

Social Fieldwork Research (FRANET)

Severe forms of Labour Exploitation

Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States

Spain, 2014

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Categories of interviewees:

Nine categories of experts working in the context of labour exploitation took part in the interviews and focus groups:

M – Monitoring bodies (such as labour inspectorates, health and safety bodies)

P – Police and law enforcement bodies

S – Victim support organisations

J – Judges and prosecutors

L – Lawyers

R – Recruitment and employment agencies

W – Workers' organisations, trade unions

E – Employers' organisations

N – National policy experts at Member State level.

FG – Focus Group

Throughout this report, references to these groups as 'M', 'P' etc. are to be understood as referring to the above-named 9 categories.

Where [M(X)] appears, this denotes the group from which the referenced interviewee came, in addition to the number of interviewees from that group referenced (for example, if a statement is supported by references to three interviewees from the M group, two from the S group and one from the J group, the reference will read '[M(3); S(2); J(1)]'. Likewise, if a statement is supported by statements from interviewees who participated in focus groups (in the following example, a lawyer), the reference will read '[FG(L)]'.

For data protection reasons, no names of interviewees have been mentioned.

1. Introduction, including short description of fieldwork

The fieldwork took place between February and July 2014 in four Spanish regions: Andalusia, Catalonia, Madrid and Valencia. There is a substantial matching between the draft list, the interviews actually conducted and the sample contained within the project guidelines..

Professional GROUP	DRAFT LIST	Interviewees	SELEX GUIDELINES FOR LARGE COUNTRIES
E	4	3	1-3
J	4	6	4-7
L	2	5	2-4
M	5	5	4-7
N	1	NOT AVAILABLE	1
P	6	4	4-7
R	2	2	2-4
S	8	6	6-8
W	4	4	2-4

In addition, participants in the only Focus Group that was conducted and professionals that provided information about the case studies were also considered.

In total, 35 interviews and one focus group were conducted.

At a local level. The fieldwork research was initially scheduled in the regions of Catalonia, Andalusia and Madrid but, for two of these regions, it was usually difficult to convince professionals to be interviewed. For this reason, an additional interview was carried out in the region of Valencia.

At a sectoral level. Most issues were encountered with professionals belonging to M, P, E and R groups. In the case of the Labour Inspectorate, interviews had to be authorised which sometimes led to delays. Requests sent to Spanish police forces (Guardia Civil and Policía Nacional) also had to be approved at very high organisational levels, which was also time-consuming. As for employers and recruitment organisations, they showed a lack of interest in the project that could be explained by their reluctance to respond to uncomfortable questions about exploitation.

Difficulties in conducting the fieldwork research also affected the case studies. One issue was the lack of interest of experts in providing information. Even when these experts agreed to, details provided were scarce, especially regarding the victims' decisions and the outcomes of their complaints. This indeed had an impact on the quality of several case studies. This situation forced us to collect information even from the main Spanish newspaper, *El País*. Among the cases in which victims succeeded in accessing justice, some of them were granted residence permits and some others were not. For instance, there were victims in irregular situations who regularised their status thanks to a labour integration scheme, similarly to the victims of trafficking who cooperated with the justice system. Other victims who accessed justice eventually aborted their complaints for fear of retaliation, whereas some people lodged a complaint to the Labour Inspectorate and no inspections had still taken place after one year.

As for the gender breakdown of research respondents, 14 women and 23 men participated in it, including two cases in which two different men attended the same interview. In the only focus group conducted, five men agreed to participate and they belonged to L, M, P, S and W groups. Concerning the case studies, two women and four men participated from profiles W, S and P.

The age breakdown shows that there has been a substantial balance between group 2 (from 30 to 50 years old) and group 3 (over 50 years old), as they are respectively 19 and 26. Regarding the focus group, the five participants were aged 30 to 50, while the case studies involved three people aged 30 to 50 and three people over the age of 50.

The variable of years of experience shows a wide range of values, spanning from 0 to 36 years in the work area of labour exploitation. In terms of distribution, four people had less than 5 years of experience, 11 people between 5 and 9 years, four between 10 and 14 years, six between 15 and 19 years, five between 20 and 24 years, three between 25 and 29 years and three had more than 30 years of experience in this field.

The duration of interviews varied according to the interviewee's interest in examining issues in greater depth, but it also depended on the professional groups they belonged to: the number of questions scheduled varied a lot, especially between E and R and S and W groups. More precisely, two interviews lasted less than 45 minutes (R and J professionals), 13 between 45 and 59 minutes [M(3); L(2); J(3); E(3); S(1); P(1)], six interviews continued from 60 until 74 minutes [P(1); L(2); J(1); W(1)] and 14 lasted more than 75 minutes [L(1); M(2); P(2); R(1); S(4); W(4)]. Finally, the only focus group conducted lasted 235 minutes.

All interviews were conducted face to face; in two cases, two respondents participated in the same interview, namely from P and W groups.

The fieldwork research started on 27 February 2014 and finished on 22 July 2014.

2. Legal framework

Spain ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the so called “Palermo Protocol” signed on 15 of November of 2000.

Also, on 23 February 2009, Spain ratified the Council of Europe Convention on action against trafficking in human beings (Convention No. 197 of the Council of Europe) on 16 May 2005. On the other hand, Spain allowed expiring a year term to transpose the Directive 2011/36, April 5, 2011 on the prevention and fight against trafficking in human beings and protection of victims.

The convention No. 197 has served as a basis for updating the criminal code through Organic Law 5/2010 June 22, where for the first time trafficking in human beings is typified as a crime, and removes its regulation as an aggravating circumstance of the offence of trafficking of migrants, article 177 bis.¹

Accordingly to the above mentioned article, Trafficking in Human Beings with the purpose of labour exploitation needs to be drawn from the sum of elements constituting the criminal offense²:

a) The spatial or geographical consideration (where): the crime must have been committed while maintaining some form of link with Spain. The need for a connecting link is further clarified by expressly covering the different possibilities:

- On Spanish territory: this means that all aspects characteristic and necessary to carry out an action of trafficking in human beings would have been brought into effect within the scope of Spanish territorial sovereignty.
- From Spain: draws the attention to the individual that is carrying out the crime, as well as the individual that is being subject to the action of the criminal. Here it could be possible to have the victim be picked up in Spain for the purpose of being exploited abroad. Or alternatively, to have the offender be located in Spain, and then contact, through a variety of means, a potential victim living abroad, in order to achieve their subsequent exploitation in Spain or another State.
- In transit through Spain: implies that at least one of the parties needs to have the offence be committed, takes place in Spain. For example, the victim may be transported through the Spanish territory, or carried on board a Spanish vessel or aircraft, or handed over to an intermediary who is in Spain.
- With destination Spain. In this case, Spain is the state where the victim will be arriving; his or her final destination, where they will be subject to a form of labour exploitation.

b) Instrumental consideration (how). In order to adequately incorporate instrumental consideration into the Spanish national legislation, as contemplated by international law, the Spanish legislator has preferred to avoid the route of literal translation, and has instead chosen to refer to legal concepts that already exist in our national laws, which provide a perfect equivalent:

¹ Source: Criminal Code [*Código Penal*]. Consolidated version 2012 www.boe.es/buscar/act.php?id=BOE-A-1995-25444.

² I. Rodríguez Fernández, “Trata de personas” in I. Ortiz de Urbina Gimeno (ed.), *Memento Experto Reforma Penal 2010*. Ley orgánica 5/2010 (Madrid, Francis Lefebvre 2010) p. 74.

- **Violencia e intimidación (Violence and intimidation):** includes all coercive forms covered under national law (“threat”, “use of force or other form of coercion”, “abduction”, “kidnapping”).
- **Engaño (Deception).** Include all forms of fraud or fraudulent action.
- **Abuso de una situación de superioridad, o de necesidad o vulnerabilidad (Abuse of a position of power or vulnerability, or of necessity):** with this expression, all three forms of abuse that exist under Spanish law are incorporated under the statutory provision. All other hypothesis are covered under the umbrella provided by this broader legal concept. This includes payment or benefits provided to those who hold some form of power over the victim, which can be exercised with a view to taking advantage of the vulnerability of the latter (because of their dependence or reliance on a third party). Alternatively, to reinstate the prevalence and superiority of the former (who would collaborate in exercising that power over the victim, and would accordingly be considered, at least, necessary co-operator in the crime of trafficking in human beings). Notwithstanding the aforementioned, and as established under the Directive of the European Parliament and Council, on the prevention and combating of trafficking in human beings and protection of victims, a situation of “vulnerability” must be understood to have occurred when the person has no real or acceptable alternative but to yield.

c) **Personal consideration (upon whom):** the crime can be committed regardless of whether the victim is a “national” or “foreign” citizen. The adoption of the term “foreign” citizen, without taking into consideration whether the victim holds a legal or illegal status of residence, has important positive consequences for the prosecution of this crime. This new language caters for the legal prosecution of cases where trafficking in human beings for labour exploitation may be carried out under circumstances where a non-national victim falls subject to trafficking in a country of origin different to Spain, and is then taken to Spain, in order to endure labour exploitation under legal conditions that could not only mask the crime, but even serve to obtain the necessary administrative authorisations. The new provision equally contemplates the possibility of the “foreign” victim who acquired a valid residence permit before falling subject to trafficking, or even a situation where the victim was a “national”. Nevertheless the latter is believed to be able to more easily avoid the sphere of influence of the criminals.

d) **Commissive Consideration (carrying out what kind of action):** sets out the actions already described at international level, namely:

- **Recruitment.** Is the act of overcoming and breaking the will of the victim, through any of the instrumental considerations described herein above. Sometimes, to favour the recruitment, the criminal will resort to the instrumental element of deception or fraud. Once the victim arrives at the destination, a number of additional measures will normally be adopted in order to have the victims give in to the labour exploitation they are intended to be subjected to. Such would be actions of violence, intimidation or abuse, exercised in any of the three situations of superiority, need or vulnerability.
- **Transport and Passage:** these are clearly intermediate compartments, and are to be construed in a broad manner. All actions carried out in aid of moving the victims to the place where they will be subject to actions of labour exploitation, should accordingly be compassed herein.
- **Housing and Accommodation:** these are also intermediate behaviours, foreordained to the subsequent exploitation of the victims. Such behaviour should therefore not be mistaken with the housing and the accommodation occurring after the arrival of the victim at the destination, since such action

and their subsequent acts would overreach the specifics of trafficking, and should accordingly be confined within the scope of the crime that constitutes each specific form of labour exploitation. Moreover, in order to open up criminal liability of actions related to trafficking and include the handover of the victim from one criminal to another,³ these concepts should be interpreted in accordance with their grammatical meaning, in order to include the concept of “transfer”, as used by the Council of Europe’s Convention on human trafficking.

- Delivery and Reception. Assumes that the subject that will be carrying out the crime of labour exploitation, contacts the victims, either directly (for example, waiting for them at an airport, bus station or any point of arrival in Spain), albeit indirectly, (the victim is handed over to him by the trafficker). In both cases the operator becomes the perpetrator of a crime of trafficking prior to the crime of Labour Exploitation.

e) Purposive Consideration (what for): as part of the present subject of analysis, and report, actions carried out must obey the unlawful purpose of the crime, including labour exploitation. Once again, national legislation has willingly adopted the criteria used at international level, whereby, labour exploitation has been defined in accordance with the following standards: the imposition of forced labour or services, slavery or practices similar to slavery, servitude or begging (...).

In light of the different elements concurring for typifying the crime of trafficking, it must be stressed that the crime of trafficking is deemed a crime regardless of whether or not the effective exploitation of labour occurred, but when specific actions of trafficking are completed.

When labour exploitation takes place, it will concur with crimes that violate the labour rights, which fall under the field of the Criminal Labour Law.

In terms of prosecution measures, article 177 bis of the criminal code includes convictions of imprisonment from 5 to 8 years. The provisions highlight different situations in which more severe penalties are established. More in detail:⁴

- When, as result of trafficking, the victim is put at risk; a higher grade penalty to the one that would have been attributable to the actions effectively carried out by each individual, will be established. This same principle will apply where the victim is underage; or where the victim is particularly vulnerable owing to an illness, a disability or its situation. Moreover, where more than one of these facts associated to the crime is present in the crime definition, then, the conviction to be imposed, must be for the upper half of the penalty under consideration.
- Where actions are carried out by individuals that hold a public authority position, acts as agents of such, or belong to the Civil Service, a higher grade penalty to the one attributable to their actions, will serve as a basis for the conviction.
- Where convicted individuals belong to a chartered profession, a registered trade, association of more than two people, industry or business, even if in a temporary or transitory manner, a higher grade penalty to the one that would have been attributable to the actions effectively carried out by each individual, will be established.

³ J. M. Terradillos Basoco. Trata de seres humanos. In F.J. Alvarez Garcia and J.L. Gonzalez Cussac (eds.) Comentarios a la reforma Penal de 2010 (Valencia: Tirant lo Blanch 2010) p. 210.

⁴ F. Manrique Lopez, F.J. Arrieta Idiákez, F. Manrique Rojo. Combating Trafficking in Human Beings for labour exploitation and the dimension of this crime. In C. Rijken (ed.) Combating trafficking of human beings for labour exploitation. 2011.

- When the criminal actions described are headed by a legal entity, a fine, equivalent to three to five times the profit made will be imposed.
- Finally, enticement, provocation, and conspiracy to commit the crime of trafficking is punishable with a lower grade penalty in one or two degrees, to the one that would have been attributable to the effective criminal actions of trafficking.

If attention is paid not just to the legislation closely related to trafficking, but rather to exploitation practices, two articles of the Criminal Code,⁵ 311 and 312, define which practices and which sentences have to be considered:⁶

- Forcing workers into harmful working conditions, or detrimental Social Security terms (Art. 311 Criminal Code). This crime is considered the “central figure” or “general crime” of all those contained under the heading “Of the crimes against the rights of the workers”. According to the definition of this crime, actions attributable to the crime are punished with imprisonment, which may range from 6 months to 3 years, and a fine. These penalties will be imposed on those individuals whom by means of deception, or through the abuse of a situation of need, impose on workers in their service, working condition or Social Security terms that lessen, suppress or diminish their Statutory rights. This is also applicable to rights to which they may be entitled, in accordance with an applicable Collective Agreement or their individual contract of employment (as per section 1). Where these actions are carried out thereof by individuals using force or intimidation, a higher-grade penalty to the one that would have been attributable to the actions effectively carried out by each individual, will be established (as per section 2). Labour exploitation can affect two fundamental aspects of the workers’ rights:

- Working conditions. It consists of a general term which includes all matters that have an effect on the conclusion, execution and fulfilment of the contract: wages, working hours, vacation etc...

- Social security conditions. They all find their origin in the basic legal relationship of protection afforded by the public System of Social Security. Inherent to this system, we find: 1. Legal relations pertaining to the system (membership, registration, cancellation. Or modification of data in a manner that is detrimental do workers’ rights). 2. Contribution (their absence or failure to perform them). 3. Protection (e.g. absence of direct payment of temporary disability benefits). However broad the public system may be in its protection, the terms and conditions resulting from the action of Private or Supplemental Social Security Benefits, established through collective bargaining, must also be taken into account. The bulk of the latter consisting basically of voluntary contributions, pensions schemes and funds.

- The recruitment in adverse conditions of foreign nationals, who do not hold valid work permits (article 312.2, under section 2). According to the definition of this crime, actions pursuant to the recruitment of foreign nationals, with a view to having them perform services in accordance with conditions that lessen, suppress, or diminish their Statutory rights, or rights to which they may be entitled to, in accordance with an applicable Collective Agreement, or their contract of employment, are punished with imprisonment from 2 to 5 years.

⁵ Source: Criminal Code [Código Penal]. Consolidated version 2012 www.boe.es/buscar/act.php?id=BOE-A-1995-25444.

⁶ See J.M. Lorenzo Salgado, “La protección de las condiciones laborales o de Seguridad Social en los arts. 311 y 312.2 inciso 2º, CP” in L. Varela Castro and M. Marchena Gómez (eds), *La protección penal de los trabajadores: tipos instrucción y enjuiciamiento* (Madrid: Consejo General del Poder Judicial. Centro de Documentación Judicial. Cuadernos de Derecho Judicial 2008, V) pp. 252-253.

In March 2010, the State Secretariat for Security issued Instruction 1/2010 that develops the transitional procedure to follow in the detection of victims of trafficking and provision of the period of recovery and reflection foreseen in the law, until new regulations for the development of Organic Law No. 4/2000 becomes applicable, the regulation 577/2011.⁷ Subsequently, the General Commissioner of Immigration and Borders released a service note addressed to various police units indicating actions to perform with victims of trafficking.⁸ The same agency has also developed a model of information charter of the provisions in article 59bis of Organic Law No. 4/2000 which includes the conditions for being assisted as a victim, and a model of proposal for granting a period of recovery and reflection, and authorisation to stay during this time.

In October 2013, Spanish regional associations and government agencies signed the Protocol on the Protection of Victims of Human Trafficking in Catalonia. The protocol aims to develop and adapt the nationwide framework protocol on victim identification and assistance to the region⁹.

On the other hand, the General Commissioner of Immigration and Borders adopted the technical necessary measures for the creation of a file recording system relating to victims of human trafficking that are processed throughout the country since January 1, 2010.

In 2011, Royal Decree 577/2011, 20 April was issued, which approved new development regulations in Organic Law 4/2000 on rights and freedoms of foreigners in Spain and their social integration, and which developed, in its articles 140 to 146, the procedure for protection of victims of trafficking in human beings.

Furthermore, Organic Law 4/2000 was reformed once more in July 2011 through Organic Law 10/2011, 27 July,¹⁰ in order to extend the protection that is given to victims of human trafficking who decide to report their exploiter extending also to victims' children, and anyone else who keeps family links or ties of any other nature when certifying defencelessness against the alleged traffickers, and establishes the obligation to motivate the refusal of this period of reflection and the right to administrative appeal.

Finally, the Royal Decree 577/20 develops itself, in its article 124, the possibility to apply for a work permit via employment ties or what is called in Spanish *arraigo laboral*. In order to achieve this permit, workers have to prove that they have been living in Spain at least during the previous three years, and a Labour Inspectorate report must state that the immigrants in irregular administrative situation have worked for at least six months.

⁷ Source: Royal Decree [Real Decreto] 577/2011, of 20 of April www.boe.es/buscar/act.php?id=BOE-A-2011-7703.

⁸ www.policia.es/actualidad/pdf/nota_1_2010.pdf.

⁹ Protection protocol of victims of human trafficking in Catalonia.

Protocolo de protección de las víctimas de tráfico de seres humanos en Cataluña www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCIQFjAA&url=http%3A%2F%2Fpremsa.gencat.cat%2Fpres_fsvp%2Fdocs%2F2013%2F10%2F17%2F11%2F42%2F02a5c5e2-dd84-4af4-b6db-29bb016553e5.pdf&ei=3VffU-2qPKaZ0QWSzoGwDw&usq=AFQjCNEm7POBI46teSmzFd_5unJHwGxydg&sig2=e3z1dFSjrSHatH7Nj4zabQ&vm=bv.72197243.d.d2k&cad=rja.

¹⁰ Organic Act 2/2009 of January 11th regulating the rights and liberties of aliens in Spain, [Ley Orgánica 2/2009, de 11 de enero, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social.] Consolidated version 2012: www.boe.es/buscar/pdf/2000/BOE-A-2000-544-consolidado.pdf.

3. Labour exploitation and the institutional setting

The present chapter lists the most relevant organisations that were identified during the Selex project. In addition, information about how often experts come across exploitation cases and the channels that allow them to know about cases of severe forms of labour exploitation of migrant workers are highlighted (section 3.1). Within the chapter (section 3.2), the typology of forms of labour exploitation and the main sectors and occupations where experts perceive it to occur are also analysed.

3.1 Tasks of institutions involved in preventing labour exploitation and in enabling victims to access justice

Among the several institutions that were identified during the research, the following institutions provide a broad spectrum of profiles and functions and include the labour inspectorate, police forces and units, trade unions, foundations, employers' organisations and associations.

Labour inspectorate

Concerning the institutional setting in place for carrying out inspections and monitoring employers' compliance with laws protecting the rights of workers, the Spanish Labour and Social Security Inspectorate (LSSI) is regulated by:

- The Law 42/1997 (November 14th) on the Labour and Social Security Inspectorate,
- The RDL 5/2000 (August 4th), enforcing the Law on Labour Infringements and Sanctions,
- RD 138/2000 (February 4th) enforcing the Regulations on the Organisation and Functioning of the Labour and Social Security Inspection,
- RD 928/1998 (May 14th) enforcing the General Regulations on the procedures aiming at imposing sanctions following labour and Social Security infringements.

A major modification of the structure of the LSSI took place in 2010. In February 2010 and by means of RD 206/2010, the Government of Catalonia become responsible for the functions and services of the Labour and Social Security Inspectorate that take place in this region.

The LSSI is the public entity in charge of controlling compliance with labour and social security legislation. It is under the supervision of the Ministry of Labour. There is a central Authority in charge of the management, coordination and assessment of the activities and functioning of the LSSI. At territorial level, the labour inspectorate is organised at province level so that in each province (there are 52) there is a Labour inspection under the organisational direction of a Labour Inspection Chief.

On the other hand, Spain is divided in 17 regions (Autonomous Communities –CCAA) and most of them have broad competencies on labour issues. According to the principle of a unique and integrated Labour Inspection system but also according to this political and regional organisation, the actual model of Labour Inspection is based on the institutional cooperation between the central government and the CCAA. This cooperation is articulated through:

- The Sectoral Conference on Labour Issues (all CCAA and the General State Administration)
- Territorial Commissions (at CCAA level)

The Autonomy Laws of different CCAAs contain provisions on the transfer of Labour Inspectors to the CCAA.

The first experience of decentralisation and transfer of the Labour Inspection Services took place in 2010. The RD 206/2010 (February 26th) regulated the transfer to the Government of Catalonia of the functions and services regarding the LSSI. According to this regulation, the government of Catalonia, within its territorial and material scope of competences, is entitled to exert all the powers entitled to the Labour and Social Security Inspections, including:

- The control on the compliance with legal provisions and legal provisions on collective bargaining with regards to working organisation, social dialogue, occupational health and safety and prevention, employment, migrant workers...;
- Technical assistance to enterprises, workers and Public Administrations;
- A comparative overview of Labour Inspectorates
- Arbitration, conciliation and mediation on collective conflicts and strikes whenever there is a demand or an agreement of the parts involved.

The transfer was done according to several principles:

- A single and integrated Labour Inspection System;
- The unity of functions and activities of labour inspectors;
- Effectiveness when carrying out their tasks.

According to these principles, the Labour and Social Security Inspectors (LSSI) and sub-inspectors can carry out their tasks and missions with regards to any social and labour issue whatsoever the administration competent on the issue.

The elements that are assessed by the monitoring institutions in order to identify labour exploitation cases include:

- Any enterprise, workplace or place where a labour relation is established, including the Public Administrations when there is a labour relation and not a civil service relation between the Administration and the worker;
- Any vehicle or means of transport where a work is performed (boats, planes and their auxiliary premises);
- Ports, airports, vehicles and arriving and depart points with regards to migration movements;
- The enterprises and entities intervening in the management of the Social Security;
- Any public or private entity cooperating with the public Administration on social protection and promotion;
- Cooperatives with regards to their establishment and functioning.

Some workplaces or enterprises are out of the scope of the LSSI and their control is devoted to other entities or organisms (mines, enterprises producing, manipulating and conveying explosives).

CEAR (Spanish Commission for Refugee Aid)

The mandate of this organisation is the defence and assistance of asylum seekers and, in general, of vulnerable migrants who are at risk of social exclusion. The latter are subject to many pressures - like the obligation to renew the residence permit - which puts them in an

extremely vulnerable situation. Summing up, the mandate of the organisation itself includes protecting migrants, which also means fighting against those who intend to exploit them. Interventions addressed to exploited immigrant workers are related to monitoring, advising and advocating for the rights of workers.

ACCEM (originally Spanish Catholic Commission for Migrations)

This is an organisation providing direct support to migrant workers and refugees. As a part of this support they implement some schemes not directly related to labour exploitation but which may deal with this issue at some point. For example, the interviewee mentions that the ACCEM local office in Huelva works with migrants who live in settlements and, even if this project is not aimed at fighting labour exploitation, they have encountered some cases of it. Another example comes from Galicia, where ACCEM has a shelter for victims of sexual exploitation which is occasionally used by women victims of labour exploitation. This NGO includes labour exploitation in its strategic action plan and has implemented awareness campaigns in this regard. ACCEM has also produced reports on this matter; for example the 2008 MIRROR Report, and is a member of the Spanish Network against Human Trafficking which includes labour exploitation. Broadly speaking, ACCEM's work in relation to labour exploitation consists of monitoring and investigating cases, supporting victims, defending the rights of workers and occasionally representing them legally at court, as well as promoting political impact, social and labour inclusion of victims and general awareness of the issue.

CASC (Coordinadora de Asociaciones de Senegaleses de Cataluña or Catalan Federation of Senegalese Associations)

This federation not only provides initial information on labour issues, but on all other aspects that may be useful for its members. Workers' rights are addressed, although the organisation's mandate does not explicitly refer to them. When cases of labour exploitation come out, victims are referred to specialised services like trade unions. In other words, CASC provides information about where and how victims can be assisted.

Sevilla Acoge

The organisation's mandate includes the promotion of migrant workers' rights. In practice this involves career advice for migrants and informing them about the rights of any workers in Spain. The legal aid department also gives migrants advice about their general rights and about labour rights in particular. When encountering victims of exploitation, they are referred to trade union legal aid services. All these actions are framed under the *Andalucía Orienta* (Andalusia Guides) programme, funded by the Andalusia regional government and which involves several organisations providing similar services. Finally, *Sevilla Acoge* has a small employment bureau receiving job offers and demands.

CEPAIM (Consortio de Entidades para la Acción Integral con Inmigrantes or NGO Consortium for a comprehensive plan of action with immigrants)

Some sections in this organisation are linked to migration issues. If the employment section identifies a case of labour exploitation in agriculture, they file a complaint with the EDATI (Spanish Civil Guard team for aid to migrants) and, if it happens in Huelva, also with the Spanish National Police. Sometimes, when the case of exploitation is not serious, they talk to the employer to convince them to address the issue; if this does not happen, CEPAIM files a complaint with the relevant authorities. In the organisation there is also a section that deals with equality, diversity management and non-discrimination and which trains corporate staff, state security bodies, etc. to prevent discrimination against migrants.

Rumiñauí

This NGO offers training courses on workers' rights to women working mostly in the domestic service sector; and courses include legal and employment advice. They have an agreement with Alcorcon town council in Madrid to provide these courses to women and to support them. The organisation's mandate includes the defence of migrants' human rights in general and of employment rights more specifically, including the prevention of labour exploitation. Rumiñauí was initially created to serve Ecuadorian migrants, but nowadays it serves migrants from all over Latin America.

USOC (Union Sindical Obrera de Catalunya, as one of Catalan Workers' trade unions)

Within the union's resolutions there are mandates, either direct or indirect, to protect workers regardless of their origin. As for migrants' exploitation, USOC has specific mandates which are written in resolutions adopted every four years in the trade union congresses, but not in its statutes. As for interventions, they provide advice/support to victims of labour exploitation and, in some rare cases, they carry out inspections themselves. Finally, no differences are said to be made in promoting workers' rights in terms of race, ideas, religion, etc.

SOC (Sindicato Obrero del Campo)

This is a trade union founded in 1976 to defend the rights of Andalusian farming and cattle raising workers. They try to defend the rights of workers whatever their nationality, offering information and support to victims of labour exploitation. In the case of migrant workers, it is not required to be a union member to obtain this support, because they are usually seasonal workers coming from other countries. Moreover, even if migrants live in Spain, they usually have no information about trade unions and cannot afford to pay an annual membership fee; therefore all services are free of charge for them. SOC main activities are monitoring and advocating workers' rights, as well as providing advice about them.

UCTEH (Unitat Central de Tràfic d'Éssers Humans or Catalan police central unit against human trafficking)

In 2007, the UCTEH was created within the organised crime area of the Catalan Police (*Mossos d'Esquadra*). There are actually two units - one fighting sexual exploitation and the other one dealing with labour exploitation - integrated into one crime area. This shows the degree of interest in tackling this specific phenomenon. Other police forces have units against exploitation in general, but the UCTEH is the only police unit in Spain with this level of specialisation. Another difference between the Catalan and the National Police forces is that the latter are entitled to enforce the alien's law; in other words, they are responsible for applying measures that may lead to expulsions. The UCTEH unit gathers information from the rest of the Catalan police structure, and to some extent it spreads this information to them too. In this way, all police officers become aware of the ongoing risks and of the interventions to be carried out. Concerning the UCTEH's mandate, it does not involve the defence of workers' rights, but rather the support to victims of exploitation.

Guardia Civil or Civil Guard

On the basis of the European regulation No. 40/2013, the Guardia Civil General Directorate has, as one of its functions, the periodic inspection of workplaces to identify possible cases of labour exploitation, among other issues. Sometimes this military police force discovers and intervenes in cases of labour exploitation thanks to confidential information; as a rule, inspections are carried out together with labour inspection. Within the Guardia Civil there is a special unit, EDATI (*Equipos de atención a inmigrantes*, namely teams for aid to migrants). This unit was created in 2002 in order to protect migrants' rights, particularly regarding

security. In order to do so, the EDATI teams must be well aware of migrants' concerns, be familiar among them and keep an ongoing contact with the migrant population. They are present at the headquarters of Guardia Civil in Granada, Almería, Huelva, Valencia/València, Alicante/Alacant, Barcelona, Tarragona, Murcia, Balearic Islands, Algeciras, Málaga, Cádiz y Castellón/Castelló.

- Informing migrants about their rights
- Receiving requests from migrants regarding security and dealing with them or referring them to other bodies
- Processing documents related to the migrants' stay or residence in Spain
- Safeguarding compliance with the work contracts clauses affecting immigrants, either on its own initiative or in cooperation with other administrative bodies.
- Informing and guiding immigrants about the activities that may improve their social inclusion and make their stay easier in Spain
- Liaising with the institutions involved.

UCRIF Unit (Unidad Central de Redes de Inmigración Ilegal y Falsedades Documentales, central unit on illegal immigration networks and documentation forgeries)

Its role is to investigate criminal activities, at both national and transnational levels, related to human trafficking, smuggling, illegal immigration, forgery and other crimes involved. The UCRIF unit also supports and liaises with police local units and squads, as well as collecting, analysing, tracking, spreading and exchanging information with national and international bodies regarding human trafficking and alien and border affairs. It is also responsible for police information planning and intelligence concerning foreign residents. UCRIF acts as the Spanish central office in these matters for other current or future bodies or organisations.

COAG (Confederación de Agricultores, Confederation of Farmers)

This Spanish coordination body has different lines of work; one of them is the women's area, where information and training sessions on workers' rights are organised. Another line of work is the selection of candidates in their country of origin to ensure the workforce required by the Confederation members. In this selection and recruitment process, COAG is very careful and works mainly with Eastern European countries - like Romania - and Latin-American countries. The selection process is extremely strict and working conditions in Spain are supervised by COAG experts. Finally, they conduct yearly awareness-raising and information campaigns about workers' rights, especially immigrants, like safety and security at work, housing conditions for temporary workers and anti-discrimination measures.

CCOO (Comisiones Obreras, i.e. Workers' Commissions trade union)

CCOO is a socio-political union. Therefore, any issues affecting workers fall within its mandate, regardless whether they are documented or not. In fact, the union has always granted membership to undocumented immigrants, even when this was not foreseen in the laws and it was considered an administrative offense. Labour exploitation, when it reaches a certain level, has always been tackled by this trade union even if the victim is not unionised. Immigrants are assisted by CITE (*Centro de información para Trabajadores Extranjeros*, Information Centre for Foreign Workers), an organisation founded by the same union to give advice to foreigners on their way to labour and legal inclusion. CITE was founded in 1986, after the first Spanish alien act came into force. At that very moment the figure of the undocumented person emerged, and so did the issue of residence and work permits and the fragmentation of rights based on the migrants' legal status.

Concerning the interview question, “In your professional work, how often do you learn of a case of labour exploitation involving a migrant worker?” results must be taken with caution, because experts reply on the basis of the data gathered within their mandate (i.e. employers’ organisations are by far less aware than labour inspectorate is) and on their geographical dimension, which can be based on local (i.e. law firms) regional (i.e. immigration prosecution office, regional branch of a trade union, or Catalan labour inspection), or national (i.e. big third sector organisations) For this reason they are hardly comparable.

twice or more than twice a week	10
once a week	1
less than once a week but at least twice per month	2
once a month	6
twice or more per year	7
once a year or less	4
other (please specify)	0
don't know	5

In the case of the interview question, “As a rule, how do you learn about cases of labour exploitation of migrant workers?” responses were balanced among all the options, hearing about the case through the private person/individual being the most common response. The large majority of interviewees consider that information is provided by the very victim. Finally the two responses targeting “other”, both were about the database of the Catalan police that gathers information about the complaints lodged across Catalonia.

Proactively looking for cases	11
The case is brought to your attention by another institution (public)	13
The case is brought to your attention by another institution (private)	10
The case is brought to your attention by a private person/individual	18
Other (please specify)	2 (database of complaints)

3.1 Forms and frequency of incidents of labour exploitation encountered by experts in their work; economic areas affected

The forms of labour exploitation detected by respondents cover all five aspects contained in the guidelines (see below table). Nevertheless, two of them - slavery and child labour - are residual as they were identified respectively three and two times, and even in these cases, they were considered as rare phenomena. Forced labour, including bonded labour (e.g. debt bondage) and trafficking for labour exploitation were identified respectively 10 and 14 times. Cases of exploitation outside the above mentioned categories are by far the option including the situations most likely to occur (28 times).

As for the relation between the frequency of the forms of exploitation and the professional group breakdown, it is not possible to find any solid relation. In one case, an interviewee [M(1)] did not respond to this question.

Slavery	3	S, J, P
Forced labour, including bonded labour (e.g. debt bondage)	10	J, L, M, P (2), S (5), W
Child labour	2	J, P
Trafficking for labour exploitation	14	J (3), M (3), P (3), S (4), W
Moving beyond the categories mentioned so far: exploitation of a migrant worker under particularly exploitative working conditions (in the terms of the Employer Sanctions Directive)	28	E (3), J (4), L (5), M (3), P (3), R (2), S (3), W (5)

Among the several exploitative working conditions that interviewees reported across the individual interviews, the focus group and the case studies are: living in the workplace; no salaries paid or salaries under the legal minimum wage; lack of social security payments; passport retention; limited or null freedom of movement; limited or null contact with nationals; no days off; no holidays; extremely long working hours; taxes to be paid by the employer actually paid by the worker; ill-treatment, deceit and working conditions in the contract different from the real ones (especially working hours and tasks).

Regarding the occupations of exploited migrants, most of them belonged to the service sector. These were identified 29 times, and mostly women were affected. Unskilled workers were identified 19 times, while farm workers occurred 14 times; in both cases these jobs were mainly occupied by men as they usually require physical strength.

The fourth occupational group is considered particularly meaningful, as severe forms of exploitation also affect semi-skilled workers (13 references), especially in the textile sector. In particular, Chinese dressmakers are the most common semi-skilled workers perceived by interviewees as being subject to exploitation. In this case the gender breakdown includes both sexes.

Service occupations e.g. waiter, care-taker, domestic worker	29
Unskilled worker e.g. labourer, porter, unskilled factory worker	19
Farm worker e.g. farm labourer, tractor driver, fisherman	14
Semi-skilled worker e.g. bricklayer, bus driver, cannery worker, carpenter, baker	13

Regarding economic sectors, "Agriculture, forestry and fishing" is the one in which severe forms of exploitation are most likely to occur, especially in jobs related to fruit growing and, to some extent, to fruit and vegetable harvesting.

The second sector (Accommodation and food service activities) and the third one (Activities of households as employers) give evidence of how service sectors are prone to harsh labour conditions. Finally, manufacturing - especially the manufacture of wearing apparel - is the fourth economic sector in which exploitation is most frequent.

Sectors and main sub-sectors	frequency
Agriculture, forestry and fishing (01)	21
Growing of fruits (03)	(9)
Accommodation and food service activities (60)	18
Restaurants and mobile food service activities (64)	(14)
Activities of households as employers (120)	16
Non-diplomatic households as employers of domestic	(10)

personnel (122)	
Manufacturing (19)	15
Manufacture of wearing apparel (23)	(5)

4. Risks and risk management

The main aspect addressed within this chapter concerns the identification of the most relevant risk factors that affect migrant workers (section 4.1) related to the legal and institutional settings, personal characteristics and the initial situation of the migrant worker at his/her workplace. The role of employment, placement and recruitment agencies in creating or preventing situations of vulnerability is also tackled, as well as which institutions are responsible for their supervision. In addition, light is shed on prevention measures implemented by organisations and the effectiveness of pre-departure programmes and standard settings in fighting severe forms of labour exploitation of migrant workers (section 4.2). Finally, information is provided about actions undertaken by the police to protect victims against the risk of repeated victimisation (section 4.3)

4.1 Identification of common risk factors for labour exploitation

When the open-ended question about what risk factors made a migrant worker more likely to be exploited was addressed to interviewees, they identified the following:

- **Irregular administrative situation.** The need of a work permit by third country nationals and the hardening of conditions for obtaining it during economic crisis force immigrants to work in the underground economy and accept harsh labour conditions. As an interviewee from the monitoring bodies group explained:

La persona que acepta este tipo de condiciones es porque no tiene otra cosa y tiene que vivir. A menor cualificación profesional y de trabajo, mayor es la posibilidad de encontrarme en una situación de obligación de aceptar situaciones de explotación. Y directamente asociado, si yo me encuentro en situación regular para trabajar puedo pretender que se respeten mis derechos, mientras que si me encuentro en una situación irregular, puedo reclamar pero el miedo que voy a tener asociado va a ser mucho mayor y esto me reprime a la hora de hacerlo.

Somebody who accepts such working conditions has indeed no other opportunities and of course needs to make a living. The lower my professional skills and job qualifications, the higher the possibilities that I will find myself obliged to accept exploitation. And, closely linked to that, if I find myself in a regular situation to work, I can expect my rights to be respected; instead, if I have an irregular status I can claim for this respect, but I will be much more afraid and that will keep me from doing it.
[M(1)]

- **Low education level.** Even if there are cases in which immigrants with a medium or high level of education are exploited, having a low education level is considered to be one of the variables that mostly trigger labour exploitation. Education level is understood in two different ways: on the one side, as formal basic education, like literacy and mathematics and, on the other side, as the skills and resources necessary to integrate in a new and different environment. As one professional [S(1)] hinted:

Muchísima gente no tiene un nivel educativo alto, tiene un nivel educativo bajo. Para qué? Para las expectativas de aquí. No hay que confundir las cosas, una cosa es el nivel académico y otra cosa es el nivel real y es lo que te hace florecer.

Many people affected do not have a high level of education; they have low education. "Low" meaning what? Well, low in relation to our expectations in the country of destination. Qualifications are not the basic issue here. Let's be clear: there is a difference between academic level and actual level of education, and the actual level is what makes a person flourish. [S(1)]

- **Lack of knowledge about basic aspects of the host country** (laws, culture, language, local characteristics, support organisations, etc.). This risk factor is especially present among the Pakistani and the Chinese communities, which tend to cater for all the basic needs of their members, especially newcomers. Nevertheless, this also affects other cultural backgrounds. An S group interviewee explained the following:

Las barreras lingüísticas son un elemento que favorece la explotación laboral, tanto porque las personas que tenemos que informar tienen dificultades, como porque las posibles víctimas no saben cuál son sus derechos, ni como conocerlos ni como ejercerlos.

Language barriers influence labour exploitation for two reasons: because people who need our advice have language handicaps, and also because potential victims do not know what their rights are nor how to learn about them and exercise them. [S(1)]

This prevents people from being socially included in the host country. One professional [S] explained that, in the neighbourhood where they worked, there were people who didn't speak any Spanish after 12 years living in the country.

- **Precarious economic situation.** The lack of job opportunities, also related to not having a work permit, and the lack of knowledge about basic aspects of the host country make immigrants extremely vulnerable and prone to accepting severe exploitation. An interviewee [L(1)] explained:

No tener recursos económicos, que acepten cualquier condición, que no la negocien o que con poco se conformen. La necesidad de tener que enviar dinero a sus países. Claro, siempre es recurrente el tema, pienso que es sobretodo económico, porque con la obtención del medio económico pueden desde su sustento ayudar a la familia.

Not having economic resources, accepting any kinds of working conditions, not negotiating them or being satisfied with little money... The need to send money back to their home countries... It's always the same old problem, you know. I think it's mostly about money, because when they get some income and have their basic needs met, they can help their families. [L(1)]

- **Being a woman, especially if employed in the domestic service.** Several interviewees and one case study evidence that women are suffering harsh working conditions, especially those employed in the residential domestic service, where the lack of controls implies conditions by far under the legal standards. An interviewee [S(1)] explained:

Este es un sector en el que está totalmente desprotegido el trabajador, trabajadoras sobre todo. No hay información, no hay un control sobre cómo se trabaja, es el empleador/a quien pone las condiciones porque está en su casa y se hace lo que el empleador diga.

In this sector workers, mostly women, are totally unprotected; there is no information about them, there is no control about how they work, the employer sets the rules because it's their home and you just do what your employer says. [S(1)]

- **Being citizens of Sub-Saharan countries.** Sub-Saharan workers tend to be considered as ill-educated and physically strong and, in case of vulnerability, they are forced to deal with very demanding jobs, as seen in two of the case studies collected as part of the research.
- **Cultural traits of some Indian, Chinese or Pakistanis Diasporas.** For some immigrant communities exploitation tends to be culturally legitimised and tight control on individuals is accepted. It must be stressed that, in order to move to Spain and get a job, these nationals very often go into debt and, to pay it back, they enter a loop of labour exploitation generated by people from their own country. An interviewee [J(1)] said that Chinese exploited workers in textile sweatshops accept their situation as the price they have to pay to achieve a better future:

No tienen conciencia de víctima, de hecho protegen al empleador, no hablan, son silenciosos, porque los dueños de talleres fueron en su día trabajadores, pero progresan... tienen su cultura... aguantan, aguantan, aguantan y un día cuando hayas pagado las deudas y conseguido los papeles, tendrás tu taller y explotará a otros compatriotas.

They don't feel as victims. In fact, they protect the employer. They do not talk about it. They keep quiet because the sweatshop owners used to be workers, but they made progress... They have their own culture... They put up with that, on and on, because they think that one day, when they had paid back their debts and got residence and work permits, they will have their own sweatshops to exploit other country fellows. [J(1)]

In the same line, one interviewee [P(1)], who when asked about which circumstances or factors render some workers more vulnerable to exploitation (question 19) hints:

(..-) Hay lo que nosotros definimos la situación de vulnerabilidad, que tiene mucho que ver con el origen de estas personas. Es decir, el concepto cultural tiene mucho que ver. Si hablamos del colectivo chino, parte de una realidad y de un entorno cultural que si se aplica aquí choca con nuestras leyes. El colectivo paquistaní parte de una realidad de origen que extrapolada aquí nos parecen situaciones de extrema vulnerabilidad. Con lo cual, entramos en el famoso apartado de la explotación consentida. Es decir, muchos de estas supuestas víctimas de explotación laboral, no es que sean conscientes, en el sentido de que interiorizan que por mucho que se sientan explotados, están mucho mejor así que en su país de origen. Representa una fuente de salida física de la realidad de la que procede de absoluta miseria, absoluta necesidad, y por otra parte es el único recurso al que se pueden acoger.

*There is what we define, situation of vulnerability, that is closely linked with the origin of these people. I mean, the cultural dimension matters a lot. If we talk about Chinese community, it is based on a situation and a cultural environment that if they were applied here, will clash with our laws. The Paquistanese community is based on a reality of the country of origin, which if it was extrapolated here, it would appear as extremely vulnerable. So we come across with the well-known topic of **consent to exploitation**. What I mean is that victims are not exactly aware of exploitation, since they embrace the idea that – however exploited they may feel – they are much better*

off here than in their home countries. It is a way out from their initial situation of extreme poverty and, on the other hand, it's the only resource they can use. [P(1)]

Concerning risk factors related to the legal and institutional settings, interviewees consider that the most relevant aspect about exploitation is the capacity of the justice system to actually punish offenders (15 preferences) and compensate victims (26 preferences). In addition, there exists the perception that labour inspection should be more effective in tackling severe forms of labour exploitation (25 preferences).

Low risk to offenders of being prosecuted and punished;	15
Low risk to offenders of having to compensate exploited migrant workers;	26
Lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs;	25

The Spanish criminal justice system does not seem to have the capacity to deal with the current organised crime which exploits trafficked immigrant workers and, as a result, a large amount of offenders are not prosecuted. A professional [P(1)] who has experience in large-scale police raids against criminal organisations explains:

(...) Hoy por hoy la justicia no está preparada para asumir estas causas gigantescas en este país. No está en ningún asunto vinculado al crimen organizado, con lo cual los crímenes graves, y esto hablo en cualquier aspecto, actúan con mayor impunidad que los delitos menores, porque judicialmente no hay capacidad para actuar contra ellos.

(...) Nowadays the justice system is not ready to take on these enormous cases in this country. Justice is not ready for any cases linked to organised crime. So serious crimes act, and I mean this in any respect, with greater impunity than misdemeanours because justice is unable to act against them. [FG(P)]

In case of social (labour) justice, interviewees stress that even if labour courts are usually efficient, their lack of resources means trial hearings are scheduled for one year after the complaint is lodged. A professional [L(1)] hints:

Entonces hoy rompemos la relación laboral pero el juicio del despido nos lo tenemos que esperar hasta dentro de un año, entonces ¿de qué vive esta persona durante un año? Si además las instituciones se hacen más lentas, la justicia se hace más lenta. Eso es bastante grave también porque no tan solo llegáis tarde vosotros sino que además la sentencia final también llega tarde.

So today we break the working relationship, but if we have to wait for a year to hold the trial ... how is this person going to make a living for a year? Besides, if institutions become slower, justice slows down too. That's pretty serious, also because not only is your work delayed but also the final court decision arrives late. [FG(L)]

When the trial hearing takes place, the court decision may take another year or more, and if eventually victims are to be compensated, the perpetrator can declare bankruptcy and avoid paying due wages. In at least one case study, the expert interviewed mentioned that a bar where a victim had worked had been closed down in order to pay lower compensations. An interviewee [L(1)] explained that, for some companies, this is a strategy that really pays off, especially when employing immigrants. In fact, since the response from labour courts is slow, immigrants are forced to find a new job, perhaps in a distant place, or even return to their home countries. Therefore, there is little likelihood of compensations being paid [L(1)].

Nevertheless, prosecutions and compensations rely on the victims' willingness to lodge complaints and to act as witnesses of potentially exploitative situations. What actually happens is that many victims decide not to take this step. There are many reasons for this; particularly relevant is fear of retaliations from the employer and the fear of being considered as an illegal resident and being expelled from the country.

A lawyer [L(1)] explains another legal and institutional setting which does not help to tackle immigrant exploitation: if complaints involve compensations under 500 Euros, it is not worth lodging them because judicial fees to be paid are equal to this amount.

Concerning the Labour Inspectorate, the lack of effectiveness is mentioned in relation to:

- Insufficient number of labour inspectors
- The Inspectorate's mandate, which is only reactive.
- Very weak investigation activity, according to several interviewees.
- Even if they have the mandate, difficulties in accessing private households exist, because even if the judicial order is not compulsory, the household owner's verbal authorisation is difficult to prove [FG(M2); (P1)].

All these factors allow labour inspectorates to intervene only when crimes have already been committed, sometimes on the basis of the information provided by the police and in authorised workplaces. When the Labour Inspectorate receives a complaint, it may take several months to carry out the inspection, and when people are in very harsh labour conditions, this means a very long time. According to a professional from the W group, even if an inspection takes place, sometimes monitoring activities do not lead to detecting the extent of exploitation, and this is scarcely effective in order to avoid future infringements:

Si yo no te pago lo que el convenio estipula y a lo máximo que me arriesgo es que de personas solo dos me denuncien y les tenga que pagar la diferencia salarial que les he abonado, arriesgo muy poco

If I don't pay workers what the labour agreement establishes and only two out of ten file a complaint and then I'm just forced to pay them the difference, my risk is very low.

[W(1)]

Finally, while great difficulties exist in accessing private households, this is particularly relevant as one of the contexts in which more exploitation is supposed to occur (see section 3.2). Unfortunately, as stressed above, even if labour inspectors do not need any judicial order, they need to have the household owner's verbal authorisation, which is something very hard to prove when the case is instructed.

Concerning the question about risk factors related to personal characteristics and the initial situation of the migrant worker, as experts already stressed when answering the question ("Certain circumstances or factors render some workers more vulnerable to exploitation than others. Based on your experience, what are important factors making a migrant worker more likely to be exploited?"), very similar elements were mentioned: low level of education (17 preferences), not speaking the language of the host country (16 preferences), some nationalities more likely to be exploited than others (8 preferences), gender (11 preferences) and not being allowed to enter employment (13 preferences). The latter option was understood as entering *regular* employment. Finally there was an answer option that was not previously identified which raised a large consensus (17 preferences): the extreme poverty at home.

Migrant worker has a low level of education;	17
Migrant worker does not know the language of the country of workplace;	16
Migrant is not allowed to enter into employment;	13
Worker comes from a country the nationals of which are often exploited in the destination country;	8
Worker is prone to discrimination on behalf of their race or through their identification as belonging to a national minority (such as Roma, Dalit or sub-Saharan African)	12
Worker is prone to discrimination on behalf of their sex	11
Worker has experienced extreme poverty at home;	17
Other (labour rights are very different and labour exploitation is allowed in countries of origin)	3
Don't know	1

As for the question about risk factors related to the situation of migrant workers at their workplace, interviewees consider that the most important one is working in a sector particularly prone to labour exploitation (28 preferences). Considering the sectors that were identified in question 3, these would be agriculture, bars and restaurants, domestic work and manufacturing.

Isolation is considered relevant (19 preferences) as well as precarious and insecure jobs (16 preferences). Seasonal jobs are also considered a potential source of exploitation (14 preferences); this does not come as a surprise, as the agriculture and bars and restaurant sectors need abundant workforce during short periods of time and have already been identified by interviewees as sectors in which exploitation is likely to occur (see section 3.2). The lack of unionisation is another relevant factor that interviewees have stressed (13 preferences).

Finally, not being directly employed by the business/organisation is considered a residual risk factor (5 preferences), even if service companies are seen as workplaces in which exploitation can occur.

The migrant works in a sector of the economy that is particularly prone to exploitation;	28
The migrant works in relative isolation with few contacts to clients or to people outside the firm;	19
The migrant worker is not a member of a trade union;	13
The migrant works in a precarious or insecure situation of employment, e.g. formally not employed but self-employed;	16
The migrant worker is not directly employed by the business/organisation for which they work, e.g. agency workers, or employees of cleaning or security companies;	5
The migrant worker is employed as a posted worker by a foreign company;	0
The migrant is a seasonal worker;	14
Other (please specify)	1
Don't know	1

Concerning the role of employment, placement and recruitment agencies in creating or preventing situations of vulnerability of migrant workers to labour exploitation, a relevant distinction must be made in Spain between the agricultural sector in Andalusia and Valencia and other sectors and regions. In the first case, all kind of agencies are seen as a way for employers to turn a blind eye about possible exploitative conditions and to discharge responsibility on the agency itself. In addition, the agencies themselves are supposed to

make profits regardless the harsh labour conditions in place. As a one respondent [W(1)] explained,

Estas empresas son las verdaderas culpables de que la explotación laboral exista. Porque además hay empresas de servicios que se han creado en torno a unas necesidades y han visto una posible ganancia económica a costa del trabajador. Son las principales culpables de las situaciones que se viven en muchos tajos

These agencies are to blame for labour exploitation. Moreover, there are employment agencies that have been created to fill a niche and after seizing this opportunity to make money at the workers' expense. They are the main responsible agents of the situation in many places. [W(1)]

In the regions of Madrid and Catalonia, respondents mainly consider that recruitment agencies have no impact in creating or preventing labour exploitation. However, few interviewees stressed that generating precarious jobs or channelling job offers that did not match with the real jobs were bad practices.

For many interviewees, recruitment agencies are simply paid to match the company's workforce shortage with the workers' profiles in the agency database. Even if recruitment agencies are obliged to carry out certain tasks, there is no external control about *how* these tasks are undertaken, i.e. registering hired workers with Social Security, paying them on the basis of collective agreements in force in the client company and periodically informing the Ministry of Labour about contracts signed and job offers [R(1); E(1)].

Instead, service companies are legal organisations which, rather than hiring workers, take on an outsourced service. For instance, a temporary agency may select an individual worker for cleaning in a company, while service companies provide a cleaning service, which usually include cleaning products, machines (i.e. vacuum cleaner), and materials (i.e. gloves). In the first case they receive instructions from the hiring company, while in the second they "should" receive such instructions from the outsourced company. In practice, there are cases in which service companies perform the same work as employment agencies and workers receive instructions from the hiring company. The real difference is in terms of price, since service companies are not obliged to respect collective agreements in force in the client company, so that the possibility of price dumping is likely. A professional from the M group explains that legislation has increasingly blurred boundaries between employment agencies and service agencies:

(...) en la esfera laboral la legislación ha ido haciéndose cada vez más laxa y en el tema de estas organizaciones en concreto muchísimo más laxa que en otros sectores, entonces la frontera estaba en la cesión ilegal (de mano de obra) antiguamente esto ha quedado tan diluido que el otro día en unas jornadas jurídicas los ponentes aludían a la necesidad de que se vuelva a reformular las diferencias entre la cesión legal e ilegal, porque hoy en día ha quedado tan diluida que es muy difícil,... se permite casi todo.

(...) labour legislation has become less and less strict, and it is especially slack about these organisations. Some time ago the red line was the illegal transfer or assignment (of workforce). But it has become so blurred that the other day, at a legal conference, the speakers talked about the need to re-establish the difference between legal and illegal transfer of workers, because today it has become so blurred that it is very difficult... Almost everything is allowed. [FG(M)]

Service companies can be of different types, including cooperatives. Nevertheless, the risk of workers to be unaware of their rights and have a part of their salaries retained can be present in all of them:

(...) una vez más se suman al tema de la falta de información, la ignorancia cuando la propia cooperativa requiere a los cooperativistas sus datos bancarios para recibir ellos los ingresos, en tanto que haciendo el servicio de la cárnica y ellos de ese capital derivan un tanto a los trabajadores pero otro se lo quedan ellos, es evidente que es un caldo de cultivo perfecto para el abuso.

(...) once again, there's the issue of lack of information, the ignorance... when the cooperative itself requires members to provide their bank details to receive their income for servicing the meat factory and then, from that money, they put aside a part to pay workers, but keep the rest for their own benefit. Obviously this is the perfect breeding ground for abuse. [FG]

As for supervision, the labour inspectorate monitors activities in these companies, even if some interviewees do not consider this monitoring effective enough. Accordingly, one expert from the M group suggests that more institutions should be created for specifically monitoring recruitment agencies:

Si, desde mi punto de vista debería haber otras entidades, otros organismos que se dediquen exclusivamente a esto. Porque tienen un papel importante las ETTs sobretodo en algunos sectores en concreto.

Yes, from my point of view there should be other institutions and other bodies exclusively devoted to it. The reason is that temporary work agencies have an important role, especially in some specific sectors. [M(1)]

4.2 Prevention measures aimed to reduce the risks of labour exploitation and the obligations of specific organisations in this area

Interviewees explained that the main preventive measure their organisations implement aimed at reducing the risk of labour exploitation is providing information (11 preferences). As the table below shows, this information is about workers' rights, legislation, contracts, payrolls and health and safety at work. This information is channelled through guides, campaigns, publication and distribution of leaflets as well as training, even though the most frequently used tool is face to face meetings. As for professional groups' breakdown, information is provided by R, S, and W groups.

After the provision of information, advocacy activities before exploitation occurs were mentioned by one interviewee, in particular it was against the Aliens Act reform.

Under the preference "Other activities", there is the assistance to companies provided by employers' organisations. In one case, assistance is about how to introduce international standards and it is addressed to companies that have to work with suppliers in third countries.

A professional from M group explained that in Valencia, as part of a national protocol of collaboration between Labour and Interior Ministries, there are meetings every six months. These meetings are attended by labour inspectorate, national police, immigration office and other organisations involved; this protocol establishes that if a case of human trafficking is detected, they have to make a report to the prosecutor in order to assess whether there is a

criminal offence; if the result is positive, the case will be referred to the police and the Immigration prosecution office.

Kind of prevention service	Frequency	Additional information
Provision of information to workers	11	<ul style="list-style-type: none"> • Information about workers' rights and health and safety at work (R) • Guide addressed to domestic workers translated into 12 languages (S) • Training for trade union representatives on how to tackle stereotypes and prejudices within companies (S) • Legal and labour information(W) • Leaflets in several languages; campaigns (S) • Provision of information to workers. In particular, they put in practice measures mainly based on training and advice: <ul style="list-style-type: none"> - Language courses (Catalan and Spanish). - Information is given on contract and payroll systems. (W) <ul style="list-style-type: none"> - IT training
Advocacy	1	Campaigns for instance against the reform of the Aliens Act 4/2000
Other	2	<ul style="list-style-type: none"> • Helping Catalan companies set up international standards to oblige their providers in developing countries to follow them. In other words, they help ensure that the supply chain is respecting human rights.(E) • Services are provided to employers.(E)

In order to have an actual overall picture of the situation, it must be stressed that on the basis of trade unions' specialisation in labour legislation and workers' rights defence, they are key organisations in receiving cases that other organisations belonging to groups W, S, and R may detect and do not have the resources to address.

Both the CEAR foundation (Spanish aid committee to refugees) and the trade union USOC run a broad spectrum of services addressed to immigrants. This is a key point because it is possible to establish a first contact this way, for instance, job seeking, training in labour legislation, advice to asylum-seekers, campaigns or Spanish courses. In this way, they can get in touch with an expert, become aware of other services and establish a bond with the organisation. It is very likely that they spread information to other immigrants, and if needed, they contact the organisation again. In addition, what is considered relevant is that both organisations have been running services for many years and that professionals involved have changed very little. This way they have overcome users' mistrust and ignorance, factors that are considered barriers that limit access to services. Institutions have become a point of reference for immigrant groups and especially for immigrants residing in the same neighbourhood.

Concerning pre-departure programmes, they currently only exist in the agricultural sector and on the basis of the information collected, just in the region of Andalusia [W(1)]. In this region, every year, before the beginning of harvest campaigns that need workers recruited in origin, a multilateral provincial commission composed of trade unions, employers' organisations, municipalities and provinces platforms, labour inspectorate, sometimes foundations representing immigrant workers and the regional government meets. The goal is

to decide how many additional workers have to be recruited from abroad.¹¹ Together with forecasts made by the information provided by the Public Employment Service, the Ministry of Labour defines the global labour shortage.

The large majority of interviewees from the E, M, R, W, S groups asked about pre-departure programmes had little knowledge of any. In two cases, interviewees [W(2)] are openly against the way programmes work. On the one hand, the focus on rights is missing according to one W group expert:

A ver, yo no creo que haya tantas garantías que cubren el trabajador cuando sale del país. Sí que se le informa de las condiciones (laborales) que hay, pero en cuanto a la explotación una vez en la empresa no. Hay cursos de idiomas, de la existencia de los servicios... pero cuando la persona llega, tiene otro tipo de relación con el empleador, la que determina el cómo y cuándo (se explota). Los mecanismos (de contratación) no se basan sobre la existencia de los derechos sino en los servicios y todo aquello que facilite que la persona trabaje. No en sus derechos. No se velan sus derechos sino como se acomoda para cubrir un nicho de trabajo no cubierto por los de aquí

So, I don't think that there are so many guarantees that protect worker when get out from his/her country. Of course he/she is informed about the existing (labour) conditions, but not concerning the exploitation when he/she is in the company. There are language training, the presence of services but when the person arrives in Spain, he/she has another kind of relationship with the employer, which determines how and when (exploitation occurs). Recruitment mechanisms are not based on the existence of rights but rather on the services and on all that favours the person working. (it is based) Not in his/her rights. There are not protection of their rights, rather how he/she fits for covering a labour niche, not covered by autochthonous [FG(W)]

And on the other hand, funding for implementing pre-departure programmes should be given to third parties instead of employer organisations:

¹¹ In 2004, international collaboration between countries of origin and Spain adopted a new dimension that includes, in addition to worker recruitment procedures, flow control, the prevention of illegal immigration, readmission procedures and development cooperation. This "second generation" of framework agreements on migration matters links immigration policy to development policy and incorporates elements of technical cooperation with third countries. In order to adapt the profile of workers to the structure of demand in the Spanish labour market while also fostering the development of countries of origin, these agreements include actions to promote training in the country of origin and set up technical cooperation offices. The agreements also establish measures for the voluntary return of migrants and the distribution of information on channels of legal migration and the risks of their illegal alternatives, as well as measures to build the institutional capacity of the countries of origin. Until 2010, Spain signed bilateral agreements with Colombia (2001), Ecuador (2001), Morocco (2001), the Dominican Republic (2002), Romania (2002), Bulgaria (2003) and Mauritania (2007). It has also signed cooperation agreements on immigration with Gambia (2006), Guinea (2006), Guinea Bissau (2008), Cape Verde (2007), Mali (2007), Senegal (2007) and Niger (2008), all of which are second-generation agreements. Based on the agreements with Senegal and with the assistance of the International Labour Organisation, a board of employment has been set up in Dakar to select candidates, manage the administrative processing of permits and train workers for employment in Spain. Since 2006, Spain has funded the creation of 12 training workshops in several African countries (Senegal, Mauritania, Mali, Gambia, Guinea-Bissau, Cape Verde, Guinea and Ghana). These trainee workshops were designed to train African workers in sectors covering the financial needs of their own countries as well as those of the Spanish labour market. The purpose was to train workers at these centres so that they are prepared when Spanish business owners seek their services through the Collective Management of Recruitments in Country of Origin procedure. (source: Temporary and Circular Migration: empirical evidence, current policy practice and future options in Spain. European Migration Network (EMN) (2011). http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/circular-migration/es_20111020_emn_es_circular_migration_en.pdf. Probably, due to the current economic crisis, the above mentioned workshops are no longer active.

Que a la propia organización de empresarios que son los que traen a estos trabajadores con contrato en origen y que son quienes los explotan, son a los que en muchas ocasiones se les dan los recursos para que asesoren a estos trabajadores.

Sometimes it is the employers' unions who hire workers in origin and who exploit them, and they are the ones who are given, in many occasions, the resources to inform those workers. [W(1)]

As for mechanisms of standard-setting and accreditation at national and international level, among interviewees who have an opinion, some of them consider that mechanisms are quite or really useful. A professional [E(1)] stressed that standard settings should also monitor fair labour conditions:

Yo creo que es muy importante, y desde la patronal XXX lo venimos diciendo hace tiempo luchando por esto. Por la diferenciación, porque además también estamos compitiendo con productos que vienen de terceros países en los que las condiciones laborales son peores y esos productos no es justo que compitan en igualdad de condiciones porque serían rechazables los productos que no se producen con unas condiciones laborales dignas.

I think it is very important and from the employers' organisation XXX we have been fighting this for a long time; because it makes a difference, because we are also competing with products from third countries with worse working conditions and it is not fair that their products compete with ours on the same level, because products that have not been produced with dignified working conditions should be rejected. [E(1)]

Some other interviewees consider that focusing only on streamlining internal processes is not enough to ensure the absence of exploitation. As a professional [E(1)] said:

(Estándares internacionales) representan formas de trabajo ordenadas pero no siempre excelentes.

(International standard settings) represent structured but not always excellent working methods. [E(1)]

In the same vein, another professional [E(1)] added:

El ISO es un sistema que da fe de lo que dices que vas a hacer. Si tú dices que realmente sigues unas pautas, el sistema corrobora que las sigues pero no va más allá.

The ISO system attests what you say you are going to do. If you say that you really follow a pattern, the system verifies that you actually follow it, but it does not go beyond it. [E(1)]

Interviews show different points of view concerning setting standards and their role in combating severe forms of labour exploitation. Some Spanish companies are adopting standards, but due to the crisis, their number is diminishing. Finally, professionals explained that these mechanisms should be supported by employers' sensitivity and their moral integrity.

4.3 Protection against (repeat) victimisation: actions undertaken by the police to protect victims against the risk of repeat victimisation, including how the police conduct investigations

This issue comes up when the police carry out a raid on the premises of a company and detect migrants who are obviously working under very poor conditions, but at the same time have an irregular residence status. Whether the police consider them primarily as potential victims of crime or as illegally residing in Spain is at the heart of the whole research. In fact, depending on it, very different consequences for immigrant workers may arise.

In order to answer this question, a major distinction must be made among police forces involved: National Police (Cuerpo Nacional de Policía, who operate in cities), Guardia Civil (who operate in urban areas under 30,000 inhabitants and in rural areas), and regional police (i.e. Mossos d'Esquadra in Catalonia), or at local level (local police). The first unit is the only one in charge of dealing with the Aliens Act enforcement,¹² while the others do not have this competence. On this basis, if National Police find exploited workers in irregular status, they tend to primarily consider them as persons not entitled to stay in Spain. As a professional of L group hinted:

ENTREVISTADA: Si la inspección la hace la policía y no la inspección de trabajo (...), lo que van a hacer es comenzar a incoar expulsiones, es decir, es lo que sí que nos pasa. Cuando estamos de guardia, nos llaman desde una comisaría y hay 15 personas chinas todas además de la misma provincia, todas además parientes, y entonces lo que está incoando la policía es la expulsión. Tú vas allí a incoación del procedimiento de expulsión...

ENTREVISTADOR: y estas personas se ve que eran explotadas laboralmente?

ENTREVISTADA: Claro, se ve que alguien ha denunciado y han levantado una empresa donde todos están cosiendo, entonces lo que hace la policía es (...) incoar un procedimiento penal (contra el empresario) y un procedimiento de expulsión. No se plantea para nada que estén siendo explotados laboralmente, es que ni se cuestiona.

INTERVIEWEE: If the inspection is carried out by the National police and not by the labour inspectorate (...), what they start doing is open expulsion files, this is what we know. When we are on duty, we can receive a telephone call from a police station where 15 Chinese people from the same province (of origin) from the same family are subject to an expulsion procedure...

INTERVIEWER: Were these people under labour exploitation?

INTERVIEWEE: of course, probably there was someone who reported them and the Police inspected the company where everybody was sewing, then what the police do is open a criminal procedure (against the employer) and an expulsion procedure. Labour exploitation is neither arisen nor questioned. [L(1)]

¹² Organic Law [Ley Orgánica] 2/1986, 13 March, of the Security Forces and Bodies Organization.

In the case of the Guardia Civil, they have a dual approach towards this issue. On the one hand and considering that they have no competences in immigration issues, they always refer exploited undocumented immigrants to the National Police.¹³

Nevertheless, the Guardia Civil themselves have a unit called EDATI (Equipo de Atención al Inmigrante, Assistance unit to immigrants), which is present in the countryside of provinces of the Spanish Mediterranean coast (Granada, Almeria, Huelva, Valencia, Alicante, Barcelona, Tarragona, Murcia, Balearic Islands, Algeciras, Malaga, Cadiz and Castellon) and which do not refer nor detain immigrants in an irregular administrative situation. On the contrary, their mandate is focused on the protection of immigrants' rights including assistance in cases of labour exploitation.¹⁴ More in detail, regardless of the immigrants' administrative status, in case of unpaid wages, EDATI police persons can contact the employer and claim for them. In other cases they can refer immigrants to support organisations or inform them about their rights. The EDATI unit does not directly provide material care to victims, but instead refers them to specialised organisations, like NGOs.

Overall, whether or not undocumented exploited persons are deported or not can depend on whether the Guardia Civil or its unit EDATI identify the undocumented exploited persons.

With regard to the regional police force, interviewees from one regional police force explained that priority is given to victims of crime, and efforts are made in order to assist them and avoid double victimisation. In this vein, one P group professional, referring to undocumented workers, said:

Con la víctima, intentamos tener un abordaje integral, me refiero primando y valorando cual es su situación y cuáles van a ser sus necesidades. Desde la condición de testigo protegido, desde tomar una declaración, desde relizar pruebas preconstituidas, para que la víctima no tenga que reproducir la declaración al cabo de un año cuando se celebre el juicio. Bueno, intentamos sensibilizar al juez para que realizamos una prueba pre-constituida ahora, tenemos ya la carga de la prueba, la víctima ha declarado y ya se puede dedicar a reinsertare, reintegrarse en la sociedad.

We deal with the victim, we try to have an integral approach. I mean that we prioritise the assessment of which his/her situation is and which their needs are. We consider his/her condition of protected witness, the way we hear them, the possibility to have a reconstituted proof, in this way, victim does not have to repeat his/her hearing after a year when the trial hearing will take place. Well, we try to make the judge aware that if we take a pre-constituted proof, we have the burden of proof, victims have already been heard and they can try to re-enter society. [P(1)]

Regardless of the police force intervening, if victims fall under the conditions set by articles 59 and 59bis of the Aliens Act fighting organised crime (see section 2) and collaborating with justice, it is possible for them to obtain a temporary residency and work permit, and if they have an order of expulsion pending to be executed, it is temporary suspended.

However, if victims have an irregular administrative status and are not being exploited by a criminal organisation, there is the possibility to apply for the residence permit thanks to the labour integration scheme, the so called "arraigo laboral" (see section 2). Unfortunately, the

¹³ Competences of Guardia Civil and Policía Nacional are defined in the Organic Law 2/1986, see: www.policia.es/cnp/competencias/competencias.html.

¹⁴ www.guardiacivil.es/es/prensa/noticias/4313_01.html.

difficulty to prove labour relations that lasted 6 months or more makes this scheme unlikely. As a lawyer stated:

La relación laboral ha existido, por lo tanto, todos sus derechos y obligaciones han existido. A pesar de haber sido explotado puede que no consiga el permiso de residencia y trabajo. Puede que se abra un protocolo específico pero en mis 20 años de ejercicio nunca he visto que se abra el protocolo.

Labour relations have existed and for this reason, all his/her rights have existed. Despite being exploited, it can occur that he/she does not achieve the labour and residence permits. A specific protocol (for granting permits) may be implemented but in my 20 years of labour experience I have never seen implementing it. [L(1)]

Even when a victim's complaint reaches a court, and when a court recognises that he/she is entitled to enter the labour integration scheme, employers can threaten their families in the country of origin and oblige them to modify their version, as seen in one of the case studies collected as part of the research.

Concerning perpetrators, it depends on whether it consists of a criminal or an administrative infringement. In the first case, the employer is arrested and brought to court and the business is closed; if the case is based on an administrative infringement, the labour inspectorate opens a sanctioning file and offenders can be sentenced with a fine. When this occurs, it is very unlikely for offenders to regularise workers' administrative situation and recruit them again; for instance, if a court decision obliges the employer to pay due wages to an unregistered worker, it is very unlikely that the employer legally recruits him/her later. Therefore, victims suffer a second victimisation even if the infringement was actually punished, as one M group professional said:

Lo que intentamos hacer con estas actuaciones es que el empresario les haga el contrato correspondiente, les ponga al día los papeles, pero no se consigue. Al empresario se le sanciona pero no hace esto y muchas veces el trabajador tiene que ser devuelto a su país. Muchas veces no se consigue lo que es la función principal de la inspección de trabajo.

What we try to do in these interventions is to get employers to make them their corresponding contracts and update their paperwork, but we do not succeed. Employers are fined but they do not legally contract their workers, and many times they must be sent back to their countries. Many times it is not possible to fulfil what the main function of the labour inspectorate is. [M(1)]

Nevertheless, the main difficulties that police authorities have in order to refer victims are threefold:

- Weak referral system
- Lack of collaboration from victims themselves
- Lack of support services specialised in victims of exploitation

The first difficulty (weak referral system) is due to the fact that some police units do not seem to have any referral system at all and even when they do have it, it consists of informing victims of NGOs that can help them, but there is little or no awareness of how effective they are and whether victims are actually assisted.

At this stage, it must be stressed that the labour inspectorate does not have any competence in referring victims of labour exploitation to victim support organisations, even if a possible decision taken by the public prosecutor in this sense is also based on the report that the

labour inspectorate submits to it. More generally, if there are irregularities beyond the administrative field, other institutions are informed (Alien prosecution office, government delegation, and the police) for them to take action within their competences.

With regard to the second difficulty, the lack of collaboration from victims themselves, there is more than one reason that can explain it. First of all, as an interviewee [P(1)] hinted, depending on an immigrant's origin, they could have a bad opinion of the administration and they prefer not to rely on them:

El grado de efectividad de las derivaciones de las víctimas es bajo, no porque no sea efectivo, sino porque ellos no quieren acogerse también porque culturalmente en la mayoría de los casos hay suspicacias y desconfianza sobre la misma policía y la administración (...). Ellos asocian directamente la policía con corruptelas.

The effectiveness of victims' referrals is low. This is not because of its lack of effectiveness but rather because people do not want to opt into them because people have a culturally based suspicion and mistrust towards the police itself and the administration (...). They link police with corruption. [P(1)]

More generally, it must be stressed that people who are exploited, or even those who lodge complaints, disappear. Therefore, it is impossible to instruct cases and hence protect them. As a professional from the J group said:

En el tema de la explotación laboral el tema es el que yo le estaba diciendo, y es que los trabajadores denuncian o son rescatados de su situación de sometimiento y desaparecen. Porque incluso gente que está siendo explotada, es rescatada por la policía, se inicia un procedimiento y cuando son llamados por el juez no aparecen. Entonces, los mecanismos procesales de los que disponemos son limitados. La prueba pre constituida, en muy pocos casos de este tipo se puede llevar a efecto porque ni siquiera acuden a la vía judicial (a la llamada del juez instructor) para realizar la prueba. Ese es el caso más usual, pero a una víctima no se la puede proteger sin su consentimiento, o no sabemos cómo, porque no se va a detener a la víctima.

In the area of labour exploitation is what I told you, workers file a complaint or are rescued from their situation and disappear. Because even people who are being exploited and rescued by the police, when we start proceedings and they are summoned to court they don't appear; then the mechanisms we have are limited. Evidence before trial can seldom be applied because in many instances they don't even go to the hearing before the judge. This is the most common scenario, but you can't protect a victim without their consent or at least we don't know how, because you are not going to arrest a victim. [J(1)]

Concerning the third difficulty, the complete lack of support services specialised in dealing with victims of labour exploitation, implies that victims can just apply for general programmes run by third sector organisations addressed to vulnerable people. As an interviewee from the P group stressed, the victim protection system is largely insufficient; especially when it involves victims exploited by international criminal organisations, and especially when compared with protocols of assistance addressed to victims of sexual exploitation:

El origen (de la investigación) estaba en dos testigos protegidos que denunciaban los hechos. Yo he tenido docenas y docenas de víctimas de explotación sexual y las tengo en diferentes centros, en Cataluña y el resto de España, dándoles asistencia, recuperación y protección, pero no encontré ninguno en el que introducir a estos dos individuos, lo cual nos supuso pagar con fondos reservados, durante dos años, un

hotel y un pequeño sueldo para sus gastos. Esto es absolutamente inasumible, estamos hablando de dos víctimas que eran los testigos, pero es que cuando hicimos la intervención tomamos declaración a casi 500 personas, imagínate que los 500 quieren asistencia. ¿Qué hacemos?

The origin (of the investigation) were two protected witnesses who reported the crime. I've had dozens and dozens of victims of sexual exploitation and I have them all over, in different centres in Catalonia and the rest of Spain getting assistance, recovery and protection. But I couldn't find one in which to introduce these two individuals, and so we had to pay with reserved funds a hotel and a small salary for living expenses for two years. This is absolutely unaffordable, we are talking about two victims who were witnesses, but when we did the intervention nearly 500 people reported; imagine that all the 500 want assistance. What could we do? [FG(P)]

Two interviewees from a regional police force stress that they are adopting criteria based on specialisation. Police have neither the resources nor competences for directly providing assistance to victims, for this reason, they limit their intervention to the law enforcement and if victims need support, they are referred to specialised organisations. For this reason, they will no longer protect victims directly but rather they have signed a regional level agreement with several institutions involved in protecting victims of trafficking of human beings, including victims of labour exploitation; among them, third sector organisations:

Se ha firmado un convenio recientemente donde están los Mossos, Fiscalia, ONGs, Gobierno de Catalunya, muchas instituciones. Dentro de estos protocolos hay alguno bilateral entre Mossos y ONGs en qué están claramente establecidos los canales de comunicación, el papel de cada uno, la coordinación etc. está claramente definido.

A collaboration agreement has been recently signed. It involves [Catalan Police, Public prosecution, NGOs, Regional Government and many other institutions. In the framework of these agreements there is one between Catalan Police and NGOs in which issues such as communication channels, roles, coordination, etc. are clearly defined. [P(1)]

In any case, it must be stressed that in terms of investigations and interventions aimed at putting an end to exploitation, a relevant difference exists between cases of severe forms of exploitation involving a perpetrator and one or a few victims, and international criminal networks with a complex productive apparatus managed by an organised criminal network relying on hundreds or thousands of victims, as in the case of Chinese criminal organisations [FG(P)].

For one interviewee from the police, in the first case (involving a perpetrator and one or a few victims), if the perpetrator is detained and the business closed down, the problem is tackled at the roots; on the contrary, the same measures are ill effective in the second instance, because the criminal organisation will simply move the workplace to another place or country. Police interventions are also less effective in blurred cases in which even if victims are exploited in small businesses like shops, there is a wider network of country fellows; i.e. Pakistanis who recruit them again in similar exploitative conditions. Especially for Chinese criminal organisations, a more complex and time consuming activity of intelligence is needed in order to put an end to severe forms of exploitation. After this huge amount of work done by monitoring and prosecution bodies, it may happen that even if employers are convicted, sentences do not serve to eliminate the problem in the long run. As an interviewee from the J group hints:

La prosecución de los delitos o lo que sería la instrucción se lleva bien por los cuerpos de seguridad del estado. El problema es el cumplimiento íntegro de las penas. Es fácil delinquir porque la pena nunca suele pagarse de inicio a fin.

Crimes investigation or what would be the prosecution is well managed by Spanish security forces. The problem is serving the whole sentences. Committing crime is easy because sentences are never entirely served. [J(1)]

5. Victim support and access to justice

The main contents of this chapter concern victim support services and the conditions necessary to enjoy them (section 5.1) and the accessibility to social (civil) justice and other mechanisms to empower victims (section 5.2).

5.1 Victim support, including available support services

NGO support services are open to a wide spectrum of vulnerable people, including those who have an irregular administrative status and are victims of labour exploitation.

Las ONGs no tenemos distinciones entre inmigrantes regulares o irregulares para proporcionar cualquier tipo de servicio, a nosotros eso nos da igual. Pero cuando tienes que acudir a la administración pública a solicitar cualquier tipo de servicios, ahí sí que podrías tener problemas

NGOs don't make any distinctions between legal and illegal immigrants when we provide services, we don't care about this. But when you have to ask any service from the public administration, that's when the problems starts. [S(1)]

In all these cases, they are free of charge and a formal previous recognition as a victim is hardly ever necessary. The problem is that, unlike in the case of sexual exploitation, there is no national plan against labour exploitation and there is a shortage of staff, resources and material, which makes providing even the most basic assistance challenging. In addition, one interviewee from the victim support services professional group considers that final users do not really know of the services that do exist.

In case of situations falling under article 59bis of the Organic Law No. 4/2000 (victims of trafficking, see chapter 2), police give legal protection and support to victims, which includes, if necessary, entering a witness protection program so that nobody knows who they are. If they are migrants with an irregular status, they can get legal permits in exchange for cooperating with the police. Catalan police have signed collaboration agreements with two third sector organisations which offer specific support services to victims of labour exploitation. Most victims are offered primary support services – like shelter, food, clothing, etc. – social and occupational integration programs, training courses, Catalan/Spanish courses, legal aid, social support...[P(1)]. It must be stressed that their referral system works on the case-by-case basis. As the case study evidences, the most common assistance provided to victims is advice about legislation, their rights, information about existing resources or programmes and how to lodge a complaint to the labour inspectorate.

In one case, victims regardless of them not being entitled to stay in Spain, can enjoy better assistance if they apply for asylum. This is not related to the labour exploitation but rather to their country of origin; for example Mali, which is currently (2014) deemed to be an unsafe country.

Organisations dealing with victim support services tend to coordinate and support each other; when one of them cannot offer a service, they know if there is another organisation that can provide it, and they try their best to refer the victim.

If victims need legal support, even in the case of being assisted during proceedings and victims earn less than twice the Spanish minimum wage, legal aid lawyers (abogado de turno de oficio) can be officially appointed. Nevertheless, an interviewee from the J group

considers that the quality of lawyers may vary a lot, and for this reason, in some cases, lawyers do not really serve the victims' interest.

Despite efforts made to support and ensure access to the justice system, difficulties linked with funding support services remain, and as a professional [J(1)] points out, the only option is to rely on altruistic basis:

Estas medidas tienen efectividad hasta el punto en qué estén dotadas de recursos económicos por parte de la administración. El problema es que siempre faltan recursos i como que también es un tema que se desborda, acaba siendo muy altruista, como colaboraciones con Caritas.

These measures are effective as long as they are provided with financial resources from the administration. The problem is that there is always lack of resources and because it is an overwhelming matter, it ends up being based on altruistic basis such as collaborations from Caritas. [J(1)]

An interviewee from the S group shares this opinion about the scarce resources available:

Con lo que tenemos y con los pocos recursos que hay, yo creo que se hace lo que se puede

We do everything we can with what we have and the few resources available. [S(1)]

On the basis of information gathered during the fieldwork research, the following table summarises the organisations that have been cited and the corresponding services they run. The main conclusions are that on the one hand, many organisations provide several services in which information and legal advice are the most recurrent. On the other, only one trade union, CCOO, provides the service of accompanying immigrant victims of exploitation during criminal proceedings.

Organisation	Psycho-social care	Legal advice	General information and referral	Accompaniment during criminal proceedings	Humanitarian Assistance (food, shelter, ...)	Vocational training/job seeking
EXIT						X
CEAR	X	X	X		X	X
CEPAIM		X	X		X	X
RUMINAUY		X*	X			X*
CASC			X**			
Trade union CCOO		X	X	X		X
Trade union USOC		X	X			X
ACCEM	X	X	X		X	X
SEVILLA ACOGE	X	X	X		X	
CARITAS	X	X	X		X	X
APIP-ACAM	X				X	X
SAIER (Service Centre For Immigrants, Emigrants And Refugees)			X			

*service especially addressed to Latin American immigrants

**service especially addressed to Senegalese immigrants

5.2 Access to Justice and other mechanisms to empower victims

Concerning the effectiveness of the *social* (civil¹⁵) justice system in enabling victims to claim compensation and back pay for denied wages, the majority of interviewees consider that the situation has worsened in recent years, for three main reasons:

1. Justice is expensive. If victims want to bring employers to court they must pay a fee [L(1)]; in addition, Madrid has eliminated the legal advice service provided by state appointed lawyers. Currently, the local bar association is provisionally fulfilling this function which is essential for any citizen, and especially for exploited migrants who are not familiar with the Spanish justice system.

2. Increase of labour lawsuits. Because of the impact of the crisis, the number of lawsuits has increased but the resources of the administration have not risen accordingly. This fact was explained by a professional [J(1)]:

Teníamos un buen sistema de justicia laboral. Yo diría la crisis y la pasividad del gobierno en dotar de suficiente plazas de jueces, está penalizando fuertemente la legislación social. Deberíamos ser el doble. El ratio de jueces en función del número de habitante se ponen a la mitad de los países avanzados, hemos de trabajar el doble y con unas leyes complejas.

We had a good labour justice system. I would say that the economic crisis and the government passivity in providing enough judges to the courts have heavily affected social legislation. We should be twice as many. If we look at the ratio of judges to number of inhabitants, (Spain) has half (of judges) the amount of developed countries; we have to work twice as much and with complex laws. [J(1)]

This situation means that court decisions take a year or more to be taken and if compensations are granted, at least another year will pass. If victims are seasonal workers, they must return to their country and do a power of attorney in favour of a lawyer. The complainant must endure very slow bureaucracy from their country of origin and does not get paid due wages until the following year when he/she is recruited again.

If the employer who has to pay back denied salaries is not financially sound or he/she has disappeared, a public fund, FOGASA (Wages Guarantee Fund) is responsible for paying. Unfortunately, it is now below minimal standards too and laid down compensations take at least 1.5 to 3 years to be paid.

3. Burden of proof difficult to prove. When exploited immigrant workers are recruited without a contract, this makes it very difficult for them to provide solid proof of witnessing/experiencing exploitation and claiming compensations. As a professional [S(1)] stressed:

¹⁵ In Spain, the jurisdiction in charge of claiming compensation for denied wages, is called social or labour jurisdiction. Source: Law 36/2011, consolidated version 2011 www.boe.es/buscar/act.php?id=BOE-A-2011-15936.

La eficacia (de la justicia) puede ser positiva, el problema tiene que ver con las pruebas que un juez acepta a la hora de decidir si se produjo realmente explotación. Creo que ahí está más el problema. Un trabajo irregular se caracteriza por qué es un trabajo que tiene que ser invisible, por esta razón el empresario buscará aquellas medidas que favorezcan esta condición como la ausencia de contrato o los sueldos en metálico. El reconocimiento por parte de los jueces de las pruebas es el principal problema que nos encontramos.

Effectiveness (of justice) may be good, the problem lies on the evidence that a judge can take into account in order to decide if exploitation actually occurred. I think that the problem is there. The basic characteristic of an irregular job is that it must be hidden. Therefore, employers will look for ways to keep it this way such as absence of contracts or salary paid cash in hand. The main problem we are faced with is the recognition of the proofs on the part of the judge. [S(1)]

As for the *social* (civil) law claims dealt with by the criminal justice system, a large part of interviewees were not aware of this issue. The most relevant information was provided by a professional [S(1)] who explained that they are not in favour of using the criminal justice system for these issues. Criminal justice is a complex and very slow way through which victims may achieve nothing else than being granted the status of protected witnesses. There are no economic means to provide these persons with accommodation or other services.

Complaints can be lodged through third parties; in fact, trade unions usually lodge them. Other organisations can lodge them too, but it depends on whether the case has a social background and involves more workers - in other words, if it has a collective impact. If these conditions are met, other organisations can also lodge complaints, such as 'SOS racism'.

In terms of mechanisms that would facilitate the lodging of complaints of migrant workers against employers, interviewees suggested the following measures:

- Implementing mechanisms already included in the Aliens Act for legalising the situation of immigrants who report labour exploitation.
- Empowering trade unions in order to better assist workers.
- Giving the opportunity to have good lawyers free of charge. Legal aid lawyers (*abogados de oficio*) already exist, but there are huge differences among them; some are very motivated and very good, but some others are not.
- Complaints should also be lodged online. It should be easier to do it online in many languages and make it available at a European-wide level.
- Allowing migrants' organisations to also lodge complaints because currently it is not possible. In addition, a more effective collaboration with trade unions is advisable. In particular, trade unions should inform migrants' organisations about the situation of the complaint lodged by their country fellows.

6. Attitudes

When interviewees answered the question on *whether or not interventions into situations of labour exploitation, generally speaking, serve the interests of the migrant workers concerned*, they tended to distinguish between individual and general interests.

Individual interest. Under this category, a wide spectrum of answers was given covering all approaches to the question. Among those who consider that justice really does serve the interest of the migrant workers concerned, the overarching idea is that justice works, and once the prosecution starts, they will receive residence permits and victims' protection, which will restore their human dignity. Another position that many respondents gave is very different. Some consider that both options (complaining or not complaining) are undesirable, because ending with severe forms of exploitation usually implies, among other things, the difficulty to find a new source of income. In this vein, one lawyer explained:

Por un lado, cuando se interviene se rompe una realidad que perjudica o que está por debajo de la realidad y también puede ser que el trabajador quiera salir de esta realidad y por esto denuncia, pero por el otro porque, acto seguido, puede perder los ingresos económicos que está teniendo, puede perder la residencia y además, además la sentencia tarda mucho, además el inmigrante no tiene los recursos suficientes para acceder a la justicia. (...) Si son trabajadores sin permiso de residencia no les dan inmediatamente un permiso para trabajar.

On the one hand, when intervention takes place, a reality that harms or that is under the reality is broken. It may occur that workers want to get out of this situation (of exploitation) and for this reason lodge a complaint, but at the same time they can lose their earnings, they may lose their residence permit and in addition, court decisions take a long time and maybe the immigrant does not have enough resources to access to justice (...) if they are workers without residence permits they will not be granted with a work permit. [L(1)]

Two interviewees made a distinction between institutions carrying out inspections, because sometimes interventions are not only conducted by the labour inspectorate but by the police. When it occurs and when immigrants are in an irregular administrative situation, they can be expelled. It is evident that this measure does not serve the interest of immigrant workers.

Finally, interviewees that consider that interventions do not serve victims' interest link to specific nationalities that despite interventions are likely to fall again into exploitative situations. This is the case of Chinese workers who, even if they acquire victim status, often disappear and find another job with similar exploitative conditions.

General interest. Professionals who provided an approach based on the general interest, tend to agree that interventions are positive because controls and interventions benefit workers in general, as even if the persons who have complained do not see any improvement in their situation, their example may be useful in the future. This way, according to interviewees, less exploitation will occur. As an interviewee from the L group hinted:

Muchas veces puede suceder eso, que de esa denuncia se benefician otros trabajadores de la misma empresa o de futuro. Pero puede que el que denunció, a lo mejor no reunía otros criterios y no va a obtener ese beneficio.

This can happen many times. The complaint benefits other workers from the same company or future workers. Perhaps the person who made the complaint did not meet other criteria and is not going to get this benefit. [L(1)]

When interviewees were asked why more migrant workers who are victims of labour exploitation do not come forward and seek a way out of their situation, they gave the following replies:

- Sometimes immigrants do not consider themselves exploited.
- Lack of victims' knowledge of legal mechanisms and rights that they actually could enjoy.
- Lack of knowledge of available resources.
- Lack of knowledge of the host society.
- Their irregular administrative situation and the fear of being expelled prevent them to refer to institutions.
- Fear of retaliations from the employers/criminal organisations.
- Fear of losing the only source of income they have.
- A certain "Stockholm syndrome" (despite having suffered harsh conditions, exploited workers are prone to protect employers and justify their behaviour).
- Unawareness of health and safety standards.

Many of these aspects have also been confirmed by some case studies, whereby victims, even if they look for a solution to their situation, ask for information, lodge complaints and even bring their employer to court, eventually change their mind – often due to the fear of retaliation against their families or the difficulties to having to find a new job. In addition, in one case study a victim, after having suffered severe exploitation, having their elbow broken in an accident at work and having being dismissed during the recovery period, did not come forward because she felt discouraged and without energy. In rare cases, the way out of the victims' situation is to claim better conditions directly to the employer, as in one case study, even if the risk of being dismissed is high and eventually, improvements might be sub-optimal. In practice, the worker's registration to the social security was modified from 4h to 8h per day even if she worked 12h per day.

At the other end within labour relations, there is the case of Chinese exploited workers and a professional [P(1)] gives more evidence of why in the interviewee's experience, they almost never lodge complaints or ask for better conditions:

Primero por el proceso de explotación "demandada", ellos quieren ser explotados y segundo porque las condiciones de acogidas del país imposibilitan otra cosa. Si soy ilegal y me presento (en una comisaría) me van a abrir un expediente de expulsión. Si desconozco la realidad del país porque me han aislado socialmente, idiomáticamente y si mis únicas referencias sociales son mis propios explotadores y el colectivo de trabajadores explotados, y luego, si estoy en un estado de necesidad en qué imperiosamente necesito hacer esto o morir de hambre, ya está, es una fórmula matemática.

First of all due to the "demanded" exploitation, they want to be exploited and secondly, because reception conditions of the (host) country make any other option impossible. If I am illegal and I go (to a police station), they will start an expulsion procedure. If I do not know the reality of the country because I am socially and linguistically excluded and my only references are my exploiters and the group of exploited workers, and then, if I am in need that obliges me to do either this or starve, this is it, this is a mathematical formula. [P(1)]

Many of the reasons provided by the previous open question have been confirmed by the answers given to the question on the three most relevant factors that significantly account for the fact that not many migrant workers who have been severely exploited come forward, seek support or report to the police.

Concerning the most relevant results, three options received the same number of preferences (17), namely: fear of retaliation from offenders, fear of having to leave the country and the awareness that being jobless is worse than working in exploitative conditions. Many interviewees (13) also consider that victims are not aware of their rights and the support available to them, and a significant number also think that victims believe that speaking to authorities is not worthwhile (8).

Lack of effective monitoring of relevant areas of economy	0
Lack of targeted support service provision available to victims	2
Victims are not aware of their rights and of support available to them	13
Victims fear retaliation from the side of offenders against them or against family members	17
Victims suffer from feelings of shame	0
Victims believe that speaking to authorities is not worthwhile or they would not benefit from subsequent proceedings	8
Victims believe that proceedings are too bureaucratic and costly	2
Victims fear that if their situation became known to the authorities, they would have to leave the country	17
Victims do not trust that the police in particular would treat them in a sympathetic manner	4
Victims perceive being jobless as worse than working in exploitative conditions	17
Other-please specify	0
Don't know	0

When interviewees were asked about the three most important factors that victims value most, the option that received most preferences (24) was related to the capacity 'to stay and make a living in an EU country', which represents a global goal that includes labour and social issues. One expert [S(1)] added an interesting reflection about immigrants' integration and the resources allocated to them:

Mi apreciación general es que los trabajadores inmigrantes son un sector aparte de la población... son elementos extraños en el cuerpo social y por lo tanto los recursos que se implementan para ellos son marginales.

My general impression is that migrant workers are a separate sector from the population... they are not part of the social body and therefore, the resources available to them are marginal [S(1)]

The two options that follow make reference to immigrants' families, their security and the capacity to support them: 17 preferences each, actually makes the well-being of their families become the first matter of concern and the main reason why they accept harsh working conditions. A judge, when asked about the factors above, replied:

A causa de la pobreza y de la situación de necesidad de los familiares en sus países de origen. Tan simple como eso.

Because of poverty and because they leave their families in severe need in their home countries. As simple as that. [J(1)]

What seems most relevant is that the three options chosen in order to be fulfilled may also justify the acceptance of severe and lasting labour exploitation.

Ellos están sujetos a su situación jurídica, laboral, familiar. Ellos priorizan y piensan “Tengo que trabajar y no quiero dedicarme a poner una denuncia”. A lo mejor también falta información de cómo interponer una denuncia y cuáles son los beneficios de esto

They are tied by their legal, work and family situation. They prioritise and think ‘I have to work and I don’t want to waste time lodging complaints’. Maybe they also lack information on how to lodge a complaint and the benefits of doing it. [S(1)]

To be safe and to be protected against further victimisation	10
For their family to be safe	17
To be able to stay and to make a living in an EU country	24
To see that offenders are held accountable and that justice is done	6
To be respected and to see that their rights are taken seriously	9
To be in a position to economically support other family members	17
To receive compensation and back pay from employers	5
To be able to return home safely	0
Other (please specify) The interviewee considers that for the complainants it is very important not to be seen as police informers by their peers	1
Don’t know	1

When experts were asked if they believe that enough was being done in Spain to address severe forms of labour exploitation, different positions were taken up. Some answered affirmatively, that quite effective measures have already been adopted. Other respondents replied negatively but they did not identify any specific improvements. Nevertheless, among these respondents, a comment from a professional [W(1)] about the “legally consented exploitation” is meaningful even if no suggestions are provided:

Si se hiciera lo suficiente, no habría tanta explotación. (..) Yo creo que las instituciones son conscientes que están personas cubren una parte de la economía y todo el mundo lo sabe. (...). Yo creo que hay como un pacto de silencio que hace que los explotadores sigan explotando y las administraciones para cubrirse hacen unas inspecciones.

If enough was being done, there would not be so much exploitation. (...) I think that institutions are aware that these persons meet the needs of a part of the economy and everybody knows it. (...) I think that there is a sort of pact of silence, so that exploiters continue to exploit and administrations in order to cover their own back, make a number of inspections. [W(1)]

Finally, for many other interviewees, there is room for improvement and they suggested the following measures. In order to make them more coherent and understandable, they have been divided into categories:

Victim support. The lack of specific programmes and funding that has been highlighted in section 5 is the motivation that pushes some interviewees to suggest focusing interventions under the prism of protection instead of enforcing the Aliens Act. Victims and witnesses of labour exploitation should receive financial support as well as accommodation.

Immigrants' integration. The overall idea is, on the one hand, to avoid exploitation and on the other, to help victims who received assistance to make a new life. As integration implies multidimensional interventions, an interviewee [L(1)] summarises the most relevant according to them:

Se podría mejorar todo lo que es recepción de inmigrantes, se debería reformar todo lo que es persecución del inmigrante que no tiene papeles porque están perseguidos como si fueran delincuentes cuando son personas que necesitan trabajo, se debería mejorar todo el área de asistencia social para evitar que la gente llegue a situación desesperantes que los lleven a sufrir explotación. En fin, se debería mirar la inmigración como un objetivo a solucionar por medio de la integración y no por medio de la persecución.

Reception of migrants could be improved; prosecution of undocumented migrants as if they were criminals when in fact, they are people who need a job should be amended; social support services should be improved to prevent people from reaching situations so desperate that they'd rather endure labour exploitation; immigration should be regarded as an objective that should be solved by integration instead of prosecution. [L(1)]

Integration policies can be the result of different overlaying models based on multiculturalism or interculturalism and are not only a matter of funding and resources. One interviewee from the W group considers that immigrant workers should be treated like any other worker, and referring to trade unions services, they should not have separated or specific services. For this reason, the respondent seems to claim for interventions on interculturalism to be axed:

Para mi debería estar muy normalizado, (nacionalidad) no debería haber un tema diferencial. Las personas que acuden son trabajadores, todo debería basarse en los derechos y no en función de la procedencia de los trabajadores.

In my opinion, it should be normalised, (nationality) should not be a differential element. People who go there are workers, so everything should be based on rights and not on the workers' origin. [W(1)]

Legislation. Having in mind that domestic service is one of the most affected by labour exploitation, an interviewee [S(1)] considers that Spain must ratify ILO agreement 189 on domestic workers. Improvements should also be introduced against trafficking. In particular, legal provisions should be contained in a specific law and not in an Organic Law (Aliens Act) aimed at governing migration influxes. This way, it is possible to break the link between immigrant flux control and protection measures. Some interviewees stressed that employers who are sanctioned for not paying social security contributions and other taxes should be prevented from closing their companies down and opening a new one the day after.

Justice system. A lawyer explains that when he/she assists immigrants, they find it difficult to understand the processes and the competences that every institution has. It would be better to set a one stop shop:

Y además, la percepción del que tiene que lidiar con las instituciones es que tiene que lidiar, primero con la inspección, luego con los Mossos, luego con Extranjería, con tantos organismos que... Claro, si fuera un solo organismo, a lo mejor hablarías con una sola persona y entendería todo el proceso, pero, por mucho que el informe de la inspección sea favorable, no hay una sentencia que diga que hay una... que hay una explotación laboral.

And besides, the perception of the person who has to deal with institutions is that they have to deal first with Inspection, then with Mossos, then with Immigration, with so many bodies ... Of course, if there were a single organisation maybe you would just talk with one person and would understand the whole process, but in spite of a favourable inspection report, there is never a verdict that says there is a... that there is labour exploitation. [FG(L)]

Concerning judges, there is also a lack of specialisation in the domain of labour exploitation. This would allow judges to be more competent and better tackle labour exploitation:

Se trata de una falta de especialización porque el mismo juez está tratando una causa de violencia doméstica, una causa de homicidio, un tema de robo y al mismo tiempo esto. A mi aviso el derecho es muy amplio que se tiene que buscar una especialización incluso para los jueces y no puede ser que un juez toque todos estos palos.

It is a matter of lack of specialisation because the same judge is dealing with domestic violence, murder, robbery and at the same time labour exploitation. In my opinion, the law is too wide and specialisation must be introduced also for judges. Judges cannot deal with all these issues. [L(1)]

Raising awareness. Some interviewees hint that exploitation of migrant workers is not a popular issue despite its importance. Along with arms and drugs trafficking, this is what generates more illegal economic profit in the whole world. It is an issue on the rise that would require more dissemination and resources. Public opinion should be more aware of it:

No hay una penalización social, no se ve mal que un empresario tenga un montón de inmigrantes irregulares y que los esté explotando... o no se ve mal que un montón de inmigrantes vivan en un asentamiento en condiciones infrahumanas

There is no social condemnation, it is not frowned upon a businessman having a lot of irregular migrants working for him and exploiting them... it is not condemned that migrants live in sub-humane settlements. [W(1)]

Nevertheless, another interviewee thinks that it is also a problem of political will, there is neither awareness nor will to fight this problem [FG].

Law enforcement. The two suggestions that fall under this category concern the improvement of controls over seasonal work recruitment agencies, especially in the agricultural sector. An interviewee is aware that human trafficking for purposes of labour exploitation is an international problem and should be coordinated by a trans-national organisation that designs effective measures to fight this type of crime. More generally, the labour inspectorate and the police's means and capacities need to be improved; for instance the capacity of the police to conduct investigations:

Muchas veces el propio trabajador no te confirma su estado de explotación, entonces hay que ir más allá, debería haber una labor de investigación por parte de la policía que es quien tiene más acceso a esto.

Many times workers themselves do not confirm their condition of exploitation, so one must go beyond. There should be a police investigation since they have access to it (information). [M(1)]

Concerning the three measures which would most improve the way labour exploitation is addressed in the country, the most recurrent suggestion was coordination and cooperation

among all the institutions that are involved in the fight of severe forms of labour exploitation (22 preferences). This situation can be summarised by a verbatim from a judge.

La policía está en un lado, sólo se coordina con el juzgado pero no hay ninguna organización de carácter social que nos haya dicho “cuando tengáis este tipo de delitos o de denuncias avisadnos” (...) inspección de trabajo no hizo nada, hizo sus informes pero tampoco dio salida.

Police are on one side, they only coordinate with the courts but there isn't any social organisation that has told us “when you have this kind of crimes or complaints, please alert us” (...). The labour inspectorate did nothing, they made their reports but it didn't give a solution to the problem. [J(1)]

The second most chosen option is about the capacity of the labour inspectorate to effectively monitor the situation of workers in the areas of economy particularly prone to labour exploitation (14 preferences), as a judge pointed out:

Lo de los talleres chinos era vox populi y nadie decía nada, luego el ayuntamiento (después de las inspecciones) se molestó mucho pero el ayuntamiento sabe perfectamente lo que había en xxx se veía, eran muchísimos talleres, pero muchos, muchos, estaba lleno de talleres textiles ilegales, todo el mundo hacía la vista gorda (...) todo empezó por dos denuncias anónimas de personas del mismo colectivo.

The case of Chinese textile sweatshops was vox populi and nobody said anything, then the municipality (after the inspections) was very disturbed, but the municipality of xxx was perfectly aware of this, it was evident, there were many sweatshops, many, many, it was full of illegal textile sweatshops, and everybody turned a blind eye. (...) everything started thanks to the anonymous complaint made by two persons of this same nationality. [M(1)]

Finally, the third option concerns the improvement of legislation against labour exploitation and its implementation (10 preferences). In particular, on the implementation side, a professional from the police suggests creating courts specialised in organised crime and training judges accordingly:

Es decir, igual que se han creado los jueces especializados en otros juzgados también pueden especializarse en materias concretas como el crimen organizado, que evidentemente desborda a un juez que tiene credibilidad con un asunto pequeño y un asunto de estas características es imposible que lo lleve, además que no conoce. A lo mejor no está especializado, no conoce ni las lenguas, no tiene todo lo que se necesita porque son mafias internacionales. Me refiero a que no es el típico delito del barrio sino que tiene una complejidad internacional que exige también una especialización, en mi opinión

In the same way that they have created specialised judges in other courts, they could specialise as well in specific areas such as organised crime, which obviously goes beyond a judge who has credibility in a small case, but a case of this kind is impossible for him/her to take, and doesn't know how to handle it. Maybe he/she is not specialised, doesn't know the languages, or doesn't have everything that it is needed because they are international mafias. I mean, it's not a typical crime in the neighbourhood, but it rather has an international complexity that also requires specialisation, in my opinion. [FG(P)]

Improve legislation against labour exploitation and its implementation	10
Improve legislation to allow better access to justice and compensation	7
More effective monitoring of the situation of workers in the areas of economy particular prone to labour exploitation	14
Measures to ensure that all workers know their rights	7
Measures to ensure that all workers have access to labour unions	6
More effective coordination and cooperation between labour inspectorates, the police and other parts of administration as well as victim support organisations and the criminal justice system	22
Setting up of specialised police units to monitor and investigate labour exploitation	7
Regularising the situation of certain groups of migrant workers with an irregular status	6
Regularising the situation of migrant workers once they have become victims of severe labour exploitation	6
Measures addressing corruption in the administration	1
More training of police, labour inspectors and other authorities	5
Police and courts taking labour exploitation more seriously	5
Don't know	1

7. Additional observations, including contentious issues from interviews/focus groups

7.1 Additional observations

Concerning issues that have not been fully developed during the report, there is the perception that exploitation is a side effect of the alien act, which set the conditions for who can enjoy similar rights and duties to Spanish citizens, and who cannot. Three interviewees [J(1); P(1); S(1)] share the same opinion; in particular the former hints:

Creo que es igual de lo que sucede con la droga: porque se enriquece, porque hay droga, porque hay mafias y grandes delitos relacionados con la droga? Porqué el consumo está prohibido. La solución es autorizar el consumo? Pues aquí puede plantearse lo mismo. Porqué sucede esto? Porqué las puertas de Europa están cerradas, del espacio Shengen si prefieres. La solución es abrirlas? Esta es la cuestión.

(...) I think it's the same as with drugs: why are there drugs out there and people making money out of that? Why are there mafias and big crimes related to drug trafficking? Because drug use is forbidden. Would allowing drug use be the solution? Well, we can ask the same question about the topic we are talking about: Why does it happen? Because the gate to Europe is closed. Let's say the gate to the Schengen Area, if you prefer. Is the solution to open that gate? That is the question. That is the issue. [J(1)]

In the same vein a member of P group criticized that the Aliens Act 4/2000 combines immigration management with the fight to immigrant workers exploitation:

Es que se ha establecido una vinculación absolutamente íntima entre los procesos de explotación y los procesos de extranjería. (...). Eso ha derivado en que cuando tienes contactos a nivel judicial los jueces hacen esa asociación de manera automática. Esto ha condicionado que la Ley de Extranjería sea el lugar donde se especifica cuáles son las ventajas legales que obtienen los trabajadores por el hecho de denunciar, lo cual ya dice mucho de nuestra legislación. Es decir, que en lugar de tener una ley específica de procesos de explotación de trata, en este caso, ese capítulo está inserto dentro de la Ley de Extranjería, del Reglamento de Extranjería y del Protocolo Marco de la Ley de Extranjería. Con lo cual aquí hay una relación un tanto torticera al respecto, que lo condiciona todo

An utterly intimate connection has been established between the processes of exploitation and immigration processes. (...)That means that when you have connections at the judicial level, the judges make that relation automatically. This has conditioned that it is the Aliens Act where are specified what legal benefits obtain the workers if they report, a fact which says a lot about our legislation; i.e. instead of having a specific law concerning exploitation processes of trafficking, in this case, that chapter is embedded within the Aliens Act, the Immigration Regulations and the Protocol Framework for the Aliens Act. Thus, there is here a somewhat wrong relationship, which conditions everything. [FG(P)]

The fact of setting different levels of rights is seen by an expert of the S group as a source of discrimination:

En el caso de los extranjeros y de los sin papeles en particular, la legislación de extranjería es una fuente de discriminación importante. Tal como comentaba antes, el hecho de compartimentar los derechos en función del qué situación legal tiene y le asigne derechos distintos de otras situaciones.

For foreigners and undocumented in particular, the legislation on immigration is an important source of discrimination. As we said before, the fact of differentiating between rights depending on your legal situation and assigning different rights to different situations. [S(1)]

Finally, it is worth reporting a verbatim from an expert from the S group, criticising the lack of coherence between policies addressed to aliens control and at the same time providing assistance to them:

Es un sinsentido, el mismo sistema por un lado hace las personas irregulares y al mismo tiempo el mismo sistema palía las situaciones que produce.

It is a nonsense, the very (legal) system on the one side makes people irregular and at the same time the very system alleviates the situations that it produces. [S(1)]

7.2 Contentious issues

Concerning contentious issues, focus group participants were asked about the relevance of education in reducing the likelihood of severe forms of exploitation. Here, interviewees had different points of views; some think that it affects illiterate people, while some others tend to include more skilled profiles. Participants distinguish between severe exploitation and administrative infringements. People with high education levels are not used to being severely exploited even if under certain circumstances they have to accept conditions under the law:

Yo distinguiría entre la situaciones de explotación laboral severa de delito penal, donde a mi modo de ver y no tengo mayor elemento de juicio, el nivel sociocultural bajo es un elemento determinante, a mí se me hace mucho más difícil pensar que una persona con un determinado nivel socio cultural pueda ser víctima de un delito. Cuestión distinta es en el ámbito más frecuente para nosotros, de explotación laboral pero no ya delictiva donde hablaría más de nivel sociocultural de necesidad económica pura y dura. Volviendo a la situación de los inmigrantes, es bastante frecuente encontrar personas cualificadas, maestros que aceptan cualquier trabajo porque no tienen permiso de trabajo y han migrado para buscar el pan, con lo cual no se trata tanto del primer caso como una situación de necesidad económica

I would distinguish between the situations of severe labour exploitation with criminal offense, where, as I see it and with no greater element of judgment, the low socio-cultural level is a key element. To me, is much more difficult to believe that a person with a given socio-cultural level can be a victim of crime. A different matter is the most frequent situation for us of labour exploitation, but not a criminal one... where I'd talk more about just pure and serious economic need than about socio-cultural level. And back again with the situation of immigrants, it is relatively common to find qualified people, teachers who accept any kind of job because they do not have a work permit and have migrated in search of bread, which is not so much the first consideration, but a situation of economic need. [M(1)]

If on one side, severe forms of labour exploitation only residually affects educated persons, if it finally occurs, the little evidence that experts have make them think that this profile of victims are more likely to seek a solution to their situation. For instance, the two Chinese people who lodged a complaint and informed authorities about a huge illegal sweatshops network, had a good educational level.

Another contentious issue that was discussed during the focus group concerned the role of service companies in contributing to exploitation. Also in this case, there were different positions that needed to be deepened. This aspect was included in section 4.1.

8. Conclusions

Keeping in mind the following:

- The relevant changes in the legislation for tackling human trafficking and exploitation in order to prosecute criminal organisations and protect victims (article 177bis of the Criminal Code, article 59 and 59bis of the Aliens Act 4/2000) and the instructions and protocols have had a limited impact on the fight against trafficking for labour exploitation and against severe forms of exploitation by criminal organisations.
- The limited importance of the other legal avenue, the so-called “labour integration” scheme, as having enabled few workers to obtain residence and work permits.
- Exploitation is mainly present in “service occupations” (namely “accommodation and food service” and “activities of households as employers”), “unskilled jobs” and “agriculture” (namely “farm workers”).
- The many and intertwined risk factors that were identified by experts derive from categories “legal and institutional settings”, “personal characteristics and the initial situation of the migrant worker and “situation of migrant workers at their workplace”, as follows:

Legal and institutional settings	Personal characteristics and the initial situation of the migrant worker	Situation of migrant workers at their workplace
Low risk to offenders of having to compensate exploited migrant workers	Low level of education	Specific economic sectors more prone to exploitation
Labour inspectorate should be more effective in tackling severe forms of labour exploitation	Not speaking the language of the country of workplace	Precarious or insecure situations of employment and precarious or insecure situations of employment
Weak capacity of the justice system to actually punish offenders	Worker has experienced extreme poverty in their country of origin	Relative isolation of immigrant workers
	Irregular administrative situation	
	Lack of knowledge about basic aspects of the host country	
	Precarious economic situation	
	Being a woman, especially if employed in the domestic service	
	Being a national of Sub-Saharan countries.	
	Being a national of India, China or Pakistan.	

- Even if the majority of interviewees do not consider employment, temporary work and recruitment agencies as really being linked to exploitation, service companies in Valencia and Andalusia rural areas - dumping prices to compete with recruitment agencies - are considered environments in which exploitative practices occur.
- There are few pre-departure programmes and they do not inform workers about rights and duties, as well as being provided by employers' organisations. [W(1)].
- There are several organisations that adopt a comprehensive approach to labour exploitation issues. On the one hand, this helps to foster mutual knowledge between the organisation and the immigrant; on the other hand, it allows for the establishment of trust in the long run, which eventually allows for training and informing workers about their rights. Nevertheless, when immigrant workers need more professional and specific support, they are usually referred to trade unions. For instance, the Cepaim foundation offers a wide set of services, but for specific advice on labour issues, victims are referred to local trade unions.
- Even if mechanisms of standard-setting and accreditation at national and international levels are considered quite or really useful, some interviewees show criticism about their actual impact.
- The extremely different criteria that police forces or even different police teams adopt about considering an exploited undocumented immigrant either as an irregular resident or as a victim can do serious harm to the immigrants' legal certainty. More specifically, since the Spanish National Police is the only force that has the competence of enforcing the Aliens Act, they tend to consider immigrants as illegal residents, while the others (Guardia Civil and regional and local police forces) provide different degrees of victims' protection as well.
- Even if workers are indeed considered as victims of severe forms of exploitation, there are three factors that affect the possibility to refer them to support services: weak referral systems, lack of cooperation from the victims themselves and lack of support services specialised in victims of exploitation.
- Encouraging results have emerged from a recently signed protocol for protecting the victims of trafficking in the region of Catalonia.
- The criminal justice system lacks resources and adequate tools for prosecuting international criminal organisations and for protecting victims and avoiding further victimisation.
- Concerning labour courts, the difficulties in proving that a labour relation actually existed, fees to be paid and the serious obstacles to ensure quick trial hearings and compensations prevent some immigrants from accessing justice. For those who finally do, when the trial hearing takes place, some do not bear witness. If the court ruling finds the employer guilty, he/she can declare bankruptcy, avoid paying compensation and can then theoretically start a new business.
- NGO victim support services are open to a wide spectrum of vulnerable people, including victims of labour exploitation, and are free of charge. The problem is that there is no national plan against labour exploitation, and there is a shortage of staff, resources and materials, which often means that interventions depend on altruism.

- Complaints can be lodged by third parties. At the same time, several improvements should be introduced, such as: improving the quality of public defence lawyers, empowering trade unions to better assist workers and allowing the lodging complaints through the internet.
- Interventions do not always serve the interests of migrant workers, especially when they imply that workers will lose their source of income, be expelled from the country or be exposed to retaliations or to further exploitation.
- Considering the above mentioned reasons, severely exploited migrants do not lodge complaints also – according to for some interviewees – because of their lack of knowledge about the host society, their rights, available resources, justice system, security and safety standards, in addition to a certain tendency to protect the employer.
- Victims tend to accept severe forms of exploitation mainly for reasons related to their families and to the possibility of staying and making a living in Europe.

The following improvements should be introduced:

- Similarly to victims of trafficking for sexual exploitation, a national plan for tackling severe forms of labour exploitation should be implemented. Even if the availability of resources for organisations and victims is essential, other weaknesses that emerged during the fieldwork research should be addressed, such as improving the general knowledge of the mandates and tasks of all the organisations involved, sharing protocols to exchange information and coordination and intervention criteria.
- Nevertheless, the mere introduction of a National Plan will not be the solution to end exploitation, since other overlying factors should be tackled:
 - **To adopt a clear position in favour of supporting victims.** It consists of a political pre-condition that should inspire the National Plan itself and the reform of the Aliens Act. The most evident result would be the harmonisation of police units and police forces criterion, which should mainstream the same approach based on protection instead of prosecution.
 - **When complaints are lodged, to ensure that the individual's interest is served.** In other words, entitle victims to assistance and resources that show the institutions support to his/her decision
 - **To promote social inclusion of migrant workers.** Multidimensional interventions should be set in order to prevent them from falling victim to harsh labour conditions and to guarantee equal rights and duties in relation to other citizens.
 - **To improve legislation.** The ratification of ILO agreement 189 about domestic workers is considered to be important, especially because this is one of the sectors where more exploitation occurs. Improvements should also be introduced against trafficking; in particular, legal provisions should be contained in a specific law and not in an Organic Law (the Aliens Act) aimed at ruling migration flows.

- **To enhance the justice system.** In order to make justice faster and easier, a one-stop shop representing and coordinating all the institutions involved is advisable. In addition, following the example of gender violence courts, a special court should be created in the field of labour exploitation. This will improve judges' specialisation, hence their capacity to tackle the phenomenon. On the other hand, the justice system should improve their response to cases involving international criminal organisations. In this vein, one interviewee [P(1)] explained that there is a proposal to charge the Spanish National Court (Audiencia Nacional) of it.
- **To assign better resources and better legal provisions to the labour inspectorate.** Labour inspectors should be allowed to access to private households as well as undeclared workplaces when sound evidence of exploitation exists. In addition, they should be able to make more effective inspections immediately after a complaint is lodged.
- **To promote the introduction of standards** that certify that certain products or services are labour exploitation free.
- **To tailor multidimensional interventions** targeting specific economic sectors or migrant nationalities, which are more likely to severely exploit migrants. Information campaigns, contact with representative organisations, specific labour inspections should be coordinated and addressed in a specific context.
- **To involve public opinion.** It is important to make public opinion aware that labour exploitation is one of the activities that generates the most illegal economic profit in the world; that harsh labour conditions are not a price that newcomers or migrants in general should have to pay, and that unfair competition affects companies which respect workers' rights. These are facts that sooner or later society as a whole will have to deal with.