

SPANISH PROTOCOL FOR THE PROTECTION OF VICTIMS IN TRAFFICKING HUMAN BEINGS

Autora: Carolina Barrio Peña, Fiscal Delegada de Extranjería, Santa Cruz de Tenerife

(Non official translation)

I.PURPOSE OF THE PROTOCOL

1.The purpose of this Protocol is to establish a guideline for the detection ,identification ,assistance and protection of victims of THB ,to promote coordination among the institutions involved in those proceedings , to define mechanisms for the relationships among public administrations ,and the communication and co-operation tools with organizations and entities with reputed and proved experience in assistance to victims of THB ,particularly those that can provide a comprehensive protection and participate in the public administrations programmes for the assistance and protection of victims

By this protocol, is intended to:

- a) Define the procedure for victims' of THB identification and co-ordinate the action of the authorities and institutions involved in the proceeding
- B) Establish guidelines for the evaluation of the risks that the victims are exposed to, and the determination of protection tools
- c) Define the aspects referred to the police or judicial formal complaint
- d) Define the necessary elements to provide victims adequate information about their rights, services and resources
- e) Establish criteria for a correct evaluation of a victim's needs, in order to provide them an adequate assistance
- f) Provide the inclusion of victims in a voluntary return programme
- g) Detail, in cases where the victim does not reside lawfully , the procedure for the recovery and reflection period ,and when appropriate, the exemption from liability and the granting of residence and labour permit, or an assisted return

h) Establish specific measures focused on the child victim

l) Define the participation of entities and organizations with proved and reputed experience in assisting victims of THB, particularly those providing an comprehensive assistance and participating in public administrations programmes for their assistance and protection

2. This Protocol also develops the provisions of Article 140 of Law Nº 4/2000 of foreigners' rights and freedoms in Spain and their social integration, and its modifications by Law 2/2009 and 10/2011

II. GENERAL PRINCIPLES

1. The actions contained in the Protocol, are focused on the promotion and protection of human rights, prioritizing the assistance and protection to the victims, avoiding a secondary victimization, encouraging them to co-operate in the criminal proceed against the dealers

Those actions will be approached from a gender perspective, ensuring that, protection measures are focused on a comprehensive framework, and adequate to the gender, age and other vulnerability situation that may affect the potential victim, like pregnancy, health or disability

Is considered as especially vulnerable, a person who has no other real or acceptable alternative than submit to abuse

2-Institutions and administrations committed to the fight against THB, will watch for the observance of the following principles:

a-To ensure that victims know their rights and obtain an adequate and specialized information

b-Adequacy of protection and assistance mechanisms to the age, gender and needs of the victim of THB, that ensure an attention to their particular vulnerability

C-Multidisciplinary care, provided by experts with an adequate training, and the co-operation of non-governmental organizations (NGO's)

d-To ensure that the access to the assistance and protection system to victims, it's not conditional on their cooperation in the criminal proceeding

e-Avoid the secondary victimization, minimizing the suffering and damage caused to the victims ,developing tools that promote their recovery and avoiding new traumatic experiences , especially during the criminal proceeding

f-Ensure their physical, social and psychological recovery

G-Victims' privacy and identity should be protected in any case

III-DEFINITION OF TRAFFICKING IN HUMAN BEINGS

1-It is considered according to article 177 bis of Spanish Criminal Code :

1. Whoever, using violence, intimidation or deceit, or abusing a situation of superiority or need, or the vulnerability of a national or alien victim, were to induce, transport, transfer, receive or house such a victim for any of the purposes described below, within Spain, from Spain, in transit or with destination therein, shall be convicted of human trafficking and punished with the penalty of five to eight years imprisonment.:

- A) Imposing on the victim forced work or services, slavery or practices similar to slavery or servitude or begging;
- b) Sexual exploitation, including pornography;
- c) Extraction of their bodily organs.

2. Even when not resorting to any of the means listed in the preceding Section, the actions stated in the preceding Section shall be deemed human trafficking when perpetrated with minors for the purposes of exploitation.

3. The consent of a victim of human trafficking shall be irrelevant when any of the means stated in Section one of this Article has been resorted to.

It is consider as victim in THB for the purpose of this Protocol, any person from whom there is a reasonable ground to believe that has been victim of the above described acts ,even if the exploitation has not been consummated and even if the potential victim has not made a formal police complaint

IV-SCOPE OF ACTION

1-This Protocol shall apply to all persons that should be considered potential victims of THB, without discrimination on account of sex ,nationality or administrative situation in case of non national victims

2-The Protocol shall apply throughout the country, without detriment to other regional or local Protocols that shall be enact to develop this Protocol

V-DETECTION OF A VICTIM OF THB AND FIRST ACTIONS

V.A.DETECTION OF A VICTIM

1-The detection of a victim is most of the times the result of a police investigation

2.The victim can also be detected as a result of a labour inspection, when the victim enters the country or, when the victim contacts a public or a private organization ,or when the victim uses a medical service ,social or educational , or contacts an information units (mobiles or telephone assistance service)

3-The victim shall also informs about her/his situation other people or organizations, or these last ones shall detect this situation by any other way

4-Any person knowing a situation of THB or a potential victim must make a formal complain to the public prosecutor or to the judicial authorities or to the police according to the Criminal Law

V.B .DETECTION BY THE POLICE

1. When the police responsible for the investigation of THB, or border controls are aware of the existence of a potential victim, will inform immediately the public prosecutor and also will prepare a police report
2. The communication of the detection of a potential victim to the public prosecutor will be immediate, and if possible, by using electronic tools

V.C .DETECTION BY THE LABOUR INSPECCION

1. Labour inspection, social security or any other regional organism committed to this subject, will carry out any investigations to detect labour exploitation situations

Any programmed action carried out by the Labour inspection or regional organism in the cases of THB for the purpose of labour exploitation will be coordinated with the police and preferably in co-ordination with the police

- 2.If in case of a non- programmed inspection ,if the officials shall detect evidences of THB , will immediately report to the Head Inspector, who ,in appliance to article 10.3 of the Labour Inspection Law nº 42/1997 14 November , will inform immediately the police and public prosecutor who will coordinate the action.

- 3-In relation to labour conditions of victims of THB ,the officials will fulfil the task they have entrusted by the Law nº 42/1997 14 November regulating Labour Inspections, both monitoring regulations enforcement as technical assistance .The personal of the Labour Inspection will also have jurisdiction over work/labour regulation , risk prevention, employment and immigration

- 4-Any inspection and its result , shall be reported by the Head of the Labour Inspection Office to the public prosecutor , with the evidences found, and also to the judicial authorities, all of this ,without prejudice of reporting an administrative offence ,if the detected fact, could also be considered as an offence to the labour regulations ,according to Art.3 of Law on offences and penalties in labour, enacted by R.D. 5/2000 4 August

V.D DETECTION BY OTHER SERVICES OR ENTITIES

- 1.When a potential victim of THB is detected in any immigrant detention centre , controlled by the central administration , in a health ,assistance or social service involved with any public administration part of this Protocol, or in any entity or organisation with a proved experience in

assisting victims , it shall be reported immediately to police, prosecutors and judicial authorities with jurisdiction over the place where the detection of the potential victim has occurred .

2. When the victim is detected in a child protection centre, the actions will be in accordance with epigraph XIV of this Protocol and also with all regulations enacted in child protection

3. When during the proceeding of an application file for international protection , appeared grounds to believe that the applicant was a victim of THB , the Asylum and Refugee Office will report to the Section of the Police with jurisdiction over migrations and borders , which will report to the identifications police unit , in order to apply article 59 bis of Law 4/2000 of foreigners rights and freedoms

V.E DETECTION AT THE BORDER OR IN INMIGRANT DETENTION CENTERS

1-When the potential victim is detected at the border , the police unit with jurisdiction over migrations control , will immediately report this situation to the Police Unit with jurisdiction over THB , and identifying the potential victim by police officers special trained in THB ,and to begin the procedure to obtain the recovery and reflection period. That person shall not be removed from the territory until the victim is completely identified according to article 59 bis of Law 4/2000 of foreigner's rights and freedoms

2-If the victim is detected during the staying in an immigration centre, this situation will be immediately report to the public prosecutor and to the Direction , who will report to the migrations police unit in order to identify the victim in accordance with the provisions contained in this protocol .The detection will also be reported to the migration police unit that applied for the retention and also to the migration and border Headquarters ,therefore any expulsion order against his/her shall not be enforced until the identification has been completed ,according to article 59 bis Law nº 4/2000

VI-IDENTIFICATIONS OF POTENTIAL VICTIMS IN THB

VI.A-IDENTIFICATION POLICE UNITS

1-The identification of a victim in THB, will be carried out by an specially trained in prevention and fight against THB police unit, also specialized in assistance to victims

2-From the time this Police Unit considers, there are reasonable grounds to believe that a person has been trafficked ,and during all the identification procedure ,measures focused on his /her protection ,or avoiding the influence of people linked to the dealer ,social and health care , counselling and legal support ,shall be taken

3-In case of a non national victim without lawfully residence ,the police unit with jurisdiction over migration, will not begin the return procedure for the offence against article 53 .1.a of 4/2000 Law , in accordance to article 59.bis 2 Law 4/2000 .The process shall be interrupted as soon as grounds of THB are discovered

4. In case of a child victim, police unit will report immediately to the public prosecutor and the actions in those cases are set up in epigraph XIV of this Protocol

VI.B .INTERVIEW

1. A police unit with special training in investigating THB and identifying victims will carry out an interview, also in co-operation if necessary, with regional administrations and entities with a proved experience in assisting victims during all the identification procedure

2-For the identification of a potential victim of THB, an evaluation of different issues and elements is required, further than information gathering about the crime and the dealers

3. The interviews shall be developed in a confidential and private way, using a language that the victim can understand or with an interpreter .If possible, in an adequate environment to the age, gender or any other circumstances .Measures focused on avoiding contact with the dealers or people related to them, shall be taken, following the instructions contained in Annex 1

4-At the end of the interview, the potential victim will be informed about the right to have free legal aid, if she/he can't afford it, according to the free legal aid act, and also can obtain legal support from the organizations and entities with a proved experience in assisting victims. The victim will also be informed about the possibility of contacting specialized organizations to be assisted or companied by them

VI.C. DETERMINATION OF THE EXISTANCE REASONABLE GROUNDS

1. In order to detect if a person is a victim of THB, the indicators contained in Annex 2 shall be followed

2. In the identification procedure, all the information about the personal situation of the victim will be collected .Organizations and entities with a proved experience in assistance to victims, and particularly those providing a comprehensive attention and participating in public programs for the protection, can provide as much information as they consider as relevant

When the victim wants to be assisted by a concrete entity, the police unit will contact this entity to obtain information about the victim. It will also be important the information obtained by professionals qualified and trained in the evaluation of the victim's health or social situation.

3-The valuation of the evidences will be focused on the best interest of the victim, in order to ensure a comprehensive attention and security for his/her, and the investigation, especially in case of non national victims in order not to apply the return procedure in article 59 bis Migration law

4.The valuation carried out by the identification police unit shall include the risks that the victim might face, personal circumstances, and also a proposal of measures to be taken focused on his/her protection, security and privacy.

5-Once the identification procedure is finished, the police unit with jurisdiction over the identification, will draft a report containing all the information collected during the identification procedure. The information can be obtained in writing or verbally, and in this case, the origin of the information and the content, shall be written and detailed

6. All the actions carried out, shall be reported in the police files

VII.INFORMATION TO THE VICTIMS

1. Once the victim is identified, the police will provide her/him the following information, clearly and in a language that can understand:

a) About the right contained in article 109 and 110 Spanish Criminal Law

b) About the right to assume the protection measures contained in Law 19/1994 about the protection of witnesses and experts, especially to get the status of protected witness

c)If the victim is also victim of a violence or sex assault, will be informed about the right contained in Law 35/1995 11 December for the assistance and protection of victims in violence or sexual assaults, and if the dealer were the couple or former couple, will also be informed about the

rights contained in Law 1/2004 28 December , about a comprehensive protection in victims of gender violence

d)If case of a non national victim without a lawful situation , will be informed about the right of a reflection and recovery period , and the possibility to obtain a residence and work permit or an assisted return , according to article 59 bis Migration Law and article 142 of Royal Decree 557/2011 11 April, developing the provisions of Law 4/2000 of foreigners rights and freedoms

e) If the victim has a residence permit, close to end, will be informed about the possibility to apply the reflection and recovery period

f) About the protection measures adequate to her/his risk situation, valued by the police

g)About the possibility of being addressed to the care services hosted and provided by public institutions or entities or organizations with proved experience in assisting victims of THB ,particularly those providing a comprehensive protection , and participating in public programmes for the assistance and protection of the victim ,according to Annex 3

VIII- PROTECTION AND SECURITY MEASURES

1.After evaluating the risks , police unit will inform the victim about the potential risk and the required protection and security measures .If the victim specifically denies all or some of the measures, this renounce shall be written and signed by the acting officer and by the victim ,certifying this circumstance if the victim cannot sign

2-Protection and security measures may consist of providing a direct line with the police officers ,informing the victim about self protection measures ,including to stay in a safe place or moving to another region ,communicate any change of address or any other measure adequate to the risk situation .In any case, the prosecutor can also establish any other measure

3. This protection will also be extended to his /her minors or disabled children, if they are in Spain and extraordinary to any other person with personal or family bounds, if the risk situation they should face in relation to the dealers is so high, that the victim would prefer not to cooperate with the police

IX. ADDRESSING TO CARE SERVICES

1-The victim will be informed about the care and social services, to obtain safe housing, economic help, psychological help, medical care, an interpreter and legal assistance

2-If the victim agrees, will be address to the local o regional institutions to obtain care and social assistance and also to the organizations and entities with proved experience in assistance to the victim, particularly those providing a comprehensive protection

3-All the entities involved in the procedure shall ensure in any case confidentiality, consensual and informed basis to the victim

X.THE POLICE REPORT

1.The special Police Unit responsible for the investigation will report to the public prosecutor with territorial jurisdiction where the potential victim has been identified ,and also send a copy of the initial any others reports , and also ,to the judicial authorities

2-Police report shall be sent as soon as possible , personally or using electronic measures according to Law nº 18/2011, 5th July about the use of technology in Justice administration , and include information about the interview, statements, or any other evidences of THB ,and also contain the information acts about the rights .It would also include any police actions or previous formal complaints related to the victim or to the dealer , criminal record or medical reports related to the victim sent by medical care services

In case of a non national victim, the police report shall also contain the actions carried out according to article 59 bis Law 4/2000

3.When the investigations carried out by the police , may occurred in a location with workers suffering an exploitation situation ,the police shall immediately report to the regional labour inspection and any other concerned institution ,and also apply for additional help

XI- THE ROLE OF THE PROSECUTOR

XI.A. PROTECTION ROLE

The prosecutor, according to the protection task entrusted by the law and according to the legal tools developed by the general prosecutor's office, will watch for the victim's rights such as to be informed about their rights, in a clear and accessible way, understanding the information, and offering the measures contained in articles 109 y 110 of the criminal procedure law, and to communicate them, all judicial actions that affect their security (articles 109 and 544 of the Criminal procedure law) and the regulations contained in article 59 bis of Immigration law

XI.B. COORDINATION TASK

The prosecutor shall implement institutional relationships with the judicial authorities, police, health and care or social services and entities, lawyers and organizations with proved experience in the assistance of the victim in THB, to achieve an effective co-operation in the fight against THB

XI.C. THE PROTECTION IN THE CRIMINAL PROCEDURE

1-The Court shall make sure that the prosecutor is well informed about the date of the statement of the victim, witness or accused along the whole procedure

2-The prosecutor will make sure that the statement of a potential victim is according to the procedure law, in order to use it as a legal evidence, without causing a prejudice to the defence, even if the victim doesn't appear at the trial, by using for instance video recording

The prosecutor will also apply for the use of the protection measures contained in the Law 19/1994 about the protection of witnesses and experts in criminal procedures, and the use of any other tools that may help in the protection of a victim at the trial, such as the use of videoconference

XII.THE ROLE OF MEDICAL EXPERTS

The medical experts will ensure that the interview and the exploration of the victim, take place in a comprehensive way, avoiding a secondary victimization, or unnecessary repetitions of interviews or complementary examinations

XIII .SPECIFIC MEASURES RELATED TO NON NATIONAL VICTIMS

XIII.REFLECTION AND RECOVERY PERIOD

1. If the identified as victim is in an unlawful situation , will be informed about the possibility of a period according to article 59 bis Law nº 4/2000. He or she will be informed that during this period , he/she will be provided of the necessary measures for his/her psychical and psychological recovery ,and also will be kept away from the dealers and perpetrators ,so she/he can reach to a thoughtful decision about the co-operation in the criminal procedure against perpetrators

2. If the victim had been identified by the migration police , in a maximum period of 48 hours and with the agreement of the victim, the police shall send to the government office placed where the victim has been identified, the proposal to grant a reflection and recovery period

3.If the identification had been made by any other police department , they will immediately send to migration police unit ,a report explaining the grounds of THB , and any other information and relevant documentation ,and if the victim agrees ,the proposal to grant a reflection period, proposal that will be sent by the migration police unit to the government office un 48 hours.

4. The proposal sent to the government office will contain:

a) Copy of the police files with all the documentation and specially the documentation provided by the organizations and entities with prove experience in assisting victims on TBH

b) Information about the statement given by the victim as a response of the rights contained in Annex 3

c) Information regarding his/her administrative situation

D) Personal situation information

e) Any other kind of relevant information

5-The positive proposal , granting a reflection period , shall never be conditional on the judicial or police co-operation of the victim or her/his statement at the trial , and will also include a proposal of the necessary duration in order to achieve the purpose of this period, at least 30 days

XIII.B.IDENTIFICATION AT THE BORDER OR IN MIGRATIONS CENTERS

1.If the identification is carried out at the border, police will report immediately to the prosecutor , to the border office chief and to the Migration Police Headquarters ,therefore the potential victim shall not be removed from the country until the proposal to grant a reflection and recovery period has been resolved, and this situation will also be reported to the Migration Court with jurisdiction over the immigrations centre .

2. If the identification is carried out in an immigration centre ,the police will report immediately to the prosecutor , to the border office chief and to the Migration Police Headquarters, therefore that person shall not be removed from the country until the proposal to grant a reflection an recovery period has been resolved, and this situation will also be reported to the Migration Court with jurisdiction over that centre .

XIII.C.DECISION ABOUT THE REFLECTION AND RECOVERY PERIOD

1.In accordance with Law 4/2000 , the government office will decide the proposal to grant a reflection and recovery period and its length within 5 days , after that, without a response ,the proposal shall be considered positive , but if the victim is in a detention centre, the decision shall be taken within 24 hours .The period begins to run from the date of the receipt of the request at the government office

2. The resolution about the reflection and recovery period shall be justified and immediately reported to the victim, directly or by the police unit responsible for the investigation or the identification, the resolution shall also be notified to the police unit who is in charge of guarding and protecting the victim

3.In case of a positive resolution , it shall also expressly refer the decision of not to initiate an administrative procedure or , if it is in course , it will be temporarily suspended ,and also not to enforce any expulsion order decided for the infraction to the migration law according to **article 53.1 .a**

4. The resolution with the authorization of the reflection and period, will allow the temporary residence of the victim and his or her minors / disabled children, in the specified period

XIII.D END AND EXTENSION OF THE REFLECTION PERIOD

1. Once the period has concluded, the police unit will contact the victim to know his/her decision about co-operating in the investigation of the crime

If the victim decides to co-operate, this decision will be report to the prosecutor and to the judicial authorities, including the statement given by the victim, if it exist.

If the victim decides not to co-operate, she/he will also be informed about the possibility of request and exemption from administrative liability because of his/her personal situation

2. If the victim needs an additional period for the recovery, of if the police valued this additional period as necessary; the victim can obtain a unique extension of the period

The police unit, will address to the government office that granted the first authorization a new proposal asking for an extension period, with all the documentation and reports

3. To make a decision to renew the period, the government office, will take into account the personal circumstances of the victim and the information sent by public institutions and organizations and entities with proved experience in assisting victims

4. During the procedure of the extension request, the residence of the victim and the children will be extended and renewed

The extension of the period will include the extension for a temporary authorization, not only for the victim but also for his/her minor/disabled children

5-Once this new period had concluded, the police unit will act in accordance with paragraph 1

6. Once the reflection period or its extension had concluded, and without requesting the victim for a residence permit or in case of its withdrawal, migration law shall be implemented

XIII.E.EXEMPTION OF LIABILITY AND RESIDENCE AND WORK PERMIT IN CASE OF EXCEPTIONALS CIRCUMSTANCES

1. The Authority with which the victim is co-operating in a police investigation or in a Criminal procedure, can propose to the competent authorities the exemption of liability for the contravention of the article 53.1.a of the migration law, or the competent authorities can make this decision without a request

2. If because of a territorial jurisdiction, the punishment record or the execution of the return order falls upon another competent authority, it will be informed about the exemption of liability
3. If this exemption of liability is granted, the competent authority (government regional office) shall inform the victim about submitting an application for a residence or work permit addressed to the State Security Office or to State Migrations Office, depending on whether the request is due to the cooperation on the investigation or in a personal circumstances
4. The request will be submitted by the victim or by her/his legal representation to the authority which granted the exemption
5. The Government regional office will transfer immediately the request to the competent authority for the decision, adding a report about the administrative and personal situation of the victim, and in case of a positive decision, the victim will get a temporary work and residence visa, also including the disabled or minor children (if they are over 16 year-old)
6. Within a month from the authorization, the victim shall ask the police for a Foreign Identity Card
7. Once the procedure had concluded, the victim obtains a five-years Visa also including the children, but after this period can obtain a permanent visa

XIII.F. VOLUNTARY RETURN

1. If case of reasonable grounds to believe that a person had been victim of THB according to this Protocol, he/she could apply for the assisted return to her/his country, with her/his children, even though this return should be delayed because of the investigations or the criminal procedure
2. Secretary of State for Emigration and Migration will facilitate the voluntary return of the victim and the children according to article 16 of Council of Europe Convention on Action against Trafficking in Human Beings. In any case, before deciding a voluntary return, the risks, security, transports and assistance in origin country, transit and destination shall be valued
3. Organizations and entities with proved experience in assisting victims can propose the inclusion of a victim in a voluntary return programme focused on immigrants with special vulnerability or in risk of social exclusion, hosted by the General Direction of immigrant integration with the funds of the European Return Fund

XIV.ESPECIFIC ACTION IN CASE OF THE CHILD AS A VICTIM

XIV. ASSISTANCE TO THE CHILD VICTIM

1. An immediate assistance, protection and support shall be provided to the child victim. The measures shall be focused on his/her security, psychical and psychological recovery, education and specially to find a durable solution

These measures shall be based on the special vulnerability of the child victim of THB, after an individual evaluation of the specifics circumstances of the victim and taking into account the child's opinion, needs and interests

2-Into this assistance measures of a child victim, it must be include mechanisms to ensure a support for an assisted return to the child's origin country, even in the E.U., prevailing the interest of the child and the valuation of the return conditions and the benefit of the family environment in the child's recovery

3-The public institution responsible for the guardianship of a child victim or the public prosecutor can propose the transfer of the child victim to a specific institution specialized in assisting victims of THB justified by the need of a specialized aid or support. These institutions shall in any case keep separation between children and adults

XIV.B NON NATIONAL UNACCOMPANIED CHILD VICTIM

1. Specific measures focused on the determination of the identity ,nationality and origin of the child victim shall be implemented ,and also , in case of an unaccompanied victim ,measures to find her/his family and to provide her/him an adequate legal representation

2. A non-national unaccompanied victim, needs an special protection due to her/his particular vulnerability, an until a durable solution is found, adequate housing measures shall be implemented

3. A durable solution shall be achieved in a short time, and could consist whether in the return or reintegration in his/her country, an international protection status or a permanent residence or work permit.

4. Without prejudice of the previsions of this Protocol, article 190.2 migrations Law, shall be apply to non national unaccompanied victims

XIV.C-PROTECTION IN ACTIONS WITH A CHILD VICTIM

1. during the police investigations and criminal proceedings in which a child victim is involved, necessary measures to avoid a secondary victimization shall be applied. In any case, a unified interview Protocol shall be used

The interview , shall take place immediately ,with adequate conditions and always with the prosecutor ,ensuring that in case of uncertain age of the victim he/she will be presumed to be a child ,and using legal tools in order to preserve the legal value of the evidences in a future trial, if necessary, by using video cameras

2. Because of the special vulnerability of the child victim of THB, additional protection measures shall be used during the interviews and statements along the whole police and criminal proceeding, particularly:

a) The interview shall take place without unjustified delay, after the communication with the competent authorities

B) if possible, in an adequate environment

c) Interviews shall be carried out by or through professionals trained for that purpose

d) The number of interviews shall be as limited as possible and only where strictly necessary and shall be recorded using technical instruments

e) The child victim may be accompanied by a representative unless a reasoned decision has been made to the contrary

XV.ACTIONS OF NON GOVERNMENTAL ORGANIZATIONS

XV.A. RESOURCES PROVIDED BY NON GOVERNMENTAL ORGANIZATIONS SPECIALIZED IN ASSISTING VICTIMS OF THB

1. This Protocol values and recognized the contribution of the organizations and entities with a proved experience in assisting victims of THB, particularly those providing an comprehensive assistance and participating in public institutions programmes for the assistance and protection of the victims

2.Those NGO's provide the victims of THB a net of resources supplementing public recourses .Therefore, the inclusion of the NGO's in this Protocol is necessary ,specially for the assistance, protection and housing the victims of THB

XV.B. DETECTION OF POTENTIAL VICTIMS BY NGO'S SPECIALIZED IN ASSITING VICTIMS OF THB

NGO's may detect trafficking situations, by using their mechanisms to approach a potential victim, such as mobile units or special hotlines or their assistance services

This detection is essential in order to begin the identification of a potential victim by the authorities

XV.C. INFORMATION ABOUT THE VICTIMS

NGO's may have relevant information for the identification of a victim, not only for the acknowledge about personal situation of a victim but also, because of the evaluation of her/his personal situation due to the direct attention and contact to the victim

XV.D ASSISTACE TO VICTIMS

1-NGO's with proved and reputed experience in assisting victims, may accompany the victim, in all actions related to her/his, specially to ensure that the victim understands her/his rights, requesting this possibility to the competent authority

2. NGO's shall provide all the relevant information in the proceedings

3.NGO's assisting victims, shall provide the necessary recourses for a comprehensive attention, such as save housing ,medical care, psychological attention, psychiatric attention, social, or educative resources, or any others for their social integration , legal aid, translation , or to facilitate the voluntary return.

XVI.INSTITUTIONALS RELATIONSHIPS

XVI.A COMMUNICATIONS

1-Police units will report to the prosecutor, judicial authorities, and also to the Victim Assistance Offices, all the incidents during the proceeding that may affect the protection measures taken

2-The court will report to the police territorially competent and to the prosecutor all the enacted resolutions and decisions related to the victims, and also any variation

XVI.CO-ORDINATION MEETINGS

1-In every region, and at least every 6 months, co-ordination meetings shall take place to monitorize all the actions related to the detected THB situations and to watch for an adequate coordination

The efficiency of the enacted measures for the assistances and protection of the victim will also be valued

2. This meeting will be organized by the public prosecutor

3. Public prosecutor, Police Chiefs of the police units specialized in THB, and a member of the labour inspection will participate in this meetings. If requested, judges and presidents of the different courts, and also regional government

4. According to the aim of the meeting, public prosecutor can also invite the NGO's with proved experience in assisting victims

ANNEX 1 –GUIDELINES FOR INTERVIEWING VICTIMS

The aim of the interview is to detect evidences of THB, when there is reasonable grounds to believe that a person had been trafficked .The interview will be carried out by specially trained in THB investigations police units in accordance with the following principles:

1-Measures to create a comfortable and save environments for the victim shall be taken, taking into account those negative circumstances that may affect the victim, such as gender difference or the interviewer, lawful situation in non national victims, cultural or language differences or fear of reprisal

2-The interviewer shall ensure that the victim is in a good condition, that he/she is not thirsty or hungry, and if the victim is afraid, the interviewer shall encourage her/him. In case of an aggressive or hostile victim, the interview will not carry out

3. Previously, an effective separation between victims and perpetrators shall be ensured

4-Interviewer (with the same victims' gender) shall be specially trained in THB

5-The interview shall carry out in an adequate environment, ensuring privacy and confidentiality avoiding unnecessary interruptions excepting those justified by the emotional situation of the victim

6. When necessary, using an interpreter, taking special care that in this translation people related to the perpetrators are excluded

7-Previously, the interviewer will inform the victim in a way she /he can understand, about the identification proceed and its confidentiality ,making sure that the victim understands the purpose of the interview , including the right to not to declare any questions or to quit the interview at any moment

8-The purpose of the interview is to get information ,bearing in mind that the questions shall be as open as possible ,trying to avoid stereotypical interviews focused on answering YES/NOT , and facilitating the victim's answer , that can be in any moment clarified

The interviewer shall always take into account that the victim is a person that could have suffered extreme situations that may affect his/her emotional stability, therefore empathizing with victims is very important, trying not to hurry up them

9-First of all, information about victims personal situation shall be obtained such us Identity (name, family name, date and place of birth ,nationality ,mother language, education, labour experience) family situation (children, marital status) basic needs (housing, medical care, legal aid) worries about his /her security (fear for his/her life or integrity or for his/her family integrity) and the existences of threatens for her/his own or family

10. Reasons and grounds that led the victim to the detected situation, profession, salary family situation ...

11-Regarding to recruitment, measures and exploitation that the victim may have suffered, the interview shall obtained the following information

A) If she/he has suffered fraud, coercion or abducted for the purpose of been exploited

b) Which labour was offered to him/her and the real one?

C) If she/her has freedom of move from a place or to a work to another, and to use telephone or mail

D) Labour conditions, salary, work schedule

e) Debts with perpetrators

f) If he /she obtains or uses money

g) If her/his personal identification documents are at his /her disposal

H) Fear or threatens to him/her or to the family

I) if he /she has suffered psychological, physical or sexual violence, threatens, illegal detention or force to use drugs

j) If he/she knows the identity of the perpetrators

12. In case of a non national victim, either from the E.U or from third countries, the victim will also be asked about

-Administrative situation in Spain

-Reasons for the migration, work expectations and if this is the first time he/she tries to reach the territory

-Travel conditions, transportation, routes (transit and borders crossed), documentation used during the travel, contacts and identities, instructions given by the perpetrators, money provided, and information given in origin.

-In national territory: Reference person in destination, information about housing in destiny, housing the first days, and when he/she realized that he/she has been fraud

-Routes followed since the entry in Spain

-Ideas for the future, plans to stay in Spain or to return home.

In any case is important to identify the control measures used with the victim, to set her/him free from the perpetrator influence .To get that information, the victim shall be interview about her/his daily routine .The last step, once clarified the controlling methods used with the victim, is to collect all the information obtained, with relevance for the future criminal procedure

13-The interview will also try to define the victim's perception about his /her own situation, her/his understanding about what happened, about his/her administrative situation, rights and recourses if he/she decides to quit her/his situation.

Co-operation provided by public administrations and organizations with reputed experience in THB will be valued

ANNEX 2 –INDICATORS FOR IDENTIFYING VICTIMS

Indicators shall be valued in a comprehensive way; therefore, they can show evidences of THB. Not all of them are significant, one of them are more important than others, the list of indicators shown below do not correspond to an order of importance. Also, some of them, shall be adapted to the kind of exploitation in which TBH consist.

1-Behavior Indicators

- 1 Victims can show reticence to talk and it is easy to detect that they are lying or that they act following instructions
- 2 They show a neglected physical appearance and also evidences of physical abuse
- 3 They look afraid and quite suspicious and sensitive
- 4 They are afraid or worried for her/his situations or for his/her family ,both in her/his country as in another one

2-Genereal Indicators

2.1. Indicators in recruitment phase

- 1 Place of recruitment :Country or region with precedent cases of TBH
- 2 Low social , cultural and economical situation ,with children in origin
- 3 Recruiters: Police records on THB
- 4 False information about the travel and life and work conditions
- 5 The costs and interest rates applied by the recruiter are excessive , and normally create a debt in the victim
- 6 The reason for the migration was an abduction or affective relationship or friendship

2.2 Indicators in Transportation, Transfer, Harbours and Receipt Phase

- 1 Lack of Identity documentation (specially passports) and immigration documents (permits, Visas)
- 2 False Documentation
- 3 Routes followed by victims of TBH
- 4 Impossibility of move to another place or to change work
- 5 Variation of different Clubs/ places of work in a short period of time
- 6 Isolation from their families or friends
- 7 Social Isolation : Contact with people out of perpetrator environment is limited or controlled
- 8 Difficulties to speak the destination country language, even if the victim had been living in for a long time
- 9 Crowded Flats
- 10 False information about labour conditions or the existence of a debt

2.3 Indicators in Exploitation Phase

- 1 Psychological, physical or sexual violence , and also threatens
- 2 Restriction to freedom of movements
- 3 Servitude for debts or the establishment of another kind of servitudes
- 4 Lack of identification or migrations documentation
- 5 Social isolation
- 6 Psychological, physical or sexual abuse (insults, threatens, forced used of drugs, lack of food, religious rituals) focus on threat the victim and avoiding escape attempts
- 7 Force prostitution /labour even if they feel sick or in case of woman if they have menstruation
- 8 Lack of money or no control about it, money and earnings are controlled by the traffickers

3-Indicators related to Labour Conditions

3.1 –Contract and labour

- 1 Lack of contract assuring labour conditions
- 2 Signing a contract in an unknown language
- 3 The accorded conditions on recruiting are not respected by employer , who determined the victim to sign another contract in destination
- 4 Force labours in contravention with her/his rights , different than the ones on recruitment , and been threatened if they refuse to sign them
- 5 The employer is allowed to set economical penalties to the worker for bizarre reasons such as using materials or instrument or others
- 6 False employer
- 7 Pretend to be associate of a firma , with no acknowledge of the participations of the price paid
- 8 Worker on a subcontract in third or fourth order
- 9 The victim had been quit with no fair cause and without compensation
- 10 Forced medical examinations , pregnancy test or interruption, of force use of birth control

3.2 .-Time schedule

- 1 Non observance of time schedule, breaks , holydays
- 2 Abuse conditions because of the length or without economical compensation

3.3-Salary

- 1 No salary
- 2 Excessive wages in kind compared to economical salary
- 3 Low salary to pay the debt with the dealers , the potential victim will need a long period to pay the debt
- 4 Determination of salary following standards with no accordance with labour provisions
- 5 Fraud in the amount of the salary
- 6 Retention of the salary for paying materials, tools, protection equipments ,labour clothes or high costs for food or housing
- 7 Unlawful salary retentions
- 8 Undocumented salary , without receipt

3.4 .Safety and Health Labour Conditions

- 1 Unsafe labour conditions
- 2 Dangerous labours with life or health risks
- 3 Unsafe labour equipments or inadequate labour clothing
- 4 Lack of individual protection equipments
- 5 Lack of medical attention if needed
- 6 Lack of preventive labour education or information about risks in a language they can understand , lack of warnings in work places
- 7 No access to first aid
- 8 Lack of potable water, toilettes , heat or electricity
- 9 Work and living at the same place

4-Enrivomental Indicators

- 1 Extreme security measures, including windows with bars, security doors, isolated environment, and electronic surveillance. Victims are not seen unless they are companied by the dealers
- 2 Potential victims live in the same workplace, or are transported from or to the workplace under control ,unsafe live conditions, living in a crowded flat, even in crowded rooms , and mostly paying high rents
- 3 Victims are kept under surveillance in public, specially if they are taken to a medical service or a Hospital ,for a medical treatment .The dealer acts as interpreter

ANNEX 3. INFORMATION FOR THE VICTIMS

.Rights contained in article 109 and 110 Spanish Criminal Law

.Provisions and rights contained in Law 19/1994 about the protection of witnesses and experts ,specially to get the status of protected witness

.If the victim is also victim of a violence or sex assault ,will be informed about the right contained in Law 35/1995 11 December for the assistance and protection of victims in violence or sexual assaults , and if the dealer were the couple or former couple, will also be informed about the rights contained in Law 1/2004 28 December , about a comprehensive protection in victims of gender violence

.Assistance resources to provide them a safe housing , economic help ,psychological and medical assistance, translation and legal aid. If the victim agrees , she /he will be addressed to the regional or local competent administrations or to the NGO's with proved and reputed experience in assisting victims

.In case of a non national victim , with unlawful situation :

-The victim has the right of a reflection and recovery period at least of 30 days , and will be informed that during this period , he/she will be provided of the necessary measures for his/her psychical and psychological recovery ,and also will be kept away from the dealers and perpetrators ,so she/he can reach to a thoughtful decision about the co-operation in the criminal procedure against perpetrators

-Possibility to obtain at her/his own election whether the assisted return to her/his country or a permanent residence permit in case of co-operation con police units or judicial authorities or the voluntary return

