law.

CHAPTER IV: SHORTCOMINGS AND WEAKNESSES OF THE SYSTEM

4.1 Difficulties to identify and safeguard the victims

The early identification of THB victims is fundamental to protecting and safeguarding them. Nevertheless, in the context of high flows of migrant arrivals and with states adopting policies aiming at stemming irregular migration, it inevitably constitutes a challenge.

To begin, this section will provide an overview of the whole procedure following the new arrival of migrants on Italian shores, as well as the main actors involved in the identification, reception and assistance of THB victims. This overview will enable a discussion of the shortcomings and weaknesses of the system.

Firstly, before disembarking, migrants are assessed by health care staff on the ship. After this, they are transferred to Centres of First Aid and Reception (CPSA) or the so-called “hotspots”. Italy counts with four hotspots in Apulia (Taranto) and Sicily (Lampedusa, Pozzallo, and Messina), down from five in 2017¹⁶⁸. The maximum period of stay at the hotspots is normally 72 hours, except for children who may have to wait longer until an appropriate accommodation for them is found (usually up to a month).

The next step is the ‘finger- printing’ and the assignment of a unique identification number in the EURODAC database¹⁶⁹. This is a quick process carried out by law enforcement officials and Frontex staff. Here, it is worth emphasising the ‘flagship approach’ followed by the EU from 2015¹⁷⁰, which included forced fingerprinting and the subsequent separation of migrants between those identified as asylum seekers and those considered as “economic migrants”. Consequently, the last ones may be returned to their country of origin.

The practice of forced fingerprinting in a context in which migrants are traumatised and exhausted after their journey constitutes a violation of fundamental rights that has been widely criticized¹⁷¹. Moreover, as GRETA stressed in its report after its visit to the Italian hotspots in 2016, staff are not provided with specialised training to pinpoint indicators of human trafficking¹⁷² and therefore do not take part in the identification of possible THB victims. In this sense, it is clear that the first step for identification basically aims at registering migrants rather than assess their vulnerabilities.

Notwithstanding this, the identification of potential victims of trafficking and migrant’s vulnerabilities and takes place at the hotspots as the second step.

¹⁶⁸ ASGI, Hotspots Italy, Aida (Asylum Information Database), Available at: < <https://www.asylumineurope.org/reports/country/italy/asylum-procedure/access-procedure-and-registration/hotspots>>

¹⁶⁹ GRETA Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, 2016, p.9.

¹⁷⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration, Brussels, 2015, P. 6.

¹⁷¹ Amnesty International, *Hotspot Italy: How EU’s flagship approach leads to violations of refugees and migrant rights*, 2016.

¹⁷² GRETA Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, 2016, p.9.

The IOM plays a fundamental role in this stage. It is present at the four hotspots in Italy. The organisation has staff trained in human trafficking indicators who perform the early identification of possible victims of this crime. They also cooperate with the competent prosecution authorities in Catania and Palermo, as well as conducting training and capacity-building activities.

The UNHCR is also a relevant actor present at the Italian hotspots and provides legal advice about asylum and the Italian legislation. Further, there are other organisations involved in the process of early identification of victims of human trafficking, torture, or other forms of abuse, who then refer victims to the IOM for further interviews and assistance. These include Save the Children, the ‘Terre des Hommes’, and Médecins Sans Frontières. They are assisted by psychologists, doctors and cultural mediators.

Nevertheless, despite the involvement of all these actors and their efforts in this matter, the early identification and protection of THB victims in such a complex context remains a challenge. It should be reiterated that protection of potential victims of trafficking in human beings is not often prioritised when states experience high flows of irregular migration.

In this light, it is important to notice that upon assessment in the CPSA or “hotspots”, some migrants can be transferred to the Centres for Identification and Expulsion (CIE). There, they are interviewed and ‘validated’ by a magistrate (*giudice di pace*). In case of repatriation or detention, they have the assistance of a court-appointed lawyer¹⁷³, although it has been stated that such professionals do not always have special training on trafficking issues¹⁷⁴. This may result in a major failure for the proper identification of THB victims that can be consequently forcibly repatriated.

Several international organisations and bodies have already stressed the crucial importance of the early identification of victims¹⁷⁵. This fundamental step for the protection and assistance of THB victims is defined as ‘the proactive informal and formal processes of screening persons to detect indications of trafficking in human beings, or of vulnerabilities to trafficking and/or exploitation’¹⁷⁶.

The role of the IOM in this regard is noted with appreciation. However, the organisation itself has stressed major challenges when it comes to identification, safeguard and protection of these victims. For early identification, the IOM uses trafficking indicators. The most

¹⁷³ Ngozi Ezeilo, Joy; Report of the Special Rapporteur on trafficking in persons, especially women and children, Italy, 2013, P.9.

¹⁷⁴ Compulsory training programmes for those dealing with potential THB victims is provided in the Article 5 of the Decree 24/2014 according to the transposition of the European Directive 2011/36/EU. Moreover, as an EU member, Italy participated in the training programmes and activities carried out by the European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the European Union (Frontex) in the areas of border control, including trafficking in human beings, among others. The Italian National Action Plan also emphasises the importance of training of relevant professional. However, GRETA has expressed its concerns about the fact that it is not promoted as compulsory and there is no allocation of funding for this cause. It is also unclear how it will be conducted and assessed. Therefore, it does not ensure the appropriate training of the whole relevant staff in the control border areas.

¹⁷⁵ GRETA; UNHCR; The European Commission (Guidelines for the identification of victims of trafficking in human beings), among others.

¹⁷⁶ Report of the Special Rapporteur on trafficking in persons, especially women and children, Human Rights Council, A/HRC/38/45, 2018. P. 4.

common ones at the arrival stage are: psychological problems or behavioural problems indicative of trauma; authorised or unauthorised departure from the centre; or being controlled by others in the centre or via phone. However, the IOM states that those indicators may not arise immediately upon arrival due to the environmental context and/or the psychophysical condition of migrants, and may be exacerbated due to the lack of time to build a trusted relationship with victims. Consequently, it emphasises that it is advisable to meet potential THB victims at different stages of their stay in Italy¹⁷⁷.

This lack of time to identify potential victims and provided them with advice, results in the fact that they may not receive information on the protection programmes at the time of landing. It makes even more difficult the chances of THB cooperating to report their traffickers.

The IOM also stressed other existing obstacles to safeguard victims, such as the fact that sometimes they are closely-bound with their traffickers and even develop a strong sense of gratitude towards those. In some cases, victims are aware of their destiny at the end of the journey but not of the level of exploitation and abuse that it involves. In fact, the IOM states that some victims perceive the exploitation (or sexual work for them) as the “right” price for being transferred to Europe where they have been promised wealth and wellbeing. Moreover, sometimes, they have convinced themselves that they cannot escape exploitation¹⁷⁸.

The afore mentioned voodoo rituals as method of coercion exerts also a strong influence in this bond between victims and their traffickers, while another major obstacle is the fact that they may be controlled by ‘accompanying individuals’, usually members of the criminal networks, whose goal is to take victims to their final destination for the purpose of exploitation. All these challenges are noted and assessed by specialised and trained staff, such as the IOM’s in this case.

One of the main weaknesses of the system is the fact is that it operates in the context of large influx of migrant arrivals, where the detection of the so-called ‘economic migrants’ is prioritised, instead of the vulnerabilities of the THB group. If potential victims of human trafficking are not interviewed by professionals, they can go unnoticed and consequently be sent to reception centres or first line centres (CAS) as ‘asylum seekers’ where they may not receive the proper attention as THB victims. In the worst case, they may also risk deportation, as previously discussed. This situation is especially worrying in the case of children and young teenagers who often allege they are older, complying with the instructions of their traffickers, and they may end up in an adult centre, which makes easier for their traffickers to pick them up.

Part of a collected testimony makes direct reference to this point¹⁷⁹. The testimony also illustrates the difficulties and the lack of staff and resources in such a complex scenario.

The presence of IOM and similar kinds of organisations in the field is fundamental, as well as the fact that they have at their disposal all the resources and staff needed for such a task.

¹⁷⁷ IOM, Human Trafficking Through The Central Mediterranean Route: Data, Stories And Information Collected By The International Organization For Migration, 2017, P.18.

¹⁷⁸ Ibid., p.22.

¹⁷⁹ See Annex interview to Joy THB victim in regard to her disembarkation in Italy.

But despite the role of the IOM being widely recognised, in a context of a large number of arrivals, it may not be able to interview individually all the possible and potential THB victims. Therefore, more specialised and trained staff should be involved in the field to ensure individual counselling to all the possible and potential victims of THB, not just by international organisations but also through the government efforts at national level. Training and guidelines for the early identifications of THB should be provided to and applied by all the actors working in the field, including law enforcement officials and Frontex staff. It should be also implemented in centres for asylum seekers as well as the promotion of adequate reception measures and the assessment of needs of THB victims.

In this point, reference should be made to the National Referral Mechanism (NRM), which divides the identification process into two phases. The first (preliminary identification) includes initial screening for trafficking indicators, while the second (formal identification) entails specific questions through an assessment of the facts at disposal. However, GRETA noted in its second evaluation visit to Italy in 2018 that the application of those guidelines remains at the project stage¹⁸⁰: that is to say, there is a substantial lack of implementation¹⁸¹.

Reinforcing this, the Special Rapporteur on trafficking in persons, especially women and children, stressed after the visit to Italy that there was a general lack of adequate procedures to identify and protect victims and potential victims of this crime, especially at the disembarkation points and hotspots¹⁸². She noted that the basic procedures were aiming to identify ‘economic migrants’, rather than vulnerabilities or THB victims. In addition, she stressed the inadequate logistics, such as the lack of proper facilities to conduct confidential interviews¹⁸³.

As a result, the identification of victims mostly relies on local anti-trafficking networks across the country. Italy has a wide local anti-trafficking network that comprises public agencies and local NGOs involved in the identification and assistance of THB victims. Nevertheless, those organisations have a limited capacity since they are mostly small organisations.

When it comes to specialised shelters for THB victims, these have a particularly limited availability. Consequently, if a THB victim is identified upon arrival, she/he may have to spend a long period of time at the hotspots while waiting to be properly allocated to the respective shelter. The facilities and assistance in these hotspots or CPSA do not comply with the needs required by this vulnerable group and it implies overcrowding conditions¹⁸⁴.

¹⁸⁰ GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, Second Evaluation Round, 2018. P. 36.

¹⁸¹ The DEO, the Ministry of the Interior and IOM were involved in a meeting in 2017 concerning the implementation of the NRM. However, ever since then the dialogue has not been continued.

¹⁸² Report of the Special Rapporteur on trafficking in persons, especially women and children, Human Rights Council, A/HRC/38/45, 2018. P. 6.

¹⁸³ *Ibid.*

¹⁸⁴ In its visit to the Pozzallo hotspot in Italy in 2016, GRETA stated that the capacity of it was 180 beds, with the possible increase up to 200 beds in case of emergency. However, the Committee was informed that around 600 people had been accommodated at given time, sleeping in tents outside the main building. For instance, on 14th of September of 2016, 656 people arrived to Pozzallo.

In some cases, when identification is not possible at the first stage in the hotspots, THB victims end up Reception Centre for asylum seekers¹⁸⁵. There, they receive assistance from social workers and are referred to specialized local anti-trafficking networks for further interviews. Such centres are entitled to host THB victims, but they do not have the same level of protection as the special shelter for victims of this crime. Reception Centres are often situated in known locations, which makes it easier for traffickers to find them.

This is directly related to the lack of availability of specialised shelters for THB victims. However, it should be emphasised that the Italian model for asylum presents a good practice in this regard, as the NGOs and associations running those reception centres sometimes have at their disposal private apartments in which they can allocate victims, giving the possibility of dividing them into groups such as women, men, single mothers or families.

Nevertheless, the assistance to victims may not be as efficient and personalised as in the special shelters or organisations that are just focused on THB victims for the purpose of sexual exploitation¹⁸⁶.

4.2 Re-victimisation, re- trafficking and returns

It is essential to consider re-trafficking and re-victimisation of THB victims, which is closely related to the lack of possible and potential THB victims' identification.

The fact that they are not properly identified at the arrival stage can consequently lead to their further re-victimisation. As discussed, victims may be sent to non-specialised reception centres, where they can be misidentified as asylum seekers. It may potentially expose victims to fall again into the hands of their traffickers or be victims of other kinds of abuse.

When it comes to the return of victims, states should ensure that the risks of re-trafficking are adequately evaluated as THB victims may face reprisal by their exploiter and risk being re-trafficked. States should guarantee that no person is returned to a place where they would be subject to suffering degrading treatment or punishment, or other serious human rights violations, including a risk of being trafficked or subject to reprisals from the traffickers, regardless their status¹⁸⁷.

Particularly, in the case of victims of trafficking for the purpose of sexual exploitation, the consequences may be even harder in terms of re-victimization in the event of forced return. This is due to social and cultural factors, as well as the perception that society may have of THB victims in their country of origin. Especially when it comes to women who have been involved in prostitution, the discrimination is usually more severe, due to the stigma attached to this practice.

It is important to note in the Central Mediterranean route that the vast majority of victims are of African origin. In South and Western Africa (the source of origin of most of the victims, such as Nigeria), women from poor rural areas are often rejected by their family

¹⁸⁵ See Annex, interview to Giullia Parodi, social worker in the Reception Centre for asylum seekers of Savona, Liguria - Centri di Accoglienza Straordinaria (CAS).

¹⁸⁶ See Annex, interview to Alberto Mossino in this regard.

¹⁸⁷ Report of the Special Rapporteur on trafficking in persons, especially women and children, Human Rights Council, A/HRC/38/45, 2018. Para. 77.

members upon return. It forces them to move to urban areas and fall in a very vulnerable situation, sometimes even having to work in the sex industry to survive. In some cases, the failure to go back without the expected money and wealth poses a stigma of failure that makes victims socially rejected¹⁸⁸.

Therefore, the repatriation and return of victims should be always in compliance with the principle of ‘*non-refoulement*’, as established under international human rights, refugee, humanitarian and customary law. Moreover, it should be preferably voluntary, as enshrined in article 16 of the CoE Convention on Action against Trafficking in Human Beings. When this is the case, an individual evaluation of the risk in case of repatriation is essential to safeguarding the victims and preventing their re-victimisation, as established in the Italian NRM.

Nevertheless, as mentioned in chapter III, the deportation of potential victims of human trafficking for the purpose of sexual exploitation has taken place in Italy, despite an appeal being made to halt the expulsion orders¹⁸⁹. This clearly poses a serious violation of fundamental rights.

When it comes to forced returns, there is an absence of standardised procedures for identification and assistance to THB victims, which can result in potential victims being detained in CIEs¹⁹⁰ and consequently, forcibly removed.

In this context, the involvement of NGOs and trained staff for the identification of THB victims is decisive. However, GRETA has stated in its last evaluation round to Italy, that just one of the CIEs allows this type of visit, the Ponte Galeria Centre in Rome. Those centres have the obligation of conducting a medical examination before deportation. Nevertheless, the Committee has been informed by NGOs that such examinations are superficial and merely aimed at detecting contagious diseases, rather than identify vulnerabilities and potential THB victims¹⁹¹.

In this light, the Memorandum of Understanding or Readmission Agreements that Italy holds with several countries such as the widely criticized with Libya, or others, for instance Nigeria, Tunisia or Romania¹⁹² should be mentioned. In such a complex context where the identification of THB victims is not always possible, along with the fact that they are not often aware of their rights, the situation becomes very delicate.

¹⁸⁸ IOM, More Needs to Be Done to Address Stigma and Discrimination Towards Women Trafficked for Sexual Exploitation, 2006. Available at: < <https://www.iom.int/statements/more-needs-be-done-address-stigma-and-discrimination-towards-women-trafficked-sexual> >

¹⁸⁹ See chapter III, the Central Mediterranean route. It described the case of 19 Nigerian women who were expelled in 2015, despite, they presented serious signs of being THB victims.

For further information, see also the GRETA report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the CoE Convention on Action against Trafficking in Human Beings, p. 16.

¹⁹⁰ Recently called CPRs (Centro di permanenza per i rimpatri)

¹⁹¹ GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, Second Evaluation Round, 2018, para. 216.

¹⁹² Paoletti Emanuela, ‘*Relations Among Unequals? Readmission between Italy and Libya*’, MIE Middle East Institute, 2010. Accessed on 13th May, Available at: < <https://www.mei.edu/publications/relations-among-unequals-readmission-between-italy-and-libya#edn31> >

Migrants frequently answer that the reason for coming irregularly to Italy is “to escape poverty” or simply “to work”¹⁹³. This may be automatically followed by immediate expulsion orders, which are even easier through these memorandums of understanding. This is especially worrying when it comes to children. Despite the adopted Law No. 47/2017 on “Provisions on protective measures for unaccompanied children in Italy”, children can still suffer forced removal due to mistakes in age assessments.

All these factors inevitably lead to the re-victimization and re-trafficking of THB victims.

It is also worth mentioning the impact of ‘Law 132 on Immigration and Public Security of 2018’, which abolished the humanitarian permit, which was a permit that used to be granted to vulnerable people, families or single women with children, and people who had suffered trauma during their journey to Italy. This abolition poses detrimental consequences for THB victims¹⁹⁴ as their only option to renew a permit is to find work, which, as discussed, is problematic. The lack of a permit may also occur as victims sometimes refrain from telling their true story in the National Commission for Recognition of International Protection, for aforementioned reasons.¹⁹⁵

This situation leaves THB victims and potential victims, who had previously obtained such a permit, in a ‘legal limbo’. They may therefore become irregular migrants, in a situation of vulnerability and social exclusion. This can consequently lead them to falling again into the hands of traffickers.

As an illustration, Nigeria, the main country of origin of THB victims in Italy, can be used. In 2016, according to the National Commission for Recognition of International Protection, before the abolition of the humanitarian permit, there were 14,681 Nigerian applicants, of which 27% were female. From this, 3% received refugee status, 5% subsidiary protection, 16% humanitarian protection, with 72% not granted with any international protection¹⁹⁶.

To contrast this estimation and provide a real case, the author interviewed Princess¹⁹⁷. Her application was rejected by the National Commission for Recognition of International Protection as they did not find substantive grounds in her story to grant international protection.

I didn't tell my true story because I was too scared [of] my madam. I felt also so ashamed about what was happening to me. I could not even tell it to my family. I was just supposed to come here to earn money working as a hair stylist and send it to help them.

When I was rejected [by the] Commission and the lawyer explained [to] me my situation, I decided to speak out. I hope it helps to other girls in my situation. They are so scared.

¹⁹³ GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, Second Evaluation Round, 2018, para. 217.

¹⁹⁴ See in Chapter III: Interview to Alberto Mossino concerning the abolition of the ‘humanitarian permit’.

¹⁹⁵ See Annex, interview to Giullia Parodi.

¹⁹⁶ GRETA, Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, called by me Trends of Italy 2016, para. 13.

¹⁹⁷ Author interview with Princess (victim of TBH for sexual exploitation), 14th May 2020

After an appeal, she told her true story as a victim of human trafficking for the purpose of sexual exploitation. She was finally granted with the subsidiary protection, a five-year permit.

In this regard, it is also worth emphasising the system of referral established in 2010 by the IOM and the Territorial Commissions for Recognition of International Protection. This was based on the assumption that most of the Nigerian female asylum seekers are *de facto* THB victims for the purpose of sexual exploitation. Nevertheless, GRETA stressed that many people interviewed by IOM are not formally identified as THB victims, as the requirements stated under Article 18 of the Consolidate Immigration Act – such as the named “concrete risk” or the “gravity and imminence of danger”¹⁹⁸ – do not exist or cannot be proven in most cases. Consequently, victims may potentially risk further exploitation and re-trafficking.

Regarding the number of permits issued under Article 18, the Ministry of the Interior’s Central Directorate for Immigration and Border Police informed GRETA that 494 permits were issued in 2016, of which 139 were for Nigerian females¹⁹⁹. This is a very small number compare to the number of Nigerian women arrived in Italy that year that were not granted with any kind of international protection (see above).

4.3 From victims to survivors.

The protection of victims of THB is not limited to identification and short-term assistance. Instead, it should encompass effective measures not to just remove victims from trafficking situations, but to ensure their personal safety, empowerment, and independence. Therefore, it should go beyond the rehabilitation phase.

When it comes to THB victims, common terms used are “rehabilitation” or “reintegration”. The first has to do with the moralist approach aimed at freeing victims from the threat of violence and exploitation. The latter is about the repatriation of THB victims. Notwithstanding this, the notion of “social inclusion” is not widely included in this field.

As previously discussed, THB victims suffer marginalisation, a loss of self-esteem, as well as rejection from their families in many cases. In this light, states have the duty to implement long-term solutions to ensure the social inclusion of survivors into society²⁰⁰. It is embodied in the right to compensation and legal redress, enshrined in art. 15 of the CoE Convention on Action against Trafficking in Human Beings and art. 8 of the UDHR.

Italy undertakes good practice in this regard through Law No. 286/1998. This allows victims a residence permit and social protection for six months, and the option to renew such a permit for working or educational reasons (art. 18).

When it comes to the social inclusion of victims in the territory where they have been granted asylum, as well as in the country of origin or a third country, individualised planning is

¹⁹⁸ Ibid., Para. 35.

¹⁹⁹ Ibid., Para. 36.

²⁰⁰ Report of the Special Rapporteur on trafficking in persons, especially women and children, Human Rights Council, UN, A/HRC/41/46, 2019, P.4.

essential. The success of it relies in engaging the survivors as well as the assessment of their recovery and social inclusion at several stages of such a process.

This individualised victim-centred approach is reflected in the Italian NRM²⁰¹. Nevertheless, the system still faces some challenges and has shortcomings.

NGOs have reported that when it comes to the voluntary return to the country of origin, the long-term social inclusion measures are quite limited due to structural factors that are, at the same time, some of the root-causes of human trafficking, such as poverty, unemployment, poor labour market regulations or discrimination and social stigmatisation²⁰². Moreover, stigma is present in the whole process of trafficking and exploitation. The “shame factor” of being trafficked to work in the sex industry means that victims may not want to accept what they have done to survive. They may refrain from seeking assistance, even if they know it is available. These are all fundamental problems that encompasses the whole situation with returns, rather than being something specific to the Italian NRM *per se*, given that the situation in the country of origin is one that it is beyond the remit of the Italian authorities to directly change.

On the other hand, as discussed, THB victims not always follow the path of article 18. Sometimes, they may be identified later, during their stay in the country, when they are already in refugee and asylum seeker centres. Consequently, they can be issued with different types of international protection, depending on their stories and their personal situation: these can include the subsidiary permit (5 years) or the ex-humanitarian permit (the current special protection).

In this context, it is worthy to reiterating that due to the recent Law 132 on Immigration and Public Security, THB victims who had obtained the humanitarian permit can no longer benefit from the SPRAR system. As mentioned, this project deals with the basic care, integration, and protection of the person in question²⁰³. This change has led to thousands of people becoming irregular and deprived them of social assistance and integration. Among this number potential victims of human trafficking can be found.

Another challenge has to do with the lack of financial resources, as well as the lack of evaluation in the long term. After the entry into force of the mentioned law, CSOs in Italy have experienced a cutting off funds in the SPRAR system and the reception refugee and asylum seeker centres. Consequently, these projects are implemented in the basis of the available budget, which is insufficient. As Giulia Parodi stated:

²⁰¹ National Referral Mechanisms- *Meccanismo Nazionale di Referral per le Persone Trafficate in Italia*, ‘Joint development of the individual programme of assistance’ – (Sviluppo Congiunto del Programma di Assistenza Individuale), p. 46, Available at: < <https://www.osservatoriointerventitratta.it/wp-content/uploads/2018/01/allegato-1-meccanismo-nazionale-referral.pdf>>

²⁰² Report of the Special Rapporteur on trafficking in persons, especially women and children, Human Rights Council, UN, A/HRC/41/46, 2019, P.8.

²⁰³ SPRAR Project (Protection System for Refugees and Asylum Seekers), Pratomigranti, Available at: <<http://www.pratomigranti.it/en/servizi/accoglienza/sprar/pagina177.html>>

“The cut off fund has significantly limited the educational opportunities and work training activities that we used to offer to our beneficiaries. Now we have to choose a very reduce number of people that would benefit from it.”

Other structural challenges are the xenophobia, intolerance, and intersectional discrimination that victim of human trafficking may face. Victims of THB for sexual exploitation are particularly exposed to these due to the social stigmatisation that exists in society towards the issue of prostitution. This aspect is especially important for the social inclusion of survivors. States have the obligation to address those factors to overcome discrimination and stigmatisation, which can be done along with civil society through awareness raising campaigns and spreading sensitisation among society.

The social inclusion of THB victims requires long-term assistance to restore their psychological and physical well-being and enhance their participation in society. In this sense, the mentioned reform for the unification of art. 13 of Law 228/2003 (short-term assistance) and art. 18 of the Decree Law 286/1998 (long-term assistance) is very welcome. However, there are serious doubts that the length of the projects are sufficient and will result in the full independence of victims and their integration in society.

Such social inclusion should be measured on an individual basis of the inclusion of the person into society, and not by a collective assessment²⁰⁴. If escaping from trafficking is a critical moment, the total autonomy and social integration of the victims should be understood as a complex long-term process, once that successfully undertaken is the best way to avoid the perpetuation of the trafficking cycle and ensure victims’ rights²⁰⁵.

To conclude this chapter, reference should be made to the terminology used in the whole study and particularly in this section. It relates to the terms, “victim” and “survivor”.

Both terms have their place and different purposes in general.

The term “victim” is necessary as a legal definition in the criminal justice system. However, it should be understood as a legal status and not as a label.

The term “survivor” denotes that the person has gained strength in her/his process of healing and a sense of peace in her/his life.

The main purpose of this differentiation is not to underestimate the utility of the connotation of both terms. The personal impact and how a person may feel about her/his experience goes beyond the use of terminology. Therefore, a “survivor” may not always feel empowered and still consider herself/himself a victim.

This study considers both terms legitimate, depending on the feelings of the person who has suffered such a gross human right violation. In this context, the title of this section, “From

²⁰⁴ Report of the Special Rapporteur on trafficking in persons, especially women and children, Human Rights Council, UN, A/HRC/41/46, 2019, P.4.

²⁰⁵ See Annex: Interview to Fatima Issah, Cultural mediator in Piam Onlus and survivor of human trafficking for sexual exploitation.

victims to survivors”, follows a trend of empowering victims to enable them to find that peace and sense of recovery through their social inclusion.

As a conclusion, it is worth stating say that consistent and open communication with victims – survivors – about their feelings is the crucial factor in supporting them.

CONCLUSION AND RECOMMENDATIONS

To conclude this study, I would like to emphasise the fact that the phenomenon of trafficking in human beings requires a consistent human rights-based approach.

It should be at the centre of every measure taken to address this transnational crime, from prevention, to protection and the social inclusion of victims, even if it constitutes or places some limits on the use of certain common strategies in this field.

States have the obligation to prevent trafficking as well as to protect and redress the victims of such a crime. It should start from efforts to address the vulnerabilities to trafficking (poverty, inequality, discrimination, gender-based violence among others) and addressing demand.

In this sense, it is essential to have efficient coordination of all policies and anti-trafficking programmes to discourage demand: national and regional action to combat trafficking in human beings should be comprehensive.

Regarding the gender dimension of this global crime, it is true that due to the gendered nature of trafficking, most of the anti-trafficking policy and practices are focused on women. Assistance, protection, and safe accommodation should also be provided to male and transgender victims of this crime, without undermining the fact that women and girls are still the most affected group by this form of exploitation.

This phenomenon constitutes one of the multiple ways in which women and girls are subjugated, subjected to violence, and violated in their human rights. It is both a cause and consequence of women's lower status worldwide. In line with this, further efforts should be made to promote gender equality, implementing specific policies for the empowerment of women as a means to combat the root causes of this transnational crime²⁰⁶.

Regarding the different legislation and policies about the purchase of sexual exploitation, it is fundamental to keep under review the impact of these in the identification, protection, and assistance of THB victims as well as in the prosecution of the traffickers. It should be kept continuously under assessment with a view to reducing the demand for these services by trafficked people.

The tendency towards restrictive external migration policies in some EU Member States combined with the phenomenon of human trafficking may create substantial incongruences regarding the implementation of protection and the assistance of victims, especially when it comes to the gender dimension. The actual role of women in the international migration process should be contrasted with the legal framework around migration and the implications that the latter may have in the phenomenon of human trafficking²⁰⁷.

²⁰⁶ Council of Europe, Gender mainstreaming in thematic areas: Gender equality and trafficking in Human beings, p.3

²⁰⁷ Askola Heli, *Legal responses to trafficking in women for sexual exploitation in the European Union*, Oxford Portland Oregon, 2007, p.68.

Tackling the phenomenon of trafficking in human beings requires embracing the gender-equality dimension of this crime with a gender-sensitive approach. It must take place across the world, compressing destination and origin countries through national plans and working together in a transnational way.

To close this study I provide some recommendations, which are the result of careful research that contrasts anti-trafficking policies and practices with the factual data analysed and the testimonies of the survivors and professionals working in the field. Such recommendations are particularly focused on Italy and within the context of the Central Mediterranean route as the case study of this research, but notwithstanding this, part of this can be applicable in other parts of the world, since in spite of the different contexts or particularities, human trafficking is a transnational crime that affects every country (as countries of origin, transit countries, or destination countries, or even a combination of all).

Its nexus with the phenomenon of globalisation should be also emphasised. The increasingly integrated world economy enables the thriving of this crime. In line with this, it must be acknowledged that human trafficking and forms of slavery are not just outcomes of globalisation but part of the process itself that involves a dynamic integration of dispersed economic activities²⁰⁸. As Kevin Bales²⁰⁹ states: “a woman recruited in Thailand and subsequently trafficked to another state as a sex-slave, generates money that is recycled back into the Thailand brothel economy”

Trafficking in human beings is, ultimately, the result of the failure of our societies and economies to protect the most vulnerable ones and enforce their rights under the rule of law²¹⁰. It is undeniably a global and universal problem that requires comprehensive national and regional efforts to be tackled, always having the human rights of victims at the centre of every measure.

Last, but not least, it is important to emphasise the current global COVID-19 pandemic situation, where essential operations to support the most vulnerable ones have been challenged, due to states adjusting their priorities in this time of pandemic crisis. All this has worsened the situation of people in living in poverty and precarious conditions, increasing their vulnerabilities and the likelihood of their becoming victims of human trafficking and re-trafficking (in case of survivors), as well of COVID-19 infection.

❖ Recommendations:

- The authorities should improve the proactive identification of THB victims, ensuring that procedures for early identification are carried out at all hotspots after arrival, complying with the OHCHR's Recommended Principles and Guidelines on Human Rights at International Borders.

²⁰⁸ Brewer Devin, Globalization and Human Trafficking, Topical Research Digest: Human Rights and Human Trafficking, P. 46. Available at: <<https://www.du.edu/korbel/hrhw/researchdigest/trafficking/Globalization.pdf>>

²⁰⁹ Ibid.

²¹⁰ UNODC, Impact of the COVID-19 Pandemic on Trafficking in Persons. Preliminary findings and messaging based on rapid stocktaking, 2020. P. 4

- Multi-agency involvement for the identification of THB victims should be strengthened and the implementation of the NRM must be enacted in all cases. Specific training and guidelines should be provided to all the actors in touch with possible THB victims at the frontline, including law enforcement officials and Frontex staff. Moreover, further ‘Guidelines’ for the identification of victims of trafficking among applicants for international protection are strongly recommended in such a context.
- The authorities should ensure that specific training is provided to all the relevant stakeholders working in the field, from law enforcement officials, border police staff at the disembarkation points to prosecutors, judges, asylum officials, social workers, labour inspectors, lawyers, child specialists and health care professionals.
- Individual counselling by qualified personnel should be provided to all the possible and potential victims of THB. It is fundamental to inform them about the risks of human trafficking as well as the protection programmes in this regard. It is also essential to advise them that they are able to seek help at any time, since most of the victims are not willing to report their situation at the arrival stage, due to fear, traumas and psychological conditions faced at that moment.
- Facilities in hotspots should be adapted to the high number of arrivals, improving their logistics in terms of accommodation and areas designated to conduct confidential interviews.
- The ‘2017 Code of Conduct for NGOs undertaking activities on migrants’ rescue operations’²¹¹ should be revised, ensuring the human rights of people are respected and enabling the identification of THB victims among migrants at sea, in ports or any other points of arrival.
- The Memorandum of Understandings or Readmission Agreements should be always implemented taking into account international human rights, refugee, humanitarian and customary law. In this light, deportation to countries, which may entail gross violations of human rights, such as the case of Libya among others, should not take place under any circumstances.
- In order to achieve more effective and efficient results in anti-trafficking actions, the Italian government should enhance partnerships with CSOs working in this field. CSOs should be involved in the planning, monitoring and evaluation of such actions.

²¹¹ Under that code, NGOs are banned from entering Libyan waters to rescue migrants, are obliged to accept the deployment of Italian vessels with armed police on board to investigate people trafficking in Libyan waters in cooperation with the Libyan authorities. NGOs have stressed their concerns on human rights grounds and how this ‘Code of Conduct’ will make the sea rescue activities less effective.

- The authorities should ensure that CSOs/NGOs running reception centres for asylum seekers are provided with qualified staff to effectively identify THB victims among asylum seekers, as well as have the sufficient funding and resources to carry out long- term rehabilitation, social inclusion programmes and anti-trafficking activities.
- The availability of special centres for asylum seekers who are presumed to be THB victims should be also ensured by:
 - o Evaluating the needs of further funding for programmes of assistance and ensuring the availability of accommodation for victims.
 - o The length of the programmes should be adopted in accordance with the individual needs of victims, allowing their full rehabilitation and integration in society.
- Transgender trafficked person for the purpose of sexual exploitation should be further taken into account for protection and assistance projects.
- CSOs should ensure that secondary victimization and re-trafficking of THB victims is avoid by implementing the necessary monitor mechanisms.
- The investment in public–private partnerships should be enhanced to offer more viable employment opportunities to survivors encouraging their social inclusion, such as through agriculture and food processing, community services, computer literacy, microcredit, and foreign language courses among others.
- Regarding compensation for THB victims in Italy, it has been proven as inefficient and rarely granted. Its effectiveness should be enhanced by revising the criminal and civil procedures in this regard.
- Awareness raising campaigns can effectively contribute to the reduction of this phenomenon and the sensitisation of society.
 - o Those programmes should be implemented at schools and high school centres, by training teachers and educational staff, as well as involving migrant communities.
- The legislation and policies about the purchase of sexual exploitation should be continuously under assessment with a view to reducing the impact of the identification, protection and assistance of THB victims, as well as their vulnerability to suffer re-trafficking or re-victimisation.
 - o The authorities should adopt specific programmes to support people who want to leave prostitution, ensuring their human rights and safety.
- The Italian authorities should revise ‘Law 132/2018 on Migration and Public Security’, with a view to ensuring the respect of the human rights of migrants and victims of THB, as well as not undermining the protection, assistance and social inclusion of THB victims and migrants in situations of vulnerability.
 - o In particular the following should be addressed:

- The abolition of the ‘humanitarian permit’ provision that potentially leads to vulnerable people such as victims of THB and asylum seekers being in an irregular situation, totally unprotected.
 - The restriction for access to the SPRAR for holders of the ‘ex-humanitarian permit’, now called ‘special permit’, which includes THB victims and potential victims, as well as the cutting off of the budget for such a project of assistance. (Art. X)
 - The suppression of civil registration for migrants, which eliminates their possibility of eventually converting the ‘temporary residence permit’ into a permanent one. (Art.13)
 - The extension of the period of time that migrants must stay at the hotspots and Detention Centres for Repatriation. (Art. 2 and 3)
 - The possible cancellation of the request for international protection to the National Commission, by the fact that the person is “accused” of committing an offence, even if the sentence is not definitive. (Art. 10)
- The Italian Decree No.53 of 2019 on “Urgent provisions on law and order and public security” should be revised and amended in line with human rights standards, including the 1951 Geneva Convention and the principle of non-refoulment, due to the serious implications it has on the human rights of victims of human trafficking, refugees and asylum seekers²¹².

²¹² The Decree has been widely criticized by international human rights organisations and NGOs, including the UNHCR in Italy. It entails serious violations of human rights and it is not in line with international treaties. See Article 1, which establishes that the interior minister can prohibit seagoing vessels from entering, transiting or stopping in Italian waters. Thus, their captains can be charged with “promoting illegal migration”. Article 2 stipulates punishments for rescue boat captains, including fines of between 150,000 euros and one million euros for entering in Italy’s territorial waters. Full Decree, Available at <<https://www.gazzettaufficiale.it/eli/id/2019/06/14/19G00063/sg>>

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ANNEX

Chapter III, P. 43

The **case of Queen** after the entry into force of the Law ‘132/2018 on Migration and Public Security’ with the consequent abolition of the humanitarian permit²¹³.

Queen, victim of human trafficking and mother of neonate baby. She was found in a detention centre by a social worker of the association BeFree. She was identified as a THB victim and subsequently transferred to a centre of reception of asylum seekers and refugees in Castelnuovo di Porto (Roma).

She rejected reporting their traffickers for fear of reprisals and was eventually granted the humanitarian permit. Consequently, she was supposed to be sent to a SPRAR centre.

In December 2018, after the entry into force of the present law, Queen was notified that she had to abandon the current centre and that she has no right to access to the SPRAR system.

Chapter III, P. 55

Telephone interview to **Alberto Mossino**. Coordinator of Piam Onlus, a secular association based in Asti, composed of Italian and immigrant social operators. Since 2000, its activities have focused on the social integration of women victims of trafficking and on immigration issues²¹⁴.

15th of April 2020

<“We often experience delays in funding, which inevitably has an impact in the quality of assistance provided to victims. We are also involved in the identification of victims and the lack of resources makes it a difficult task.”>

Chapter IV, P. 61

Joy (Survivor of THB, arrived in Sicily in 2016)

<“I arrived to Italy. First, the doctor check us, then they gave us a personal hygiene- kit to take a shower. Afterwards, we went to a place where they took our fingerprints and then they let us sleep in a centre (CPSA). We were a lot of people there.

“I had 8 months pregnancy and I had an injury in my leg, so they sent me to the doctor again. After some days, they sent me to the north of Italy by bus and I was hosted by an organisation (NGO running a first-line centre), who asked me to write my history in the meantime that they will manage to interview all of us.” > (sic)

²¹³ Camilli Annalisa, ‘Con il decreto sicurezza le vittime di tratta finiscono per strada’- (The Decree on Security and Migrations leads THB victims to end in the Street); Internazionale; 14th December 2018; available <<https://www.internazionale.it/bloc-notes/annalisa-camilli/2018/12/14/decreto-sicurezza-vittime-di-tratta-prostitute>>

²¹⁴ Piam Onlus, (Project for the Integration and Welcoming of Immigrants), Official Website available at <https://piamonlus.org/en/home_en/>

Joy was a victim of human trafficking for sexual exploitation. She was brought from Nigeria by a relative who promised her a job as a hair stylist in Libya. After a long and dangerous journey via the Sahara Desert where several of their companions died, she arrived in Libya. There, she was imprisoned, raped, and tortured for two months. Finally, she was released since one of their traffickers paid for her. She was put in a boat and sent to Italy, where she was supposed to work to pay her debt.

However, she was not individually interviewed on arrival, nor received a proper attention at the beginning in the first-line centre where she was designated.

Consequently, after she attended to the Territorial Commission for recognition of international protection, she was automatically referred to the Anti-Trafficking Services, since she was found as a possible victim of human trafficking.

Chapter IV, P. 62

Interview with **Giullia Parodi**. Social worker in the Reception Centre for asylum seekers of Savona, Liguria - Centri di Accoglienza Straordinaria (CAS).

4th of May 2020

<“I work in the area of women and family unit, we have 42 women in our centre, mostly young girls, from Nigeria and some from Somalia.

“When they first arrived to the centre, we have no given information that they could be victims of trafficking for the purpose of sexual exploitation. However, after interviewing them and following their conduct and behaviours, we could state the wide majority of them were THB victims. Most of them still controlled by their traffickers. They came with telephones and were constantly talking with people from outside. We also received information about some of them, who had been seen in the closest big metropolis like Genoa late at night, probably performing prostitution.

“We interviewed them and explained them the rights that they are entitled in Italy as well as the protection programme. Then, we referred the victims to the competent Anti-trafficking association assigned in our region, so they could further interview them and evaluate their cases.

“We work along with this association. They issue individual reports about the victims and their exploitative situation that are subsequently sent to the Territorial Commission for granting asylum.”> (sic)

Chapter IV.

Alberto Mossino, (telephone interview):

15th of April 2020

<“The COVID 19 situation has particularly hits the north of Italy where we are located.

“In our organisation, we have availability for 30 people. We currently have no means to assist the numerous requests of victims of trafficking for the purpose of sexual exploitation that are contacting us. First of all, we have no more availability in our structure. Second, the delays on government funding hinders significantly our work.

“We are mostly receiving petitions of women to provide them with food and first needs basic material. During this period, they cannot work and their traffickers do not provide them any maintenance.

“We are really concerned about this situation since we do not know if after this crisis more resources will be provide to other ambits of welfare and we may experience a cut down in our funding. It will be detrimental for victims.”> (sic)

Chapter IV, P. 65

Interview to **Giullia Parodi**.

4th of May 2020

<“Most of the women in our centre are victims of human trafficking for sexual exploitation. Some of them did not tell us their true history. Two of them escaped from the centre.

“In 2018, Faith was rejected by the Territorial Commission for her asylum claim. Subsequently, we received the appointment for her appeal for 2021. She was really depressed and desperate after that.

“We called her since we realised she had disappeared from the centre. A man answered the phone, when we said we were from their centre and he passed her the phone. She said she was in Naples and she cannot go back, since there was nothing to do there waiting for two more years.

“Faith was a clear victim of human trafficking for sexual exploitation as stated by the local Anti-trafficking network and contrasted in our interviews. She had several phone numbers to which we kept calling but after that day, there was no further answer.”>

Chapter IV, P. 68

Interview to **Fatima Issah**, Cultural mediator in Piam Onlus and survivor of human trafficking for sexual exploitation.

10th May 2020

[Question: Do you consider efficient the system for rehabilitation and social inclusion of the trafficked victims? If not, how do you think it could be improved?]

<“It is not efficient at all. In most of the cases, the SPRAR projects have a duration of six months or one year maximum. It is not enough for a person who has suffered such a trauma and is alone without any knowledge about the language, the culture of the country, etc.

“The system offers work training activities and educational opportunities like attending to school to learn the language. Sometimes, the period of assistance can be extended up to one year and a half, if the person in question is still taking some of the courses. Notwithstanding, it is not enough for a complete social integration in the society in most of cases.”>