

**LABELLING MIGRANTS WHO SELL SEX:
A CASE STUDY OF BRAZILIANS IN SPAIN AND PORTUGAL**

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SUMMARY

This thesis set out to assess whether the existing trafficking legislation and policies in developing and developed countries differentiate between victims of human trafficking for the purpose of sexual exploitation and migrant sex workers, taking into account and respecting the agency of the individuals concerned as well as addressing the specific issues and needs of each group. This was accomplished by the development of four specific sub-questions which considered (1) to what extent the terms “victim of trafficking for sexual exploitation” and “migrant sex worker” are differentiated in legislation, policies and practices; (2) whether available trafficking statistics confuse “victim of trafficking for sexual exploitation” and “migrant sex worker;” (3) whether policies were made to address the issues which negatively affect migrants who sell sex outside the trafficking context; and (4) how (potential) victims of trafficking for sexual exploitation are perceived and the consequences of that perception.

The thesis replicated the developing/source and developed/destination dynamic through a specific case study: Brazilian migrants who sell sex in Spain and Portugal. Its four proposed sub-questions were answered through five articles submitted to peer-reviewed publications. These articles were constructed in the framework of labelling theory, based upon the hypothesis that migrants who sell sex are affected by the labels imposed on them by states, which in turn have specific reasons for constructing and using these labels in specific ways.

In “*Contrasting the Conceptualization of Victims of Trafficking for Sexual Exploitation: A Case Study of Brazilians in Spain and Portugal*”¹ we examined if and how the term “victim of trafficking” was differentiated from “migrant sex worker” in the legislation, policies and practices of these three countries. The article concluded that the terms differed not only between countries, but also within the same state. The construction and manipulation of these labels supports two particular goals (the curtailment of the migration of certain types of individuals and the placement of restrictions upon the performance of sex work), negatively affecting all migrants who sell sex.

In the article “*Examining Trafficking Statistics Regarding Brazilian Victims in Spain and Portugal*”² we found that although all three countries have recognised the importance of accurate criminal statistics, the data which is available suffers from severe inconsistencies. At some point, statistics from all three countries have conflated migrant sex workers and victims of trafficking for sexual exploitation; the use of problematic labels means that the data is frequently misleading. While there have been a number of projects which could better the data gathering process, the article concludes

¹ Pérez, J. L. (2014). Contrasting the conceptualisation of victims of trafficking for sexual exploitation: a case study of Brazilians in Spain and Portugal. *European Journal on Criminal Policy and Research*. doi: 10.1007/s10610-014-9265-3

² Pérez, J. L. (2015). Examining Trafficking Statistics Regarding Brazilian Victims in Spain and Portugal. Manuscript submitted to *Crime, Law and Social Change*.

that it seems unlikely that such changes will be made as there is a long history of using overblown, if not completely made up “trafficking” statistics to justify the creation and/or perpetuation of actions to restrict migration and/or sex work.

In the first article we assessed that migrants who sell sex are viewed either as victims who must serve prosecutorial ends or deviant migrants who are treated almost as delinquents. In the article “*Considering the exploitation of migrants who sell sex: A case study of Brazilians in the Iberian sex industry*”³ we focused on the major problems which affect migrants who sell sex and whether these problems are being addressed. Most of them seem to be a result of three overlapping issues: problems which result from prostitution’s status as a forbidden or at best a grudgingly tolerated (yet still repressed) activity, problems that affect workers in low-status occupations and problems that affect (undocumented) migrants. The situation of Brazilian migrants who sell sex in the Iberian countries follows this pattern.

As countries focus their efforts almost exclusively on those they have labelled as trafficking victims, the problems of all other migrants who sell sex are often considered to be a non-issue. In this way, two separate objectives are achieved: the sex industry is “morally condemned” and constrained and migrants provide a cheap labour force that has no access to “costly” state services and little recourse to improve their situation. By relying almost solely on a law enforcement and crimmigration approach, comprehensive and well established international labour and migration instruments which could benefit all migrants who sell sex are ignored.

In the last two articles of the thesis we considered how those who are labelled as (potential) victim of trafficking for sexual exploitation are perceived and the consequences of this perception. For all that migrant sex worker is a category which is often ignored, the article “*Analysing the use of the trafficking victim archetype by Brazil and the Iberian countries*”⁴ clearly showed that the considerable attention placed upon (potential) victims of trafficking is not always beneficial. Throughout history the official trafficking discourse has supported the trafficking victim archetype as a faithful description of the category of people most vulnerable to exploitation. Those who fit the profile are thus to be objects of specific policies which are aimed at “protecting” them.

In practice, however, this has not been the case at all. Those that fit the archetype have their agency curtailed; migration opportunities are restrained “for their own good,” often leading them to migrate in perilous conditions which are imposed due to the “protective barriers” they are submitted to. Those that do not fit the archetype and end up being exploited are seen as guilty parties, regardless of context or conditions. Their

³ Pérez, J. L. and Vermeulen, G. (in press). Considering the exploitation of migrants who sell sex: A case study of Brazilians in the Iberian sex industry. *International Review of Penal Law*.

⁴ Pérez, J. L. (2014). Analysing the use of the trafficking victim archetype by Brazil and the Iberian countries. In N. Persak and G. Vermeulen (Eds.), *Reframing Prostitution: From Discourse to Description, from Moralisation to Normalisation?* (pp. 173-198). Antwerp: Maklu.

victimisation is often considered to be a just comeuppance for their transgressions in the realms of migration and/or sexuality.

In origin countries such as Brazil the dissemination of the archetype may serve two ends. On one side, it supports internal anti-vice campaigns that harm sex workers, but rarely detect traffickers. On the other, it creates barriers to the migration of people who are not considered “suitable” due to a combination of race, gender and socioeconomic circumstances. Abroad, the use of the archetype has allowed for the propagation of actions that, although marketed as “protective,” end up negatively affecting the migrants who fit the description being considered. These measures often take the shape of more aggressive forms of border control.

The appropriation of “(potential) trafficking victim” to be used as a label of deviance was not the only time where a term established in the UN Trafficking Protocol has been misappropriated to the detriment of those the instrument was supposed to protect. In “*A criminological reading of the concept of vulnerability: A case study of Brazilian trafficking victims*”⁵ we addressed the use of the term “position of vulnerability” as a de facto synonym of strain.

The use of the concept of vulnerability has often been justified as a way to highlight the systemic problems which affect certain groups of people and curtail their opportunities. If misused, however, the concept may end up paternalising, stigmatising and constraining the groups it singled out.

This problematic aspect of the concept can also impact existing trafficking frameworks. The interpretation of what constitutes a “position of vulnerability” may be too broad and, like in the case of the trafficking archetype, negatively impact specific groups of people. Those who are labelled as being “vulnerable to trafficking” are considered by the authorities to have a propensity to engage in non-acceptable actions, such as irregular migration and migrant sex work. Consequently, the focus of so called “anti-trafficking” actions is not on reducing the strain which is placed upon these segments of society, but on curtailing deviant behaviour by punishing and/or restraining those that are seen as potential criminals. By labelling certain groups of people as “vulnerable,” states are giving themselves the justification they need to control these groups without raising significant outrage.

In the conclusion of the thesis we assessed that the concepts of “trafficking victim” and “migrant sex worker” present in the legislation and policies of both developing and developed countries are not static, but are rather manipulated by individual states to serve their own ends. Although this manipulation of concepts is also perpetrated by

⁵ Pérez, J. L. (in press). A criminological reading of the concept of vulnerability: A case study of Brazilian trafficking victims. *Social and Legal Studies*.

migrants, in practice states have final say in the labels that are applied and rarely take into account the self-classification and desires of the people in question.

Despite continuous assertions that human rights are of primary importance, that socioeconomic problems will be addressed and that migration is a right of every human being, policies aimed at countering trafficking for sexual exploitation have tackled the issue as primarily a criminal one through actions which are intended to repress both migration and sex work. The concern over legitimising only trafficking victims that serve prosecutorial ends also means that the actual needs of victims, as well as the problems which affect all migrants who sell sex are not comprehensively addressed.

Although there is a tendency to approach trafficking policies from developed countries as if they were monolithic, this is not precisely the case. Even though they have the same objectives and similar overall results, they can be approached in different ways. Some states, such as Spain, take the crimmigration approach to the extreme, misusing the trafficking label to their own ends and exposing migrants not only to a carceral atmosphere but to an exploitative and harmful one at that. Other countries, like Portugal, take a more staid approach. By respecting minimum standards of dignity when dealing with migrants and relying more on prejudiced opinions about the relevant groups rather than on the manipulation of the trafficking label, such countries may be able to achieve their objectives (bar and/or expel certain migrants) without incurring too much negative attention and repercussions.

While there has been significant research on why developed countries manipulate the trafficking framework, less has been written about why developing states such as Brazil may also use this framework to the detriment of their own citizens. The pressure exerted by potential receiving states is clearly a strong motivator, as is the dependence origin countries may have on international funding. There are also, however, internal issues such as conservative, anti-sex work agendas which may benefit from the use of the trafficking framework. The assessment previously made about destination countries shows us, however, that individual states may have very different ways of achieving different objectives, each of them leading to specific repercussions.

SAMENVATTING

Dit proefschrift heeft als uitgangspunt te beoordelen of de in ontwikkelingslanden en ontwikkelde landen bestaande wetgeving inzake mensenhandel en het beleid hieromtrent onderscheid maken tussen, enerzijds, slachtoffers van mensenhandel met het oogmerk van seksuele uitbuiting en, anderzijds, migrantensekswerkers, waarbij rekening wordt gehouden met de betrokken personen, alsook het benoemen van de specifieke problemen en behoeften van iedere groep. Dit is bewerkstelligd aan de hand van vier specifieke deelvragen, die in overweging hebben genomen (1) in hoeverre in wet- en regelgeving en toegepast beleid onderscheid wordt gemaakt tussen de termen “slachtoffer van mensenhandel met het oogmerk van seksuele uitbuiting” en “migrantensekswerker; (2) of de beschikbare statistische gegevens omtrent mensenhandel al dan niet onderscheid maken tussen de termen “slachtoffer van mensenhandel met het oogmerk van seksuele uitbuiting” en “migrantensekswerker;” (3) of er sprake is van gemaakt beleid gericht op het benoemen en aanpakken van de problemen die buiten de context van mensenhandel in sekswerk actieve migranten treffen; en (4) op welke wijze (potentiële) slachtoffers van mensenhandel met het oogmerk van seksuele uitbuiting worden be- en veroordeeld en de gevolgen hiervan.

Het proefschrift herneemt het model waarin de dynamiek van ontwikkelingslanden als plaats van oorsprong en ontwikkelde landen als plaats van bestemming tot uiting komt, middels een specifieke case study: Braziliaanse in sekswerk actieve migranten in Spanje en Portugal. De vier aangegeven deelvragen zijn beantwoord door middel van vijf artikelen onderworpen aan peer-reviewed wetenschappelijke publicaties. Deze artikelen zijn opgezet in het kader van etiketteringstheorie, gebaseerd op de veronderstelling dat migrantensekswerkers worden benadeeld door hen door landelijke overheden opgelegde etiketten, die op hun beurt hun eigen redenen hebben voor de ingebruikname en toepassing van deze etiketten en op specifieke manieren.

In het artikel getiteld “*Tegenstellingen in de definiëring van slachtoffers van mensenhandel met het oogmerk van seksuele uitbuiting: Brazilianen in Spanje en Portugal*”¹ hebben we onderzocht of en, zo ja, op welke wijze er in wet- en regelgeving en toegepast beleid van deze drie landen onderscheid wordt gemaakt tussen de termen “slachtoffer van mensenhandel” en “migrantensekswerker.” De conclusie van het artikel luidt dat de termen niet alleen tussen landen onderling verschillend zijn, maar ook binnen één en dezelfde staat. De ingebruikname en de manipulatie van deze etiketten onderschrijft twee specifieke doeleinden (de inperking van de migratie van bepaalde – ongewenste – personen en de inlassing van beperkingen op de uitvoering van sekswerk), die alle in sekswerk actieve migranten benadelen.

In het artikel getiteld “*Statistische gegevens betreffende Braziliaanse slachtoffers van mensenhandel in Spanje en Portugal*”² hebben we ondervonden dat, hoewel de drie landen zonder uitzondering het belang van nauwkeurige misdaadstatistieken hebben

¹ Pérez, J. L. (2014). Contrasting the conceptualisation of victims of trafficking for sexual exploitation: a case study of Brazilians in Spain and Portugal. *European Journal on Criminal Policy and Research*. doi: 10.1007/s10610-014-9265-3

² Pérez, J. L. (2015). Examining Trafficking Statistics Regarding Brazilian Victims in Spain and Portugal. Manuscript submitted to *Crime, Law and Social Change*.

erkend, de beschikbare gegevens te lijden hebben van ernstige tegenstrijdigheden. De statistische gegevens uit het drietal landen hebben tot op zekere hoogte migrantensekswerkers en slachtoffers van mensenhandel met het oogmerk van seksuele uitbuiting gelijkgesteld; het gebruik van problematische etiketten betekent dat de gegevens vaak misleidend zijn. Hoewel er sprake is van een aantal projecten die tot verbetering van de procedure omtrent het verzamelen van gegevens zou kunnen leiden, luidt de conclusie van het artikel dat het onwaarschijnlijk lijkt dat dergelijke wijzigingen zullen worden doorgevoerd, aangezien overdreven, zo niet volledig fictieve statistieken rond “mensenhandel” al sinds jaar en dag in gebruik zijn, om aldus de invoer en voortzetting van maatregelen ter beperking van migratie en/of sekswerk te rechtvaardigen.

In het eerste artikel zijn we tot het oordeel gekomen dat in sekswerk actieve migranten worden beschouwd hetzij als slachtoffers die justitie behoren te dienen met als uiteinde strafrechtelijke procedures, hetzij als van de norm afwijkende migranten die blootstaan aan een bijna gelijke behandeling zoals toebedeeld aan criminelen. In het artikel “*De uitbuiting van in sekswerk actieve migranten: een case study van Brazilianen in de Iberische seksindustrie*”³ hebben we ons gericht op de voornaamste problemen die in sekswerk actieve migranten ondervinden en of deze problemen worden benoemd en aangepakt. De meeste van deze problemen lijken resultaat te zijn van drie elkaar overlappende kwesties: problemen die het gevolg zijn van de status van prostitutie als een zo niet verboden dan toch met tegenzin getolereerde (maar nog immer onderdrukte) activiteit, problemen die werknemers in laaggewaardeerde beroepsgroepen treffen en problemen die (illegale) migranten treffen. De situatie van Braziliaanse in sekswerk actieve migranten in de Iberische landen volgt dit patroon.

Aangezien landen hun inspanningen bijna uitsluitend richten op degenen die ze hebben bestempeld als slachtoffers van mensenhandel, worden de problemen van alle andere in sekswerk actieve migranten vaak als onbetekenend afgedaan. Op deze manier worden twee afzonderlijke doelstellingen bereikt: de seksindustrie wordt “moreel veroordeeld” en tot een minimum beperkt en de migrantenpopulatie levert goedkope arbeidskrachten die geen toegang hebben tot “kostbare” overheidsdiensten en weinig middelen hebben om hun situatie te verbeteren. Door zich vrijwel uitsluitend te beroepen op een benadering waarin rechtshandhaving en de criminalisering van migratievraagstukken voorop staan, worden omvangrijke en reeds ingeburgerde internationale arbeids- en migratieinstrumenten die alle in sekswerk actieve migranten zouden kunnen bevoordelen, genegeerd.

In de laatste twee artikelen van dit proefschrift hebben wij beschouwd hoe degenen die worden bestempeld als (potentiële) slachtoffers van mensenhandel met het oogmerk van seksuele uitbuiting worden be- en veroordeeld, en de gevolgen hiervan. Ook al is migrantensekswerker een categorie die vaak wordt genegeerd, is uit het artikel “*Een analyse van het gebruik van het archetype slachtofferbeeld van mensenhandel door Brazilië en de Iberische landen*”⁴ duidelijk gebleken dat de behoorlijke hoeveelheid aandacht toebedeeld aan (potentiële) slachtoffers van mensenhandel niet altijd gunstig

³ Pérez, J. L. and Vermeulen, G. (in press). Considering the exploitation of migrants who sell sex: A case study of Brazilians in the Iberian sex industry. *International Review of Penal Law*.

⁴ Pérez, J. L. (2014). Analysing the use of the trafficking victim archetype by Brazil and the Iberian countries. In N. Persak and G. Vermeulen (Eds.), *Reframing Prostitution: From Discourse to Description, from Moralisation to Normalisation?* (pp. 173-198). Antwerp: Maklu.

is. Sinds jaar en dag heeft het officiële discours inzake mensenhandel het bestaande archetype slachtofferbeeld onderbouwd als een getrouwe beschrijving van de categorie personen die het meest blootgesteld staan aan uitbuiting. Degenen die aan dit profiel voldoen worden aldus onderworpen aan specifieke beleidsmaatregelen die gericht zijn op hun “bescherming.”

In de praktijk is dit echter in het geheel niet het geval. Degenen die voldoen aan het bestaande beeld worden aan banden gelegd; migratiekansen worden “voor hun eigen bestwil” ingeperkt, wat vaak leidt tot migratie in hachelijke omstandigheden, die hen opgelegd zijn juist door de “beschermende barrières” waaraan zij zijn onderworpen. Degenen die niet passen in het bestaande beeld en daadwerkelijk worden uitgebuit worden als de schuldige partij gezien, ongeacht context of omstandigheden. Hun slachtofferschap wordt vaak beschouwd als het verdiende loon voor hun misstappen op het gebied van migratie en/of seksualiteit.

In landen die plaats van oorsprong zijn, zoals Brazilië, kan de verspreiding van het bestaande archetype slachtofferbeeld twee uiteinden dienen. Enerzijds ondersteunt het landelijke bewustwordingscampagnes die sekswerkers schaden, maar zelden mensenhandelaars helpen opsporen. Anderzijds creëert het belemmeringen voor de migratiekansen van mensen die wegens een combinatie van etnische afkomst, geslacht en sociaal-economische omstandigheden niet als “geschikt” worden beschouwd. In het buitenland heeft het gebruik van het archetype slachtofferbeeld ruimte gegeven aan de uitbreiding van maatregelen die weliswaar als “bescherming gevend” naar buiten worden gebracht, maar uiteindelijk de migranten die voldoen aan de beschouwde beschrijving negatief beïnvloeden. Deze maatregelen nemen vaak de vorm aan van meer agressieve vormen van grenscontrole.

De toeëigening van de term “(potentieel) slachtoffer van mensenhandel” om het als van de norm afwijkend gedrag te bestempelen was niet de enige keer dat een in het Protocol van de Verenigde Naties inzake de voorkoming, bestrijding en bestraffing van mensenhandel opgenomen bepaling is misbruikt, dit ten nadele van degenen die dit instrument juist zou moeten beschermen. In het artikel getiteld “*Een criminologische lezing van het concept kwetsbaarheid: een case study van Braziliaanse slachtoffers van mensenhandel*”⁵ hebben we het gebruik van de term “kwetsbare positie” beoordeeld als zijnde een feitelijk synoniem van dwang.

Het gebruik van het concept kwetsbaarheid wordt vaak gerechtvaardigd als een manier om de steeds terugkerende problemen die bepaalde groepen mensen treffen en hun kansen beperken te benadrukken. Als het concept echter wordt misbruikt, kan het uiteindelijk de beoogde doelgroepen bagatelliseren, stigmatiseren en kansarm maken. Deze problematische keerzijde van het concept kan ook gevolgen hebben op bestaande mensenhandelkaders. De interpretatie van wat een “kwetsbare positie” precies behelst kan te ruim genomen zijn en, net als in het geval van het archetype slachtofferbeeld, een negatieve impact hebben op specifieke groepen mensen. Degenen die worden bestempeld als zijnde “kwetsbaar voor mensenhandel” hebben volgens de autoriteiten de geneigdheid onaanvaardbare handelingen aan te gaan, zoals illegale migratie en illegaal sekswerk. Bijgevolg ligt de nadruk van zogenaamde “bestrijdende” maatregelen inzake mensenhandel niet op het verminderen van de druk die deze segmenten van de

⁵ Pérez, J. L. (in press). A criminological reading of the concept of vulnerability: A case study of Brazilian trafficking victims. *Social and Legal Studies*.

samenleving wordt opgelegd, maar op het beperken van van de norm afwijkend gedrag door degenen die worden gezien als potentiële criminelen te straffen en/of in hun bewegingsvrijheid te beteugelen. Door bepaalde groepen mensen als “kwetsbaar” te bestempelen, voorzien staten zichzelf van de rechtvaardigingsgronden die ze nodig hebben om deze groepen te controleren zonder het risico op aanzienlijke maatschappelijke verontwaardiging.

In de conclusie van dit proefschrift zijn we tot het oordeel gekomen dat de begrippen “slachtoffer van mensenhandel” en “migrantensekswerker” zoals opgenomen in de wetgeving en het beleid van zowel ontwikkelingslanden als ontwikkelde landen niet vastomlijnd zijn, maar veeleer worden gemanipuleerd door individuele staten om zo hun eigen doeleinden te dienen. Hoewel deze losse hantering van begrippen ook door migranten zelf wordt gebruikt, zijn het de staten die daadwerkelijk het laatste woord hebben in de toegepaste etikettering en wordt door deze staten zelden rekening gehouden met de behoeften van de betreffende personen en de door henzelf aangeduide categorie waarin zij denken te behoren.

Ondanks voortdurende verklaringen die stellen dat eerbiediging van mensenrechten van het grootste belang is, dat sociaal-economische problemen zullen worden benoemd en aangepakt en dat migratie een van ieder mens onvervreemdbaar recht is, heeft beleid gericht op het tegengaan van mensenhandel met het oogmerk van seksuele uitbuiting het vraagstuk bovenal vanuit strafrechtelijk oogpunt opgevat, door middel van maatregelen die bedoeld zijn zowel migratie en sekswerk te onderdrukken. De eenzijdige aandacht voor het legaliseren van slechts de slachtoffers van mensenhandel die justitie dienen met strafrechtelijke vervolging als uiteinde, betekent dat zowel de daadwerkelijke behoeften van slachtoffers, alsook de problemen die in sekswerk actieve migranten treffen niet uitvoerig worden benoemd en aangepakt.

Hoewel er een tendens bestaat om de in ontwikkelde landen uitgevoerde vormen van beleid inzake mensenhandel als zijnde eenduidig en zonder onderlinge verschillen te benaderen, is dit niet precies het geval. Ook al hebben deze vormen van beleidsvoering dezelfde doelstellingen en soortgelijke algemene resultaten, kunnen ze op verschillende manieren worden benaderd. Sommige staten, zoals Spanje, brengen de aanpak waarin de criminalisering van migratievraagstukken centraal staat tot het uiterste, misbruik makend van het etiket mensenhandel terwille van hun eigen doeleinden en migranten bloot stellend aan een uitbuitende en schadelijke gevangenisomgeving. Andere landen, zoals Portugal, hebben een meer nuchtere aanpak. Deze landen kunnen hun doelstellingen (bepaalde immigranten de ingang weigeren of uitzetten) eventueel bereiken, zonder te veel negatieve aandacht en andere nadelige gevolgen, door minimale voorwaarden van menselijke waardigheid te respecteren in de behandeling van migranten en zich meer te berusten op (bevooroordeelde) meningen over de relevante groepen dan op de losse hantering van het etiket mensenhandel.

Ofschoon er behoorlijk veel onderzoek is gedaan naar de redenen waarom ontwikkelde landen een losse hantering van begrippen binnen het kader van mensenhandel gebruiken, is er minder geschreven over waarom ontwikkelingslanden zoals Brazilië ook gebruik maken van deze opzet, dit ten koste van hun eigen burgers. De vanuit potentiële ontvangende staten uitgeoefende druk ligt duidelijk hieraan ten grondslag, zo ook de internationale fondsen waarvan landen van herkomst afhankelijk zijn. Er zijn echter ook binnenlandse kwesties, zoals conservatieve beleidsprogramma's die

sekswerk bestrijden, die kunnen profiteren van het gebruik van de losse hantering van begrippen binnen het kader van mensenhandel. De beoordeling die eerder is gemaakt over de landen van bestemming maakt ons echter duidelijk dat individuele staten heel verschillende manieren kunnen hebben om verschillende doelstellingen te bereiken, ieder van hen met specifieke gevolgen.

CHAPTER ONE

INTRODUCTION

Migrants who sell sex tend to feature primarily in criminological studies rather than those that focus on migration. This placement is certainly understandable when we consider that prostitution and the activities surrounding it are criminalised to some extent in most jurisdictions and that in the past few decades migration policies (particularly those from developed countries¹) have become increasingly similar to criminal ones.

“Migrants who sell sex” is a vast category which includes a variety of ever-changing and fluid experiences. Many of these migrants identify as and/or are considered to be migrant sex workers because to them the sex industry is primarily a source of income. Their experiences can vary from being excellent to being extremely problematic and exploitative. Some migrants who sell sex go through a very specific set of circumstances which leads to exploitation² and can thereafter be considered as trafficking victims.

It is important to note that the categories of “migrant sex worker” and “victim of trafficking for commercial sexual exploitation” are not diametrical opposites. Migrants may choose to identify as one or the other³ depending on the advantages this classification may bring or transition from one category to the next as their situation evolves. Perhaps more significantly, they might be boxed into one label or the other against their will.⁴

¹ This thesis will address international economic and political dynamics in a rather simplistic way, positing a North/First World/developed versus South/Third World/developing dynamic. It is important to highlight that while the numerous criticisms to this classification are more than valid (particularly regarding its western-centric, homogenized assessment of countries in extremely different circumstances), this dichotomy is still widely reproduced in international politics and is still very much present in discourses about human trafficking.

² Per the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, human trafficking consists in “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal or organs.”

³ Some migrants who sell sex, however, do not identify with either label. Although they do not consider themselves as being trafficked, they also do not identify as sex workers, as they may see the necessity of selling sex as a temporary condition and thus not one which defines them.

⁴ The distinction between trafficking for sexual exploitation and migrant sex work is not always straightforward. While prototypical trafficking cases (involving complete deceit, violence and slavery-like conditions) are relatively easy to identify, other cases are more ambiguous and may be perceived differently by government authorities, migrants themselves and other third parties.

There exists, for instance, a strong (neo)abolitionist⁵ movement which advocates that all migrants who sell sex have been coerced to some degree and should thus be considered victims of trafficking. This imposition of the trafficking label is not exclusively done by academics and activists, but is also, to some degree, a characteristic of the trafficking policies of several states and organizations, governmental or otherwise. Although policies such as these are heralded as primarily concerned with the rights of “victims,” they often have very clear anti-migration and anti-sex work objectives that may cause real harm to both migrant sex workers and trafficking victims.

This thesis will use a case study of Brazilian migrants who sell sex in Spain and Portugal to explore how and why migrant sex workers and trafficking victims are conflated in the legislation, policies, practices and statistics of both receiving and sending states. It will also address the consequences of amalgamating these two categories, as well as the repercussions to being labelled (or not) as a victim of trafficking. In short, through the framework of labelling theory this thesis will consider how labels are applied to migrants who sell (or are suspected of selling) sex, who applies them and to what purpose.

Background of the thesis

Criminological research on human trafficking has mostly focused on the experiences of women who have been victims of trafficking for sexual exploitation (Spencer and Broad, 2012, p. 277). It is true that the feminization of both poverty and migration, combined with the restrictions women face in access to opportunities, education and the labour market, both at home and abroad, have made women more exposed to a combination of dangerous migratory practices and unsafe and underpaid jobs which can, in some of their most extreme forms, result in human trafficking (Vietti, 2008). Following this understanding, constant assertions that women and girls represent as much as 80% of all trafficking victims (Senado Federal, 2012, p. 23; UN.GIFT, 2009, p. 6; US Department of State 2005, p. 6) are perhaps not surprising. The alleged greater vulnerability of women to human trafficking also seems to reinforce the largely disseminated assessment that trafficking for the purpose of sexual exploitation is by far the most prevalent variant of the crime. This perception has led certain states, such as Brazil, to fail to legally recognise any other forms of trafficking.

These allegations, however, are not unquestioned. Some scholars are quick to point out, for instance, that there appears to be a very clear gender divide involved in how

⁵ The abolitionist model condemns the exploitation of prostitution by third parties (and thus condemns pimps and prohibits brothels), but sees prostitutes as victims without agency who must not (in theory) be punished. The neoabolitionist approach (often referred to as the Swedish or Nordic model) goes a little further and explicitly condemns clients. The other two most common governmental attitudes towards prostitution are the prohibitionist approach which, as the name implies, prohibits all forms of sex work and criminalises all those involved in it, including prostitutes themselves, and the regulationist model, which sees prostitution as a “necessary evil” and attempts to limit its pernicious effects by exercising strict state control over it (Council of Europe, 2007).

migratory movements are classified. Although two of the Palermo Protocols⁶ delineated standard definitions that distinguish human trafficking from migrant smuggling, the language used in the protocols, along with a myriad of assumptions about the “greater vulnerability” of women have created a situation where women’s migratory movements, unless explicitly sanctioned, are much more likely to be considered as human trafficking, even in the absence of conclusive evidence regarding exploitation. Conversely, adult men’s irregular migration projects are much more often classified as involving migrant smuggling, even when there is evidence that the migratory process has resulted in exploitation (Blanchet, 2012, pp. 4-5; Frisso, 2014, p. 76). Thus, assertions that women represent a disproportionate majority of trafficking victims may simply reflect the biases of those responsible for categorizing migrants rather than reality.

Authors such as Agustín (2006, 2007) and Chuang (2010) have repeatedly pointed out that these different perceptions of extremely similar forms of migration are often connected with the presence of sex work (an activity which is overwhelmingly associated with women), as trafficking is often reduced to that which is linked with sexual exploitation. This perception is linked to the idea that sex work is in itself inherently exploitative. In this vision, there is no distinction between migrant sex work and human trafficking for sexual exploitation. This is the position adopted by, among other (neo)abolitionist groups, the Coalition Against Trafficking in Women (CATW), arguably one most well-known transnational anti-trafficking organisations. The CATW defends the idea that saying women can consent to sex work is to say that they consent to violation and humiliation, as in their view sex “must be based on intimacy” (Barry as cited in Kempadoo, 1997).⁷

Even if this premise is not taken to extreme of the position of the CATW, there are still a number of problems with equating prostitution in itself to a form of sexual violence, including the fact that it perpetuates the placement of sex work as a marginalised activity, which is consequently often illegal and/or unregulated and thus offers little to no protection to those who engage in it. Most significantly, perhaps, is the fact that considering sex work as purely exploitative drowns the voices of the myriad of prostitutes who proclaim that they made a choice to sell sex of their own free will and see it as a job, not a form of violence. The very term “sex worker” is attributed to Carol Leigh, a member of COYOTE (Call Off Your Old Tired Ethics), one of the best known sex workers’ rights organization in the United States (Sutherland, 2004).

⁶ More specifically the UN Trafficking Protocol and the *Protocol Against the Smuggling of Migrants by Land, Sea and Air*.

⁷ Article one of the CATW’s proposed *Convention on the Elimination of All Forms of Sexual Exploitation of Women* defines sexual exploitation, which includes sex work, as “a practice by which women are sexually subjugated through abuse of women’s sexuality and/or violation of physical integrity as a means of achieving power and domination including gratification, financial gain [and] advancement.” Prostitution is equated to rape, genital mutilation, incest and battering (Doezema, 1998, p. 36).

There exists some valid criticism concerning the fact many of the pioneers of the international prostitutes' rights movement (including most of the members of COYOTE) consist of white, relatively educated, middle-class women from developed countries whose view and reality of prostitution as a sexually liberating, freely chosen profession excludes the experiences of non-white women, those who live in developing countries and women whose social-economic circumstances and educational backgrounds do not give them as wide a array of professional choices (Sutherland, 2004, p. 17). While in the past few decades the international sex workers' rights movement has been moving towards a greater inclusion of previously marginalised sex workers, the power imbalance still remains (Kempadoo, 2005, pp. 296-297).

Some proponents of the abolitionist position (CATW in particular) take the disparities that exists between sex workers worldwide to an extreme, positing that while women from developed countries may, to the detriment of the position of all women, choose to sell sex, third-world women cannot ever truly consent to sex work as they have "no real alternatives."⁸ To them, women from developing countries who migrate to work in the sex industry are seen as victims of "structural trafficking" (Solana Ruiz, 2011, p. 921), which means that although they might claim not to have been coerced into prostitution, they have been forced into it due to their precarious socioeconomic circumstances.⁹

This "poverty as force" rhetoric is highly problematic, as it posits agency as a privilege conferred by sufficient economic means. Moreover, it is often accompanied by the idea that non-western women are ignorant of their own reality and unable to perceive the exploitative situation they are living in. This "colonial gaze" aspect of the discourse of some of (neo)abolitionism's chief defenders is often reinforced by the terms used by them. In the words of post-colonial feminist Chandra Talpade Mohanty (1984, p. 352),

[T]hird world women as a group or category are automatically and necessarily defined as: religious (read "not progressive"), family oriented (read "traditional"), legal minors (read "they-are-still-not-conscious-of-their-rights"), illiterate (read "ignorant"), [and] domestic (read "backward") ...

This does not mean, of course, that monetary concerns have no impact on the selection of sex work as a means of financial gain or that "survival sex" is not a reality in many parts of the world. But even when migrant sex workers label their work as prostitutes as "forced," they do not necessarily mean that they are being coerced by a third-party or have no other viable alternative to earning money (Andrijasevic, 2010, pp. 113-114).¹⁰

⁸ The UN Trafficking Protocol does mention that "abuse of a position of vulnerability" is one of the means which can lead to trafficking. As per the *travaux préparatoires* of the Protocol, a person that is in "position of vulnerability" "has no real and acceptable alternative but to submit to the abuse involved" (Jordan, 2002, p. 7). What constitutes a "real and acceptable alternative," however, is unclear.

⁹ This, of course, neatly ignores the fact that not all women in these conditions choose to sell sex and that vulnerability does not automatically equal victimisation (Walklate, 2011, p. 183)

¹⁰ In this context, it is important to note that the "forced" rhetoric may be used as a strategy by sex workers due to, among other things, the social stigma attached to prostitution and the need to conform to

It is often the case that migrants who engage in sex work see it as the only viable alternative for them to achieve medium and long-term goals which are dependent on a higher level of income than that which they can obtain in their own country. These goals often entail securing money, property and goods which are sufficient to adequately provide for family members, particularly children, and even ensure a comfortable retirement. In some cases, the money is used to help the sex workers achieve a position of power and respect among their social circle which would otherwise be impossible. Thus, rather than survival stories, many of the narratives of those who migrate and engage in sex work (particularly in a South-North context)¹¹ are in fact stories of socioeconomic mobility strategies (Agustín, 2007).

In this context, choosing to engage in sex work can be a very rational strategy. It is a job that can complement the earnings of another activity or substitute them. Depending on where and how it is undertaken, it can have a very flexible schedule with relative few working hours. Moreover, the ratio of amount earned per hours worked is significantly higher than many other jobs which are classified as “low skilled” and even some that are not (Surt, 2007, p. 39-40).

It is important to note that such a mobility strategy is not restricted to financial considerations. Although that does play a prominent role in people’s decisions to migrate, other factors are also very relevant. Among them comparatively little attention is paid to the fact that migrants from the lower socioeconomic strata share some of the same cultural aspirations commonly attributed to higher class migrants (often dubbed “expatriates”), such as the desire to see new places, to be in contact with new cultures, learn languages and to lead a cosmopolitan existence (Agustín, 2007, p. 44-45).

Supporting the agency of those who choose to engage in sex work (particularly women) does not mean ignoring the fact that some people’s choices are more constrained than others due to a number of factors, which do include their socioeconomic status, as well as their ethnicity and nationality. The power imbalance that these factors may bring does sometimes lead people to make judgments regarding the “least awful” option, rather than the best. This may mean accepting an abusive situation which is still considered less damaging or exploitative than the alternatives.

The need to respect the agency of sex workers is not the only motivation behind differentiating between sex work and commercial sexual exploitation. Much has been written about the problems with what Sánchez-Covisa Villa (2009) calls the “unified penological treatment of two criminal phenomena which are perfectly differentiated in essence and transcendence: human trafficking and clandestine migration.” In the same vein, there are severe consequences which result from a unified approach to the distinct

a narrative role (i.e. a victim of circumstances) to obtain certain benefits, such as those accorded to trafficking victims, but not to undocumented migrant sex workers (Piscitelli and Sprandel, 2010).

¹¹ Although less publicised in this context, South-South migration of sex workers also happens with some frequency.

phenomena of “trafficking for sexual exploitation” and “migrant sex work.” Of particular note is the fact that people in each category have problems and needs which, although often overlapping, can also be very different. In this sense, the response to the phenomena cannot be the same.

Despite the problems caused by the conflation, there is a long history of labelling all forms of migrant prostitution as human trafficking. We shall thus address contemporary approaches towards human trafficking and the consequences they have for all migrants who sell sex.

On the approaches towards human trafficking

Trafficking in human being is often described as a “complex” and “multifaceted” phenomenon (GAATW, 2007, p.135; ICMPD, 2011, p. 199; Viuhko and Jokinen, 2009, p. 9). While this may be acknowledged in theory, in practice anti-trafficking actions tend to have a very specific and limited focus. In her work on transnational responses to human trafficking in the Balkans, Nicole Lindstrom (2007) proposed the categorization of the anti-trafficking frameworks adopted by the international community into four approaches: law enforcement, human rights, economic and migration.

The most common approach is the one that focuses almost exclusively on the criminal dimension of trafficking and on the law enforcement response which is therefore needed to prevent, prosecute and most particularly punish the crime. When targeting primarily the offenders, the human dimension is often considered to be secondary: the people being trafficked are frequently seen as simply another commodity which is being traded outside the law, like guns or drugs. In this approach victims are often criminalised, even if they have had little or no choice but to take part in an illegal activity. At best, they are treated as material evidence and only afforded (limited) rights if they are considered to be useful in the investigation process and/or in the subsequent court proceedings against their traffickers (Lindstrom, 2007, p. 64).

A second recurrent approach is the one that puts primary importance on the human rights dimension of the issue. Through this lens trafficking is seen as a violent and coercive breach of human rights, making it a much more nefarious activity than the trade in illicit goods. Its focus is thus mostly placed upon helping victims (Lindstrom, 2007, p. 65). In practice, however, this is not always the case. States often invoke a human rights’ protection rhetoric to help legitimise counter-trafficking actions which are primarily focused on securing their sovereignty and frequently prove to be harmful to victims. In the vast majority of cases they also fail to take into account an issue which is paramount to a comprehensive human rights approach: the fact that the responsibility for the crime of human trafficking must not be placed solely upon the traffickers, but may also to be assigned to states, which, due to complicity, neglect or incapacity, allow trafficking to take place (Lima de Pérez, 2010, p. 35; Mitsilegas, 2012, p. 6).

In recent years the economic approach has increasingly become a part of mainstream discussions about human trafficking, particularly in origin countries. In this view, a focus on a law enforcement approach to deal with traffickers or a human rights approach which focuses on the violations suffered by the victims is not enough; the phenomenon can only be truly combated if protection and prosecution measures are combined with preventive actions which address the socio-economic problems which enabled trafficking to occur in the first place. Per Lindstrom (2007, p. 67), the economic approach “also contests the rigid binaries of trafficking versus smuggling, legal and illegal migration, and voluntary versus involuntary prostitution.”

Because this approach intends to comprehensively tackle the root causes of trafficking, it is also costly and time-consuming and thus hard to be implemented. Moreover, the economic model of trafficking prevention can also be somewhat reductionist. While it is true that migration can be (and largely is, when it comes to women in development countries) financially motivated, money is not the sole catalyst for transnational movements. But while other non-financial problems and sources of violence at home (both structural and familial) are acknowledged as “push” factors which impulse migration,¹² comparatively little is said about positive impulses which motivate people to leave their homelands. The desire to learn new languages, meet new people, explore new lands and cultures is often associated with upper-middle class mobility, but is rarely taken into account when addressing people with less financial resources and education (Agustín, 2007). It is imperative to acknowledge that addressing socio-economic inequalities in origin states does not mean curtailing the migratory impetuous entirely.

Lastly, there have repeated calls throughout the years to address trafficking as a form of “unregulated or ‘irregular’ migration” (Lindstrom, 2007, p. 63). This, of course, ignores the fact that trafficking victims can be legally residing in their country of destination. Moreover, by treating trafficking victims solely as “illegal migrants,” many states end up deporting them as soon as they are found by law enforcement personnel. This is counterproductive, as not only does it often endanger the victims (who are not treated with the consideration and support they need and deserve), but also makes prosecution against traffickers significantly more difficult (Lima de Pérez, 2010, pp. 34-35).

While a number of scholars would like to emphasize the migratory rather than the criminal dimension of trafficking, they are highly critical of the placement of migration barriers as counter-trafficking measures. In their view this simply places further restrictions to legitimate migration channels without affecting the desire and/or need to migrate, resulting in the search for unregulated channels of migration which often prove

¹² These negative push factors are particularly associated with women. Men’s migration is largely presumed to be based on purely economic reasoning and is thus framed as a rational decision. Women’s migration, on the other hand, is often couched in more emotional (and thus presumably less rational) overtones, as a form of escape from violence and/or romantic disillusionments or as a form of self-sacrifice for the family members (usually children) who depend on her (Mayorga, 2009, p. 76).

to be more expensive, more dangerous and much more likely to lead to trafficking (Lima de Pérez, 2010, pp. 34-35).¹³

Lindstrom's categorization is not universally accepted. Even if she does present these approaches as interrelated and overlapping, researchers such as Goodey (2008) argue that the idea of transnational actors framing their response to trafficking primarily through a singular approach is somewhat misguided, as there is "increasing evidence of a crossover in roles and approaches to trafficking" (p. 433). Goodey is also keen to point out that the "victim's place in trafficking policy and practice has become increasingly important over recent years" (p. 431), an assessment which supposedly undermines the idea that states and transnational organizations can focus primarily on a law enforcement or migration approach that marginalizes and disregards victims' rights.

We must consider, however, that the adoption of an increasing plurality of approaches in theory does not necessarily translate into a multifaceted response in practice. The greater concern for victims which has been in evidence in the last few years and the abundant rhetoric which focuses on safeguarding human rights and tackling the (economic) roots of trafficking have led to comparatively little improvement in the wellbeing of victims of trafficking and migrants who sell sex in general. On the contrary, bastardizations of the tenants of both the economic and human rights approaches are often used to justify policies that curtail migration options and enable police forces to identify and expel migrants in irregular situations, even if they have been exploited.

For the most part, only two approaches – law enforcement and migration – can be said to have been truly integrated, often to the detriment of all migrants who sell sex. This is very clear, for instance, in the anti-trafficking policies of the European Union (Lindstrom, 2007). This "crimmigration" framework is not limited to responses to trafficking at a national or transnational level, but has also permeated all migratory discourses.

On crimmigration

As the term implies, crimmigration is the overlap, either *de jure* or *de facto*, of immigration and criminal law. Breaking it down more clearly, crimmigration is characterized by the criminalisation of violations of immigration law and the imposition of migratory consequences to criminal acts (Stumpf, 2012).¹⁴

¹³ The problems caused by restrictions imposed on (irregular) migrants are not, however, limited to the crossing of international borders. A number of states also limit irregular migrant's access to certain fundamental rights, which makes their position inside the state precarious and leaves them vulnerable to exploitation.

¹⁴ Of particular note is the fact that while those who are detained due to administrative infractions related to migration often face conditions akin to or even worse than those who are convicted of crimes, they do not benefit from the safeguards which are embedded in the criminal justice system (Majcher, 2013, p. 17).

Although the instrumentalisation of criminal law to serve migratory ends has been happening for decades, the use of the “crimmigration” terminology is somewhat recent. It most often references the changes to the approach towards migration which took place after the terrorist attacks of September 11th, 2001, whereupon border security became one of the most visible concerns for a large contingent of developed countries. In this context, an increase in physical and technologically enhanced barriers was accompanied by progressively more developed risk assessments which aimed at detecting potentially problematic migrants before they reached the borders of receiving, transit and sometimes even origin countries (Mitsilegas, 2012, p. 12).¹⁵

The criminalisation and persecution of migrants and the desire to curtail and control their movements has been a recurrent trend during periods of economic, political and social crises (Parkin, 2013, p. 4). Like other practices whose core ideals are rooted in racist and xenophobic sentiments, the idea of the “other” as dangerous has little or no basis in actual fact. Rather, it is a way to project the blame for societal problems onto third parties and thus safeguard the legitimacy of the state despite its failure to properly provide for or protect its inhabitants. The long history of anti-Semitic and antiziganist sentiments and actions throughout Europe are clear examples of this type of strategy.

The violation of migration codes, which has primarily been and still remains in most cases an administrative infraction, thus gains a criminal dimension. In the framework of crimmigration, “legal” and “illegal” migrants have become synonymous respectively with “guilty” and “not guilty” foreigners (Stumpf, 2006, p. 380). In this way, unregulated migrants are summarily labelled as deviant and presented as security risks to the state (Parkin, 2013, p. 2).

In the context of human trafficking, the desire to control “deviant” migrants is usually reinforced by a particularly strong anti-prostitution rhetoric that fails to distinguish between trafficking for sexual exploitation and migrant sex work. As mentioned previously, this appropriation of anti-trafficking instruments and discourses to impose restrictions on migration, sex work and particularly on women is not a new phenomenon. Although the contemporary approach to human trafficking has evolved in some respects from what it was in the beginning of the 20th century, the parallels that can be traced with what was then commonly referred to as the anti-white slavery movement are very clear.

In her article, “Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women,” Doezenia (2000) drew sharp parallels between the 19th century myth of white slavery and current human trafficking debates. She particularly emphasized the fact that both white slavery and trafficking discourses emerged in an environment steeped in racial, ethnic, economic,

¹⁵ In this way the crimmigration phenomenon slots itself neatly into the increasingly common preventive, as opposed to reactive, approach towards crime (Mitsilegas, 2015, p. 2).

gender and cultural tensions. Proponents of both movements have used questionable sources, unreliable statistics and harrowing “cautionary tales” to create a widespread panic about the safety of women who were “tricked” (if not outright forced) into migrating and selling sex.

The resulting hysteria served a dual purpose: it allowed for the propagation of increasing restrictions to female migration and it created an environment where the suppression of prostitution was seen as the only humane alternative. Then and now, the well-being of the actual women involved in (migrant) prostitution and whether they had been placed or not situations of abuse and exploitation was a distant secondary consideration, if that.

One of the clearest contemporary examples of the use of anti-trafficking rhetoric as a form of migration control is that of the European Union and its policies. In the past few decades the EU has cloaked its anti-trafficking instruments and actions in a strong “protection of human rights” rhetoric (European Commission, 2013, p. 2). Although the EU’s anti-trafficking instruments might have had some positive effects, one cannot forget that there is a reason for the “fortress Europe” appellation.

Many of these “protective” policies have limited to no positive effects towards potential victims. In the end, barring these migrants from entering the EU often does nothing to protect them from being trafficked. For one, these stricter policies can and have been circumvented due the lack of consistency in the way the EU’s external borders are managed. On top of that, those that are denied entry at the borders often do not give up, as failure is not seen as an option after their considerable investments in their migratory project. Each subsequent attempt only worsens their situation, as they result in additional costs and may translate into increasing debts or in more dangerous alternative routes. The more precarious a migrant’s economic condition is, the more likely it is that he or she will be to accept exploitative labour situations (Secretaria Nacional de Justiça, 2006; Secretaria Nacional de Justiça and ILO, 2007).

This “protection by denial of entry,” along with most anti-trafficking narratives which are overwhelmingly focused on keeping people out and/or returning them to their home countries (where they are supposed to be “safe”),¹⁶ also neatly ignores how the legislation and policies of receiving countries are often one of the greatest obstacles placed upon trafficking victims, particularly if they are undocumented (which is not always the case). The migratory experience is often dangerous because receiving states have designed it to be so by purposefully denying (undocumented) migrants access to key services, leaving them open to exploitation, particularly in the labour market

¹⁶ One must not forget that although the concept of exploitation has been increasingly linked to migration, a migrant’s situation in their state of origin can also be incredibly precarious (Sharma, 2003, p. 54) and returning to their home country may prove to be a danger to them. It is often the case that migrants, even if they have been exploited or trafficked, seem to feel that living abroad has improved their living conditions (Piscitelli, 2006).

(Sharma, 2003, pp. 56-57). In certain EU countries, potential trafficking victims, particularly those submitted to sexual exploitation, are often rounded up and either placed in detention centres or expelled without having their situations considered.¹⁷ When victims of trafficking are identified as such, their security is also not guaranteed. In their “functionalist, prosecutorial logic,” most member states only provide comprehensive aid to those victims who prove to be a valuable asset in the judicial case against their traffickers (Mitsilegas, 2012, p. 8).

This pattern of using the trafficking discourse as a “more acceptable” justification for greater migration control (Berman, 2010, p. 89), as well as for curtailing sex work is not restricted to European Union states. Similar assertions can also be made about the United States (Chapkis, 2003, p. 294), a country which has furthermore attempted to impose its migration-restrictive, anti-prostitution trafficking standards on other states by threatening them with economic sanctions should they not comply with the US’s parameters. As one would expect, this is particularly problematic for developing countries, which may be induced to place migratory restrictions on their own citizens not to safeguard them from human trafficking, but to satisfy the United States.

This transatlantic crimmigration-centred approach to trafficking has expanded even further. Over a decade ago, Brock, Gillies, Oliver, and Sutdhibhasilp (2000) discussed how trafficking was being used in a similar manner in Canada. Sociology professor Deborah Brock, for instance, claimed that the “discourse of female sexual slavery [was] being appropriated and mobilized in conjunction with a growing post Cold War scare – the fear of international organized crime.” In her view gender and national protection discourses were being used with racist and ethnocentric implications to support narratives of “good” and “bad” migrants and impose migratory restrictions (p. 87). Kara Gillies, a sex worker and sex workers’ rights advocate, claimed that this was a “very deliberate ruse [used] to garner support from otherwise liberal thinking people for an extremely racially biased and regressive immigration policy” (pp. 90-91).¹⁸

It is thus clear that an increasing number of developed countries, self-proclaimed trafficking destinations, seem little interested in safeguarding victims. Although anti-human trafficking actions are frequently enveloped by a “protection of human rights” rhetoric which is now accompanied by recurring, yet vague references to the need to attack the socioeconomic roots of the problem and secure migration channels, the vast majority of counter-trafficking actions are still based on the use of states’ security forces

¹⁷ See for instance several articles written by Anelise Infante for BBC Brasil regarding trafficking operations in Spain.

¹⁸ Gillies also commented on the fact that many migrant sex workers willingly faced problematic working situations in the sex industry because they believed the (financial) gains they have achieved or will achieve offset any other issues. In this context, their greatest fears were not turned towards the organised criminal networks that may have helped them reach Canada or even those exploiting them, but towards police officers and migration officials who could arrest and deport them (Brock, Gillies, Oliver, and Sutdhibhasilp, 2000, p. 87).

to discourage, prevent and punish migration, sex work and most particularly the combination of both.

Main aims of the research

There exists some pointed criticism of the “transference” of migrants who sell sex from migration studies to criminological ones (Agustín 2006, p. 30). This is understandable if we consider that many of these studies focus primarily on the role played by traffickers, smugglers and pimps, relegating the migrants to a secondary status and often pigeonholing them in the problematic dichotomy of villain (“willing sex worker”) or victim (“forced trafficking victim”).¹⁹

Yet to limit criminological studies to these constrained and problematic viewpoints is to ignore the large contributions criminology may bring to the study of human trafficking and migrant sex work. Rather than restrict itself to crime and criminals, criminology has evidenced a growing concern towards the role of victims. Specific focus has been given to the victimisation of women (the primary victims of trafficking for commercial sexual exploitation and abuse in the sex industry) and, perhaps more importantly, their survivorship (Daly and Chesney-Lind, 1988, p. 521). Rather than reinforce problematic dichotomies, criminological studies that address trafficking for sexual exploitation and migrant sex work through a more victimological approach can challenge the link which is often imposed between victimisation and passivity.

It is important to note, however, that the role criminology may play goes beyond merely recognising the agency of those who have been negatively impacted by crime. Rather, the discipline may help question the construction of the victim label and the repercussions of identifying, labelling and recognising a person as a victim (Walklate, 2011, p. 181).

In the context of this thesis, it is paramount to question: who is being labelled/mislabelled/not labelled as a victim of trafficking for sexual exploitation? Why are certain people (not) being labelled as victims? What are the consequences, on paper and in practice, of (not) labelling a person as a victim of trafficking?

The idea that more attention should be given to the process of victim labelling is far from new (see for instance Miers, 1989, 1990; Rock, 2002 and Viano, 1989). More recently, however, this line of inquiry has come to recognise that it is also important to consider that the victim label may bring negative repercussions, such as limiting what is considered to be acceptable behaviour (Van Dijk, 2009, pp. 3, 24).

The lingering remains of the “white slave trade” discourse, the normalisation of extreme media portrayals and the dissemination of objectifying and sexist anti-trafficking

¹⁹ For a comprehensive and sex-work positive discussion on why a distinction between voluntary and forced prostitution is problematic, see Doezeema (1998).

campaigns (Andrijasevic, 2007; da Silva, Blanchette and Raylane Bento, 2013) have contributed to the consolidation of the image of what Srikantiah (2007) refers to as the “iconic” trafficking victim. This victim is nearly always a sexually exploited woman²⁰ who was forced, deceived or coerced to cross borders (and thus cannot be labelled as an ordinary – and guilty – irregular migrant). She is passive and voiceless (presenting a sharp contrast to her active and morally culpable trafficker) and, once she is rescued (as her slave-like conditions should hardly present her with a chance of escaping), cooperates fully with the authorities and acts as an ideal witness.²¹

The iconic trafficking victim is an adaptation of Christie’s (1986, p. 18) conception of an ideal victim, “a person or category of individuals who – when hit by crime – most readily are given complete and legitimate status of being a victim.” To be completely sympathetic, the trafficking victim must be virtuous and blameless and have gone through significant suffering. It is this suffering,²² allied with her role as tool for the state’s case against her traffickers, which enables her to obtain certain rewards, such as a residence permit (Srikantiah, 2007).

This conception of what constitutes a “real” trafficking victim worth of state support is highly problematic. For one, it tends to ignore men and victims of labour trafficking, as they are at most considered to be irregular migrants who had bad experiences. Additionally, the “iconic” victim trafficking discourse posits migration as a black and white dichotomy of innocent victims and guilty migrants rather than a continuum of experiences which is often “neither purely involuntary nor voluntary from the perspective of the migrant” (Srikantiah, 2007, p. 193). It also fails to acknowledge that the decision to label a migrant as a trafficking victim is frequently arbitrary and rather subjective (p. 180). Finally, it takes for granted the idea that migrants will want to cooperate with authorities and position themselves as victims if they have been exploited. This ignores the fact that people who have been trafficked often have a variety of motives (which include fear of traffickers, but also distrust of local authorities) for refusing to serve as witnesses. Moreover, as pointed out by several criminologists (Rock, 2004; Spalek, 2006; Van Dijk, 2009) the overwhelming association of the concept of victimhood with passivity has led many people to refuse to be labelled as victims.

²⁰ Here the abolitionist interpretation of sex work – that it is always sexually exploitative and therefore cannot ever be voluntary – is paramount, as it negates the agency of all victims of trafficking for sexual exploitation and puts them in a passive position, contrasting them with victims of labour trafficking, who are seen as complicit in their migration (and ultimately exploitation) process.

²¹ This conception is also steeped in a colonial discourse. As highlighted by Srikantiah (2007, p. 202), iconic victims “originate from cultures in Asia, Latin America, or Africa stereotyped as suppressing the individuality of women and girls and rendering them simple prey for manipulation by clever traffickers. The iconic victim concept is thus consistent with stereotypes of foreign women and women of colour as meek, helpless, and belonging to repressive male dominant cultures.”

²² For more on the role of suffering in the construction of an iconic trafficking victim, see Aradau’s (2004) discussion on what she labels “the politics of pity.”

Although primarily relevance in this thesis is given to the effect the imposition of labels have on all migrants who sell sex, we cannot deny that it is also important to consider who is labelled as a perpetrator and why. In the context of this thesis, it is particularly relevant to consider whether national governments – who deliberately criminalise key aspects of migration and sex work and impose severe restrictions to the rights of (irregular) migrants (who sell sex) – can be considered at least partially responsible for the victimisation of said migrants.²³

As previous established, a cursory analysis of the way trafficking is addressed by the United States, Canada and the European Union seems to imply a very clear attitude from developed states towards the phenomenon. Considered primarily as destination countries, they address the issue through a dual law enforcement and migration control (crimmigration) lens, combined with an anti-sex work perspective whereupon the primary concern is to stop potentially deviant migrants and prosecute alleged criminals rather than aid or protect potential victims. How effective these anti-trafficking actions are at stopping the crime and how much of this “effectiveness” comes at the expense of all migrants who sell sex is somewhat more difficult to assess.

The role played by developing countries in this dynamic is even more complex to determine. Do they oppose the position of the hegemonic powers or do they follow the same crimmigration perspective, restraining the movements of their own citizens? More importantly, why do they choose one perspective over the other and how effective is the chosen approach in combating trafficking for sexual exploitation and protecting migrant sex workers?

Considering all this, this thesis will focus on whether or not (current) anti-trafficking policies in both developed and developing countries are beneficial to two distinct groups which often seem to be lumped together: transnational victims of trafficking for commercial sexual exploitation and migrant sex workers. If that proves to not to be the case, we will hypothesize why such policies might have been adopted by the selected origin and/or destination countries.

Thus, the **main research question** to be considered is: *do the existing trafficking legislation and policies in developing and developed countries differentiate (in theory and practice) between victims of human trafficking for the purpose of sexual exploitation and migrant sex workers, taking into account and respecting the agency of the individuals concerned and addressing the specific issues and needs of each group?*

Considering that this research question is rather broad, four more specific **sub-questions** were developed, focusing on the differentiation between the concepts at

²³ It is also important to question whether different states have the same understanding of what constitutes a trafficking victim and how he or she should be treated. One must also consider if and how they way migrants who sell sex are labelled and treated is influenced by the level of criminalisation of both sex work and migration in individual states.

multiple levels and on issues related specifically to migrant sex workers and victims of trafficking for sexual exploitation.

(1) *To what extent are the terms “victim of trafficking for sexual exploitation” and “migrant sex worker” differentiated in legislation, policies and practices?*

(2) *Do the available trafficking statistics differentiate between “victim of trafficking for sexual exploitation” and “migrant sex worker”?*

(3) *Are there policies made to address the issues which negatively affect migrants who sell sex outside of the trafficking context?*

(4) *How are (potential) victims of trafficking for sexual exploitation perceived and what are the consequences of this perception?*

The scope of the issues still to be addressed means that it would be unfeasible to answer these questions for every single country which has been involved with human trafficking. Thus, the thesis will replicate the developing/source and developed/destination dynamics²⁴ through a specific case study: Brazilian migrants who sell sex in Spain and Portugal.²⁵

Structure of thesis

Following this introduction, **chapter two** addresses the overall methodology, including the case study selection. The core of this thesis consists of a bundle of five chapters, each reproducing a manuscript which has been submitted to, accepted by or published by a relevant journal or book which the Doctoral Guidance Committee considered to be of a high level and with a high impact.²⁶ Chapters three through five answer the first three of the proposed sub-questions respectively, while chapters six and seven are both used to answer the fourth sub-question. As mentioned in the beginning of this chapter, all articles in this thesis were steeped – explicitly or implicitly – in a labelling framework. This will be expanded upon in chapter two.

Migrant sex workers and victims of trafficking have different needs and issues that must be addressed. Bundling both categories may lead to overstating, understating or even

²⁴ Although trafficking may occur in South-South, North-North and North-South contexts, the primary dynamic identified and the one which is always highlighted is that of the trafficking of individuals from the Global South (developing countries) to the Global North (developed countries).

²⁵ Chapter two will further discuss the choice of the case study methodology and the reasoning behind the choice of Brazilian migrants in the Iberian sex industry as a relevant case.

²⁶ Chapter IV § 14 of Ghent University’s “Complementary Regulations Concerning the Doctorate for the Faculty of Law and Criminological Sciences” establishes that an article-based doctoral thesis must be composed of three to five articles. Per these guidelines, the majority of the manuscripts (in the present case, at least three out of five) must have either been published or at least accept for publication before the thesis was submitted. At the time of submission of this thesis four of the five manuscripts had been either published or accepted for publication.

ignoring the existence of at least one of them, which in turn could lead to misguided and even harmful policies being applied. Thus, to understand to what extent the terms “victim of trafficking for sexual exploitation” and “migrant sex worker” are differentiated, **chapter three**²⁷ tackles the policies and practices that all three countries have towards trafficking for sexual exploitation, focusing on whether the labels of trafficking victim and migrant sex worker are, in theory and/or practice, used as synonyms and the consequences of that. In this way, we explore how, why and by whom these labels are constructed and applied.

Accurate statistics are of crucial importance for the development of appropriate responses to the trafficking phenomenon. **Chapter four**²⁸ thus assesses whether available trafficking statistics differentiate between “victim of trafficking for sexual exploitation” and “migrant sex worker.” In particular, it considers why different state actors compiling statistics may apply a single label to vastly different categories of people.

In reports concerning Brazilian migrants who work in the sex industry, any alleged evidence of exploitation is almost always associated with human trafficking, which is not at all the case. To consider whether there are policies made to address the issues which negatively affect migrants who sell sex outside of the trafficking context, **chapter five**²⁹ focuses on the origins of these problems and how they are being tackled. It addresses the fact that by focusing solely on those it labels as trafficking victims, states fail to respond to the specific needs of most migrants who sell sex.

In chapters six and seven we consider how those who are labelled as (potential) victim of trafficking for sexual exploitation are perceived and the consequences of this perception. While they create compelling and heart-tugging narratives, the use of the “exemplary victim myth” and of the idea that entire groups are deemed to be inherently “vulnerable” to trafficking in official narratives and as a basis of official policies are highly problematic.

²⁷ Pérez, J.L. (2014). Contrasting the conceptualisation of victims of trafficking for sexual exploitation: a case study of Brazilians in Spain and Portugal. *European Journal on Criminal Policy and Research*. doi: 10.1007/s10610-014-9265-3

²⁸ Pérez, J.L. (2015). Examining Trafficking Statistics Regarding Brazilian Victims in Spain and Portugal. Manuscript submitted to *Crime, Law and Social Change*. The present article is a revision of the original manuscript submitted at the request of the journal.

²⁹ Pérez, J.L. and Vermeulen, G. (in press). Considering the exploitation of migrants who sell sex: A case study of Brazilians in the Iberian sex industry. *International Review of Penal Law*. Per department guidelines, an article-based thesis may include articles with a co-author as long as the doctoral student is the primary author of the manuscript, as is the case here. The responsibilities of the main author included conducting the case study presented in the second-half of the article and penning the article as a whole. As secondary author, Professor Vermeulen played a more conceptual role, contributing to the discussion of the key points in the first half of the article based on his previous research on trafficking and prostitution, some of which is explicitly referenced in the text.

Chapter six³⁰ questions the idea that “a certain type of Brazilian woman” is more susceptible to trafficking by linking the Brazilian trafficking archetype to the unfounded premises which created the white slave mythology. It also focuses on the reasons for the use of this archetype and its consequences. **Chapter seven**³¹ addresses the issue of the misuse of the concept of “(abuse of a position of) vulnerability” in the context of (potential) Brazilian victims of human trafficking.

Finally, **chapter eight** presents a conclusion which delineates the answers to the four proposed sub-questions and the main research question. It then goes on to discuss why origin and destination countries may have adopted their particular trafficking policies.

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³¹Pérez, J.L. (in press). A criminological reading of the concept of vulnerability: A case study of Brazilian trafficking victims. *Social and Legal Studies*.

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CHAPTER TWO

METHODOLOGY

As established in the introduction, this thesis will explore to what extent, in which manners and for which reasons the conflation between migrant sex workers and victims of human trafficking for commercial sexual exploitation happens and what are its consequences. More specifically, it will address the marginalisation and mischaracterisation of migrants who sell sex (with migrant sex workers frequently being labelled as trafficking victims but treated as irregular migrants and trafficking victims being treated as if they have no agency), as well as the misguided and repressive policies which are characterized as “humanitarian,” but in fact do not benefit migrants who sell sex, serving instead the interests of the state.

To comprehensively address issues such as “one size fits all” policies, “rescue” operations and “preventive” inspections at the borders and why such actions are adopted by both receiving and sending states, it was deemed necessary to limit the scope of this work. Although such policies are recurrent in a variety of states, it is simply unfeasible to make an in-depth exploration of how all relevant countries address migrants who sell sex. Therefore, a case study was considered the most appropriate research design.

Feagin, Drum and Sjoberg (1991, p. 2) define a case study as “an in-depth, multifaceted investigation, using qualitative [and occasionally quantitative] research methods, of a single social phenomenon. The study is conducted in great detail and often relies on the use of several data sources.” They later go on to assert that “[the] qualitative research exemplified in the case study usually brings us closer to real human beings and everyday life. Rather than assuming a world of simplicity and uniformity, those who adopt the qualitative approach generally picture a world of complexity and plurality. It is the richness and subtle nuances of the social world that matter and that the qualitative researcher wishes to uncover.”

The idea behind the selection of the case study method in this thesis was to reproduce in a small yet representative scale the dynamics between receiving (in this case, developed) and sending (in this case, developing) countries when it comes to trafficking for commercial sexual exploitation and migrant sex work. To be able to answer the main research question proposed in this thesis, as well as the sub-questions delineated in the introduction, the research design should be able to provide a comprehensive picture of the experiences of migrants from a developing country who sell sex in a developed country, how these countries’ policies affect them and how and why such policies are formulated.

Although the case study method was adopted in the individual manuscripts written for this thesis, the function of the case study was different in every chapter. In chapters three and four the case study method was used to “[provide] information from a number

of sources and over a period of time, thus permitting a more holistic study of complex social networks and of complexes of social action and social meaning.” In chapter five it was used to “[permit] the grounding of observations and concepts about social action and social structures in natural settings studied close at hand.” In chapter six and seven it was used to “[encourage] and [facilitate], in practice, theoretical innovation and generalization” (Feagin, Drum and Sjoberg 1991, pp. 6-7).

In very broad terms, the methodology adopted to formulate a case study must specify the conditions for designing an investigation, collecting and analysing all the pertinent data, as well as reporting the findings (Yin, 1993, p. 6). This basic outline is expanded upon in Pedra Jorge Birol’s (2012) “Methodology and form of diagnosis of trafficking in persons,” which served as the primary guideline for the construction of this thesis. This manual, which was developed with the support of the Brazilian government and UNODC, adopts a simple yet efficient six step process to produce a “dynamic picture of the phenomenon researched and of the people ... involved in [it].” While it is true that the manual’s focus is on producing a diagnosis regarding human trafficking, it proved perfectly suitable for the exploration of migrants who sell sex as a whole.

The first two steps were, perhaps unsurprisingly, the selection of an appropriate case study and the delimitation of its scope.¹ The third step – which occurs parallel with the second – was the mapping of available sources. This included, for instance, identifying relevant institutions in all three countries, as well as key authors and their bibliographies. In this phase of the research, it was crucial to take into account two specific limitations – time and resources (financial or otherwise) – which determined certain choices, such as a preference for document analysis rather than fieldwork. In a logical follow-up, the fourth step was centred on gathering the relevant information previously identified to compile a diverse bibliography, as one of the defining characteristics of the case study method is its reliance on multiple sources of evidence (Feagin, Drum and Sjoberg, 1991; Yin, 1984, 1993).

The fifth step consisted of content analysis, in which the available data was scrutinized, contrasted and triangulated. It was followed by the sixth and final step: writing the articles which would answer the proposed research questions, taking into account the theoretical framework which will be discussed further on.

Selection of a case study

Two main issues were considered in choosing the countries which would form the case study. The first was the feasibility of the subject matter. This focused particularly on the level of availability of primary and secondary sources of data, which, if not high,

¹ It is perhaps relevant to note here that Pedra Jorge Birol intended this methodology to be used to formulate diagnoses of a more limited geographic – that is to say municipal or regional – scope. Nevertheless, as the subject matter of this thesis was trimmed down to a specific group of people and a specific timeline, as will be explained further on, the methodology proposed proved to be adequate.

needed at least to be reasonable.² The second was the scientific relevance of the study. In particular, it was deemed necessary to cover an area in which the topic of human trafficking and migrant sex work, while previously discussed, was still in some respects under-researched. In this way, the thesis could present a significant contribution to the debate which already exists on the subject.

The item of primary importance was the selection of a developing country considered as a source of trafficking victims. In that respect, Brazil was a particularly easy choice. The country, which has a relatively high profile in the international scene, has often been singled out for its alleged role as a major source of (female) victims of transnational trafficking (US Department of State, 2014, p. 106). Rather than dispute these assertions, Brazil has acknowledged its role as a source country and has, in the past decade in particular, put considerable resources into “cleaning” its image (Blanchette and da Silva, 2010b, p. 342). This means that there is a wealth of primary source materials available for the research.

The assessment of the dynamic between Brazil and all of the potential destinations for its trafficking victims would be a lengthy task. There was thus a need to select one or two states which could reproduce Brazil’s trafficking dynamics with developed countries. In this context, the selection of Spain and Portugal, which henceforth will be referred to collectively as the “Iberian countries,”³ was also a relatively easy one.

The Iberian countries are not only Member States of the European Union, but also fully-fledged members of the Schengen area, which virtually eliminated restrictions to the movement of people between most Western European countries whilst conversely strengthening their collective external borders. While there are certainly significant differences between the policies and legislations of each EU state, in this context it is relevant to consider that there has been, through the last few decades a progressive “Europeanization of migration policy” (Huysmans, 2000, p. 756). As Mitsilegas (2012, p. 4) points out, this harmonization of policies has not predominated on the field of rights of third-country nationals, but simply in the enforcement of immigration control.

² The assessment of the feasibility of the subject matter was also influenced, to a large degree, by personal considerations of the author, namely educational background (which includes a Brazilian undergraduate degree in International Relations and a Master’s in European Interdisciplinary Studies), nationalities (Brazilian and Spanish) and language capabilities (which include, besides English, Portuguese and Spanish, a somewhat limited ability to read both Galician and Catalan, the two most widely spoken co-official languages of Spain).

³ The Iberian Peninsula is, of course, not restricted to the continental territories of Spain and Portugal, but also encompasses the microstate of Andorra, the British Overseas Territory of Gibraltar and the westernmost section of the French department of Pyrénées-Orientales. The label of “Iberian countries” used in this thesis, however, is more than a geographical descriptor. It will refer to the entirety of the territories of the Portuguese Republic and the Kingdom of Spain, as it is meant to be a link to the idea of “Ibero-America” (that is to say, the territories in the American continent which were colonized primarily by Spain and Portugal) and thus to evoke the significant historical and cultural ties that exist between Spain, Portugal and Brazil.

Because of their geographical position, the Iberian countries (but most particularly Spain) have been under strong migratory strain, primarily at their sea borders, but also through land and air. In consequence, for years they have endured – along with Italy and other Mediterranean states – the brunt of the EU’s anti-migration efforts (Lodge, 2010). “Fortress Europe” is only as strong as each individual section of its walls and it is thus unsurprising that the purported weak links are pressured into erecting strong barriers against undesirable migrants.

Besides representing EU countries under a strong migratory pressure, the selection of Spain and Portugal also has other advantages. They have often been singled out as “longstanding partners of Brazil” (Amorim, 2010, p. 237) and have strong cultural and historical ties with the country, which has facilitated the bilateral dialogue in a wide variety of transnational matters. Even more relevantly, Spain and Portugal have been recurrently mentioned in the Brazilian trafficking debate.

Perhaps it was the dissemination by the Ministry of Justice of data claiming that Spain and Portugal were the destination of over half of the Brazilians trafficked abroad (Ministério da Justiça and UNODC, 2004). Perhaps it was the media attention granted to two operations conducted by the Brazilian Federal Police in 2005 (Babilônia and Castanhola), which tracked the trafficking of women from the state of Goiás to Spain and Portugal (ICMPD, 2011) and the subsequent emphasis given by the Federal Police to the Iberian Peninsula as a major trafficking destination for Brazilian women (see for instance Cerqueira Bunn, 2011). It might even have been simply the recurring labelling of Portugal and Spain as major destinations for Brazilian sex workers (Duarte, 2012; Guardia Civil, 2009; Ribeiro and Sacramento, 2005). Whatever the reason, the idea that the Iberian Peninsula is a major, if not *the* major, destination of Brazilian trafficking victims started to be disseminated at the beginning of the twenty-first century and soon became widespread in the country. In a similar vein, claims that Brazilians corresponded to a significant amount of those who were trafficked to Spain (Carballo de la Riva and Teresi, 2009) and the majority of those that ended up being trafficked to Portugal (de Queiroz, 2006) have also been frequent.

Such assertions have generated a number of bilateral and multilateral meetings, treaties and joint operations (Ferreira Dornelas, 2011; Teresi, 2011) in conjunction with increasingly expanded national legislations and policies to address human trafficking as a whole. The effectiveness of such accomplishments, however, was not something that could be readily ascertained.

To determine whether the existing trafficking legislation and policies in Brazil, Spain and Portugal differentiate (in theory and practice) between victims of human trafficking for the purpose of sexual exploitation and migrant sex workers, taking into account and respecting the agency of the individuals concerned and addressing the specific issues and needs of each group, it was necessary to construct an in-depth profile of the situation of Brazilian migrants who sell sex in the Iberian countries.

Delimitation of the subject matter

The creation of such a comprehensive profile is a substantial challenge. The fact that all three countries possessed a wealth of both official sources and academic publications on topics such as human trafficking, migration and sex work was both a reinforcement of the appropriateness of the topic chosen and a deterrent to all-inclusive research, as it is impossible to address all aspects pertaining to such a vast subject in a single thesis. Following this understanding, a further limitation of the topic was warranted. Its discussion covered three significant issues: age, gender and time-frame.

Victims of trafficking come in all age ranges, which would initially make an age restriction seem somewhat incongruous. How one approaches trafficking, and trafficking for sexual exploitation in particular is significantly different, however, when minors are concerned. The United Nations (UN) Trafficking Protocol very clearly establishes, for instance, that in cases involving “children” (i.e. those under eighteen years of age) consent is always to be considered irrelevant.

The discussion when it comes to migrant sex work is somewhat more complex, as ages of sexual consent vary considerably among different countries and the use of the “child” label to refer to human beings that range from newborns to seventeen years of age seems somewhat misleading, as their situations and levels of autonomy are completely disparate. Nevertheless, minors are, legally, largely considered as being unable to consent to sex work, irrespective of the actual age of consent for sexual relations. This is, for instance, the understanding adopted in the International Labour Organization’s Convention 182 regarding the Worst Forms of Child Labour (article 3), as well as by the sex workers’ rights movement in Brazil (Piscitelli and Sprandel, 2011).

Two other issues were also taken into consideration. The first was the highly sensitive nature of data addressing minors and the difficulty in obtaining it. The second is the fact that there is little to no mention of Brazilian minors being involved in both trafficking for sexual exploitation and migrant sex work in the Iberian countries.⁴ Taking all these points into account, it seems as if the exclusion of minors from the pool of potential victims of trafficking for sexual exploitation is a valid choice. Thus, the victims of trafficking and migrant sex workers who will be contemplated in this thesis shall all be Brazilians of at least eighteen years of age.

The issue of limitations placed due to gender is infinitely more complex. Although women are often discussed as if they were the sole victims of trafficking for sexual

⁴ See for instance reports by the *Guardia Civil* in Spain and the *Observatório de Tráfico de Seres Humanos* in Portugal. Of note is also the fact that the majority of times minors are mentioned, they seem to be older adolescents (frequently around seventeen) rather than younger children.

exploitation and the only ones that participate in migrant sex work, men and trans⁵ are also involved in both situations.⁶ Few potential cases of men and trans being trafficked for sexual exploitation have been identified, however, and their participation in the sex industry of the Iberian countries seems to be relatively small. Whether this is because there really are proportionally so few of them or because the female-centric vision of the sex sector ends up making men and trans invisible in the discourse is hard to affirm.

The recurrent idea that women represent the overwhelming majority of potential victims of trafficking for sexual exploitation and migrant sex workers means that data on women is readily available, while information about men and trans is much harder to be obtained. In the end, because the discourse on trafficking and migrant sex work is so female-centric, this thesis will focus, for the most part, on the narrative of cisgender Brazilian women. Nevertheless, when appropriate and possible, both men and trans will be included.

The last delimitation initially contemplated was a temporal one. Migrant sex work and human trafficking have been debated in the international agenda for decades, even if not under these precise labels. For the past few years the legislation and policies concerning human trafficking have changed and evolved relatively quickly, and so far this process shows no signs of stopping.

The analysis of such a large period is, however, a somewhat daunting task. Thus, although frequent references will be made to the historical context of the “white slave trade” and to the late 1990s, when the issue of human trafficking regained force in the international agenda, the focus of the thesis will be on trafficking and migrant prostitution in the 21st century. This “starting” point was chosen mostly due to the fact that the UN Trafficking Protocol (whose definition of human trafficking, which allows for the possibility of recognising sexual exploitation and sex work as two distinct phenomena, is paramount to this thesis) was signed in the year 2000. Although no specific end-point was ever set out, as the majority of the articles that compromise the bulk of this thesis were submitted to publication by mid-2014 this means that significant changes to policy and legislation that may have taken place from this period onwards will likely not be included.

Mapping of available sources, information gathering and content analysis

⁵The emic term “trans” is being used here to refer to *travestis* (as per the terminology used in Brazil), as well as transsexual and transgender persons. Because there appears to be no data or mention of trans male individuals in the context of trafficking and the sex industry in Brazil, “trans” shall refer to individuals who were assigned male at birth and were, to some degree, dissatisfied with this label.

⁶Interestingly enough, these groups are perceived in completely opposite ways. Men are seen as both clients and possible exploiters of sex workers, but rarely considered as potential sex workers themselves. In Brazil (and, it seems, already in the understanding of some European countries) the term *travesti* is considered as a de facto synonym to prostitute, which is one of the reasons this group is so heavily stigmatized.

The source mapping process led to the discovery of a number of key institutions (international, governmental and otherwise), individual works and relevant scholars which formed the basis of the bibliography of this thesis. The texts used in this thesis were obtained either online or in person through the Ghent University libraries, the Brazilian National Library and the libraries of the Federal University of Rio de Janeiro and of the Pontifical Catholic University of Rio de Janeiro. They included books, academic articles, theses, studies sponsored by national governments and/or international organizations, publications from government agencies and other state institutions, studies produced by non-governmental organizations (NGOs), think-tanks and other research groups, court records, newspaper and magazine articles, and ethnographic studies.

Although the primary sources used in the development of this thesis were qualitative ones, as is common in most case studies, quantitative data was also utilised. Considering that some of the harshest criticism in any trafficking research is usually directed towards the statistics which are presented (Tyldum, 2010; Tyldum and Brunovskis, 2005), the current research took a different approach. Rather than try to establish estimates of the number of Brazilian trafficking victims and migrant sex workers in Spain and Portugal, what was sought was to offer a critical reflection on the trafficking data which is available. This was accomplished through a methodological review of key quantitative studies and official statistics covering Brazilian victims of trafficking which are present in Spain and Portugal.⁷ Particular attention was paid to the concept of victim of trafficking used and how the data was collected.

The qualitative methodology was based primarily on textual analysis of existing sources of data which were supplemented by information requests conducted online or through letters. While significant time was spent collating official trafficking narratives, one of the main objectives of the proposed research was, in fact, to challenge some of the core assumptions which underpin the established trafficking narrative that exists in Brazil and the Iberian countries.

The assessment of trafficking as primarily a criminal matter with transnational dimensions has often meant that the opinions of policy makers and law enforcement officers have had primacy in the debate about the topic. They are often followed by the assessments of specialists, be they academics or those involved in international or non-governmental organisations. Comparatively little space is given to the voices of the trafficking victims themselves, who are often considered as unable to make rational decisions and consent to migration and/or sex work, and as incapable of assessing their own situations. Thus, one of the focus points of this thesis was to take into consideration the voices of trafficking victims, as well as that of all other migrants who sell sex and particularly to respect their self-classification into one category or the other. With this in

⁷ See chapter four.

mind, primary importance was given to ethnographic studies⁸ that focus on Brazilian sex workers and trafficking victims in the Iberian Peninsula.

Daly and Chesney-Lind (1988, p. 518) once suggested that female criminologists, in their attempts to comprehend women's (criminal) actions in their own terms, "are more interested in providing texture, social context, and case histories" and thus that their empirical approach is "more likely than the men's to involve observations and interviews." While this may be a generalization, it proved to be true in the case of this thesis.

Per Flavin (2001, p. 278), the use of narrative accounts does not mean simply relying on individual experiences to explain an issue. Rather, such personal statements allow the writer to "identify important themes while at the same time giving their findings a human face." As financial and temporal resources made it impossible to obtain such accounts in person, information from existing sources was relied upon.

In this scenario, the construction of a case study based upon ethnographic works developed by different authors has some considerable advantages in comparison to limited field research which could have been conducted by the author of the thesis. The first is that the use and triangulation of multiple ethnographic studies to formulate the present case study helps avoid biases which might have been reproduced in the research of a single investigator (Feagin, Drum and Sjoberg, 1991, p. 18)

A second advantage was the increased temporal scope. Significant research on migration, sex work and human trafficking has been conducted for decades. By piecing together accounts collected by different ethnographers, it was possible to get a clear picture of the evolution of the presence of Brazilians in the Iberian sex industry since the late 1990s and the way it has responded to significant events in the last twenty years, such as the global financial crisis and changes in the local legislation.

Besides providing a larger and contiguous timeline, utilising ethnographic studies conducted by other researchers also meant that it was possible to obtain a greater understanding of the situation of Brazilians in the Iberian Peninsula as a whole, rather than simply one or two locations. It is important to acknowledge that this, however, did not mean that there were no regional biases in the research. Although many of the articles and reports which addressed both trafficking for sexual exploitation and (migrant) prostitution in Spain also tended to mention Portugal (often due to the relatively high level of mobility between sex workers in the Iberian Peninsula), the discrepancy between them is large. There were considerably more sources addressing these issues in Spain than in Portugal, where no extensive ethnographic studies and few country-wide reports were found. On top of that, inside Spain itself there was significant

⁸ The term "ethnographic studies" is used here in the broad understanding of Le Compte and Preissle Goetz (1982, p. 31) and includes "investigations described variously as qualitative research, case study research, field research, anthropological research, or ethnography."

focus on sex work which took place in the metropolises of Madrid and Barcelona. Although studies from several Spanish regions were found, the works which were the most relevant to the construction of this thesis tended to focus on the regions of Galicia and Catalonia, as well as the Spanish-Portuguese border. Research which addressed Brazilians who sell sex in Brazil also had its biases, focusing primarily on urban prostitution in the city of Rio de Janeiro and on the north-eastern coast of the country, internationally recognised destinations for sex tourism.

In addition to having certain geographical limitations, ethnographic accounts of individual authors largely focused, if only because of logistics, on specific sectors of the sex industry and/or particular gender groups. By making a secondary analysis of existing research, it was possible to obtain a broad picture which included the three most significant venues of the Iberian sex industry (street, clubs, apartments) and take into account not only the narratives of women, but also of men and trans, even if in a much smaller scale.

Finally, by using existing ethnographical research it was also possible to obtain information regarding a vast amount of people in a scope which would be virtually impossible to be reproduced by a single researcher during the development of this thesis. This will be further elaborated in the next section.

Besides ethnographical works, reports and publications which were developed, sponsored or validated by the national, regional or local governments of the countries being studied, as well as by international organizations⁹ were included as a matter of course. Their quality was immaterial as, regardless of that, they were used to guide and justify governmental policies at all levels. This did not mean, however, that the content of these materials were reproduced uncritically. Each document was scrutinized for its methodology, for contradictory statements and for the terminology used to assess whether or not it was the appropriate one. Each time a report presented problems which qualified or possibly invalidated the material which was being referenced this was very clearly marked and subsequently referenced throughout the thesis. The focus of this documental analysis was not on reproducing the contents of the listed publications, but rather on how these documents – and particular the concepts used within them – were produced (Mason, 1996, pp. 72-73).

A similar position was taken regarding speeches, articles, interviews or any other form of communication written and/or otherwise presented by official representatives of the judicial, legislative or executive powers of the countries concerned. Although they were certainly not considered uncritically, they were taken to represent an opinion endorsed

⁹ International organizations in this context refers to well-established, supra-national and intergovernmental bodies such as the United Nations (UN) and its specialized agencies and offices, the European Union (EU), the International Organization for Migration (IOM), the International Centre for Migration Policy Development (ICMPD), among others.

by the organ these people represent, unless the individuals in question had disclaimed otherwise. Contradictory information on all levels was always clearly marked.

This critical assessment of all government-sponsored information was not a pioneering undertaking. On the contrary, a significant part of the criticism which was heaped into some of the most relevant, but also most controversial publications was previously offered by third parties (usually academics or NGOs) that clearly delineated the problems with the official narratives being presented. These critical reviews were also not accepted unchallenged and thus their problematic aspects (if any) were also made clear.

Besides officially endorsed data, there was also a significant number of texts, speeches and publications which were developed by unaffiliated organizations (particularly non-governmental ones), prominent members of civil society and academics. Once more, this data was not taken uncritically, having being scrutinized for its methodology, terminology and agenda.

To ensure data validity as much as possible, efforts were made to triangulate the most relevant information being quoted and to privilege the voices of those who either belonged to or at least had direct contact with the groups being discussed. As previously detailed, this was the reasoning behind the emphasis on referencing multiple ethnographic reports and publications based on anthropological observations of both migrant sex workers and trafficking victims.

Although the majority of sources used in this thesis consisted of written materials, video and audio files of relevant interviews, seminars, public hearings, colloquiums, television programs, news broadcasts and documentaries were also utilised. Selected passages from such files were transcribed in their entirety, while others were made into field-style notes so as to transform them into searchable texts. The same technique was used to obtain textual data from events the author attended in person.

All the texts consulted throughout this thesis were catalogued in a reference management software which labelled when and where each specific source was found. As each file was processed, it was appropriately tagged and given a “rating” according to its relevance to the thesis. The texts were then read, highlighted and annotated. Parallels with materials approaching a similar subject matter (in either a complementary or opposing manner) were also noted.

The search, notation and tagging capabilities of the software became particularly valuable to establish construct validity and reliability during the data analysis process, as the multiple sources of data were processed in such a way as to allow for pattern matching and data triangulation (Bayens and Roberson, 2010, p. 86-87; Feagin, Drum and Sjoberg, 1991, p. 19). This was particularly relevant when utilising ethnographic

studies to construct a picture of the lives of migrant sex workers and trafficking victims in the Iberian sex industry.

This textual analysis conducted on pre-existing materials led to the discovery of some gaps in the existing data. To supplement the information available, a series of data requests were conducted through emails, letters and official information requests channels. These requests will be elaborated further on.

Selected ethnographic studies

Although several works were crucial to the development of this thesis (including government produced and sponsored reports), significant relevance was placed, as previously mentioned, on data obtained from ethnographic research. This section will list some of the main researchers included in this thesis and elaborate on why their work was selected.

One of the cornerstones of this project was the research undertaken by Adriana Piscitelli, a professor at the State University of Campinas. Three categories of her body of work were considered to be relevant.¹⁰ The first is her work which dealt specifically with Brazilian women who had migrated to Spain to work in the sex industry. Developed mostly since 2006, its observations came primarily from research in the Guarulhos airport and extensive field work undertaken by the author in Spain (Piscitelli, 2006c, 2007b, 2009a, 2011c, 2011d and 2011e). The second category, which is strongly influenced by her Spanish research, focused more on the divide between trafficking for sexual exploitation and migratory projects which include work in the sex industry (Piscitelli, 2006a, 2007a, 2008a, 2008c, 2009b, 2010a, 2011a, 2012). A third group of her work dealt with the construction of an innate “Brazilian sexuality” and how that intersected with gender, race, the sex industry and international power relations. This work initially focused on sex tourism in north-eastern Brazil, but in later years begun to incorporate her ethnographic research in Spain (Piscitelli, 1996, 2001, 2004, 2005, 2006b, 2007c, 2008b, 2010b and 2011b).

The importance given to Piscitelli’s research in this thesis was a result of three of its characteristics. The first is the very clear divide she makes between migrant sex work and trafficking for sexual exploitation, a separation which is not made by several other prominent Brazilian academics. The second is the weight she gives to the perceptions and agency of potential victims and particularly to their assessments of their own situations. Lastly, her opinions and articles are primarily based on extensive and detailed ethnographic research undertaken by her in both Brazil and Spain between 2000 and 2009, which included nine months of fieldwork scattered between 2004 and 2009 in the Spanish cities of Barcelona, Madrid, Bilbao and Granada (Piscitelli, 2011a).

¹⁰ The separation of the articles in these categories was made taking into consideration the main focus of each one. Due to the nature of Professor Piscitelli’s research, however, in most of these articles one or more of the other themes are likely to be present, as sometimes evidenced by their titles.

Besides focusing on her own academic research, Piscitelli also coordinated the production of some of the most relevant publications sponsored by the Brazilian government, “Report: trafficking indicators in the universe of deported and non-admitted people who return to Brazil through the Guarulhos airport” (Secretaria Nacional de Justiça, 2006) and “International human trafficking and migrant smuggling among deported and non-admitted persons that have returned to Brazil through the São Paulo international airport” (Secretaria Nacional de Justiça and ILO, 2007), henceforth collectively addressed as the Guarulhos Airport studies. These studies were based on months of interviews with Brazilians who were deported or denied entry at international airports, primarily in Europe. They were particularly interesting because the evidence of human trafficking (defined as per the UN Protocol standards) was, in fact, very low, while the presence of Brazilian women who migrated to Europe to work in the sex industry was much more noticeable.

The Guarulhos airport studies present several characteristics that have made them some of the most relevant works included in this thesis. The first is the fact that they are based on months of direct contact with a large number of potential, alleged and confirmed victims of trafficking and migrant sex workers. The second is that the two main reports have been supplemented by five additional publications (ASBRAD, 2008; Donadel, 2011; Secretaria Nacional de Justiça and UNODC, 2008; Secretaria Nacional de Justiça, UNODC and ASBRAD, 2008a; Secretaria Nacional de Justiça, UNODC and ASBRAD, 2008b) that have minutely detailed the methodology used in the studies, expanded on previously mentioned cases and significantly enhanced the reliability of the data provided in the main publications.

Several other authors presented, like Piscitelli, general critical reflections about the intersection of the issues of trafficking, migration, race, sexual exploitation, sex work and agency. One of them is Laura María Agustín, whose relevant work can be divided in two main categories. The first deals mostly with the issue of consent in sex work and its relevance to the trafficking discourse (Agustín, 2001b, 2003a, 2004, 2005a, 2005b, 2006a, 2006c, 2007, and 2011). The second deals more specifically with the sex industry in Spain (Agustín, 2001a, 2002a, 2002b, 2003b, 2005c, 2006b, and 2012).

Agustín’s work is repeatedly quoted throughout this thesis because it is largely based on research undertaken by her in Europe (primarily in Spain) and Latin America since 1994 (Agustín, 2005b). Moreover, like Piscitelli, Agustín privileges the voices and agency of migrants who sell sex, be they potential victims of trafficking or not.

Another series of works based on in-depth ethnographic research in Spain proved to be very valuable to this thesis: López Riopedre’s (2010a, 2010b and 2011) investigation of migrant sex workers (particularly Brazilians and Colombians) in the Spanish region of Galicia. Although Riopedre’s work may appear at first to be limited, it presented a number of positive aspects. It was based on extensive, in-depth research with a variety

of female and trans sex workers through a large period of time.¹¹ Even though most of his field research took place in the Galician city of Lugo, the largely itinerant nature of migrant sex work in Spain meant that most of his informants had lived and worked in a variety of Spanish cities and regions and even in other countries, such as Portugal. In this way, his assessment of the conditions of the lives of migrant sex workers is ultimately much more extensive than it may at first appear.

Although many of the articles and reports which addressed both trafficking for sexual exploitation and (migrant) prostitution in Spain tended to mention Portugal, the discrepancy between the source materials available is obvious, with considerably more research focused on Spain than there were focused in Portugal, where no significant ethnographic studies or country-wide reports were initially found. Thankfully, this situation was not reproduced in Brazil.

In the course of over ten years of anthropological research on prostitution in the city of Rio de Janeiro, professors Thaddeus Blanchette¹² and Ana Paula da Silva have interviewed some two thousand sex workers, most of them women, nearly half of which had either lived or planned to live abroad at some point in their lives (Câmara dos Deputados, 2014, p. 475). This incredible amount of data gives significant weight to the work they have produced, individually or together, on sex work, migrant prostitution and trafficking for sexual exploitation.

Blanchette and da Silva co-wrote two articles giving a clear overview of contemporary prostitution in urban Brazil and the role of transnational migration for sex work (Blanchette and da Silva, 2005 and 2011a). Da Silva also wrote a solo article which deals with this theme (da Silva, 2011). Other relevant articles which deal with the power structures constructed around race, sex and gender were Blanchette (2011) and Blanchette and da Silva (2010a).

Two of their most recent articles have added substantially to the understanding of human trafficking in Brazil. In “As American Girls,” Blanchette (2009) made a powerful parallel between the white slavery moral panic of the beginning of the 20th century in the United States and contemporary efforts against human trafficking in Brazil, showing that they were both much more tied to a need to protect the reputation of the nation and its rising place in the international scene than to a genuine concern about the fate of the women allegedly victimised. “The myth of Maria, an exemplary trafficking victim” (Blanchette and da Silva, 2011b) explored the Brazilian trafficking victim “myth” of the poor, ignorant, non-white woman and her journey of deceit and redeeming pain, comparing it with the reality of the Brazilian migrants who work in the

¹¹ Riopedre spent nearly six years between 2000 and 2006 undertaking field work for his research on Latin American sex workers in Spain. Four of these years were based in the Spanish city of Lugo where, among other things, he compiled the life histories of thirty Brazilian sex workers which are included in his doctoral thesis.

¹² Professor Blanchette also works for and often represents the NGO “Davida,” one of the oldest and most prestigious sex workers’ rights organizations in Brazil (Piscitelli and Sprandel, 2011).

sex industry abroad. Many of the key points made in “The Myth of Maria” were also included in Blanchette (2012), as well as Blanchette and da Silva (2010b) and Blanchette, da Silva and Raylane Bento (2013).

Information requests

During the initial elaboration of the methodology of this thesis, there were no planned interviews, questionnaires or surveys, as there was no one topic which could at first glance be further clarified by them. Rather, it was felt that should some questions remain unanswered during the development of the thesis, additional information would be solicited through one of the preceding means.

Due to the extensive amount of primary and secondary sources that were collected (which did include a number of surveys, interviews and information obtained through questionnaires), there did not seem to be a need to conduct any additional field research about some of the broad issues involved. There were, however, some small gaps in the data collected and some materials which could not be located. To be able to locate these sources and obtain the necessary information, several information requests were sent, some more successfully than others.

The requests took two forms. In some cases, the inquiry concerned the desire to obtain one or more specific publications which were known to exist but could not be located. In others the request consisted of a very limited number of both open-ended and close-ended questions which asked for either factual information or the official position of an institution regarding a particular subject. These questions were preceded by a short introduction from the author and a brief explanation that the answers provided may be included in the research being conducted.

Perhaps the most successful case is that of information requests directed towards Brazilian institutions. In accordance to a law regarding access to public information enacted in 2012, the Brazilian government created a website where electronic requests for information can be submitted to any of its organs.¹³ After each request is submitted, the organ in question has a limited deadline to either answer the request or thoroughly justify its denial.

During the course of the research for the thesis, the e-SIC website was used to request information three times, all successfully and within the established time limit. In the first instance the Ministry of Justice was able to locate a text which was cited in two of its publications, but which did not appear to have been made available to the public. In the second instance, the Foreign Ministry was able to clarify some specific points about the trafficking data it supplied to a report from the Ministry of Justice (Ministério da Justiça, Secretaria Nacional de Justiça and UNODC, 2013). In the third instance, the

¹³ <http://www.acessoainformacao.gov.br/>

Federal Police clarified its official position regarding preventive inspections which take place in Brazilian airports to detect trafficking victims. The second and third requests consisted of a small number of both close-ended and open-ended questions which were to be answered, if possible, in writing. As the responses received by email were sufficiently informative, no follow-up questions were deemed necessary.

An information request was also sent directly to the NGO ASBRAD, which had been responsible for conducting the Guarulhos Airport studies under the direction of Professor Adriana Piscitelli. Dalila Figueiredo, the current director of ASBRAD, very promptly clarified some minor questions regarding the research, explained the current position of the organization regarding the humanised assistance office for migrants established in the Guarulhos airport and made herself available to answer any more inquiries on the subject. Some of her answers were subsequently quoted in the body of this thesis.

Other information requests were, however, unsuccessful. Unlike ASBRAD, which was very prompt in discussing its experience in the São Paulo airport, representatives of the humanised assistance office for migrants in the Rio de Janeiro airport (who are members of the city's municipal guard) did not respond to the messages sent to them. This lack of information ended up being largely irrelevant, however, as a Master's thesis (Antunes Sosinho, 2011) made available online soon after the requests were sent contained details of its author's research in the Rio de Janeiro airport. The information it contained managed to clarify all the relevant issues which would have been addressed in a potential interview.

Neither the "Rede Brasileira de Prostitutas," nor "Davida," two NGOs dedicated to sex workers' rights in Brazil, responded to information requests regarding the Federal Police's inspections in Brazilian airports which tended to target migrant sex workers. Quotes from members and representatives of these organizations on this subject, however, were found in publications and records of public appearances (for instance, Piscitelli and Sprandel, 2011 and Blanchette, 2012).

The NGO "Movimento contra o tráfico de pessoas" was contacted several times through a variety of different means. No answer was given, however, regarding the availability of one of its publications on its monitoring of the Brazilian national trafficking plan, which did not appear to be available either online or elsewhere. In this case, the notes taken by the author during a public hearing (Procuradoria da República no Estado do Rio de Janeiro, 2013) regarding the result of their research had to suffice.

Since alternatives to obtain most of the information in the listed requests were found, none of the denials given by Brazilian organizations proved to be particularly problematic. The situation changed somewhat in the case of Spain, because although the country also has a Transparency and Public Information access law, in practice it proved to be far less effective than Brazil's.

During the initial literature review conducted for the thesis, two unavailable data sources from Spain were singled out as particularly relevant. The first were the annual publications of the Civil Guard regarding human trafficking for the years 1999, 2007, 2010, 2011 and 2012.¹⁴ The second was a publication of the National Police Corps (*CNP*), “Disarticulated prostitution networks, responsible persons detained and victims freed (2003-2006).”

The first attempt which was made to obtain the Civil Guard reports was a message sent to the email address listed in the most recent publication available. As this did not generate a response, at the request of the author a third-party made an inquiry in person at the *Guardia Civil*’s public relations office in Madrid and was there advised to send a request to another email address. The *Guardia* responded to this subsequent email by informing that a request for criminal data should be addressed to the Ministry of Interior. An email sent to the Ministry informed the author that such a request must be made by mail using the forms available on its website.

Parallel to this, an email was also sent to the *CNP*’s trafficking division requesting the relevant trafficking report it had produced. No response was forthcoming. Thus, two separate information requests originated from the forms available at the Ministry of Interior’s website. The first request was sent to the appropriate division of the Civil Guard, requesting the relevant publications. Although the letter was tracked to them, no response, by any means, was ever forthcoming.

The second request was addressed to the general archive of the Ministry of Interior. It asked not only for the publication produced by the *CNP*, but also for trafficking data collected by the Ministry itself. In its answering email, the staff member of the Ministry advised that the publication might be found through the Ministry’s Central library and that any crime data available could be found in the Ministry’s statistical yearbook, which is available online. Unlike what the employee seemed to believe, however, the yearbook (which had been consulted previously) does not contain any trafficking data.

An email was sent to the Central Library and Documentation System of the Ministry of Interior, as advised, to try and locate the publication of the *CNP*. A staff member subsequently advised that the publication, while not available there, might be found in the library of Spain’s Institute of Police Studies. A subsequent request to said library went unanswered.

In the end, all attempts made during the course of months to obtain these publications from Spain’s main police forces proved unsuccessful. It is relevant to note, however, that at no point were these requests outright denied for data protection reasons.

¹⁴ The reports from 2000-2006, 2008 and 2009 were available online, most in different websites, none of which was affiliated with the government or the Civil Guard.

Writing

The final step in the elaboration of the thesis was the actual writing it entailed. As established in the introduction, the core of this work consisted of five distinct yet interlinked manuscripts which were submitted to peer-reviewed publications.

By its own nature, an article-based doctoral thesis differs significantly from a more traditional book-based one. Each individual chapter must stand on its own as a contained piece of research, but at the same time the bundle of scientific publications must be clearly related so as to form a coherent body of work that answers the proposed research questions.

The coherence in the presented work is also a result of the unified theoretical approach which, implicitly or explicitly, shaped its writing. This framework was that of labelling or societal reaction theory, a perspective whose main concerns, as its name implies, “are the nature, emergence, application and consequences of labels” (Plummer, 1979, p. 85). The term “label” is used here in a similar way to what Judith Butler (2009) referred to as “frames,” politically saturated ways to present a person or deed that lead to assumptions being made about them.¹⁵

The seeds of labelling theory can be traced back to symbolic interactionism, a sociological theory that posits that reality is not immutable and objective, but rather constructed through the interaction and interpretation of members of society. This implied “that the labelling or appraising of individuals by social groups affects the individuals’ identities or social selves. Those identities, in turn, influence subsequent behaviour [...]” (Matsueda, p. 16). Labelling theorists applied this premise to deviant labels, asserting that “regardless of whether a person is objectively deviant or not, if that person is defined as deviant, negative consequences will result” (p. 14).

Theorists like Tanenbaum and Lemert considered that these negative consequences consist primarily of the criminogenic effect of state intervention. In their view, by applying deviant labels to individuals, the state reinforces, rather than discourages, behaviour it considers to be problematic if not outright criminal (Lilly, Cullen and Ball, 2007, pp. 123-124, 129). This contentious assertion was later softened by John Brainwaite, who posited that while labels may indeed have a disintegrative effect that leads to stigmatization and social exclusion, they can also have a reintegrative effect if societal disapproval is followed by attempts to restore the offenders to their previous standing in the community (p. 139).

¹⁵ Butler explores, for instance, the effects of framing Muslim women as passive and downtrodden and Muslim men as oppressors. According to her “[s]exually progressive conceptions of feminist rights or sexual freedoms have been mobilized ... to argue for limits to immigration to Europe from predominantly Muslim countries.”

Labelling was seen as a fringe theory until the early 1960s, but by the end of the decade had been incorporated into the mainstream (Plummer, 1979, p. 85). Hagan (1973) and Hirschi (1975) believe that this ascension was more a reflection of labelling theory's provocative overtones (which were particularly suited to the public sentiments at the time) than its validity; by the mid-1970s the theory was already being vehemently criticized for its biases and lack of empirical support (Plummer, 1979, p. 85).

Conflict or radical criminologists, for instance, criticized incipient labelling theorists for failing to acknowledge the relevance of power dynamics in the construction and application of labels (Lilly, Cullen and Ball, 2007, p. 131). This issue was later more thoroughly explored and the fact that "social control institutions disproportionately label the disadvantaged and powerless as deviant, regardless of their actual behaviour"¹⁶ can now be viewed as one of the key propositions of labelling theory (p. 23).

Following this line of thought, this thesis focuses on the hypothesis that migrants who sell (or are suspected of selling) sex are affected by the labels imposed on them by states, which in turn have specific reasons for constructing and using these labels in particular ways. Ultimately, it explores the specific effects the labels of "migrant sex worker" and "(potential) trafficking victim" have on all relevant migrants and assess the motivations behind origin and destination countries' construction and manipulation of said labels.

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¹⁶ In the same vein, privileged members of society may indulge in questionable behavior without being saddled with deviant labels (Newburn, 2009, p. 218).

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CHAPTER THREE

Contrasting the conceptualisation of victims of trafficking for sexual exploitation: a case study of Brazilians in Spain and Portugal

Abstract

Despite the significant emphasis given to the trafficking of Brazilians to the sex industry of the Iberian Peninsula, the concepts of “victim of trafficking for sexual exploitation” used in these three countries vary. This article analyses the positions of Brazil, Spain and Portugal regarding the conceptualisation of “trafficking victim,” focusing on their legislation and policies, as well as on relevant narratives which show how these policies are being applied. It showcases how the incompatible definitions being used compromise genuine anti-trafficking actions and may be an indicator that stopping trafficking may not be the primary concern of the policies developed by these governments.

Keywords

Brazil; Human trafficking; Portugal; Spain; Trafficking victim; Trafficking policy

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Contrasting the conceptualisation of victims of trafficking for sexual exploitation: a case study of Brazilians in Spain and Portugal

Introduction

Brazil is considered one of the major source countries of women who are trafficked to the European Union (EU) for sexual exploitation. Among the receiving states, Portugal and Spain, countries with which it has strong historical and cultural ties, have held at times some of the largest declared numbers and percentages of its victims (Ministério da Justiça 2011).

This noteworthy human trafficking flow has been recognised as a problem by all three countries. It has resulted, from a policy standpoint, in a number of transatlantic meetings, declarations and agreements between the parties to ensure that traffickers are dealt with and victims protected. In practice, Brazil has taken part in a number of joint anti-trafficking operations with Spain (such as *Castelo* in 2004 and *Ninfas* in 2013), Portugal (*Lusa* in 2006 and *Luxúria* in 2009) and both countries at once (*Castanhola* in 2005), while Spain and Portugal have also collaborated in joint operations, particularly along their shared border (ICMPD 2011). When analysing these instances of cooperation it is clear that particular (if not exclusive) focus is given to combating trafficking for sexual exploitation

Considering the prominence given to the issue and the high level of multilateral cooperation involved, it would be reasonable to assume that all three countries would have compatible policies and definitions of human trafficking and that these would be based upon minimum international standards, particularly the United Nations (UN) Trafficking Protocol.¹ We thus turn specifically to the Protocol's condemnation of the "exploitation of the prostitution of others or other forms of sexual exploitation" in the framework of human trafficking. The exact same language is used in the two foremost European instruments on the subject, the Council of Europe Trafficking Convention² and Directive 2011/36/EU.³ However, in none of these documents is the term sexual exploitation defined, being left to the discretion of each state. There is thus no guarantee that these three countries use the same definition when considering what constitutes a victim of trafficking for sexual exploitation.

This is highly problematic in a number of ways. If certain countries state that they have a common goal and strive to work towards it through, among other means, transnational

¹ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (2000). Spain ratified the Protocol in 2002, while Brazil and Portugal did so in 2004.

² *Council of Europe Convention on Action against Trafficking in Human Beings* (2005). The Convention entered into force in 2008 for Portugal and 2009 for Spain.

³ *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*.

judicial and police cooperation, having different interpretations of what constitutes the phenomenon is counterproductive. This may lead, for instance, to the development of inconsistent statistics and joint operations that have different objectives.

The main objective of this article is thus to assess whether the concepts of (transnational) “victim of trafficking” for sexual exploitation have been constructed in compatible ways by Brazil, Spain and Portugal. In particular, we will determine whether the concept is being erroneously used by one or more countries to refer to all migrant sex workers and what consequences this can have.

This assessment will be conducted in two separate stages for each country. First, we will consider how the concept of victim is defined in the anti-trafficking legislation and policies and how this concept has evolved over time. Secondly, we will determine whether the established definition is used in practice by police forces, the judiciary and other relevant organs. We will also assess whether those who fulfil the definition of a (potential) victim of trafficking benefit from the provisions laid out in the relevant legislation and policies or whether they are in practice treated as undocumented migrants.

Unlike the evaluation of the construction of the official concepts of “victim of human trafficking,” the appraisal of how legislation and policies are being and have been applied will not be based solely on official government discourses. Rather, the assessment of the actual identification and treatment of these victims will be constructed through accounts of relevant non-governmental and transnational organizations, academics, police and migration officers, members of the judiciary and, of course, migrant sex workers and victims of trafficking for sexual exploitation themselves. These accounts have been obtained primarily through institutional publications (sponsored by national and regional governments, international organizations and civil society representatives), ethnographic and other relevant academic studies (such as theses), and newspaper reports addressing the issues of human trafficking, sex work and migration in all three countries.

Brazil

Local Legislation and Policies

Human trafficking has been typified in Article 231 of the Brazilian Penal Code (BPC) since 1940. At the time trafficking, a crime against sexual liberty, consisted solely of promoting or facilitating the movement of women (into or out of the country) for the purpose of prostitution and did not take into account the consent of the alleged victims or if any exploitation was planned or took place.

In 2005 major changes were made to this definition. Two of them were the replacement of the term “women” by “someone” and the introduction of Article 231-A, typifying

internal trafficking. A second amendment took place in 2009, when (among other things) the term “other forms of sexual exploitation” was added to the law. Note that the Brazilian legislation, unlike the UN Trafficking Protocol, does not condemn “the exploitation of the prostitution of others,” but prostitution in itself, which in this context is equated to a form of sexual exploitation.

As it current stands,⁴ Article 231 of the BPC reads,

International trafficking in persons for the purpose of sexual exploitation

Art. 231. Promote or facilitate the entry into national territory of someone who will engage in prostitution or other form of sexual exploitation, or the exit of someone who will engage in it abroad.

Sentence – incarceration, from three to eight years.

§1 Incurs the same sentence the person who handles, recruits or buys the trafficked person, as well as those who, aware of his/her condition, transport, transfer or harbour him/her.

§2 The sentence is increased by half if:

I – The victim is younger than eighteen years of age;

II – The victim, due to infirmity or mental deficiency, does not have the necessary discernment to practice the act;

III – If the agent is a parent, grandparent, stepparent, sibling, stepchild, spouse, companion, tutor or caretaker, preceptor or employer of the victim, or if he/she assumed, by law or other form, obligation of care, protection or vigilance;

IV – There is the use of violence, grave threat or fraud.

Despite the fact that the UN Protocol was ratified by Brazil in 2004, the BPC still only contemplates trafficking for sexual exploitation, which, when it concerns adults, is treated as an offence whose primary concern is public morality. Moreover, it depends solely on two single variables: conduct (recruitment) and purpose (prostitution, which is read as exploitation), ignoring the necessity of means (coercion, abduction, etc.)⁵ for trafficking to take place, the consent of the victim (even if non-vitiated), and the possibility of non-exploitative yet non-autonomous migrant sex work.

The absence of exploitation as a key component of the definition can lead to a rather broad perception of what constitutes “facilitate” in this context. In the assessment of Public Prosecutor Ella Wiecko de Castilho (2006: 2), this “aid” is not restricted to lending money (at a profit or not) or helping the person obtain travel documents (legally

⁴ Law Project 479/2012 – which was approved by the Brazilian Senate in April of 2014 and is currently under review by the Chamber of Deputies – intends to change this definition. If ratified in its current form it will, among other things, shift the classification of trafficking to a crime against human dignity, introduce other forms besides sexual exploitation (such as slave labour and organ removal), make the means described in the UN Protocol a pre-requisite for the crime and eliminate the use of the word “prostitution,” substituting it for sexual exploitation.

⁵ The use of violence, grave threat or fraud and the (implied) use of a position of vulnerability or power are not mentioned as pre-requisites, but as aggravations to the crime.

or not), but can also include things like buying clothes or any other necessary things for the journey. Thus, anyone who knowingly participates in the migration process of a (future) sex worker can be charged as a trafficker, even if no exploitation takes place. This ample interpretation is problematic because a large number of people, working in a variety of sectors, are aided in their migration process, not always in a strictly monetary way or even at a cost (Piscitelli 2006: 5).

Thus, according to the BPC practically all migrant sex workers can be classified as victims of human trafficking for sexual exploitation and the only migrant prostitution which can legitimately take place is that which is completely autonomous. This offers an interesting parallel to the legal standing of prostitution in Brazil, which is in itself not criminalised. Rather, the Brazilian state has long since adopted an abolitionist position in which adult prostitution is tolerated (although not regularised), but in terms which imply that prostitution is in itself sexually exploitative.⁶ As it happens in the context of trafficking, only prostitution which is completely autonomous is tolerated.

Besides trafficking for prostitution, Article 231 also condemns that which involves “other forms of sexual exploitation.” This term, however, is not defined in the BPC, nor is a definition present in either the National Trafficking Policy or the National Trafficking Plans (Secretaria Nacional de Justiça 2008, 2013). However, in the “Reference guide to the network facing human trafficking in Brazil” (Teresi and Healy 2012), sponsored by the Ministry of Justice, there is a definition of sexual exploitation used as reference, which was in fact taken from a publication of the Brazilian office of the International Labour Organization (ILO):

Commercial sexual exploitation is a crime and occurs when men and women are *forced to enter prostitution*. It also occurs when they enter prostitution of their own free will, but are *hindered from leaving it*. (p. 15)

In the case of adults, prostitution is considered *commercial sexual exploitation* or forced prostitution when *forced labour characteristics* show up: restriction of freedom, debt bondage, retention of documents, threats, etc. ... In situations of sexual exploitation, the victims, be they adults of either sex, children or adolescents, are *exposed to different kinds of violence*, such as psychological pressure, physical ill-treatment, beatings, humiliations, slander, libel, sexual harassment, rape and murder. (p.14) (Miranda et al. 2009; emphasis added).

Here there is a very clear emphasis on the fact that not all kinds of prostitution consist in sexual exploitation and that some kind of mistreatment (physical, psychological) must

⁶ The abolitionist approach to sex work – which is taken not only by Brazil, but also by Spain and Portugal – tolerates the activity, but does not consider it a job like any other. Sex workers are seen as victims, not workers, and thus profiting from the prostitution of others or inducing others into prostitution is prohibited. In all three countries brothels are, in theory, prohibited, but places which act as de facto brothels (such as highway clubs) are tolerated to an extent.

also take place. This position, while still in line with the UN Trafficking Protocol, contradicts the BPC definition.

This duality when it comes to the definition of sexual exploitation in the context of human trafficking, which is understandably problematic, is reinforced by different state agents. Both positions were, for instance, presented in 2010 by official government representatives during the “I Seminar regarding Brazilian migration and gender issues.” The Ministry of Justice (responsible for backing most of the anti-trafficking policies that have been implemented, as well as funding trafficking research) put forth the broader UN definition of trafficking which is used in the National Trafficking Plans and Policies; the Federal Police highlighted the BPC definition and in broad terms condemned the prostitution of Brazilians abroad regardless of the condition and wishes of the sex workers (Piscitelli 2011: 16-17).

Law and policies into practice

The Federal Police is in practice responsible for enforcing the Brazilian migration policy and for investigating potential cases of transnational (and at times internal) human trafficking. Its decision on whether to abandon or pursue an investigation makes all the difference when it comes to establishing a legal case about a potential trafficking situation.

There is no doubt that the Federal Police has been responsible, often by working alongside law enforcement agencies from other countries, for apprehending traffickers and aiding victims as understood in the terms of the UN Protocol. Yet not all cases persecuted seem to be targeting exploitative situations. Official statements from its representatives seem to indicate that the Federal Police bases its actions solely on the trafficking definition enshrined in the BPC and this is reflected in the cases it pursues. This is very clear, for instance, in cases that are “discovered” during the so-called “preventive actions in the inspection of airports” (Blanchette 2012: 18).

The following situation was presented during the Senate’s trafficking commission hearings (Senado Federal 2012). In March of 2012 the Federal Police arrested in the Guarulhos airport a taxi driver who was flying to Namibia in the company of seven women, having been alerted to “suspicious circumstances” by the police in the Rio de Janeiro airport, where they had initially boarded. The police found out that the women were supposed to spend a weekend with Angolan businessmen with whom most had had previous contact. Evidence suggested they would be exchanging sexual services for money, even though they officially worked as receptionists and escorts. Each would receive U\$ 3000, although half the money would go to the handler, who had also paid for the plane tickets. The women refused to abandon their journey when prompted by the police, had return tickets, seemed to be perfectly aware of what the trip entailed and would be remunerated accordingly. There was no evidence that force or deceit had been used, that any exploitation would take place or that they would be forced to remain in

Namibia. Despite all this the Police refused to let the group board the plane to Africa and charged the taxi driver not only with *lenocínio* (aiding and profiting from the prostitution of others), but also with trafficking. It is clear that the standards of article 231 (which basically translate to aiding the international movement of those who will participate in sex work abroad) were used, as neither the means nor the exploitation outlined by the UN Protocol as necessary for the existence of trafficking seemed to take place.

This clearly highlights the previously mentioned contradictory official position of state authorities. While the National Justice Secretary affirms that people are free to go abroad, even if to perform sex work (Abrantes 2013), the Federal Police has a policy of stopping those Brazilians who are deemed to be “suspicious” at border crossing points (personal communication, June 24, 2014). This translates, in practice, to profiling people on their susceptibility to trafficking based solely on their physical appearance and distorting article 240 of the Penal Procedural Code so that people may be temporarily detained as evidence of their own potential victimisation.

The declaration made during the First National Anti-Trafficking Seminar in 2007 by retired prostitute and sex workers’ rights activist Gabriela Leite seems then prophetic: “A lot has been said here about fighting human trafficking, but on a day to day basis what will happen is that the whores will be arrested and labelled as ‘trafficking victims’” (Blanchette and da Silva 2010: 355). As to why this happens, the head of a Brazilian anti-trafficking non-governmental organisation (NGO) claimed in 2009 that the country “is concerned about answering the UN’s demands to contain the migratory influx of Brazilian women to Europe and not with creating measures that can contain the number of trafficked women and offer a more humane reception to the victims” (Piscitelli 2006: 78).

These declarations become particularly relevant when we consider that the repressive measures undertaken under the “anti-trafficking” umbrella have not been restricted to targeting women and trans⁷ who attempt to cross borders, but have also surfaced in the return of vice operations supposedly targeting trafficking in cities such as Rio de Janeiro, which have led to the arrest of virtually no traffickers, but have brought significant negative impacts to the lives of sex workers (Amar 2009).

Sex workers are also negatively impacted by the fact that they are marginalised in the development of the government’s anti-trafficking policies. Prior to 2007 sex workers’ rights organisations were completely excluded from the debate (Blanchette and da Silva 2010: 340). Although this has slowly started to change, it is often the case that when sex workers are included they are seen as mere victims and consequently have their voices

⁷ The emic term “trans” is being used here to refer to “travestis” (as per the terminology used in Brazil), as well as transsexual and transgender persons. Because there appears to be no data or mention of trans male individuals in the context of trafficking and the sex industry in Brazil, “trans” shall refer to individuals who were assigned male at birth and were, to some degree, dissatisfied with this label.

suppressed, leading some of them to become very reluctant to work with the government (Piscitelli and Sprandel 2011).

This infantilisation and marginalisation of sex workers is particularly problematic because this means that the likelihood of future anti-trafficking policies becoming de facto anti-prostitution mechanisms, as it has happened previously, only increases. Moreover, the very valuable first-hand knowledge prostitutes possess about the reality and problems of those who migrate to work in the sex industry abroad is completely belittled and ignored.

Another serious issue with Brazil's anti-trafficking policy is the fact that the Federal Police does not offer official statistics regarding the number of trafficking victims it has identified, although it does offer data regarding the persons charged with committing a trafficking offense and the number of police investigations that fall under article 231 (Ministério da Justiça et al. 2013). There are likewise no reliable national statistics from the judiciary system regarding the number of alleged victims who have been "confirmed" during criminal proceedings, nor there seems to be a way to access all of the cases tried under article 231 (Senado Federal 2012).⁸

Data regarding the number of Brazilian victims of international trafficking for sexual exploitation, however, has become available for the 2005-2012 period. The numbers adopted as official by the government have been acquired through the Ministry of Foreign Relations, which utilizes the UN Protocol definition (personal communication, August 5, 2013). The Ministry, however, only counts as trafficking victims those who contact the consular authorities for help to return to Brazil or to obtain temporary shelter, accounting for a mere fraction of the victims identified abroad.

The Foreign Ministry is charged with offering adequate training to the staff of its consulates so that trafficking victims can be identified, aided and even taken to Brazil at the government's expense if they wish to return and cannot afford to do so. In practice, however, the consulates do not always prove to be a source of help. There is a widespread perception among certain Brazilian migrants that the consulates are not interested in aiding people like them: poor, trans, sex workers and/or who are in an irregular situation. While help has been denied more than once at certain consulates to people who fit one or more of these categories, so far there has not been sufficient information to affirm that this reflects a systemic problem rather than isolated incidents

⁸ While it seems unlikely that a systematic appraisal can be made of whether the victims and traffickers identified by the judicial system are classified according to the standards of the UN Trafficking Protocol or Article 231 of the Penal code, some small scale research has been undertaken by NGO *Projeto Trama* (Procuradoria da República 2013) (28 cases) and Ferreira (2009) (19 cases). The results show that the UN Protocol is rarely, if ever, mentioned in trafficking sentences and that people are often condemned as traffickers simply for aiding the migration of sex workers, even when there is no evidence of fraud, coercion, abuse, exploitation or financial gain. The moral condemnation towards prostitution is very clear in multiple judicial sentences.

which may be limited to a few consulates (Blanchette and da Silva 2011: 94).⁹ Even if the consulates could prove to be helpful, there have also been reported cases in Europe where, despite it being illegal, local authorities have not allowed Brazilian migrants who have been detained to contact the consular authorities (Secretaria Nacional de Justiça and ILO 2007: 112).

Yet the problems are not solved when victims manage to return to Brazil. Although there are support structures for victims of trafficking coming from abroad (most notably the humanised assistance offices for migrants¹⁰ and the anti-trafficking nuclei which are present in several states), they are not well known and, unless there is a proactive involvement in the reception of trafficking victims at the borders, not likely to be sought (Procuradoria da República 2013).¹¹

Victims that need greater support are often let down. There are no specialised shelters in Brazil to harbour trafficking victims, who are put into those existing few which house either the homeless or drug addicts and do not have adequate facilities to receive families or trans victims (Procuradoria da República 2013). Despite the fact that victims of labour exploitation (who are often male) have been detected with increasing frequency, much of the focus is still placed upon female (and to a lesser extent, trans) victims of trafficking for sexual exploitation (Secretaria Nacional de Justiça 2006; Secretaria Nacional de Justiça and ILO 2007; Ministério da Justiça et al. 2013). This means that male victims are often made invisible and frequently simply considered as (undocumented) migrants who had “bad” experiences (Agustín 2007).

Those that need further protection are in even worse straights. Brazil has had since 1999 a somewhat efficient general witness protection program, but PROVITA has proven to be inadequate to deal with trafficking victims. Although the official guidelines of the program do not make it a pre-requisite, in practice only those victims who have gone on record against their traffickers are offered protection. Even then, there is a considerable delay between the request to enter the program and the provision of protection. PROVITA does not have the infrastructure or the budget to guarantee the safety of the victim’s whole family, which is often threatened by traffickers, particularly if they are in another state. Moreover, the structure of the program is such that victims of trafficking are often re-victimised, being submitted to a high level of movement

⁹ Blanchette and da Silva’s observations are based on anecdotal evidence from a limited number of sex workers who have returned to Brazil. Although Professor José Carlos Sebe Bom Meihy is undertaking research on the subject, having amassed accounts from more than seventy trans sex workers, his observations are limited to Brazilian diplomatic representations in France (Procuradoria da República 2013).

¹⁰ These outposts are present along selected migration hubs (such as international airports) and are supposed to, among other things, provide information and support to previously identified trafficking victims and identify through interviews previously unknown victims that have been deported or denied entry abroad.

¹¹ This reception problem may be exacerbated by the fact that most channels trafficking victims go through are now under the authority of government officials (such as the police), rather than through the much less intimidating NGOs.

constraint and even having further rights infringed upon (Procuradoria da República 2013).

Lastly, it is not easy for victims to re-establish their lives once they are in the country. The “Return to Brazil” guidebook developed by the Foreign Ministry (Ministério das Relações Exteriores et al 2010) gives information about how to contact government programs that encourage returning migrants to work with handcrafts, construction and agriculture – the same kind of labour intensive, low-income jobs most of them had before leaving the country in search of a better life.

Spain

Local Legislation and Policies

The history of the anti-trafficking legislation in Spain is relatively recent. Its provisions can be found primarily in two sources of law: the penal code and *Ley Orgánica (LO) 4/2000* (the so-called *Ley de Extranjería*, which regulates “the rights and liberties of foreigners in Spain and their social integration”), both of which have been modified a number of times throughout the years.

LO 4/2000, in its article 55 (later changed to article 59 by *LO 8/2000*),¹² focused on collaboration against organised networks. It granted undocumented migrants who were smuggled or trafficked (the term “*tráfico*”¹³ was here used interchangeably) by those who abused their “necessity” the possibility of a pardon for their administrative infraction and a chance to avoid deportation. To obtain this reprieve they had to report their traffickers/smugglers or collaborate with the competent authorities, either presenting essential information or testifying against members of the criminal network. It is thus very clear that the legislation was little concerned with the welfare of the undocumented migrants, who could only benefit from its (limited) provisions if they proved to be an asset during criminal proceedings.

The *Ley de Extranjería* also introduced article 318 bis to the Spanish penal code. This article penalised those who promoted or facilitated “*tráfico ilegal*” to or through Spain. No differentiation was made between trafficking and smuggling, leaving trafficking victims without a specific recourse.¹⁴ Exploitation, in fact, was not mentioned at all, although submitting people to circumstances which endangered their life, health or integrity was considered an aggravating circumstance.

¹² Article 59 was later further modified by *LO 14/2003* and *LO 2/2009*, but its basic premise remained.

¹³ Although by now mostly overcome, it is important to note that for many years there was a certain amount of confusion over the appropriate term used to refer to human trafficking in Spain. *Trata* (now used to designate trafficking) and *tráfico* (now used to designate smuggling) were used interchangeably, not only in news reports, but also in official documents.

¹⁴ The only exception was trafficking for sexual exploitation, which was added as a subset of article 188 (which covered *rufianismo*, the exploitation of the prostitution of others) by *LO 11/1999*.

Article 318 bis was modified by *LO 11/2003* (and later on by *LO 13/2007*). There continued to be no differentiation between the concepts of smuggling and trafficking, which by then were detailed in the UN Trafficking and Smuggling Protocols that had already been ratified by Spain.¹⁵ A significant change was brought, however, with the addition of a paragraph detailing that if the purpose of the “*tráfico*” was sexual exploitation, a higher sentence could be warranted. This presented a number of problems. First, the only form of exploitation recognised was sexual, as if no other forms (such as forced labour) existed. Secondly, the wording of section one of the article only considered the existence of “*tráfico*” in cases of irregular entry into the country, which do not account for all cases of human trafficking, as victims may enter the country legally and still be subjected to exploitation. Finally, although the article recognised a particular subset of victims (undocumented migrants trafficked for sexual exploitation), this only led to potentially higher sentences to the traffickers, with no provisions being made for the welfare of the victims.

In its 2005 trafficking report, the *Guardia Civil* (Civil Guard) outlined for the first time which articles of the Spanish Penal code covered the varieties of human trafficking as established by the UN Protocol.¹⁶ These offences were then clearly differentiated from migrant smuggling, although the two terms were still often used interchangeably by official sources at the time. In practical terms, however, the Spanish government only addressed trafficking for sexual exploitation and even then in a problematic way. Sexual exploitation was said to cover, per the UN Protocol, the exploitation of the prostitution of others and other forms of sexual exploitation.¹⁷ This exploitation of the prostitution of others was further divided into two categories: coercion/profit from prostitution and illegal “*tráfico*”/clandestine migration with sexual purposes (established in article 318 bis), which did not need to involve exploitation at all.

While Spain tightened its borders against irregular migration, the discussion about the situation of prostitution in the country took a prominent place in the public sphere. In 2007 the Spanish legislature held an extensive debate on the subject. Although it did not bring about any legal changes (the abolitionist position continued to prevail), the resulting report did offer some interesting insights into the perception of sex work in the country, such as the rampant (although not unchallenged) assertion that prostitution and human trafficking are strictly linked. Without citing sources, it claimed that “the majority of women in a situation of prostitution are or have been victims of human

¹⁵ The means – an essential part of the UN trafficking definition – are present, but they are only seen as aggravations to the smuggling, rather than as indicators of a separate crime.

¹⁶ Forced labour or services, slavery and practices similar to slavery and servitude were put under the heading of labour exploitation, followed by a separate category for organ removal. In a situation similar to Brazil’s, these crimes were only punished by themselves, as there were no trafficking provisions which encompassed them, despite the fact that Spain had ratified the UN Trafficking Protocol in 2002. Child trafficking, on the other hand, was a category on itself.

¹⁷ Interestingly, all “other forms of sexual exploitation” cited by the *Guardia Civil* involve minors (specifically their corruption and use in pornography).

trafficking” (Cortes Generales 2007: 23). Moreover, the report cited more than once as one of its main inspirations the 1949 “Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,”¹⁸ which classifies all prostitution, regardless of the consent of the person performing it, as a form of sexual exploitation which is incompatible with human dignity. To an even greater extent than in Brazil, the concepts of “morality” and “decency” (which are held up as timeless and immutable) are often used in Spain as a justification to oppose prostitution (Surt 2007: 21).

Following the 2007 nationwide debate about prostitution and its conclusions, the Spanish government launched in 2008 the *I Plan Integral de Lucha contra la Trata de Seres Humanos con Fines de Explotación Sexual* (2009-2011). In it “sexual exploitation” in the context of trafficking was defined as encompassing prostitution as a whole, sex tourism, the buying of mail order brides and servile marriages. Rather than focus on exploitation, the plan seemed to condemn any sort of monetary (or equivalent) exchange for sexual services, regardless of its context. *Proxenetes* (those who profit from prostitution) and traffickers were treated interchangeably and it was taken as a universal truth that trafficking “of women, boys and girls” only exists because prostitution exists (Ministerio de Igualdad 2008).

In 2009, after the launch of the Plan, the *Ley de Extranjería* underwent a significant change. A new article, 59 bis, specifically covering “victims of human trafficking”, was added by *LO 2/2009* (and later modified by *LO 4/2010*), finally differentiating between smuggled migrants and trafficking victims. It established that a thirty day reflection period, which could be renewed once, might be offered for identified victims of trafficking, during which deportation procedures would be halted.¹⁹ In “exceptional” cases residence permits could be granted due to victims’ personal circumstances or their role in aiding the investigation and/or criminal procedures against their traffickers.

Article 59 bis also established that victims should be identified according to the provisions set in Article 10.2 of the Council of Europe Trafficking Convention, which reads in part: “Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations.” The Spanish Protocol of Identification (Gobierno de

¹⁸ Although both Brazil and Portugal are also signatories of the 1949 Convention and have not denounced it, neither country cites it as a strong basis of its trafficking policies, referring rather to the UN Trafficking Protocol.

¹⁹ A reflection period does not need to be offered in all cases. Although the *Protocolo Marco de Protección de las Víctimas de Trata de Seres Humanos* (Gobierno de España 2011) does not clarify in which circumstances one may be denied, it does say that the reasoning may not be depended on the fact that the victims may have chosen not to give statements or collaborate with the authorities. In 2011, 4338 trafficking cases were confirmed (from 28970 potential ones), but only 763 reflection periods were offered, 98 of which were accepted. (Secretaría General de Políticas de Igualdad and Delegación del Gobierno para la Violencia de Género 2012: 37, 40). 51 residence permits were granted by Spanish authorities in that year and all but one were granted due to cooperation with investigative procedures (GRETA 2013: 51).

España 2011), however, was only developed in late 2011. Unlike the Trafficking Plan, it covers both labour and sexual exploitation.

It was not until *LO 5/2010* that a true “trafficking” article, as per the UN Trafficking Protocol understanding, was added to the Spanish legislation. Acknowledging that addressing both trafficking and smuggling in article 188 bis was inappropriate, a new subcategory of the penal code (Title VII bis, focused exclusively “On Human Trafficking”) was created. Its sole article, 177 bis, reads, in part,

1. A person will be punished with a sentence of five to eight years imprisonment as a human trafficking defendant who, be it in Spanish territory, be it from Spain, in transit or bound for it, employing violence, intimidation or fraud, or abusing a situation of power or necessity or vulnerability of the victim, national or foreign, captures, transports, transfers, harbours, receives or takes in the victim with one of the following purposes:
 - The imposition of forced labour or services, slavery or practices similar to slavery, servitude or begging.
 - Sexual exploitation, including pornography.
 - The removal of organs. ...
3. The consent of a victim of trafficking in human beings shall be irrelevant if any of the means set forth in paragraph one of this article took place.

The above definition of human trafficking finally goes beyond the focus on sexual exploitation²⁰ and takes into account the consent of the person involved when the situation warrants it. The use of the term “necessity” and the inclusion of the victim’s “situation” as a possible cause of particular vulnerability, however, leave open the possibility that persons of diminished socio-economic means will be branded as unable to consent. It is a recurrent abolitionist interpretation that the lack of financial means (and, although less mentioned, of extensive education) leaves people with “no other alternative” than to turn to prostitution. This rhetoric is often used when dealing with migrant sex workers from developing countries, regardless of their specific situation.²¹

Law and policies into practice

The genesis of the Spanish trafficking victim identification system may be traced back to the *Directiva de Servicio 3/2000* of the Spanish Civil Guard. The Directive established that, in order to curb the exploitation of minors and detect trafficking cases, periodic inspections²² should take place in known prostitution establishments located in

²⁰ It is interesting to note that the term “prostitution” is absent here, while pornography is explicitly stated as able to be a form of sexual exploitation. However, per the Spanish Trafficking Plan still in use, sexual exploitation does include prostitution in all its forms.

²¹ See for instance the work of Kathleen Barry, the founder of prominent abolitionist group CATW (Coalition Against Trafficking in Women).

²² *Directiva de Servicio 40/2009* established that these “preventive inspections” were to take place at least once a year.

the jurisdiction of the Guard, which consist mostly of “highway clubs.” The *Guardia Civil*, claims that these establishments harbour around 80% of the total of sex workers in Spain (with the other 20% working in urban centres, in locations that vary from the streets to luxury apartments), but this assertion has been hotly contested (Agustín 2007: 144).

During these “inspections” (which are perhaps more akin to raids) a (usually female) specialist of the “Women Minors Team” (*EMUME*) is supposed to approach the sex workers separately, question them about their situation and inform them of their rights (particularly the benefits they can gain if they report their exploiters and the security that can be given to them if they do so).²³ These interviews apparently last from three to four minutes (Andreu 2013).

The Civil Guard releases an annual report with data from these inspections in which the number of “victims” of trafficking for sexual exploitation can be found. Their definition of victim, however, is quite broad:

although technically this denomination [of victim] should only be applied to a person that reports their situation, for the effects of this report [the *Guardia Civil*] will also consider “potential victims” the people (mostly women) who engage in prostitution in these establishments, because [we] understand that they do so without any administrative support, due to finding themselves in a situation of necessity (although not all of them) and because, making an accusation or not, there is always the lingering doubt of whether they engage in this activity under the greater or smaller control of people and organisations dedicated to illegal activities (Guardia Civil 2005: 12).

Rather than justify the perception that all foreign sex workers are (potential) victims by pointing out that nearly all of them share some of their earnings with third parties (such as club and apartment owners), which fits the Spanish definition of *rufianismo*, the angle most commonly exploited is their alleged situation of necessity and lack of support, which would invalidate their consent to sex work, as they are perceived as having no other choice. Thus, a link to prostitution in itself, rather than to *rufianismo*, becomes the only requirement to label a foreign woman as a victim.

Note that these “victims” need not show any of the usual signs of a potential trafficking situation (violence, control, the presence of a debt or retention of documents): working as a prostitute is enough to acquire the label. Nor is there any indication whatsoever that these cases undergo a scrutiny longer than a brief conversation between the trained

²³ Although the *Guardia Civil* is often the most cited police force when it comes to investigating trafficking in Spain, the *Cuerpo Nacional de Policía* is also very much involved, having brigades exclusively dedicated to combating the phenomenon. It seems however, that the *Cuerpo* takes a stricter position than the *Guardia* and considers as potential victims only those that present actual signs of exploitation rather than all migrant sex workers (Teresi 2007: 93). Data from the *CNP*, however, is not easily made available to the public and thus is much less often used in the trafficking debate.

police officer and the alleged victim to determine whether trafficking is indeed taking place. There is also no way to ensure that the same woman will not be counted twice. Considering the widespread *plaza* system in Spain, in which women usually spend twenty-one days in a particular establishment before moving to another,²⁴ the possibility of sex workers being counted multiple times, in different cities and even communities, is not a small one.

The disparity between the number of “(potential) victims” and alleged victims which have reported being exploited (but whose status has not been confirmed) is immense. In 2002 despite there being 23,020 “victims” (read, sex workers) counted by the Civil Guard, only 236 presented themselves as victims of trafficking, which amounts to almost 1.03% (Guardia Civil 2002). Although there is always the possibility that a number of women did not make a formal complaint due to fear or other motives, the disparity is still very large and has continued over the years. In 2012, of the 12,305 persons identified as “at risk” by Spanish security forces, only 125 were legally recognised as victims of trafficking, totalling less than 1.02% of at risk cases (Secretaría de Estado de Servicios Sociales y Igualdad and Delegación del Gobierno para la Violencia de Género 2012: 37).

This focus on looking for victims of trafficking by raiding places that are considered to be brothels carries a lot of problems. It ignores the fact that situations of extreme exploitation and violence also take place in other forms of trafficking, particularly labour exploitation. Furthermore, sexual exploitation in the context of trafficking is not confined to the sex sector, but also takes place in other contexts, particularly domestic service. Finally, by focusing solely on migrants whose situation in the country is irregular, it ignores the fact that regular migrants may also be subjected to trafficking and exploitation.²⁵

Besides these issues, one must also not discount the extremely negative effects these “inspections” bring to sex workers, such as the loss of time and money (not only during the operation, but on subsequent days when clients are still wary). Raids such as these, which often lead to a massive number of deportations and may even result in violence, also position the police as actively working against sex workers, making it more unlikely for them to confide in officers in the event that something is wrong.²⁶ The fear

²⁴ The *plaza* system’s three weeks length is supposedly tied to the length of women’s menstrual cycles, allowing, in theory, sex workers to complete a non-stop work cycle and take time off for their period. Its widespread use in Spain, however, may be more linked to the fact that sex workers usually earn more when they are new to a particular place and that constant movement seems to be a strategy to bypass police checks. A similar placement system also exists in Portugal, although its length is usually fifteen days (Riopedre 2010: 658).

²⁵ Data from 2011, for instance, shows that only 40% of persons identified as “at risk” of being victims of trafficking (i.e. sex workers) were irregular migrants (Secretaría General de Políticas de Igualdad and Delegación del Gobierno para la Violencia de Género 2012: 37).

²⁶ This is made more problematic by the multiple reports by sex workers that show that some members of the police forces are frequent clients of clubs, where they are offered free drinks and sexual services as a way to ensure that no raids will take place (at least not without warning) (Riopedre 2010).

of the police leads many prostitutes to work in isolation, undermining their security even further (Global Network of Sex Work Projects: 3-4).

In the assessment of a significant percentage of Brazilian sex workers in Spain, these anti-trafficking (and in practice anti-migration) operations are to them a greater concern than trafficking itself (Piscitelli 2012: 300). Numerous migrant sex workers have made allegations of ill-treatment, which includes physical and verbal abuse, against the migration and police officers who are part of the brigades responsible for identifying trafficking victims (Piscitelli 2006: 8).

These identification raids are thus problematic by their nature, a fact which is only made worse when we consider that the actual identification and support of trafficking victims which is supposed to be their goal seems to be relegated to a secondary concern, if that. The “investigations” seem to be more of a socially acceptable way to detect and expel undesirable irregular migrants and curb sex work or at least make it less visible. In the words of a Brazilian woman exploited in Spain,

From what I have seen, from what I see, the police does not know if the girl is paying [a] debt, if she's not paying [a] debt, or will see what is happening, or what is not happening. The police goes to see if you are illegally in the country and that's it. (Federación de Mujeres Progresistas 2008: 350).

The Identification Protocol, which has existed only since late 2011, has created parameters for the assessment interviews, although whether or not they are being used and whether they can ensure that a victim is identified in less than five minutes is a matter of debate. Prostitution in itself is not identified in the *Protocolo Marco* as an indicator of trafficking (contradicting somewhat the vision of the *Guardia Civil*). Rather, certain working conditions (such as excessive retention of money, working while sick or menstruating and the existence of abusive and/or irrational sanctions) are highlighted as being problematic.²⁷ Other somewhat arbitrary trafficking indicators in the Protocol include coming from a (perceived) known country of origin, having a low socio-economic status and one or more children (Gobierno de España 2011).

The Protocol brings to mind Article 59 bis of the *Ley de Extranjería*, which establishes that in Spain, as per the terms of article 10.2 of the Council of Europe Trafficking Convention,

Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process

²⁷ This seems to change, however, when potential victims are identified at the border. If they are identified as migrant sex workers then, they can be labelled as *de facto* victims of sexual exploitation (Gobierno de España 2011).

as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities ...

By the logic of the *Guardia Civil*, in which there are reasonable grounds to assume that every sex worker is a potential victim of trafficking, no migrant sex worker in an irregular situation should be expelled from Spain before a thorough investigation regarding their situation took place. Yet this is most certainly not the case. Multiple media reports²⁸ attest to the fact that large numbers of undocumented migrant sex workers who are detected by the *Guardia* are set to be deported with no care as to a potential trafficking situation, even when strong trafficking indicators (such as violence and movement control) are clearly identified.

In fact, despite the recurrent abolitionist rhetoric that considers all sex workers as (potential) victims (of trafficking), jurisprudence from the Supreme Court and the assessment of the Fiscal Ministry (Freire 2013: 43-44) determine that for exploitation to be considered in connection of trafficking for sexual exploitation, it needs to be clear and evident – which is understood to mean more than simply obtaining an agreed upon share of the sex worker's profits.

Moreover, it seems that the only people who are officially labelled as victims (and thus benefit from protection and other forms of aid) are those who decide to testify against their traffickers (Piscitelli 2006: 8). Even in such cases, however, the protection and aid are not always guaranteed and some victims have had their claims ignored, particularly if they are not able to point towards new and valuable evidence against “organised criminal networks” (Piscitelli 2011: 19; Piscitelli 2012: 286).

If foreigners are found to be in an irregular situation in Spain, they can be detained for up to seventy-two hours and receive an “expulsion letter,” which notifies them that they are supposed to leave the country. Afterwards, one of two things happens: the migrants are released or, with the authorisation of a judge, they can be relocated to a Foreigners’ Internment Centre (*CIE*) for up to sixty days. Should the migrants already possess such a letter, they will be automatically relocated to a *CIE* to be expelled from the country.

Although some migrant sex workers are let go after being identified during raids as being irregularly in Spain, a large number are taken directly to the *CIEs*. In these places, which resemble prisons, many of them are not made aware of their rights (which include the right to appeal their expulsion) and are submitted to a number of human rights violations, including sexual assault. Among these migrants set for deportation, NGOs have detected a number of trafficking victims who have not received any sort of support from the authorities (Women’s Link Worldwide 2012). In some cases deportation cannot take place for a number of reasons (including insufficient funds) and

²⁸ See for instance the work of Analise Infante for BBC Brasil.

migrants may end up being set free after being detained for weeks without having committed any crimes (Arella et al. 2006: 74).

Even the victims who are in fact identified do not seem to always fare better. According to Amnesty International, even when victims report their situations and agree to testify against their traffickers, it is not uncommon for expulsion orders to be brought against them, being at most halted during the judiciary proceedings (Gonzales and Olmos 2011). As per the terms of the *Ley de Extranjería*, as modified in 2010, only those victims who have exceptional personal circumstances or who played a significant role in the judicial proceeding against a trafficking network are accorded resident permits which extend beyond these proceedings. In some places, a victim may have to wait a whole year to obtain a residency permit, which does not include a work authorisation (de la Riva et al. 2008: 45). Furthermore, according to prominent anti-trafficking NGO *Proyecto Esperanza*, Spain's anti-sex work perspective, while not explicitly included in the legislation, makes itself known in practice. To obtain a residence permit, victims must not only distance themselves from their traffickers, but from sex work altogether (Amnistía Internacional 2009: 42-43). This is highly problematic considering that for some victims sex work is still the most viable and desirable source of income.

Although the government claims that every victim who has undergone an identification procedure has received adequate support, there is no official data regarding the number of victims that have been referred to the NGOs that are supposed to provide it (E-Notes 2010: 204). This "support" is also not universally well regarded. By 2010 there were only seven centres in the whole of Spain focused on sheltering trafficking victims, while fifty-five existed to support "victims of sexual exploitation in the context of prostitution" (Secretaría General de Políticas de Igualdad 2010: 4). A large number of these institutions lacked sleeping accommodations for victims; none of those that did have accommodations provided residence for male victims and only a handful could accommodate the children of trafficked women. Moreover, only a few places provided the full range of services the victims might need (Ministério de Sanidad 2012). Many of these centres are backed by religious institutions and some have such strict codes of conduct (regarding dress code, daily schedule, etc.) that they are regarded as akin to prisons by the victims. There are a number of recorded cases where people have escaped from these centres which were supposed to help them, preferring to try their own luck rather than feel incarcerated (Federación de Mujeres Progresistas 2009).

Portugal

Local Legislation and Policies

The first signs of an anti-trafficking legislation in Portugal date back to the 1980s when *Decreto-Lei (DL) 400/82* created a new Portuguese Penal Code. It contained, under the "sexual crimes" heading, article 217, which punished the person who handled, seduced or deviated someone else (even with his or her consent) to engage in prostitution or acts

that went against modesty or sexual morality in another country. Monetary gain, violence and grave threat were considered aggravating circumstances to the crime.

The following decade led to a revision of the Penal Code by *DL 48/95*, which shifted trafficking to article 169 under the “crimes against sexual freedom” heading. It punished anyone who, through violence, grave threat, ruse or fraud, took another person to a foreign country to engage in prostitution or relevant sexual acts,²⁹ exploiting their situation of abandonment or necessity. This already represented a considerable shift, going from punishing basically anyone involved in migratory movements that resulted in sex work, regardless of the consent of the alleged victim, to focusing solely on those who did so using underhanded means and exploiting a (debatable) situation of vulnerability. This requirement of exploitation of a situation of vulnerability in the recruitment process was dropped three years later by *DL 65/98*.

Article 169 was altered a third time by *Lei 99/2001*, which punished those who, through violence, grave threat, ruse or fraud, abuse of authority resulting from a hierarchical, economic or work dependency or by taking advantage of a situation of special vulnerability, recruited, transported, harboured or enabled someone to engage in prostitution or relevant sexual acts in a foreign country. Although the conduct and means were here very clearly delineated, like the provisions before it the new reading of the law continued to be based on the assumption that engagement in prostitution is, in itself, exploitative. This was supported by the fact that there were no separate provisions for internal trafficking, which was punishable under article 170 (*lenocínio*, the exploitation of the prostitution of others). Other forms of exploitation in the context of trafficking were not contemplated.

By 2004 Portugal had ratified the UN Trafficking Protocol, but it was not until 2007, through *Lei 59/2007*, that its definition of trafficking fulfilled the Protocol’s requirements. Now typified in article 170, under the “crimes against personal freedom” heading, the law reads (in part),

Whomsoever offers, delivers, recruits, accepts, transports, houses or harbours a person for sexual exploitation, labour exploitation or organ removal:

- a) Through violence, abduction or grave threat;
- b) Through ruse or fraud;
- c) Abuse of authority resulting from a hierarchical, economic, work or familial dependency;
- d) Taking advantage of mental incapacity or a situation of special vulnerability of the victim; or
- e) By obtaining the consent of the person who has control over the victim; ...

²⁹ “Relevant sexual acts” may encompass not only direct sexual acts, but also those that do not involve direct sexual contact (such as striptease and erotic pole dance) (Peixoto et al. 2005: 72).

Besides expanding the forms of exploitation, the terms “prostitution and other relevant sexual acts” were substituted by “sexual exploitation.” No definition, however, is given to the term. Yet, as the legislation regarding *lenocínio* (now article 169) continues to punish whomsoever, “professionally or with the intention of profit, foments, encourages or facilitates the engagement in prostitution by another person,” without considering the consent of the supposed victim, it is not unreasonable to consider that prostitution, unless completely autonomous, could be encompassed in the sexual exploitation label. In this way, it seems that Portugal’s trafficking legislation, like Spain’s and Brazil’s, may have been strongly influenced by the country’s abolitionist approach towards prostitution.

In the same year these major changes were brought to the trafficking legislation, *Lei* 23/2007, which regulated the situation of foreigners in Portugal, introduced specific provisions for trafficking victims. The first was the concession of a reflection period, ranging from thirty to sixty days, during which deportation procedures are halted and necessary medical and psychological aid are provided. After the reflection period, a renewable one year permit to reside in the country may be granted to victims who have cut all ties with traffickers and whose personal circumstances justify their stay. These circumstances can be related to the safety and health of the victims or their families, their family situation or other situations of vulnerability.

Two points concerning the aforementioned law are of particular interest. The first is that although Section V of the law deals with both victims of trafficking and those who have been smuggled into the country, there is not, in the case of the trafficking victims, a “usefulness requirement.” Irregular migrants, on the other hand, must not only cut contact with smugglers, but must also show a willingness to cooperate with the relevant authorities and be in a situation where an extension of their stay in the country is necessary due to their role in the investigation or criminal proceedings taking place to be able to benefit from a residence permit. The second is that, as clarified by *DL* 368/2007, a “victim of trafficking” (who is able to benefit from the full provisions of the law) is any person that, according to the assessment of the proper authorities, shows any signs of having being victimised by trafficking. Thus, in theory a potential victim should also be able to benefit from these legal provisions.

Following these changes to the Portuguese legislation, three national trafficking plans have been published (República Portuguesa 2006; Presidência do Conselho de Ministros 2010, 2013), setting up goals and directions for the management and eradication of the crime in Portugal. While the first plan made a cursory reference to the potential link between prostitution and trafficking, this was not the case with the subsequent plans. Overall, rather than explicitly singling out migrant prostitution as almost synonymous to trafficking as it happened in Spain, Portugal’s plans take a much broader view towards this criminal phenomenon.

Law and policies into practice

When talking about identifying victims of trafficking in Portugal, one must consider two distinct moments: pre and post 2008. While data for “victims of trafficking for sexual exploitation” was available before 2008, it did not reflect the reality of the situation, as the category included both victims of trafficking and of *lenocínio*, that is to say, those who worked in prostitution and were “exploited” by a third party (Santos et al. 2007: 73).

After 2008, as a response to the significant shift in the Portuguese trafficking legislation and the elaboration of the First National Anti-Trafficking Plan which took place the year before, the process of identifying trafficking victims and gathering information about them improved significantly. In that year the Human Trafficking Observatory (*OTSH*) was established, having as one of its main objectives producing and collecting standardised trafficking data which is made available to the public. The current monitoring system used to identify and deal with trafficking victims is divided in three phases: flag, identify and integrate (ICMPD 2010: 218).

Potential trafficking victims are flagged either by the organs of criminal police (OCP)³⁰ – primarily during “actions against human trafficking”³¹ – or by NGOs and private-public entities. A flagged victim is a person who demonstrates enough indicators of trafficking to warrant a closer examination of their situation. These trafficking indicators,³² which are available to OCP officers in the form of a checklist, are very similar to the ones developed by the ILO and the European Commission (E-notes 2010: 190).

If there is enough evidence to suspect a possible case of trafficking, the trained OCP officer files a *GUR* (Sole Registering Guide) with the relevant information about the potential victims and their situation.³³ Flagging victims leads to an active investigation of their case by a specialised team during which their status as victims of trafficking can be confirmed or not. Non-confirmed cases are usually divided into two categories:

³⁰ These include police forces (the National Republican Guard, the Judiciary Police and the Public Security Police) and the *Serviço de Estrangeiros e Fronteiras* (*SEF*, the organ responsible for dealing with foreign nationals on Portuguese soil). In practice, the Judiciary Police and the *SEF* are the only ones with investigative powers. Cases involving foreign victims are usually passed to the jurisdiction of the *SEF* (GRETA 2012: 41).

³¹ There were 10,982 such inspections/raids in 2011, most of them conducted by the *SEF* and some with the cooperation of the other OCP and even the Spanish police. Portuguese authorities recognise that these inspections are aimed not only at detecting cases of human trafficking, but also of irregular migration and illegal employment (SEF 2011).

³² These indicators include, among others, control of movement, threats, physical violence, inability to access identification documents and signs of fear/depression.

³³ Should the potential victim be identified by an NGO or a public organ a *GS* (Flagging Guide) is filled instead. It is relevant to note that few victims flagged by NGOs are formally identified and as such most benefit from no official assistance (GRETA 2012: 29).

victims of other offenses³⁴ who nonetheless do not qualify as trafficking victims and cases which have been shelved due to lack of evidence.

During the confirmation process the presumed victims are allowed to remain in the country regardless of their migration status. Adequate support (medical, psychological, legal) and shelter are provided as needed.³⁵ In case the trafficking victim status is confirmed, a reflection period is given, lasting between thirty and sixty days. Victims are placed in temporary shelters specifically designated for trafficking cases, which are coordinated by the Shelter and Protection Centre (*CAP*), where they continue to receive support.³⁶ After the reflection period, the victims may decide whether they would like to contribute to the criminal proceedings which are taking place.

Afterwards, there are two main paths for the victims. If victims are unable or unwilling to remain in Portugal, support is given for their assisted return. Besides the relevant Portuguese authorities, this may involve the International Organization for Migration (IOM), public institutions from their country of origin (such as consulates) and relevant members of civil society.

If they elect to remain in Portugal, but are in an irregular situation, they may apply for a residence permit, which may be granted if their situation warrants it even if they did not cooperate with the judicial proceedings against their traffickers. If they are allowed to remain in the country, adequate support will be given to allow them to fully integrate into Portuguese society.

While the Portuguese authorities continue to affirm that the process is not associated with cooperation with the judicial system, some NGOs claim that to be identified as a victim of trafficking and benefit from the provisions granted to them, this is in practice a requirement (GRETA 2012: 29), and they are thus pressured to encourage victims to collaborate (Gomes et al. 2011: 175). Moreover, *Lei* 23/2007, as previously mentioned, requires victims to cut all ties with their alleged traffickers to receive a residence permit. As we have seen with Spain, this may in practice mean that trafficking victims are pressured into leaving the sex industry altogether if they want to receive any of the benefits they are legally entitled to.

³⁴ These other offenses are most often “connected” crimes which include slavery, *lenocínio*, domestic violence, rape, the retention of documents and aid to irregular migration.

³⁵ Neves and Pedra (2012: 117) claim, however, that over half of existing trafficking victims do not receive any assistance.

³⁶ For a number of years, however, the *CAP* only had a six-person shelter available in Portugal, leading some victims to be placed in non-specialised centres. This shelter only served women and children, which was particularly problematic considering the high numbers of male victims of labour exploitation (GRETA 2012: 7). Moreover, having only one centre meant putting all victims together, regardless of their personal circumstance and needs (such as protective custody) (Gomes et al. 2011: 177). As of 2013, the *CAP* was given the necessary means to open a shelter for male victims of trafficking, which now represent the majority of confirmed cases.

Although data from 2010 shows that residence permits have been given to a large percentage of the trafficking victims which have asked for them (OTSH 2011: 33-34), in practice all permits provided up to that year (fifteen in 2008, two in 2009 and ten in 2010) were granted due to cooperation with the judicial authorities (GRETA 2012: 32).

While the Trafficking Observatory's identification mechanism seems to be living at least in part to its potential, there is still room for improvement (E-notes 2010: 190).³⁷ The *OTSH* itself notes that the *GS* and the *GUR* are not always properly filled, making it difficult to collect accurate data.

There are also two problems linked specifically to information provided by NGOs. First, cases submitted through the *GS* receive a separate status from those that come from the *GUR*, as if they were less relevant. Secondly, it appears as if only a small percentage of NGOs dealing with trafficking acknowledge the cases they detect by filling the *GS* and even those who do so do not always share all pertinent information. This is mainly due to the fact that many NGOs do not trust the current system to focus on the victims' best interests (Neves and Pedra 2012: 23).

Other problems are found when it comes to data collection from the police forces and migration officers. OCP officers are not always respectful while dealing with sex workers (among whom most potential victims of trafficking for sexual exploitation are flagged), who have reported cases of violence and extortion against them perpetrated by those who are in theory in charge of protecting them (Pereira 2010). Before the establishment of the *OTSH* mechanism it was very common for the police to turn sex workers who were in the country irregularly to the *SEF* for immediate deportation without taking the time to assess their situation and flag potential trafficking cases, particularly in the case of Brazilian women (Santos et al. 2007: 120-121).

Although the situation seems to have improved with the new mechanism, it is still not perfect. In the words of a specialist interviewed during the evaluation of the First Portuguese Anti-Trafficking Plan: "We continue to feel that there are organs of criminal police that do not know where to find the legislation, do not know who to identify and this is very grave" (Gomes et al. 2011: 167). On top of that, it seems that not all cases that are flagged by the OCP end up in the official statistics. In some estimates, existing problems mean that the actual number of trafficking victims is at least three times greater than the number of flagged cases (Neves and Pedra 2012).

Like in Spain, many sex workers do not approve of the investigation process, which is based primarily on the inspection/raid model, as it negatively impacts business and

³⁷ Nevertheless, the system in itself seems to be favourably viewed, as the International Centre for Migration Policy Development (ICMPD) has been working with the Portuguese Ministry of Internal Affairs in the development of a human trafficking data collection system based on the *OTSH* model (Vermeulen and Paterson 2010: 4).

results in the deportation of many of those who are in an irregular situation (Riopedre 2010: 654). Moreover, although the Portuguese trafficking-detection mechanism is much more refined than the Spanish, it has not been immune to being misused by corrupt police and migration officers (Pereira 2010).

It is relevant to consider in this context that the investigative processes to detect potential exploitation cases are almost exclusively focused on foreign sex workers. As such, while policies and practices in Portugal are much closer to UN standards, its anti-trafficking actions are, like in Spain, still used as a form of migration control (Oliveira 2012: 38).

In short, in Portugal there is an extensive, although not infallible, process of investigation that is undertaken to label someone a trafficking victim, which in turn is no longer synonymous to being a victim of *lenocínio*. Moreover, unlike in Spain and despite the ambiguous wording of the Portuguese legislation, migrant sex workers are not automatically seen as having been trafficked. Even if a Brazilian sex worker is being “exploited,” in the terms of the Portuguese legislation, by a third party (by, for instance, sharing any percentage of her earnings), this does not make her automatically a victim of trafficking.

The real problem which seems to remain is the definition of “exploitation of a situation of special vulnerability” which will qualify a situation as trafficking even in the absence of more obvious indicators, such as threats or violence. This seems to be a particular issue when it comes to Brazilian women, who seem to be less often submitted to total deceit and violence. In the words of a Portuguese magistrate,

It is precisely the concept of “special vulnerability” which raises more questions. Is the young woman from Goiás, who has three children, is a single mother, unemployed, has extremely poor parents and has to come to Europe in these circumstances in a situation of extreme vulnerability? Jurisprudence will tell. (Santos et al. 2007: 284).

The possibility that the “poverty as force” rhetoric will be used in the building of trafficking cases against migration networks, which are subsequently re-labelled as criminal networks or “mafias,” is thus left in the air.

Conclusion

The understanding of what constitutes a trafficking victim is different in all three countries and for the most part does not fulfil the minimum standards established by the UN Trafficking Protocol. While its policies adopt the UN definition, Brazil falls short of it in both its legislation and in practice, focusing almost exclusively (at least on a transnational level) on its understanding of trafficking for sexual exploitation. Spain possesses an adequate legislation which is not widely used and policies which are still

mostly focused on a too broad understanding of sexual exploitation which encompasses all forms of prostitution. Portugal is the only one among these three countries whose legislation and policies seem to conform to a large degree to the UN definition and standards, although it still has room for improvement when it comes to putting policies into practice.³⁸

All three countries have their unique interpretation of “victim of trafficking (for sexual exploitation).” These concepts are not only incompatible between countries, but also often internally contradictory, with the implemented policies often failing to reach the standards set by the legislation. Much seems to depend on how the term “sexual exploitation” is interpreted. Because of their abolitionist position, Brazil, Spain and Portugal consider sex work as exploitative to some extent in their criminal codes. However, none of them actually legally define “sexual exploitation” in the context of trafficking, leaving it to be spelled out by secondary policies and jurisprudence. This leads to very different scenarios.

Brazil takes a dual and contradictory position on the subject. Its consular authorities (and consequently official statistics) separate migrant sex workers and trafficking victims, as does its Ministry of Justice and related organs. In practice, however, the Federal Police and the judicial system conflate both categories, keeping in line with the legislation which equates trafficking to non-autonomous migrant sex work, particularly if it involves (poor, non-white) women who are considered to be “in a position of vulnerability.”

The country also takes a double approach to the classification of victims. Abroad, the consulates rely on victims of trafficking to not only label themselves as such, but to also explicitly ask for help from the Brazilian authorities. Inside Brazil, however, the assessments made by the Federal Police and/or the judiciary system supersede the opinions of the alleged trafficking victims, with the frequent imposition of the victim label being made upon those who see themselves as migrant sex workers, both before and after they leave the country to work abroad.

In Spain, trafficking policies are strongly supported by a crimmigration approach whose main concerns are the security of the Spanish borders against irregular migration and the persecution of traffickers (Amnistía Internacional 2009: 40-41). Moreover, the declared anti-prostitution stance of the government, although not reflected in a prohibitionist legislative model, does mean that sex work – regardless of its conditions – is always viewed as sexual exploitation and thus needs to be monitored and (in some measure) actively combated. Although Spain affirms the validity of the UN trafficking

³⁸ The fact that Portuguese and Spanish laws are much more UN-compatible may be due to the fact that these countries are also constrained to a similar definition of trafficking by two other instruments and organisations (the Council of Europe’s 2005 Trafficking Convention and the EU’s Directive 2011/36/EU), which gave added pressure (and in the EU side, the looming possibility of sanctions for non-compliance) to adopt the standard.

definition, which is mirrored in its most recent legislation, the “known” victims of trafficking who are quoted by the Spanish government are often all migrant women who engage in prostitution.

The conflation of migrant sex work and trafficking in Spanish policies is justified by the alleged inherent vulnerability of all (female) migrant sex workers. In practice, this is done to legitimise raids that result in the expulsion of undocumented migrants. This becomes clear when we consider that the country becomes much more discerning regarding who can be labelled as a victim when it comes to extending benefits enshrined in law and policy.

Although the *Guardia Civil* seems, at first sight, to consider the self-classification of victims, the distinction that is made between those that denounce potential trafficking situations or not is ultimately meaningless. The final decision on whether or not to label a person as a trafficking victim and whether or not that person has achieved a “sufficient level of victimhood” to benefit from certain provision is made by government officials. Only those who report their traffickers and participate in proceedings against them are counted and only those whose testimony is useful are able to reap full benefits. Although club managers and apartment owners may be charged for being *proxenetas*, foreign sex workers are rarely acknowledged as victims of *rufianismo* and even more rarely receive any benefits from this victim status. They are simply treated as undocumented migrants, being jailed for a few days before receiving expulsion orders or being sent to a foreigners’ detention centre.

In Portugal, the extensive investigation process into potential trafficking cases, although privileging the findings of the OCPs, shows that not all irregular migrant sex workers are classified as victims and moreover that not all cases where these sex workers are victimised are automatically classified as trafficking. Portugal very clearly separates its interpretation of sexual exploitation (*lenocínio*), migrant sex work and trafficking.

The self-classification of victims is very likely to play a role on whether or not a person is flagged as a potential trafficking victim. Ultimately, however, the labelling of a person as a victim (and all the potential benefits this labelling may allow for) is in the hands of designated officials of the Portuguese government. This may mean that some people who consider themselves as trafficking victims may not benefit from the full extent of governmental aid, while some who consider themselves as migrant sex workers may be labelled as victims against their will. The major problem that still remains is the interpretation given to the concept of “abuse of a position of vulnerability,” which may lead to the mislabelling of certain situations as trafficking since in Portugal, like in Brazil and Spain, there is still the lingering perception that certain types of women are unable to consent to migrant sex work.

These contradictory and incompatible concepts have some severe consequences at a transnational level. The first one is that this results in incompatible cross-comparable

statistics. Considering that Brazil and Spain – the countries which most often push the narrative of a large quantity of Brazilian victims of trafficking for sexual exploitation in the Iberian countries – both treat, in some respect, migrant sex workers as synonymous to trafficking victims, this may mean that this large flow assumption is flawed.

From a more practical standpoint, incompatible definitions may also cause direct problems for both migrant sex workers and trafficking victims. It is possible that a Brazilian migrant sex worker could be labelled (against her will) as a potential trafficking victim in Spain, while not being labelled as such in Portugal. In both countries victims of trafficking recognised by Brazilian consular authorities may not be officially recognised as victims by the national governments and thus may be deported without receiving any support. In all cases the Brazilian migrant is susceptible to being harassed by members of the brigades responsible for detecting trafficking victims during the “identification” process.

Considering the existing problems which arise due to these mismatched legislation and policies and the fact that there has been considerable time, money and political will spent in developing a network of transatlantic cooperation regarding the subject, it is somewhat surprising that little has been done to change the situation. Much of that is a reflection of the fact that existing legislation and policies, while not necessarily complying with international anti-trafficking standards and goals, have proved to be particularly efficient in other ways.

Trafficking policies have a long history of being used primarily not to stop traffickers and protect victims, but to constrain migration and discourage sex work (GRETA 2013: 22; Oliveira 2012; Piscitelli 2006: 78). By using a “protection of the human rights of victims rhetoric,” the limitation and curtailment of the rights of migrants, sex workers and even certain types of women is justified.

In the case of Brazil, Spain and Portugal, this is very clear both inside their territories and at their borders. The “rescue” of trafficking victims has enabled the dissemination of large number of raids in spaces used primarily by sex workers, disrupting and discouraging business without making it illegal. These raids result in the detection of comparatively few victims, but have enabled the deportation of a large number of undocumented migrants. At the borders, the “detection” of trafficking victims has allowed for massive profiling of migrants, both before and after they leave their own country. “For their own good,” certain types of (poor, non-white, female) migrants have had increasingly restricted access to legitimate migration channels.

Considering all this, the inconsistent and incompatible definitions of “victims of trafficking (for sexual exploitation)” and particularly their frequent conflation with migrant sex workers is perfectly understandable. Moreover, while the concepts can be manipulated to restrict both migration and sex work, it seems very unlikely that clearer and more precise definitions will be established.

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CHAPTER FOUR

Examining Trafficking Statistics Regarding Brazilian Victims in Spain and Portugal

Abstract

Despite a number of policy decisions being based upon the premise that there is a large flow of Brazilian trafficking victims to Spain and Portugal, existing statistics are not reliable enough to confirm this assertion. Due to a number of reasons, including problematic, incompatible and evolving definitions, as well as fragmented data gathering systems, the available human trafficking statistics about Brazilian trafficking victims in the Iberian Peninsula are internally and cross-comparatively inconsistent. The widely varying scenarios presented by the available numbers compromise the individual and collective responses to the phenomenon. Although a number of possible solutions can be proposed to improve the data collection, it is unlikely that the systems will change significantly as long as the figures being presented continue to support the agendas defended by the countries in question.

Keywords

Human trafficking for sexual exploitation, international data comparison, Spain, Portugal, Brazil

Examining Trafficking Statistics Regarding Brazilian Victims in Spain and Portugal

Introduction

A debate about human trafficking almost always involves data which showcases its alleged gigantic proportions. The existence of such numbers is not in itself a negative thing, as statistics about a criminal phenomenon are crucial to ensure that the policies to combat it are both proportionate and effective. The vast majority of existing trafficking data, however, does little to clarify the reality of the situation. The fact that trafficking victims mostly consist of a hidden population is used as an excuse to project the existence of an immense dark figure which dwarfs the number of detected cases. The figures which are inferred, often from a handful of confirmed victims, are primarily used not as an honest assessment of the issue, but as a way to stir indignation against it.

This is very clear when we examine statistics which refer to “potential victims of trafficking,” addressing not only people who show signs of being in a trafficking situation, but also entire subgroups which are labelled as being “at risk” due to their supposed vulnerability. Considering that these groups often consist of sex workers, irregular migrants and minorities, as well as women in diminished socio-economic circumstances, it is no wonder that the alleged figures being bandied about are so large.¹

Very little, if anything, is said about the methods used to collect the numbers which are presented. Moreover, it is often unclear what exactly is being counted as a (potential) victim of trafficking, which may vary from those who fulfil the standards of the United Nations (UN) Trafficking Protocol² to all kinds of forced labourers, irregular migrants and migrants who sell sex.

The lack of scientific scrutiny regarding most of these numbers is disconcerting. Statistics are often repeated *ad nauseam* without any reference to their sources or the years they were developed. They are often misattributed to large international organisations, such as the UN, as this apparently gives them legitimacy. Significant weight is given to unsubstantiated media reports. This trend, “where tabloid journalism is footnoted, referenced, and hence legitimated” ([42]: 417) is rightly vehemently and universally denounced in other areas of academia, but is often accepted without question when human trafficking is being debated.

¹ In a tendency in line with other heavily advocated issues, anti-trafficking proponents seem to find false negatives (cases which are not counted as part of the problem despite fitting the right criteria) as much worse than false positives (cases which are mistakenly taken as part of the problem). Thus, broad definitions are often defended as they allegedly help minimize the prevalence of undiscovered cases, despite the fact that such extensive definitions usually end up supporting estimates which are considerably larger than reality and often misrepresent the issue which is being discussed ([2]: 40).

² *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime* (2000).

In the past few decades Brazil has gained and maintained an international reputation as a major source country of trafficking victims, particularly to Europe.³ Yet despite the continuous avowal that transnational trafficking is a large-scale problem in the country and increasing efforts to combat it, statistics about the phenomenon are scarce and questionable.

The lack of valid data has not stopped the dissemination of a variety of assertions about Brazilian trafficking victims. One of the most common is the insistency that there are large numbers of (female) Brazilians trafficked to the Spain and Portugal, which are supposedly among the main destinations for Brazilian victims.⁴ Even though this premise has been the basis of a number of bilateral debates, agreements and joint operations between the three countries [68], there are few data sources regarding Brazilian victims in the Iberian countries that can undergo any sort of scrutiny and the numbers produced by those tend to be rather small for a phenomenon which is supposed to possess epidemic proportions.

Although an extensive literature exists on the myriad problems which affect trafficking data in general [57], less work has been done on dissecting the existing problems of data in specific countries. This avenue of exploration is important, as challenging the numbers which are used to shape a country's trafficking policies may also mean challenging the policies themselves. Thus, this article will address some of these data issues in relation to Brazilian victims of transnational trafficking, focusing particularly on victims of trafficking for commercial sexual exploitation that end up in Spain and Portugal.⁵ The aim of the article is not to refine existing data to obtain as accurate a report as possible regarding the number of Brazilians victimised by transnational trafficking, but to work with the existing publically available data and analyse its validity.

A brief introduction will, based on existing literature on the subject, highlight the importance of (comparable) trafficking data, the most common problems with data collection and proposed solutions to improve the data gathering processes. The focus will then shift to two particular issues: the internal inconsistencies of the transnational trafficking data in Brazil, Spain and Portugal and the cross-comparative inconsistencies of the data regarding Brazilian victims of trafficking between these countries. The methodological issues present in some of the data gathering processes and their consequences to the understanding of human trafficking in this scenario will be

³ Brazilian Public Prosecutor Eliana Vendramini, who specializes in combating organised crime, declared that a "UN Study" (unnamed, no year given) affirms that Brazil is the main origin country of women trafficked for sexual exploitation worldwide [41]. Similar statements, equally unsupported, have been made by a variety of other people and in the name of multiple organisations.

⁴ See for instance multiple declarations by members of the Brazilian Federal Police, such as [7].

⁵ Primary focus will be given to adult victims of trafficking, as the criteria established in the UN Protocol for labelling minors as victims of trafficking is different. Nevertheless, in some cases the presented data conflates adults and minors, without taking into consideration the differences between them. This amalgamation, if it takes place, will be explicitly stated.

addressed. The article will then conclude with the presentation of possible obstacles to establishing strong and reliable data gathering systems.

These data assessments will be based primarily on an extensive qualitative data collection undertaken by the author which took place between January of 2012 and January of 2014. This data collection privileged primary sources produced by relevant government organs (police forces, migration offices, courts, etc.) and international organizations (primarily the UN and the European Union) which are available to the public.⁶ When primary data was not accessible, efforts were made to find reliable secondary sources of information that not only clearly established that the data was obtained from governmental institutions, but also expanded upon the methodology which was used when collecting it.

The need for accurate statistics

Accurate statistics do more than give a more precise dimension of the extent of human trafficking. They enable both governmental and non-governmental organizations to adequately tailor their responses to the phenomenon regarding, for instance, needed financial resources, as well as suitable facilities and services that need to be available to victims. They also allow governments to produce evidence-based trafficking policies and assess throughout time whether these policies have been effective [57].

Bad statistics, therefore, may do more than impede an appropriate allocation of resources; they may also shape and support bad policies. In fact, such statistics may actually be deliberately constructed to stir fear and indignation and through this enable the shaping of trafficking policies whose primary concern is not victim protection, but the constraint of migration and sex work.⁷

Having accurate and internally consistent data be available for individual countries, however, is not enough. As trafficking is a crime with extensive transnational dimensions, it becomes imperative for the data produced to be comparable in a cross-country basis. This compatibility, however, is notably absent in the vast majority of cases.

One of the primary reasons behind data incompatibility is that although a lot of statistics claim to be assessing “human trafficking,” not all of them are identifying trafficking victims per the full understanding of the UN Trafficking Protocol. In some countries the distinction between trafficking and smuggling may be blurred. In others, no distinction is made between victims of trafficking and migrant sex workers and other forms of

⁶ The focus of this data collection is on statistics produced and/or sponsored by national governments and/or international organizations, as this is the data which shapes and is shaped by official policies. This means that data collected by non-governmental organizations (NGOs) will not be taken into account unless it is explicitly government endorsed.

⁷ The use of overblown statistics to support supposedly humanitarian “anti-trafficking” policies has been a strategy used by abolitionists since the heydays of the anti-white slavery movement [12].

trafficking besides sexual exploitation are completely ignored. In many more, the concept of (abuse of a) “position of vulnerability” is interpreted in such a way that poverty is seen as a form of force and therefore the non-autonomous migration of poorer people (particularly women who migrate and perform sex work) is interpreted as being a form of “structural trafficking” [50].

Some of the time, such interpretative problems are a result of unclear or outdated legislation, making a shift towards the use of an UN-compliant definition of human trafficking a paramount priority.⁸ Other times, however, such conflations appear to be intentional. Countries that have an abolitionist or prohibitionist position, for instance, deliberately make no distinctions between all migrants who sell sex, as it enables them to use trafficking policies to target migrant sex work. In such cases, there is little internal motivation to improve the legislation.

A second crucial step is the need for a centralized data gathering system which will coordinate data received from several distinct sources into one single product (be it a database or periodic report). This will not only ensure the production of internally coherent data, but will also make access to such data much easier and, if the appropriate care is taken, minimise, if not entirely eliminate, the possibility of double counts.

To be of utmost use, trafficking data should also be publically available. There is, of course, the need for some of the information to remain confidential due to privacy and security considerations. Nonetheless, most findings (such as overall numbers of victims, as well as types of trafficking and nationalities detected) can be released without greater problems. Considering the invaluable role such information may play in the actions of governmental agencies, the development of policies in other countries and in the decisions undertaken by auxiliary support systems (which include everything from local NGOs to international organisations), it is not unreasonable to assume that the time and expenses incurred in the production of an annual report or similar data compilation are more than worth it.

Presenting such information publically, however, is not enough. Transparency is also of the utmost importance when it comes to explaining how the data was obtained. Who was responsible for gathering data, which criteria were used to separate valid from invalid cases and, most importantly, which definition of human trafficking is being used are some of the key pieces of information that need to be made available so that the validity of the presented statistics can be properly considered.

Although these changes may seem daunting, significant efforts have already been made to establish guidelines for integrated trafficking data collection systems ([1]: 93-106) by

⁸ Although the leeway given by the UN Protocol may mean that the definitions established by different countries may not be entirely the same, at a minimum they should be perfectly consistent internally, which is not currently the case.

both international organizations and individual states. Some of these efforts are particularly relevant to the current discussion.

The International Centre for Migration Policy Development (ICMPD) launched in 2006 the “*Programme for the Enhancement of Anti-trafficking Responses, Data Collection and Information Management*” (DCIM), which was later followed by the project “*Trafficking in Human Beings: Data Collection and Harmonised Information Management Systems*” (DCIM-EU). This second project led to the elaboration of a handbook which outlined a methodology and a proposed set of harmonized indicators/variables for trafficking data collection [65]. Although this model was lauded as exemplary during the “International Seminar on Combating Human Trafficking” which took place in the framework of the EU-Brazil Sector Dialogues, ([15]: 4), it has not been completely absorbed by either EU Member States or Brazil.

Following a similar pattern, in 2009 the International Organization for Migration (IOM) produced a set of “Guidelines for the collection of data on trafficking in human beings, including comparable indicators.” It provided templates for more comprehensive data collection on victims, traffickers, the trafficking process and criminal justice responses to trafficking [1]. Its results, however, were similar to ICMPD’s.

Under the aegis of the European Commission, the Institute for International Research on Criminal Policy (IRCP) developed in 2006 SIAMSECT, a set of standardised templates for a EU-wide collection of statistical information regarding missing and sexually exploited children as well as trafficking in human beings. Following an event, victim and author template, SIAMSECT allowed multiple ground actors (not only law enforcement and judicial authorities, but also other governmental offices and NGOs) to provide information which would go on to be centralized by a National Focal Point and then later on by a European Monitoring Centre. In this way SIAMSECT established a guideline for the creation of integrated and comparable statistical information at both the Member State and EU level, allowing for more effective cooperation within the EU, as well as between its bodies and other organizations. The SIAMSECT templates became the basis of the IRCP’s 2010 elaboration of the MONTRASEC (Monitoring Trafficking in Human Beings and Sexual Exploitation of Children) demo, an interface and reporting tool which enables users to create an integrated data collection that gives an accurate picture of the relevant phenomena while following strict data protection guidelines [75].

The publication of Eurostat’s trafficking statistics [13, 14] showed, however, that although the ICMPD, IOM and MONTRASEC models were taken into account in the development of the EU’s official trafficking statistics, none of them have been fully adopted in the EU’s trafficking data collection efforts. Thus, even though the EU has recognised the need for comparable trafficking data since 1997 [75], it is clear that by 2014 problematic statistics were still being produced and disseminated in the EU and beyond.

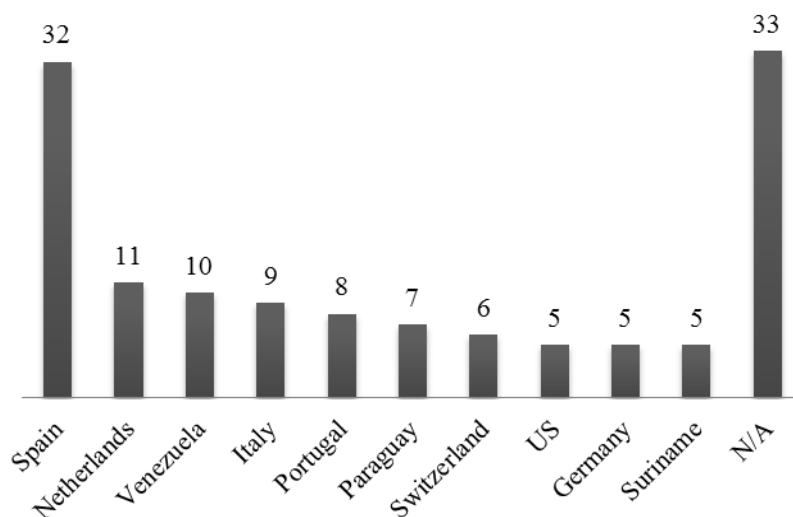
Internal inconsistencies in Brazilian trafficking data

As previously stated, one of the major challenges of dealing with human trafficking is the establishment of a definition of the phenomenon. Although Brazil ratified the UN Trafficking Protocol in 2004, its current definition of trafficking is still not UN-compliant, as it does not address organ removal, forced labour or any other forms of trafficking besides those involving sexual exploitation.

Even the existing definition of trafficking for sexual exploitation is problematic. Prior to 2005, trafficking as laid out in article 231 of the Brazilian Penal Code (BPC) consisted of any sort of aid to the movement, to or from the country, of a woman who would end up working in prostitution. No specific means such as force or fraud were needed, nor was any kind of exploitation a prerequisite. In 2005 the legislation was modified for the first time and its two major changes included the expansion of the crime from trafficking in women to trafficking in persons and the introduction of Article 231-A, typifying internal trafficking. In 2009 the term “other forms of sexual exploitation” was added to the law, which, however, continues to condemn not “the exploitation of the prostitution of others,” but prostitution in itself. As it stands, Brazilian legislation considers any kind of migrant prostitution which is not completely autonomous as human trafficking.

The first attempt to construct a country-wide diagnosis of the situation of human trafficking in Brazil was the “Study of Trafficking in Women, Children and Adolescents for Commercial Sexual Exploitation – National Report – Brazil,” better known as PESTRAF, which was commissioned by the Organization of American States. Despite claiming to represent a “strategic investigation for developing new political practices that support the process used to resolve this problem” ([35]: 23), there seems to have been no concerted effort in the research to develop accurate statistics regarding the number of actual trafficking cases which took place in Brazil or involved Brazilian citizens abroad. The study did, however, attempt to map the existing international routes being used to traffic Brazilians (**Graph 1**). In this mapping Spain was very clearly the country most paths lead to (32 routes), with Portugal trailing behind in fifth place (8 routes).

Graph 1: Main trafficking routes of Brazilian victims by destination country⁹



Source: PESTRAF ([35]: 81)

Although there is no supporting evidence regarding the number of persons allegedly trafficked through each route, the study strongly implies that there is a correlation between the number of routes and the number of victims. Thus, in PESTRAF's vision the higher the number of routes towards a country, the higher the number of victims in it. The possibility that a single route may be used by more people than multiple other routes seems to not have even been considered.

Even worse than the unsupported assumption that more routes mean more victims are the severe methodological failings which permeate the study [5]. When it comes to the alleged number of trafficking routes, this becomes particularly problematic on three accounts. The first issue is that the definition of trafficking used by PESTRAF considers both consent and coercive means to be irrelevant. Thus the routes which are laid out may have been used not by trafficking victims, but by completely independent migrant sex workers (a category whose existence PESTRAF, which classifies all prostitution as exploitative, chose to ignore). Secondly, the "mapping" of the routes consisted in a mere compilation of information presented in unsubstantiated media reports, which often fail to make basic distinctions between trafficking in persons and migrant smuggling. Finally, one of the study's coordinators has admitted that their primary concern was not to provide data as accurately as possibly, but to stir society to react against human trafficking ([52]: 370), which puts the findings produced by the report, particularly those which claim trafficking is a problem of major proportions, in a distinctively dubious light.

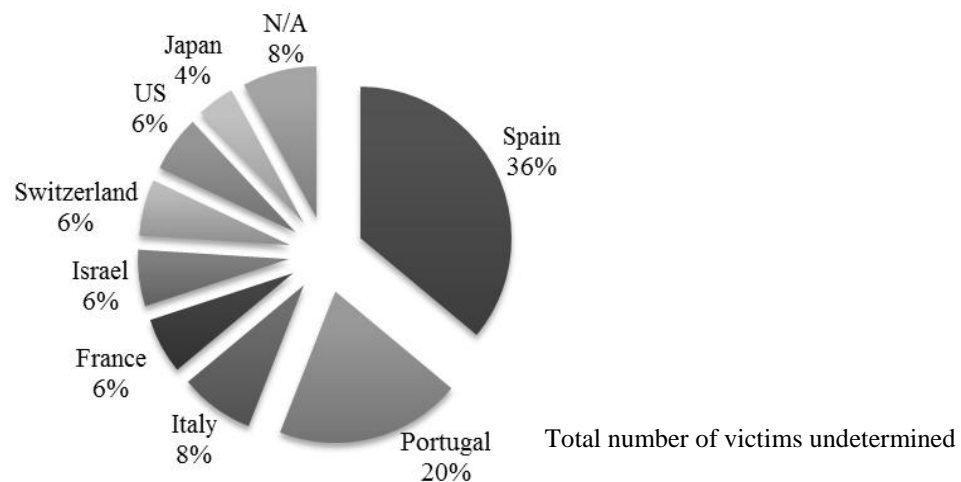
Despite its numerous failings, the "findings" and assumptions from PESTRAF were and continue to be used as a source of information and policy guidance in Brazil [37]. Throughout the years information from the study came to be attributed to the UN

⁹ N/A represents the 33 out of 131 international routes "mapped" by PESTRAF which were not given a specific destination country.

(particularly the United Nations Office on Drugs and Crime – UNODC – which adopted it as fact), further legitimising it [5].

A couple of years after PESTRAF was released, a second set of data begun to circulate in a booklet produced in partnership by the Brazilian Ministry of Justice and UNODC [39]. One of its key pieces of information consisted of “the main destination countries” for Brazilian trafficking victims (**Graph 2**). The booklet offered the percentage of victims which ended up in each destination, but did not clarify the total number of victims the percentages represented, nor how or when the data was obtained.

Graph 2: Main destination countries for Brazilian Trafficking victims



Source: Reproduced by the Brazilian Ministry of Justice and UNODC without attribution [39]

According to Blanchette and da Silva ([3]: 334-337) the source of the percentages presented in the booklet is the “I Diagnosis Regarding Human Trafficking: São Paulo, Rio de Janeiro, Goiás and Ceará” [8]. Although called a “diagnosis,” all of its findings are based on data from only 36 selected cases (22 judicial cases at the Federal level and 14 Federal Police investigations) from four states during a period of four years (2000-2003). These cases were not always confirmed as trafficking by the Brazilian judicial system and even when they were did not always fit the definition of trafficking established by the UN Protocol. The group of alleged victims also included a small number of minors, who were for the most part bundled with the adults.

Just as problematic as the presentation of highly questionable and limited statistics as a “country-wide diagnosis” of the trafficking situation are the inferences made from such data. The booklet claimed, for instance, that the Iberian countries (which it labelled as “Latin countries”) were the main destination for Brazilian victims of trafficking due to the language similarities. In its source report ([8]: 37) the author went further and claimed that victims were “limited” to “neo-latin” countries due to their lack of formal education, which he imagined would preclude them from moving to countries with substantial linguistic and cultural differences.

There is nothing in the study to show that this was more than a mere assumption that ignores a number of issues. The first is that linguistic and cultural isolation are recognised as effective forms of controlling trafficking victims ([56]: 107), which would seem to make traffickers’ overwhelming preference for countries where this isolation will be somewhat limited suspect at best. Secondly, if victims were in fact “limited” to countries with similar linguistic and cultural backgrounds, one would then expect to see an influx of victims to Latin American countries, which are notably absent from the list presented. The counter-argument that these countries are simply not rich enough to attract victims would not hold weight, as it would ignore the reality of South-South migration flows and the acknowledged existence of trafficking routes from Brazil to its (poorer) neighbouring countries.¹⁰ Finally, this premise also ignores the massive flows of Brazilian migrants towards places such as the United States and Japan, countries which present significant linguistic and cultural barriers.

In the years following the presentation of this “diagnosis” Brazil continued to give increased attention to human trafficking, producing its National Trafficking Policy in 2006 and its First Trafficking Plan in 2008. Both were developed under the assumption that transnational trafficking was a major issue in Brazil despite the continued lack of valid statistics to confirm this assertion.

After the establishment of the First Trafficking Plan, two sets of data related to trafficking in Brazil surfaced in UN trafficking reports. Although not explicitly government-endorsed, the UN’s trafficking reports and data have been considered to be reliable by those involved in the development of Brazil’s trafficking policies [5]. The 2009 Global Report [70] presented some very specific trafficking numbers for the 2004-2007 period (**Table 1**).

Table 1: Women and girls victims of trafficking in persons identified during criminal proceedings

2004	2005	2006	2007
14	9	57	5

Source: United Nations 2009 Trafficking report, quoting Federal and State Courts in Brazil [70]

There are, however, major issues to be considered regarding the presented data. The first is that the 2009 UN report did not clarify whether it was addressing solely transnational trafficking or whether victims of internal trafficking (a crime that was typified in Brazilian legislation in 2005) were also being taken into account.

A second problem is that although the Brazilian trafficking legislation changed its definition of victims from women to persons in 2005, this dataset continued to show a clear focus on women and girls. Whether this was due to a choice by the report writers or the fact that the courts have only dealt with female victims (which is possible

¹⁰ See for instance [33] for a detailed report of the trafficking of Brazilians to Suriname.

considering that the only type of exploitation recognised is that which is sexual and tends to be more female-centric) is not clear. The conflation of “women and girls,” although a reflection of the Brazilian legislation (which establishes a unified threshold of victimhood), is also problematic, as the UN Protocol established different standards for the trafficking of adults and minors.

Another issue is that the quoted source of “Federal and State Courts in Brazil” is in practice very vague, as it does not clarify from which courts the data comes from or if all relevant courts have been taken into account. Considering that there is no centralised data gathering system for the Brazilian judiciary, there is a possibility that some cases are not being included.

Finally, while the UN is considered an important partner and source of trafficking information by the Brazilian government, other pieces of data presented in the report (specifically the number of cases of human trafficking investigated by the Federal Police¹¹ – **Table 2** – and those who have reached the courts – **Table 3**) do not match the data presented as official by the Brazilian government itself (**Tables 9** and **10** respectively), despite the fact that the Federal Police is quoted as the source in all cases.¹²

Table 2: Cases of trafficking in persons investigated by the Federal Police in Brazil

2003	2004	2005	2006	2007
55	71	118	105	109

Source: United Nations 2009 Trafficking report, quoting the Brazilian Federal Police databank [70]

Table 3: Cases of trafficking prosecuted as a result Federal Police investigations in Brazil

2003	2004	2005	2006
7	1	12	11

Source: United Nations 2009 Trafficking report, quoting the Brazilian Federal Police database [70]

The problems did not end with the release of the subsequent UN report. In its “Country Profiles – Americas” annex, the 2012 Global Report also presented some aggregated information about alleged cases (**Table 4**) which is quoted as coming from the Brazilian Public Ministry, the country’s body of independent public prosecutors.

¹¹ The Brazilian Federal Police is always responsible for investigating cases of transnational trafficking, while cases of internal trafficking are usually, but not always, assigned to the police forces of individual states. While the presented data most likely refers only to cases of transnational trafficking, we cannot affirm that it does, as internal cases involving multiple states may also be assigned to the Federal Police [37].

¹² It is important to bear in mind that the number of cases does not necessarily match the number of trafficked persons, as each case may involve multiple victims.

Table 4: Cases detected by offence and type of proceeding (2007-2010)

	Trafficking in persons (for sexual exploitation) per articles 231 and 231-A BPC	Slavery	Organ Removal
Judicial	499	2639	24
Extra-judicial	109	1783	15

Source: United Nations 2012 Trafficking report, quoting the Brazilian Federal Public Ministry [71]

Although this information is offered in a trafficking report, it is important to keep in mind that while recognised in both its transnational (Article 231 of the BPC) and national (Article 231-A of the BPC) forms, the only type of trafficking which is typified as such in Brazil is that for the purpose of sexual exploitation. Thus, the cases of slavery and organ removal most likely represent the total number of such crimes detected in the country, which may or may not have involved trafficking. Moreover, it is unclear whether each “case” of trafficking corresponds to a single victim or if the cases refer to trafficking operations detected which may each contain multiple victims. As an additional problem, it is not clear what is meant by “extra-judicial” cases of trafficking, although it may refer to cases which were investigated but did not produce enough evidence to go to court.

The 2012 Global Report also presented additional data regarding Federal Police investigations (**Table 5**), which once more is inconsistent with official Brazilian data which was published afterwards (**Table 9**).

Table 5: Number of investigations conducted by Federal law enforcement agencies in connection with the offence of trafficking in persons

2007	2008	2009	2010
114	95	76	78

Source: United Nations 2012 Trafficking report, quoting the Brazilian Federal Police [71]

When it comes to human trafficking information in Brazil, investigative data seems to be the most easily obtainable. The oldest and most consistent figures available before 2013 referred solely to the number of Federal Police investigations related to Article 231 (**Table 6**). This data set has often been presented as official trafficking figures from Brazil and is the only piece of “concrete” (i.e. not based solely on estimates) trafficking data presented during the Parliamentary Inquiry Commission to investigate Human Trafficking which took place in the Brazilian Senate from 2011 to 2012 [63].

Table 6: Police investigations under Article 231 of the BPC

1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
1	5	4	4	6	8	10	7	11	20	35
2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	
48	39	56	72	119	105	111	89	43	74	

Source: Brazilian Ministry of Justice and Federal Police as quoted in the report from the Senate’s Parliamentary Inquiry Commission on Human Trafficking [63]

This data presents a number of problems. First, it refers to the number of investigations, which can and often do include multiple potential victims, who may not end up being confirmed as actual cases of human trafficking. Thus, while the numbers may show an overall increase in the efforts to detect trafficking cases, they do not help in estimating the number of victims detected.¹³ Furthermore, as previously mentioned the definition of trafficking typified under article 231 has changed twice throughout the years, which means that the crimes being investigated in 2010 are not necessarily the same as those being investigated in the 1990s. Finally, despite its recurrent use, it is incompatible with data later presented by the government as official (**Table 9**), as well as with data presented by the UN's 2009 (**Table 2**) and 2012 (**Table 5**) reports.

It was not until 2013, over a decade after the introduction of trafficking as a major public issue in Brazil, that an official compilation of trafficking data which included actual estimates about the numbers of victims was released by the Brazilian government. The “National Report on Human Trafficking: consolidation of the data from 2005 to 2011” [37] (later supplemented by a report on 2012 data [38]) provided a wealth of information regarding both national and transnational trafficking (**Table 7**).

Table 7: Victims of transnational trafficking for sexual exploitation and/or slave labour which needed repatriation or temporary shelter provided by Brazilian Consular authorities

2005	2006	2007	2008	2009	2010	2011
16	55	38	50	88/93	218/213	9

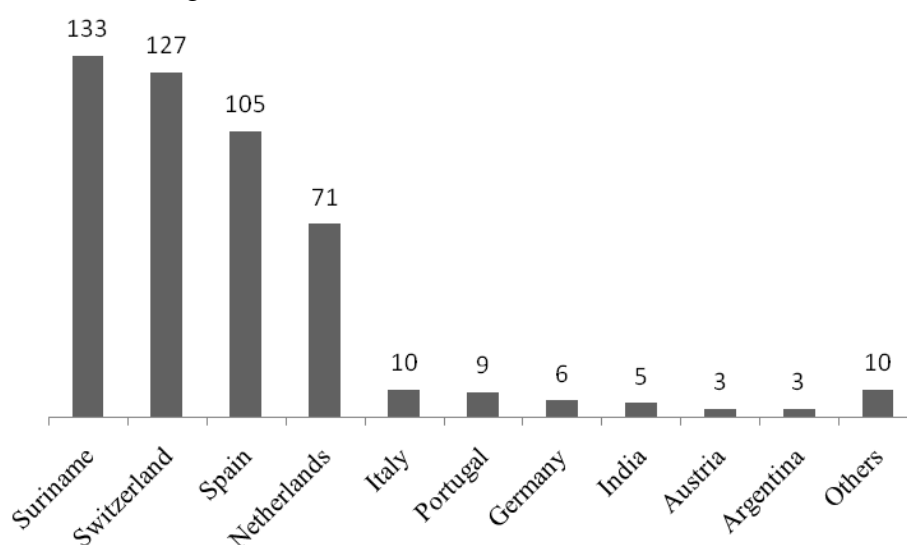
Source: Brazilian Ministry of Foreign Relations' Consular Assistance Division as quoted in the Government's official trafficking data publications [37, 38]

These numbers are particularly relevant to contextualize the known dimension of human trafficking if we consider that a mere three years before the publication of this report the Brazilian National Justice Secretariat claimed that on average 60,000 Brazilians were victims of transnational trafficking each year [54]. Yet despite the report's stated intention of offering a “picture” of the trafficking situation in Brazil, there are multiple problems with accepting the presented numbers of transnational victims as definitive.

¹³ Judge Rinaldo Aparecido Barros, considered a national expert on trafficking, claimed in a 2012 interview that the Federal Police has numbers that support the assertion that there are 75,000 Brazilian women who are victims of trafficking for sexual exploitation worldwide [66]. No other sources, however, including official data presented by the Federal Police, seem to acknowledge this number. It is likely a misrepresentation of an often repeated figure that claims that there are 75,000 Brazilian women working in the European sex industry. This data, often quoted without sources, is attributed by Téchio [67] to a 2005 report by the Helsinki Foundation for Human Rights (although it is sometimes also attributed to the International Helsinki Federation for Human Rights, the UN or IOM). This 2005 assertion, however, may be unlikely, as the same figure was quoted in the 2004 United States Department of State's Trafficking in Persons (TIP) Report [73]. A similar 70,000 sex workers figure is also often used and at times attributed to the United Nations Population Fund ([72]: 47). The UNFPA's data, however, originates from the 2005 TIP report [74]. The TIP reports did not cite sources for these figures or clarify why or how 5000 Brazilians “disappeared” from its statistics between 2004 and 2005.

First, the numbers presented in the 2005-2011 report are internally inconsistent. The total of 474 victims given in the country segregated data-set (**Graph 3**) differs from the 475 victims presented in the data set which separates the types of trafficking. This is explained in the report by the fact that one victim was subjected to both labour and sexual exploitation and is thus counted twice. No explanation is given in the text, however, for the fact the types of exploitation data-set gives a different distribution of victims in the 2009-2010 biennial (88 and 218 respectively) from the one given in the country segregated data-set (93 and 213 respectively).¹⁴

Graph 3: Countries where Brazilian trafficking victims were detected with respective numbers of alleged victims (2005-2012)¹⁵



Source: Brazilian Ministry of Foreign Relations' Consular Assistance Division as quoted in the Government's official trafficking data publications [37, 38]

Secondly, although the Ministry has clarified that it (along with the embassies and consulates it administrates) adopts the trafficking definition set out in the UN Trafficking Protocol (Ministério das Relações Exteriores, personal communication, August 5, 2013), Brazilian legislation only recognises those subjected to sexual exploitation (**Table 8**) as trafficking victims.

Table 8: Victims of transnational trafficking for sexual exploitation which needed repatriation or temporary shelter provided by Brazilian Consular authorities

2005	2006	2007	2008	2009	2010	2011	2012
16	55	38	50	86	88	4	4

Source: Brazilian Ministry of Foreign Relations' Consular Assistance Division as quoted in the Government's official trafficking data publications [37, 38]

¹⁴ An inquiry sent to the Ministry of Foreign Relations (Ministério das Relações Exteriores, personal communication, August 5, 2013) clarified that the numbers were different because some cases which took place in 2009 were not accounted for until the following year.

¹⁵ The "Others" category includes one victim in each of the following countries: Cuba, the Czech Republic, England, France, Japan, Peru, Romania, Serbia, the United States and Venezuela.

Finally, the data only encompasses victims who have come in contact with the Brazilian consulates and official representatives abroad. Yet not all victims contact the consulates, sometimes out of their own free will (being under the – at times justifiable – belief that consulates will be unable or unwilling to help them),¹⁶ sometimes due to outside forces (such as being barred from doing so by the police forces which have “rescued” them).¹⁷

Moreover, the victims that do come in contact with the Brazilian consulates are further divided into three categories: a) those who go to the consulates looking for information or aid but are not identified as having been trafficked, b) those who are identified, but only want information or documents and thus are not registered as victims, and c) those who need help returning to Brazil or temporary shelter and are thus identified and registered. Only those who belong to the last category are classified as victims of transnational trafficking in the statistics compiled by the Foreign Ministry ([37]: 32).¹⁸

Although most of these issues explain why trafficking cases may be under-reported, it is important to keep in mind that problems with the existing system may also lead to *over*-reporting. Gabriela Leite, one of the foremost activists for sex workers’ rights in Brazil, affirmed, for instance, that Brazilian prostitutes will at times present themselves as being trafficked if they come in contact with the consular authorities abroad because they believe they are more likely to receive a better treatment if they position themselves as victims [53].

Even though the government recognises the fact that the provided statistics may only represent a fraction of the existing trafficking victims, little seems to have been done to improve the situation. Despite the findings of the Guarulhos Airport studies [60, 62], which showed that it is possible to identify concrete and potential situations of trafficking through a consistent supportive approach to Brazilians who are deported or non-admitted abroad and thus forced to return to Brazil, the support that does exist is not dependable. While the “humanised assistance offices for migrants”¹⁹ have multiplied, their work still remains inconsistent and systematic and valid data does not

¹⁶ This particular perception seems to be widespread among trans individuals and sex workers and has been confirmed by documented cases where help has been denied at certain consulates ([4]: 94).

¹⁷ See for instance accounts in [60] about police forces deporting trafficking victims without giving them the opportunity to contact Brazilian authorities. Even in cases where trafficking victims are officially labelled as such by foreign governments and enjoy the rights that the category confers, no mechanism to ensure that the Brazilian government is informed when a victim of trafficking is identified abroad appears to exist.

¹⁸ It is relevant to consider that to be statistically valid the classification of the trafficking victim depends on the victim’s agreement to the use of the label. One can argue that this may result in under-reporting of trafficking cases, as some victims do not identify as such. It is very important, however, to recognise that this goes against the widespread trend of ignoring the agency and autonomy of migrants by labelling them as trafficking victims, often to their detriment, without considering whether they see themselves as such.

¹⁹ These outposts are present along selected migratory hubs (mostly in major airports and in the Amazon) and are supposed to, among other things, provide information and support to previously identified trafficking victims and identify through interviews previously unknown victims that have been denied entry into other countries or deported.

seem to be collected by this auxiliary support system (D. Figueiredo, personal communication, July 18, 2013).²⁰

Following the trend of previous data sets, the National Report also contained data regarding police investigations (**Table 9**) and court procedures (**Table 10**). While the definition used by the Federal Police in these cases appears to be consistent with the 2005 version of Article 231, the actual number of victims cannot be estimated because, as previously mentioned, each case investigated may contain multiple victims or none at all.

Table 9: Police investigations on human trafficking for sexual exploitation (per Article 231)

2005	2006	2007	2008	2009	2010	2011	2012 ²¹
50	35	26	21	13	10	2	52

Source: National System of Criminal Information (*SINIC*) and Brazilian Federal Police as quoted in the Government's official trafficking data publications [37, 38]

The data available regarding the number of actual criminal indictments in the courts is significantly smaller (**Table 10**). There are two reasons for that. The first, which is not limited to trafficking cases, is the fact that not all investigations lead to the discovery of actual crimes. Even when they do, sometimes there is simply not enough evidence to take the cases to court. The second is the fragmented and at times inexistent sources of judicial data regarding human trafficking in Brazil. The data from Table 10 was compiled by the National Justice Council (the administrative organ of the judicial system) and came mostly from Federal Regional Tribunals (although ten cases were reported by Justice Tribunals). As there is no central national database or means for the Council to obtain the data itself, it was dependent on the contribution of individual courts, not all of which answered the information requests that were sent. A similar issue was encountered by members of Congress during the investigations of the Parliamentary Inquiry Commission on human trafficking [63].

Table 10: Criminal indictments on transnational human trafficking for sexual exploitation (per Article 231 of the BPC)²²

2005	2006	2007	2008	2009	2010	2011	2012
7	1	4	10	43	13	13	12

²⁰ A similar issue appears to happen with non-governmental organisations (NGOs). Although they are often relied upon to support government efforts (see for instance the II National Plan on confronting trafficking in persons [61]), there appears to be no mechanism which enables data to be gathered about trafficking victims supported or identified by NGOs.

²¹ In 2012 the wording changed to "police investigations and victims."

²² A different data set was released by the National Justice Council [9] after the publication of the National Trafficking Report, giving larger numbers for the 2008-2011 period and establishing nine identified cases in 2012. The Council's data collection is claimed as the basis of the National Report and no explanation is given for the different numbers. It is likely that they were caused by collecting data from the fragmented and unreliable judicial sources at different points in time.

Source: Brazilian National Justice Council (*CNJ*) as quoted in the Government's official trafficking data publications [37, 38]

The problems we face are therefore three-fold. First, officially endorsed victim-related “trafficking” data in Brazil actually consists of three different categories: victims who needed the resources of the Foreign Ministry, cases investigated by the Federal Police and cases taken to court. Each of these statistical categories is obviously shaped by the primary area of interest of the entity collecting data.

Secondly, the indiscriminate and at times unclear way the data is presented gives a confused and at times unclear picture of the magnitude of the problem in Brazil. Extrapolating the existence of 75,000 victims of trafficking [66] from an average of little more than 41 cases investigated a year (per Table 6), for instance, is highly problematic.

Finally, even the data in these self-contained categories do not match. For the year 2007, for instance, the 2009 UN report acknowledged the existence of 5 female victims, per the Brazilian courts [70], while the Brazilian Foreign Ministry claimed to have identified 38 victims of trafficking in that same year [37]. The difference, although problematic, is understandable, as what is being labelled as a “victim” is different in each case. The courts were only considering women and girls who fell under the provisions of article 231 of the BPC (which differs from the UN Protocol trafficking definition by, among other things, bundling adults and minors), while the Foreign Ministry used the UN's definition to identify all Brazilian victims of trafficking abroad which needed the help and resources of its consulates.

The situation regarding the number of cases investigated by the Federal Police is even worse. As the parameters being used are presumably the same (cases investigated under article 231 of the BPC) and the primary source quoted is the same (the Federal Police), one would expect the numbers to match, which is not the case. For the year 2007, the 2009 UN report asserted that the Federal Police investigated 109 trafficking cases [70], while the 2012 report changed this number to 114 [71]. Data presented in 2011 by the Federal Police itself claims a middle ground with 111 cases having been investigated [63]. This represents, however, a stark contrast to the numbers quoted in the government's 2013 trafficking report as coming from the National System of Criminal Information and the Federal Police itself: 26 cases of trafficking investigated [37].

Internal inconsistencies in Spanish data regarding Brazilian trafficking victims

Efforts to compile human trafficking data in Spain date back to the late 1990s. Despite this relatively early start (which preceded even the UN Protocol by a few years), the trafficking data collection in that country presents a number of significant problems.

It is important to consider, for instance, that the Spanish legal definition of human trafficking has not been constant throughout the years. At first, data labelled “human trafficking” focused on coercion into prostitution, which since 1999 explicitly included, but was not limited to, trafficking for sexual exploitation. In 2003 the perspective about trafficking widened and started to include all cases of irregular migration whose purpose was sex work, even if there was no exploitation involved.²³ Specific legislation which clearly differentiated human trafficking from migrant smuggling as per the terms of the UN Protocol did not exist until 2009. It was not until the following year, moreover, that the legislation was modified to acknowledge all forms of trafficking rather than just focus on trafficking for sexual exploitation [50].

A second major problem is the lack of a centralised data collection system. Data is gathered by individual police forces (the *Guardia Civil*²⁴ and the *Cuerpo Nacional de Policía*²⁵) and the Fiscal Ministry²⁶ and later also compiled by the Intelligence Centre Against Organised Crime (*CICO*), the Ministry of Interior and the Attorney General’s Office (*Fiscalía General del Estado*). Data from these sources, however, is not always consistently publically available.

Perhaps worse than the multiple data sources is the fact that the data is at times inconsistent among the sources themselves, which is exacerbated by the multiple definitions of trafficking in persons being used, even by single governmental entities, regardless of the actual legislation which is in place. Although each of the sources presented does elaborate on the fact that a small percentage of the victims are minors, this information is never segregated by country of origin and does not impact the final “victim” count, which always incorporates adults and minors as if there were no distinctions between them.

Data specifically mentioning Brazilian victims, although sparser than overall trafficking data, is also available. It suffers from the same problems found in all of Spain’s trafficking figures, with inconsistency resulting primarily from incompatible definitions of what constitutes a “victim of trafficking” being the most easily observable (**Table**

²³ This, however, excluded cases of trafficking where the victim was legally present in the country. This is particularly problematic when we consider that official data from 2010 implies that in over 65% of the cases in that year where trafficking indicators were found the potential victims were regularly residing in Spain ([58]: 44). This large percentage, however, may be a reflection of the fact that many undocumented migrants are summarily expelled from the country when identified by the police and not given a chance to have a potential trafficking situation investigated.

²⁴ The Spanish Civil Guard has jurisdiction over the majority of the Spanish territory (although that amounts to but approximately 40% of the population), including border posts such as airports. The rest of the territory is overseen by the *Cuerpo Nacional de Policía* (National Police Corps, responsible for urban environments) and the Autonomous Police Forces of Catalonia and the Basque Country ([25]: 3).

²⁵ Unlike the *Guardia Civil*, which counts all sex workers it comes into contact with as potential victims, data from the *CNP* supposedly only counts those who have been submitted to a situation of trafficking for sexual exploitation ([68]: 93). *CNP* data, however, is not publically available and attempts by the author to obtain it were unsuccessful.

²⁶ The Fiscal Ministry (known in other countries, such as Brazil, as the Public Ministry) is the body of public prosecutors.

11). Besides the large differences between the data sources, it is interesting to note that they also fail to follow similar patterns regarding the increase and decrease of the alleged number of trafficking victims across the years.

Table 11: Brazilian “victims of trafficking” detected in Spain

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
I ²⁷	*	1876	2153	3102	3332	3789	5015	4331	3277	2658	539	*	*
II ²⁸	*	*	10	22	22	52	20	23	15	13 ²⁹	18	*	*
III ³⁰	68	28	35	23	*	*	*	*	*	*	*	*	*
IV ³¹	*	*	*	*	*	*	*	*	*	56	33	40	12

Sources: (I & II) Civil Guard [25, 26, 27, 28, 29, 30, 31, 32]; (III) Spanish Ministry of Interior as quoted in the MON-EU TRAF II Spanish report³² [55]; (IV) Fiscal Ministry, as quoted in the annual report of the Attorney General’s Office [17, 18, 19, 20]

Data about Brazilian victims is publically available from three major sources: the Civil Guard, the Ministry of Interior and the Fiscal Ministry. Due to the fact that the *Guardia Civil* has consistently published a (mostly) publically-available annual trafficking report since 1999,³³ its trafficking data is often used to represent the totality of trafficking cases in Spain despite the fact that it is not the only police force in the country and thus only deals with a fraction of the total of victims.³⁴

The *Guardia Civil* focuses the vast majority of its efforts on detecting trafficking for sexual exploitation which occurs in highway clubs.³⁵ By taking into account only its information, trafficking cases which potentially occur in street prostitution and those

²⁷ From 1999 to 2009, the Guardia identified respectively 590, 12 783, 16 006, 20 770, 18 516, 18 655, 20 036, 18 478, 15 264, 14 788 and 2758 foreigners who were “potential victims of trafficking.”

²⁸ From 1999 to 2009, the Guardia identified respectively 75, 160, 194, 234, 161, 210, 140, 168, 119, 123 and 115 migrants who claimed to have been either victims of trafficking or submitted to other forms of commercial sexual exploitation.

²⁹ Some secondary sources reproducing the data from the *Guardia* (such as [34]) give the figure of 20 Brazilian victims in 2008.

³⁰ From 1999 to 2002 the Spanish Ministry of Interior identified 412, 393, 553 and 725 migrants as being “trafficked” (i.e. coerced into prostitution).

³¹ From 2008 to 2011 the Fiscal Ministry identified 104, 104, 116 and 76 “victims of sexual exploitation.”

³² Data from the Ministry of Interior is compiled from forms filled by the *Guardia Civil* and the *Cuerpo Nacional de Policía* ([69]: 56), similarly to the data compiled by *CICO*, which, although collected in a specific database (BDTRATA) and compiled in trafficking-specific reports ([59]: 11-12), is not publically available. Trafficking numbers are not available in the Ministry’s Annual statistics report, nor were they made available through a direct request from the author to the Ministry, which is why secondary sources are being used.

³³ Multiple attempts by the author to contact the *Guardia* to obtain the reports from 1999, 2007 and 2010 onwards were unsuccessful.

³⁴ This may be due to the fact that the data from the *CNP* seems to be difficult to access. No known sources seem to take into account information from the *Mossos d'Esquadra* or the *Ertzaintza* (the Catalanian and Basque Police, respectively) as well. This seems to be the case because these regional police forces have no jurisdiction on migration-related matters and have to coordinate with either the *CNP* or the *Guardia* when dealing with foreigners. Thus, the vast majority of trafficked cases detected by them are incorporated into the data from the two main police forces ([24]: 16).

³⁵ The Civil Guard claims, based on a 1999 study, that highway clubs, the vast majority of which are located in areas under its jurisdiction, represent 80% of the prostitution in Spain. This percentage, however, was obtained in the observation of a single, rural region and is highly debatable when we take the country as a whole into account ([22]: 177).

which take place in apartments are often ignored. This is particularly problematic when we consider that these forms of prostitution tend to be more attractive to male and trans³⁶ sex workers, who have little to no participation in highway clubs and are thus mostly invisible in the *Guardia*'s statistics ([6]: 37).³⁷

Perhaps worse than that is the fact that the *Guardia Civil* presents in its reports two sets of data. The first set (**row I**, containing by far the largest numbers in the table) refers to "potential victims" as per the understanding of the Spanish Civil Guard:

...although technically the denomination of "victim" should only be applied to a person that reports being sexually exploited, for the effects of this report [we] will consider "potential victims" the people (mostly women) who engage in prostitution in these establishments, because [we] understand that they do so without any administrative support, due to finding themselves in a situation of necessity (although not all of them) and because, making an accusation or not, there is always the lingering doubt of whether they engage in this activity under the greater or smaller control of people and organisations dedicated to illegal activities ([32]: 13).

Note that these "potential victims" need not show any of the usual signs of a potential trafficking situation, such as violence, movement control or retention of documents; working as a prostitute is enough. Nor is there any indication whatsoever that these potential cases undergo a scrutiny longer than a brief conversation between a trained police officer and the alleged victim to determine whether trafficking is indeed taking place. There is also no system to ensure that the same woman will not be counted twice. Considering the widespread *plaza* system in Spain, in which women usually spend twenty-one days in a particular establishment before moving to another,³⁸ the possibility of sex workers being counted multiple times, in different cities and even communities, is not a small one. Despite these issues numbers obtained through this understanding that all "victims of prostitution" are (potential) trafficking victims are often used to represent official Spanish trafficking statistics, particularly when there is a need to reinforce the idea that trafficking is a major problem in Spain.³⁹

³⁶ The emic term "trans" is being used here to refer to "*travestis*" (as per the terminology used in Brazil), as well as transsexual and transgender persons. Because there appears to be no data or mention of trans male individuals in the context of trafficking and the sex industry in Brazil, "trans" shall refer to individuals who were assigned male at birth and were, to some degree, dissatisfied with this label.

³⁷ In its 2005 report the *Guardia* ([29]: 14) categorically stated that male prostitution does not exist. Reports from other years, such as 2006, state, on the other hand, that it "practically" does not exist ([30]: 15).

³⁸ The *plaza* system's three weeks length is supposedly tied to the length of women's menstrual cycles, allowing, in theory, sex workers to complete a non-stop work cycle and take time off for their period. Its widespread use in Spain, however, may be more linked to the fact that sex workers usually earn more when they are new to a particular place and that constant movement seems to be a strategy to bypass police checks [48].

³⁹ This is for instance, the case of the 2005-2006 report "*Estudio sobre la explotación sexual de las mujeres, con referencia al tráfico ilegal*" produced by the Spanish Ministry of Labour and Social Issues which claims that there are approximately 90,000 victims of trafficking for sexual exploitation in Spain.

The second set of data from the *Guardia* (**row II**) contains much smaller numbers which refer only to women who have claimed to have been exploited and/or forced into prostitution.⁴⁰ Despite referring to these women as the “real” victims in its 2009 report ([32]: 17), the *Guardia* admonishes against taking these numbers as the totality of trafficking cases, as it claims that for a variety of reasons (including fear of traffickers and of the police), some victims will refuse to acknowledge they have been trafficked. Although this assertion is certainly true, one cannot forget that some migrant sex workers can also, for a variety of reasons (most particularly fear of being deported), claim to be trafficking victims when they would otherwise reject the label should it not provide them with any advantages.

The data from **row III** comes from the Ministry of Interior and refers to cases under article 188 of the Spanish criminal code (“coercion into prostitution”), which since 1999 specifically recognised human trafficking for the purpose of sexual exploitation as a subset. Data from the Ministry is also problematic in some other respects. First, since all crimes are transcribed into a standard data-sheet,⁴¹ specific information related to trafficking offenses is not collected, which may make it harder for third parties to confirm whether they consist of *bona fide* cases. Secondly, the numbers available refer to cases of “trafficking” which were being investigated and may or may not have ended up being confirmed.

Row IV’s data comes from the Fiscal Ministry through annual reports of the Attorney General’s Office. Data available from 2008 to 2011 covered the more generic term “victims of sexual exploitation,” and included crimes persecuted under articles 318 bis and 188 of the Spanish Penal code detected not only by the National Police and the Civil Guard, but also by other secondary sources.⁴² In its 2009 annual report (which covered data from 2008) the *Fiscalía General del Estado* acknowledged this problem:

While a system like the current one is in force, it is extraordinarily difficult to obtain precise information about human trafficking in Spain such as it is demanded by a rational and pertinent criminal policy which aims to end this

This figure comes from considering that every sex worker who is not completely autonomous is a victim of trafficking ([23]: 22).

⁴⁰ Foreign sex workers who actually claimed to have been exploited represented, in most years, less than 1.5% of the foreign women which were identified by the *Guardia Civil* as potential victims of trafficking. In some years (2003 to 2005, 2009) the percentage of Spanish sex workers who claimed to have been exploited was actually higher than that of migrant sex workers. This challenges the pervading assumption, reinforced by the *Guardia*, that only migrants from developing countries can be and are being exploited.

⁴¹ See ([55]: 17-20) for a reproduction of the data-sheet used by the Ministry of Interior to collect crime data.

⁴² Although 2007 data is available (295 victims) [16], it is not included since it is limited, unlike in subsequent years, to victims detected by the *Guardia Civil* and the *Cuerpo Nacional de Policía*. Numbers from 2012 (29 victims) onwards are also not included because the Fiscal Ministry abandoned the term “victims of sexual exploitation” and started to address “victims of trafficking for sexual exploitation,” focusing for the first time on victims detected under article 177 bis [21], which, although mentioned in the previous report [20], was not then included in the final count of cases which reached the courts.

execrable crime. No official statistic can facilitate any data because the legal references do not exist. In this way, the summary report of the Attorney General's Office can reflect the number of cases initiated in persecution of the facts typified in articles 318 bis of the Penal Code (PC), 188 PC, 312 PC or any other connected to them but we would have to scrutinize each one of the procedures to learn if the pursued facts constitute in real cases of human trafficking ([17]: 77).

The *Fiscalía* clarified that this problem is not exclusive to the data compiled by the Fiscal Ministry. The Ministry of Interior and the *Guardia Civil* also use broad definitions of human trafficking which often mix it with irregular migration issues.

Just as in the case of Brazil, different definitions are used by different Spanish institutions according to their focus area and needs. The fact that the Ministry of Interior mixes trafficking for sexual exploitation and people being coerced into prostitution and the Fiscal Ministry focuses on all victims of commercial sex exploitation in the country is easily explained when we consider that prior to 2010 Spanish trafficking legislation was problematic and often failed to draw a line between migrant sex work and trafficking. The case of the *Guardia Civil*, however, is much more complex.

The *Guardia* presents two different sets of data: one which involves all (migrant) sex workers and one which only considers those that claim to have been exploited. Although it claims this dual set of data is necessary because of its understanding that (almost) all migrant sex workers are, to some extent, being coerced, the reality may reflect a different concern. Based on her interviews with members of Spain's police forces, Malgesini ([36]: 70) stated that one of the possible explanations for the *Guardia*'s position is that their real goal is to obtain statistics about sex work, not trafficking. Since there can be no legal registration of prostitutes under Spain's current legislation, they are labelled by the police as "trafficking victims" so they can be tracked. This explanation also meshes with the fact that the *Guardia*'s inspections to "rescue" trafficking victims are more often than not raids to identify and expel migrants selling sex [50].

Internal inconsistencies in Portuguese data regarding Brazilian trafficking victims

When talking about Portuguese human trafficking data, two moments must be taken into account: pre- and post-2008. Before the 2007 reform which made Portuguese trafficking legislation compatible with the UN Protocol definition, the crimes of human trafficking (restricted to sexual exploitation) and *lenocínio* (profiting from the prostitution of others) were considered to be one and the same.

Besides not being a true reflection of the trafficking situation in Portugal, pre-2008 data regarding trafficking victims was also not systematically available to the public. Data which specified the country of nationality of the victims was even rarer. In a similar

vein to what happened in Brazil, the data collection focus in the early years seemed to be on the number of perpetrators caught, the number of police investigations that took place and the number of cases that reached the courts rather than on the victims. According to one of the few sources where such early trafficking data from the Judicial Police is available ([10]: 82), during the 2004-2006 period 41 out of 89 suspected victims of trafficking for sexual exploitation (and *lenocínio*) detected in Portugal were of Brazilian origin.

2006 heralded the beginning of an experimental period in the development of trafficking statistics in Portugal, with many of the mechanisms which would form the cornerstone of the current trafficking monitoring system being developed and tested ([49]: 176). 2008 marked the end of this transition period and hallmarked the start of the publication of consistent trafficking statistics. Data from that year is available in the Annual Internal Security Report (*RASI*)⁴³ and in a special report analysing the year's trafficking statistics [11] which preceded by a year the creation of the Annual Trafficking Report. The latter is produced by the Portuguese Human Trafficking Observatory (*OTSH*) which was created after the 2007 change of the Portuguese trafficking legislation.

Most information about potential trafficking cases is currently collected through two standardised reporting forms: the *GUR* (Sole Registering Guide)⁴⁴ and the *GS* (Flagging Guide). *GUR* forms are used by the police forces (the National Republican Guard, the Judiciary Police and the Public Security Police) and the *Serviço de Estrangeiros e Fronteiras* (*SEF*, the organ responsible for dealing with foreign nationals on Portuguese soil) and represent the majority of potential cases detected. *GS* forms are used by NGOs and any public organs besides the police forces and the *SEF*.⁴⁵

By utilizing standard reporting forms and making every effort to eliminate the possibility of double counts, the Portuguese government ensures that the data which is collected is as consistent and as accurate as possible. Unfortunately, the standard forms are not always correctly or at all filled in every case, which undermines the effort. Moreover, although *GS* forms were created to enable the input of NGOs in the official statistics, they do little to contribute to the official understanding of trafficking in Portugal. First, because NGO-flagged cases are considered apart from those that come through *GURs*, as if they were somehow less valid. Furthermore, a large number of NGOs refuse to fill out *GS* forms, as in their understanding bringing trafficking victims to the attention of the state could be detrimental rather than helpful to their well-being [56].⁴⁶

⁴³ The *RASI* is a publication of the Portuguese Ministry of Internal Administration which details crime trends in the country.

⁴⁴ A sample copy of the *GUR* can be found in ([49]: 164).

⁴⁵ Besides the *GUR* and *GS* forms, additional data comes from the Ministry of Internal Administration, which provides information about potential Portuguese victims of trafficking detected abroad.

⁴⁶ In their analysis of the trafficking situation in Portugal and particularly the country's data gathering system, Santos Neves and Pedra [56] claim that the number of trafficking victims in the country is at least three times greater than that which is presented in official statistics.

Portuguese trafficking data is currently released twice a year. First, it continues to be published in a section of the *RASI*. Some months later, it is released in an expanded form in the Annual Human Trafficking Report, which has been produced by the *OTSH* since 2009. Although these publically available reports contain a large amount of data, they do not include all data which is collected about (potential) victims and at times specific pieces of information are explicitly redacted due to the need for secrecy in on-going judicial and investigative proceedings and personal data protection guidelines.

Although it also contains data about perpetrators, the Annual Report is very clearly victim-centred. Per the terms established in the Portuguese trafficking victim identification guidelines, victims are divided into two categories: flagged victims (those that show enough trafficking indicators to warrant an investigation about their circumstances) and victims which have been confirmed as being trafficked.

Although the flagging procedure usually occurs upon first contact with a potential victim, the confirmation process is time-consuming and on-going. This accounts for the disparity which is found between the data presented in the *RASI* (which is compiled first) and that which is presented in the Annual Trafficking Report, as during the time which passes between reports some outstanding flagged cases are either confirmed or dismissed. This trend is not limited to reports from the same year; there are often cases from a given year which are still under scrutiny by the time the annual report is released and will be marked as confirmed or not in the following year's report.

Despite the internal inconsistencies of the available data across different reports due to the constant evolution of flagged cases into confirmed or not confirmed, the cases which are confirmed fulfil for the most part the definition of trafficking established in Portugal's UN-compliant legislation. However, although the Trafficking Observatory's report provides the age-range of the potential and confirmed victims, it tends to conflate in its statistics both minors and adults.

Table 12: (Potential) Brazilian victims of trafficking (per 2007 legislation) flagged or confirmed in Portugal⁴⁷

	2008	2009	2010	2011	2012	2013
Flagged	102	34	13	11	N/A ⁴⁸	14
Confirmed	N/A	3	5	0 ⁴⁹	3	N/A

Source: *RASI* [64] and *OTSH's* Annual Human Trafficking Reports [43, 44, 45, 46, 47]

⁴⁷ As the data of the annual trafficking reports is explicitly stated as being more accurate than that which is presented in the *RASI*, the data in Table 12 will come from that source when possible. 2008 data comes from the *RASI* since the annual trafficking report had yet to be established.

⁴⁸ Neither the 2012 *RASI* nor the 2012 *OTSH* Report state the number of Brazilian victims flagged in Portugal in that year.

⁴⁹ One or two cases of Brazilian victims were still in the process of being investigated as of the release of the report. There were also from two to six still unconfirmed cases flagged by NGOs involving Brazilians (the exact number was not given for security reasons).

Analysing the differences between flagged and confirmed victims (**Table 12**) can lead to a number of conclusions. First, either the number of cases involving Brazilians has been in sharp decline over this period or the system has become more discerning in identifying suspected cases. Another possible explanation for the decline is that the number of Brazilians found in suspect situations may have decreased in the past few years due to the prevalent economic crisis. Secondly, although the cases of potential Brazilian victims represented a significant percentage of the total of flagged cases in Portugal from 2008 to 2012,⁵⁰ the actual number of confirmed victims was small. This puts in question the idea that Portugal is a significant destination of Brazilian victims of trafficking, even if it has proven to be a destination of Brazilian migrant sex workers.

Cross-comparative inconsistencies regarding Brazilian victims of human trafficking

Cross-national data comparisons, particularly in the criminal justice field, are not easily made. Differences in offence definitions, reporting and recording practices and the existence of (partially) confidential databases all lead to situations where obtaining data which is held by the same standards is difficult. If on top of that we consider the issues with internal inconsistency of data regarding trafficking victims which are present to a smaller or larger degree in all three countries being discussed, it is not surprising that the data inconsistency issue is also present when cross-comparing available statistics.

In 2013 Eurostat released a working paper on “Trafficking in human beings” [13] which compiled trafficking data from European Union Member States and other countries⁵¹ for the period of 2008 to 2010. It was followed in 2014 by a paper covering data from 2010 to 2012 [14]. Although the definition of trafficking used in the reports is the one found in the UN Trafficking Protocol, as well as the Council of Europe’s Trafficking Convention and Directive 2011/36/EU, this definition was not always the one used by individual states when collecting data. Eurostat therefore acknowledged in the 2013 report that the results “[did] not entirely comply with the stringent requirements of the European Statistics Code of Practice” ([13]: 9) and that thus the use and interpretation of the numbers presented should be done with caution.

Despite these issues, the Eurostat compiled data will be used here as it “presents the first report[s] at the EU level on statistics on trafficking in human beings” ([13]: 9) In the same vein, the National Reports about Human Trafficking will be used as the data source from Brazil despite its methodological issues, as they represent the first official data compilations produced by the Brazilian government.

⁵⁰ The total number of flagged victims in Portugal in this period was 138, 84, 35, 48, 81 and 299 respectively. From 2009 to 2013 there were 7, 22, 11, 4 and 45 victims confirmed.

⁵¹ The reports included data from what are the now the 28 EU Member States, as well as data from selected Schengen Associated Countries and candidate countries: Norway, Montenegro, Serbia, Switzerland and Turkey.

The Brazilian report offers yearly data disaggregated by country, while the EU report lists the specific yearly number of victims from the top ten non-EU countries of origin (in the 2008-2012 period Brazil ranks as number four, two, two, three and five respectively). As such, it was possible to compile the following table (**Table 13**) regarding the number of Brazilian trafficking victims identified in the selected thirty-three countries during the 2008-2013 period.

Table 13: Brazilian victims of trafficking identified in the EU and selected countries

	2008	2009	2010	2011	2012
Brazilian data	48	90	77	8	6
Eurostat data ⁵²	111	151	341 ⁵³	107	89

Source: Brazilian Ministry of Foreign Relations' Consular Assistance Division as quoted in the Government's official trafficking data publications [37, 38] and Eurostat [13, 14].

It is abundantly clear that the numbers are very different, with Eurostat numbers being consistently larger than the ones identified by Brazil. A number of factors explain this disparity. As the Brazilian numbers come from diplomatic representations of Brazil abroad, the fact that Brazil does not have representations in eight of the thirty-three relevant countries [40] is problematic. Moreover, even if a country does have one or more Brazilian consulates, it does not necessarily mean they are easy to get in contact with, particularly if people do not have sufficient financial resources and do not speak the local language. Furthermore, even if they do manage to reach the consulates, only those victims who ask for specific aid will be counted for statistical purposes, provided they are not turned away in the first place.

The situation on the EU side is very different. First, we must consider that despite the existence of relevant transnational texts, not all trafficking definitions in the European States are UN-compliant, leading to different understandings of what consists in a "victim of trafficking." Moreover, most trafficking victims are identified by the police, immigration officials and border guards [13]. This may mean that more victims are being identified by European states because in some countries they are being proactive in their search for them. Such is the case of Spain and Portugal, where there are periodic "inspections" in places which are suspected of harbouring victims of trafficking. On the other hand, there is no guarantee that the number of trafficking victims depicted in official statistics is indicative of the number of victims found, as these inspections/raids are often followed by the expulsion of those migrants who are irregularly in the country,

⁵² The total number of victim identified by Eurostat from 2008 to 2012 was 6309, 6955, 9710, 9438 and 10 998.

⁵³ In the 2013 report [13] Brazil initially counted 76 victims and ranked as number seven. The change in the numbers, which was also significant in other countries presented in the report, is likely a result of the confirmation of cases identified in the period which occurred after the publication of the report. A similar disparity, as previously mentioned, is found between the reports produced by the Portuguese Security Ministry and its Trafficking Observatory.

without considering their situation. Whether they are acknowledged as trafficking victims at all before their expulsion may vary on a case by case basis.

Considering that the Brazilian government only takes into account a fraction of the victims identified abroad, while Eurostat aggregates data which possibly encompasses migrant sex workers and smuggled migrants, it is unsurprising that the numbers presented do not match at all. This disparity, however, is problematic, particularly if we consider that the European Union and Brazil have made concerted efforts to establish cross-border cooperation on this matter [15]. The fact that their understanding of the dimension of the crime is so disparate can only cause problems.

The disparity issues continue, to a smaller and larger extent, when comparing statistics from individual countries. **Table 14** shows the number of Brazilian victims of trafficking identified in Portugal.⁵⁴ While the definitions used are assumed to be compatible, as the Brazilian Ministry of Foreign Relations uses the UN Protocol definition while the Portuguese Human Trafficking Observatory uses the current UN-compatible Portuguese trafficking legislation, the victims being counted are still different, as one group focuses on victims that sought consular assistance while the other counts those identified after an in-depth investigation.

Table 14: Brazilian victims of trafficking identified in Portugal

	2009	2010	2011	2012
Brazilian data	5	0	0	0
Portuguese data	3	5	0	0

Source: Brazilian Ministry of Foreign Relations' Consular Assistance Division as quoted in the Government's official trafficking data publications [37, 38] and *OTSH's* Annual Human Trafficking Reports [43, 44, 45, 46, 47]

It is interesting to note that despite constant assertions in official reports and by local trafficking specialists in both countries that Portugal is a major destination for Brazilian trafficking victims (see for instance [6] and [7]), the actual number of victims identified yearly by both sides is rather small, if not non-existent. This also means that the disparities are smaller in size, if not proportion. Brazil's numbers were the higher of the two in 2009, only to have no victims identified the following year, when in turn Portugal's numbers rose. Data from 2011 and 2012 is consistent, with no victims being confirmed on either side.

Unlike Portugal (which has a central source for all of its data compilation and publication) and Brazil (which published a report with the express intention of compiling all of its existing trafficking data), Spain does not have a specific data source

⁵⁴ In response to an inquiry from the author, the Brazilian Ministry of Foreign Relations claimed that more specific information regarding Brazilian victims in both Portugal and Spain (such as gender of victims and types of trafficking) was not available for the 2005-2011 period (Ministério das Relações Exteriores, personal communication, August 5, 2013). Data from 2012 shows that the one victim identified in Spain (none were identified in Portugal) was a woman subjected to sexual exploitation [38].

which can claim prominence over the others. As there is no national dataset, numbers from two of the three major available sources⁵⁵ will be compared with the Brazilian data, starting with the information provided by the Spanish Fiscal Ministry through the Annual Statistics Report of the Attorney General's Office (**Table 15**).

Table 15: Brazilian victims of trafficking identified in Spain (Fiscal Ministry)

	2008	2009	2010	2011
Brazilian data	2	20	71	5
Spanish Data (Fiscal Ministry)	56	33	40	12

Source: Brazilian Ministry of Foreign Relations' Consular Assistance Division as quoted in the Government's official trafficking data publications [37, 38] and Spanish Fiscal Ministry [17, 18, 19, 20]

Considering that the Spanish Fiscal Ministry is detecting in this period the much more generic "victims of sexual exploitation," it is not surprising that its numbers are much bigger than Brazil's in 2008, 2009 and 2011, even if victims of labour exploitation are not being taken into account. Moreover, when we consider that the Brazilian data is obtained only when trafficking victims require consular assistance, it is not unreasonable to suppose that many trafficking victims are not counted because they are unable (or unwilling, for fear of being turned to the authorities) to reach the consulates. This resonates particularly when we consider that Spain has a history of deporting trafficking victims if they are in the country irregularly, often without giving them the chance to obtain legal aid [4]. In this scenario, the fact that in 2010 Brazil detected over 75% more victims than Spain is thus a bit surprising.⁵⁶

The problems are not limited to comparing Brazilian data with that of the Fiscal Ministry. When we take into consideration the data which is provided solely by the *Guardia Civil* the disparity is of an even greater magnitude (**Table 16**).

Table 16: (Potential) Brazilian victims of trafficking identified in Spain (*Guardia Civil*)

	2005	2006	2007	2008	2009
Brazilian data	0	2	4	2	20
Spanish Data (<i>Guardia Civil I</i>)	5015	4331	3277	2658	539

Source: Brazilian Ministry of Foreign Relations' Consular Assistance Division as quoted in the Government's official trafficking data publications [37, 38] and Spanish Civil Guard [30, 31, 32]

The reason for this disparity is easy to understand; this data set does not count trafficking victims as per the terms of the UN Protocol, but identifies instead "potential trafficking victims" (or rather, "victims of prostitution"), regardless of whether their working conditions are exploitative or not. This too broad understanding led to a

⁵⁵ Data from the Ministry of Interior will not be used because the years where data is available do not overlap with the Brazilian data.

⁵⁶ This may be accounted for by the fact that Brazil's numbers also include victims of trafficking for labour exploitation.

situation where the *Guardia Civil*'s numbers for 2008 and 2009 (2658 and 539), despite being its smallest figures in all listed years, were in fact far superior to Eurostat's account of the total number of Brazilian victims of all forms of trafficking detected in the European Union and selected adjoining countries in the same year (111 and 151). Despite this, these numbers produced by the *Guardia* are often used in academia and politics to reinforce the idea that the number of trafficking victims identified in Spain is incredibly large.

The situation becomes much more reasonable if we only take into account the *Guardia*'s numbers on Brazilian victims who claimed to have been exploited (**Table 17**). Despite the fact that the data still does not match (with Spanish numbers being higher than Brazilian ones in all years but 2009), this data is at least reconcilable with that which is presented by Eurostat and can be much more easily be explained by the fact that not all victims require or desire direct consular assistance. Although not insignificant, the magnitude of the problem as assessed by both sources also puts into question the idea that there are incredibly large numbers of Brazilian trafficking victims in Spain.

Table 17: Brazilian victims of trafficking identified in Spain (*Guardia Civil II*)

	2005	2006	2007	2008	2009
Brazilian data	0	2	4	2	20
Spanish Data (<i>Guardia Civil II</i>)	20	23	15	13	18

Source: Brazilian Ministry of Foreign Relations' Consular Assistance Division as quoted in the Government's official trafficking data publications [37, 38] and Spanish Civil Guard [30, 31, 32]

Conclusion

To be able to develop an accurate response to a transnational criminal phenomenon and to keep track of how the policies being applied affect the issue, the existence of valid, internally consistence and cross-comparable data is of the utmost importance. When it comes to analysing the presence of Brazilian victims of trafficking in the Iberian Peninsula, this need for statistics has long been recognised. Since the late 1990s human trafficking data has been collected by all three countries and in recent years much of it has become publically available. These data collection efforts, however, have not been entirely successful. The reasons for the internal and cross-comparable inconsistency of the available statistics are multiple and often reflect some of the major pitfalls found in the collection of trafficking data worldwide.

The primary problem seems to be that the definitions of "victim of trafficking" being used vary considerably [50]. The existence of a standard and immutable definition of human trafficking is extremely important for the development of statistics, not only for international comparison purposes, but also to enable the development of an accurate picture of the progress of the crime across the years. Mixing incompatible concepts undermines the overall data validity.

The kind of data available often depends on the institutions charged with collecting it, which have their own biases. Police and migration officers often deal with investigative data, whereas the courts tend to focus on judicial data. While such numbers may reflect the efforts made by law enforcement and legal personnel to identify trafficking situations, they often do not represent the total of identified victims and are incompatible with data from other sources which use different categories.

A second problem is that the methodology used to acquire the numbers presented, including the definitions which are being used, is often not made clear in the data collection. This means, for instance, that it may be impossible to determine whether alleged trafficking statistics are dealing with *bona fide* trafficking victims per the terms of the UN Protocol or if they represent, for instance, migrant sex workers who have been detected by law enforcement.

Finally, it is important to consider how the data is being obtained. In Spain and Portugal a lot of time and energy is given to police raids in clubs to detect possible victims of trafficking for commercial sexual exploitation. Besides the problems these raids bring to sex workers, this has two major consequences for data collection. By focusing on this specific venue for sex work the police and migration officers end up detecting almost exclusively women (as they tend to dominate this environment), ensuring that male and trans victims are rarely present in official statistics. Perhaps even more importantly, it leads to an under-detection of other forms of trafficking, such as labour exploitation, which are often seen as a (distant) secondary consideration, if that.⁵⁷ The idea that sexual exploitation is the primary form of trafficking taking place is thus often reproduced without any valid data to endorse it.

Above all, it is important to consider that the choices which are made regarding the definitions being used, as well as data collection and processing methodology are not random or apolitical. While the collection of trafficking data may be influenced by each institution's focus area, it may also reflect systemic biases. Police forces for instance – either because of how the trafficking legislation is worded, as is the case in Brazil, or because of how they choose to interpret the legislation, as is the case in Spain – often equate trafficking victims and migrant sex workers. Far from being an oversight, this amalgamation is quite likely to be deliberate, as it justifies the application of strong anti-sex work (and to some extent anti-migration) measures which might have been otherwise prohibited under the guise of humanitarian anti-trafficking operations. This includes raids in known prostitution locales and the denial of entry into the country of migrants who fulfil all bureaucratic requirements based on their alleged vulnerability to trafficking [50].

⁵⁷ In more recent years this trend has started to change, particularly in Portugal, where greater importance has been given to detecting trafficking for labour exploitation.

The fact that most of the trafficking data available in all three countries is unreliable has a number of concrete consequences. Many policy decisions made by these countries have been based on the assertion that there are large numbers of Brazilian victims of trafficking in Spain and Portugal, an assumption which is in turn contradicted or at least heavily questioned by a considerable part of the existing numbers. As it stands, none of the available statistics are particularly sound, making them unhelpful, if not harmful, to efforts to combat the phenomenon. Without accurate statistics it is impossible to establish whether the resources allocated to deal with the issue are few or disproportionate and to assess the impact of the prevention and intervention actions which have proliferated in the past decade.

More accurate information would generate a better understanding of the phenomenon and subsequently lead to more effective detection and prevention strategies and the identification of best practices to combat this crime. In the case of Brazil and the Iberian countries, a uniform understanding of the dimensions and structure of trafficking could lead to a smoother exchange of information, which is in turn crucial for effective transnational cooperation.

The implementation of such data gathering systems, while challenging, is not unfeasible. In the last decade, several attempts have been made to establish data collection frameworks which fulfil all the necessary requirements, such as the ICMPD and IOM guidelines and the MONTRASEC project. Yet besides the necessary costs (of time, money and personnel) involved in setting up and maintaining such a project, there are other considerations which could and most likely will impede (at least to some degree) the creation and/or further implementation of improved data gathering systems.

Such systems could produce more accurate trafficking statistics than the “estimates” which are often bandied about despite the considerable criticisms they receive. But even if the more precise figures are not negligible, they do not have the same power as the overinflated numbers currently available. The mere possibility of there being thousands of victims of trafficking hidden away (particularly as they are almost always characterized as suffering from the most extreme forms of violence and exploitation) is a strong justification for maintaining the anti-trafficking policies which are currently in place in many European countries (including Spain and Portugal) and to some extent Brazil as well. The “urgency” implied in the overblown data also helps support the idea that trafficking must be stopped “by any means necessary.”⁵⁸

As we have seen, these policies often have much less to do with dealing with trafficking than with implementing a strong anti-immigration and anti-prostitution agenda ([24]: 22; [53]: 78). The sexist, racist, classicist and xenophobic implications of hunting down

⁵⁸ While Portuguese data has, for the most part, overcome the overblown data stage (although the possibility of a large dark figure is still discussed), the Portuguese victim identification and data gathering system was designed in such a way as to support the perpetuation of a system of identification, detention and subsequent expulsion of migrant sex workers under a human rights umbrella.

poor, non-white women⁵⁹ from developing countries at the borders and inside the EU are forgotten when these women are labelled as “vulnerable” and the harmful actions against them presented as “protective measures.” As long as the supposedly huge figures of “(potential) trafficking victims” allow states to implement their real agendas behind a protective screen of alleged human rights protection, it is unlikely that the necessary changes to the existing data gathering systems will be made.

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CHAPTER FIVE

Considering the exploitation of migrants who sell sex: A case study of Brazilians in the Iberian sex industry

Abstract

Although migrants who sell sex often go through a range of situations which might be considered exploitative, such situations are not always linked with trafficking. Most of the problems seem to be a result of three overlapping issues: problems which result from prostitution's status as a forbidden or at best a grudgingly tolerated (yet still repressed) activity, problems that affect workers in low-status occupations and problems that affect (undocumented) migrants. The situation of Brazilian migrants who sell sex in the Iberian countries clearly illustrates this. While focusing almost exclusively on implementing (largely infective and potentially harmful) trafficking policies, Spain and Portugal have not addressed the issues which are considered by migrants as the most significant: police harassment and exploitation, unhygienic and unsafe working environments, lack of access to public services such as healthcare, lack of access to housing, as well as prejudice and stigmatization and the consequences thereof. By relying almost solely on a de jure and de facto law enforcement approach, comprehensive and well established international labour and migration instruments which could benefit all migrants who sell sex are ignored.

Keywords

Migrant sex work, human trafficking, Brazil, Spain, Portugal

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Considering the exploitation of migrants who sell sex: A case study of Brazilians in the Iberian sex industry

Introduction

Conservative groups, radical feminists and other proponents of the idea that prostitution is inherently exploitative believe that there is no distinction between migrant sex work¹ and trafficking for sexual exploitation² (Farley, 2003: 3). Unsurprisingly, sex workers rights activists take a more nuanced view of the matter and recognise a distinction between the two categories. As such, they often vehemently criticize the use of trafficking instruments and frameworks to suppress the transnational migration of sex workers (Piscitelli and Sprandel, 2010).

The acknowledgment of the existence of both trafficking victims and migrant sex workers must not, however, be reduced to the idea of voluntary versus involuntary migrant prostitution, as it risks reproducing the innocent and guilty dynamic found in the “forced” and “free” prostitution divide (Doezema, 1998). This dichotomy often leads to the criminalisation of those seen as guilty and the infantilisation of those who are seen as victims. Moreover, it frequently results in an environment where every problematic situation faced by migrants who sell sex is seen as an indicator of trafficking. Consequently, migrants who sell sex end up being “rescued” against their will and have the root causes of their problems be completely ignored.

Based upon the idea that the working and living conditions of migrants who sell sex fall into a continuum of situations which may range from ideal to extremely exploitative, this article will showcase that by focusing almost exclusively on a very narrow understanding of “trafficking” states often fail to recognise and address a myriad of other problems that affect migrants working in the sex industry.

In its first half, the article will contend, based on existing literature on the subject, that migrant sex work should not be considered synonymous to trafficking for sexual exploitation. In addition, it will argue that, rather than always being an outcome of trafficking, the exploitative situations migrants who sell sex may be exposed to often result from problems in the sex industry caused by misguided governmental policies, as

¹ Sex work is defined by Bindman and Doezema (1997) as the “negotiation and performance of sexual services for remuneration with or without intervention by a third party[,] where those services are advertised or generally recognised as available from a specific location [and] where the price of services reflects the pressures of supply and demand.”

² *The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (hereafter the UN Trafficking Protocol) defines the crime as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

well as difficulties faced by those that work in informal and/or low-skilled professions and those faced by (undocumented) migrant workers.

The second half of the article will consist of a case study regarding Brazilian migrants who sell sex in Spain and Portugal. It will explore the range of working conditions Brazilian migrants (particularly women) face in the Iberian sex industry³ and showcase that many of their problems are not related to trafficking, but are in fact similar to those faced by other (migrant) workers in unregulated sectors, as well as being a result of both countries' abolitionist position. In this way, it will show how the current trafficking legislation is unable to address the vast majority of problems faced by migrants who sell sex.

Rather than focus on the perspective given by government officials and police and migration officers, as it often happens in trafficking reports, this article will privilege the narratives of Brazilian migrants who sell sex and focus on how these migrants perceive their situation. Its case study is primarily based on a combination of sources unearthed by the author between 2012 and 2013 which include not only large scale research projects about migrants who sell sex in Europe and the Iberian Peninsula in particular (Brussa, 2009; ⁴ De Sousa Santos et al., 2007; Federación de Mujeres Progresistas, 2009; Malgesini, 2006), but also a series of ethnographic studies which document a variety of experiences faced by Brazilians in the Spanish and Portuguese sex markets from the late 1990s to the second decade of the twenty-first century (Agustín, 2001; López Riopedre, 2010; Oso Casas, 2010; Pelúcio, 2009; Piscitelli, 2011; Ribeiro and Sacramento, 2005).

The reality of migrant sex work

Anti-sex work activists often accuse those in favour of sex workers' rights of glorifying the sex industry and failing to consider all of its problems (see for instance Raymond, 1998). This, however, is not true. Proponents of sex work do recognise that the sex industry can be exploitative and that reforms are needed; they are also quick to point out that several of these problems result from the illegal or unrecognised nature of sex work in most jurisdictions and sex workers' subsequent lack of access to social channels of protection (Catarino and Morokvasic-Müller, 2013).

In the same way proponents of sex work separate prostitution from commercial sexual exploitation, they also consider migrant sex work and human trafficking for the purpose

³ The general term "sex industry" encompasses a variety of forms of commerce (mostly monetary, but not always) involving sexual services (which may involve direct body contact, but also may not). In this article the Iberian sex industry will be limited to prostitution which takes place in clubs (or *casas de alterne*), private residences (mostly apartments) and on the street.

⁴ Previous TAMPEP projects have been criticized for not always examining the totality of the sex industry in a given country, focusing rather on particular groups, such as street sex workers (Agustín, 2001). Thus, data from Brussa (2009), while claiming to represent the situation of prostitution in entire countries, may in fact be representing one particular sector of it.

of sexual exploitation as two distinct phenomena. This divide is also acknowledged by migrants themselves.

While many migrants would not describe their situation as idyllic, they may not consider it exploitative, as that would imply a level of harm they do not feel. Even if they go so far as considering themselves as being exploited, migrants may be reluctant to label themselves as trafficking victims. This may be a result of not considering their situation sufficiently bad, as trafficking is often associated with physical violence, total movement control and conditions analogous to slavery.⁵ We must consider as well that different people may assess similar situations differently and that work conditions are not immutable and may become more or less problematic over time (Weitzer, 2005). The refusal may also represent a desire not to put themselves in a position of victimhood, as the “trafficked” label often results in a loss of agency over decisions in their own lives (Piscitelli, 2006). The reverse is also true: migrants who sell sex may decide to change their narratives if they have assessed (or have been induced to consider) that it is better to present themselves as victims of trafficking, as that might be the only way to escape jail or deportation (Catarino and Morokvasic-Müller, 2013; Piscitelli and Sprandel, 2011).

The manipulation of the concept of trafficking for sexual exploitation is not exclusive to migrants who sell sex. Based on their research with sex workers in five distinct countries,⁶ Segrave, Milivojevic, and Pickering (2009: 58-60) concluded that the identification of trafficking victims by the government was arbitrary and did not correspond to migrants’ experiences. In some countries the label of a *bona fide* trafficking victim (who has access to all the possible benefits of the position) is granted not based on the level of exploitation suffered, but on whether or not the victim can be “instrumentalized in the interest of prosecution” (Konrad, 2008: 162).

The fluidity of the concepts of trafficking victim and migrant sex worker shows that rather than adhere to a strict forced/free divide, the conditions faced by migrants who sell sex, as well as by migrants in a variety of other sectors, may range from optimal to indisputably exploitative. As posited by Skrivankova (2010), between decent work and forced labour there is a continuum of exploitation and each individual situation fluctuates along it. Like in any other form of work, the response to non-ideal conditions will depend on the nature and severity of the issues involved: minor (labour) rights violations can be dealt with through labour instruments, whereas more severe violations fall under the purview of criminal law. A more comprehensive understanding of the issues faced by migrant sex workers will follow in the next section.

Problems associated with migrant sex work

⁵ This perception is often shaped by the imagery and slogans used in several contemporary anti-trafficking campaigns (see Andrijasevic, 2007).

⁶ Bosnia and Herzegovina, Italy, Japan, the Netherlands and Serbia.

The direct correlation between migrant sex work and trafficking does more than obscure the fact that sex work is not inherently exploitative. It also fails to recognise that the problems faced by migrants who sell sex are a result of multiple intersecting issues that do not automatically translate to trafficking. Rather, most of these problems can be broadly considered as belonging to three potentially overlapping categories: issues which result from prostitution's status as a forbidden or at best a grudgingly tolerated (yet still repressed) activity, issues that affect workers in low-status occupations and issues that affect (undocumented) migrants.

There is an extensive abolitionist literature which associates prostitution with (almost) all social evils. MacKinnon (2011: 287), for example, lists various studies that link prostitution to drug and alcohol dependency, while Farley (2003, 2004) lists a large body of literature that documents the supposedly inherent nature of violence in prostitution and the great likelihood sex workers have of being infected by sexually transmitted diseases and developing other severe health complications. The veracity and particularly the universality of such claims, however, is not uncontested. Weitzer (2005), for instance, offers a broad criticism of such studies, as he considers that they often have a poor or unclear methodology, generalize specific situations as pertaining to the whole of the global sex industry and, perhaps most damning, are tailored to reflect the anti-prostitution bias of the researchers.

While the fact that many people selling sex face exploitative situations is undeniable, this does not support the assertion that the sex industry is inherently exploitative. Many of the most serious problems are not linked to the act of selling sexual services and its potential repercussions, but are caused or amplified by prostitution's "prohibited and penalized status, culturally and legally produced and promoted by capitalist patriarchy" (Catarino and Morokvasic-Müller, 2013). Per Pheterson (1993: 40), "such lack of choice is not inherent to prostitution but to abuse, poverty, poor working conditions, inexperience, or despair. Whores, like other workers, want to change those circumstances without necessarily changing their trade."

Many of the negative issues associated with the sex industry are thus amplified by the stigma which is associated with it. A stigma-theory – an ideology used to explain the alleged inferiority and danger represented by those who are stigmatized – is constructed to rationalize the discrimination exercised against certain groups and its negative consequences (Goffman, 1986: 5). The "whore stigma," therefore is "a social and legal branding of women who are suspected of being or acting like prostitutes" (Pheterson, 1990: 397) which legitimises the curtailment of their rights (such as bodily autonomy, mobility, free speech and privacy) and normalises the (physical, sexual, psychological) violence which is perpetrated against them.

Such stigma is also present when the prostitute is labelled as victim rather than deviant. Although the discourse in such cases emphasizes the need to support "the women who

have been prostituted,” they are often infantilized and silenced. The prostitute as victim is often an object of pity without agency (Pheterson, 1993: 43, 60).

This position is very common in countries that follow abolitionist models. Although sex workers are not penalized, like in prohibitionist regimes, the limits placed on their activities to “protect them”⁷ often compromised their safety and lead to “isolation, stigmatisation, marginalisation and social exclusion” (Wijers, 2004). They are universally silenced and their positive views on their profession are seen as misguided at best and a reflection of brainwashing and damage at worst.

Migrants who sell sex often need third parties to ensure they have viable work locales. Streets, which are perhaps the most conducive to autonomy, have been increasingly barred for sex workers due to growing zonification projects which include the application of large fines which can surpass the debt they own to third parties (Carranco and Sahuquillo, 2012). Apartments can be difficult to rent unless the migrant has the right documentation and demand a very large starting capital to pay the necessary deposit and fees. Shared apartments are a much more viable option, but are frequently considered by law to be brothels (and therefore prohibited) even if administered by sex workers in equal footing. Clubs, which are often reviled by abolitionists as dens of exploitation, are considered by many migrants to be the best working locales (Piscitelli, 2011).

While working conditions in the sex industry can certainly be precarious and exploitative, research undertaken by Anti-Slavery International and the Global Network of Sex Work Projects in the late 1990s showed that in the majority of cases most of the issues faced by sex workers resembled problems which are endemic to other low-status occupations in the informal sector, many of which are overwhelmingly associated with women (such as domestic service). These include exploitative terms of employment, no access to adequate health care and unsafe and unhygienic working environments, issues which could be addressed by existing labour instruments (Bindman and Doezema, 1997).

Bindman (1998: 65) posits that by separating sex work from all other forms of low-status informal labour one “hides the commonality, the shared experience of exploitation, which links people in all such work. The distinction between ‘the prostitute’ and everyone else helps to perpetuate her exclusion from the ordinary rights which society offers to others, such as rights to freedom from violation at work, to a fair share of what she earns, or to leave her employer.”

⁷ In some states, prostitution is seen as a viable economic activity as long as it is completely autonomous; the existence of pimps and brothel owners is seen as inherently exploitative because they benefit, at times significantly, from prostitutes’ work (Farley, 2004). Yet one must ponder if this is indeed a pernicious feature exclusive to the sex industry or whether it is not perhaps a greater reflection of the inherently exploitative nature of the capitalist system. By placing all blame for exploitative conditions on the nature of the activity and on third-parties, governments ignore the devastating role their own policies (particularly regarding migration, zonification and policing) have on the quality of life of sex workers.

The restrictions which are placed upon sex work and the refusal to grant it a legitimate status as an occupation mean that the support which is offered to recognised workers through national and international labour legislation is denied to them. A number of the abuses which are cited by abolitionists as recurrent in the sex industry could be properly combated, discouraged and sanctioned if sex work were inserted into a labour rather than a criminal framework. By considering prostitution harmful in itself and perennially coercive and exploitative, governments ensure that sex workers are less, rather than more protected (Vermeulen, 2001).

One must not forget that many of these issues are particularly common among migrant workers. (Female) migrants in the European Union, particularly if they are third-country nationals, are primarily welcomed into low-skilled and low-paying positions and therefore tend to be more susceptible to a number of labour issues which are associated with such jobs (Ayres, Barber, Antheas and Cederberg, 2013). Migrants are also often discriminated against in access to health services, insurance and information and frequently denied the social protection and social services which are made available to national workers. Moreover, they tend to be disproportionately exposed to occupational and environmental hazards (United Nations, 2003: 34, 43). These situations are aggravated if the migrant is undocumented.

The agency of migrants who sell sex is questioned even more than that of their native counterparts, particularly if they are migrants from developing countries settling in a developed nation. The argument used is that they are, at a minimum, victims of what Solana Ruiz (2011: 921) labels “structural trafficking.” That is to say, the poverty they lived in is considered a *de facto* position of vulnerability which is automatically being exploited when they join the sex industry abroad. Thus, regardless of their own desires and opinions and actual work conditions, they are seen as being “forced” to engage in prostitution. This assessment justifies the establishment of “anti-trafficking” policies which have negative repercussions to all migrants who sell sex.

Many migrants who sell sex finance their journey by acquiring debts with third parties that can range from family members to members of criminal organizations. It is very common to see such situation be indiscriminately labelled as “debt bondage” and highlighted as a sign of human trafficking (Vermeulen, 2001). This assessment, however, ignores the fact that such arrangements are extremely common in the migration of lower income migrants and that, like sex work, they exist in a continuum which goes from straightforward and selfless to deceptive and violent. It is only in cases where there is fraud in the transaction (such as when the total being asked for is greater than the agreed upon amount) or it results in exploitative labour conditions and/or violence and curtailment of rights (such as the passport retention) that situations of bonded labour and human trafficking may be present (Weitzer, 2014: 8).

Despite all the problems they are faced with, research with migrant women from developing countries as diverse as Bangladesh (Blanchet, 2012: 4) and Brazil (de Oliveira Assis, 2007) shows that their migratory experiences, even if problematic, often make women question the subservient and limited roles they were restricted to in their home country and can therefore be considered by them to be empowering.

The problems of addressing all migrants who sell sex as victims of trafficking

Migrants who sell sex face a diverse array of problems, the vast majority of which are completely unrelated to human trafficking and situations akin to slavery. Nevertheless, several countries label these migrants as victims of trafficking for commercial sexual exploitation without considering whether they fulfil the requirements established by the UN Protocol.

Most post-facto trafficking policies aim at identifying and “rescuing” alleged victims. Most migrants who are “rescued” are forcibly removed from their place of work and temporarily detained, even if they attest to the fact they are not being coerced or exploited. Their testimony is considered to be meaningless, and they are classified as either too “uneducated” to perceive they have been trafficked or too afraid of their traffickers to talk. While the latter may certainly be true, the fact that most migrant sex workers are more afraid of the local police than of their alleged traffickers is never mentioned in official discourses (Piscitelli, 2006).⁸

Those few that are officially labelled as trafficking victims often have to be willing to renounce sex work altogether, as well as to testify against their traffickers and prove to be an asset in the criminal proceedings against them to secure the limited benefits which are offered to “legitimate” victims. Those that are not considered valuable face an even harsher process. In countries which espouse a prohibitionist system, sex workers may be criminally charged. In countries where an abolitionist position prevails, they are still often treated as criminals even if officially considered as having been victimised. Unless they can prove they are not undocumented, migrants who sell sex are for the most part placed in detention centres (often without recourse and under problematic conditions) and subsequently involuntarily repatriated (Chuang, 2010: 1716).

Current policies, therefore, do not aim to improve the conditions of those involved in the sex industry, but to curtail the participation of migrants in it. It is therefore unsurprising that the trafficking framework does not address the problems which affect most migrants who sell sex and can, in fact, be counterproductive (Vermeulen, 2013). In the words of Chuang (2010: 1694):

⁸ In discussions which emphasize the perverse nature of pimps and clients, little to no emphasis is given to the fact that a large percentage of prostitutes in a variety of countries (particularly those with prohibitionist systems) single out the police as the greatest perpetrator of violence against them (Pheterson, 1993: 56).

The reductive trafficking narrative oversimplifies the problem of trafficking from a complex human rights problem rooted in the failure of migration and labor frameworks to respond to globalizing trends, to a moral problem and crime of sexual violence against women and girls best addressed through an aggressive criminal justice response. In so doing, the narrative circumscribes the range and content of anti-trafficking interventions proffered, feeding states' preference for aggressive criminal justice responses. It overlooks, if not discounts, the need for better migration and labor frameworks or socioeconomic policies to counter the negative effects of globalizing trends that drive people to undertake risky migration projects in the first instance.

In the next section we shall explore how the focus on damaging anti-trafficking policies and the presumption that all migrants who sell sex need to be “rescued” negatively impact Brazilian migrants who sell sex in Spain and Portugal, as it fails to address some of the most pressing problems faced by them.

Brazilian migrants who sell sex in Spain and Portugal

A problematic trafficking narrative

While there has been significant emphasis given to the idea that Spain and Portugal are main destinations for a large number of Brazilian victims of trafficking for sexual exploitation, the only thing that can be truly asserted is that the Iberian Peninsula is a significant destination for Brazilian migrants who sell sex (Brussa, 2009: 20). Existing policies however, focus solely on trafficking victims and even then in a problematic way, offering very limited “benefits” to an increasingly select group which fulfils a high threshold of both victimisation and usefulness for the judicial system.⁹

Four issues are often highlighted as undisputable signs of trafficking in the Iberian sex industry: third-party involvement (which is interpreted as forceful control exerted by traffickers), the existence of a debt (which is classified as “debt bondage”), the occurrence of (physical) violence (which is seen as perpetuated by traffickers) and restricted mobility (which is interpreted as movement control imposed by traffickers).

The idea of allowing only “completely autonomous” prostitution is highly problematic and tends to privilege a very small percentage of sex workers who have the necessary

⁹ The mere recognition that not all migrants who sell sex are trafficking victims is still problematic. Brazilian legislation, for instance, considers that all migrant prostitution which is not completely autonomous is a result of trafficking for sexual exploitation. Spanish legislation follows a pattern similar to the UN's in condemning “sexual exploitation,” which is not defined. However, the strict abolitionist position of the state and the way its policies are formulated suggests that Spain also considers that unless migrants who sell sex are acting in a completely autonomous manner, they are almost certain to be victims of trafficking. While in Portugal legislation and policies to not delineate a strict autonomous or forced divide like in Brazil and Spain, there is still a lingering understanding that certain categories of people (women with a low educational and socio-economic background) are too vulnerable to have agency (De Sousa Santos et al, 2007).

knowledge, resources and social condition which enable them to be independent. Dependence on a third party is not automatically a sign of trafficking or exploitation.

The secondary recruitment of sex workers by those already in the industry, for instance, is often seen in this context as a sign of trafficking. But while it is true that some traffickers pressure their victims to offer information about other potential targets and that some trafficking victims may “switch sides” and start working for their exploiters, this does not reflect the totality of such situations. Many sex workers offer information to club owners or even directly to their friends and acquaintances because they believe others could also benefit from working in the sex industry abroad. Some believe that lending money or giving information to those who wish to join the sex trade is a perfectly legitimate way to make a profit and are often extremely honest about the conditions their fellow Brazilians will encounter. These people repudiate the label of “trafficker,” as they do not consider they are exploiting anyone (Piscitelli, 2011: 206-207).

Regardless of their conditions and outcome, recruitments are often associated with trafficking as they almost always result in migrants acquiring a financial debt with a third party because they were unable to finance their trip themselves. In many cases the assumption is that these migrants are submitted to a form of debt bondage, where they will work in highly problematic, if not slave-like conditions to try to pay an insurmountable amount of money.

First, it is important to note that a large part of the narratives found in relevant ethnographic studies¹⁰ show that most Brazilians who have come to the Iberian Peninsula have done so completely or at least mostly in an independent manner. Even if a debt does exist, it does not automatically equal debt bondage. Many migrants, even those that pass through completely legitimate channels, contract debts to finance their trips. These debts can be owed to a variety of people and institutions (such as friends, family members, banks and money lenders) who are in many cases in no way connected to what happens to the migrants after they leave the country.

Even if those who lent the money are connected to the Iberian sex industry (a club owner or apartment madam, for instance), this does not mean that the migrants will be forced into an exploitative situation until they pay their debt, nor does it mean that their debt will be virtually unpayable. For many migrants paying these debts is a question of honour and they do so despite there being no legal contract that could enforce the payment and no coercive measures to ensure it (Malgesini, 2006).

On average the debts which are acquired by Brazilian women tend to be relatively small (often around 3000 Euros) although there are, of course, exceptions. Moreover, although women are often faced with additional costs, such as daily club fees, most

¹⁰ See for instance the works of Adriana Piscitelli, José López Riopedre and Laura Oso Casas.

debts seem to be repaid in relatively short amounts of time (Federación de Mujeres Progresistas, 2008: 234-235). In 2006 a Brazilian woman described what happened when she came to Spain to work in the sex industry:

[When I arrived in Barcelona], I still had to pay 800 Euros, but on the first week I had luck: I earned 1700 Euros, paid my debt and I still had some money left to send to Brazil (Piscitelli, 2011: 200).

Even when the values that are charged do not correspond to the costs of the journey, it does not necessarily follow that this in itself establishes an exploitative situation. A Brazilian woman working in the Barcelonan sex industry expressed her feelings on this matter very clearly back in 2004:

What is a mafia? Is it paying twice as much for a plane ticket? That is not a mafia... You want to go to Europe, but don't have money for the ticket. The ticket costs 1000 Euros, I buy it for you, because I have money, but I want 3000 Euros in return. You agreed to the deal. Business concluded. Done (Piscitelli, 2011: 206).

This does not mean of course, that there are no exploitative situations that fulfil the UN's trafficking definition. When migrants are not informed about the existence of debts, deceived about their amount or how easy it will be to pay them, have their freedom curtailed and documents removed until the debts are paid, are unable to keep any or keep very little of their earnings and/or are submitted to a variety of fines or extra expenses which disproportionally increase their financial burden, there is a great possibility that all three elements of the UN Protocol's definition are present.

The confirmation of trafficking is perhaps most often associated with the presence of violence. While in both Spain and Portugal migrants who sell sex face a higher risk of violence than the general population (Brussa, 2009), their main source of fear is not the violence which can be perpetrated by clients or pimps, but state-sanctioned violence through the police forces, as well as migration and border officers (Piscitelli, 2006: 48), the people who are charged with "rescuing" them from exploitative situations. Stories of unnecessary arrests, long and unjustifiable detention periods, physical, verbal and sexual violence, threats, extortion of money and sexual services, and overall persecution are recurrent among all sex workers, but seem to be particularly prevalent in the narratives of migrant and trans¹¹ prostitutes (Agustín, 2001: 557). This leads them to flee from the police as much as they can rather than rely on it for protection.

¹¹ The emic term "trans" is being used here to refer to "travestis" (as per the terminology used in Brazil), as well as transsexual and transgender persons. Because there appears to be no data or mention of trans male individuals in the context of trafficking and the sex industry in Brazil, "trans" shall refer to individuals who were assigned male at birth and were, to some degree, dissatisfied with this label.

In the Iberian Peninsula, Brazilian sex workers seem particularly concerned about the fact that the officers' primary motivation in approaching places where prostitution takes place is not investigating possible abusive conditions or trafficking cases, but ensuring that there are no irregular migrants present. Barbara Love, a sex worker from the state of São Paulo, sees it this way:

So I also think that the problem that exists with prostitution is because the most of us are foreigners. It's a migration problem. When the police arrives at the club and conducts a raid, it only arrests the foreigners. The Spanish women that work in prostitution have no problems. Because of that, I say that it might be a question of migration and politics. I feel a lot of pity when the police comes and catches the girls to deport them. They should be financially compensated. It's not fair. (López Riopedre, 2010: 311).

The fact that these actions against irregular migrants are, at least in Spain, almost always focused on those working in the sex industry is also harshly criticised. As put by Janaína, from Mato Grosso,

The police should go to the clubs to protect the girls, to look after the safety of the girls and not to go after the foreigners. Why don't the police go to the houses and apartments where the undocumented girls work as maids? (López Riopedre, 2010: 631).

The fear engendered by the police and migration officers often expresses itself in a voluntary retirement from public life. Although cases where women rarely leave the clubs and/or apartments they work in are often automatically read as movement restrictions imposed by traffickers, it seems that many sex workers make the decision to stay indoors so as to have a smaller chance of being detected by migration officers (Oso Casas, 2010).

Fear of authorities also leads migrants who sell sex to lead an itinerant life, using the constant movement between working locations as a strategy to bypass police checks. Besides safety, such constant movement is also stimulated by the desire to find better work conditions and better payment, as sex workers tend to earn more when they are new to a particular place (López Riopedre, 2010).¹²

Problems faced by Brazilian migrants in the Iberian sex industry

¹² This constant mobility led to the development of the so called *plaza* system which is widespread in Spain and also very popular in Portugal. In this system sex workers (usually women, though trans and male workers have been known to take part) spend a set amount of time (usually three weeks in Spain and two in Portugal) working non-stop in a club or apartment before moving to another location (López Riopedre, 2010).

While human trafficking for the purpose of sexual exploitation is certainly a reality in the Iberian Peninsula, the insistence on interpreting any potentially problematic conditions faced by Brazilian migrants who sell sex in Spain and Portugal as trafficking ends up being damaging, as current trafficking policies tend to bring negative repercussions to most migrants.

The failure to consider that a significant part of the problems faced by migrants who sell sex are not connected with trafficking is as damaging as such problematic “rescue” operations. By focusing exclusively on trafficking, governments and NGOs fail to address issues which result from prostitution’s status as a forbidden or at best a grudgingly tolerated (yet still repressed) activity, as well as issues that affect workers in all low-status occupations and (undocumented) migrants.

The violence perpetrated against sex workers has many forms and does not always come from pimps, clients or the police. It often comes from society and its view on sex work. This social stigma attached to prostitution seems almost universal and is the basis of the societal models in which the sex worker – seen either as victim or danger to society – is unable to enjoy the rights conferred to people in other professions. This leads to low self-esteem, loss of interpersonal networks, as well as higher exposure to exploitation, violence and isolation (Oliveira, 2012: 35). In the words of Gabriela Leite, one of the pioneers of the sex workers’ rights’ movement in Brazil, “[t]he greatest violence inflicted on the prostitute is the prejudice against her activity and the stigma attached to it” (Ribeiro and Sacramento, 2005: 75).

In the Iberian Peninsula, the whore stigma is far reaching. Due in part to the way they are portrayed in both the Spanish and Portuguese media (Badet Sousa, 2010; Pontes, 2004), Brazilian women have been increasingly linked to prostitution and have had to feel the brunt of the “whore stigma” even if they have never participated in sex work. The situation appears to be particularly problematic in Portugal. In the perception of Alexandra, who migrated to that country, the situation is worse outside the sex industry than in it:

In the [club] the Brazilian woman is much more respected than if she was working in a restaurant. I worked for over three months in restaurants, but because we have a Brazilian accent, we are soon told to shut up. Once a client started to say I was a whore, that I was good in bed. ... In a restaurant we are not able [to work] (De Sousa Santos et al., 2007: 120).

The situations of greatest discrimination often take place when sex workers seek the help of public institutions (López Riopedre, 2011: 12-13). In the case of Brazilian migrants who sell sex, this situation is made worse by the fact that such prejudices appears to be present not only in the public institutions of the receiving countries, but also in the institution which was designed to be of utmost help to them: the Brazilian consulate. There is a widespread perception among Brazilian migrants that the

consulates do not wish to help sex workers and trans individuals (who in Brazil are often associated with prostitution), even if they have been exploited. Personal accounts indicate that such people have in fact been turned away in some consulates without receiving help (Blanchette and da Silva, 2011: 94).

It is not uncommon to see ways in which migrants who sell sex have internalised some of the premises of the “whore stigma.” Many of them are disgusted by prostitution and only participate in it because they feel they have no choice. This is not to say that they are being forced or coerced in any way or are engaging in survival sex. Rather, they feel that in any other job they would be unable to earn in a relatively short amount of time the necessary amount of money they need to fulfil their ambitions. Others try to detach themselves from the undesirable “whore” image, labelling themselves as professionals who take no pleasure from the sexual aspect of their work and condemning those women who are promiscuous simply because they enjoy sex and thus are, according to them, the “true whores” (López Riopedre, 2010). Amanda from Mato Grosso, has this point of view:

For me the worst thing about prostitution is the discrimination, how people look at you... And here there are women who are greater whores than us, who sleep with ten, twenty men and do it for free. These are the whores. I’m a call girl, I charge for my work, I’m not a whore. Here the worst ones are the Spanish women, they are the ones that discriminate most against us (López Riopedre, 2010: 470).

Despite the fact that most abolitionist narratives single out violence, drugs and alcohol dependence, and diseases as the “accompanying evils” of prostitution, it seems that some of the most recurring complaints from the sex workers themselves are much more ordinary. One of the most common problems Brazilian sex workers have with their Iberian clients does not involve violence, but is in fact centred on the clients’ low levels of personal hygiene. The issue of hygiene is also a prevalent complaint when it comes to clubs, which are often criticised for subpar installations and lack of adequate bathing facilities, a criticism also directed towards many working apartments (López Riopedre, 2010).

The problems are not restricted to the physical conditions of the buildings: many sex workers complain of low temperatures, loud music and copious cigarette smoke in clubs. Environmental conditions, particularly the cold, are also clearly an issue when it comes to street prostitution. Other issues are repeatedly brought up, such as the quality of the food in clubs and apartments and the fact that in both street and club environments sex workers are often expected to stand (often wearing high heels) for long amounts of time, which can cause physical discomfort (López Riopedre, 2010).

All of these issues, while present in the narratives of those working in the sex industry, are not limited to it. People who work in stores and factories often have to stand for

large amounts of time, street vendors are also susceptible to the weather and many other sectors, including domestic work, expose people to unhygienic environments and gruelling working practices, such as excessively long working hours. Silvia, originally from Rondônia, considers that some of the disadvantages of sex work are also present in many other professions:

I am a bit tired, but this is because [sex] work can also bore you, like there are other kinds of work which can be very tiring and boring. For instance, lorry driver. I worked as a lorry driver and also got tired (López Riopedre, 2010: 517).

There are thus significant commonalities between situations faced by Brazilian migrants who sell sex in the Iberian Peninsula and those faced by workers in low-skilled and low-paying jobs, particularly in the informal sector. Many, although not all, of the sex industry's problematic labour conditions stem from the fact that sex work, while not illegal, is not recognised as a legitimate form of work in Spain and Portugal. Therefore, sex workers in these countries do not have access to a variety of advantages attached to being a part of the formal economy, like social security and the guarantee of minimum labour standards, such as the right to unionise or establish a maximum amount of working hours per week.

Thus, it is not surprising that many people involved in the sex industry would like to see prostitution treated as any other profession, even if it means increased costs and restriction imposed upon them. Janaina, a sex worker from Mato Grosso working in Spain sees it this way:

I think it would be good if they made a law legalizing prostitution. This way we could have the right to social security and we would also have medical coverage. This is very hard work, a profession with many risks and, because of that, of course, we should have our rights. I would be willing to pay my taxes (López Riopedre, 2010: 630).

There are those, on the other hand, who believe that the status quo – where the industry is not in itself illegal, but is also not regulated – should not be changed. There are a number of reasons for that. First, there are those who object to the formalisation of the sex industry if it is done in a classic regulationist model.¹³ State control of what it is considered to be a “necessary evil” and particularly the sanitary control of sex workers,

¹³ Some sex workers believe that rather than creating a regulationist model, prostitution and activities related to it should undergo a process of decriminalisation and depenalization. That is to say, activities associated with families, clients, other third parties and even fellow sex workers (living off the earnings of prostitution, keeping a brothel, procuring) should not be criminalised while certain administrative and other general offences (such as loitering and public nuisance) should be reformed as to ensure they are not used to punish sex workers (GNSWP, 2013).

who are almost always considered as potential vectors of disease, is seen by many as demeaning (López Riopedre, 2010).¹⁴

A second issue is that some sex workers believe regularisation would eliminate many of the greatest advantages of the sex industry, such as its flexibility (including working as many hours as an individual sees fit) and its ability to generate large amounts of tax-free income in short amounts of time. In the words of Xuxa, a trans sex worker from Minas Gerais living in Spain,

Regarding prostitution my opinion is that society shouldn't interfere too much. They should leave us alone. I don't want to pay taxes [...] Working in prostitution you can earn a lot of money. But this is because there is no government control. If they legalize it, they would afterwards come and say: you earn too much money, you have to pay (López Riopedre, 2010: 496-497).

A third and no less important issue is the already acknowledged fact that many migrants have internalized the stigma attached to selling sex. Although they have chosen, for a variety of reasons, to work in the sex industry, they do not want this fact to be advertised, particularly to their families, or to go on a permanent record. Letícia, who was born in the city of São Paulo, is one such person:

I was so afraid my family would find out. I still am. They think I work in a restaurant. Yes, they know I'm illegal and the problems we have to obtain the residence papers, but they don't even imagine I'm working in prostitution (López Riopedre, 2010: 477).

Lastly, there are those who believe that the regularisation of sex work would not benefit (and could in fact further undermine) migrants who sell sex. When a regulatory model based on the majority of those which exist in Europe is advocated for, what is being considered is the implementation of a system that explicitly excludes the possibility of non-EU citizen claiming prostitution as an income-generating activity for migratory regulation purposes (Danna, 2003: 10).¹⁵ This would only serve to drive migrant sex workers deeper underground and into even more hazardous situations.¹⁶

¹⁴ It is relevant to note that some sex workers, on the other hand, think that mandatory health checks are a perfectly reasonable way to ensure health standards for those working in the sex trade (López Riopedre, 2010).

¹⁵ While the European Court of Justice ruled in *Jany and others v Staatssecretaris van Justitie* (Case C-268/99) that EU citizens could not be barred from earning their livings as sex workers in a country where the occupation is regularized (Vermeulen, 2013), this recourse did not extend to third country nationals, who are still unable to join the sex industry legally.

¹⁶ By denying migrant sex workers the opportunity to become documented migrants, several rights are also being denied to them. In Spain, these include the right of free movement in the country's territory, the right to social security and family reunification, as well as the right to work autonomously (Arella et al., 2006: 68), all of which are essential to the well-being of sex workers.

The stigma and problems faced by sex workers is exacerbated by the fact that the Brazilians who work in the sex industry are also (irregular) migrants, a situation which has its own negative associations (Oliveira, 2012: 35-36). In both Portugal and Spain there has been in recent decades an ethno-stratification of the labour market where migrants from developing countries have taken over the low-paying, low-qualified jobs, even if they held higher status occupations in their home countries. A combination of assumptions about their gender, class and ethnicity has relegated most migrant women to marginal jobs which often make them invisible, such as domestic service and sex work. In both job sectors Brazilian women are often submitted to long working hours, improper working environments and harassment (Sole and Parella, 2003; Masanet and Padilla, 2010; Gonçalves Baptista, 2011).

A final issue which is particular problematic for (undocumented) Brazilian migrants working in the sex industry is housing, a problem which also affects migrants in other sectors and even foreign students (Pelúcio, 2009: 186). While some sex workers consider that living in the same club or apartment they work in is a way to save time and money, others dislike doing so as they consider that this arrangement makes it difficult to separate their private and professional lives. Sex workers who separate their living and working environments tend to find considerable improvements in their quality of life (Oso Casas, 2010: 56).

Acquiring a place to live, however, is not always an easy prospect. Like other migrants who do not have access to the mainstream market, they often have to pay considerably more money than nationals of the country to be able to rent a property. Brazilian women in Portugal are often unable to rent a place even if they have proper documentation because many landlords fear that their property will be used as a brothel (Malheiros and Fonseca, 2011: 12). At times, migrants are obliged to use third parties who must be duly (monetarily) compensated to sign the paperwork on their behalf (Pelúcio, 2009: 186).

Conclusion

When we analyse the problems faced by Brazilian migrants who sell sex in the Iberian sex industry, we find that the vast majority of them are not intrinsically tied to trafficking. Moreover, contrary to the emphasis given to the issue of sexual exploitation, a relatively small part of the complaints of Brazilian sex workers in Spain and Portugal recorded in ethnographic studies have to do with sex in itself. Rather, we find that existing problems are primarily a result of a combination of three overlapping factors: the semi-illicit nature of the sex industry, its parallels with low status occupations and general problems faced by (irregular) migrants.

When such problems are all dealt with through trafficking policies which address the issue primarily as a criminal matter without considering its labour and migratory implications, a disservice is done not only to the victims of trafficking themselves, but

to all migrants who sell sex. The UN Trafficking Protocol is widely recognised as a weak instrument when it comes to victim protection provisions and in practice does little to improve the situation of those who have been trafficked or exploited, which is not surprising considering that its focus is the punishment of crime rather than the assurance of human rights. Often, in fact, many “anti-trafficking” actions only serve to further victimise migrants who sell sex. By focusing on “combating” trafficking as a problem connected mainly with the existence of organized crime and “rescuing” victims on an individual basis, often by removing them from their income generating environment, rather than trying to improve the labour and overall living conditions of migrants who sell sex (Shamir, 2011: 36), countries end up further victimising in direct and indirect ways those they claim to want to help.

In this sense, rather than focus on punishing the crime, “rescuing” victims and or curtailing or destroying the sex industry, the best way to ensure the improvement of the lives of all migrants who sell sex is by improving migrants’ working conditions, guaranteeing their legal protection and ensuring their access to necessary services (Peršak, 2013: 319; Vermeulen, 2013). Thus, the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which protects migrants regardless of their status and which sector they work in, as well as the ILO labour rights conventions should be the international treaties setting the basic standards for dealing with all migrants who sell sex rather than the UN Trafficking Protocol and similar instruments.

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CHAPTER SIX

Analysing the use of the trafficking victim archetype by Brazil and the Iberian countries

Abstract

The victim archetype has been a characteristic of the mainstream narratives of human trafficking since the creation of the white slavery myth despite its incongruence with most real life cases. In a similar vein, the current Brazilian trafficking victim archetype fails to reflect the reality of trafficking victims hailing from that country, yet it is still used as a label by Brazil, Spain and Portugal. The label of “(potential) trafficking victim” is used not as an instrument of human rights protection, but as both a political weapon to curtail prostitution and a socially acceptable form of migration control to the detriment of Brazilian migrant sex workers and any women who fit the targeted “profile.”

Keywords

Human trafficking for sexual exploitation, victim archetype, Brazil, Spain, Portugal

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Analysing the use of the trafficking victim archetype by Brazil and the Iberian countries

Introduction

Much has been written about the construction of a white slavery mythology in the end of the 19th century, reflecting much more the social anxieties of the period rather than the existence of a large number of cases of human trafficking for sexual exploitation. One of the basic pillars of this cultural myth¹ was the construction of the white slave archetype – female, young, beautiful, innocent, victimised and, of course, white – which engendered feelings of protection and pity in western societies (Irwin, 1996). Over a hundred years later, the victim archetype has changed to reflect the new being supposedly in need of protection from human trafficking: female, poor, uneducated, coming from developing countries and often coded as non-white.

Brazilian women in Europe have become closely linked with the sex industry, particularly in the Iberian Peninsula, and have been widely recognised as potential victims of trafficking, even in their own country. Although the contemporary Brazilian variant of the trafficking victim archetype corresponds only to a small fraction of the reality of trafficking victims and migrant sex workers from Brazil, it is still prevalent in the country's media and its political discourses.

This chapter will reconstruct the historical development of the trafficking mythology's victim archetype, focusing on the recent debate about the construction of its Brazilian variant and how closely it reflects reality (or fails to do so). It will analyse how this archetype has been included in the development of official (anti-)trafficking narratives and policies in Brazil, Spain and Portugal since the turn of the millennium, concentrating on why it is being used and the consequences such use brings.

The evolution of the “sex trafficking” mythology

The end of the 19th century saw a period of greater independence for women, some of which chose or were induced towards sex work as a strategy of economic and spatial mobility. The social anxieties related to women's growing freedom (sexual, financial, of movement) and independence, when combined with the shifting position of western countries in the global scene and increased prospects of upward social mobility created a scenario where the cultural myth of white slavery was encouraged to grow (Irwin, 1996).

¹ The use of the term “myth” does not mean to imply a complete fabrication of information. It is rather a simplification of the truth in more palatable terms which ends up distorting it and exaggerating the real dimension of a situation. It reflects a processing of a complex reality into a clear-cut narrative that is easily understood, particularly in the case of trafficking, where the categories of “victim” and “villain” seem to be so well defined (Doezema, 2000, p. 26).

The initial victim here was, of course, the western woman at the turn of the 19th to the 20th century: innocent (naïve), pure (white) and cruelly deceived (by non-western men). Of note is the fact that in this scenario the historical labelling of prostitutes as deviant was eclipsed by the idea that these women were somehow “forced” into debasing themselves. By positioning every woman as a potential victim, “protective measures,” such as special passport requirements, could be extended to all of them.

Relatively few women corresponded to the archetype of the unwilling virgin who was kidnapped or deceived with promises of respectable situations, but that was not the point (Doezema, 2000, p. 26). The “moral panic” engendered by the myth was focused not on empowering women to help them safely achieve their objectives (including migration and/or profiting from sex work), but in creating an environment that was even more hostile to women’s mobility, spatial or otherwise.

As societies changed, the myth evolved. When the western woman became widely regarded (in theory, if not always in practice) as liberated, the focus shifted towards women from developing countries. They came to be perceived (in direct or indirect terms) as unable to protect themselves or to make the “right” choices (i.e. the ones which would keep them in their home countries and away from sex work) when they are able to have choices at all (Doezema, 2000).

The official discourse of the new mythology which emerged in the late 20th century was the protection of women who were made vulnerable due to a number of factors, particularly their precarious economic situations. Rather than create safe paths of migration for them, however, the earlier divide was reiterated: some people (men, western women, third-world women whose migration is part of family mobility spearheaded by their fathers or husbands) are allowed to travel, while others (sex workers, single women from developing countries) should not move across borders “for their own good.” By classifying some women as inherently “vulnerable,” states gained socially acceptable ways of controlling their movements.

The identity of the (no longer white) slave was not the only significant change to the myth. By the late 20th century the idea that all prostitution was exploitative was being hotly contested and the sex workers’ rights movement gained strength. Debates soon started making a distinction between so-called “voluntary” and “forced” prostitution. Although this dichotomy did not receive universal support, it seemed at first glance to be a reasonable compromise that recognised that some situations in the sex industry were indisputably exploitative. In practice, however, it created a division of women into two categories: the “innocent victim” (the “forced” prostitute who deserved to be rescued) and the “guilty whore” (the “voluntary” sex worker who deserved whatever mistreatment she got due to her deviant behaviour) (Doezema, 1998, p. 48).

In the trafficking narrative, this division soon developed nuances. The term “forced” gained more connotations than it had in the original myth, where it referred mostly to

physical force and abduction. Here economic vulnerability became a form of “force,” as women from developing countries were understood as having no choice but to participate in sex work.² Deception, an element already present in the white slavery narratives, gained full strength, with stories of women who had accepted “decent” jobs abroad (nanny, waitress, housemaid) being tricked and forced into prostitution (Doezema, 1998, p. 43).

As more research began to emerge, two trends became noticeable. First, that while economic considerations were clearly important to women who decided to perform sex work abroad, they were rarely the only factor taken into account. Secondly, most women were perfectly aware of the nature of the job they would undertake, although they were at times deceived about the conditions involved (Doezema, 2000, p. 32).

This information, however, is often ignored and the image of the struggling third-world woman forced by her circumstances into prostitution still carries a lot of weight. Yet to reinforce the fact that these women are “true victims,” deserving of special consideration rather than of being treated as ordinary irregular migrants (who should be punished with deportation for their transgressions), a particular emphasis is given to the suffering they have endured, particularly its physical aspects. This generates what Claudia Aradau (2004) calls a “politics of pity.”

There is an element here very reminiscent of the catholic imagery of the martyrdom of the saints, in which ordinary people are transformed through great trials and physical suffering. Here the “unsuitable” behaviours of the victim (her ambition, her willingness to become an irregular migrant, her engagement in prostitution) are “cleansed” by the violations she has suffered, rendering her an object of pity rather than scorn.

Not all trafficking victims, however, bear physical marks. Threats and psychological abuse can be just as effective weapons of control, yet they are much more difficult to perceive at a glance than bruises. This often leads trafficking victims that do not resemble the “physically abused and locked-away slave” image that is so pervasive in trafficking campaigns to be completely ignored (Aradau, 2003).

Even physical suffering is not always redeeming. Many migrant sex workers who have had their rights violated, but whose victimisation is not linked to complete deceit and trafficking see the abuses they have endured be ignored and often considered to be expected and even acceptable. Here their desire for money is read as ambition, not necessity, and as such not seen as a valid cause to perform sex work; they are thus classified as “not victims” and their plight is ignored (Aradau, 2004, p. 263).

² The term voluntary, conversely, was associated with women from developed countries, who were the only ones considered to be in a position to truly consent to sex work.

This leads to a Catch-22 for many migrant sex workers. On the one hand, to adopt the identity of a trafficking victim is often to be put into a position of infantilisation and objectification, where their agency is stripped by their “rescuers,” who appoint themselves as more capable of deciding what is best for the victims than the women themselves. These rescuers are often law enforcement agents, who in the trafficking mythology play the part of the heroes who succour the damsels in distress. Yet the myth ignores, despite large amounts of evidence, that law enforcement agents often physically, sexually and verbally abuse sex workers and that many victims who are “rescued” end up being arrested and expelled from the country they are in without being heard, even in cases where there are compelling trafficking indicators (Agustín, 2007).

On the other hand, to give up the label of victim means in most cases to give up the possibility (even if small) of benefiting from the provisions accorded to trafficking victims which are almost never offered to irregular migrants: shelter, access to medical and legal services and even temporary permits to stay in the country. These benefits lead many women to choose to, in the words of Spencer and Broad (2012, p. 272), “negotiate victimhood for services” despite the negative consequences victimisation may bring.³

Most significant is the fact that when it comes to cases of human trafficking these women are not often given the choice to accept or reject both the “vulnerable” or “victim” labels. Rather, such labels are institutionally imposed on them, frequently to their detriment, as despite the overwhelming victim protection rhetoric being used by most western countries, true victim status (with all the benefits it provides) seems to be granted to very few people (Agustín, 2007).

The use of the term “trafficking victim” as a de facto label of deviance

The longstanding connection between the anti-human trafficking and anti-prostitution movements is well known. It was perfectly exemplified, for instance, in the language of the earlier trafficking conventions (particularly the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others) and remains very clear to this day, when many countries (including Brazil) still fail to recognise any form of trafficking besides that for the purpose of commercial sexual exploitation.

Rather than forms of human rights’ protection, throughout the years anti-trafficking instruments have been used as forms of migration and prostitution control which have targeted women in particular. A very clear example of this are the so called “inspections” which take place in many European countries to supposedly identify trafficking victims, particularly those submitted to commercial sexual exploitation. In

³ Note that this “choice” does not mean that they are lying. Rather, they may choose to interpret their migration and any exploitation they have suffered as trafficking when they would not do so without incentives, particularly in cases where the exploitation is offset by gains.

practice these inspections are raids which have two clear objectives: to constrain (migrant) sex work, even in places where prostitution is not illegal, and to identify and expel irregular migrants. This is highlighted by the fact that inspectors often only care about the situation of undocumented migrants, ignoring the working conditions of nationals or of those who are legally in the country. Moreover, many of the “potential trafficking victims” (i.e. irregular migrants) which are identified are deported without having their situations examined or considered (Piscitelli, 2012).

Ken Plummer (1979, p. 108) once posited that “... labels alter the nature, shape and incidence of the experience.” Here it is clear that the use of the label of “trafficking victim” often alters migration experiences for the benefit of those in power. Associating the deviant labels of “prostitute” and “illegal migrant” with actions which target these groups means leaving these actions open to extensive criticism of the social, economic and racial profiling which is often involved in them. In this sense, actions such as widespread raids to identify and expel unwanted migrants (often non-western women in the sex trade) or migrant profiling at international airports (which frequently target young women seen as potentially involved in prostitution), which might have been condemned if identified as such, are reinterpreted and justified in the name of the protection of those vulnerable to trafficking. The label of “(potential) trafficking victim” is much more palatable and much more likely to generate public support for the aforementioned actions.

This power imbalance is made very clear once we consider that when any sort of benefits or protections are offered for those that are labelled as victims, they often come with a heavy price tag attached. To qualify for benefits, a trafficking victim must often not only pass stringent standards (which frequently demand the existence of large amounts of physical and/or sexual harm as proof of genuine victimisation), but also sacrifice their safety and mental well-being by testifying against their traffickers (and often only have it count if the information offered ends up being valuable). Victims are frequently put into a position of complete infantilisation, where their agency is stripped and decisions regarding their lives are made by those in positions of power, who believe themselves to be more qualified to decide their fate (Piscitelli & Sprandel, 2011).

In this context, “(potential) trafficking victim” is clearly a label that brings more problems than benefits for the majority of migrants and one which is frequently associated with deviant behaviour on the part of the victims which is only “pardoned” through considerable victimisation. For those who fit the disseminated trafficking archetype, migration itself is often considered a deviant act, as it is frequently associated with unwanted actions such as irregular border crossing, overstay and sex work.

The construction of the Brazilian victim archetype

In the initial “white slavery” narrative of the turn of the 19th century, Brazil was categorised as a receiving, not an origin country. One hundred years later the shift in the

mythology from “white slavery” to “human trafficking” also shifted the position of the country. Although Brazil is still a destination for trafficking victims, it is now positioned on the global scene as a major source of victims, particularly for Europe. The widely disseminated profile of the “typical” Brazilian victim matches the modern trafficking victim archetype perfectly. This compatibility takes an interesting turn, however, when we analyse where this profile comes from.

The first major study about trafficking in Brazil – commonly known as PESTRAF (Leal & Leal, 2002) – was published in 2002. Through highly questionable methodology,⁴ the study enshrined the archetype of the Brazilian trafficking victim: female, poor, uneducated, non-white, relatively young, hailing from peripheral regions with poor infrastructure, possessing a low skilled job and having at least one child (and often other family members) dependent on her earnings. The authors adopted the position that the consent of women who fit this profile was always “induced” by their socio-economic circumstances and thus to be disregarded. The abuse of their alleged “position of vulnerability” was to be presumed, without supporting evidence, in all cases.

The serious methodological failings of the study were considered secondary by its coordinators, who acknowledged that their main goal was to create a widespread discussion on the subject of trafficking (Piscitelli, 2010, p. 370). This statement ties very neatly with the discourse used to spread the white slavery myth at the end of the 19th century, where facts were secondary considerations in the creation of a moral panic which would induce people to act (Irwin, 1996).

In the case of PESTRAF, this objective was certainly achieved. Not only it was and continues to be used as one of the cornerstones of the current Brazilian trafficking policy, but over ten years and innumerable criticisms later, its assumptions (such as that trafficking is a widespread phenomenon in Brazil despite the lack of supporting data) are still widely regarded as entirely factual. In the past few years its claims have often been misattributed to the United Nations (UN), which further legitimises them (Blanchette & da Silva, 2012).

Although the terms to describe victims which are now used in official narratives were purposely chosen to be politically correct (“afro-descendant,” “economically disadvantaged,” “low level of formal education”), Blanchette (2009, p. 31) stripped them down to their core meaning in the discourse: “black, poor and dumb.” In this we find a striking parallel with the words of Chandra Talpade Mohanty (1984, p. 352) about what she calls the “colonial gaze,” where “[...] third world women as a group or category are automatically and necessarily defined as: religious (read ‘not progressive’), family oriented (read ‘traditional’), legal minors (read ‘they-are-still-not-conscious-of-their-rights’), illiterate (read ‘ignorant’), [and] domestic (read ‘backward’) ...”

⁴ A thorough criticism of the study can be found in Blanchette & da Silva (2012).

Here the gaze is inflicted not by western activists, but by the (mostly white) socio-economic and cultural elite which moulded the initial Brazilian trafficking policy as a “protection strategy” geared towards those they considered to be the most vulnerable members of society, presuming (without much evidence) that they were the main victims of trafficking (Blanchette, 2009, p. 26).⁵ Rather than focus on the stated wishes of those they allegedly want to protect, this elite group tailors policies that respond to their own interpretations of trafficking and vulnerability and which can be manipulated to serve their own interests. The “moral panic” they encourage is but one more way to ensure that their policies are legitimised.

In the terms of Goode and Ben Yehuda (1994, pp. 135-136), this elite engineered panic acts as a form of displacement for the anxiety generated by other issues. In the case of Spain, Portugal and Brazil, increased concerns about migration (with several racist, sexist and, on the European side, xenophobic implications) and the control of sex work are reworked into a human trafficking narrative where increased forms of control and the human rights’ abuse they generate are considered acceptable as they are made under the guise of protection.

The evolving trafficking narrative of the Brazilian woman

The core profile of the “typical” Brazilian trafficking victim has changed little in the past two decades, although her narrative has evolved. Blanchette & da Silva (2011) presented a thorough analysis of the myth of the “exemplary” trafficked woman.⁶

The initial standard discourse⁷ presented a “vulnerable woman” (in the terms described by PESTRAF) who, in her innocence, accepts an offer from a charming (white) foreigner to go abroad, either to work in a respectable (i.e. non-sexual) situation or as a response to an offer of marriage. Her Cinderella story, however, takes a dark turn when her Prince Charming reveals himself to be the villain of the tale. When she finds herself abroad the woman learns that she has been deceived and that the man she believed had saved her from a life of poverty has brought her to a life of degradation, forcing her to become a prostitute.

Here the trafficked woman hits rock bottom, becoming a mere object to be bought and sold. Many narratives emphasise her physical suffering, her drug and alcohol dependence, the great likelihood she has of contracting a fatal disease. There are only two possible outcomes in this scenario: either the trafficked woman succumbs to her despair and dies (either from illness or at the hand of her traffickers or clients) or, if she

⁵ The gaze becomes quite literal when we consider that members from the Brazilian Federal Police claim to be able to tell “at a glance” which women are “unsuited” to travel (Blanchette & da Silva, 2010, p. 345).

⁶ Later works which further explore this narrative include Blanchette, da Silva & Bento, 2013a and 2013b.

⁷ Examples of such narratives can be found in news reports (Summa, 2005) and in warning pamphlets distributed by non-governmental organisations (NGOs) such as Chame (1998).

is lucky, she is rescued, usually by the police forces of the country she is in. Her saviours make sure she is returned to Brazil, her rightful place.

With time, this narrative began to change slightly. The evil foreigners (a staple of the white slavery mythology) have gradually been substituted by the figure of the “treacherous Brazilians,” who can now be either male or female and who are willing to sell anyone – even their own friends and relatives – to gain money.

Even if this acknowledges the fact that traffickers are often not complete strangers, it fails to recognise that the majority of migratory journeys undertaken by Brazilians (be they regularised or not) depend heavily on support networks of acquaintances and family members who offer everything from money and job offers to accommodation and information. These support networks are not “mafias” by any stretch of the definition, even if the aid they provide is not always selfless.⁸

There has also been an increasing acknowledgement that the victim may have worked as a sex worker previous to her migration and that she could have been aware of the true nature of the job abroad. Nevertheless, her purported ignorance is still highlighted, emphasizing the fact that she was not truly prepared to travel abroad and had no idea of what she was getting into.

There is no mention of the fact that migration has long been considered a viable path for sex workers in Brazil (particularly for those who wish to own property and businesses, invest in their education or have enough money to allow them to retire) and that these women are very likely aware of the potential problems associated with sex work. Moreover, no mention is given to the fact that women (and those who worked previously in the sex industry in particular) are often not passive respondents to these opportunities. Many of them actively search for people who have the knowledge and means to aid their migration project (Blanchette & da Silva, 2005).

The alleged poverty these women live in is supposed to drive them to a state of desperation where any offer for a better life is accepted without question. However, while this is not reflected in the standard narrative, there is an increasing acknowledgment, even on the part of the Brazilian authorities, that these women do not come from the most economically deprived segment of society (Procuradoria da República no Estado do Rio de Janeiro, 2013). To them migration is not the only alternative to total deprivation, but a rational path towards better living conditions.

Particular emphasis is also given to the women’s lack of formal education, which in the discourse is tied to a supposed inability to face life abroad. This lack of adequate preparation is also underscored by presenting their decision to migrate not as a rational

⁸ See for instance Padilla (2006) for an exploration of the role played by these networks in the migration of Brazilians to Portugal.

choice where many factors have been taken into account, but as a thoughtless gamble in the search for money. Their “naïveté” in believing they can change their fate without “really working for it”⁹ is seen as akin to stupidity (Blanchette & da Silva, 2011, p. 86).

The existence of debts has become more present in the narrative in recent years, as has the fact that most women are aware of their existence. The debts, however, are characterised as “unpayable” and an instrument of control over the victims. The fact that most Brazilian women consider debts to be a fair and normal part of the migration process and that they are often able to repay them in relatively short amounts of time is conveniently never mentioned (Malgesini, 2006).

The myth’s narrative is so strong that it is often the case that when Brazilian sex workers are “rescued” and affirm that they have not been trafficked, their statements are considered to be irrelevant. They are often seen as “too afraid of their traffickers to talk,” with no mention given to the fact that they might not want to accuse acquaintances who from their perspective performed a valuable service. The alleged victims are also frequently dismissed by being characterised as “unable to recognise themselves as trafficked,” with the implication being that they are too “uneducated” to perceive their reality, rather than that they might not have been exploited or that the level of (financial) “exploitation” was considered by them to be acceptable in face of their gains (Piscitelli, 2006).

At no point does the myth recognise that the greatest fear of many Brazilian sex workers living irregularly abroad is not the possible abuse from their alleged traffickers, but an encounter with the local police which is tasked with “rescuing” them. In the majority of cases the police forces the women to return to Brazil against their will, often confiscate their savings and in some places are even known to be physically, verbally and sexually abusive (Piscitelli, 2011). Rather than be thankful for being returned to Brazil, many of the alleged victims soon search for other migration opportunities.

Confronting the use of the victim archetype in Brazilian and Iberian narratives

In recent years a number of academic works have confronted the established trafficking mythology and undone the certainty that surrounds the existence of the trafficking victim archetype.¹⁰ Yet the myth has not disappeared – although it has, as mentioned above, evolved – and its influence is still present in several official narratives about human trafficking as detailed below.

Brazil

⁹ There still exists a recurring idea in some segments of Brazilian society that prostitution is not true form of work, but simply a way to gain “easy money.” This is apparent even in how some judges word their decisions about human trafficking (see for instance Wiecko V. de Castilho, 2008, p. 110).

¹⁰ See for instance the works of Laura Agustín and, in the case of Brazil in particular, Adriana Piscitelli, as well as Thaddeus Blanchette and Ana Paula da Silva.

It is very clear that the trafficking mythology has had a strong influence in the development of Brazil's anti-trafficking policy. This can be explained by a combination of factors.

At the turn of the 21st century, as Brazil's relevance grew on the international scene, the country became increasingly preoccupied with its image and reputation abroad. Trafficking became a concern not because of the human rights violations involved, but because it reinforced the idea that Brazil "is not a serious country" and thus unsuited for a bigger role in international politics (Piscitelli & Sprandel, 2011).

Forbidding potential trafficking victims (in practice, all migrant sex workers) from travelling¹¹ and thus safeguarding the "dignity and honour of the country," in the words of an employee of the Brazilian Ministry of Justice (Blanchette & da Silva, 2010, p. 342), was thus seen as more important than capacitating people to travel with safety. This is reflected in the "preventive actions" which take place in international airports, where Federal Police officers "detect" women who they suspect of planning on engaging in prostitution abroad and try to persuade them to desist from travelling. The Federal Police boasts of this as a successful anti-trafficking strategy; sex workers' rights activists classify it as a harassment of (potential) sex workers to induce them to give up their right to migrate (Piscitelli & Sprandel, 2011).

This safeguarding of the image of the country by curtailing the movement of women (particularly those considered as potentially involved in the sex trade) is not a new phenomenon.¹² The official explanation for curtailing free movement, a constitutional right of every Brazilian citizen, is the protection of these citizens the government has labelled as "vulnerable." Even the right to obtain a passport is seen as "dangerous" for certain kinds of women (non-white, of the lower socio-economic strata, with low levels of education). During a 2005 seminar debating human trafficking in Rio de Janeiro, an employee of the Federal Police reminisced about the times of the Military Dictatorship in Brazil (1964-1985), during which the authorities could simply "look at a person," somehow perceive they were "not fit to travel" and refuse to emit the appropriate documents (Blanchette & da Silva, 2010, pp. 341, 344).

When these women do manage to migrate, however, the alleged concern about their well-being seems to disappear. In the past decade there have been an increasing number of reports of Brazilian women being identified as sex workers by foreign border officers, particularly in Europe, and being refused entry into other countries and at times subjected to veritable interrogations (and even rights' violations) to "confess" their true

¹¹ Article 231 of the Brazilian Penal code characterizes human trafficking as the aided movement, to or from the country, of a person who will engage in prostitution.

¹² Blanchette (2009), for instance, shows that, when it comes to making it difficult for certain types of women to travel, in some respects little has changed between the rhetoric employed by the United States in 1918 (in the middle of the white slavery moral panic and during a time where the country was consolidating itself as a major power in the international scene) and that used by Brazil in 2008.

intentions (Secretaria Nacional de Justiça, 2006; Secretaria Nacional de Justiça & ILO, 2007). It is of note that the complaints made about these situations in Brazil are often worded as extreme dismay in having “righteous women” (i.e. not prostitutes) be treated as if they were “whores.” The implication is, of course, that the degrading and at times severely abusive treatment would be justifiable (or at least not objectionable) if it were directed towards bona fide sex workers (Blanchette & da Silva, 2010).

The remedy offered here is also notable and ties back to the original premise of the anti-trafficking campaigns: instead of advocating for a change in the treatment offered by European countries to those who are seen as (potential) prostitutes, the solution most often advocated is to curtail the migration of sex workers, lest they continue to “besmirch the name” of Brazilian women abroad (Blanchette & da Silva, 2010, pp. 353-354). Note that the issue is never broached in terms of the women being irregularly in foreign countries, nor points to the legal ramifications of performing sex work in countries where that activity is illegal, but centres on curtailing prostitution in itself.

The recurring preoccupation with restricting the movement of certain types of women under the guise of protecting them against trafficking takes an even more interesting turn when we take into consideration some of the results of the published work of the “humanised assistance office for migrants” of São Paulo, hereafter referred to as the Guarulhos Airport studies (Secretaria Nacional de Justiça, 2006; Secretaria Nacional de Justiça & ILO, 2007), whose data collection took place in 2005 and 2006. The studies, which analysed interviews with people who had been either deported from or non-admitted to foreign countries, showed some evidence that the Brazilian trafficking victim archetype might correspond more closely to women who had been denied entry into other countries than to the women who were deported for being irregular migrants (many of which either admitted to or were suspected by the researchers of being sex workers). A significant percentage of the women whose entry to the European Union (EU) was denied fulfilled all legal entry requirements; some claim that they were not given a reasonable explanation for the denial they received, but most seem to have been told that their stories were false or contradictory despite evidence to the contrary.

More recently, however, there has been some indication of a shift in the way trafficking is being presented in Brazil, perhaps as a result of an expansion of the groups involved in the development of trafficking policies, which now occasionally include members of civil society and NGOs associated with sex workers. This is very clear when we analyse the evolution of government-sponsored anti-trafficking campaigns.¹³

In the first nationwide Brazilian campaign against trafficking (“International Trafficking in Women – Report it!”), co-sponsored by the United Nations Office on Drugs and Crime (UNODC) in 2004, the information about how to protect oneself from

¹³ Folders, posters and other materials of these campaigns can be found on the website of the Brazilian Ministry of Justice (<http://portal.mj.gov.br>).

exploitation had a very clear agenda. Targeting women specifically, it asked them to be sceptical of offers to work abroad, even if coming from acquaintances or relatives, but offered no suggestions about how to ensure the offers were legitimate. It affirmed that success stories of women working in prostitution were rare, which is debatable, especially since people may interpret “success” differently. Perhaps even more tellingly, it outright stated to women that they “w[ould]not work abroad, [they] w[ould] be enslaved,” leaving absolutely no space for the existence of migrant experiences (even those not linked to sex work) which did not involve slavery or exploitation.

This type of campaign makes a clear divide between spaces which are safe (in this case Brazil) and unsafe (in this case, other countries), failing to recognise that “home” is not always a safe place and that people can find better living conditions abroad, even if their migratory process is not idyllic. Rather than an anti-trafficking campaign designed to educate potential victims so they could be able to make informed decisions, this campaign appeared to want to curtail feminine migration through scare tactics. This particular campaign also presented a highly sexualised gaze upon the body of the female victims, a problematic pattern among many anti-trafficking images (Andrijasevic, 2007).

Another government-sponsored campaign, launched in 2010, started to offer more valid information about how to ensure one’s safety when travelling abroad. Nevertheless, it continued to focus its imagery on the sexualised female body, this time caged (another recurring motif).¹⁴ Its slogan was also telling: “Help Brazil not to fall into this trap.” The concern here was turned not towards the women who may be victimised, but towards their country, which may experience negative repercussions if it is considered a source of trafficked women.

A 2011 campaign, co-developed with the International Centre for Migration Policy Development (ICMPD), started to distance itself from the initial approach, abstaining from the sexualisation of women’s bodies in its images. Yet despite tentatively approaching other forms of trafficking besides sexual exploitation, it still visually tied trafficking to slavery and presented strong indicators of victim blaming (its slogan was “The decision to travel is yours. So are the consequences”).

The government’s 2013 anti-trafficking campaign “Tips to travel safely,” whose folder is modelled after the Brazilian passport, seems to have finished the cycle. It does not rely on sexualised imagery, nor does it target only women and trafficking for sexual exploitation. It offers helpful information on how to secure a journey abroad, who to contact in case of exploitation and how to identify a situation of trafficking. Moreover,

¹⁴ Federal Public Prosecutor Daniel de Resende Salgado points out that this type of imagery, which associates trafficking exclusively with slavery and the most extreme cases of control, is actually counterproductive, as people who went through less extreme, but nonetheless exploitative situations do not make the connection between the trafficking they see depicted in the campaigns and what happened to them (Procuradoria da República no Estado do Rio de Janeiro, 2013).

when giving suggestions about aiding those who might have been potentially trafficked, it encourages people to talk to the alleged victims and offer them information about possible resources, rather than to make decisions for them. This offers a particular contrast to seminars sponsored by the Brazilian Foreign Ministry around 2006, where people being capacitated to deal with human trafficking were encouraged to report to local police forces any circumstances where Brazilians were involved in sex work, regardless of the presence or not of exploitation and without consulting the supposed victims (Piscitelli, 2012, p. 282).

Yet despite a much more liberal rhetoric being in place in recent years, which encourages responsible migration and includes sex work as a viable labour alternative, in practice the actions of the Brazilian Federal Police (which enforces the anti-trafficking legislation) and of the country's judicial system are both still tied to the Brazilian legislation and thus focus on restraining and punishing all migration for sex work, regardless of its conditions. The label of "(potential) trafficking victim" is still applied to many women, often to their detriment, heedless of their own interpretation of their situation.

Spain

Spanish trafficking legislation makes a clear division between victims who are worthy of maximum state support (in the form of a residence permit) and those who are not. To be a worthy victim, one must not only have been victimised, but utilised this victimisation as a way to punish traffickers, providing useful information and testimony.

The anti-prostitution stance adopted by Spain¹⁵ is very clear in every official policy and document issued about human trafficking. Sexual exploitation is broadly understood, as per the National Plan Against Trafficking, as encompassing prostitution as a whole, sex tourism, the buying of mail order brides and servile marriages (Gobierno de España, 2008, p. 3).

Trafficking and prostitution are thus seen as closely linked. The official report on prostitution by the Spanish legislature claims, for instance, without offering supporting evidence, that most women that are in a situation of prostitution are or have been victims of human trafficking (Cortes Generales, 2007, p. 23).

Spain's anti-prostitution position goes far. In its annual trafficking reports, the Spanish Civil Guard classifies as a (potential) victim of trafficking every person who is engaged in prostitution, as they consider that the vast majority of women become prostitutes because they live in a state of necessity. The claim that anyone can "voluntarily" become a sex worker is viewed with great scepticism.

¹⁵ Note that despite this prostitution, even if unregulated at the national level, is not illegal in Spain, although third-party control is.

... although [to become a prostitute] is a free decision, we observe that in reality they have been pushed by the economic difficulties in their countries of origin. Detailing the socio-economic and cultural conditions to which this report refers the majority are people from regions which are economically disfavoured and have family obligations, who see in prostitution a way to subsist (Guardia Civil, 2009, p. 18).

In a classic trafficking mythology tradition,¹⁶ a combination of insufficient economic means (not-emancipated), family obligations (not-modern) and cultural factors (not-western) is interpreted as lack of agency. Sex work is seen not as a strategy of socio-economic mobility, but as a survival mechanism, despite the fact that research shows that trafficking and survival sex are not necessarily closely linked (Saunders, 2005, p. 253).

It is thus very clear that in Spain the archetype of the trafficking victim is cantered around women from developing countries that have been commercially sexually exploited although there is no hard evidence to support this assertion. Brazilian women, who are frequently associated with sex work in Spain (Badet Souza, 2010), as well as women from other parts of Latin America, who are particularly prominent in the Spanish sex industry, seem to fit this mould perfectly.

Fitting the archetype, however, rarely seems to gain these women anything more than frustrated journeys or expulsion orders. Sex workers and NGOs have repeatedly affirmed that the “inspections” undertaken by the police to identify trafficking victims and minors engaged in sex work are in fact raids in which irregular migrants are identified and deported. Multiple newspaper reports seem to confirm this, as they often state in the same paragraph that a number of “trafficking victims” have been “rescued” during a police operation and that they will all be expelled from the country without delay due to their irregular situation.¹⁷ The anti-immigration stance becomes even clearer in airports, where border officers seem to adopt an even broader approach and target Brazilians with a vengeance.¹⁸ Brazilian women report that cases of verbal, physical and sexual violence enacted by both border and police officers are not uncommon (Secretaria Nacional de Justiça, 2006; Piscitelli, 2011, p. 18).

Portugal

¹⁶ In Spain the strength of the “white slavery” mythology goes beyond official policies. The term “*trata de blancas*” (trafficking of white women) is still – despite its now widely recognised racist implications – often used as a synonym for trafficking for sexual exploitation (see for instance Fiscalía General del Estado, 2006, p. 445).

¹⁷ See for instance several news reports written by Anelise Infante for BBC Brazil (<http://www.bbc.co.uk/portuguese/>).

¹⁸ In the past decade minor diplomatic conflicts between Spain and Brazil have become recurrent as Spain has increasingly tightened its borders. The effect against Brazilians has been felt in such a way that the Brazilian government has retaliated on a number of occasions by refusing to admit selected Spanish citizens, as per the website of the Brazilian Ministry of Foreign Relations (<http://itamaraty.gov.br/>).

The current Portuguese trafficking legislation does not, unlike the Spanish one, contain a “usefulness” requirement. This means that all those who have been trafficked to Portugal are eligible to receive aid and a temporary residence permit, even if they choose not to cooperate with the investigation against their traffickers. However, we can still find traces of the “worthy” and “unworthy” division that permeates the trafficking mythology when it comes to the more permanent residency arrangements. To be eligible, victims must cut all contact with their traffickers and show that their personal circumstances (their health, safety or, significantly, their high level of vulnerability) makes a permission to stay in the country essential to their survival and well-being.

In the Portuguese national trafficking plans there is a clear link between increased vulnerability and women and children, as per the UN Trafficking Protocol’s¹⁹ example. The first two plans stated that precarious economic circumstances are closely associated with the possibility of exploitation, yet other factors present in the Brazilian victim archetype (such as race) were not mentioned. The First Plan (2007-2010) cited “more vulnerable social groups” which could be “potential targets” for recruitment into trafficking (Presidência do Conselho de Ministros, 2007, p. 3943), but did not clarify which groups were these.

The official reports of the Portuguese Observatory on Human Trafficking limit themselves to relaying cut and dry facts, without trying to create vulnerability narratives in which to contextualize them. They do, however, cross examine some statistics: age/sex, sex/nationality, type of exploitation/nationality/sex. Note that information which is considered essential in the Brazilian trafficking archetype (race, education, economic circumstances) does not appear to be relevant in this data collection.

Despite the widespread perception in both police forces and NGOs that Brazilian sex workers, who are predominant in the Portuguese sex industry, are the group most vulnerable to trafficking (de Sousa Santos, Gomes, Duarte & Ioannis Baganha, 2007), this does not seem to correspond to the facts assessed by the Trafficking Observatory. Since 2010 most confirmed victims of trafficking have been men who had had their labour exploited. This offers a contrast to the fact that most potential cases flagged from 2009 to 2011 were of Brazilian women who were considered to be potential victims of sexual exploitation (Observatório do Tráfico de Seres Humanos, 2010, 2011, 2012 and 2013). Thus, while the first impulse seems to have been to focus on supposedly sexually exploited women from developing countries, men working outside the sex industry appear to be in practice the group most vulnerable to trafficking.

Even though they are not necessarily the segment most susceptible to trafficking, the Guarulhos airport studies (Secretaria Nacional de Justiça, 2006; Secretaria Nacional de Justiça & ILO, 2007) showed that in 2005 and 2006 Portugal was one of the countries

¹⁹ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime (2000).*

which most often denied entry to Brazilian women. As previously noted, most of the women, interestingly enough, fit the Brazilian victim archetype perfectly, offering a contrast to the fact that those being “returned” (i.e. deported), some of which were involved in the sex industry, usually did not fit this mould so neatly.

Perhaps even more significantly, multiple reports from non-admitted women recorded in the studies claim that Portuguese border officers made it very clear that they associated Brazilian women with prostitution and that they were humiliated and mistreated so that they would “confess” their “true purpose” in coming to Portugal. The concern of the officers here was clearly not that the women were being potentially trafficked, but that they would become irregular migrants working in the sex industry.

Although the concept of vulnerability is not very present in official reports, it does not mean it is completely absent from the Portuguese trafficking narrative. One of the most thorough government-backed studies about trafficking for sexual exploitation in Portugal (de Sousa Santos, Gomes, Duarte & Ioannis Baganha, 2007) makes a very clear connection between increased vulnerability to trafficking in the face of poverty and social inequalities. The study goes even further by also mentioning cultural aspects, particularly “the weakening of social and cultural values and the disintegration of family structures” and the existence of “patriarchal cultures which are permissive to violence against women” (p. 317).²⁰

The same Portuguese study contains a variety of statements from law enforcement officers, magistrates and NGO staff members about trafficking victims. A cursory analysis shows that while most of them consider that the majority of women involved in the Portuguese sex industry are independent workers who made a rational choice to migrate based solely on financial motives, there is still a perception that are cases of ingénues trafficked into miserable conditions who have been completely deceived about the nature of the job, even if evidence to support this seems scant. The use of the “poverty as force” rhetoric seems to also be present in the perception of many of these individuals, particularly when associated with Brazilian women.

Conclusion

Since the emergence of human trafficking as an issue in the global scene, the victim archetype has been used by many actors (states trying to control migration and sex work, organisations who benefit from participating in the rescue industry,²¹ anti-prostitution activists) to defend their own interests rather than those of the alleged

²⁰ This seems to play very much into the contemporary trafficking mythology which classifies non-western countries as places which are less evolved and where women are routinely subjected to exploitation and violence. This, of course, neatly ignores the fact that gender inequality and violence against women also exist in western countries. According to the Council of Europe (2002), for instance, one in four European women will be victimised by domestic violence in their lifetime, compared to one in five women in Brazil (Núcleo de Opinião Pública da FPA, 2010).

²¹ See Agustín, 2007.

victims. It is beneficial for these actors to continue to perpetuate the modern trafficking mythology rather than conduct well-sound methodological research on the subject which could disprove many of the premises their policies and actions are based upon.

The perpetuation of the trafficking mythology is particularly detrimental for migrants who fit the victim archetype, especially if they are involved with sex work. Some are considered to be guilty parties and are promptly given expulsion orders; their victimisation (which is not necessarily tied with trafficking) is seen as an expected comeuppance for their transgressions in the realms of sexuality and migration and thus dismissed. Others are labelled as victims and stripped of their agency and decision-making capacity and often returned to their countries of origin against their will “for their own good.” In both cases, the issues which affect migrant sex workers – be they related to the unregulated nature of the sex industry or to the problems faced by all (irregular) migrants – are never addressed, perpetuating the problems they face.

In the case of Brazil it has not been different. The Brazilian trafficking victim archetype, which was constructed with little basis in fact, has often been used as a justification to create barriers to the migration of “non-suitable” individuals. Moreover, the creation of anti-trafficking actions has become tied to an increase in anti-vice campaigns inside the country which negatively affect sex workers, but do little to respond to the trafficking phenomenon (Amar, 2009).²²

Although the way the country addresses trafficking has been slowly distancing itself from the trappings of the classic approaches to the issue, in practice the actions of its Federal Police and judicial system, as well as the opinion of its lawmakers, are still heavily influenced by the trafficking mythology. The rhetoric of a victim-centred, human rights conscious approach to deal with human trafficking, although widespread, has little basis in reality.

In Brazil the fight against trafficking has become a symbolic fight for justice and human rights which was kick-started not by internal concerns, but after the issue was brought into the limelight by international organisations (Sprandel & Mansur Dias, 2010, p. 163). The time and money which are spent in anti-trafficking activities is justified by the repeated assertion that there exists an invisible, yet extremely large number of Brazilian trafficking victims. In 2010, for instance, the Brazilian National Justice Secretariat claimed that on average 60,000 Brazilians were victims of transnational trafficking each year (Platonow, 2010).

Recent statistics from the Brazilian Ministry of Foreign Relations (Ministério da Justiça, Secretaria Nacional de Justiça & UNODC, 2013), however, told a very different story: during the 2005-2011 period there were on average less than seventy Brazilian victims

²² According to sex workers’ rights activist Gabriela Leite, conditions for prostitutes in Brazil got worse during the Lula government (2003-2010) and further deteriorated throughout the Dilma Rousseff presidency (2011–) (Moribe, 2013), periods in which anti-trafficking activities flourished.

of transnational trafficking identified per year. Despite these official figures, there is a continuous insistence by policy makers and civil servants that trafficking is a major problem in Brazil. Many other more statistically significant issues, such as the country's horrifyingly high rates of sexual violence, are much less empathically debated. Data from 2010, for instance, shows that 41,680 cases of rape were recorded in that year, a rate of approximately 21.85 cases per 100,000 inhabitants (Fórum Brasileiro de Segurança Pública, 2012, p. 234), a fact which made few headlines and did not generate widespread moral outrage. In the same year, a record-high number of 218 Brazilian victims of transnational trafficking were detected (88 of which were victims of sexual exploitation), at a rate of approximately 0.11 cases per 100,000 inhabitants. This was considered a national crisis.

The difference can be explained by the fact that there is considerable international pressure on Brazil to "clean up" its alleged bad trafficking record.²³ Yet once more this pressure is not motivated by an international wave of concern about possible human rights violations, but exists much more because focusing on "the tragedy of human trafficking" has become an acceptable way for developed countries to curb and control undesirable migration flows. The alleged protection of those being trafficked justifies the tightening of borders, the creation of "(risk) profiles," the unleashing of punitive actions against origin countries and the existence of raids aimed at discovering "victims," but which in practice detect and expel irregular migrants, particularly sex workers.

This can certainly be felt in Europe. In Spain in particular and in Portugal to a lesser degree, the Brazilian victim archetype has been adopted by state institutions and representatives. Such is the case with border officers present at airports, who often turn away those who do not fit their expectations of what a legitimate migrant looks like, even when they fulfil all the financial and documental requirements to enter the EU. This is done despite the fact that identified victims of trafficking in both countries very often do not correspond to the official victim profile.

Rather than be primarily concerned with the rights of trafficking victims, both Spain and Portugal use the "victim protection" rhetoric as a way to legitimise two specific types of actions. Externally, the focus is on aggressive forms of border control,²⁴ despite the fact that more restrictive migration barriers have been recognised by many (including members of Brazil's National Immigration Council), as making migratory processes even riskier and thus more attractive to smugglers and traffickers (Procuradoria da República no Estado do Rio de Janeiro, 2013). Internally, the alleged desire to "liberate" victims of trafficking has led to a perennial cycle of "inspections"

²³ There is also, in the perception of Gabriela Leite, a considerable amount of financial resources at stake for both the government and NGOs who support the existing trafficking narrative (Piscitelli & Sprandel, 2011).

²⁴ Jorge Fernández Díaz (2013), Spain's Minister of Interior, has recognised that the intensification of border controls is one of the main strategies being used by that state in its fight against human trafficking.

whose main aim is in fact to punish those involved in prostitution and, most importantly, detect and get rid of irregular migrants.

Thus, while the trafficking victim archetype has proved to be inaccurate and based upon sexist, racist and classist assumptions of “vulnerability,” as long as its use continues to enable countries to fulfil a number of their political objectives without significant backlash, it is unlikely that it will soon fall into disuse.

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CHAPTER SEVEN

A criminological reading of the concept of vulnerability: A case study of Brazilian trafficking victims

Abstract

The United Nations Trafficking Protocol establishes the ‘abuse of a position of vulnerability’ as one of the means used to traffic persons. This term, however, was not properly defined, leaving it open for multiple interpretations, many of which do not focus on the well-being of the supposedly vulnerable victims. Through a case study of how (potential) Brazilian victims of trafficking are dealt with in Brazil and (to a lesser extent) outside the country, this article focuses on how ‘vulnerability’ is often interpreted as a synonym of strain which leads to deviant behavior. In this way, the concept is co-opted to enable the punishment or restraint of certain people (particularly women from developing countries) who are considered to be unsuitable to migrate.

Keywords

Brazil, human trafficking, strain theory, abuse of a position of vulnerability

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A criminological reading of the concept of vulnerability: A case study of Brazilian trafficking victims

Introduction

The 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (hereafter the UN Trafficking Protocol) is widely regarded as the contemporary international standard to deal with human trafficking. It defined the crime as

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

Despite the efforts of several parties during its drafting process, some of the Protocol's key concepts remained either badly or non-defined. The most discussed case is that of the concepts of 'exploitation of the prostitution of others' and 'sexual exploitation,' which were deliberately left undefined so as to leave the ultimate decision on whether prostitution was to be considered inherently exploitative to individual states (Jordan, 2002: 8-9). Whatever the initial purpose might have been, this broad understanding of sexual exploitation has meant that some countries have used the UN Protocol, like other trafficking instruments before it, to curtail all forms of migrant prostitution and, to a lesser but not insignificant extent, to deter female migration (Doezema, 2005).

The concept of abuse of a position of vulnerability was also inadequately addressed. Per the *travaux préparatoires* of the UN Trafficking Protocol, a person that is in a 'position of vulnerability' 'has no real and acceptable [legal or cultural] alternative but to submit to the abuse involved' (Jordan, 2002: 7-8). This explanation does not clarify, however, what 'position of vulnerability' means in practice. It fails to consider, for instance, whether the 'acceptability' of the alternative is measured by (undefined and unknown) external parameters or if it is shaped by the understanding of each potential victim (UNODC, 2013: 6). In consequence, abuse of a position of vulnerability has arguably become the most controversial of the means outlined in the Protocol and the one which can most easily be misused.

This article intends to showcase how the concept of 'abuse of a position of vulnerability' can be and has been misappropriated in the context of human trafficking, particularly in the case of trafficking for sexual exploitation. It will do so in two ways.

First, it will delineate, based upon relevant literature already written on the subject, how and why the concept was constructed, focusing particularly on its problematic aspects. In addition to that, it will also explore how the concept can be co-opted to constrain the migration of certain types of people – particularly women who are seen as (potential) sex workers – by treating vulnerability as a form of strain towards deviant behaviour.

In its second part, the article will exemplify the appropriation of the concept of ‘abuse of a position of vulnerability’ through a case study showcasing how Brazilian migrants who are characterized as vulnerable to trafficking are treated in Brazil and (to a lesser extent) outside the country. This case study was compiled through an extensive analysis of relevant documents and archival records produced, sponsored or validated by the government of Brazil and other relevant entities, as well as an examination of official discourses of representatives of the legislative, judicial and law enforcement sectors and of records of state-sponsored activities which have been made available primarily through the official websites of each institution.

The construction of a concept of ‘abuse of a position of vulnerability’

The concept of ‘abuse of a position of vulnerability’ has no established definition in international law, although the term ‘vulnerability’ has long been debated in academic circles and has been particular in vogue in discussions about social policy since the 1990s (United Nations, 2003: 8-9). The concept appears to have been included at the very end of the UN Trafficking Protocol’s drafting process primarily to guarantee that a very broad range of means would be outlined, ensuring that subtler forms of violence and control would also be taken into account (UNODC, 2013: 2-3). Unlike the debate surrounding the inclusion of the also undefined concept of ‘sexual exploitation,’ which was extensively documented (Doezema, 2005), a more comprehensive discussion about the inclusion of ‘abuse of a position of vulnerability’ seems to be lacking.

The wording of the concept indicates that the mere existence of a position of vulnerability is not sufficient to establish the means of a trafficking case. This vulnerability, be it an intrinsic factor (such as age or gender) or a situational condition (such as irregular migration status), must be shown to have been abused. That is to say, the vulnerability must have been exploited in such a way as to have vitiated the consent of the alleged victim, creating a situation which could not have taken place had it been a non-vulnerable person involved (UNODC, 2013: 78). In practice, however, vulnerability is most often not viewed as one of the means used to traffic people, but simply as a greater susceptibility to being recruited. The focus frequently seems to be on establishing the *existence* of a position of vulnerability, rather than whether this position was *exploited* during the trafficking process (UNODC, 2013: 4-5).

In some jurisdictions, the mere knowledge by the alleged traffickers about the vulnerability of the supposed victim is enough to prove the (intention to) abuse (it) (UNODC, 2013: 81). This is highly problematic when we consider that some

interpretations include rather broad categories (such as gender) as signs of vulnerability. Moreover, the interpretative note of the UN Trafficking Protocol leaves open the possibility that alleged traffickers may be condemned even if they did not know about the supposed vulnerability or did not abuse or intend to abuse it (UNODC, 2013: 87). Thus, the broad reading of the concept may mean the classification of certain cases as trafficking when they might have been better represented in other categories (UNODC, 2013: 6), such as human smuggling or migrant sex work.

This last issue is particularly problematic when we consider that although there are no extensive records to support the assertion, there are some indications that the concept of ‘abuse of a position of vulnerability’ might have been included in the Protocol as one of the ways to ensure a consensus about how the Protocol should address prostitution (UNODC, 2013: 3). Combining this with the fact that the Protocol focuses ‘especially on women and children,’ which are seen as intrinsically more vulnerable to trafficking, it is thus hardly surprising that most of the discussion around the concept of vulnerability seems to centre on trafficking for sexual exploitation, which is overwhelmingly associated with women and girls. The result of this is that women’s migratory experiences which are linked to sex work often end up being labelled as trafficking regardless of (lack of) evidence of force, deceit or coercion, while men’s irregular migration experiences are labelled as smuggling, even if subsequent (labour) exploitation is detected (Agustín, 2007).

The misuse of the concept of vulnerability in the context of human trafficking

At first sight, it seems hard to argue against the necessity of a concept such as ‘abuse of a position of vulnerability’ in the construction of a definition of human trafficking. Well-established human rights issues such as sexism, racism and xenophobia seem to leave no doubt that systematic oppression and societal power imbalances have caused certain categories of people to be put into a position of inferiority that has concrete negative consequences to their income, safety and overall quality of life. ‘Vulnerability’ could thus be a concept that showcases that certain people are more susceptible to being negatively affected by the structural problems the system possesses and thus have greater constraints on their opportunities, including those linked with migration.

As established in the Brasília Regulations Regarding Access to Justice for Vulnerable People (Ibero-American Judicial Summit Work Group, 2008),

[t]he following may constitute causes of vulnerability: age, disability, belonging to indigenous communities or minorities, victimisation, migration and internal displacement, poverty, gender and deprivation of liberty.

The specific definition of vulnerable people in each country will depend on their specific characteristics, and even on their level of social or economic development.

This understanding, however, is often taken too far. In his book *Regions of Risk*, Kenneth Hewitt (1997: 169) cautions that ‘vulnerability can treat human individuals, the public or communities simply as pathetic and weak.’ Indeed, a number of politicians and government officials have endorsed the idea that vulnerable people are simply ‘suffering the just results of their own individual failures and inadequacies’ (Fineman, 2008: 18), rather than acknowledging that their ‘problems derive largely from the social context rather than their inherent qualities’ (Hewitt, 1997: 169).

This logic is reproduced in a migratory context. Some types of people (women, minors, minorities) are frequently viewed as unable to migrate safely simply because they are disproportionally affected by certain issues, such as economic and social deprivation. In the context of the UN Trafficking Protocol, this presumption of the intrinsic vulnerability of certain categories of people presupposes that they do not have the ability to externalise consent to certain forms of migration (UNODC, 2013: 14, 78). Their ‘vulnerability’ to trafficking is almost presented as an individual character flaw, rather than a structural problem.

This understanding bears striking parallels to the abolitionist rhetoric in the debate about sex work. Institutions and individuals that want to eliminate prostitution have often adopted the position that while women from developed countries may, to the detriment of the position of all women, choose to sell sex, women from developing states cannot ever truly consent to sex work as they have ‘no real alternatives’ (Doezema, 2005). To them, women from developing countries who migrate to work in the sex industry are seen as victims of ‘structural trafficking’ (Solana Ruiz, 2011: 921), which means that although they might claim not to have been coerced into prostitution, they have in fact been forced into it due to their precarious socioeconomic circumstances. This ‘poverty as force’ rhetoric is highly problematic, as it posits agency as a privilege conferred by sufficient economic means.

By adopting the position that the abuse of a broad interpretation of ‘vulnerability’ is in itself one of the means used by traffickers, many situations involving migrants who are ‘vulnerable’ may end up being characterized as trafficking when they would not have been if other types of migrants had been involved. Conversely, people who are not seen as ‘vulnerable’ are often considered ‘immune’ to trafficking (UNODC, 2013: 15). Throughout the years, this has been reflected in the gendered dimension that is attributed to the crime. Positioning women as intrinsically vulnerable to trafficking has meant that the experiences of trafficked men have been marginalized and silenced. Moreover, as women were from the outset heavily associated with trafficking for sexual exploitation, other forms of exploitation in the context of trafficking have been largely ignored (Agustín, 2007). This becomes clear when we consider that despite the

definition that is included in the UN Protocol, several states (including Brazil)¹ still fail to recognise any form of trafficking besides that for the purpose of sexual exploitation (UN.GIFT, 2009: 8).

Another serious problem is the fact that from the inception of the ‘white slavery’ moral panic onwards, the alleged vulnerability of certain types of people has led to the imposition of restrictions ‘for their own safety.’ A number of the trafficking solutions proposed under the aegis of the League of Nations in the beginning of the 20th century focused, for instance, on curtailing the independent movement of women and included prohibiting them from travelling alone and creating special passport requirements for them (Saunders, 2005: 346). In Brazil, members of the Federal Police have been known to bemoan the fact that the advent of democracy in the 1980s has meant that they can no longer control which types of people are allowed to receive a passport (Blanchette and Da Silva, 2010: 345).

The concept of vulnerability to trafficking as a de facto form of strain

American sociologist Robert Merton gained much of his reputation in the field of criminology by studying what he referred to as ‘strain towards anomie.’ In his understanding, individuals who do not have legitimate means (such as education and occupational opportunities) to achieve social goals which they have internalised as important will become frustrated over their situation of ‘relative deprivation,’ causing a certain strain. Responses to such a strain included what Merton referred to as ‘innovation,’ whereupon people who lack opportunities to achieve success through conventional means seek unconventional (and often illegal) ways in which to do so (O’Connor, 2007). Merton’s strain theory thus posited that most crime was caused by ‘the dissonance between socially desirable ends and limited means’ (Newburn, 2007: 179).²

Since the 1980s, criminologist Robert Agnew has been developing a general strain theory of crime and delinquency that takes into account three major types of deviance-producing strain. The first is the failure to achieve positively valued goals. The strain can thus be a response to the difference experienced between aspirations and expectations, expectations and achievements and between what is considered to be a fair outcome and the actual outcome which takes place. The second is the removal of positively valued stimuli, as it happens, for instance, when there is a death in the family. The final type is the confrontation with negative stimuli, which may vary from peer pressure to child abuse (Akers and Sellers, 2004: 179).

¹ Article 231 of the Brazilian Penal Code defines transnational trafficking as the promotion or facilitation of the entry into national territory of someone who will engage in ‘prostitution or other form of sexual exploitation’ or of the exit of someone who will engage in it abroad.

² Of course, ‘innovation’ was but one form of response to strain. Not all people who are under strain will or are able to turn to crime. Richard Cloward and Lloyd Ohlin further refined strain theory by, among other things, clarifying that a lack of legitimate opportunities does not automatically translate into access to all forms of illegitimate opportunities (Akers and Sellers, 2004: 167).

Agnew's broader understanding of strain seems to solve one of the major criticisms levied against earlier forms of the theory: the idea that more economically deprived groups are inherently more criminal (Akers and Sellers, 2004: 170-171). In the assessment of general strain theory, various forms of strain can be experienced by individuals of every gender, class and race, who may all respond by turning towards deviant behavior (Akers and Sellers, 2004: 180).

Nonetheless, Agnew posited that those who experienced chronic (repeated) strain had their ability to emotionally and legally cope with what is happening to them eroded and thus may have had a greater predisposition for crime (Newburn, 2007: 182). This idea of chronic strain resulting from a combination of deprivation and negative stimuli parallels very neatly the general understanding of vulnerability in the context of human trafficking.

Child abuse and neglect, marital problems, low income and jobs in the informal sector are all acknowledged by general strain theory as forms of strain which are conducive to crime (Newburn, 2007: 182). At the same time the loss of family and community support networks, the lack of economic and educational opportunities and a history of family violence are also widely regarded as vulnerability factors which may lead to human trafficking (Leal and Leal, 2002: 41; United States Department of State, 2005: 13).

This parallel between vulnerability and strain is very relevant. In theory, the concept of 'abuse of a position of vulnerability' was included in the UN Trafficking Protocol to serve as an instrument of protection of certain categories of people who are in a position of such deprivation or weakness that they are unable to properly consent to a migratory project. In practice, however, the concept has frequently not been employed to the benefit of those it allegedly protects.

Legal jurist Martha Fineman (2010: 266) considers that the concept of vulnerability can '[force] us to examine hidden assumptions and biases folded into legal, social, and cultural practices.' She warns, however, that the concept can also be used to stigmatize certain 'disadvantaged populations' due to its recurrent association with the idea of deprivation, dependency and pathology, characteristics which are also associated with predisposition for antisocial (and criminal) behaviour (Fineman 2008, 2010). Following this pattern, the category of 'position of vulnerability' often seems to group characteristics (gender, socioeconomic status) which are seen by certain governments as potential red-flags to what they consider to be unsuitable behaviours which need to be discouraged. More specifically, in the context of trafficking vulnerability (strain) may lead to irregular migration and even migrant sex work (deviant behaviour).³ In this way,

³ Although irregular migration is more often considered an administrative infraction rather than a criminal offense, there is considerable stigma attached to the behaviour. 'Illegal' migrants are deprived of fundamental rights and often blamed for the economic and security problems of their host states (United

rather than being seen as ‘at risk,’ these vulnerable people are often considered by states to be ‘a risk’ (Oliveira, 2012).

This is very much the case, for instance, when it comes to migrant women from developing countries, whose employment opportunities are constrained by both the nature of the work most often offered to them (servile, informal, badly paid) and a combination of sexism, racism and xenophobia (Campani, 2000). Discouraging their migration projects does not, in fact, protect them. Rather, by giving these women less opportunities to participate in officially-sanctioned migration programs (by denying visas to single women, for instance, or relegating them to a non-working and dependent position in family reunification programs) states have made them turn more and more frequently to dubious support networks to aid their migration projects, exposing them to possible situations of abuse. Thus, a vicious circle is created: few migration opportunities lead female migrants to choose risky options, which in turn may lead them to situations of abuse, exploitation and even loss of life. To deter such situations, more restrictions on migration are imposed, re-starting the cycle.

One such form of deterrence is the dissemination of descriptive ‘profiles’ which are used (often by law enforcement and border control officers) to identify potential trafficking victims, particularly before they enter a foreign country. The rhetoric used to justify the use of such profiles at the borders is steeped in the emotionally charged language of human rights and victim protection: by identifying potential trafficking victims before they reach their destination, one can stop the abuses they would have suffered otherwise (Frontex, 2011: 21). Yet in practice such anti-trafficking instruments and policies seem to be used more as (sexist and xenophobic) instruments of control and persecution, as well as punishment and retaliation than of protection. This becomes clear, for instance when we analyse cases involving (potential) Brazilian trafficking victims.

Vulnerability as strain: the case of (potential) Brazilian trafficking victims

The concept of vulnerability is widespread in the discussions about human trafficking in Brazil despite there being no nationally established definition for the term (Câmara dos Deputados, 2014: 186). Notwithstanding the lack of a legal definition, individual interpretations of ‘position of vulnerability’ in the context of human trafficking tend to overlap significantly. Most seem to share an understanding that those who fit the ‘vulnerable’ profile are incapable of assessing what is best for them.

A recent publication of the Brazilian health system dealing with gender violence and trafficking reflects this perfectly. It embraced an understanding in which vulnerable people are seen as ‘relatively or absolutely incapable of protecting their own interests.

Nations, 2003). In the same vein the interpretation of (migrant) sex work as deviant does not necessarily correspond to a prohibitionist system, as in many (if not most) states where sex work is not, in itself, illegal, prostitution is still considered immoral and, at best, a necessary evil.

In a more formal way, *vulnerable people have insufficient power, intelligence, education, resources and strength* to purposefully react to the possibility of exposure to violence, which in this case is trafficking' (Lima Araújo, 2013: 18, emphasis added).

This interpretation has two powerful consequences. The first is the implicit understanding that since these vulnerable people cannot protect their own interests, someone else should do so for them. This role usually falls to the state and in this way the constraint of the agency of certain groups of people is justified 'for their own good.'

This imposition of the role of the state as protector faces certain opposition on the part of the victims themselves. Federal Prosecutor Daniel de Resende Salgado considers that Brazilian trafficking victims often do not place the entirety of the blame for their victimisation on their traffickers, but also shift it to the state. These victims are particularly critical of the fact that the government ignores their financial, cultural, social and family problems while they take place in its territory and only concerns itself when the potential victims leave Brazil, as their problems might then reflect badly on their home country (Procuradoria Regional da República da 3ª Região/SP, 2014).

The second is the implication that vulnerability is an intrinsic (negative) characteristic of certain people. By focusing on the vulnerability of individual people, one risks ignoring the larger structural issues that surround them and have made them vulnerable in the first place (Philo, 2005: 443). In this way, neo-liberal governments will often ignore the fact that vulnerability has structural causes and simply expect vulnerable people to 'restrain' themselves (Munro and Scoular, 2012: 189) from participating in activities considered as unsuitable (such as irregular migration and sex work), even though such activities lead to some of the few paths of socioeconomic mobility open to them.

Despite these issues, a survey conducted by the United Nations Office on Drugs and Crime (UNODC, 2013: 52) found that officials who dealt with the issue of human trafficking in Brazil believed that vulnerability was present in *all* trafficking cases. A significant problem with this assessment is the fact that, in practice, the *abuse* of a position of vulnerability is presupposed in all cases where a person is considered to be in such a position. By characterizing certain categories of people as intrinsically vulnerable to trafficking, they are thus considered as unable to consent to certain forms of migration. Their voices and opinions are often ignored and they are patronizingly characterized as incapable of understanding their 'true' situation. In Brazil, this appears to a recurrent theme in judicial sentences about trafficking, as the testimonies of those considered to be 'vulnerable' that do not fit the mainstream narrative are completely ignored (Carone Mayrink Ferreira, 2009). Notably, (female) migrant sex workers who affirm they knew what they would be doing and under what conditions and/or that they did not feel they were being exploited are considered to be either too afraid of their 'traffickers' to tell the truth or simply too 'uneducated' to understand their real situation (Blanchette and Da Silva, 2011; Senado Federal, 2006)

In the words of the members of the Brazilian Senate's Parliamentary Commission on Human Trafficking, when referring to their draft of a new trafficking legislation:

... we have opted to consider consent irrelevant, since the perception of the members of the commission is that the *victims, as a rule, find themselves in a vulnerable situation, without conditions to externalise their consent* in a truly free manner. This understanding coincides with the one adopted by the National Plan Against Human Trafficking (Senado Federal, 2012: 202, emphasis added).

This understanding of vulnerability established by the socioeconomic elite in charge of developing trafficking policies (Blanchette, 2009: 28) is rather broad. In the Second National Plan Against Trafficking (Secretaria Nacional de Justiça, 2013), for instance, the list of supposedly vulnerable groups (which are assumed to have a connection with human trafficking) is quite extensive: people from certain (underdeveloped) geographic regions, indigenous and afro-descendant persons, non-cisgender and non-heterosexual people, women, children and adolescents, as well as sex workers. In this understanding, only middle or upper-class, cisgender and heterosexual adult white men appear to be 'invulnerable' to human trafficking and thus able to migrate as they choose.

The Brazilian Observatory of Human Trafficking, a collective of non-governmental organisations (NGOs), criticised this widespread reading of vulnerability, adopting a position similar to Fineman's (2008: 8), who considers vulnerability a 'universal, inevitable, enduring aspect of the human condition.' In this way, the Observatory declared to the Senate's Trafficking Commission that:

... if vulnerability can be related to gender, class, race and economic situation, then it ends up potentially reaching every person or most of them; thus, *we are all in some way or another vulnerable to trafficking (not only poor people, blacks and women)*. Moreover, trafficking may be associated with dreams and desires, a situation common to all people, which widens vulnerability once more (Senado Federal, 2012: 36, emphasis added).

This criticism is particularly pointed when we consider that although the Second Trafficking Plan's established understanding of vulnerability is rather broad, in practice government officials and institutions tend to focus on one particular group of people when it comes to trafficking: young, non-white women with low levels of education and a low socioeconomic status.⁴ These women are usually seen as having suffered the removal of the few positive aspects of their lives (frequently romantic relationships), while being faced with a barrage of negative stimuli, such as childhood abuse and

⁴ See for instances mentions by the Ministry of Justice (Ministério da Justiça, 2011) and by representatives of the Federal Police (Lopes, 2010), Federal Public Ministry (Procuradoria Regional da República da 3ª Região/SP, 2014) and of the state government of Rio de Janeiro (Blanchette and Da Silva, 2010: 345).

violence in their communities. They are also often characterized as unable, due to a lack of institutional means, to achieve their goals (such as owning their own home) and thus being ‘pushed’ towards seeking a better life abroad. In this way, their narratives always seem to include multiple types of chronic strain which encompass all the range described by Agnew.

This ‘vulnerable’ group, which intersects several of the vulnerability markers present in the Second National Plan Against Trafficking, was brought to national attention through the ‘Study of Trafficking in Women, Children and Adolescents for Commercial Sexual Exploitation – National Report – Brazil,’ better known as PESTRAF. Throughout the years, PESTRAF’s understanding of vulnerability, which posits that the consent of people who fit its highlighted victim profile is always ‘induced’ (Leal and Leal, 2002: 26), seems to have permeated all official narratives about human trafficking in Brazil. Many scholars, however, have thoroughly criticized the findings of PESTRAF, including its profile of the ‘average’ Brazilian trafficking victim (Blanchette and da Silva, 2012). Blanchette (2009: 29), for instance, questions the assumption that this large group of young women is more vulnerable to trafficking than other subsets of people, an idea which in his understanding ‘is simply presumed [by PESTRAF] and not verified, much less explained.’

Considering the high level of stigma attached to prostitution in Brazil⁵ and the fact that the country’s legal understanding of human trafficking is limited to cases of sexual exploitation, it is not surprising that young women, particularly if they are perceived to be non-white and poor, end up being singled out as vulnerable and thus in need of protection. This ‘protection,’ however, seems to have less to do with ensuring that vulnerability (constrained choices) does not lead to trafficking (victimisation), than with making sure that vulnerability (strain) does not lead to irregular migration or migrant sex work (deviant behaviour).

This becomes clear, for instance, when examining the anti-trafficking campaigns available on the Brazilian Ministry of Justice’s website (Ministério da Justiça, 2014). Several of the campaigns were aimed solely at women and strongly discouraged them from migrating, claiming that (sexual) exploitation would be the only possible outcome of their journeys.

Since the use of such scare tactics was not enough to stop those under strain from committing what the government considered in practice to be deviant acts, more direct actions were called for and thus preventive anti-trafficking ‘inspections’ have been incorporated by the Federal Police (2014, pers comm.) into their daily procedures in all border crossing points. During these ‘inspections,’ officers prevent ‘human trafficking’

⁵ Although Brazil adopts an abolitionist position where prostitution itself is not illegal, sex work is, by and large, considered to be immoral, deviant and ‘not real work.’ Negative public perception is coupled with a long history of state-sanctioned violence against sex workers, including physical and sexual violence perpetrated by the police (Ruvolo, 2012).

(which in the understanding of Brazilian law is any form of aided migrant sex work) by observing (female) passengers leaving the country and trying to stop the migration project of those they have visually assessed as being ‘vulnerable.’ While some interventions consist simply of officers questioning these migrants, others result in their temporary detention for more in-depth interrogation, a process which in some cases seems to be timed to ensure the women will miss their flights (Blanchette, 2012). Unsurprisingly, these operations have disproportionately targeted young, non-white women who do not possess clear indicators of belonging to the upper-middle class (Piscitelli and Sprandel, 2011).

Although the Federal Police does not appear to keep any records on the number of women it has detained and interrogated (and often stopped from boarding) or, even more importantly, how many genuine trafficking cases it has prevented in this way, it considers these ‘inspections’ as a necessary and effective tool in the fight against transnational human trafficking (Blanchette, 2012: 18).

The Federal Police (2014, pers comm.) bases such actions on article 240§2 of the Criminal Procedure Code, which covers personal searches that may be carried out to arrest criminals or apprehend relevant materials, which include false or counterfeit goods and objects that serve as evidence to a crime. In this understanding, the way in which these preventive actions are undertaken is somewhat peculiar.

While it is certainly possible that trafficking victims may be carrying false documents, that is easily determined and should not impede their journey if it proves not to be the case.⁶ The possibility of finding victims themselves, while allowed for in house searches, is explicitly excluded in personal searches. The scenario of a person being searched and/or detained to ascertain whether they are in fact the victim of a crime is thus, at best, questionable.

In this way, only two possibilities to justify these inspections remain. Either the alleged trafficking victims are (temporarily) detained because they are seen as a piece of evidence to be used in the case against their supposed traffickers or because they are considered to be criminals themselves. While the latter interpretation is not supported by Brazilian legislation (as prostitution is not a crime) and thus cannot result in formal charges or a bona fide arrest, it can and has resulted in the temporary curtailment of several rights of the ‘deviant victims,’⁷ particularly the right to leave Brazilian territory.

⁶ These ‘inspections’ have been described several times throughout the years in a variety of different sources, including judicial sentences (Pires Oliveira, 2008), speeches by members of the prostitutes’ rights movement (Piscitelli and Sprandel, 2011), accounts of specialists on the subject (Blanchette, 2012), and hearings conducted by the Senate commission on trafficking (Senado Federal, 2012). In none of these cases was there a reference to an attempt or desire to identify counterfeit documents.

⁷ Migrant sex workers and trafficking victims are often treated and/or referred to as if they were criminals, even when they have violated no laws. In her research on Brazilian and Spanish media approaches to both categories, Marcon Venson (2009) found that the language used when referring to these women (‘confessed,’ were ‘detained’ or ‘arrested,’ are to be ‘deported,’) was loaded with heavy implication of guilt, even though they were often referred to as ‘victims.’

In this way, the Brazilian police reiterates its historical position of working against (potential) sex workers despite the non-criminal nature of their activities (Blanchette, 2012: 18).

Luciano Ferreira Dornelas (2012), a senior officer of the Brazilian Federal Police, considers this type of operation problematic, but not because it constrains the constitutional right of free movement of these ‘potential (female) victims’ or may result in their unwarranted detention. In his view, there is no gain in stopping alleged victims from leaving the country, as this will only affect the side of the trafficking network working in Brazil. It is much more profitable to contact the police in the destination country so that sufficient evidence can be gathered to coordinate a joint operation that will simultaneously dismantle the entire trafficking ring. The exception to this would be situations where there is a concrete danger to an inalienable possession of the victim, such as life. In such cases, unless the authorities in the destination country are ready to make a quick intervention to safeguard the alleged victim, she should, in his view, be barred from travelling for her own protection, regardless of her personal wishes

Of note is the fact that there is no mention whatsoever in the entire process of the opinion and agency of these alleged victims. In the procedure as outlined, it is unknown whether they are told there is reason to believe they are being trafficked or whether they know they might be used as bait and evidence for a transnational police operation. Despite considering that permitting women to leave the country to be exploited is a ‘great cruelty,’ Ferreira Dornelas’ (2012) concern seems to be divided between the ‘civil responsibility’ of the Brazilian state should one of these women die and capturing as many traffickers as possible, regardless of the impact on potential victims.

This side-lining of the protection of people from victimisation in face of other interests becomes even clearer when trafficking actions are presented, as they have often been, primarily as a way to ensure the ‘dignity and honour’ of Brazil, rather than as a way to protect Brazilian migrants. In this context, the international reputation of Brazil – which is considered by the government to be intrinsic to the country’s continued growth as a relevant political figure in the international scene (Amorim, 2010: 238) – is explicitly linked to its attitude towards sex work.⁸ Anti-trafficking actions, both at the borders and inside Brazil (Amar, 2009), thus serve as a way to combat prostitution in a country where the activity is not, in itself, illegal.⁹

⁸ This type of reasoning seems to be prevalent in judicial sentences about trafficking (see the analysis made by Carone Mayrink Ferreira, 2009) and has been brought up by staff of the Ministry of Justice (Blanchette, 2009: 27), in accounts of members of anti-trafficking groups (Blanchette and Da Silva, 2010: 353) and in speeches of politicians (Teixeira Laky de Sousa, 2012: 352).

⁹ Although anti-sex work policies have been in place for decades in Brazil, the preoccupation with eliminating or at least hiding the existence of prostitution seems to be particularly strong during times of greater international scrutiny. The 2014 FIFA World Cup and the 2016 Summer Olympics are the most recent examples (Ruvolo, 2012).

It is also important to acknowledge that countries such as Brazil, which have a reputation as sources of trafficking victims, also suffer significant external pressure from receiving states to curtail the migration of (potential) trafficking victims. The United States is perhaps the most notable case, as it classifies countries into 'tiers' depending on their attitude towards trafficking and threatens to withhold non-humanitarian aid to those that fail to fulfil its interpretation of an adequate response to the phenomenon. In this way, the US found a way to manipulate other states' attitude towards migration and sex work under the guise of protecting human rights (Chuang, 2007).

The European Union and its member states have also been known to utilise a trafficking framework in order to push a similar anti-migration, anti-sex work agenda. Frontex (2011: 7, 21) generates, for instance, a series of 'risk profiles' which are marketed as particularly relevant tools to identify potential victims of trafficking at the external borders of the EU and thus prevent exploitation. In practice, however, they may be used as a way to justify the denial of entry into the EU to people who have otherwise fulfilled all requirements because their physical appearance and/or limited interaction with border officers flagged potential signs of 'vulnerability.' Although the risk profiles are not made available to the public, it is not unreasonable to speculate about the existence of a Brazilian profile considering the country was ranked by Frontex (2011: 5, 7) as one of the top-three non-EU places of origin of trafficking victims detected in 2009.

At the national level, countries such as Spain and Portugal also seem to interpret the concept of 'vulnerability' as strain and use a trafficking framework to constrain both migration and sex work. Accounts from Brazilians who were denied entry to the Iberian Peninsula collected in the Guarulhos Airport Studies (Secretaria Nacional de Justiça, 2006; Secretaria Nacional de Justiça and ILO, 2007) show that in various cases entry was denied despite the fulfilment of all necessary requirements. The implied or outright suspicion that Brazilian women were migrant sex workers (and not, in fact, potential trafficking victims) seems to be a recurrent explanation for their forced returns and occasional mistreatment. In this context, it is thus not surprising that a memorandum regarding forced prostitution and trafficking produced by Spanish and Brazilian NGOs with the backing of the Spanish government affirms that the focus of anti-trafficking actions should not be on how to ensure the migration process of (vulnerable) Brazilians is safe, but on how to discourage these women from migrating altogether (APRAMP and CHAME, 2009: 3).

In Spain, the presumption of vulnerability, although not described in these terms, is very clear when addressing migrant sex workers, a significant percentage of whom are Brazilian. Regardless of their individual situations, they are all considered to be (potential) trafficking victims since it is assumed that they engage in prostitution 'without any administrative support, due to finding themselves in a *situation of necessity*' (Guardia Civil, 2009: 23, emphasis added). In this understanding, neither what constitutes a situation of 'necessity,' nor the fact that the lack of administrative

support is a failing of the Spanish government rather than of the migrants themselves are made clear.

The continuous assertion that migrant women from developing countries are burdened by problematic economic and cultural conditions which make them vulnerable (Guardia Civil, 2009: 18) is used by the government to justify the constant monitoring of all sex workers in Spain (Malgesini, 2006: 70). Yet this wide assessment of vulnerability is not accompanied, despite official rhetoric, by an equally wide protection instinct. A large percentage of the irregular migrants selling sex who are discovered in Spain are deported from the country without any serious assessment about potential exploitative situations they might have been subjected to. In practice, the 'deviant behaviour' they have taken part in seems to trump any consideration for their supposed vulnerability, unless they can prove to be valuable assets in the judicial cases against their traffickers. Even then, the 'benefits' they can expect are limited (Ación Gonzales and Checa y Olmos, 2011).

Although the situation in Portugal is not as dire, the understanding of vulnerability in the country follows some of the greatest failings present in Brazil. Per a 2007 study co-sponsored by, among others, the Portuguese government and the EU (De Sousa Santos, Gomes, Duarte and Ioannis Baganha, 2007), Portuguese institutions and their representatives seem to accept in large respects the Brazilian understanding of vulnerability which singles out (certain types of) women as the category of people most vulnerable to (sex) trafficking. This is supported by the fact that most cases flagged as potential situations of trafficking in Portugal from 2009 to 2012 tended to involve women (often Brazilians) in the sex industry (Observatório do Tráfico de Seres Humanos, 2014).

Interestingly enough, after recognising forms of trafficking besides sexual exploitation, most cases of trafficking *confirmed* in Portuguese territory in recent years have involved men having their labour exploited. This brings to mind a discussion in the 2009 Global Report on Trafficking in Persons (UN.GIFT, 2009: 6), which considers that the political focus on trafficking for sexual exploitation may lead statistics to be biased towards this form of trafficking. In the same way, focusing solely on members of groups particularly 'vulnerable' to trafficking may mean ignoring actual trafficking victims because they do not correspond to the idea of what a victim is supposed to be.

Like in Spain, those that fit this wide understanding of vulnerability are not necessarily treated as a group in need of support. Brazilian women, particularly those that are considered as the most vulnerable, are very heavily discriminated against because they are almost universally associated with sex work. This discrimination not only results in verbal and sexual harassment, but also curtails their access to jobs, housing and other services (Padilla, 2007).

Conclusion

The inclusion of the concept of ‘abuse of a position of vulnerability’ in the UN Trafficking Protocol has been justified by the understanding that certain conditions (be they intrinsic or situational) restrain a person’s choices in such a way that their acquiescence to migrate is seen as invalid, as they have no ‘real alternative’ but to accept the conditions they are given. Following this understanding, it would not be unreasonable to assume that vulnerable people would be more likely to be trafficked and would thus need special protection.

The problem is that this concept of ‘vulnerability’ has been deliberately interpreted to serve other ends. Rather than being used to describe why people may be coerced into being trafficked, it has often come to be equated to a conceptualisation of strain. In other words, the so-called ‘position of vulnerability’ represents societal constraints (gender, race, class) which make it difficult for people to obtain socially-approved goals through legitimate channels. Rather than give up on the desired success (material or otherwise), these ‘vulnerable’ (deprived) people may choose to act in socially unacceptable ways (migrate irregularly, join the sex industry abroad).¹⁰ Vulnerability is thus often treated in practice as a moral weakness which may lead to deviant behaviour.

Following this understanding, it is not surprising that many anti-trafficking policies, instruments and campaigns are focused not on aiding (potential) victims, either by securing their journeys or by providing economic or occupational opportunities in their home countries which would reduce strain, but on curtailing possible problematic behaviour, particularly if linked to migration and sex work.

The concept of vulnerability is thus reduced to a ‘check list’ used by law enforcement and migration officials to profile people, often from purely visual cues, frequently resulting in a constriction of rights or a justification for racist, sexist and xenophobic practices under a human rights umbrella. By considering that all ‘vulnerable’ people are potential criminals and punishing/restraining them accordingly before any deviant behaviour has been proved or even taken place, the legal principle of presumption of innocence is completely ignored.

The Brazilian case explored in this article showcases this contradiction perfectly. On paper, most anti-trafficking policies emphasize the need to improve the socioeconomic conditions of those at risk of being trafficked so they are no longer vulnerable. In practice, the focus seems to be on scaring certain types of people so they do not migrate and trying to stop them when they attempt to. Moreover, when people do manage to migrate, those that do not fit the receiving state’s conception of an ‘exemplary’ trafficking victim (forced into sex work, grateful for their ‘rescue,’ valuable witness) are often treated as criminals (Carline, 2012: 211).

¹⁰ Sources of strain (many of which are caused or perpetuated by states) are coded as ‘vulnerability factors’ because it is more acceptable to ‘protect vulnerable people’ than to constrain fundamental rights (such as free movement) because they may lead to deviant behaviour.

In all the rhetoric of ‘victim protection’ that surrounds the curtailing of rights of those considered to be vulnerable to trafficking, there is never any reference to the type of protection or aid these potential victims actually want. In the case of Brazil, extensive anthropological research with over two thousand prostitutes in Rio de Janeiro (Câmara dos Deputados, 2014: 475), as well as research undertaken through the reception of deported and non-admitted migrants at the Guarulhos airport show that Brazilian migrant women who fit the vulnerable profile have two very clear wishes (Blanchette and Da Silva 2010: 338). First, they want access to the proper documentation that would allow them to enter foreign countries and reside there legally, with all the benefits and security this status may bring. Secondly, in case something does go wrong, they would like to receive more respect and help from the Brazilian consular authorities, which have been known to dismiss precisely the type of people the government has characterized as most vulnerable to trafficking (Blanchette and Da Silva, 2011: 94).

It is very clear that the focus of those that are seen as vulnerable is not on (long term and costly) social policies that would make it unnecessary for people to migrate for economic reasons, which seems to be the default preventive measure to trafficking advocated worldwide. Rather, they are primarily interested in the safety of those who, for a variety of reasons, not all necessarily economic, would like to migrate. Legal channels of migration would reduce the attractiveness of traffickers’ offers, while knowing that all migrants could rely on the consulates to help them and not turn them to the local police would mean that those that do end up being trafficked would have a possible way out.

In short, those that are seen as vulnerable to trafficking need migration to be made easier, not harder. Thus, we must acknowledge that even if the concept of ‘abuse of a position of vulnerability’ in the context of human trafficking was initially conceived as a way to help these people, the broadness of this particular mean has left it open to being used as an instrument to constrain the migration of certain groups. This is particularly the case when it comes to women from developing countries, whose access to legitimate migration channels tends to be very restricted.

This does not mean that the concept should necessarily be abandoned completely. Its specifications, however, must be properly defined. In their introduction to *Feminist Legal Studies*’ special issue on vulnerability, FitzGerald and Munro (2012: 183) counselled ‘caution regarding the ways in which the label of vulnerability is constructed, applied and deployed in contemporary debates around sexual exploitation, where a range of other social, economic and political agendas are implicated.’

In the context of trafficking, a cautionary approach would ensure that legislation based on the UN Protocol and future trafficking instruments clearly delineate what ‘real and acceptable alternatives’ are supposed to be so that the concept of ‘abuse of a position of vulnerability’ cannot be misused. Considering, however, the long history of trafficking

instruments being deliberately crafted to be used as forms of migration and prostitution control to the benefit of certain national governments and elite groups (Doezema, 2005; Piscitelli and Sprandel, 2011), it seems unlikely that a concept which has proven to be so useful to these agendas will be neutralized.

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CHAPTER EIGHT

CONCLUSION

This thesis set out to assess whether the existing trafficking legislation and policies in developing and developed countries differentiate between victims of human trafficking for the purpose of sexual exploitation and migrant sex workers, taking into account and respecting the agency of the individuals concerned as well as addressing the specific issues and needs of each group. This was accomplished by the development of four specific sub-questions which considered (1) to what extent the terms “victim of trafficking for sexual exploitation” and “migrant sex worker” are differentiated in legislation, policies and practices; (2) whether available trafficking statistics confuse “victim of trafficking for sexual exploitation” and “migrant sex worker;” (3) whether policies were made to address the issues which negatively affect migrants who sell sex outside the trafficking context; and (4) how (potential) victims of trafficking for sexual exploitation are perceived and the consequences of that perception.

Having concluded that it would not be feasible to consider these questions as they apply to all relevant countries, a case study was proposed involving Brazilian migrants who sell sex in Spain and Portugal. The selection of these particular countries was intended to reproduce the dynamics between receiving (in this case, developed) and sending (in this case, developing) countries when it comes to trafficking for commercial sexual exploitation and migrant sex work.

Five articles were subsequently written to address the proposed questions. Although each individual article utilised different approaches and methods to form standalone pieces of academic writing, they were all influenced by a labelling approach which enabled them to form a coherent bundle. As established in the introduction, one of the main aims of this thesis was to consider how labels are applied to migrants who sell (or are suspected of selling) sex, who applies them and to what purpose. In particular, while law enforcement and migration agents, as well as states as a whole are often seen as objective and impartial arbiters of the classification and needs of migrants who sell sex, this thesis sought to showcase the biases and hidden objectives of states and their institutions and how they might affect their actions and policies. As a counterpoint, the narratives of migrants who sell sex, although not taken uncritically, were highlighted and given primacy.

Findings

Question one:

To what extent are the terms “victim of trafficking for sexual exploitation” and “migrant sex worker” differentiated in legislation, policies and practices?

As we established in the introduction, there are a myriad of problems which result from addressing two distinct concepts such as human trafficking and migrant sex work through a unified penological approach. This manipulation of concepts can negatively affect all migrants who sell sex. Trafficking victims who are labelled as migrant sex workers are treated as any other kind of migrant and frequently summarily deported if they find themselves in an irregular situation. They are not offered any type of support from the authorities of the receiving states and often fear denouncing the exploitative situation they find themselves in, not only because they may be afraid of their traffickers, but also because they do not trust the local authorities. Migrants who sell sex who are labelled as trafficking victims are frequently cut off against their will from their main, if not sole source of income. The category of “victim” offers little benefit to those who have no value as material witnesses in court cases, as well as to those who cannot prove they have an overwhelming need to remain abroad for their own safety and well-being.

In “*Contrasting the Conceptualization of Victims of Trafficking for Sexual Exploitation: A Case Study of Brazilians in Spain and Portugal*” we examined if and how the term “victim of trafficking” was differentiated from “migrant sex worker” in the legislation, policies and practices of these three countries. This parallel analysis focused primarily on the impact national trafficking legislation and policies had on both groups.

The article concluded that the concepts differed not only between countries, but also within the same state. The differences between countries, although problematic (as they may, among other things, impede successful transnational cooperation) are at least understandable, even among European Union countries such as Spain and Portugal. The use of different definitions within the same state, however, is much harder to justify.

The labelling of migrants involved in the sex trade seems to be deliberately decided depending on the needs of each state and, within the same state, the agenda and limitations of different actors. When justifying actions which target sex workers and (irregular) migrants, such as raid in locations where sex work is known to occur, authorities are eager to brand their actions as intended to “rescue” trafficking victims. These actions, however, often are more concerned with disrupting the sex industry and identifying irregular migrants. This becomes very clear when states issues expulsion orders to the same people they have “rescued,” re-labelling them as irregular migrants with little consideration regarding whether or not they have been exploited.

In this sense, the article finalised the discussion of this issue with the assertion that the conflation of these categories and the lack of efforts to change the status quo are not accidental. Rather, these problematic laws, policies and practices support two particular goals: the curtailing of the migration of certain types of individuals and the placement of restrictions upon the performance of sex work.

Question two:

Do the available trafficking statistics differentiate between “victim of trafficking for sexual exploitation” and “migrant sex worker”?

Having established that the conflation between “victim of trafficking for sexual exploitation” and “migrant sex worker” is somewhat extensive in Brazil and Spain and has not been totally eradicated in Portugal, the findings of the article “*Examining Trafficking Statistics Regarding Brazilian Victims in Spain and Portugal*” are perhaps not entirely surprising. Although all three countries have recognised the importance of human trafficking statistics, having started some form of data-collection in the late 1990s, the data which is available suffers from severe inconsistencies. At some point, statistics from all three countries have conflated migrant sex workers and victims of trafficking for sexual exploitation. The use of problematic labels means that the available statistics are frequently misleading; the large numbers which are presented often represent the significant flow of Brazilian migrants who sell sex to the Iberian Peninsula and fail to address whether or not they have been victims of trafficking.

The existence of valid criminal statistics is of the utmost importance for the development of effective policies which help facilitate the prevention of crime, the implementation of correct responses by law enforcement and the establishment of effective aid to victims. In cases involving a transnational crime such as human trafficking, the statistics which are made available must also be cross-comparable so as to provide adequate support for decisions on transnational judicial and police cooperation. But while there have been a number of projects which could be feasibly implemented to better the data gathering process, the article concludes that it seems unlikely that such changes will be made as there is a long history of using overblown, if not completely made up “trafficking” statistics to justify the creation and/or perpetuation of actions to restrict migration and/or sex work.

Question three:

Are there policies made to address the issues which negatively affect migrants who sell sex outside of the trafficking context?

In the first article we assessed that migrants who sell sex are almost universally viewed through a criminal lens, either as victims who must serve as evidence or deviant migrants who are treated almost as delinquents. This focus on addressing these migrants almost exclusively through a law enforcement and crimmigration framework, however, may mean that the legislation and policies being applied fail to consider issues outside of this context which may affect them. In the article “*Considering the exploitation of migrants who sell sex: A case study of Brazilians in the Iberian sex industry*” we thus considered the major problems which affect migrants who sell sex outside of the trafficking context and whether these problems are being addressed.

While it is an undisputable fact that migrants who sell sex often go through a range of situations which might be considered exploitative, such situations are not always linked

with trafficking. Most of the problems seem to be a result of three overlapping issues: problems which result from prostitution's status as a forbidden or at best a grudgingly tolerated (yet still repressed) activity, problems that affect workers in low-status occupations and problems that affect (undocumented) migrants.

The victimisation of migrants who sell sex, like that of all sex workers and (irregular) migrants, is often considered to be a non-issue by the authorities of the receiving states. Developed countries in particular often make conscious choices to create an environment in which sex workers and undocumented migrants are made increasingly more vulnerable to exploitation and not allowed to thrive. In this way, two separate objectives are achieved: the sex industry is “morally condemned” and constrained without the political costs of trying to extinguish it completely and migrants provide a cheap labour force that has no access to “costly” state services and little recourse to improve their living and working conditions.

The situation of Brazilian migrants who sell sex in the Iberian countries clearly illustrates this. While focusing almost exclusively on implementing (largely ineffective and potentially harmful) trafficking policies, Spain and Portugal have not addressed the issues which are considered by migrants as the most significant: police harassment and exploitation, unhygienic and unsafe working environments, lack of access to public services such as healthcare, lack of access to housing, as well as prejudice and stigmatization and the consequences thereof. By relying almost solely on a *de jure* and *de facto* law enforcement approach, comprehensive and well established international labour and migration instruments which could benefit all migrants who sell sex are ignored.

Question four:

How are (potential) victims of trafficking for sexual exploitation perceived and what are the consequences of this perception?

Having established that the specific needs of migrants who sell sex placed outside the trafficking context are often ignored, it became necessary to consider what would be the repercussions of being labelled as a (potential) trafficking victim. This question was considered in two different chapters.

In the article “*Analysing the use of the trafficking victim archetype by Brazil and the Iberian countries*” we assessed that throughout history the official trafficking discourse has supported the trafficking victim archetype as a faithful description of the category of people most vulnerable to exploitation. The trafficking victim archetype has not been immutable; uniquely tailored versions are presented for people of different countries, despite the lack of evidence to support the assertion that it describes the “average” victim. The archetypal Brazilian trafficking victim has been described as a young, non-white woman who has a low socioeconomic background and low levels of formal education.

For all that migrant sex worker is a category which is often ignored, the article clearly showed that the considerable attention placed upon (potential) victims of trafficking is not always beneficial. Those who fit the profile are thus to be objects of specific policies which are aimed at protecting them. In practice, however, this has not been the case at all. Those that fit the archetype have their agency curtailed; migration opportunities are restrained “for their own good,” often leading them to migrate in perilous conditions which are imposed due to the “protective barriers” they are submitted to. Those that do not fit the archetype and end up being exploited are often seen as guilty parties, regardless of context or conditions. Their victimisation is frequently considered to be a just comeuppance for their transgressions in the realms of migration and/or sexuality.

Similarly to what we have seen since the inception of the trafficking mythology in the international scene, the archetype is appropriated to be used as an instrument of control. In this context, the term “(potential) victim of trafficking” came to be used as a de facto criminal label both internally and by third parties.

In origin countries such as Brazil the dissemination of the archetype may serve two ends. On one side, it supports internal anti-vice campaigns that harm sex workers, but rarely detect traffickers. On the other, it creates barriers to the migration of people who are not considered “suitable” due to a combination of race, gender and socioeconomic circumstances. Abroad, the use of the victim archetype has allowed for the propagation of actions that, although marketed as “protective,” end up negatively affecting the migrants who fit the description being considered. These measures often take the shape of more aggressive forms of border control. In the European Union this has included the dissemination and use of “risk profiles” that, rather than protect people “at risk,” bar those considered to be “a risk” to the “area of freedom, security and justice.”

Inside destination countries such as Spain the trafficking label is usually linked with the widely-popular “rescue operations” which are at heart law enforcement raids used to discourage sex work and detect and expel illegal migrants. By labelling the people involved as (potential) “trafficking victims,” these raids are characterized as beneficial to those being “rescued,” despite all evidence to the contrary. The subsequent massive deportations can thus occur without significant criticism from the general public, as those that are expelled are considered as ultimately having being found to be unworthy. In both situations the rhetoric used is that of protection, which legitimises these anti-migration and anti-sex work actions, even if the end results punish the alleged victims.

The appropriation of “(potential) trafficking victim” to be used as a label of deviance was not the only time where a term established in the UN trafficking protocol has been misappropriated to the detriment of those the instrument was supposed to protect. In “*A criminological reading of the concept of vulnerability: A case study of Brazilian trafficking victims*” we addressed the use of the term “position of vulnerability” as a de facto synonym to strain.

The use of the concept of vulnerability has often been justified as a way to highlight the systemic problems which affect certain groups of people and curtail their opportunities. If misused, however, the concept may end up paternalising, stigmatising and constraining the groups it singled out.

This problematic aspect of the concept can also impact existing trafficking frameworks. The interpretation of what constitutes a “position of vulnerability” may be too broad and, like in the case of the trafficking archetype, negatively impact specific groups of people. Those who are labelled as being “vulnerable to trafficking” are considered by the authorities to have a propensity to engage in non-acceptable actions, such as irregular migration and migrant sex work. Consequently, the focus of so called “anti-trafficking” actions is not on reducing the strain which is placed upon these segments of society, but on curtailing deviant behaviour by punishing and/or restraining those that are seen potential criminals. By labelling certain groups of people as “vulnerable,” states are giving themselves the justification they need to control these groups without raising significant outrage.

In Spain and Portugal the concept is hijacked to suit the needs of the moment. When it is more convenient to label migrants who sell sex as victims of trafficking to justify barring them from the country or setting up “rescue operations,” the migrants are considered too vulnerable to have any agency and thus to consent to sex work. When it becomes necessary to consider them as commonplace irregular migrants so they can be deported, their alleged position of vulnerability is no longer taken into account.

Main Research Question

This thesis set out to assess how, by whom, for which purposes and with what results the labels of “victim of trafficking for sexual exploitation” and “migrant sex worker” were applied to migrants who sell sex. Throughout the presented case study, it became clear that it was imperative to adopt a critical approach and question the power dynamic which exists in this labelling process. While migrants who sell sex may adopt, refute or manipulate the labels of “trafficking victim” and “migrant sex worker” to serve their own interests, ultimately it is the state and its institutions and representatives that have final say on which label(s) will be applied and what will be the repercussions of this labelling process.

Through the presented articles, we have seen that the concepts being used in the legislation and policies of both developing and developed countries are not static, but are rather being manipulated by individual states to serve their own ends, which often comprised of the restriction of both migration and sex work. By manipulating and utilizing the labels of “migrant sex worker” and “(potential) victim of trafficking for sexual exploitation” to restrain and punish migrants who sell (or are suspected of selling) sex both origin and receiving countries can be said to reinforce and even create

the victimisation of these migrants. States' concerns over legitimising very narrow conceptions of victimhood to serve their prosecutorial ends also means that the actual needs of all migrants who sell sex (including those that have faced situations such as those described in the UN Trafficking Protocol) are not comprehensively addressed.

Discussion

Exploring the anti-migration and anti-sex work agenda

Throughout this thesis there has been a recurring emphasis on the fact that the formulation of policies, the manipulation of concepts and statistics and the refusal to consider alternatives which might be beneficial to migrants who sell sex has had a double purpose. In the origin and receiving states discussed, the trafficking discourse is employed not as an instrument of victim protection or even crime prevention, but is rather used to support an anti-migration and anti-sex work agenda.

This agenda has a very specific context. Although it certainly serves certain issues such as the protection of state sovereignty and the maintenance of socially constructed ideas of “morality,” it goes far beyond it. Historically, the control and vilification of migrants and certain minorities has been a way to deal with complex social issues. As aptly put by Huysmans (2000, p. 770),

[i]n contemporary Europe, migration has become a meta-issue in the political spectacle. It has become a powerful theme through which functionally differentiated policy problems, such as identity control and visa policy, asylum applications, integration of immigrants, distribution of social entitlements, and the management of cultural diversity are connected and traversed. Discourses and governmental technologies reifying immigrants, asylum-seekers, refugees and foreigners as a dangerous challenge to societal stability play a prominent – though not exclusive – role in connecting these different issues.

“Anti-trafficking” policies, which are often wrapped in human rights rhetoric, are much more palatable than “anti-migration” ones, but they often have the same objectives, methods and results (Berman, 2010, p. 89). By approaching human trafficking through a law enforcement and crimmigration lens, the majority of efforts are focused on the prosecution of traffickers and detection of irregular migrants, rather than on the human rights implications of the crime, ignoring the well-being of victims, who are often treated as criminals themselves (Goodey, 2003, p. 422).

Considering that the focus of transnational trafficking policies is overwhelmingly on cases of sexual exploitation (often to the detriment of policies targeting slave labour and other forms of exploitation), one could perhaps argue that sexual exploitation, rather than problematic forms of migration, is the greatest concern of the governments in question. And yet we must consider that the spotlight is given to a very limited

perception of *commercial* sexual exploitation affecting migrants, as exemplified by the fact that only a fraction of the personnel, research and resources expended on trafficking are given to combat the issue of rape and other forms of sexual assault, despite the fact that they are much more endemic. The main issue of concern that can be discerned is the presence of migrants in the local sex industry.

A renewed interest on trafficking and the restriction of prostitution in Europe may represent a growing anxiety which is focused primarily not on human rights or sexual morality, but on the permeability of state borders and the violation of state sovereignty (Scoular, 2010, p. 16). Anti-prostitution agendas are often tied to the control of women rather than sex, as “relations between governments depend not only on capital and weaponry, but also on the control of women as symbols, consumers, workers and emotional comforters” (Enloe, 2000, p. xvii). This control serves as a way to displace anxieties about racial, economic and political tensions and is often achieved through the criminalisation of certain behaviours. In the heyday of the white slavery moral panic described by Doezenia (2000), this was particularly exemplified by restrictions placed upon women’s migration and to their ability to profit from sex work. Rather than being a historical curio, we have seen that this type of actions and behaviour still persists today in contemporary anti-trafficking policies.

The motivations of destination and origin countries

The work presented in this thesis reinforced the already widespread idea that developed states which serve as countries of destination of migrants who sell sex manipulate trafficking definitions, policies, statistics and actions to serve their own ends (Berman, 2010; Brock, Gillies, Oliver, and Sutdhibhasilp, 2000; Chapkis, 2003). What is perhaps notable in the presented case study was a sense of how this manipulation is adapted by different states that have similar goals and motivations.

In Spain, for instance, we saw a country that tackled trafficking primarily through a more standard law enforcement and crimmigration approach. Its main objectives are clearly the security of its borders from unwanted migrants and the prosecution of traffickers, even if that is to the detriment of their victims. Moreover, its policies show that the trafficking framework has been used to push a strong (moral) condemnation of prostitution.

This intensification of border controls is singled out by the government as one of the key components of its fight against trafficking for sexual exploitation (Fernández Díaz, 2013). The logical process behind this seems to be that the less irregular migrants come through the borders, the less trafficking victims will be present in the country. This of course, ignores the fact that those who present trafficking indicators may not be in an irregular situation. Moreover, such attempts to detect potential trafficking victims at the borders seem to be based almost exclusively on the assessment of (risk) profiles which tend to disproportionally target women, non-white people and those that do not carry

obvious status markers, even though there is no hard evidence that they are more likely to be trafficked than other groups.

The undesirability of certain types of migrants is thus a much more reasonable explanation for the high level of control at the borders. This seems to be based mostly on pervasive ideas which abound in many developed countries about the negative impacts of migration, which seem to have become increasingly more widespread since the deflagration of the global economic crisis in 2008. Much of the anti-immigration rhetoric is nonsensical and has little to do with reality, being much more tied to increasing levels of xenophobia and racism as a response to economic, political and social problems (Weber, 2009).¹

Although Spain's use of the trafficking framework seems to mimic that which is ascribed to the United States, Canada and the European Union member states as a whole, the case of Portugal shows that this use may also evolve and present a slightly different configuration while still pursuing the same objectives.

As it happened in other European countries, the use of the trafficking narrative was essential to the creation and legitimacy of the stricter migration policies now in place in Portugal (Christofoletti Togni and Alvim, 2010, p. 148). Although its goals are very similar to Spain's – securing its territory from unwanted migrants, particularly those in the sex industry – in the past few years Portugal has refined its use of the trafficking framework significantly.²

Consider for instance, Portugal's treatment of detained migrants (including potential victims of trafficking) at the borders and at its single long-term detention facility for foreigners awaiting deportation. Unlike in Spain, where complaints from migrants and NGOs are multiple, Portugal has managed to, on the whole, respect the fundamental rights of migrants and house them adequately (Provedor de Justiça, 2011). One can argue, of course, that offering minimum standards of dignity to detained migrants merely reflects the fact that Portugal is taking the protection of human rights rhetoric present in its trafficking and migration discourses seriously and following through with its obligations to instruments such as the EU Charter of Fundamental Rights and the European Convention on Human Rights. We must consider, however, that Portugal is not so much ensuring that migrants avail themselves of all their rights as it is abstaining

¹ In this context, it is particularly striking to compare how attitudes towards migration in developed countries vary widely depending on who is moving across the borders. When young people from Spain, for instance, were hit by high levels of unemployment in their homeland due to effects of the global economic crisis and left their country to seek out jobs abroad, they were praised by the government for their resourcefulness and their ability to move transnationally was considered a "source of pride" for the country (Agencias, 2013). Yet when young people from developing countries show a desire to move across borders into wealthier countries for purely economic – rather than political or immediate lifesaving – reasons, they are vilified, painted as potential drains on resources and sources of criminality, and treated accordingly.

² Prior to the change of its trafficking legislation, Portugal was known for being the country that most often profiled and barred Brazilian women at its borders (Secretaria Nacional de Justiça and ILO, 2007).

from submitting them to severe rights violations, such as the inhuman and degrading treatment migrants have been known to encounter in Spain's detention centres (Women's Link Worldwide, 2013). In essentials Portuguese and Spanish policies – significant numbers of denials of entry at the aerial borders based solely on problematic profiles, a large quantity of inspections in locales known for sex work which result in the detention and expulsion of dozens of migrants who sell sex from the country – are very much the same. What changes is the way such policies are being perceived.

Although Brazilians are not the most significant contingent of foreigners to migrate to Spain, there have been considerable negative repercussions about the ways they are treated. Spanish citizens have been barred in Brazilian airports simply to reciprocate the treatment of Brazilians at Spanish borders and the actions of its police forces are much more closely scrutinized and criticized. Even though the end result is very similar to that of Spain, there is significant less negative response to Portugal's methods. By treating migrants reasonably well, Portugal has managed to keep its role as gatekeeper to the European Union out of Brazilian newspapers' headlines, thus avoiding public shaming and negative diplomatic repercussions (Villas Boas and Burgarelli, 2012).

Portugal's internal anti-trafficking "rescue operations" follow a preliminary logic similar to Spain's, but with a different execution. In this case, we must consider that the dynamics of migrant prostitution is very different in Portugal. Rather than push the approach of labelling nearly all migrant sex workers as (potential) trafficking victims (which makes the waves of subsequent deportation a jarring contrast to the presented rhetoric), in Portugal the migrants who are seen as being targeted by these hundreds of "inspections" in the sex sector are considered by and large to be independent (Brazilian) women who have come to "make easy money" at the expense of the integrity of Portuguese families.³ Taking that into account, it does not seem farfetched to consider that there are no particular outcries if they are deported by the dozen. Thus, Portugal can afford to implement a trafficking system explicitly designed to reward a handful of "deserving" individuals who will supposedly benefit from the trafficking label.

These different approaches also became very clear when we consider how both countries tackled legislation. Spain seemed very reluctant to adapt its laws to the standards imposed by the UN (as well as the EU and the Council of Europe), perhaps fearing they would constrain its ability to manipulate the trafficking framework. The legislation only fully evolved in 2010, after the country was condemned by the European Court of Justice (Case C-266/08) for failing to timely transpose the 2004 Directive on residence for trafficking victims (GRETA, 2013).⁴ Despite the changes

³ For a detailed discussion about the association of Brazilian women in Portugal with the image of temptresses and whores and the social purity movement created in the mid-2000s to target them, see Machado Pais (2011).

⁴ *Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.* The problems did not, however, stop there. In 2013 Spain was reprimanded by the European Commission for failing to report on

which have been made to its legislation, its approach remains slapdash, is still almost entirely centred on trafficking for sexual exploitation and continues to rely on the idea that nearly all migrants who sell sex are victims, which makes their subsequent deportations problematic.

Portugal, on the other hand, changed its trafficking legislation in 2007. It adapted its use of the trafficking framework to focus more on labour exploitation (therefore justifying the extensive amount of labour inspections aimed at identifying and expelling irregular migrants in a variety of sectors) and made full use of the high level of stigma attached to migrant prostitutes (particularly Brazilian women) to endorse a system which expelled dozens of migrants sex workers for every potential “victim” found. In this way, it showed that developed countries can use the trafficking framework to fulfil their agendas in a much more subtle way.

We can thus conclude that although there is a tendency to approach trafficking policies from developed countries as if they were monolithic, this is not precisely the case. Even though they have nearly the same objectives and similar overall results, they can be approached in different ways. Some states take the crimmigration approach to the extreme, misusing the trafficking label to their own ends and exposing migrants not only to a carceral atmosphere but to an exploitative and harmful one at that. Other countries take a more staid approach. By fulfilling minimum standards of dignity when dealing with migrants and relying more on prejudiced opinions about the relevant groups rather than on the manipulation of the trafficking concept, such countries are able to achieve their objectives (bar and/or expel certain migrants) without incurring too much negative attention and repercussions.

While the use of the trafficking framework as an anti-sex work and particularly an anti-migration instrument by developing states is understandable, the role played in this scenario by developing countries is somewhat more complex. The idea that an origin country would use the trafficking framework to the detriment of its own citizens appears at first as somewhat incongruous. After all, contemporary counter-trafficking discourses are often imbued in a colonialist perspective, espousing anti-migration sentiments which rely not only on sexist assumptions, but also on classist, racist and xenophobic ideas that perniciously affect (female) migrants from developing countries. Given that many of these countries depend on remittances, it may seem unlikely that they would impede migration.

Nevertheless, developing countries can also make full use of the trafficking framework. Like in receiving states, countries of origin often coat their anti-trafficking actions in a protection of human rights rhetoric which more often than not hides their primary concerns, which may be classified as internal or external.

compliance with *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*. (European Commission, 2013).

Although transnational human trafficking is marketed as an “extremely important” issue, the Brazilian government did not consider it a priority until international organizations and other countries introduced the topic, being previously much more concerned with the issue of slave labour inside its territory. Outside pressure made the anti-trafficking discourse gain a rather large amount of strength in Brazil in a relatively short amount of time, creating a certain level of dissatisfaction among Brazil’s anti-slavery activists. Having been relatively successful for a decade about calling attention to the existence of slave labour inside the country, many activists saw the emergence of the trafficking narrative (which focused at first almost exclusively on transnational trafficking for sexual exploitation) as diverting attention and resources from the work they had already accomplished, with far less promising results (Sprandel and Mansur Dias, 2010, pp. 157-163).

The internal slavery narrative, however, did not engender a fraction of the outside interest generated by human trafficking. Countries and regions which were singled out (on the basis of scant and highly questionable data) as major destinations of Brazilian victims were keen to influence the way the issue was discussed in the country.⁵ Despite its less prominent role as a destination of Brazilian victims, the United States played a vital role in this scenario, as it did in the way the trafficking framework was moulded throughout most of the world

The United States signed its Trafficking Victim Protections Act (TVPA) in 2000, giving the US president power to establish unilateral sanctions should a country fall short of the US’s subjective minimum standards to combat trafficking. This withdrawing of non-trade related, non-humanitarian financial assistance from the US (and of US support in some multilateral institutions such as the International Monetary Fund and the World Bank) is depended on the classification received by a country in the US Department of State’s annual Trafficking in Persons (TIP) Report (Chuang, 2007).⁶

This imposition of US domestic standards included the possibility of countries incurring sanctions should they fail to monitor patterns of immigration and emigration and take measures to reduce the demand for commercial sex. In this way the UN Trafficking Protocol’s parameters, which deliberately left open the possibility of a country not

⁵ Federal prosecutor Daniel Resende Salgado once stated, for instance, that he believed that the Brazilian Ministry of Justice was making itself accountable to Portugal regarding one the trafficking campaigns it had implemented (Procuradoria Regional da República da 3ª Região/SP, 2014).

⁶ Of note is the fact that the parameters set out by the TIP report are vague and their application erratic, a fact that has been criticized even by the US Government’s Accountability Office. This has led some (developed, allied) countries to be labelled as “Tier 1” (highly compliant) even if they had severe trafficking-related problems, such as systematically jailing trafficking victims, failing to distinguish between trafficking and smuggling and not recognising any form of trafficking except that for sexual exploitation. In the opposite extreme, some (developing, hostile to the US) countries were labelled as “Tier 3” (subjected to possible sanctions) despite their marked progress, lack of sufficient data to make a true assessment and the fact that they have situations which are comparable to many (more neutral) countries classified as “Tier 2” (in need of improvement) (Chuang, 2007; GAATW, 2007).

equating prostitution and sexual exploitation, were ignored and the US's abolitionist position imposed on those who did not wish (or could not afford) to suffer financial reprisals (Chuang, 2007).

This position was further imposed through the establishment of an "anti-prostitution" pledge in the TVPA, whereupon US anti-trafficking funding would only be available to organizations which denounced sex work.⁷ A similar anti-prostitution pledge was later imposed by the US in the "United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003" (Leadership Act),⁸ which restricted funding to fight these diseases to countries and civil society organizations which condemned prostitution (Global Rights, 2006).⁹

Unlike other countries, Brazil has declined, at least officially, to condemn sex work outright. Nevertheless, it has given significant consideration to the image it projects to the United States, as the country, local NGOs and think tanks – which have formed what Agustín (2007) calls a veritable "rescue industry" – have a keen interest in receiving outside funding to "combat trafficking." In this understanding it is not surprising that anti-trafficking actions are considered to be by many "... cosmetic actions to convince the United States Department of State (...) to reconsider its classification [of Brazil in its annual TIP report]" (Sprandel and Mansur Dias, 2010, p. 163).

Besides some (justifiable) concern about US retaliation, this attempt to comply, or at least to appear to comply, to outside parameters about effective human trafficking actions seems to be motivated by another issue: the need to present the "right image" abroad (Piscitelli and Sprandel, 2011).

Human trafficking is often referred as a crime which stains or tarnishes the countries involved (BBC News, 2001; Procuradoria da República no Estado do Rio de Janeiro, 2013). The idea that trafficking is a shameful issue is recurrent in official discourses, but appears to have little to do with the victimisation which takes place, which is seen as a secondary concern (Sprandel and Mansur Dias, 2010, p. 163). Rather, it is the negative repercussions to the image of the countries affected which is of greater interest.

In the case of Brazil, being known as a major source of trafficking victims or being labelled as reluctant to address trafficking are issues which undermine the country's contention that it is qualified to play a greater role in international politics and multilateral mechanisms. This also explains why trafficking victims and migrant sex

⁷ For more on the role played by religious morality in the US's trafficking policy and its global repercussions see Peach (2011).

⁸ The anti-prostitution pledge was ruled as unconstitutional by the US Supreme Court in its October, 2013 ruling of *Agency for International Development v. Alliance for Open Society International, Inc.*

⁹ When it came to the HIV issue, in 2005 Brazil chose to decline millions in US funding, as the government recognised that one of the key aspects of its successful AIDS policy was the preventive work which was accomplished in conjunction with and by Brazilian sex workers (Global Rights, 2006).

workers continue to be lumped together in Brazilian legislation and actions. After all, being known as a source of sex workers is also seen as detrimental to the image of Brazil.¹⁰ Blocking the constitutional right of free movement of said sex workers is seen as much more justifiable when they are labelled as “victims” and the restrictions imposed upon them are classified as “for their own protection.”

Thus, it does not really matter if many of the trafficking joint operations between the Brazilian Federal Police and European police forces result simply in the arrest and subsequent deportation of Brazilians who were involved in the sex trade (Sprandel and Masur Dias, 2010, p. 160), often leading to situations of humiliation, if not outright abuse. As long as such actions can be framed as representing Brazil’s active role in the fight against the “blight” that is human trafficking, the collateral damage to the actual (potential) trafficking victims is completely ignored.

When we consider internal motivations, we see once more trafficking being used as a way to displace certain concerns. In Brazil, for instance, the use of the trafficking framework as a form of migration control has little to do, despite official discourses, with protecting the country’s citizens. Rather, it is merely a symptom of some of the endemic classicist (and invariably racist) beliefs which are often present in the upper socioeconomic classes. Despite the constitutional right of free movement, travelling abroad (and most particularly travelling by plane to so-called “first world” countries) is often seen as a privilege that should be reserved for vacationing elites or upper-class émigrés, and not something that should be available to everyone (Pichonelli, 2014).¹¹

The extent of the anti-sex work character of Brazil’s counter-trafficking actions is not limited to barring the movement of sex workers to and from Brazilian territory. It has also resulted in the internal increase of anti-prostitution raids in a country where prostitution, even if not regulated, is not illegal and is recognised as a legitimate professional category. Although touted as targeting human trafficking and the exploitation of minors in the sex trade, such actions have found few victims of either crime and have proved to be very detrimental to the well-being of sex workers (Amar, 2009; Sprandel and Mansur Dias, 2010, p. 157).

Considering that such anti-migration and anti-sex work actions tend to disproportionately target women who fit the trafficking archetype (young, poor, non-white and frequently perceived as being potentially linked with sex work), the reality of

¹⁰ The overwhelming majority of judiciary doctrine in Brazil very clearly establishes that the main objective of article 231 of the Brazilian Penal Code is upholding (international) public morality by constraining the movement of sex workers (Silva Barbosa, 2009, p. 23).

¹¹ Here the whore stigma is once more very clear. There has been a clear discourse wherein Brazilian women revolt at being “treated as if they were prostitutes” in the EU and at its borders; the implication being that if they were prostitutes the mistreatment they have suffered would have been justified. The “righteous women” who have been mislabelled as sex workers often advocate barring prostitutes from travelling so they cannot besmirch the image of all Brazilian women abroad (Secretaria Nacional de Justiça, 2006; Secretaria Nacional de Justiça and ILO, 2007).

the trafficking discourse ends up dismantling two myths about the country which are propagated internally and internationally. The first is the idea of Brazil as a “racial democracy,” when in fact racism, institutionalised and otherwise, is rampant (Paixão, Rossetto, Montovanele and Carvano, 2010). The second is the vision of Brazil as a “socially / sexually progressive” country, when in fact it is highly conservative in many respects (Montenegro Pessoa de Mello, 2010).

In short, while there has been significant research on why developed countries manipulate the trafficking framework, less has been written about why developing states may also use this framework to the detriment of their own citizens. The pressure exerted by potential receiving states (and particularly the United States) is clearly a strong motivator, as is the dependence origin countries may have on international funding. There are also, however, internal issues such as a conservative, anti-sex work agenda which may benefit from the use of the trafficking framework.

At this point, however, there is simply not enough information to present the Brazilian case as archetypal. While external pressures (particularly from the United States) are likely to be a significant issue for most origin countries, different countries may have different internal motivations for adopting the trafficking framework, as well as different ways of moulding it. It would be interesting to examine whether countries whose migrants face experiences which are very similar to those faced by Brazilians (for instance, Colombia) tend to have similar motivations and methods and whether the use and understanding of the trafficking framework is radically different in states whose migrants who sell sex face situations which differ significantly from those encountered by Brazilians (such as Nigeria and Romania).

Final remarks

In the course of this thesis we have assessed that countries frequently do not differentiate between migrant sex workers and victims of trafficking for the purpose sexual exploitation. The unified approach towards trafficking and migrant sex work which has been present, to a smaller or larger degree, in the legislation, policies, statistics and counter-trafficking actions of both origin and receiving states ignores the specific needs and issues of each group.

Despite continuous assertions that human rights are of primary importance, that socioeconomic problems will be addressed and that migration is a right of every human being, policies aimed at countering trafficking for sexual exploitation have tackled the issue as primarily a criminal one through actions which are intended to repress both migration and sex work.

The current crimmigration approach towards trafficking has proven to be an ineffective deterrent and often has resulted in negative repercussion to trafficking victims (be they confirmed, alleged or potential) and all other migrants who sell sex (GAATW, 2007).

Some discussion has been given to the fact that the trafficking framework, due to its history of frequent misuse, is inherently counterproductive (Agustín, 2007; Wijers, as cited in Andrijasevic, 2010, p. 142). In this assessment, it would be more effective to address trafficking through a combination of criminal, labour and migration instruments tailored to each specific case.

Dismantling the trafficking framework is not, however, an easy task. In the short and medium term, it is perhaps more feasible to invest in alternative counter-trafficking actions that focus on the well-being of both victims of trafficking and all other migrants who sell sex, as adequate treatment to victims of trafficking should not be given at the expense or in opposition to migrant sex workers. That is to say, the securitisation of trafficking victims should not lead to further insecurity for those who work in the sex industry through tactics such as raids, interrogations and incarceration. To truly offer a comprehensive approach to the issue, counter-trafficking actions must, at all levels, also take into account the need to protect the rights of those involved and to secure, rather than block, migration channels.

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