

## Dealing with international human trafficking in Spain: between criminalization and a human rights approach

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Enviado: 28/05/2022 // Aceptado: 23/11/2022

**Abstract.** The international community has played an essential role in creating and building an international system as a global response to combat people trafficking. This development has taken place through international instruments to fight organized crime and based on a rationale of State security. States underpin the international system, and the majority are more concerned with prosecuting crime than protecting victims' rights. Progress is being made, but this system does not guarantee the rights of all victims in a fully effective manner. The theoretical framework for the analysis presented in this paper is the critical theory of human rights; Spain is used as a case study. Spain is considered to have regulations that offer guarantees; however, rights are only effectively guaranteed in formal terms. The human rights-based approach is part of Spanish law and policy, but it remains insufficiently effective. There is a need for improvement and for mechanisms to secure continuous participation by all actors, including victims. This article has two aims: to offer a differential analysis perspective with a focus on human rights, and to promote a new public policy interpretation in the fight against trafficking, placing victims at the centre of policies and not treating them as mere objects or instruments in a criminal phenomenon.

**Keywords:** human rights, human trafficking; treatment casualties; focus on rights; Spain.

### [es] Enfrentando la trata internacional de personas en España: entre la criminalización y el enfoque en los derechos humanos

**Resumen.** La Comunidad Internacional viene ejerciendo un papel esencial en la creación y la construcción del régimen internacional como respuesta global, para combatir la trata de personas. Ha sido a través de la creación de instrumentos internacionales de lucha contra el crimen organizado y desde una lógica de seguridad para los estados que fue trazando su desarrollo. La cimentación del régimen internacional se ampara en la capacidad de los Estados, estando la mayoría más preocupados por la persecución del crimen que por la protección de los derechos de las víctimas. En la actualidad se constatan avances, sin embargo, este sistema no ofrece garantías efectivas y plenas en cuanto a derechos a todas las víctimas. El análisis que presentamos tiene como marco teórico la teoría crítica de los Derechos Humanos y España como estudio de caso. Consideramos que España tiene regulaciones garantistas, sin embargo, la garantía efectiva de los derechos se mantiene solo a nivel formal. El enfoque de derechos a pesar de estar incluido en la normativa y en las políticas de lucha en España, aún carece de efectividad suficiente exigiendo mejoras y mecanismos de participación permanente de todos los actores involucrados, incluidas las víctimas. Nos guían dos propósitos en este artículo: ofrecer una perspectiva de análisis diferencial, con un enfoque de derechos humanos. Y promover una nueva interpretación que instituya las Políticas Públicas en la lucha contra la trata, colocando a las víctimas como sujeto central de la política, y no como un objeto o instrumento del enfrentamiento criminal del fenómeno.

**Palabras clave:** Derechos Humanos, trata de personas; víctimas de trata; enfoque en derechos; España.

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**Como citar:** Teresi, V. M.; Sopeña Vallina, M. E. (2023). Dealing with international human trafficking in Spain: between criminalization and a human rights approach. *Cuadernos de Trabajo Social*, 36(1), 165-174.

## 1. Introduction

The fight against human trafficking has been conducted on the basis of an international legal regime anchored in the 2000 Palermo Convention against Transnational Organized Crime. Authors such as Krasner (1983) and Young (1994) define an international regime as a set of principles, norms, rules and decision-making procedures, explicit or implicit, around which the expectations of the actors in a given field of international relations converge, or even as social institutions that define practices, assign roles and guide the interaction of the occupants of those roles in a given issue. In addition to the importance of combating the crime of international trafficking in persons through repressive instruments and policies, the phenomenon is much more complex, varied and goes far beyond the *persecutio criminis*.

The international regime against trafficking in persons is under construction and is highly complex due to its links and overlapping with other regimes such as: labor, organized crime, migration and human rights, generating a dispersion and overlapping of international norms and institutions that do not allow for its adequate application (Raustiala and Victor, 2004). Many of these global organizations (International Labor Organization, International Organization for Migration, United Nations Office on Drugs and Crime, and the United Nations Commission on Human Rights), exercise their own competencies independently, however, they coincide in some points with the issue of human trafficking.

In this international regime, victims are not a priority. If the value to be protected in the fight against human trafficking is the protection of the individual, the legal regime established for this protection has important flaws.

In this sense, the construction of a regime to combat international trafficking in persons with a human rights approach becomes imperative to guarantee the place of victims of trafficking as subjects of law and to address this problem in the light of human rights. This perspective introduces a new interpretation and a social practice where the victim is the central subject of the policy and not an instrument of criminal confrontation of the phenomenon.

The analysis carried out in this article has as its main theoretical framework the critical theory of Human Rights and Spain as a case study. An analysis is made on the key legislative references for the protection of rights in the field of human trafficking, modification of norms, advances and challenges, using Spain as a case study.

## 2. Trafficking in persons: progress in the construction of the international Regime

The struggle for human rights in humanity has not been, nor is it linear. Confronting a phenomenon such as human trafficking requires more than legislating by criminalizing offenses or creating protocols for action. The fight for the rights of victims of trafficking mainly implies a change in the way of understanding and analyzing inequality and inequity towards people in vulnerable situations, particularly women, in the international order, in economic relations and in production relations. It requires a critical, structural analysis of the socio-economic system in which we live, from history and intersectionality that allows us to identify the existing contradictions and reflect on the practices carried out. Inequality will not be resolved as long as there is exploitation. And exploitation seems to be naturalized in the capitalist system, every object is susceptible to be commodified, even human beings.

The phenomenon of human trafficking basically refers to a form of exploitation of people derived from the prevailing economic system in the world. This perception is fundamental, as human trafficking is often thought of as the displacement of people, whether internal or international. What leads to human trafficking is the exploitation of people, regardless of the type of exploitation.

Trafficking in persons is characterized by “the recruitment, transportation, transfer, harboring 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 authority 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”, according to Article 3 of the Palermo Protocol (2000). This exploitation can occur for various purposes, such as sexual exploitation, labor exploitation, exploitation of domestic work, forced marriages, illegal adoption, begging, among others.

Even today, the phenomenon of human trafficking is analyzed in a fragmented manner, diverting and prioritizing the economic, political and legal dimensions, to the detriment of the historical, social and human dimensions, consciously preventing the construction of paths for other reflections and critical analysis.

To think of a regime based on a rights-based approach is to place the human person at the center, and his dignity as a value to be achieved. It is a regime that organizes and orders all practices in this sense. It is a

matter of ensuring a comprehensive, interdisciplinary, cross-cutting approach, focused on the complexity, multidimensionality and multi-causality of the phenomenon of human trafficking.

The human rights-based approach can be defined as a “conceptual framework of the human development process that [...] is based on international human rights norms, principles and standards, and from an operational point of view is oriented to the promotion and protection of human rights” (De Blas, 2012, p.18). It can also be conceptualized as “the legal discussion and efforts to translate (international human rights) norms into institutional policies and social control actions” (Güendel, 2003, p. 2).

This approach demands commitments among the different actors to lead to human development, and requires a society free of violence and exploitation, where relationships based on respect, recognition, equality, solidarity and non-discrimination are fundamental. In this sense, rights advocates are those who carry out political, legal and paradigm transformations for collective action, either to combat the problem or to promote protection and comprehensive care for victims of trafficking, generating an anti-trafficking policy at the global level, with the primacy of human rights (Alvarez et al., 2020).

In the context of international human trafficking, the rights-based approach places human dignity as the main asset to be protected, being the human rights of trafficked persons the focus of all efforts to prevent and suppress the crime, protect, assist and repair the victims. From this perspective, the fight against trafficking occurs through actions subsequent to the violation, but mainly in guaranteeing the exercise of human rights (Ramos, 2018).

This approach requires a vision committed to human rights, demanding the obligation of States to offer efficient mechanisms to avoid impunity. For they are duty bearers and, at the same time, must create effective protection for exploited persons. This requires an institutional, normative and cultural environment clearly oriented towards people, particularly those most vulnerable to conditions of poverty and exclusion, protected from exploitation and trafficking.

The ethics of human rights contemplates in the other, a being deserving of equal respect, endowed with the right to develop their human potential in a free, autonomous and full way (Alvarez et al., 2016). Without forgetting the need for actors and mainly professionals who act directly with the victims, diligently committed to the restoration of their violated human rights.

In addition, the view from the critical theory of human rights aims to identify situations of discrimination, as well as the structural bases of inequality that produce them. In the context of trafficking, this theory allows broadening the perspective of analysis, making the vision offered by the normative approach more complex, providing other elements that go beyond, such as real and effective guarantees (Gallardo, 2010). It means interrupting the process of human trafficking, allowing the person to stop being objectified or treated as a commodity for consumption or exchange, since this violates their inherent rights and subtracts their human condition. It means creating mechanisms that guarantee the dignity of the human being as inalienable. It therefore requires proactivity and social commitment.

It can be seen how this rights-based approach differs from the normative approach, in which the centrality of the State predominates, where human trafficking is a threat to national security. In this approach, it is not possible to place the person at the center of all actions. In such logic, the State is above any personal interest or right and must protect its territory and borders, in addition to having a post-violation character to the detriment of the pre-violation of rights (Silva, 2018).

Since this rights-based approach is central to the human person, guaranteeing the effectiveness of rights requires strategies that include social equality, positive discrimination, participation and emancipation as guides for public policies. Only with this approach is it possible to guarantee humanized and more sustainable results in the fight against human trafficking (Abramovich, 2006).

A rights-based approach perceives human trafficking as a violation of human rights and, therefore, as a threat to human security and social development (Sorj, 2005). This approach aims to favor the emancipation of people as rights holders and the fulfillment of the responsibilities of duty bearers, generating spaces for advocacy, mobilization, participation and inclusion that transform power relations (Alvarez, 2016).

The prohibition of human trafficking is contained in the first human rights document developed by the UN, which lists the basic rights and fundamental freedoms to which every human being is entitled, without any discrimination: the Universal Declaration of Human Rights of 1948 (Castaño, 2019). In addition to these norms, others were incorporated into the field of International Human Rights Law, creating, among other aspects, obligations to States for the implementation of human rights and fundamental freedoms.

In this sense, human rights are “non-negotiable values” that represent a historical and social product derived from social struggles. Positive rights, understood as those that can be legally enforceable, have expanded from the conception of classic rights (civil and political) to others of an economic, social, cultural and environmental nature (Giménez and Valente 2010, p. 54).

The Palermo Protocol makes general references to human rights in a very limited way. It also includes a series of obligations that can be interpreted as aimed at protecting victims. The inclusion of a rights-based approach brought a new perspective to the understanding of trafficking as a human rights violation.

Particularly speaking of human rights linked to the violation of rights arising from international trafficking in persons, a number of global and regional human rights guarantee documents can be listed:

Table 1. Global and regional regulations related to trafficking in persons

<b>At the Global Level</b>	
(2000)	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol);
(2000)	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
(2000)	United Nations Convention against Transnational Organized Crime;
(1990)	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
(1989)	Convention on the Rights of the Child;
(1984)	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
(1979)	Convention on the Elimination of All Forms of Discrimination against Women;
(1967)	Protocol Relating to the Status of Refugees;
(1966)	International Covenant on Economic, Social and Cultural Rights;
(1966)	International Covenant on Civil and Political Rights;
(1965)	Convention on the Elimination of All Forms of Racial Discrimination;
(1948)	Convention on the Prevention and Punishment of the Crime of Genocide.
<b>At the Regional level</b>	
(2011)	Charter of Fundamental Rights of the European Union.
(2011)	Directive 2011/36/EU of the European Parliament and of the Council;
(2005)	European Convention on Trafficking in Human Beings;
(2002)	South Asian Association for Regional Cooperation, Convention on Preventing and Combating Trafficking in Women and Children for Prostitution;
(1994)	The Arab Charter on Human Rights (not yet in force).
(1986)	The African Charter on Human and Peoples' Rights;
(1969)	The American Convention on Human Rights (Pact of San José);
(1950)	European Convention on Human Rights of 1950 (Rome Convention);
(1948)	American Declaration of the Rights and Duties of Man; (1948) American Declaration of the Rights and Duties of Man.;

The Office of the Special Rapporteur on Trafficking in Persons (hereinafter, RETP) complements the rights-based approach through the strategic orientation for the Fight against International Trafficking in Persons. This is fundamental for the construction of domestic public policies in each national state.

In particular, the 2009 report of the RETP, collects and provides the expansion of the strategic vision of reference for the organization of responses to human trafficking at national, regional and global levels: 5 P (prevention, prosecution, protection, punishment of offenders, promotion of cooperation); 3R (reparation, rehabilitation and reintegration of victims) and 3C (capacity, cooperation and coordination).

In 2013, the same PRTR guides the actions of actors for development based on the human rights approach, stating that victims must be at the center of all efforts to combat, protect, assist and repair victims and, furthermore, no measure to combat human trafficking could harm the human rights and dignity of those affected. The need to listen to and consult with victims of trafficking was reinforced as a fundamental element of the human rights approach and the responsibility and obligation of States to provide redress to victims. The obligation in the care, protection and reparation of victims, as well as the accountability of agents, is always of the State, even if there is an alliance of non-governmental actors for the care, protection and reparation of victims (United Nations High Commissioner, 2004, 2013).

The human rights violated by human trafficking are protected by existing international human rights law (Ramos, 2018), by the strategic recommendations of the PRTR, and at the European level, the recommendations of the Group of Experts on Combating Trafficking in Human Beings to Spain (GRETA, 2020).

The standards complement and are specialized by other sources of international law, such as custom, general principles and decisions of international courts, which are also crucial in determining what exactly is required of States in the fight against human trafficking. In this sense, it can be appreciated how international courts were relevant to support and guide governmental actions and those of other actors involved in the construction of the complex regime and in combating trafficking in persons (Silva, 2018, p. 38).

### 3. Principles of the rights approach

International human rights standards allow the internalization for the implementation of public policies of guarantee, demanding concrete actions from the State and society.

Universality and equity can be considered the first important principles by which universal access to rights is sought, preserving and respecting the diversity and non-discrimination of the actors involved in the processes of public elaboration. In this sense, "universality is only built by accepting and contemplating diversity" (Güendel, 2003, p.8).

The principle of participation constitutes the ability to influence fundamental decisions through a set of processes (association, meeting, information), which last over time, require “the interest of the actors responsible for and involved in the construction of something common” (Giménez and Valente, 2010, p.69).

The principle of community participation and emancipation requires reflective and critical actors willing to become actively involved in the solution of public problems. This principle “resizes the concept of citizenship beyond its political aspect, incorporating it into the social and economic sphere”. “The rights approach makes it possible to build a new State-society relationship, capable of transcending hierarchies and oriented towards a more comprehensive and, in a way, shared vision of public management.” In the fight against human trafficking, it is through participation that the interaction of governmental actors and civil society is verified, more specifically, the State and civil society organizations. Society is conceived as a fabric formed by the multiplicity of networks that generate bonds of belonging that limit social integration (Güendel, 2003, p.8).

We also include other principles proposed by Giménez and Valente, 2010, such as “accountability and enforceability”, as they guarantee the responsibility of the guarantors of rights, in addition to monitoring and evaluation processes that make it possible to verify the progress and setbacks of the proposed objectives. This requires accessible, transparent and, above all, effective implementation mechanisms. Thus, information is fundamental for decision-making as a collective/participatory process.

“Comprehensiveness and progressivity” are fundamental elements linked to the need for the interrelation of rights and the need for the State to guarantee the maximum possible progress, in the form of resources that enable the exercise of rights. The characteristic of the interdependence of rights and their effective implementation depend on “the comprehensive vision of their exercise as a basis for the implementation of equitable public policies” (Giménez and Valente, 2010, p.69).

The PRTR, in 2015, reinforced the need to address human trafficking through a human rights-based approach. It recognized that the responses given to human trafficking were not always fundamentally anchored in human rights. On the other hand, the rapporteurship was instrumental in constructing and defining what human rights should be guaranteed and what obligations should be imputed to states. Having clarity on which rights must be guaranteed is essential to assess the extent to which a specific situation, initiative or response complies with international human rights law and to hold States accountable (United Nations High Commissioner, 2015).

This same rapporteurship also pointed out important areas of work for the anti-trafficking movement, especially for women: the right of victims to assistance, protection and support; the right of victims to access reparations; and human rights in the criminal justice response. In this regard, States are obliged to provide immediate assistance and support to victims of trafficking. This provision of immediate assistance, protection and support should not be conditioned on the victim’s ability or willingness to collaborate or cooperate with criminal justice bodies, demonstrating that there should be no reception linkage, *stricto sensu*, and collaboration of the victim with the authorities.

In addition, the identification of victims must be done quickly and accurately to avoid denial of the effectiveness of rights. Delay in identifying a victim or criminalizing the victim, for example, for having entered a country to work illegally or engage in prostitution, violates and infringes on the rights of these women.

The identification of victims is fundamental to the realization of their rights. If victims are not identified quickly and accurately, States effectively and permanently deny them the rights to which they are legally entitled. In this regard, States must create more rigorous and collaborative approaches to identifying victims, especially with greater cooperation between government and civil society actors working to combat human trafficking.

This identification is directly linked to the right of trafficking victims to receive compensation for damages. The RETP has identified that trafficked persons often lack the necessary redress or support to access redress, which can often put that person back in the line of vulnerability to human trafficking. It is therefore essential that States have legal provisions in place to ensure effective redress for the harm inflicted on them.

With respect to the criminal justice response to hold traffickers accountable, there should be no conflict between the rights of victims and the responses of the criminal justice system. Victims of trafficking are often used as instruments of criminal investigation and not as subjects and rights holders, entitled to protection, support and redress. We believe that the incorporation of the rights perspective brings benefits such as:

1. Improve the conception in terms of the parameters of the definition of human trafficking.
2. To broaden the identification and reflection on the different forms of exploitation related to human trafficking.
3. To correct discriminatory practices.
4. To guarantee a social practice that is more in line with the rights of persons.
5. To consider different avenues and actors that could or should play a role in preventing or responding to human trafficking.

In the complex field in which anti-trafficking policy operates, public policies can be understood as a product of the State that has been configured in legal and technical-administrative forms, reflecting a previous process

of complex power relations, and which must be guided by a normative and operational framework that promotes the universal, integral and progressive exercise of human rights (Salamanca, 1994, p. 223).

#### 4. Proposals for an intervention from a rights-based perspective

Based on the systematization of practice, Álvarez (2016) highlights important elements for reflection on intervention and care for women victims of trafficking: 1. analyze the reality from the perspective of rights and the humanist paradigm; 2. use a comprehensive approach and apply a gender perspective in the intervention; 3. consider social intervention as a process; 4. recognize women as subjects of rights, bearers of competencies and co-responsible for solutions; 5. understand the relationship and the link as the fundamental axis of the intervention; 6. carry out an interdisciplinary and socio-educational approach based on teamwork; 7. ensure the specialization of professional teams through training processes that allow the acquisition of knowledge and the development of skills; 8. apply methodologies of support and social monitoring and; 9. contribute to the construction of the social imaginary and a careful use of language (Alvarez, 2016; SICAR, 2004). It can be said that these points converge to achieve humanized care and support.

Humanized care for trafficked women constitutes a foundational pillar of the human rights approach. Ferreira (2013) offers considerations:

Humanized care is the most important point to be pursued by a care policy. It is characterized [...] by the ability of the technical team to recognize the person being served as a subject of rights, and to collaborate so that the same person recognizes his or her citizenship and knows his or her rights. Public efforts and investments aimed at assisting victims of human trafficking must be guided by respect for human dignity, a concept that must be translated into technical actions. The valorization of human potential and respect for the will of the persons assisted should be priority objectives of care. The Humanized Service seeks to reduce the distance between the person assisted and the technical team so that both parties are co-responsible in the identification of solutions and referrals (p. 108).

The approach from a rights-based approach must be contextual, comprehensive, multi-grantist and intersectional, as we know that the factors (race, sex, ethnicity, religion, sexual orientation and disability) interact with each other, adopting different forms of discrimination. Therefore, it aims to bring together the following characteristics: comprehensiveness, transversality, intersectionality and interdisciplinarity.

The actors in charge of assisting victims often share the idea of profiles and common elements of victims such as deception, coercion, exploitation, but these characteristics do not ipso facto imply the consideration of a standard category. Each person must be treated in their individuality, with specific idiosyncrasies: name, identity, place of origin and particular legal, social, family and cultural situations, which must be recognized in institutional practices (Cordero, 2014).

The denial of this form of approach leads to an increase in abuse with devaluation, exclusion, discrimination, negative qualification, disqualification and subjugation based on a patriarchal culture in which the normativist approach prevails. In the words of Cordero (2014):

From the critical approach to human rights, the importance of generating hermeneutic processes that dignify the attention to women and generate a deeper and more singular understanding of the situations they are experiencing prevails. In this sense, it is imperative to claim, with the mediation of the institutions, possibilities of a dignified life for the affected women and girls, giving them a voice and protagonism in the processes of struggle for their emancipation. The objective of transformative actions will be to restore their autonomy, based on the right of women to make their own decisions in matters that affect their bodies and their living conditions (p.9).

Intervention and care for victims of trafficking based on human rights requires constant improvement and training of the actors involved in this function. It is important to add that not all intervention is homogeneous since there are differences in the approach according to the territory and the singular characteristics imposed by the diversity of institutions, their vision, their values and their programs.

Once the analysis of the rights-based approach has been presented, it is important to verify the extent to which Spain is building a regime to combat human trafficking based on the human rights approach.

#### 5. Spain: towards a human rights approach

Spain has been building a domestic regime to combat trafficking in persons since the internal incorporation of the Palermo Protocol in 2002 to the present day.

Table 2. Main regulations of the regime to combat trafficking in persons relevant to Spain

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- Warsaw Convention (2009)
  - Modification of Trafficking Regulations and Foreigners Act (2010)
  - Asylum Law (2009)
  - I Comprehensive Plan to Combat Trafficking in Human Beings for Sexual Exploitation Purposes (2009-2012)
  - Directive 2011/36/EU on preventing and combating trafficking in human beings and the protection of victims
  - Framework Protocol for the Protection of Victims of Trafficking in Human Beings (2011)
  - Directives 2012/29/EU and 2013/33/EU
  - Creation of the National Rapporteur on Trafficking in Persons.
  - Instruction 6/2016, Secretary of State for Security on actions of the State Security Forces and Corps in the fight against trafficking in human beings.
  - II Integral Plan to Combat Human Beings with Sexual Exploitation Fines (2015/2018).
  - National Strategic Plan against Trafficking and Exploitation of Human Beings 2021-2023.
  - EU Strategy against Trafficking in Human Beings (2021-2025) adopted by the European Commission.
  - Organic Law 10/2022, Comprehensive Guarantee of Sexual Freedom.
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Spain has been underestimating the purposes of trafficking such as labor exploitation, begging, domestic servitude, forced marriages, among others. Likewise, it does not take into account how trafficking victims, whether men, women, boys, girls and transgender people, experience trafficking, the consequences and their vulnerabilities, nor does it allow identifying protection and assistance measures appropriate to the needs of individuals and according to the purpose of trafficking (Carrillo and De Gasperis, 2019).

The Group of Experts of the Council of Europe (GRETA) warns, in its report on Spain, the consequences of focusing on the fight against trafficking in human beings solely for the purpose of sexual exploitation of women and girls (COUNCIL OF EUROPE, 2018, p.21). Thus, GRETA urges the Spanish authorities to adopt measures to ensure that the fight against trafficking and actions are comprehensive, targeting all victims of this crime for all its forms of exploitation in the legislative and policy framework, including through a comprehensive national action plan against human trafficking in various modalities.

With regard to the normative modification of human trafficking, Organic Law 5/2010, of June 22, incorporates in article 177 bis of the Penal Code a typification of the crime of human trafficking that overcomes the previous confusion between this crime and the smuggling of migrants.

It is verified that in Spain there are numerous plans, protocols, law reforms, among others, to address human trafficking, however, there are also numerous criticisms that have been received by expert civil society entities. These criticisms emphasize the problem of terminological indifferentiation and the imbalance between the importance given to the prosecution of the crime - prioritizing the control of migratory flows - and the scarce means planned and financed for the protection of victims. The trafficker's bias in public policies is evident, as priority is given to the crime rather than to the victim.

On the other hand, in the practice of victim protection there is an incongruence derived from the different approaches in force in Spain that distort the effective protection of human rights (Agrela, 2004, p.36). On the one hand, the approach to migration and security controls, the fight against irregular migration and organized crime; on the other hand, the attempt to guarantee rights to formally identified victims. The dispute between these regimes generates inconsistencies in the Spanish protection system.

The central point of analysis of the Spanish model is the procedure for the formal identification of victims. In the name of criminalizing human trafficking, victims are not always protected first (Teresi, 2021, p. 323).

If Spain wants to improve its anti-trafficking policy from a human rights perspective, among other aspects, it needs to place the person to be protected as a priority and central axis of the actions of all the agents involved in the process on a permanent basis. To this end, it is necessary to definitively unlink the identification of victims from collaboration, in addition to modifying the actor responsible for formal identification, it must allow and effectively facilitate the presence of a specialized agency at the time of the identification of a victim, as well as at any time the victim deems it necessary (Mestre i Mestre, 2011, p. 40). The Organic Law 10/2022 itself does not solve the issue of comprehensive protection of foreign victims of sexual violence in an irregular administrative situation, conditioning their administrative regularization again to the complaint.

It is clear that a person may have an absolutely legitimate and justifiable fear of denouncing a potential human trafficking network. Referring for example to a situation of trafficking in women for the purpose of sexual exploitation, a woman who has just arrived in Spain and has not yet been exploited, but the crime of trafficking has already been committed because that was the intention, may not even have relevant information to report. These cases indicate how this formal identification of the trafficked woman should not be conditioned to this collaboration, because if that woman were identified, she could have access to formal recognition as a victim because of a personal situation, for example. It is in this identification phase that distortions are generated.

There are other barriers or gaps, some of which are listed, such as the legislative dispersion related to the subject, the scarce professionalization and specialization of the entities that attend to the victims, the organiza-

tion and functioning of the system that is articulated on the basis of benefits from other social protection systems, an insufficient portfolio of services, slow procedures with few guarantees for the victims.

In addition, a fundamental criticism is that much has been done to combat trafficking in women for the purpose of sexual exploitation, but much remains to be done for the other modalities, even when they are recognized by internal regulations.

A Comprehensive Law that covers all modalities of exploitation of trafficking in persons and determines the competences, limits and participation of the actors in charge of combating trafficking in persons and, mainly, the actors in the field of protection and assistance to victims is the main and next step to be taken by Spain, a recommendation made by the EU itself and the Group of Experts on Combating Trafficking (GRETA, 2018).

As established in Organic Law 10/2022, another fundamental change that Spain must prioritize is the recognition of human trafficking as a form of gender-based violence, not only in the form of trafficking for sexual exploitation.

Finally, Spain has a system of subsidies and aid to civil society organizations that provide care and monitoring of victims of human trafficking. It is essential to rigorously evaluate and monitor the work carried out and, on the other hand, to criticize, if necessary, the actions of the organizations. Working from a rights-based approach demands a critical vision and monitoring by the state and requires acting with responsibility and transparency in order to be accountable and to be able, from time to time, to claim and demand accountability from the state. This work is known to be very tense and complex. To the point of compromising the ability to criticize, to take a position (Aradau, 2003).

The construction of a system of confrontation based on human rights implies the governance of the actors, including the State and civil society organizations. Governance that requires occupying spaces of formal and informal disputes, which must take into account the institutional role of each one and, above all, the interests and rights of the victims to be protected.

A place of informal dispute is reinforced through the Spanish Network Against Trafficking in Persons, which since 2004 has been occupying a space for the construction, monitoring and proposal of public policies to combat trafficking in persons. It is clear that there are disputes over the spaces occupied within the network itself and for being part of this network. In any case, these tensions occupy a fundamental place in the construction of this complex Spanish regime.

The last step taken in the construction of this fight against human trafficking was the aforementioned Integral Organic Law on Sexual Freedom. This only addresses trafficking for the purpose of sexual exploitation and, where appropriate, forced marriages and sexual exploitation, but does not resolve the issue of comprehensive protection for foreign victims of sexual violence in an irregular administrative situation, making their administrative regularization conditional once again on a complaint.

In view of the above, Spain faces an important challenge in the fight against human trafficking: to advance in the construction of a comprehensive protective law that takes into account all forms of exploitation and, at the same time, does not adopt an approach of criminalization of migrants.

The harmonization of norms related to the fight against human trafficking is fundamental to promote attention, protection and restitution of rights. In this sense, the Integral Organic Law on Sexual Freedom does not fully respond to what is necessary for the construction of a rights-based regime. On the other hand, the proposal of a Strategic Plan against trafficking in persons that takes into account all types of trafficking needs to modify the way victims are detected, formally identified and approached, guaranteeing them effective protection and care, in the medium and long term, especially independently of their administrative status.

## 6. Final considerations

The international regime against trafficking in persons is under construction and is highly complex due to its links and overlapping with other regimes, generating a dispersion and overlapping of international norms and institutions that do not allow its adequate application and the guarantee of the rights of trafficking victims.

The rights-based approach is indispensable for human development, addressing the problem in the light of human rights. This perspective is the only one that guarantees the place of victims of trafficking as subjects of rights. It places the victims and respect for their human dignity at the center of all efforts to prevent and suppress the crime, and to protect, assist and repair the harm done to the victims.

This approach is materialized through political, legal and paradigm transformations for collective action, either to combat human trafficking or to promote protection and comprehensive care for victims of trafficking, generating an anti-trafficking policy at the global level, with the primacy of human rights. From the vision offered by this approach, it is observed that the mere application of incriminating international provisions is still insufficient for the eradication of human trafficking, as it does not in itself ensure the obligatory nature and compliance with the law.

It is considered important to reinforce that public policies built with a rights-based approach require a look at human rights from the perspective of building a more egalitarian, just and supportive society.



These policies can only be constructed through the greatest possible participation of the actors, guaranteeing diversity, complexity and tolerance of processes and results.

Spain is an example of a country that has initiated this construction and has regulations that move in the direction of public policies built from a rights-based approach.

The case study on Spain shows legislative progress in the area of sexual exploitation, although there are still challenges. It presents the lack of approach to other types of trafficking. It is evident that it is necessary, above all, to change the procedure for formal identification of victims, separating protection and care from the collaboration of victims with police and judicial authorities. This measure would improve the detection of cases of exploitation. This modification can and should be accompanied by a Comprehensive Law to support victims of trafficking, which would constitute a comprehensive system of measures aimed at preventing and punishing human trafficking, facilitating the understanding of the actors and especially of the victims, integrating the care and protection of all forms of human trafficking and improving the mechanisms and possibilities for guaranteeing the rights of victims of trafficking. Work in a holistic manner, without neglecting the structural causes of the phenomenon.

It would also be important to intensify international cooperation in the area of trafficking with the aim of supporting returned victims and strengthening prosecution.

It would also be important to improve and promote the coordination of public resources in collaboration with non-governmental entities and organizations. In addition to thinking about how to guarantee the standards of care and protection offered by organizations specialized in care and subsidized by the State.

It is essential to advance in research and social intervention methodologies in order to systematize knowledge and know-how. These indicators could, in some way, measure the quality of care offered beyond the number of people or care offered. This very specific point indicates an important step in the construction of the regime with a rights-based approach, as it begins to understand the care provided through qualitative results in the guarantee and restoration of these victims.

Finally, at the UN level, it would be important to create an international protection statute through a norm that recognizes human trafficking as a violation of human rights, trying to reconcile morality, politics and law in an ethical horizon, but at the same time operational, giving centrality to the protection of victims. This would be an important step towards the creation of an international protection statute, guaranteeing rights through care and protection.

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