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Combatting trafficking in women and girls for the purpose of sexual exploitation

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Combatting trafficking in women and girls in Portugal

Marlene Matos
University of Minho

1. Relevant country context

1.1. Relevant data about Portugal

In Portugal, the most relevant data about trafficking of women and girls for the purpose of sexual exploitation comes from the Observatory of Trafficking in Human Beings (OTHB). Taking this into account, Portugal remains primarily a country of destination for trafficked persons but is also, to some extent, a country of origin and transit. In the period 2012 to the first half of 2016, a total of 226 victims of THB were formally identified (13 in 2012, 144 in 2013, 33 in 2014, 32 in 2015, and 4 from January to June 2016). Most of the victims were trafficked for the purpose of labour exploitation (162 persons), followed by sexual exploitation (52 persons). In that period (2012 to 2016), a total of 36 children (32 girls and 4 boys) were formally identified as victims of trafficking (31 of them were aged 10-17 and 5 were younger than 10), most of them (31) for the purpose of sexual exploitation. Concerning sexual exploitation, in 2017, according to OTHB, 24 potential victims were identified, all women, with ages between 18 and 53, mostly from Romania, Nigeria and Portugal. So far, and to our knowledge, there is no information about the police confirmation of those victims. In 2017, trafficking for purposes of labour exploitation remains the most identified form of THB in Portugal, with 47 potential victims identified, mostly men, with ages between 19 and 64, the majority from Moldavia and Romania (OTHB, 2017).

In addition to the OTHB data, there are other sources with some relevant data. According to statistics provided by the Directorate General for Justice Policy, 151 investigations into THB cases took place, always growing, in the period 2012-2015 (22 in 2012, 28 in 2013, 48 in 2014, 53 in 2015). The proceedings concerned 43 accused persons (14 in 2012, 29 in 2013). There were 10 convictions in 2012 and 9 convictions in 2013 that involved privation of liberty (detention), of which three in 2012 and five in 2013 were effectively enforced. Also, a recent empirical study by the University of Minho, entitled "Trafficking in persons and criminal procedures", analysed the factors behind the low rate of convictions for the crime of trafficking in persons in Portugal (Matos, Maia, Gonçalves, & Pinto, 2015). In that study, 481 criminal investigations initiated for the crime of THB were identified by the researchers (from 2007 to 2017); 31% ($n = 151$) of them had progressed to the stage of prosecution for THB or related crimes. Only 9 cases (2%) had resulted in convictions for THB. In that context, 30 cases in different stages of the criminal procedure were studied. Also, in-depth interviews were held with 13 magistrates/prosecutors and 5 police officers. In sum, one of the identified problems was the difficulty to distinguish between the crime of THB and other criminal offences. Another difficulty was related to the legislative redundancy, in particular in the relation to the crime of slavery and aggravated pimping. When cases were dropped due to lack of evidence, this was often due to delays and omissions at the criminal investigation stage that compromised a timely, coordinated and efficient collection of criminal evidences. Another problem reported was the inability to locate the suspect and/or the absence of witnesses. The latter condition was related to an insufficient concern about the

protection and support of the victim, described by the participants, which often led to a lack of cooperation.

1.2. Legal provisions in Portugal

With the 2007 revision, the crime of trafficking in persons was automatically included in article 160º of the Portuguese Penal Code (PPC), which is part of the crimes against personal liberty (Decree-Law no. 59/2007). In that way, the crime of trafficking in persons began to contemplate a broader definition, not only criminalising sexual exploitation, but also labour exploitation and organ extraction. Since 2008, other law decrees have been adopted on the basis of the commitments made by Portugal under the Council of Europe Convention on Combating Trafficking in Human Beings, adopted in Warsaw, in 2005. In 2013, the Decree-Law no. 60/2013 represented the 30th amendment to the Penal Code and transposed the Directive No. 2011/36/EU of the European Parliament and of the Council of 5 April on the prevention and combating of trafficking in human beings and the protection of victims. Following the various directives and recommendations of GRETA (2013), art. 160º of the Penal Code since then includes all forms that, consensually, characterise trafficking in persons, adding to previous ones (sexual exploitation, labour exploitation and organ extraction), begging, slavery and other activities for criminal purposes (Decree-Law 60/2013). Another recent change, clearly stated in the aforementioned decree, is the irrelevance of the victim's consent (cf. paragraph 8 of the same article). Decree-Law 60/2013 also establishes a set of amendments regarding special means in the collection of evidence and the loss of property resulting from criminal activity related to trafficking in persons. In Portugal a difficulty still persists related with a legislative redundancy, in particular in the relation to the crime of trafficking in persons and aggravated pimping.

Prostitution is also a current debate that occurs parallel to the trafficking in persons but should not be confused (e.g., in terms of socio-cultural discourses, prostitution seems to be more tolerated). Portuguese legal system does not criminalise the conduct of the person who prostitute her- or himself. It criminalises, rather, the conduct of those who exploit prostitution through part of another person (pimping). Article 170 (1) of the Criminal Code punishes, with prison sentence from 6 months to 5 years, those who, professionally or for profit, encourage or facilitate the exercise by another person of prostitution (simple pimping). That crime is more severely punished (with imprisonment from 1 to 8 years) if the agent uses violence, serious threat, arrogance, fraudulent manoeuvre, abuse of authority resulting from a hierarchical dependency, economic or working status, or take advantage of the psychic incapacity of the victim of any other situation of special vulnerability (the so-called pimping qualified).

However, in the debate about prostitution, according to a known judge in Portugal, decriminalisation cannot be confused with legalisation. Legalisation will include the decriminalisation of pimping, which is currently criminalised in the PPC (and would therefore be contrary to the Convention for the Suppression of Trafficking in Persons and for the Exploitation of the Prostitution of Others). With the legalisation, the exercise of prostitution would be like any other profession, subject to the same labour and tax regime. With legalisation, the state transmits a cultural message: the prostitution is equivalent to any other profession, it results from an option authentically free and does not imply the violation of the dignity of the human person. Trafficking in persons for sexual exploitation would continue to be punished or the exploitation of so-called "forced prostitution". However, it can be said that, in extreme situations that lead to the practice of prostitution, it will be easy to simulate a "consent" to provide

legal situations of real "trafficking for sexual exploitation". Empirical evidence (e.g., Cho, Dreher, & Neumayer, 2013) has shown that, for those reasons, the trafficking networks have, as their main destination, the countries where prostitution has been legalised (Vaz Pato, 2013).

1.3. Multi-agency coordination in Portugal

In Portugal, the aim of developing a multi-agency coordination was achieved through highly combined strategies, namely through: the establishment of a network in 2013 called a Network for Support and Protection of Victims of Trafficking (RAPVT); the development of the third national plan to prevent and combat trafficking in human beings (2014-2017); the reinforcement of the collaboration of Police agencies with specific competence on criminal investigation of trafficking in persons; the establishment of specialised multi-disciplinary teams with local action (decentralised) and, finally, through the scientific research on the phenomena in Portugal. The network RAPVT brings together governmental and non-governmental organisations working on issues relating to combating THB and serves as a mechanism of enhanced co-ordination and information sharing. In 2014, the RAPVT was involved in revising the National Referral Mechanism (NRM). Originally focused on THB for the purpose of sexual exploitation, the NRM now also covers THB for the purpose of labour exploitation, forced begging and criminal activities.

The 3rd National Plan stated the priorities and specific objectives to fill, involving administrative public organisations competent to implement the 53 measures, distributed for five main strategic areas. Private institutions, NGO's and multiple stakeholders could also collaborate in order to its full implementation. The 4rd National Plan (2018 -2021) is structured on the basis of the following Strategic Objectives: 1 – To reinforce the knowledge and to inform and to raise awareness on the subject of THB; 2 – To ensure the victims of trafficking better access to their rights, as well as consolidate, reinforce and qualify the intervention; 3 – To reinforce the fight against organised crime networks. Additionally, Portugal has five specialised multi-disciplinary teams, that cover all the Portuguese regions (North, Centre, Lisbon, Alentejo, Algarve), under the coordination of an NGO called Family Planning Association (APF). Their main task is to assist with the initial identification and reporting of victims of THB and coordinating the support provided to them. Further, the multi-disciplinary teams are actively engaged in awareness-raising and training activities. They have developed regional networks for victim assistance composed of members of relevant public organisations and NGOs.

Scientific research, from multidisciplinary approaches, although still insufficient, have also had an important role for this multiagency coordination's advances: with empirical evidence some "diagnosis" and progresses can be made (e.g., understanding the victim's experiences and how to provide more efficient responses to their needs; identifying the professional's acknowledgments about the phenomena; identify the obstacles to better prosecution of crime trafficking in persons).

1.4. Prevention in Portugal

In Portugal, the prevention of trafficking in women and girls for the purpose of sexual exploitation involves several sectors (e.g., education, health, justice, support services, etc.) and it is developed at different levels, such as:

1.4.1. Primary prevention

Raising awareness through campaigns involving civil society in order to improve the community knowledge about this crime; working with the media to inform and to erase misconceptions about the phenomena, stablishing trafficking as a crime and a serious human rights violation supporting zero tolerance. One of the measures supposed the development of training programmes on gender equality and violence against women and girls, including sexual violence, gender-based violence and THB, for executive and technical staff in the fields of justice, armed forces and security forces. Further, another measure aimed to integrate the issues of gender and violence against women and girls, including THB, as well as the protection of victims and the punishment of the perpetrators, into the context of the technical and legal cooperation with the ministries of justice, courts and criminal investigation entities of partner countries (GRETA, 2017).

1.4.2. Secondary prevention

Strengthening the mechanisms to identify and support victims among some vulnerable groups. At this level, Portugal has in course the *Project Mercadoria Humana 3* (on going): human trafficking sensitization project, which integrates the development of awareness actions for publics most vulnerable to THB (*Saúde em Português* as the responsible entity). Likewise, the same NGO developed a number of awareness-raising initiatives aimed at the homeless population of CAIS and other vulnerable groups.

1.4.3. Tertiary prevention

Improvements on victim's identification, protection and assistance through the capacitation and training of professionals from different sectors (e.g., justice, health, social); the legal mechanism of victim's protection related to the program of protection of testimony and statements for future memory; improvements on the prosecution of trafficking crimes and reducing the profits from trafficking; providing victims specialised assistance and compensation.

2. Police Debate

The national debate regarding “combatting trafficking in women and girls for the purposes of sexual exploitation” is active. It occurs mainly through the mass media, the prevention campaigns, the conferences on the issue and some technical and scientific meetings. However, this debate could be more lively and dynamic. We anticipate a consolidation on the current policies, namely regarding a national couverture of the preventive campaigns and the intervention on the part of the institutions in the field, namely in rural and interior areas. Also, Portugal pretends, as stated in the 4rd national plan (2018-2021) to continue the training of first line professionals, in order to improve a proactive approach and increase their outreach work to identify THB victims; training and guidance for stakeholders in order to guarantee a more effective victim centred approach intervention, adequate support and services; to promote a proactive, timely and collaborative investigation and to guarantee the prosecution of the cases.

The debate concerning police involvement to combat THB is also active in Portugal and can be exemplified by the number of training programmes and actions directed to criminal police agencies, also extended to other professionals in the justice system.

This concern is also noted in the empirical studies carried out in Portugal (e.g., Matos et al, 2015) that have identified gaps and good practices in all stages of the judicial process related to THB, as well as elaborate some important recommendations: promote police specialisation with legitimacy to investigate this crime; to improve cooperation between different criminal police bodies and with social institutions at national and international level; to promote the effective application of the legislation by the judicial institutions, in particular with regard to the exemplary repression of traffickers and the confiscation of their property, in order to establish greater proportionality between the gravity of the crime and the severity of the penalties applied, to dissuade their practice. One of the main objectives of Portugal for the next triennium is related to the identification, assistance and protection of child victims who, as stated by OTHB, are mostly exploited sexually. Future developments - eventual some reforms - that are likely to be relevant will come through the 4rd National Plan that is now on course since 2018.

3. Good practice examples

In Portugal, we establish the following as good practice examples:

- The National Plan as an instrument of coordination of multiple sectors, and multiple stakeholders;
- Portuguese Law is gender neutral and inclusive, concerning sex victims;
- The development of campaigns to raise awareness related to each form of exploitation, namely sexual exploitation, in order to sensitize civil society and to strengthen the identification of potential victims of this crime;
- Training of professionals of front line areas of intervention (law enforcement officials, prosecutors, judges, labour inspectors, health and social workers and NGO representatives);
- The specialised multi-disciplinary teams have a main role in the identification and provision of support to victims of trafficking. Those teams are often called upon to accompany the police in the identification of victims and guarantee intervention in crisis at those moments. The proximity of those teams to the population allows the adequacy of the prevention campaigns, adapted to the needs of each region of the country;
- The creation of the Network for Support and Protection of Victims of Trafficking (RAPVT), which brings together relevant governmental and non-governmental organisations, and the enlarged composition of the working group coordinating the implementation of the National Action Plan;
- Setting up of a specialised Anti-Human Trafficking Unit within the Immigration and Border Service.
- Specific measures to discourage demand: Article 160, paragraph 6, of the Criminal Code, which criminalizes the use of services of a victim of trafficking while knowing that the person is a victim; Article 185-A of the Immigration Law, which penalises the employment or use of services of an irregular foreign citizen, with the knowledge that he/she is a victim of offences related to human trafficking;
- The development of empirical studies to promote the understanding of the factors that facilitate and/or difficult the conviction of the traffickers.

4. Transferability aspects

A victim centred approach is a country priority and it works well in order to an efficient multi-agency coordination. The network such as RAPVT and the decentralised multi-disciplinary teams are also a very powerful qualified resource to any country. Finally, an initiative such as The Step by Step pathway (ongoing in Spain), would be of interest for Portugal. It is organised across four stages of a pathway to release women who have been trafficked for sexual exploitation. It seeks to integrate them into society as free people with dignity and social inclusion.

5. Conclusions and recommendations

The causes of THB are multifaceted and the solutions cannot be simplistic. Portugal have been making improvements on this field. Evidently, we are still learning about THB and we are trying to do better, namely based on good international practices. We need to elaborate protocols, develop practical and useful tools for professionals and also training them on trauma basic issues. Specially, in Portugal, the tourism sector and the health contexts need to improve the ability to promptly identify and assist victims. We need more specifically invest in training to better capture the all phenomena of trafficking since in Portugal we are identifying mostly labour trafficking. Probably the civil society and the organisations are not so well prepared to identify and protect sexual victims as labour victims. We need to invest in projects taking particular account high-risk groups as well as high-risk sectors, users and consumers. That is a high challenge in the future.

We also need a change the cultural and social discourses on prostitution and victims of trafficking in women and girls (e.g., “they are not among us”; they are represented as “the other”), through prioritising education (e.g., to disseminate a humans’ rights perspective and also gender equality). This is an issue that involves all the society (men and women) and any polarisation of discourses are problematic. We need to raise more awareness of society so that anyone (e.g. a potential sex-buyer), when facing a potential victim, can help her identification as a crime victim, through an emphatic and responsible attitude. We need to know more through the development of scientific studies: how are the institutions involved in the combat of THB being efficient? Are they able to reflect on how their institutional and professional’s practices are affecting victims (e.g., reduce revictimisation)? How are they dealing with most vulnerable victims (e.g., minors)? How do they protect victims according to their needs and cultural specificities?

We also definitely need better data on trafficking in order to a comparative approach among EU countries. Finally, Portugal must develop mechanisms and practical guidance to enhance inter-agency and transnational cooperation aiming to prevent child trafficking of EU children, ensure protection of child victims, find durable solutions and safeguard their rights under EU and international law (EU follow-up Strategy towards the Eradication of THB). Specifically, Portuguese institutions and authorities must make efforts to improve the identification of, and assistance to child victims of trafficking. The protection services for minors also need to develop effective solutions to the “new users”.

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