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THE VULNERABILITY OF NIGERIAN AND ROMANIAN WOMEN IN SEXUAL EXPLOITATION. MOTHERHOOD AS BEING A DOUBLE VULNERABILITY.

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“Those who do not move,
do not notice their chains.”

Rosa Luxemburg

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Acronyms

ANITP- Romanian National Agency Against Human Trafficking

APOV- Abuse of position of Vulnerability

CARA- Centro di Accoglienza per Richiedenti Asilo- Reception Center for Asylum Seekers

CAS- Centro di Accoglienza Straordinaria-Temporary Reception Center [for asylum seekers]

CEDAW- Convention on the Elimination of All forms of Discrimination Against Women

CIE- Center for Identification and Expulsion

ECOWAS- Economic Community of West African States

ENI- Europeo Non Iscritto

EU- European Union

ECHR-European Court of Human Rights

IOM- International Organization for Migration

ILO- International Labour Organization

OHCHR- Office of the United Nations High Commissioner for Human

OSCE- Organization for Security and Co-operation in Europe

NGO- Non Governmental Organization

THB- Trafficking in Human beings

VoT- Victim of Human Trafficking

UN- United Nations

UNICEF- United Nations Children's Fund

UNODC-United Nations Office on Drugs and Crime

Introduction

Research Issues and aims

In recent years, especially after the adoption of the United Nations Protocol on Human Trafficking in 2001, the so-called Protocol of Palermo, the phenomenon of human trafficking for sexual purposes has been extensively explored in the literature, involving researchers and experts from different disciplinary backgrounds. Yet, the definition of human trafficking has demonstrated to be a very complex to be understood. This is not only due to its transnational features, but also to the implications of compound notions in its definition, such as “vulnerability” (Gallagher, 2012), “consent” and “exploitation” (Gallagher, 2015). The debate has surfaced mainly between supporters that have a conservative and limited vision of the definition of Trafficking and supporters that have a flexible perspective of the definition.

The present research aims to examine in depth the concept of “vulnerability” in human trafficking, cited on the definition of Human Trafficking on Art.3¹ of the Trafficking Protocol, through the “mean” of “abuse of Position of Vulnerability”, so-called APOV. Several proposals have been given to define vulnerability as by International Agreements, such as the Council of Europe Convention on Action against Trafficking in Human Beings, the so called Warsaw Convention (2005)², the so-called Convention of Warsaw, that defines vulnerability as “lack of alternative”³ and the Art.2,

¹ The definition of Human Trafficking is expressed by the Art. 3, comma a) “Trafficking in persons” shall “mean” 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 of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. 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”.

² The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008.

³ Art. 4, 83, “By abuse of a position of vulnerability is “meant abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim’s administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce.”

comma 2⁴ of the 2011 European Directive on Human Trafficking or the UNODC Background Paper for the Vienna Forum 2008 (UNODC & UNGIFT, 2008)⁵. However, the definition of vulnerability that is presented is normally provided to identify a situation of human trafficking and not to do a vulnerability assessment of the victim in all phases of human trafficking. Furthermore, it has been noted that the “mean” of APOV is normally considered a “soft mean” that needs to be supported by other “stronger “means”” such as “force” or “coercion”, in order to identify a situation of trafficking (Gallagher, 2012).

The case study will analyse the complex vulnerable dimension of Nigerian and Romanian women, within a situation of sexual exploitation, regarding in particular the context of motherhood. Furthermore, the research aims to compare these two groups, not only regarding their vulnerability in relation with the traffickers, but also with the State and the society. Therefore, this analysis, tries to understand the vulnerability of the victims in their pre-trafficking situation, during their exploitation and in their post-trafficking path. Moreover, despite the vast study on human trafficking, especially on the subject of sexual exploitation, scholars have not given much attention to the subject of motherhood on human trafficking (Brotherton, 2016). In fact, the present research aims to study the overlap between being a mother and a human trafficking victim, for Nigerian and Romanian women.

The analysis of these two groups, Nigerian and Romanian women derives from the high presence of these two nationalities within the European and Italian Human trafficking statistics, especially remarked by sexual exploitation (EUROSTAT, 2015). The intersectional factors can increase or decrease their vulnerability due to the overlap of different characteristics that characterise the same person. However, even intersectionality is not a stable feature, especially due to the dependence of the subject to the State and the ever-presence of being exposed to risk (Fineman, 2010).

It is the concept of vulnerable subject (Fineman, 2008) that provides us also the tools to identify the potential discrimination and the consideration of a vulnerable group

⁴ “A position of vulnerability “means” a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved”.

⁵ “A condition resulting from how individuals negatively experience the complex interaction of social, cultural, economic, political and environmental factors that create the context for their communities”. The UNODC Model Law in Trafficking in Persons (2009) has also provided new insights on the concept of APOV, by separating the two definitions into “abuse of position of vulnerability” and “taking advantage of position of vulnerability”.

by the State, leading to the conclusion that other groups might be considered invulnerable, thus invisible to potential victimisation. In fact, attribution of vulnerability as a universal category applied to a collective, under a common biological base, such as gender or race or status based (poor or immigrants) discharges the disadvantages that can transcend identity categories, particularly at the individual level (Fineman, 2008). Furthermore, the category of vulnerability is delimited by the State, which attributes specific features that can provide the individual in having further protection of the Paternalistic State.

It is based on the theory of the vulnerable subject of Fineman that I compare and question the attribution of Nigerian women being more vulnerable than Romanian women due to their access of legal permanence and free mobility within the European Union. Furthermore, the role of the State is also implied on the individual's vulnerability, since it is also considered to be an outcome of relations (Butler, 2014), not only among individuals, but also between the State and the individual. According to Fineman (Fineman, 2012) individuals belonging to vulnerable groups are "those who cannot exercise their right to contract", thus the ones that the State already discriminated in the exercising their rights.

In the chapter of *Motherhood in sexual exploitation*, Fineman's concept of vulnerable subject, identified as a non-static concept, which is constantly changing the conditions, demonstrated to be the more appropriate instrument to analyse the victim's vulnerability. Motherhood in this case comes to be questioned within a situation of trafficking as an asset (Kirby, 2006) that can lead the victim into a situation of resilience (Butler, 2016), or as a form of resistance that, despite of the endurance of the mother, it can maintain or initiate the victim in the exploitative situation. Despite of the influence of motherhood in a victim of human trafficking, scholarship has merely considered the subject in the Academic literature as well as in legislation (Brotherton, 2016).

The structure of the thesis

This thesis consists of three chapters that will answer the three main research questions of this study. The first research question regards the concept of vulnerability and its importance in the International legal framework in human trafficking: What is

the use of the concept of vulnerability in the International Legal Framework in Human Trade? The second research question is the comparison of the two nationalities and their access to a European citizenship: Are Romanian women, as European Union's citizens less vulnerable in human trafficking than Nigerian women? Finally, the third question regards to the third part of the thesis, on the influence of motherhood on the sexual exploitation of the women. Is motherhood a double vulnerability to human trafficking victims? These three questions have been dedicated to each chapter, applying not only a desk research, qualitative methodology, as previously mentioned, but also a participative methodology as I will further report

In the first chapter, I questions on the application of the concept of vulnerability on Human Trafficking, in order to understand which factors can affect vulnerability. Therefore, I start to dissect the concept of vulnerability passing first on its evolution within the International Legal Framework on Human Trafficking, through its legal application in the countries of relevance (Romania, Italy and Nigeria) and in the European Court of Human Rights with the concept of vulnerable group (Peroni & Timmer, 2013). Furthermore, with the aim of understanding the concept of vulnerability on Human Trafficking, I decided also to study its application in the three Ps, Prevention, Prosecution and Protection, normally suggested by the States to tackle the phenomenon, in order to comprehend the application of the concept of vulnerability in the different phases of a Human Trafficking process. The analysis proceeds with a philosophical approach based on the theory of vulnerability of Martha Fineman, in order to understand the chronological aspect of vulnerability, as well as the responsibility of the State in one's vulnerability (Fineman, 2010). The examination finishes by analysing the concept of intersectionality (Crenshaw, 1991), which gives us the instruments to compare the two proposed groups, Nigerian and Romanian women, according to their race and nationality.

The objective of the second chapter is to compare the situation of the two groups, separated by nationalities, in order to understand if the women's vulnerability is affected by nationality and consequently by their access to a free mobility within the European Union. The chapter starts by introducing the term victim to the reader, proceeded by a deep analysis on the concept of "sexual exploitation", by combining the contemporary debate on the concept with my experience in the field. The goal of this

analysis is to place my own concept of victim, in order to define a particular subject within the research, especially since the research has been influenced by Participant methodology. The analysis proceeds by a scrutiny observation that exams all different aspects that can influence the vulnerability of the two groups. The vulnerability factors are analysed from the origin country, as carried vulnerabilities, through the travel as a vulnerability factor, until the accumulated vulnerabilities in the destination country. The vulnerability of the group is also analysed by the type of strategy used by the criminal networks as using oaths or the *Loverboy method*, as well as the influence of the families in the trafficking situation. Finally, this chapter by applying the conceptualising the term of victim, deconstructs the protection system in Italy, by comparing both nationalities in their specifics within the Italian system. Furthermore, this chapter tries to compare the situation of human trafficking of both nationalities in the past, especially when Nigerian women would arrive by plane and remain illegal and Romanian women were not European Union's citizens. Therefore, in this chapter besides the application of a press and literature review, the application of field qualitative methodology by semi-structured interviews has demonstrated to be essential to expose the actual situation of human trafficking victims, in the present.

This research ends with the third chapter, which goal is to understand if motherhood becomes an added vulnerability to the victims of human trafficking for sexual exploitation. Since there is a deep gap in the literature regarding this subject, this chapter has been mainly based on field qualitative methodology with the application of semi-structured interviews with second sources added to the participant's observation methodology that I have followed in the field. Furthermore, on the contrary of the second chapter, this chapter has also included other European countries as Romania, Spain and France. The link to these countries it is important to understand not only the use of motherhood by the criminal networks when the victims enter in the European territory, such as in Spain, but also the aspect of transnational motherhood that it is observed with Romanian women. Finally the chapter analyses the impact of motherhood and how it can be a resistance factor for the women who are victims of human trafficking.

Methodology

Human trafficking for sexual purposes, as due to its illegal nature, as to its complex legal definitions, continuously object of debate within the scholarship, has demonstrated to be defiant to academic research (Tyldum & Brunovskis, 2005). The imprecise and unlimited definition of human trafficking as well as the indignation of certain concepts as “exploitation” often lead researchers to be unclear about their target groups, by mixing, for instance, sex workers and human trafficking victims. Moreover, researchers lean in choosing their data, according to their own perception of the phenomenon (Roos, 2016). Therefore, in order to proceed with my research with an honest study, not only I had to put a limit definition of what I consider to be a human trafficking victim, but I had also to be attentive to the ethical aspects of the research, since my research was based on the study of vulnerable groups, within a criminal activity.

As it will be further detailed, my first preoccupation on the study was to deepen my knowledge of the concept of vulnerability, not only applied to the phenomenon of human trafficking, but also on philosophy of Law. The adoption of the concept of intersectionality has given me the possibility in comparing the two groups, as according to their nationality, as regards the strategies used by their criminal networks as well as their general features and adaptation to the system within their migration process. My second priority has been based on providing a limited concept of sexual exploitation, in which I could homogenize, my study group, especially, since I have undergone qualitative research during the exploitation period and not only after the identification of the victim.

During my research, I have proceeded with an extensive analysis of academic literature on the subject of human trafficking, vulnerability, migration and gender studies that has given me the main bases to analyse my research subject. The Academic literature was completed with the press review in Italian, Romanian and Spanish from 2009 until 2017, being selected online through key words such as “Nigerian human trafficking”, “Romanian human trafficking”, “abortions and sexual exploitation”, “motherhood and sexual exploitation”, “collective instruments”, “Nigerian Mafia” and “lover boy method”, in a total of 26 press articles. Moreover, I have continued with the desk research through the analysis of Spanish judge statements by researching the subjects of

“Nigerian Children” and “prostitution”, without a specific period. Legal analysis has provided a wider knowledge of the phenomenon in different destination countries (Snape & Spencer, 2003), in order to understand the different behaviour of the criminal networks according to the context of the destination country and its anti-trafficking measures. Furthermore, this has provided me a different perspective from the past and the present in the exploitation of the women, leading me to three major research questions on the comparison of the two nationalities.

Research on human trafficking is normally driven by the absence of direct sources (Berman, 2003) and researchers tend to turn to women that were once identified. In fact, in this case, not only the researcher is sure that the person has been identified as human trafficking victim, but also the research avoid in having access to the victims during the exploitation period, which can turn to be unsafe as for the researcher (Zimmerman & Watts, 2004) as well as for the victims. Nevertheless, identified victims tend to provide sided information, not only because they are already aware about their victimisation, but also because they tend to filter information by, for instance, providing data that have been previously given to the law enforcement agents (Pascoal, 2017) or being still emotionally attached to their trafficker (IOM, 2014). Furthermore, identified victims are normally traumatised, being often unable to provide precise information (Zimmerman, et al., 2006) and falling often in deep silence as a defence mechanism to the trauma (Brennan, 2005). In this case, the researcher not only should be attentive in avoiding a secondary victimisation, but also being attentive in avoiding a possible exposure of the victim to the exploiters.

Qualitative research during the exploitation period has allowed me to deepen the issue (Denzin & Lincoln, 2011), being mainly focused on the method of Participative observation, which has demonstrated to have advantages and disadvantages on the research (Siegel, 2004). Participatory research in outdoor sex works tends to be temporary (Coy, 2006), yet in order to establish deeper ties with the women I engaged in the voluntary street unit for two years, once a week. This duration has provided to go deeper into the experiences of the target group, not only by analysing them at different times of the year, especially during Christmas and summer, but also by being able to interact with them in different occasions. Consequently, this application of Participative Observation

has also allowed me to create contexts to explore my subject of interest (Pascoal, 2017), especially since many of the women did not feel like victims (Siegel & Yesilgoz, 2003).

Since my research is based on the comparison of Romanian and Nigerian women and it is difficult to have access to both nationalities in the same space, I have divided this method by nationalities. On one side I engaged the voluntary street unit for Romanian women engaged in the sex industry and on the other side, I also did volunteer work in an association that provide assistance for Nigerian women victims of human trafficking. The first group, due to the different roles and relationships between women and their pimps, sometimes exploiter, within the sex industry has helped me in delimiting my definition of human trafficking victim. This distinction was made not only within the same space between sex workers and human trafficking victims, but also chronologically by accepting that within prostitution, a woman can pass from a free sex worker into a victim and the other way around (Carchedi & Tola, 2008). Furthermore, despite that I was not able to observe the relationship of the Romanian with their children, since most of them live a transnational motherhood, establishing a confidential relationship with them has helped me in understanding their relation with their children and their country of origin. On the other hand, Nigerian motherhood has been observed on first hand, since my volunteer work consisted in taking care of their children, while their mothers were having Italian classes.

Considering that the first sample group was composed of outdoor Romanian sex workers, at the beginning of my Participant Observation methodology, I started to identify potential indicators of human trafficking victims, in order to avoid confusing human trafficking victims with sex workers. The indicators were: 1) the clothes that they wear according to the temperature (often the women can be in shorts even during the winter; 2) working for longer hours; 3) being present on the street in adverse weather; 4) lack of knowledge of the city or lack of social life; 5) not going to the origin country for a long period, even when they have their children in the origin country; 6) changing their behaviour in the presence of certain elements of the group (Pascoal, 2017).

The perception of the indicators, not only was useful to identify the potential human trafficking victims, but also potential controllers within the group as it can be understood from the last indicator. In this case, the strategy applied normally regards to

the very vague conversation by targeting subjects as family, children and their social life, in order to understand the relationship between the girls, with their families and among themselves. This interaction avoids that there are potential alarms for the exploiters or the controllers, leaving only space for deeper conversations when we caught the girls alone. However, with time, it was observed that at the arrival of the street unit, the women would arrive all together to speak with us, avoiding that we could be able to speak individually with them.

Besides the information provided on “first hand” (Laczko & Gozdiak, 2005), I have also enhanced the research through the application of 35 semi-structured interviews, since it can provide openness from the interviewee to secondary sources and since it also avoids secondary victimisation for the victims. The application of semi-structured interviews that normally does not limit the answer of the participant (Sarantakos, 2005) was intended to create a better interaction between the participants as well as deepen the participants’ experiences (Gorman, Clayton, Shep, & Clayton, 2005).

The interviews have included target groups from different professional backgrounds that not only work with the women on the field, but also experts on the subject of human trafficking, in total five, that could provide me some insights and guidance for my research. The interviews also included third sector workers, four anti-trafficking associations, including the national hotline. The associations were chosen from the different Italian regions, North, Central and South part of Italy in order to understand the influence of the context in the integration of the victims, after the exploitation period. In this category, there were also included an association present at the disembarkation, two cultural mediators, one volunteer in a street unit, four associations that provide assistance to victims outside the anti-trafficking national program of Art.18 and eight associations that have shelters in Italy, France, Spain, Austria and Romania. The final category was directed to law enforcement agents mainly from Portugal, Italy and Romania composed of two lawyers, one prosecutor, one police officer and four agents of the anti-trafficking agency.

The access to secondary sources were mainly provided through the combination of purposive sampling and snowballing, since purposive sampling is a type of sampling in which ‘particular settings, persons, or events are deliberately selected for the im-

portant information they can provide that cannot be gotten as well from other choices (Maxwell, 1997). In order to complete purposive sampling, I have introduced the methodology of Snowballing (Johnson, 2014), since the participants could provide me information about other potential interviewees within the field. The variety of participants working in different fronts could also provide me different perspectives on the subject, by including criminal, sanitary, cultural, economic and the social aspect during and after the exploitation period. Furthermore, these participants tend to regard the phenomenon from different perspectives that provides a multifaceted aspect of the phenomenon.

Pursuing qualitative research in sensitive issues as human trafficking requires highly ethical protocols (Haggerty, 2004), in fact, participative research in human trafficking involves vulnerable subjects, being normally regarded as unethical (Siegel & De Roos, 2016). Furthermore, safety should also be part of the ethical concerns of the researcher, in which colleagues should be aware of the location of the researcher (Kelly & Coy, 2016). In this case my Participant Observation was firstly through purposive sampling, which has introduced me in the group of volunteers that had already contact with the women. Their experience of two years has given me safety, since they previously did not have to face any problem. Furthermore, since the street unit was a religious group, most of the women have regarded me as well as a religious person, which for them was a synonym of being inoffensive (Kelly & Coy, 2016).

When doing research with vulnerable groups, especially including criminal activities that can be object of threats from criminal groups it is highly important to keep their anonymity and confidentiality. In fact, while mentioning the person I have used a casual capital letter that it is not the first letter of the person's name, being restricted to their nationality.

1st Chapter

The analysis of the concept of vulnerability on the International legal framework of Human Trade.

According to the Oxford dictionary, the definition of vulnerable is to be “Exposed to the possibility of being attacked or harmed, either physically or emotionally” (Pearsall & Hanks, 2001) or a person “in need of special care, support, or protection because of age, disability, or risk of abuse or neglect.” The concept derives from the Latin word *vulnus*, which means "wound". The noun “*Vulnus*” has led to the verb *vulnerare* that means “to wound” and to the *adjective vulnerabilis*, which became "vulnerable" in English in the early 1600s. Nowadays the concept has been widely used in different subjects as “economic development, social science, human security, crime prevention, environmental research, disaster relief, famine, contagious diseases and mental health” (UNODC & UNGIFT, 2008). This chapter intends to analyse the use of such concept regarding the phenomenon of human trafficking, exploring the different features of the subject as well as its development and application of the International Legal Framework.

1.1 Evolution of the concept of Vulnerability on the International Legal Framework

The last century saw the evolution of the International Legal Framework on Trafficking in persons, passing from a major focus on sexual exploitation, strictly regarding white women⁶, as it happens in the International Agreement for the Suppression of the White Slave Traffic in 1904 to a broader concept of human

⁶ International Agreement for the Suppression of the White Slave Traffic concluded the 18th May, 1904 and came into force on 18 July 1905, ratified by a total of 26 states that had colonies: His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the German Emperor, King of Prussia, in the name of the German Empire; His Majesty the King of the Belgians; His Majesty the King of Denmark; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of Italy; Her Majesty the Queen of the Netherlands; His Majesty the King of Portugal and of the Algarves; His Majesty the Emperor of all the Russias; His Majesty the King of Sweden and Norway; and the Swiss Federal Council. Five years after the treaty was re-negotiated in Paris and concluded on 4 May 1910.

trafficking victim applied in the Protocol of Palermo. The amplification of the concept has permitted to insert on the International legal framework other exploitative typologies and a large range of individuals independently of their gender, race and age. This passage from a restrictive view of the phenomenon applied to a particular vulnerable group that shares common features has allowed to have a more inclusive notion of vulnerability that could be applied at an individual level, rather than an entire collective sharing a characteristic. The consideration of individual vulnerability has emerged during the *Travaux Préparatoires* of the Trafficking Protocol⁷. Despite that, the majority of the member States admitted that the phenomenon was more prevalent in women and children, the representatives of the member states showed preference including all categories, rather than only women and children.

Effectively, despite that the term “Abuse of authority” has previously appeared in other international conventions, such as the 1910 White Slavery Convention⁸, the concept of Vulnerability has only been introduced at an International level through the European Parliament’s Resolution A4-0326/95 on Trafficking in human beings in 1995⁹. The term is mainly introduced in the document not regarding a potential vulnerable group sharing a gender or age, but regarding third countries’ citizens¹⁰. Furthermore, the structure of the Resolution introduces a draft from the current trafficking definition by the Protocol by introducing terms as “deceit”, “abuse of position of vulnerability or abuse of administrative status”, “exploitation” and “any other form of coercion”.

The concept of Vulnerability in this case is considered to be one of the “means” presented as “abuse of a person’s vulnerable situation”, used by the trafficker in order to obtain the victim’s consent. Moreover, the Resolution A4-0326/95 also admits the urge to draw legislation, in order to reduce the victims’ vulnerability and highlights the

7 United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

8 International Convention for the Suppression of the "White Slave Traffic," May 4, 1910, 211 Consol. T.S. 45, 1912 GR. Brit. T.S. No. 20, as amended by Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, and Amending the International Convention for the Suppression of the White Slave Traffic, May 4, 1949, 2 U.S.T. 1999, 30 U.N.T.S. 23, entered into force June 21, 1951.

9 Official Journal C 032 , 05/02/1996 P. 0088

10 “Takes the term 'trafficking in human beings' to “mean” the illegal action of someone who, directly or indirectly, encourages a citizen from a third country to enter or stay in another country in order to exploit that person by using deceit or any other form of coercion or by abusing that person's vulnerable situation or administrative status.”

access to protection services. On this case, the European Resolution not only understands vulnerability during the recruitment's act and exploitation, but also as a feature of the victim after the exploitation period, since it recommends to the European Union's member States to avoid deportation, which probably exposes the victim to further exploitation.

Despite this, firstly introduction to the concept of "abuse of a person's vulnerable situation", the concept of APOV was only taken at a wider International level by the United Nations, with the establishment of the Human Trafficking¹¹ and Smuggling Protocols¹² after the United Nations Convention Against Organised Crime, in 2000. However, regardless of the fact that the concept was considered an important part of the international legal definition of THB (UNODC, 2013), it was controversially debated and it was only introduced on the last negotiation stage in the definition of the Art.3 of the Trafficking Protocol.

The definition of the "mean" "abuse of a position of vulnerability" was only deepened later on other International Agreements in THB and in the Protocol's Legislative Guide¹³ as "any situation in which the person involved has no real and acceptable alternative, but to submit to the abuse itself". Despite that, the concept's definition has also been relatively mentioned previously on a 1997 EU Ministerial Declaration¹⁴, the definition of APOV was still regarded as being unclear, due to the imprecise "mean"ing of a "real and acceptable alternative. None the less, the imprecision of the concept's definition was also adopted in the Arab Model Law on Combating Trafficking in Persons, as the "Exploitation of physical, mental, or psychological disability or a given legal status, or any particular situation that may

¹¹ Art.3, "Trafficking in persons" shall "mean" 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 of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. 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".

¹² United Nations, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime, supplementing the United Nations Convention against Transnational Organised Crime, entered into force on 28 January 2004.

¹³ UNODC, 2004, Legislative guides for the implementation of the United Nations Convention against Transnational Organised Crime and the Protocol thereto, New York

¹⁴ Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation," Apr. 26, 1997. "by "means" of coercion, in particular violence or threats, or deceit, abuse of authority or other pressure which is such that the person has no real and acceptable choice but to submit to the pressure or abuse involved."

affect the willingness or the behaviour of the person, where she/he has no real and acceptable alternative but to submit to the abuse involved”. According to Gallagher (Gallagher, 2012), the imprecision of the definition of “real and acceptable alternative” was purposely left unclear, since the Interpretative Note cautiously purposes that the consensus should be determined by the States according to their different views.

The concept of Vulnerability, after its first introduction in the Legal Framework at International level, has been often referred in other Legal instruments regarding the phenomenon of Human Trafficking. The Brussels Declaration on Preventing and Combating Trafficking in Human Beings (2002) has introduced the concept of vulnerability mainly referring to vulnerable groups, by identifying women as object of gender discrimination and applying a gender approach. Such concept is mainly used as a preventive measure, as it will be considered in other International Legal Instruments addressing the phenomenon of Human Trafficking.

In 2004, the Council Directive 2004/81/EC¹⁵ identifies third-country citizens as being human trafficking victims particularly vulnerable that should be granted with protection. Furthermore, the Directive highlights the necessity to provide special protection to the most vulnerable victims, in order to fulfil their special needs. Further precision was given to the concept by the Council of Europe Convention on Action against Trafficking in Human Beings (2005), which also urges the Member States on the protection of vulnerable individuals and their special needs as well as the adoption of a gender mainstream. The gender approach indicates the concern of the European Union by the gender inequality, reflecting the vulnerability of women, by lacking of participation and empowerment in all public and private spheres. Furthermore, the Explanatory Report of the Warsaw Convention identifies the particular vulnerability of women, especially exposed to a major risk of degrading and inhuman treatment than men and urges the States to promote measures that empower women and equality between sexes. As it has been regarded, despite that the concept of vulnerability was later introduced as an individual feature, the International Legal Framework on Human Trafficking tends to focus on women and children as vulnerable groups.

The Warsaw Convention has also adopted the proposed APOV from the

¹⁵ 29th April 2004, Council Directive 2004/81/EC, on the residence permit issued to third country nationals who are victims of trafficking in human beings or who has been the subject of an action to facilitate illegal immigration, who cooperates with the competent authorities.

Trafficking Protocol as a “mean”, providing the same definition as indicated on the Trafficking Protocol’s Legislative Guide of “abuse of power or a position of vulnerability”, which is defined as “abuse of any situation in which the person involved has no real and acceptable alternative to submitting the abuse”. As the Convention, in the European Directive 2011/36 EU¹⁶, the Art. 2, comma 2 defines vulnerability as “a position of vulnerability “means” a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved” (Parisi, 2016). However, the Convention goes beyond the provided definition on the Protocol’s Legislative Guide by considering that “vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic”¹⁷. Furthermore, the vulnerability’s definition provided by the Convention includes different approaches of vulnerability, since it attributes not only as being a dimension based on the victim’s features and conditions, but also recognising as an active vulnerability that can be created by the exploiter (Pascoal, 2016).

According to Gallagher (Gallagher, 2012), despite that, most trafficking victims tend to share common features that can lead them to the traffickers, the exposure to trafficking should not be only reviewed as a passive vulnerability, depending on the victim's background. Actually, law enforcement should also focus on the created vulnerability, when the victim is exposed to the criminal network or to the trafficker (UNODC, 2012). For instance, the reference to emotional vulnerability can be regarded on the *Loverboy* method¹⁸, in which the trafficker intentionally and actively creates the emotional vulnerability of the victim, in order to achieve consent or maintain the victim in exploitation. The Warsaw’s Convention Explanatory Report summarises vulnerability’s definition, as “the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one

¹⁶ Directive 2011/36/EU of the European Parliament and of the Council of 5th April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

¹⁷ “Vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim’s immigration status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce”.

¹⁸ The loverboy method has been identified by the Dutch government as a recruitment method, mainly used by the Eastern traffickers, in which the recruiter attracts the girl into human trafficking by grooming her.

can validly renounce”.

The imprecision and flexibility of the concept of vulnerability and APOV has led to a deep debate that has generated other definitions of the concept of vulnerability. For instance, in the *UNODC Background Paper for the Vienna Forum 2008* (UNODC & UNGIFT, 2008), Michèle Clark has proposed another definition of vulnerability “a condition resulting from how individuals negatively experience the complex interaction of social, cultural, economic, political and environmental factors that create the context for their communities”. The *UNODC Model Law on Trafficking in Persons* (2009) has also provided new insights on the concept of APOV, by separating the two definitions into “abuse of position of vulnerability” and “taking advantage of a position of vulnerability”.

Furthermore, the Model Law suggests a list with several possibilities of definition of position of vulnerability, yet, it also gives an open end to the list, which is connected to the flexibility and complexity of the concept.¹⁹ Despite the open list of factors, that assumes the infinitive possibilities, most of the provided factors are the same usually indicated as an aggravated penalty applied to the offender. In fact, as it will be further mentioned, some countries have adopted the concept of APOV in their national legislation as an aggravated penalty and not as a “mean” to demonstrate the trafficking situation. Furthermore, due to the extensive possibilities of vulnerable situations, the *Model Law on Human Trafficking* (UNODC, 2009) suggests that governments should concentrate on the profile of the offender, rather than the vulnerable situation itself.

Other International reports and studies (ILO, 2009) have tried to define vulnerability, especially on the use of indicators to identify the victims, based on “precarious financial, psychological, and social situation, as well as on linguistic, physical, and social isolation”. The indicators have been graded from medium to weak indicators, but no indicator was classified as “strong”. Furthermore, the indicators were mainly applied on the course of investigations, but have not been applied at a legal

¹⁹“(i) Having entered the country illegally or without proper documentation;] Or [(ii) Pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance;] or [(iii) Reduced capacity to form judgments by virtue of being a child, illness, infirmity or a physical or mental disability;] or [(iv) Promises or giving sums of money or other advantages to those having authority over a person;] or [(v) Being in a precarious situation from the standpoint of social survival;] or [(vi) Other relevant factors.]”

level. Recently, ILO has also produced a Survey guidelines (ILO, 2012), mainly regarding labour exploitation, where the definition of “Abuse of vulnerability” relies mainly on coercive instruments used by the exploiter such as threats of denouncing the worker to the authorities, taking advantage of limited intellectual capacity or use of force. The Survey guidelines also have provided a clearness on the concept of “lack of alternative” regarding labour exploitation, explaining that “absence of alternative employment opportunities” by itself cannot be considered as forced labour, yet it can be considered when the employer uses this absence in his/her favour to expose the workers to extreme conditions.

The definition of abuse of position of Vulnerability, provided by the previous Convention of Warsaw and the *UN Legislative Guide on Human Trafficking* has been further taken and confirmed by the Directive 2011/36/EU, in its Art. 2.2. The Directive 2011/36/EU has also emphasized the importance of reducing the vulnerability of individuals, by addressing trafficking root problems, especially in third countries, by incentivizing appropriate anti-trafficking measures. Despite of the unclearness on the definition of a vulnerable person, the EU Directive 36/2011 has assent that a vulnerable person should be considered at least according to gender, pregnancy, state of health and disability (Satzger et al., 2013).

The EU Strategy 2012-2016 also identifies gender inequality as well as violence against women as a vulnerability factor. However, despite that the recognition of gender inequality and violence can be considered a particular vulnerability factor in Human Trafficking, the EU Strategy also identifies that traffickers tend to target boys, men, girls and women in a vulnerable position (Walby et al., 2016). Moreover, the EU Strategy identifies that vulnerability is shaped by gender, which influences both genders in being vulnerable to different types of exploitation. For instance, due to the work segmentation in many countries, women and girls were identified to be more vulnerable to sex exploitation and domestic servitude, while men and boys tend to be more vulnerable to labour exploitation in certain sectors (Anderson, 2004).

Trafficking related to conflict situations has a very strong gender influence, since men and boys are often used to supply military forces, while women tend to be exposed to forced marriage, providing food to fighting forces and being sexual slaves (Rehn & Sirleaf, 2002). Furthermore, the strategy also indicates other environment and

contextual factors based on the economy, such as poverty, political and social factors as it happens in conflict and post-conflict situations, lack of social integration, lack of opportunities and employment and educational factors, which increases the groups' or the individual's vulnerability to traffickers. In addition, post-conflict situations diminish inhabitants in vulnerable situations, since the population might still be exposed to economic pressure and to violent movements or rebels. Conflict situations also tend to obligate individuals to displace from their homes and expose them to organised criminal networks.

1.2 The definition and application of the “mean” “abuse of Position of Vulnerability” on the International Legal Framework

The definition of Trafficking, provided by the Palermo Protocol has been widely adopted by the States in their domestic law, but remarks on the ambiguity of the Trafficking defining elements, such as “vulnerability” and “exploitation” have emerged a debate about their legal limitation and application. The debate has surfaced mainly between supporters that have a conservative and limited vision of the definition and supporters that have a flexible perspective of the definition, especially on concepts such as “purpose” and “abuse of position of vulnerability”. In fact, the “mean” of “abuse of Position of Vulnerability” has been a core issue of the debate. However, despite its fluidity and ambiguity, the concept APOV has been largely accepted as an important part of the Trafficking's definition (Gallagher, 2012).

According to the *Travaux Préparatoires* (UNODC, 2006) the “mean” was initially introduced by Belgium on the fourth session of the Ad Hoc Committee that has proposed to incorporate “or through abuse of the particular vulnerability of an alien due to that person's illegal or precarious administrative status, or through the exercise of other forms of pressure or abuse of authority such that the person has no real or acceptable choice but to submit to such pressures or abuse of authority”. The *Travaux Préparatoires* (UNODC, 2006) has also confirmed the discussion on the definition of such “complex “mean””, especially between APOV and “abuse of authority”. For instance, on “abuse of authority”, the drafters have defined the term as it “should be understood to include the power that male family members might have over female family members in some legal systems and the power that parents might have over their

children.”

The “mean” of APOV has been considered to be based mainly an intrinsic feature of the victim in most trafficking cases, being often based on factors such as age, illness, gender and poverty, related to the background of the victim. It has also been based on other factors such as isolation and psychological manipulation that are created by the trafficker in order to maintain the victim in exploitation. According to the authors Penedo and Wrabetz (2015) there are three main categories of vulnerability that not only depend on the victim’s background, but also on the passive and the active influence of other factors. The authors divide vulnerability as being 1) pre-existing, basically depending on the victim’s background, such as a person’s physical or mental disability, young or old age, gender, pregnancy, culture, language, belief, family situation; 2) situational that can be created or maintained, such as legal status in one given territory or social, cultural or linguistic isolation; or 3) circumstantial (also created or maintained: such as a person’s unemployment or economic destitution).

Other suggestions have been given for the different levels of APOV, for instance, in the *Issue paper on APOV* (UNODC, 2012), Gallagher focus on the distinction between vulnerability (the victim’s push factors), mainly based on the passive action of the victim and the “Abuse of Position of Vulnerability” (trafficker’s pull factors) that requires an active action of the trafficker. Therefore, despite the obvious overlap on these two mentioned elements “Abuse of power” and APOV, trafficking does not occur based only on the vulnerability of the victim, but also based on an active interaction between the trafficker’s intentions and the victims’ conditions (Pascoal, 2016). In this case, when APOV is used, other coercive methods, which are more direct, are also applied such as deceit, threats and violence.²⁰

Soft “means” such as APOV, fraud and deception are considered to be less direct “means”, which generally are more difficult to prove during investigations. Therefore, in most of the cases APOV is recognised through the victim’s narrative, when the “act” has already taken place, proved through the link and support of other “means” such as

²⁰ European Parliament Resolution on trafficking in human beings, Resolution A4- 0326/95 of 18 January 1996, OJ C 032, Feb. 5, 1996 (“deceit or any other form of coercion”); Council of Europe 1997 Joint Action on Trafficking (“coercion, in particular violence or threats, or deceit”); 2000 Committee of Ministers Recommendation (“coercion, in particular violence or threats, deceit, abuse of authority or a position of vulnerability”).

deception, coercion or fraud. However, Moldavian Practitioners (Gallagher, 2012) have affirmed to be possible to prosecute a case of human trafficking being based only on the “Abuse of position of vulnerability”, even though the tendency is to be connected with other “means” such as “threat” or “use of force” and “deception”. Otherwise, in these cases, the vulnerability of the victim cannot be proven to have been taken as an advantage by the trafficker. Moreover, according to the Protocol, in order to apply the “mean” by itself and identify a trafficking situation, the “mean” has to be accompanied by the “Act” through “recruiting, transferring, harbouring, or receiving the person”. However, most of the cases where APOV is identified are connected to “recruiting” rather than “harbouring” or “receiving”. This is due to the fact that this “mean” is mostly linked to the recruiting phases, than other phases, despite that confiscation of documents or the obstacle of the language are verified after the recruitment of the victim.

The Protocol is very clear in requiring the presence of at least two elements (Act+ “mean”) in order to identify a trafficking situation and assuming the presence of the third element (Purpose) only through the trafficker’s intention. However, the absence of the element of “means” can also be applied in case the victim is under 18 years old, since the minor’s consent is always considered to be irrelevant, even if no “mean” has taken place. The issue of the irrelevant consent in the case of minors has risen, since they are considered to be always vulnerable. Therefore, in case there is the trafficker’s scope is always considered to be APOV. For instance, in 2016 Romania has considered a case of human trafficking, where no “means” were used by the traffickers, where a group of criminals have incited a 13 year old girl to do shoplifting. The girl, who was living with her parents and has not suffered any violence, had seen the activity as being exciting, while the traffickers were receiving the money. However, despite no coercion methods were used in the case, law enforcement has still considered the irrelevance of the minor’s consent due to her vulnerability²¹.

1.2.1 The “mean” of APOV in some National Legal Frameworks?

In the interviews on the *Issue Paper on APOV* (Gallagher, 2012), practitioners from different countries cited different types of vulnerabilities, which were mainly

²¹ Interview number 12 (Law enforcement), 23/08/2016, Romania

related to: age, irregular legal / migration status, poverty; precarious social status; pregnancy; illness and disability (mental and physical); gender; sexuality, religious and cultural beliefs (notably practices commonly referred to as juju and voodoo); linguistic isolation; lack of social networks; dependency (on employer, family member, etc); threats to disclose information about the victim to his or her family or others; and abuse of emotional/ romantic relationship. As it is perceived, the given vulnerable factors are not only vulnerabilities depending only on the victim, but also the vulnerability that has resulted from the interaction between the trafficker and the victim. Therefore, the “mean” of APOV is perceived as being the result of such interaction, *hic est.*, the advantage taken by the trafficker, not only based on the victim’s vulnerabilities, but also on the situation that was created. Other situations have been verified, where the trafficker has not abused the position of vulnerability of the victim, but has created the victim’s vulnerability. For instance, some Romanian criminal groups tend to drug their victims in order to create substance’s dependency and be able to continue to exploit their victims and control them (Croitoru, 2016).

Due to the ambiguous definition on the Protocol, the transnational “mean” of “abuse of position of Vulnerability” has been differently applied in several National Legal Frameworks. In the research on the APOV, Gallagher (Gallagher, 2012) has undertaken depth interviews with practitioners and experts from twelve countries (Belgium, Brazil, Canada, Egypt, India, Mexico, the Republic of Moldova, Netherlands, Nigeria, Switzerland, the United Kingdom of Great Britain and Northern Ireland, and the United States of America), dividing them, according to their adoption on the concept of APOV.

Therefore, the countries were divided in four groups by: “(i) those that have reproduced the Protocol’s definition into their national law, including the concept of “abuse of a position of vulnerability”; (ii) those that have reproduced the three elements of the definition, but omitted one or more “means” including “abuse of a position of vulnerability”; (iii) those that have omitted the “means” element altogether: retaining only the “action” and “purpose” elements; and (iv) States where the legislative situation is unclear: for example, “means” may be required under one instrument but not on another – or the “means” element may be omitted, but apparently taken into account in judicial decisions.”

The study analysed the introduction of the concept of APOV on the national legal framework of the countries that have adopted the “mean” of APOV such as Egypt²², Moldova and Netherlands. The Egyptian Civil Code recognises that vulnerability factors “can deprive, diminish or in general reduce the capacity of the person to form and exercise judgments, including lack of capacity (minors, mental disability); physical disability where this leads to an inability to express one’s will; and “emotional deficiencies” including “manifest impetuosity and unruly passion”.

The Egyptian Civil Code has introduced the “mean” of “abuse of power” and has enlarged the concept of APOV to “abuse of position of vulnerability and need”. According to one of the practitioners, the difference between vulnerability and need is considered especially due to the notion of “will” or “consent”. However, despite the enlargement of the “mean”, it has been mainly applied to sexual exploitation, normally related to minors, as in the case No. 8959/2012, Giza Criminal Court. In this case, not only APOV was applied, since the case was regarding a situation of young girls, but it was also applied the concept of “abuse of power”, due to the relationship of the traffickers with the girls. Furthermore, the “mean” is also applied to minors by the Law No. 12/1996, amended by Law No. 126/2008 in a case related to forced marriage, where “abuse of authority” was also considered due to the relationship of the traffickers with the victim.

Despite that APOV was enlarged in the Egyptian code, in the Moldavian Legal Framework was replaced by the “abuse of vulnerable condition”, mainly based on: (i) “taking advantage of physical dependence”; (ii) threat of disclosure of confidential information to the family of the victims or to other persons; (iii) rape; (iv) torture, inhuman or degrading treatment in order to ensure the obedience of the person; and (v) debt bondage.²³ Several aspects that were not mentioned before are considered quite relevant on the present components identifying a situation of vulnerability, especially difficult to prove, such as “disclosure information to the family of the victims that can be recognised as threat and debt bondage”, extremely used on situations of human trafficking in the Eastern European countries.

²² Article 2 of Egypt’s 2012 Law No. 64 on Combating Human Trafficking

²³ Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova on application of legislative provisions in cases of trafficking in human beings and trafficking in children, No. 37 of 22 November 2004, published in the SCJ Bulletin No. 8, 2005. (Hereafter Supreme Court of Moldova: Decision 37/2004).

The third country that has been considered in the study, which has introduced the “mean” of “APOV” in its Legal Framework is Netherlands. The Netherlands has adopted APOV through the Article 273f of the Dutch Criminal Code as “misuse of position of vulnerability”. The “mean” assumes that psychological violence can be used under the “abuse of position of vulnerability as it is described in the policy rules in 2010, the Violent Offences Compensation (Netherlands, 2010), which can create a “particular situation and the misuse of circumstances.”

Some cases have been considered only under the “mean” of “abuse of position of vulnerability” without the enhancing of other “means”. For instance, in the case Almelo District Court 30 March 2012, LJN: BW0448, the court has sentenced the trafficker only based on the APOV on a case of sexual exploitation, since despite that the court has found no “means” of “coercion”. The fact that the victims were living illegally in the country, with no residence permit and did not know the local language has been identified as a situation of APOV (Mensenhandel, 2012). In addition, in another case, the “mean” APOV was used by the Dutch Supreme Court²⁴, with Chinese victims that had approached the trafficker, instead of being recruited. The Lower Court has considered that APOV requires that the initiative comes from the trafficker, rather than from the victims. However, in this case, even if the victims were the ones to approach firstly the trafficker, the Higher Court has still considered that the vulnerable position of the victims was consciously abused and has recognised the “misuse of vulnerable position” as one of the “means”.

The *Issue Paper on APOV* (Gallagher, 2012) has included two countries that have not mentioned directly the “mean” of APOV in their national legislation, such as Nigeria²⁵ and United States. However, despite that, Nigeria has not included this “mean” within its trafficking legislation; it has been mainly applied in cases involving minors or regarded to being implicit on the “mean” of “deception”. Furthermore, one Nigerian practitioner has affirmed that even “juju” tends to be considered as a coercive “mean”, in which “the victim has no real or acceptable alternative to submit to the exploitation”. The applied definition is the same suggested by the Warsaw Convention’s

²⁴Dutch Supreme Court, 27 October 2009, LJN: B17099408. See also: L. van Krimpen (2011), ‘The interpretation and implementation of labour exploitation in Dutch Case Law’.

²⁵ By the time of the study, Nigeria had in force the Nigerian 2003 Trafficking Act that did not include the “mean” of Abuse of position of vulnerability. However, as it will be further detailed, Nigeria prevailing legislation on Trafficking is the 2015 Trafficking Act.

and the Trafficking Protocol's definition to the "mean" of APOV. The United States of America, as well as Nigeria has not introduced the "mean" of APOV in their trafficking definition²⁶. Nevertheless, during the study, APOV was mainly considered to be within the "mean" "coercion" or being based on the "victim's age, status as an illegal alien, physical and mental condition and lack of contact with anyone other than the defendant."²⁷

The third group of countries in the study considered to not include explicitly the "means" in their definition are Canada and Belgium (Gallagher, 2012). In the case of Belgium, vulnerability is not seen as a "mean" to support the identification of the trafficking situation, but as an aggravated offence differed in three levels that can increase the trafficker's penalty. The "aggravated circumstances" are connected to 1) "abuse of authority; 2) offences committed against a minor or including other "means" such as "fraud", "violence" and "coercion"; 3) Abuse of vulnerable situation "by abusing the (particular) vulnerable situation in which a person is, because of their illegal or precarious administrative situation, their precarious social situation, a pregnancy, illness, a disability or physical or mental impairment, such that the person actually has no real and acceptable alternative but to submit to the abuse (Krimpen, 2011)."²⁸ As Belgium, Canada has not included "means" in its trafficking definition²⁹, yet, recently the Subsection 279.04(2) has included guidelines to the trafficking definition, where it is mentioned the concept of APOV: "(a) used or threatened to use force or another form of coercion; (b) used deception; or (c) abused a position of trust, power or authority". However, it has been reported that the concept of "abuse of position of trust, power or authority" has also been applied in other cases regarding mainly to sexual exploitation, especially connected "in a position of dependency from engaging in sexual acts with that young person".

The last five countries as Brazil, Switzerland, India, UK and Mexico were included in a last group, since they could not fit into the categories mentioned before.

²⁶ The 2000 Trafficking Victims Protection Act (TVPA)

²⁷ United States v. Djoumessi, 538 F.3d 547, 552 (6th Cir. 2008) (applying 18 U.S.C. § 1584); Bradley, 390 F.3d at 152-53. Also Veerapol, 312 F.3d 1128, 1132 (9th Cir. 2002); H.R. Rep. No. 106-939, at 101 (2000)

²⁸ Art. 433septies, Belgium Criminal Code

²⁹ Criminal Code (Canada), Art 279.01 "recruiting, transporting, transferring, receiving, holding, concealing or harbouring a person, or exercising control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation"

Due to the historical background, Brazil's trafficking definition³⁰ is mainly based on slavery work, which normally requires the absence of consent, being APOV scarcely mentioned in the judgments. On the other hand, India³¹ has a definition closer to the Trafficking's definition, with the presence of APOV, yet the "mean", as previously observed in other countries is limitedly related to sexual services. For instance, in the case PUDR v Union of India, 139³², the Indian Supreme Court has affirmed that due to the frequent deep poverty and unemployment in India, the employee is frequently faced with the Hobson's choice, preferring to be submitted to the exploitative situation, rather than to starve. Furthermore, despite that, Mexico has not identified APOV in its trafficking legislation, the General Law on the Prevention, Punishment and Eradication on Trafficking in Persons and the Protection and Assistance to Victims has identified in Art.4 a situation of vulnerability³³ as aggravated offences

By the end of the study, three types of adjectives regarding the "mean" of APOV were given by the practitioners of the researched countries to describe the "means" importance of the national legal framework. Hence, according to the practitioners from the involved countries, the "mean" APOV has been considered to be: 1) "vital" and "essential", since the prosecution could not have been achieved without the identification of such "mean"; 2) "neutral", showing no impact on the conviction of the traffickers; 3) "harmful" since the employment of such "mean" could result in its misapplication. The countries that do not have an explicit designation of the concept of APOV in their legislation have agreed that such concept is too vague in order to be "effectible justiciable" or apparently redundant considering the other "means" such as coercion and deception (Gallagher, 2012). On the other hand, the importance of such "mean" has been highlighted by some practitioners from the countries that have included the "mean" on their national legal framework, since it has led to more convictions that could not be identified due to the lack of other direct "means".

Furthermore, the recognition of its importance has been connected to the

³⁰ Decree No. 5, 948 promulgating the National Policy to Combat Human Trafficking.

³¹ Trafficking in persons is prohibited by the Indian Constitution, Art 23

³² (The Asian Games case) AIR 1982 S.C. 1473.

³³ "Origin, age, sex, precarious socioeconomic status; Level of education, lack of opportunities, pregnancy, violence and discrimination suffered prior to trafficking related crimes; Immigration status, physical or mental disorder or disability; Being a member or to come from an indigenous community Being a person older than sixty years; Any type of addiction; A reduced ability to form judgments for being a minor, or Any other characteristic that is harnessed by the perpetrator of the criminal offence."

complex and ambiguous methods used by the traffickers, which tend to adapt to the improving of policy making by recurring to more manipulated vulnerabilities, rather than force or direct coercion. However, despite that the “mean” APOV has seemed to be useful in the last years on the conviction of traffickers that tend to use softer coercive instruments, some practitioners in the study demonstrated that the extend of such definition should not be applied, in order to avoid a banality of the use of the trafficking term. In fact, some practitioners defend that trafficking it is a serious crime, carrying with serious penalties and the term “vulnerability seems awfully imprecise, with uncertain legal foundation” to be “imported into a national criminal statute without limiting language or clear definitions” (UNODC, 2012). Such reflection, in fact, leads us to interrogate about the application and delimitation of such concept of the National legal frameworks.

1.2.2 The adoption of APOV in the National Legislation of the analysed countries: Italy, Romania and Nigeria

After an International focus on the application of the “mean” APOV, this subchapter intends to analyse the adoption of such “mean”, as well as the national legislation on human trafficking on the analysed geographic areas, as origin countries such as Romania and Nigeria, such as transit and destination countries as Italy.

1.2.2.1 Nigeria

Nigeria has signed the Trafficking Protocol in 13th December 2000 and was the second State to ratify the Protocol, after Monaco in 28th June 2001. The Country is also party in other International Human Rights Treaties against exploitation and Slavery, such as the United Nations Slavery Convention (1927), the Convention for the suppression of trafficking in Persons and of the Exploitation of the Prostitution of Others (1949), the ILO Forced Labour Convention (1930, No. 29), the ILO Abolition of Forced Labour Convention (1957, No. 105), the ILO Worst Forms of Child Labour Convention (1999, No. 182). Nigeria has also ratified other international instruments regarding the protection of women, children and migrants.³⁴

³⁴ The Convention on Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), the Optional Protocol to the Convention on the Rights of the Child on

After the ratification of the Protocol, Nigeria has implemented the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 in 14th July 2003, mainly focusing on women and children for sexual exploitation. Before the implementation of the 2003 Trafficking Act, crimes of human trafficking were mostly under other minor crimes, due to the absence of legislation on the phenomenon in the Section 516, 419 and 390 of the Criminal Code. The 2003 Trafficking Act in the Section 50 defines Human Trafficking as “includes all acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchases, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in force or bonded labour, or in slavery-like conditions”. As it is observed on the definition and previously mentioned, the “means” that are cited are “deception”, “coercion” or “debt bondage”, being the “mean” of APOV clearly absent. However, on Section 12a focused on the prosecution of the offender, the Act, besides the “means” of “deception”, “coercion” and “debt bondage” presents unlimited possibilities of “means” by including “or any “means”, whatsoever³⁵”. The referred open ending of “means” appears related to the underage victim of Trafficking, which is considered potentially vulnerable. Furthermore, the phenomenon of Trafficking is also regulated by the Section 275 of the Penal Code, which, the 2003 Act does not identify in the used “means”, in case the victim is underage.³⁶

On 30th March 2015, the Trafficking in Persons Prohibition Enforcement and Administration Act was published in the Federal Republic of Nigeria Official Gazette, which, besides the aspect of protection of victims and prosecution of offenders, firstly

the Sale of Children, Child Prostitution and Child Pornography (2000), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Elimination of All Forms of Racial Discrimination (1965), the UN General Assembly Declaration on the Elimination of Violence against Women (1993), the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the ILO Conventions 97 and 143 on Migrant Workers and 181 on Private Employment Agencies.

³⁵ “by the use of deception, coercion, debt bondage or any “means” whatsoever, induces any person under the age of eighteen years to go from one place to another to do any act with intent that such person may be, or knowing that it is likely that the person will be forced or seduced into illicit intercourse with another person”

³⁶ “whoever, by “means” whatsoever, induces a girl under the age of eighteen years to go from any place or do an act with intent that the girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punished with imprisonment which may extend to ten years and shall also be liable to a fine”

mentioned in the Act 2003, also includes the issue of prevention. The Act on the Section 3a attributes the responsibility to the Public Enlightenment to prevent the phenomenon by broadcasting awareness campaigns on media or carrying information through seminars or workshops, especially directed to vulnerable groups.

Contrary to the 2003 Trafficking Act, the recent Act has a more inclusive concept of human trafficking, according to the Trafficking Protocol's definition, including other types of exploitation as forced labour, domestic servitude and organ harvesting. Therefore, the Trafficking definition on the Section 13 of the Nigerian Trafficking 2015 Act includes "2) Any person who recruits, transports, transfers, harbours or receives another person, by the "means" of a) threat or use of force or other forms of coercion; b) abduction, fraud, deception, abuse of power or position of vulnerability; or c) giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the of exploitation of that person." As it can be seen, as the "abuse of power", as APOV have been transcribed into the recent legislation of trafficking in Nigeria, yet, no definition or further explanation has been given to the concepts. Only the abuse of power on section 20 is further detailed as "any person that abuses a position of power or situation of dominance or authority arising from a giving circumstance" for organ harvesting.

1.2.2.2 Romania

Romania has ratified the Trafficking Protocol on the 4th December 2002 and also several international legal instruments on human rights as the UN Convention on the Elimination of All Forms of Discrimination against Women 1979, the Convention on the Rights of the Child 1989, ILO Convention for the elimination of the worst forms of child labour 1999, the Council of Europe Convention on Action against Trafficking in Human Beings 2005, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse 2007 and the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). In 2007, Romania has joined the European Union and has applied the Directives of 2011/36/EU, 2004/81/EC on human trafficking to its national legislation (GRETA, 2016).

Romania has established its first law against human trafficking,

678/2001³⁷ adopted in 21st November and entered in force in 11th December 2001. meanwhile, the law has suffered several alterations with the laws No. 143 of 24th October 2002, Law No. 39 of 21st January 2003, EGO No. 79 of 14th July 2005, Law No. 287 of 11th October 2005, Law No. 230 of 30th November 2010 and the law No. 41 of 3rd May 2011 (GRETA, 2012). The law includes the “means” of APOV and “abuse of power”, which is considered the “abuse of power or by taking advantage of that person’s inability to defend him-/herself or to express his/her will or by giving or receiving money or other benefits in order to obtain the agreement of a person who has control over another person with the intent of exploiting the latter”. Despite that the concept of vulnerability was not clearly adopted into the Romanian legislation, the theory of the concept was translated directly into “the inability to defend him/her”.

With the entered in force in February 2014, the New Criminal Code and the Criminal Procedure code, based the legislation of human trafficking on the articles Art.182³⁸, Art.210, Art.211³⁹ and Art.367⁴⁰ of the Criminal Code. The Art.210 defines

³⁷ Art.12 - (1) “Whoever recruits, transports, transfers, harbors or receives a person, through the use of threats or violence or the use of other forms of coercion, through kidnapping, fraud or misrepresentation, abuse of power or by taking advantage of that person’s inability to defend him-/herself or to express his/her will or by giving or receiving money or other benefits in order to obtain the agreement of a person who has control over another person with the intent of exploiting the latter, commits a criminal violation of this Law and shall be punished with 3 to 12 years imprisonment and denial of a number of rights”

³⁸“Exploitation of a person “means”:

- a) forcing a person to carry out work or a task;
- b) enslavement or other similar procedures to deprive of freedom or place in bondage;
- c) forcing persons into prostitution, pornography, in view of obtaining and distributing pornographic material or any other types of sexual exploitation;
- d) forcing into mendicancy;
- e) illegal collection of body organs, tissues or other cells”.

³⁹ Trafficking in underage persons

(1) Recruitment, transportation, transfer, harboring or receipt of a juvenile for the purpose of their exploitation shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.

(2) If such act was committed under the terms of Art.210 par. (1) or by a public servant while in the exercise of their professional duties and prerogatives, it shall be punishable by no less than 5 and no more than 12 years of imprisonment and a ban on the exercise of certain rights.

(3) The consent expressed by an individual who is a victim of trafficking does not represent an acceptable defense.

⁴⁰“ Creation of an organised crime group (1) The act of initiating or creating an organised crime group or of joining or supporting such a group in any way shall be punishable by no less than 1 and no more than 5 years of imprisonment and a ban on the exercise of certain rights. (2) When the offenses included in the purpose of an organised crime group are punished by life imprisonment or by a term of imprisonment exceeding 10 years, it shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights. (3) If the acts set out in par. (1) and par. (2) were followed by the commission of an offense, the rules on multiple offenses shall apply. (4) No penalty shall apply to the individuals who committed the acts set out in par. (1) and par. (2) if they report the organised crime group to the authorities before it was discovered and before the commission of any of the offenses included in the purpose of the group. (5) If the perpetrator of one of the acts referred to in par. (1) - (3) facilitates,

trafficking as the “(1) Recruitment, transportation, transfer, harbouring or receipt of persons for exploitation purposes: a) by “means” of coercion, abduction, deception, or abuse of authority; b) by taking advantage of the inability of a person to defend themselves or to express their will or of their blatant state of vulnerability; c) by offering, giving and receiving payments or other benefits in exchange for the consent of an individual having authority over such person, shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights. As verifiable, the previous “abuse of power” mentioned on the Law 678/2001 was substituted by “abuse of authority” and adding “the inability of a person to defend themselves or to express their will” together with the sentence “of their blatant state of vulnerability”. However, despite the insertion of the concept of vulnerability on the trafficking definition, no attribution is made to the meaning of “vulnerability”. Furthermore, the adjective “blatant”, might have an ambiguous role, since the trafficker can declare that the “vulnerability” was not blatant.

Romania in the Law Nr.292 of 20th December 201, Art.6 describes vulnerable group as “individuals or families who are at risk of losing their capacity to meet the needs of daily living because of cases of disease, disability, poverty, drug addiction or alcohol or other situations that lead to economic vulnerability and social development or people more than 65 years”. According to Art.92 (1) “The elderly are a vulnerable population group with particular needs, due to the limitations and fragility characteristic physiological aging. (2) In the category of vulnerable people are included minors, unaccompanied minors, persons with disabilities, the elderly, pregnant women, single parents with their children, victims of trafficking, persons suffering from serious illnesses, people with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, or in other situations special

1.2.2.3 Italy

Italy has ratified the UN Trafficking Protocol on 2nd August 2006 and other

during the criminal investigation, discovery of the truth and the prosecution of one or more members of the organised crime group, the special limits of the penalty are reduced by one-half. (6) An “organised crime group” “means” a structured group, made up of three or more persons, which exists for a certain period of time and acts in a coordinated manner for the purpose of perpetrating one or more offenses”

international instruments as the Council of Europe Convention on Action against Trafficking in Human Beings 2005, the UN Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified in 1991 and 2002), the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1985), the Convention concerning Forced or Compulsory Labour (No.29), Convention concerning the Abolition of Forced Labour (No.105), Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182) and Convention concerning Decent Work for Domestic Workers (No.189) (GRETA, 2014).

The offence of human trafficking was introduced in 2003, by the Law No. 228/2003⁴¹ on “Measures against trafficking in persons” on the Criminal Code through the Art.600⁴² (“Placing or holding a person in condition of slavery or servitude”), Art.601⁴³ (“Trafficking in persons”) and Art.602⁴⁴ (“Purchase and sale of slaves). Despite that in the Art.600 and the Art.601, it is previewed the “means” of “violence, threat, deception, abuse of authority or profiting from a situation of physical or psychological inferior or a situation of need”; the concept of vulnerability has not been

⁴¹ Law 11 August 2003, n. 228, "Measures Against human trafficking", published by the Official Gazette n. 195 of 23rd August 2003

⁴² “Whoever exerts on any other person powers and rights corresponding to ownership; places or holds any other person in conditions of continuing enslavement, sexually exploiting such person, imposing coerced labour or forcing said person into begging, or exploiting him/her in any other way, shall be punished with imprisonment from eight to twenty years. Placement or maintenance in a position of slavery occur when use is made of violence, threat, deceit, or abuse of power; or when anyone takes advantage of a situation of physical or mental inferiority and poverty; or when money is promised, payments are made or other kinds of benefits are promised to those who are responsible for the person in question. The aforesaid penalty becomes harsher, increasing by one third to 50%, if the offences referred to in the first paragraph above are perpetrated against minors under eighteen or for sexual exploitation, prostitution or organ removal purposes”

⁴³ “Whoever carries out trafficking in persons who are in the conditions referred to in article 600, that is, with a view to perpetrating the crimes referred to in the first paragraph of said article; or whoever leads any of the aforesaid persons through deceit or obliges such person by making use of violence, threats, or abuse of power; by taking advantage of a situation of physical or mental inferiority, and poverty; or by promising money or making payments or granting other kinds of benefits to those who are responsible for the person in question, to enter the national territory, stay, leave it or migrate to said territory, shall be punished with imprisonment from eight to twenty years.

The aforesaid penalty becomes harsher, increasing by one third to 50%, if the offences referred to in this present article are perpetrated against minors under eighteen or for sexual exploitation, prostitution or organ removal purposes”.

⁴⁴ “Whoever, in cases other than the ones referred to in article 601, purchases or sales or transfers any person, who is in any of the conditions referred to in article 600, shall be punished with imprisonment from eight to twenty years.”

The aforesaid penalty becomes harsher, increasing by one third to 50%, if the offences referred to in this present article are perpetrated against minors under eighteen or for sexual exploitation, prostitution or organ removal purposes”.

applied. Therefore, the Italian legislation until the transposing of the European Directive 2011/36 has mainly adopted the “mean” of “abuse of authority”, being the “mean” of APOV mostly limited to a disability or a situation of need that is very unclear.

The anti-trafficking national legislation in force, the Law Decree No. 24/2014⁴⁵ has transposed the Directive 2011/36/EU after the 28th March 2014, modifying the Italian definition of human trafficking, especially through Art.601, by adopting the Palermo Protocol’s and the Directive 2011/36 human trafficking definition. The approximation to the International definition of human trafficking has passed mainly through the insertion of the “mean” of “abuse of position of vulnerability”. The Art.600⁴⁶ and the Art.601 have transposed the “mean” of APOV as the “abuse of authority or taking advantage of a situation of vulnerability, inferior physical or psychological condition or of necessity” (Parisi, 2016).

Despite the lack of a definition of vulnerability, the Law Decree, on Art.1, specifies the concept of vulnerable individuals as: minors, non-accompanied minors, elderly, disabled, women, in particular if pregnant, single parents with minor children, people with psychological disturbances, people who have been submitted to torture, rape or other serious forms of psychological, physical sexual or gender violence.⁴⁷ The reference to women, in this case is very important to our study, especially on the adoption of a gender mainstream of the Decree Law, yet by considering all women vulnerable, the legislator regards all women as victims lacking from auto-determination. In fact, the lack of determination is also what leads vulnerable groups to discrimination at several levels as economic, legal, social and cultural, which consequently renders this collective group vulnerable to human trafficking (Palumbo, 2015).

⁴⁵ Decree Law 4th March 2014 n. 24, published on the Official Gazette of 13th March 2014 n. 60

⁴⁶ Unofficial translation in the GRETA report on Italy (2014) “A term of imprisonment of from eight to twenty years shall be applied to whoever recruits, introduces into the territory of the State, transfers even outside said territory, transports, yields authority over a person to another person, offers lodging to one or more persons who are in the conditions specified in Article 600, or performs the said conducts against one or more persons by deceit, violence, threats, abuse of authority or taking advantage of a situation of vulnerability, or of a weaker physical or psychic condition or a condition of need, or by promising or giving money or of any other advantage to the person having control over that person, for the purpose of inducing or forcing him/her to perform work, sex or to beg or, in any case, to perform unlawful activities entailing his/her exploitation or removal of organs. The same penalty shall apply to whoever, even without using the “means” provided for in the first paragraph, performs conducts set forth therein against a minor.”

⁴⁷ Decree Law 4th March 2014 n. 24, published on the Official Gazette of 13th March 2014 n. 60, Adoption of the European Directive 2011/36/UE, Related to the prevention and prosecution on human trafficking and the protection of victims that substitutes the legal framework of 2002/629/GAI.

1.3 Vulnerable groups versus vulnerable subjects

As previously regarded on this chapter, the concept of vulnerability on human trafficking has been mainly introduced from a prospective of vulnerable group often based on gender and age to a broader conception of individual vulnerability. However, despite the continuous adoption of the gender mainstream approach on the recent International Law instruments, vulnerable groups are also referred on other basis such as economic and social status from a preventive basis. In fact, these are mainly considered the root causes of human trafficking, based on shaped features shared by a collective group, which are eagerly recommended to be addressed by State Members. These groups have been recognised mainly in their difficulty in exercising their rights due to their age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances (UNODC, 2012).

Actually, the recognition of vulnerability in human trafficking is not only based on one single factor, but mainly regarding a complex intersection of factors, intrinsic to the victim's environment and context, which exposes the victims to a higher violation of human dignity and therefore to an exploitative situation (UNODC & UNGIFT, 2008). These factors tend to be identified during trafficking operations as vulnerability indicators of the victim, especially based on common characteristics shared by ethnic groups. The recognition of such vulnerable indicators has helped NGOs and law enforcement stakeholders in recognizing potential human trafficking victims. However, vulnerability indicators not only should be used in the victims' identification, but also should be used by the states to address the root causes of trafficking, and thus develop prevention policies and practices. Moreover, they tend to shape groups differently by their existing status in society. Therefore, their vulnerability is not mainly based on their capacity to adapt to the existing society, but due to the inadequacy of society to provide to these groups full access to their rights.

For instance, according to Brazil's definition of vulnerability, the so-called vulnerable groups tend to have difficulty in exercising their rights due to their age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances. Hence, vulnerable groups in Brazil can be considered according to their

age, disability, belonging to indigenous communities or minorities, victimisation, migration and internal displacement, poverty, gender and deprivation of liberty⁴⁸. The example of Brazil in the definition of vulnerable groups demonstrates that States members tend to recognise vulnerable groups differently according to their national context, normally connected to their political, historical, anthropological, social and economic factors within their borders. For instance, on the Brazilian definition of vulnerable groups, special attention has been given to indigenous communities, since they have been discriminated, especially regarding the issue of land property.

Another example is the consideration of Roma people, who are highly exposed to human trafficking, as a vulnerable group in Romania. The identification of vulnerable groups within the national territories especially exposed to the risk of human trafficking permits the governments to address collective vulnerability. Furthermore, with the individualization of traditionally disadvantaged groups, member States can act on take special measures by providing livelihood options, increase children's access to education and compulsory birth registration.

According to Gallagher (Gallagher, 2010), trafficking victims can be members of a particular social group that attract traffickers into introducing them in human trafficking. The traffickers tend to be attracted their shared features that shape certain social groups also located in certain geographical areas. By considering the link between vulnerable features related to origin countries, Gallagher (UNODC, 2012) interrogates if during the legal procedures, the Court takes into consideration the APOV in the origin, transit and destination countries and about the relevance as well as the difference between the pre-existing vulnerability factors between origin countries, transit and destination countries.

The designation of particular vulnerable groups to trafficking based on a particular origin, geographic area has been recently indicated by High Courts in different countries. For instance, in 2013, IOM has declared that the 80% of Nigerian women (mainly coming from the Edo State) coming through the Mediterranean were destined for sexual exploitation in Europe. The veracity of the statement has been later taken in consideration, in France, 3rd March 2015, after the request of the *General Director of the Office Français de protection des Réfugiés et Apatrides* to give a special

⁴⁸ 100 Brasilia Regulations Regarding Access to Justice for Vulnerable People, available from: <http://justicia.programeuroocial.eu/datos/documentos/noticias/1217852883.pdf>.

status to Nigerian women. The request was based on the fact that Nigerian women are considered to be part of a social group exposed to criminal trafficking networks for sexual exploitation purposes. Consequent to the request, the French National Court of Asylum Right has declared that Nigerian women coming from Edo State were particularly vulnerable to sexual exploitation. Therefore, according to the Paragraph A, 1st Article of the Geneva Convention 1951⁴⁹, women were considered to belong to a particular vulnerable group, sharing a common story, which, due to the reprobation of society as well as the criminal networks based, especially on Edo State; the French state has recognised their exposure to risks and sexual exploitation.

In fact, on the Ouagadougou Action Plan (2006)⁵⁰ certain geographic areas are recognised to be particularly vulnerable human traffickers. Moreover, the United Kingdom has recognised asylum for two Albanian trafficked victims, due their membership of a specific group highly exposed to traffickers. The indicators were based on different and broader factors, which included the social and economic status, education level, mental health, stability, area of origin, the presence of an illegitimate child and age. The major exposure of certain groups according to their geographic area has been also highlighted by Gallagher (Gallagher, 2010) that affirms that individuals' and social groups' vulnerability can be influenced by environmental and contextual factors, leading to trafficking situations. Factors as poverty, inequality, discrimination and gender-based violence contribute to a higher marginalization of certain groups that tend to be misrepresented in society. Furthermore, the absence of visibility regarding certain categories, such as prostitutes and domestic workers also increases their own vulnerability. Children are also considered a highly vulnerable group, yet the European Commission strategy against trafficking has identified special attention to early school leavers, unaccompanied minors, children left behind and with disabilities.

1.3 The understanding of vulnerable groups and vulnerable subject

1.3.1 Women and Children as mainly vulnerable groups exposed to Human Trafficking

Despite that National legislation on human trafficking identifies vulnerable

⁴⁹ United Nations, Geneva Convention 1951, signed on the 28th July 1951

⁵⁰ Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children As adopted by the Ministerial Conference on Migration and Development, Tripoli, 22-23 November 2006

groups within their social and historical structure, the International legal Framework on human trafficking has identified at a transnational level women and children as vulnerable groups more exposed to human trafficking. For instance, during the *Travaux Préparatoires*⁵¹, the United States have started to understand the particular vulnerability of women and children as well as their exposure to transnational criminal organizations operating on human trafficking. Furthermore, Argentina⁵² has suggested on the preambles of the Draft that these two categories were more vulnerable to certain types of illicit acts than men were. However, despite the definition of “certain illicit acts” was not given at the time, the affirmation regarding the vulnerability’s comparison between men, women and children it is noted in the preamble to be mainly based on sexual exploitation, rather than other types of exploitation⁵³. Special attention was required by the Special Rapporteur on the subject of violence against women at the fourth session of the Ad Hoc Committee, in order to active measures to avoid causes and consequences of violence against women such as discrimination and marginalisation.

The Warsaw Convention also indicates women as often marginalised individuals more exposed to poverty and unemployment than men. Moreover, according to the CEDAW Committee’s General Recommendation No.19 (1992) gender shaped factors such as poverty and unemployment increment women’s vulnerability to human trafficking, especially sexual exploitation. While in prostitution, the precedent vulnerability is intensified by the marginalisation of this group and the tendency to be invisible to society. Addressing gender shaped pull factors can be a long-term scope that includes several steps.⁵⁴ According to the OSCE’s Action Plan, the steps to diminish

⁵¹ First session: 19-29 January 1999, United States of America (A/AC.254/4/Add.3) “Draft Protocol to Combat International Trafficking in Women and Children Supplementary to the United Nations Convention on Transnational Organised Crime”

⁵² *Idem*, Argentina (A/AC.254/8)

⁵³ “Bearing in mind also that, while there is a wide variety of international legal instruments containing provisions aimed at combating sexual exploitation of women and children, in particular the Convention on the Rights of the Child¹ and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,² there is no such instrument whose specific objective is to deal with the problem of international trafficking in children for any purpose or of trafficking in both categories of person by criminal organizations,”

⁵⁴ UN Committee on the Elimination of All Forms of Discrimination against Women, “Concluding Observations: Viet Nam,” UN Doc. CEDAW/C/VNM/CO/6, Feb. 2, 2007, at para. 19; “Concluding Observations: Nicaragua,” UN Doc. CEDAW/C/NIC/CO/6, Feb. 2, 2007, at para. 22; “Concluding Observations: The Philippines,” UN Doc. CEDAW/C/PHI/CO/6, Aug. 25, 2006, at para. 20; UN Committee on the Rights of the Child, “Concluding Observations: Mauritania,” UN Doc. CRC/C/MRT/CO/2, June 17, 2009, at para. 78; “Concluding Observations: Qatar,” UN Doc. CRC/C/OPSC/QAT/CO/1, June 2, 2006, at para. 38; OSCE Action Plan, at Recommendations

gender equality are mainly based on improving education opportunities and providing access to credit finance, especially for women.⁵⁵ Furthermore, the establishment of a minimum wage, as well as employment rights can improve women's living standards and create more economic and social opportunities.⁵⁶ Developing political and social measures on this direction permits women to decrease gender vulnerability that tend to be one of the main pull factors to feminine migration and exposure to exploitation and traffickers.

The Directive 2011/36⁵⁷ has also adopted a gender mainstream approach by identifying sexual exploitation more gender related and proposes to the Member states to provide gender specific assistance and support measures to the victims. Furthermore, the Directive 2011/36 indicates that the abuse of particular vulnerabilities, usually reflected on national legislations by age and physical or psychological disabilities, should be considered an aggravated offence, which requires a more severe penalty. Vulnerability of women has been taken in particular attention by International Legal Instruments, such as the CEDAW Convention⁵⁸, the Inter-American Convention on Violence against Women⁵⁹ and the Istanbul Convention⁶⁰. In addition, African legal Treaties on Human Trafficking, such as the Declaration on the Fight Against Trafficking in Persons (2001) and ECOWAS Initial Plan of Action Against Trafficking in Persons (2002-2003) have targeted mainly women and children as vulnerable subjects to human trafficking.

Children tend also to be considered one of the most vulnerable groups, especially regarding the reliance on others as for safety as for their wellbeing. If children are considered to be dependent on others, according to Butler (Butler, 2004),

⁵⁵ Ministerial Council Decision No. 14/04 - 2004 OSCE Action Plan for the Promotion of Gender Equality

⁵⁶ UN Commission on Human Rights, "Report of the Special Rapporteur, Ms. Radhika Coomaraswamy, on Violence against Women, Its Causes and Consequences, on Trafficking in Women, Women's Migration and Violence against Women," UN Doc. E/CN.4/2000/68, Feb. 29, 2000,

⁵⁷ European Commission, 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

⁵⁸ Convention on the Elimination of All Forms of Discrimination against Women , Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with article 27(1)

⁵⁹ Inter-American Convention on Violence against Women, also known as Convención de Belém do Pará, Prevenir, Sancionar y Erradicar la Violencia control as Mujeres, adopted in 6/9/1994

⁶⁰ Council of Europe, Istanbul Convention Against Women Against Women and Domestic Violence, adopted 12th April 2011

women are generally considered to be vulnerable, due to their “intrinsic anatomy”. Yet, this “intrinsic” vulnerability is put in discussion as being a product of social construction, rather than a biological feature (Dworkin, 1989). Despite that most International Legal instruments on human trafficking focus mainly on women and children, the last group has been considered particularly vulnerable to exploitative situations. For instance, during the *Travaux Préparatoires*, the Special Rapporteur on the sale of children, child prostitution and child pornography has urged to distinct and separate women and children vulnerability, since children should be seen as a more vulnerable category than women. International law has recognised children’s vulnerability by attributing to them special rights regarding their care and protection. These measures tend to act on children’s vulnerability in order to prevent their abuse and exploitation as well as migration to labour purposes (Dottridge, 2007; ILO, 2009).

As previously mentioned, International legislation recommends to the states to act in different types of children’s vulnerability. Firstly, in order to guarantee their access to justice, International Law on Human Trafficking urges to enhance their legal status not only by certificating their birth, but also their citizenship. Furthermore, International Legal Instruments propose to improve children’s educational access with a particular regard on girls in order to combat discrimination against them. According to UNICEF’s promotion for a safe environment for children, there are eight key components to act on children’s vulnerabilities. The key components are based in protecting children from antagonistic attitudes, customs, behaviours and traditions; enhance their access to rights as well as their rights’ awareness; enforce protective legislation as well as improve the capacity of those who relate with children; offer protection response to abuse cases and adequate services.

Despite that, children *per se* are considered a vulnerable group; the intersectional vulnerability can increase or decrease their vulnerability due to the overlap of different factors that characterise the same person. For instance, older children have different needs from younger children, which characterize them as more independent. Furthermore, vulnerability tends to have different impact on girls than in boys, since as it was mentioned; gender discrimination is also noticed in children⁶¹. Another important aspect is related to the family’s background of the child, since children are considered to

⁶¹ Trafficking Principles and Guidelines, Guideline 7.3; Rights of the Child, Commission on Human Rights resolution 2005/44

be less protected regarding violence and sexual violence, especially in relation to abuse within the family context. Furthermore, the lack of a guardian for a child tends to expose children to a higher risk of human trafficking or criminal networks. Human trafficking is normally deeply linked with vulnerable subjects, thus unprotected children that were abandoned, orphaned, homeless or displaced should be considered by the States for a higher level of protection (European Commission, 2015).

Within the minors' category, non-accompanied minors have been considered on the destination countries a major vulnerable group that needs to receive protection until 18 years old. Despite that major attention has been given to the protection of non-accompanied minors, mainly regarding in juridical terms, the United Nations human rights system has recognised highly susceptibility to exploitation and human trafficking and re-trafficking. According to the UN Human Rights Committee, besides acting on minors vulnerabilities, the states should also take measures in order to identify non-accompanied minors, such as regularly inquiry their whereabouts and guardians.

The implementation and efforts on applying International Law instruments regarding the protection of particular vulnerable groups, such as women and children identify the lack of motivation of national Governments to empower these subgroups. Moreover, the recognition of vulnerability attributed to a collective of individuals, reflects the inadequacy of the State itself in providing equal rights to all individuals. Nevertheless, States tend to avoid recognizing their responsibility on the phenomenon of Human Trafficking, referring that human trafficking is performed by criminal groups and not the state itself (Gallagher, 2010). However, according to Fineman (Fineman, 2008), the existence of vulnerable groups is nothing more than the privilege provided by the State and its institutions to a certain limited segment and the discrimination of other groups. For instance, according to Gallagher (Gallagher, 2010) there is a strong link between vulnerability and gender discrimination. Therefore, unstable and oppressive environments for women can push them into accepting unsafe migration arrangements, by being perceived as a better opportunity. Consequently, women become more susceptible to traffickers during the recruitment's phase, rather than men (Gallagher, 2010).

In this case, the Protocol rather than advising the states in actuate in vulnerability factors, such as poverty, underdevelopment and lack opportunity, should

recommend the adaptation of legal framework in order to empower vulnerable groups. Furthermore, the Protocol should recommend to the states to focus on factors based in politic, social, economic, psychological or physical grounds that often lead to vulnerability and exposure to human trafficking. If in one hand the affirmation of vulnerable groups reflects the discrimination of a particular collective of individuals, on the other hand, the focus on specific categorized subgroups that share a common characteristic can originate a differentiation from the rest of the society that might be considered invulnerable. Hence, the attribution of vulnerability as an universal category applied to a collective, under a common biologic base, such as gender or race or status based (poor or immigrants) discharges the disadvantages that can transcend identity categories, particularly at the individual level (Fineman, 2008).

1.3.2 The vulnerable groups according to the European Court of Human Rights

The concept of vulnerable groups has been extensively applied on the two last decades on the jurisprudence, being legally recognised by the European Court of Human Rights and not being a “mere rhetorical flourish” (Peroni & Timmer, 2013). In fact, until 2013, the term vulnerability was referred by the European Court Human rights in 900 cases, but has been relevant in only around 557 cases, in a total percentage of 8% of the total cases and noticing an increase of 6% since 2007 (Tamimi, 2015). The development and increase of the use of such concept applied on juridical aspects has influenced on the conception of a more inclusive human rights law that requires more responsibility towards the individual’s needs by the State (Fineman & Gear, 2013).

The emergence of the concept of vulnerable groups, based on particular marginalized collective of people that has suffered discrimination in the past, has led to a closer concept of equality in the legal grounds. However, despite the openness regarding the concept of vulnerability, the ECHR has never delimited or defined such concept, being identified on a case-by case basis (Tamimi, 2015). In fact, the non-definition of such concept allows the Court to not be compelled to explain and justify the utilization of the term of vulnerability (Besson, 2014). The concept has been differently analysed by Peroni and Timmer (2013) that have used the “multi-dimensional characterization of equality” of Fredman (Fredman, 2011) to divide the

generative aspect of vulnerability in four main aims based in participation, transformation, redistribution, and recognition.

The participative dimension regards to a more inclusive approach that comes to fill the “absence of political voice” that does not require a specific political participation, but a more active participation within the community’s organization (Fredman, 2008). The transformative dimension intends to explore the impediment/harm that is linked to the shared “difference of the group”, rather than eliminate the difference itself. The redistributive aspect of equality has the aim to break the cycle of disadvantage by creating a better distribution of resources. This characteristic was evident on the case *M.S.S. v. Belgium and Greece*, in which, due to the dependency of the individual on the State and the inhuman treatment, the state was compelled to provide accommodation to the Afghan asylum seeker. This decision, which does not generally imply that states are obligated to subsidy housing to asylum seekers, was based on the Art.8 and Art.3⁶² of the European Convention, grounded on the extreme material poverty⁶³.

While the recognition of equality has the aim to overcome the stigma and stereotype due to the membership to a specific identity group by promoting respect and dignity to the individuals, the substantive equality based in vulnerability has generated the State’s responsibility to fill the absence of special protection regarding particular “needs” and specificities of vulnerable groups.⁶⁴ For instance, in the *Chapman’s* case, the Court has affirmed the responsibility of the State to facilitate the Roma people’s lifestyles, by the application of the Art.8⁶⁵ of the Convention⁶⁶. This facilitation

⁶² Article 3 – Prohibition of torture: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

⁶³ “The Court considers that the Greek authorities have not had due regard to the applicant’s vulnerability as an asylum seeker and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living in the street, with no resources or access to sanitary facilities, and without any “means” of providing for his essential needs” in *M.S.S. v. Belgium and Greece*, App. No. 30696/09, 53 Eur. H.R. Rep. 2, 263 (2011).

⁶⁴ *Chapman v. United Kingdom* (GC), 2001-I; 33 Eur. H.R. Rep. 18, 96 (2001); *M.S.S. v. Belgium and Greece*, App. No. 30696/09, 53 Eur. H.R. Rep. 2, 251 (2011); and *Yordanova v. Bulgaria*, App. No. 25446/06, 24 April 2012, 128 and 129.

⁶⁵ Article 8 – Right to respect for private and family life: 1. Everyone has the right to respect for his private and family life, his home and his correspondence; 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

⁶⁶ The European Convention on Human Rights, formally named as the Convention for the Protection of

generates an intervention to fill the gap of positive legislations, policy and administrative decision-making processes that do not regard the vulnerability of minority groups. Furthermore, this case has also been considered transformative by recognizing a “positive obligation” towards Roma minority (Peroni&Timmer, 2013).

According to Fineman (Fineman, 2012) the generative feature of the concept of vulnerability “presents opportunities for innovation and growth, creativity, and fulfilment. It makes us reach out to others, form relationships, and build institutions.” On the other hand, the same concept that urges for an equal approach, regarding discriminated categories at the same time risks to augment the exposure of this groups to stigmatization, essentialism and stereotypes (Peroni & Timmer, 2013). Moreover, it is known that vulnerability attracts violence and abuse of power, which just enhances the vulnerable condition of the victim (Murphy, 2009).

The deployment of vulnerable groups recognised by the ECHR has demonstrated that the European Court has given a different approach to the issue of vulnerability, by ignoring Fineman’s thesis. Despite the connection beyond the legal subject that regards to the human part of the subject, the Court has not embraced in its fullest the definition of the vulnerable subject, constantly exposed to the inevitable presence of harm and in relationship with others. Instead, the Court has identified the concept, especially regarding vulnerable categories that gather a group of individuals based in one or two features and not to the individual as the embodiment of experiences and networks (Timmer, 2014). Hence, the ECHR has applied a more universal concept of vulnerability based on specific populations that share common features or a base identity. On the other hand, Fineman’s theory on the vulnerable subject (Fineman, 2010) conceals the universal and the individual vulnerability in a theoretic intimate relationship (Timmer, 2014), which goes beyond the group identity.

The conception of Vulnerability, which links the vulnerable subject and the legal subject suggests to the ECHR to confront vulnerability, not only regarding the responsible individual, but also by acting on the gaps that are created by the establishment on the social contract. Therefore, the concept of vulnerability starts to be regarded, not exclusively as an ontological intrinsic feature from the individuals, but a result from a context, influenced by several factors. This adoption of the concept by the

Human Rights and Fundamental Freedoms was drafted in 1950 by the then newly formed Council of Europe and entered into force on 3 September 1953.

ECHR changes the negative perspective of vulnerability transforming into a generative legal concept that creates institutions (Fineman, 2012). This proves the ambiguity of vulnerability, since that, if from one hand the state marginalizes and increases violence and discrimination towards a group or an individual; from another hand, it creates empathy and care (Butler, 2004; Murphy, 2009).

The concept of vulnerable groups in the ECHR has been initially shaped with the Chapman's case⁶⁷, by the lack of consideration regarding the Roma community lifestyle, whose vulnerability is based in an apart social, political and institutional circumstances (Peroni & Timmer, 2013). The concept was mainly introduced on the acceptance of communities as "right and duty bearing units" (Dyke, 1995), and has led to the conception of injustice that minority groups should abandon their culture to embrace the dominant culture. In the following years, the concept has been enlarged to other vulnerable groups regarding people with disabilities, people with HIV and asylum seekers.

Despite that the evolution of the concept of vulnerability has been mainly attributed and designated to vulnerable groups, the author Tamimi (2015) has also highlighted the difference between "vulnerable category" and "determinants of vulnerability". This distinction is the mainly base which clarifies the reason that determines the attribution by the ECHR of the concept of vulnerability to categories or individuals. Therefore, the author has recognised different determinants that act as a guideline to understand its use and application within the ECHR.

The author has gathered the determinants in four categories: vulnerability as a result of history; vulnerability in the context of state control; references to International documents; other determinants. The first determinant is "vulnerability as a result of history"⁶⁸, mainly used on the case of Roma people, which are highly subjected to discrimination "including access to public places, education, employment, health services and housing, as well as crossing borders and access to asylum procedures". Other groups that have been recognised on this category of vulnerability determinant are disabled people⁶⁹ and people with HIV⁷⁰ due to their historic marginalization.

⁶⁷ Chapman v. United Kingdom (GC), 2001-I; 33 Eur. H.R. Rep. 18, ¶ 96 (2001).

⁶⁸ ECHR 13 November 2007, no. 57325/00 (D.H. and Others v. the Czech Republic).

⁶⁹ ECHR 20 May 2010, no. 38832/06 (Alajos Kiss v. Hungary).

⁷⁰ ECHR 10 March 2011, no. 2700/10 (Kiyutin v. Russia); ECHR 3 October 2013, no. 552/10 (I.B. v. Greece).

Hence, discrimination, marginalization and segregation seem to be indicators of the use of vulnerability by the ECHR (Tamimi, 2015).

Another determinant indicated by Tamimi (2015) is the State Control, which is the cause for the applicant's vulnerability, since the detained person is limited in his/her contact⁷¹, with limits access to sanitary help⁷² or lack of legal representation⁷³. The third mentioned determinant is the references to International Treaties as the UN Declaration on the Elimination of Violence against Women (1993)⁷⁴ and to the reports of the Commission on Human Rights of the UN Economic and Social Council⁷⁵, among others regarding the issue of migration such as the Convention of Geneva. On the fourth category of determinant, the author has gathered less cited cases, in which the applicants were non-nationals⁷⁶ or victims of domestic violence⁷⁷.

The identification of vulnerability determinants by the Court has demonstrated that despite the unwillingness of the Court to explain the application of the term of Vulnerability (Timmer & Peroni, 2013), the frequent application of the term in certain aspects and regarding specific typology of victims has provided a general definition of its use within the EHRC. On the contrary of Tamimi (2015), the researchers Timmer and Peroni (2013) do not recognise the basic guidelines of the use of the concept of vulnerability, dividing the indicators of group vulnerability, according to the ECHR as relational, particular, and harm-based.

As previously mentioned, the groups that have been identified as vulnerable categories come from a situation of marginalization and discrimination within society, due to their particular social, political and institutional background. Therefore, the vulnerable situation of these groups outcomes from relational interactions that differentiate individuals that share common features from the rest of the society. The

⁷¹ ECHR 13 July 2006, no. 26853/04 (Popov v. Russia).

⁷² ECHR 20 January 2009, no. 44369/02 (Wenerski v. Poland).

⁷³ ECHR 6 November 2008, no. 30209/04 (Ponushkov v. Russia); ECHR 8 January 2009, no. 74266/01 (Alekseyenko v. Russia); ECHR 10 February 2009, no. 11982/02 (Novinskiy v. Russia); ECHR 15 October 2009, no. 2295/06 (Chaykovskiy v. Ukraine).

⁷⁴ A/RES/48/104, 85th plenary meeting, 20 December 1993, 48/104. *Declaration on the Elimination of Violence against Women*

⁷⁵ D.H. and Others v. the Czech Republic; ECHR 28 May 2013, no. 3564/11 (Eremia v. The Republic of Moldova).

⁷⁶ ECHR 21 February 1986, no. 8793/79 (James and others v. the United Kingdom); ECHR 8 July 1986, no. 9006/80 (Lithgow and others v. the United Kingdom).

⁷⁷ ECHR 28 May 2013, no. 3564/11 (Eremia v. The Republic of Moldova), ECHR 3 June 2004, nos. 33097/96, 57834/00 (Bati and others v. Turkey).

second characteristic defined by Perroni and Timmer (2013) is related to the particular feature of vulnerability, since the Court refers to particular vulnerable groups⁷⁸, having a more considered volume of vulnerability regarding the other groups. The third characteristic is related to harm, which tends to be related to historic prejudice and marginalization, due to the institutionalized cultural and social patterns that excludes non-adapted individuals in society (Fraser, 2000).

Timmer (2013) has divided the concept of vulnerability used by the ECHR into different six different categories, according to the application of the concept on different cases. These applications of the concept identify the main vulnerable categories that have been recognised by the ECHR. The first group (A) has been identified according to their Inherent vulnerability, mainly including groups as children and disabled people, which are related to the Fineman's approach of dependency. The inherent vulnerability is represented by the case of *Mubilanzila Mayeka and Kaniki Mitunga v Belgium* 13178/03, 12 October 2006, where the ECHR recognises the difficulty or incapacity to denounce a situation of abuse. This category, which is the second most cited related to the concept of vulnerability, it is also recognised by Tamimi (2015). Moreover, the reference to this group is mainly homogeneous by the clear idea that all children are vulnerable, even if other authors (Ippolito, 2015) have contradicted this affirmation.

Despite children are considered homogeneously vulnerable, other categories were found by Tamimi (2015) to be difficult in being divided according to only one vulnerable characteristic. The author has considered in gathering the main cited 20 cases into 6 main vulnerable groups as being Roma: 22; Suspects: 24; Detained + mental: 25; Non-nationals: 28; Victims: 34 Children: 37. It is interesting that Tamimi (2015), on the contrary of Timmer (2013) does not gather children and disabled on the same category through an inherent category of vulnerability, but instead the author follows a logic of the most cited groups being categorised as vulnerable and conjoins mentally ill and detainees on the same group. Therefore, besides the category of "persons in detention", also considered by Timmer (2013), the referred author has underlined a category of detainees and people with mental disorder. The attention to this particular category⁷⁹ has

⁷⁸ *Alajos Kiss v. Hungary*, App. No. 38832/06, 20 May 2010, ¶ 42; and *Kiyutin v. Russia*, App. No. 2700/10, 53 Eur. H.R. Rep. 26, 74 (2011).

⁷⁹ ECHR 17 July 2012, no. 2913/06 (*Munjaz v. the United Kingdom*); ECHR 24 November 2009, no. 23968/05 (*Halilovic v. Bosnia and Herzegovina*).

derived from the number of cases that gathers these two characteristics, which presents an intersectionality of vulnerability that has a stronger weight than the others detainees⁸⁰. Another category referred by the author is the suspects based on the deprivation of legal representation.⁸¹

While Tamimi (2015) differs detainees with mentally disorders and suspects from the other categories, Timmer (2015) gathers the second category (B) of vulnerability according to the state's control, referring to people that are deprived of their liberty depending on the authorities as prisoners that are vulnerable to "arbitrary treatment and infringements"⁸². In this category, vulnerability has not only been recognised as physical, but also in terms of the possibility to exercise the prisoners' citizenship rights, as right to pension⁸³. The category of detainees is also considered by Tamimi (2015) being the group, where the concept of vulnerability has been mostly applied (236 cases). The court comes to the conclusion that all detainees are in a vulnerable situation through the case *T.W. v. Malta*. In cases of deprivation of liberty by the State, the Court sustains the concept of vulnerability being based under the use of Art.2⁸⁴, Art.3⁸⁵ and Art.5⁸⁶ of the Convention.⁸⁷ Tamimi (2015) has also differenced the

⁸⁰ ECHR 10 January 2013, no. 43418/09 (*Claes v. Belgium*); ECHR 18 December 2007, no. 41153/06 (*Dybeku v. Albania*); ECHR 20 January 2009, no. 28300/06 (*Sławomir Musiał v. Poland*).

⁸¹ ECHR 24 April 2012, no. 918/02 (*Solovyev v. Russia*).

⁸² *Dennis Vasilyev v Russia*, App. No 32704/04.

⁸³ *Stummer v Austria* n 37452/02 7 July 2011

⁸⁴ Section 1, Rights and Freedoms, Art 2 Right to Life "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

⁸⁵ Section 1, Rights and Freedoms, Art 3 Prohibition of Torture: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

⁸⁶ Section 1, Rights and Freedoms, Art 5: Rights to Liberty and Security: "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition. 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest

vulnerability as violation of human rights and the vulnerability that outcomes from a violation of human rights. Therefore, vulnerability in the case of detainees has demonstrated to be mainly caused by the period of detention, due to the isolation that they suffer, such as physical and mental torture, the control of the detainee's correspondence, intimidation and long periods of interrogation.⁸⁸ Other considerations on detainees are based on the long duration of detention⁸⁹, as well as the lack of representative to a fair trial.

The third identified category attributed by Timmer (2013) is related to gender, with a major focus on cases regarding the issue of domestic violence, as physical as psychological,⁹⁰ or regarding precarious reproductive health, as I will further analyse on the chapter on motherhood⁹¹. Tamini (2015) has designated this category as victims and has added the group of human trafficking victims⁹² as well as victims of sexual violence⁹³. Regarding this category, the Court does not make a homogenous statement, seeing vulnerability as very individual and citing vulnerability as experienced by the victim during the offense itself⁹⁴ and therefore, considering the victim as a vulnerable subject.

On a fourth category, Timmer has identified the category of “legal power imbalance”, in which the defendant's vulnerability is consisted in their incapacity to be assisted⁹⁵ and might feel pressure to incriminate themselves. On the case of *R.R v Poland*, where were applied the Art.6 and Art.3 of the Convention, the ECHR does a

and of any charge against him. 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

⁸⁷ The foundational cases based on the Articles 3 and 5 are *Iwanczuk v. Poland* (ECHR 15 November 2001, no. 25196/94), *Kurt v. Turkey* (5 December 1996, no. 24276/94) and *T.W. v. Malta* case.

⁸⁸ ECHR 8 July 2004, no. 48787/99 (*Ilaşcu and others v. Moldova and Russia*); ECHR 6 November 2007, no. 8207/06 (*Stepuleac v. Moldova*); ECHR 10 March 2009, no. 4378/02 (*Bykov v. Russia*); ECHR 7 February 2008, no. 35421/05 (*Mechenkov v. Russia*).

⁸⁹ ECHR 11 April 2013, no. 17828/05 (*Ochelkov v. Russia*)

⁹⁰ *Opuz v Turkey* App No. 33401/02, 9 June 2009

⁹¹ *r.R v Poland* n27617/04 26 May 2011

⁹² ECHR 21 July 2011, no. 44438/06 (*Breukhoven v. The Czech Republic*).

⁹³ ECHR 15 October 2013, no. 33882/05 (*Şandru v. Romania*).

⁹⁴ ECHR 4 December 2008, no. 1200/03 (*Umayeva v. Russia*); ECHR 24 July 2003, no. 26973/95 (*Yöyler v. Turkey*); ECHR 28 July 2009, no. 47709/99 (*Rachwalski and Ferenc v. Poland*).

⁹⁵ *Salduz v. Turkey* n 36391/02, 27 November 2008

prognostic that people accused of crimes tend to feel pressure to incriminate themselves. The fifth category is mainly regarding journalists and demonstrators that represent different and uncommon opinions, chiefly regarding minorities and opponents to the rest of the political system⁹⁶. The category of “Vulnerability due to espousal of unpopular views” is based on the right to peaceful assembly and association, based on the Convention’s art.11⁹⁷.

The sixth category is denominated by Timmer as “Vulnerability in the context of migration” and designated by Tamini (2015) as non-nationals, with a particular focus on migrants with an irregular legal situation in the context of inhuman and degrading treatment. The approach to this category is regarding the Paternalistic State and the responsibility of the origin or destination States to protect migrants, especially regarding the issue of deportation. In order to appeal to the consideration of vulnerable and unprivileged group, the Court⁹⁸ has mentioned different International Treaties and European Conventions. The belonging to historic discriminated groups has been contradicted, in which according to the United States of America Supreme Court, the individual has to demonstrate the belonging to a “discrete and insular minority”⁹⁹. Furthermore, despite the consideration by the Court of migrants being inherently vulnerable, the Judge Sago affirms that on the contrary of Roma community, disabled people and people with HIV that have been historically discriminated and marginalized, asylum seekers are not considered to be historically and socially excluded. In fact, asylum seekers’ vulnerability seems to be related to their dependency of the State¹⁰⁰ in

⁹⁶ Baczkowski and others v Poland no. 1543/06

⁹⁷ Section Rights and Freedoms, Art 11 Freedom of Assembly and Association: “1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

⁹⁸ “The Court attaches considerable importance to the applicant’s status as an asylum seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection (see, *mutatis mutandis*, Oršuš and Others v. Croatia [GC], no. 15766/03, § 147, ECHR 2010-...). It notes the existence of a broad consensus at the international and European level concerning this need for special protection, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the European Union Reception Directive.”

⁹⁹ United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938) (“Nor need we enquire . . . whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities . . .”);

¹⁰⁰ M.S.S. v. Belgium and Greece, App. No. 30696/09, 53 Eur. H.R. Rep. 2 (2011).

their daily life reality and in their trauma related to their migration process.¹⁰¹

Despite that the concept of vulnerability has been mainly raised and connected to Roma Community, Timmer (2013) does not consider the Roma community within the vulnerable categories division. While, on the other hand, Tamimi (2015) applies the subdivision of Roma people within his categories affirming the overlap of status minority and vulnerable groups by the ECHR and the assumption of the assistance of the particular needs to the Roma Community¹⁰². However, the Court presents that the particular attention to Roma community should be evaluated within the environment and legal framework of the majority society.¹⁰³

Tamimi (2015) divides the categories into main 3 groups based on the number of cases. As it has been noticed, a major category is divided into 6 groups that were chosen according to the number of cases (20) related to an individual vulnerable group. A second subcategory, which consists on cases that the term vulnerability has been mentioned from five to twenty times, is designated as mentioned as the middles groups. This category consists in ten subgroups that includes: mentally ill, Kurdish, not vulnerable, person with health problems, detained with health problems (mainly considering people with HIV), vulnerable persons in general, persons entitled to social security, pregnant women and religious groups. On the middle groups, the category of not vulnerable it is interesting to regard, especially cases in which the vulnerability was considered at a first place, but neglected at the end of the judgement. An example of our interest is the case of *Valiulienė v. Lithuania*¹⁰⁴, where the Court declared that being a woman was not a valid characteristic to be considered to be vulnerable. Finally, the

¹⁰¹“In the present case the Court must take into account that the applicant, being an asylum seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously” in *M.S.S. v. Belgium and Greece*, App. No. 30696/09, 53 Eur. H.R. Rep. 2 (2011). “[The Court] does not regard the duration of the two periods of detention imposed on the applicant— four days in June 2009 and a week in August 2009—as being insignificant. In the present case, the Court must take into account that the applicant, being an asylum seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously”

¹⁰² ECHR [GC] 18 January 2001, no. 27238/95 (*Chapman v. the United Kingdom*)

¹⁰³“(…) although the fact of belonging to a minority with a traditional lifestyle different from that of the majority does not confer an immunity from general laws intended to safeguard the assets of the community as a whole, such as the environment, it may have an incidence on the manner in which such laws are to be implemented. As intimated in *Buckley*, the vulnerable position of Gypsies as a minority “means” that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases (...). To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the Gypsy way of life.”

¹⁰⁴ ECHR 26 March 2013, no. 33234/07 (*Valiulienė v. Lithuania*).

author defines the category of small groups with less than five cases, which vulnerability is taken on an individual matter rather than into a group category. Furthermore, on this group is noticeable the inclusion of several subcategories that belong to the main groups indicated on the first category, but intersected by other common characteristics.

During the analysis of the application of the concept of vulnerability, it is understandable that ECHR does not consider vulnerability as a single and generic concept, in order to fit into different universal and particular categories. In fact, it is based on this grey zone that Tamimi (2015) has identified different categories of the concept of vulnerability attributed by the Court, according to different vulnerable situations and vulnerable subjects; feeling vulnerable and being vulnerable; individual and group vulnerability; situations in which the vulnerability is not regarding the applicant; particularly vulnerable persons; vulnerability as a cause or an effect. In order to introduce the subject for the next subchapter, I will only focus on the difference between vulnerable subjects and vulnerable situations as well as individual and vulnerable group.

Therefore, the identified groups are individuals such detainees that being persons who depend on the state are normally considered in a vulnerable situation, which is caused by their condition¹⁰⁵ and thus, temporary vulnerable subjects. However, vulnerability during detention can also prolong the time of detention, especially in cases where the detainees were submitted to torture¹⁰⁶. On the other hand, the Court has considered as vulnerable subjects Kurds¹⁰⁷, people mentally and terminally ill¹⁰⁸, non-nationals¹⁰⁹ and victims¹¹⁰. As regarded until now, the Court has defined children, Roma people, Kurds and victims as vulnerable groups, thus, this approach of Universal categories of vulnerability does not embrace the vision of Fineman's vulnerability that I will further analyse in the next subchapter (Tamimi, 2015; Timmer&Perroni: 2013).

¹⁰⁵ ECHR [GC] 27 June 2000, no. 21986/93 (Salman v. Turkey); ECHR 8 January 2004, nos. 32578/96, 32579/96 (Colak and Filizer v. Turkey).

¹⁰⁶ ECHR 3 June 2004, nos. 33097/96, 57834/00 (Bati and others v. Turkey).

¹⁰⁷ Among others ECHR 25 May 1998, no. 24276/94 (Kurt v. Turkey).

¹⁰⁸ Among others ECHR 27 July 2004, no. 57671/00 (Slimani v. France) and ECHR 29 April 2002, no. 2346/02 (Pretty v. the United Kingdom).

¹⁰⁹ Among others ECHR 16 June 2005, no. 60654/00 (Sisojeva and others v. Latvia).

¹¹⁰ Among others ECHR 4 May 2006, no. 633/03 (Dudek v. Poland); ECHR 28 May 2013, no. 3564/11 (Eremia v. the Republic of Moldova).

1.3.3 Should we speak about vulnerable subjects or vulnerable groups?

The EHRC's division of the conception of vulnerable groups into categories provides an insight of the adopted legal concept of vulnerability that can forward guide at national levels into a definition of vulnerability. However, the adoption and clarification of such concept does not go hand and hand with Fineman's theory of the vulnerable subject that regards vulnerability as a more individual concept (Peroni, 2012). Fineman's theory opposes to the grouping of individuals with certain characteristics that have been subordinated and excluded often indicating that they are inadequate, inferior or weak, by segregating these individuals in subpopulations of vulnerable groups. Furthermore, Fineman (2012) affirms that individuals segregated in vulnerable groups are "those who cannot exercise their right to contract" and therefore, they are dependent individuals who long for monitoring and supervision.

According to Fineman (2008), vulnerability is Universal, not because it is regarded to specific groups, but also due to the ever presence and exposure to risks as a result of the human condition. Therefore, the author suggests considering vulnerability as a "post-identity", not only based on the discrimination of certain identified groups, but also regarded on the side of the privilege and favoured segments of population.

This omnipresent exposure to risk is chronologically present from birth to death, even though it can be mitigated with particular measures, it cannot be eradicated (Fineman, 2008). According to Neal (Neal, 2012), vulnerability is our capacity to suffer in two ways, one due to the co-operation with others, which also "means" dependency and the second due the inevitable ever presence exposure of the individual to different harms and risks. Moreover, this exposure demonstrates that vulnerability is not a static concept, but a constant changing condition that is considered Universal through the embodiment, but simultaneously particular. This particular level is mainly based on the embodiment at a physical level, including different variations of human embodiment as mental and intellectual side and on the social, which are the results of economic networks and institutional relationship.

Fineman (2004) starts to develop the concept of Vulnerability by questioning the true autonomy of the liberal subject, by affirming instead the dependency of the subject from its context. The theory of dependency is also shared by Butler (2004) that affirms

that despite the body is a physical boundary, it is also connected to relations within the social network. Therefore, Butler (Butler, 2014) suggests rethinking the relationship between human body and infrastructure, in which the human body is normally framed as a self-sufficient identity and infrastructure and starts to regard the embodiment as being relational depended on infrastructural conditions. On these terms, the human body is less regarded as an entity, but a body depending from infrastructural conditions that automatically attributes a pack of stereotypes to the individual and therefore, vulnerabilities.

In fact, due to the feature of inevitable dependency of the individual, the State is responsible in recognising this dependency and therefore, the needs and support linked to the dependency itself (Eichner, 2005). Furthermore, Fineman (Fineman, 2004) affirms that each society has its own “foundational myths” that are based on the autonomy of the social contract, where the individuals are freely gathered to create the entity of the State. These myths are the base of a strong group identity that operates in a complex, social and cultural environment, where individuals consolidate a liberal relationship (Fineman, 2004; Tamimi, 2015), laws, Constitutions and Treaties that are established to enhance the idea of individual rights supported by the State.

The embodiment perspective of the vulnerable subject of Fineman (2008) ignores the concept of the autonomy and the concept of “equality on the western thought” based on the creation of the liberal subject of John Locke (Locke, 1689). This formal equality leads to a misallocation of resources as well as rights that validate an institutional framework based on the misbalance of advantaged and disadvantaged groups (Fineman, 1991:2004). This misbalance of rights and access to resources is reproduced and produced as by society, as by its institutions that contemporaneously mediate and lessen the vulnerability of groups through what Peader Kirby (Kirby, 2006) designates as “assets”. These “assets” are a gathering of advantages, coping mechanisms and resources, such as education and health care that provide to the subject the instruments to better endure misfortune. By the accumulation of these “assets”, the individual starts to become resilient. By becoming resilient, the individual does not become invulnerable, since vulnerability is considered chronologically omnipresent, but rather resilient by creating the conditions to endure and lessen vulnerability.

Despite that institutions supply individuals with assets by lessening their

vulnerabilities, Fineman (2008) reminds us that institutions are also vulnerable, being also exposed to corruption and damage, comparing institutions and individuals by regarding their vulnerabilities. Furthermore, despite the positive providing of assets to specific particular groups, the affirmation of these vulnerable groups is normally connected to a negative labelling that augments their marginalization and discrimination based on a consideration of victimhood and dependency on the State based on the theory of the liberal subject (Fineman, 2008). This characterisation only augments the division of groups that instead of allying for a more just society, there is the tendency to a neater separation (Fineman, 2010).

In contradiction to the autonomy of the liberal subject, due to the inevitable dependency of the individual of a network context, Kirby (2006) enhances the idea of assets through the theory of “social assets”. Therefore, the individual resistance is enhanced with the provision of social assets, by the belonging to family or cultural groups that come to fulfil the individual vulnerability gaps in a social and cultural context. As well as Kirby (2006), in the book *Vulnerability and Violence*, Fineman (2010) recognises the need of assets, by identifying them as physical, human, social, ecological or environmental and existential. Furthermore, the liberal subject is based on the notion of the individual’s independence, autonomy and self-sufficiency that is empirically unrealistic and unrealizable due to the dependency of the interrelationship system. On the contrary, the conception of vulnerable subject is able to agglomerate the human part of the individual and allocate within its complex interrelation dependency. The interesting concept of the vulnerable subject is that it is not only based on the existed damaged in the past, but also in the possible existence of harm in the future (Fineman, 2008).

By ignoring the human part of the individual and by affirming the presence of the liberal subject on the social contract, the State does not include the concept of vulnerability and consequently, does not apply it on the law. Fineman (2010) seeks to reconstruct a law and policy by suggesting the replacement of the concept of autonomy with the concept of Vulnerability. The author starts to criticise on the strict approach of equality and its incapacity to contrast inequality regarding wealth, position and power in United States. This inability is based that inequalities are tolerated on a free marked based on meritocracy.

Hence, with her vulnerability thesis, instead of the inflexible system based on equal and formal protection, Fineman suggests to focus on social institutions targeting segments of population rather than on vulnerable groups (Fineman, 2012). In this case, the State is expected to revise its equality structure by concentrating on its institutions and division of benefits and disadvantages. However, equality of opportunity is a synonym of securing the access to the distribution of social goods such as wealth, health or employment. Despite the reluctance of Fineman regarding the liberal subject, the author affirms that the solidification of an equal distribution of social goods would not put aside the concept of autonomy; on the contrary, it will be based on the provision of substantial assistance. Autonomy would include more duties to the individuals and also the enhancement of the State authority regarding the access of opportunities for all individuals. Therefore, Fineman on the paper *The vulnerable study and the responsive State* (2010) affirms that as the concept of autonomy as the concept of equality should not be understood in singularly, but rather in equality, since it is a step forward to take the individual to autonomy (Fineman, 2010).

The concept of vulnerability according to Fineman is more related to the human nature than rights, which permits the institutions to provide a better response to the people's needs from a multidisciplinary approach. Therefore, the focus on vulnerability as embodiment relieves the responsibility from the individual and attributes vulnerability as a result of interaction between individuals that live on an "addictive dependency of social welfare". The understanding of the assumption of the "vulnerable subject" twists the attention on the group identity that requires special protection to achieve an equality discourse and a broader governmental responsibility to social justice (Fineman, 2013).

The vulnerable subject comes to replace the autonomous subject in the liberal tradition and should be at the centre of the political discussion on vulnerability (Fineman, 2008). Contrary to the liberal subject that assumes the individual responsibility and has a more autonomous role within the private sphere, the vulnerable subject proves its dependency through the human part. The human part is nothing more than the overlap of the universal concept of vulnerability embodied on an individual, which has a particular experience. Therefore, the embodiment of these two types of vulnerabilities results on a particular individual that has developed the capacity of

resilience as a result of the overlap of both types of vulnerabilities. Furthermore, the embodiment is not only intrinsic to the individual, but also a result of the established relationships in a social context, which results from the exposure and openness of the individual to the world (Gear, 2007).

The theory of the “vulnerable subject” avoids the agglomeration of individuals based in their shared features which defines them as vulnerable, normally according to their identity base (gender or race) or status based (poor or immigrants). The identification of the “vulnerable subject” not only avoids the recognition of individuals that are outside the vulnerable categories as invulnerable, but also denies that all individuals who share certain features are to be considered vulnerable. Furthermore, the association of certain categories or individuals that share a certain characteristic is normally associated to negative concepts such as victimhood, deprivation, dependency or pathology (Knowles, 1996).

Martha Fineman renounces to the concept of vulnerable group as well as intersectionality of vulnerabilities by creating the “vulnerable subject” that is ever exposed to vulnerabilities. This recognition of the “vulnerable subject” is based on Fineman’s recognition of the embodiment, which is vulnerable to the “ever present risks” and denial of the structured vulnerability based in shared features. Being vulnerability based on the embodiment, it is singularly experience, not only according to the quality and quantity of assets, material or not, but also to the capacity of resilience that each single individual has to respond to ever presence of harm (Fineman 2008).

The denying of vulnerable groups based in certain categories is also connected to the capacity of resilience that is mostly provided by the establishment of solid relationships and the supply of caring necessities and ties. Hence, vulnerability cannot only be measured by the material, physical assets or social assets, but also by the human influence on the individual. The segregation of these individuals into subcategory groups comes to affirm the individual responsibility that responds to certain characteristics and patterns in opposing to the State responsibility. Therefore, the use of vulnerable groups only comes to relief the paternalistic responsibility of the state to act at a particular rather than in collective measures.

The attribution of certain characteristics to vulnerable groups also leads to a

double protection of the State in order to fulfil the disadvantage gap created by the violence and discrimination originated by the capitalistic system. According to Fineman, in the theory of the vulnerable subject, the State should act as a mediator between the vulnerable subject and the “asset conferring” with the scope to redistribute the resilience resources. This mediation normally through the role of social institutions tends to alleviate the marginalization, by actuating in the specific characteristics that identify the subjects as vulnerable.

The approach of supplying the vulnerable subjects in order to achieve equality is the vision that opposes to the Conservative vision of vulnerability, where there is a major individual responsibility. The Conservatives regard vulnerability as settled in a concept of basic needs and not, ignoring the support of a strong social connection network, such as family, friends and community. The ties established on the social context provide to the individual a feeling of belonging, rather than a social structure problem and put the vulnerable subject in an individual level (Fineman, 2008). In fact, this approach is closer to the vulnerability concept of Socialism, which affirms that individual responsibility does not turn individuals more resilient to their vulnerabilities, but rather more vulnerable. Therefore, Socialist’s focus is mainly based on the redistribution of resources, while Conservatives’ vision of vulnerability is based on market’s profits (Gear, 2015).

1.4 Double vulnerability as Intersectionality

The concept of Vulnerability has led to many scholarly debates regarding its imprecision and lack of limitation, in fact many scholars have defined the concept as being confusing, complex, vague and ambiguous (Solbakk, 2001; Ruof, 2004; Fineman, 2008). Therefore, the concept of vulnerability, being largely broad, it is known to be polysemantic (Besson, 2014) and with different characteristics. Besson (2014) has characterised the concept of vulnerability according to its four main features. The author has identified the concept as being “potential”, since it opens the possibility of suffering, it is also “objective” and “subjective”, since the menace of suffering can be established in an objective way, but the perception of vulnerability can be relative. The concept of vulnerability is also “relational”, since the individual is exposed to the suffering that is brought by another person. The verified complexity of the term of

vulnerability plays a role within the subject of human rights, but from an embodiment perspective, that balances the abstraction of the liberal subject (Gear, 2007; Fineman, 2008).

The intricacy of the term vulnerability has been analysed from different perspectives regarding different subjects. On the two past decades, the academic world has observed an escalation regarding the analysis of female vulnerability and intersectionality in the international legal framework (Nussbaum, 1999). This dissection of the term vulnerability has been mainly analysed by the subordination of women regarding a politic, socio-economic, cultural, legal and political context (FitzGerald & Munro, 2012). Crenshaw (Crenshaw, 2002) has described intersectionalities as a method to capture the consequences of the accumulation of more than one way of subordination to the Patriarchal State. The use of the term Intersectionality has become an analysing instrument to better understand how different identity sets can have an impact in the individual access to rights and opportunities. In fact, according to Prins (Prins, 2006) Intersectionality has a systematic approach by emerging the marginalization of subordinated groups and empower them and it has a constructive approach, since the multi-identity offers more possibilities to the individual.

As mentioned by McCall (McCall, 2005) “intersectionality is the most important theoretical contribution that women’s studies have made so far”. In fact, despite that gender discrimination is frequently present in women’s lives, intersectionality includes the influence of other factors combined, such as race and skin colour, caste, age, ethnicity, language, ancestry, sexual orientation, religion, socio-economic class, ability, culture, geographic location, and status as a migrant, indigenous person, refugee, internally displaced person, child, or a person living with HIV/AIDS, in a conflict zone or under foreign occupation, determines the level of vulnerability and discrimination of an individual (Change, 2004).

The concept of intersectionality comes to put in discussion the concept of vulnerable groups, by exposing the different levels of victimisation and privileges within the same group. For instance, despite the considerable use by the ECHR of labelling vulnerable groups, as previously mentioned, the author Luna (Luna, 2009) considers that the Court should understand the multi-layered discrimination of victims, rather than concentrate in a single vulnerable group. Therefore, despite the fact that

certain individuals share a certain characteristic and identity and are categorised as a specific segment, the introduction of the concept of intersectionality analyses the individual as a set of experiences layered in several identities that can be chronologically changeable. Therefore, the concept of intersectionality should be regarded as within the ever present openness to harm, that gathers multiple factors being bodily, moral psychological and economic (Bryan, 2006) into an accumulation of vulnerabilities. Furthermore, the aggregation of different experiences shapes the individual into a personalized mould that instigates different experiences and behaviours in different times (Maj, 2013).

Regarding a group through only the feature of gender, eliminates substantial multiple factors that influence and distinguish women among themselves (Young, 1997). In fact, Fineman (2008) in her paper *Anchoring equality* rejects the idea that a simple feature determinates the vulnerability of the subject. For instance, regarding the female gender, she presents the example of the existence of CEO women that are against the benefits of caretaking on recent motherhood or successful African American that are against affirmative action in college admission. These two examples demonstrate that founding inequalities based in only one shared feature denies the individual chronological complexity and resilience. In addition, intersectionality comes to demonstrate that the use of gender's differences as based discrimination by institutional and juridical systems tends to perpetuate women's socioeconomic and political lack of participation (Nussbaum, 1999).

Despite the obvious adoration of the term intersectionality, as the issue of vulnerability some scholars have also emerged a debate around this issue, regarding its ambiguous definition (Smooth, 2013). In fact, intersectionality, as well as vulnerability has been also recognised as an indefinable concept (Nash, 2008). According to Hancock (Hancock, 2007a), intersectionality should be seen as a paradigm characterised by influenced factors such as gender, class and race that can be considered as a theory or a research method. The perspective of intersectionality as theoretical paradigm permits us to a more inclusive perspective of the intricacy identification of the individual, therefore a broader vision to understand privileges, discrimination and access to human rights (AWID, 2004). Hence, if from one way an identity feature can lead the individual to marginalization, another identity feature can produce the exactly the opposite result,

blocking the inequality that can be led by the first feature.

The theoretical paradigm of intersectionality outcomes from a perspective of a higher degree of violence and discrimination that women, within several identity categories such as race and class, can be shaped into. According to Crenshaw (Crenshaw, 1991), the experiences of Black women on employment cannot be regarded only from the perspective of gender by excluding the factor of race. In the sex industry, women tend to be highly exposed to violence and discrimination, yet it has been analysed that black women have less access to rights than white women (Yoshida, 2013). For instance, when sex workers in Holland have fought for their rights, many of the black women involved in the sex industry were marginalised from accessing to their rights and were misrepresented (AWID, 2004).

In the Butlerian perspective of the Universal vulnerability, that all bodies are exposed to violence, Judith Butler (Butler, 2004) affirms that “this vulnerability becomes highly exacerbated under certain and social and political conditions”. For instance, individuals engaged in the sex industry are definitely more vulnerable to violence than those who are not engaged in the sex industry (Carline, 2010). This affirmation is perhaps linked to the Butlerian (2004) conception that not all lives are countable as “liveable lives”, since not all lives merit to be respected, according the individual’s way of living. Normally, States tend to implement domestic anti-trafficking measures regarding people engaged on the sex industry, based on a moral and legal status of prostitution (Munro, 2005). This discourse of equality of prostitution and human trafficking, that I will further analyse on the following chapter, spreads the idea that all individuals engaged in sexual work are equally vulnerable and exposed to criminal networks (Kapur, 2005). Therefore, based on the UK’s Action Plan (2006), Kapur (2005) affirms that the State acts in a Paternalistic way in order to “rescue vulnerable trafficked female migrants”, based in interactional categories of gender, race, ethnicity and sexuality (Kapur, 2005).

It is not the aim of this subchapter to debate the issue of sex work and sexual exploitation; instead, the aim is to understand the application of the concept of intersectionality on the world of sexual exploitation, where women are subjected to their exploiters. Furthermore, the use of the term comes to underpin a better understanding of the issue of vulnerability between Nigerian and Romanian women engaged in sexual

exploitation. For instance, in the case of *B.S. v Spain*¹¹¹, a Nigerian female engaged on the sex industry have accused the Spanish police of being discriminated according to her gender, race and profession, being constantly called “black whore” (Yoshida, 2013). Furthermore, the complainer has declared that the police has addressed only to her, by ignoring other white women who were sharing the sidewalk. Despite that the ECHR has not referred to the term of discrimination multifactorial and intersectionality, previously proposed by AIRE Centre and the European Social Research Unit of the University of Barcelona, the Court has given to the case an intersectional approach (Peroni, 2012). This understanding of intersectionality by the Court is also acknowledged in other cases, such as *Chapman* (Bénédicte, 2006) that goes beyond the vulnerable groups’ segmentation (Solbakk, 2011).

The regard on the issue of intersectionality on this chapter is due to the impossibility in understanding the complexity of multiple identities of migrant women who are engaged in sexual exploitation, within a chronological vulnerability as motherhood. Furthermore, this research intends to compare the vulnerability of two groups of women that share the characteristics of being migrant women engaged in sexual exploitation, yet, with different racial and citizenship features. In the book *Libere tutte: Dall’aborto al velo, Donne nel nuovo millennio* the authors affirm that black women are more aware of their lack of rights, due to the historical discrimination that they suffer (Serughetti, 2017). The analysis on these two groups derives from the high presence of these two nationalities within the European and Italian Human trafficking statistics, especially remarked by sexual exploitation (EUROSTAT, 2015). Therefore, the present study intends to understand and dissect the concept of vulnerability not only regarding the access of rights, as a marking point of European citizenship, but also to interpret the focus of invisibility of individuals engaged in sexual exploitation.

1.5 Vulnerability within the multifactorial strategies against Human Trafficking

The concept of vulnerability in human trafficking tends to be regarded as a static concept especially from a perspective of a passive position, mainly based on the

¹¹¹ Please see in *B.S. v. Spain* - 47159/08, Judgment 24.7.2012 [Section III]

victim's experience. However, vulnerability has proven to be chronologically changeable by the influence of several factors before, during and after the exploitation process. According to the *OHCHR Recommended Principles and Guidelines on Human Trafficking* (2010), vulnerability can be regarded as in a long-term perspective, as well as a short term, with particular or general features depending on economic, structural or political factors. The understanding of such concept, not only helps in the identification process as being an indicator, but it also can be relevant in order to understand how to supply the victims' needs, by understanding the trafficker's method used in order to control the victim and act in order to prevent a new re-victimisation of the victim. The researcher Weber and Penedo (2015) suggest that the identification of vulnerability indicators can be also useful for data collection, in order to provide substantial analysis on Human Trafficking. The indicators should be based in different grounds, including "gender; poverty; social and cultural exclusion; limited education; political instability, war and conflict; social, cultural and legal frameworks; movement under duress and demand" (Weber&Penedo, 2015).

In this case, the analysis of such concept can be helpful 1) within preventive measures, in order to address the general root's problems of human trafficking, usually connected to cultural, social, economic and geographic condition of the victim and also the individual victim's vulnerabilities regarding her/his trafficking situation by avoiding re-victimisation; 2) in prosecution, since the understanding of the APOV can aid into the conviction of the trafficker, where other direct "means" cannot be directly identified; 3) in the protection of the victim, since a major understanding of the victim's needs can provide personal services adequated to the special needs of the victims, especially in cases connected to psychological and emotional manipulation.

1.5.1 Identification of vulnerability as a Preventive measure

International legal instruments on Human Trafficking have been urging the necessity to act on the root causes of Human Trafficking in origin, transit and destination countries. The recognition of vulnerable features in origin countries' population can help the governments in designing preventive measures against human trafficking. Moreover, a focus on these factors will also "enhance the human rights

component of trafficking prevention policies” (UNODC, 2008). For instance, the Warsaw Convention (2005) demands to the States to apply instruments to decrease vulnerability, by the implementation of programs targeting short-term vulnerability, such as awareness campaigns on migration and human trafficking, as well as long-term vulnerability by the promotion of human rights, gender approach and special needs of children.¹¹²

These measures can be rather directly applied by programs acting on economic empowerment or indirectly applied by the compulsory birth registration, which can be a guaranty to the child in being able to exercise her/his rights and thus, be protected by the state.¹¹³ Long-term measures are normally related to more intrinsic problems as discrimination and violence, as also particular vulnerable categories. In order to address long-term problem roots States have to increase the implementation of legal measures against repressive violent behaviours, as well as discrimination against women or certain vulnerable groups. According to OCHRH (2010), States should also investigate cases regarding complains on violence or discrimination against women, with the aim to provide effective solutions for gender-based violence. Furthermore, in order to give better protection, especially to vulnerable categories, training should be also given to the authorities that work with vulnerable groups that are potentially exposed to human trafficking and organised crime.

On the Art.9, the Protocol identifies potential vulnerability factors, such as “poverty, underdevelopment and lack of equal opportunity”, which origin states are advised to address. The recognition of poverty as well as other inequality factors as a vulnerable element that pushes individuals to a human trafficking situation and endangered migration leads the Protocol in advising origin countries to take social measures to address economic difficulties. The analysis of such factors as poverty can aid State Members to individualise the brackets used by criminal networks in order to lead individuals to human trafficking. For instance, the General Assembly has recently called on State members to actuate on short-term vulnerability, such as lack of information regarding migration procedures that can lead a victim to a situation of human trafficking. However, vulnerability cannot be only regarded as a collective shared feature, but also as an individual characteristic. In that measure, it is also

¹¹² Explanatory Report on the European Trafficking Convention, para. 106.

¹¹³ United Nations Children’s Fund, Birth Registration: Right from the Start (March 2002).

necessary to understand the concept of vulnerability from an individual perspective as well as why some individuals are more vulnerable to trafficking situations than other individuals (OHCHR, 2010).

Poverty should not only be considered on an economic perspective, but also on a matter of well-being and human dignity. Hence, poverty is also the lack of nourishment, clothes and shelter as well as access to education¹¹⁴. These conditions lead the individual in not having a role on the public sphere within his/her community, which increases with the lack of awareness on the individual's rights. Consequently, the individual is collocated on a vicious circle, since his/her situation of marginalization also increases his/her lack of access to his/her rights and consequently, it enlarges his/her exposition to discrimination. While being discriminated and not being on his/her full capacity on responding to the access to justice, the individual tends to heighten his/her vulnerability to the criminal networks.

The marginalization of certain groups or categories can lead individuals not only to be vulnerable to criminal networks as victims, but also as possible offenders. Thus, in the *Travaux Préparatoires*, it is recommended to the States to promote and develop measures in order to avoid social marginalization of vulnerable groups to transnational organised crime, not only as victims, but also to avoid prospecting criminal careers. By establishing prevention programs, the States can act on vulnerable groups, by reducing their susceptibilities and avoid criminal organizations to recruit new members. In spite that the term vulnerable groups has been frequently mentioned on International law regarding Human Trafficking, during the *Travaux Préparatoires*, the issue of "vulnerable groups" was required to be cautiously taken by some of the delegations.

International Legal instruments on human trafficking are very clear in urging States to address vulnerability root factors that lead to a situation of human trafficking, yet, none of the instruments indicates which State, origin or destination has to intervene on vulnerability factors (Kuper, 2005). However, the Explanatory Report of the Warsaw Convention (2005) affirms that social and economic measures should be taken by the origin countries, in order to increase employment opportunities and decrease inequalities. In addition, the empowerment of vulnerable individuals and categories in origin countries would avoid the movement from countries with large income and

¹¹⁴ Office of the High Commissioner for Human Rights (2004), Human Rights and Poverty Reduction: A Conceptual Framework

wealth difference.

According to Gallagher (Gallagher, 2010), both origin and destination States should address vulnerable factors, in order to prevent and also respond to the victims' vulnerabilities. Considering that human trafficking tends to move people from areas with a wider social and economic gap, less wealth and opportunities to countries with bigger incomes and opportunities, broader preventive measures should be applied in the origin countries, in order to diminish inequality gap between citizens. However, rather than implementing social or economic measures in order to address deep root problems shared by victims of trafficking, origin States have been tackling human trafficking mainly focusing only on awareness campaigns against Trafficking.

The application of measures in order to empower vulnerable groups should not only be concentrated in origin countries, but also in destination countries. In fact, despite that some victims of human trafficking can come from countries where they suffer a higher discrimination, inequality in accessing rights and economic endurance, this does not "mean" that they were recruited in the origin country. In addition, many human trafficking victims tend to be recruited directly on the destination country due to their high vulnerability, especially connected with the irregular status situation on the territory, isolation and lack of knowledge of the language on the destination country.

As previously mentioned, International legal instruments regarding human trafficking tend to apply a gender mainstream, normally connected to the female gender, due to the higher discrimination to women. The major attention to this group on human trafficking is tending to be linked to their higher risk to the purpose of sexual exploitation. Even though women by themselves are not recognised as particular vulnerable groups in many countries, their intersectional vulnerability can be increased, especially when added to their irregular status/ migrant situation or the engagement on sex work.

Women working in prostitution tend to suffer from a higher marginalization, due to social and cultural attitudes, being particularly vulnerable to violence and exploitation because of their invisibility. According to CEDAW, there is a clear link between poverty and sexual exploitation and trafficking. The connection between these phenomena is a cause and consequence of their vulnerable intersectionality, mainly

based in migration, discrimination, and ethnicity as well as migration policies.¹¹⁵ As I will further analyse, the position of women as being considered a vulnerable category is mainly related to the lack of implementation of measures, in order to reduce gender discrimination in accessing resources as financing, education, equal income and also employment opportunities. According to the Special Rapporteur on violence against women, the failure in providing equal opportunities to women in origin countries is one of the main causes contributing to female migration.¹¹⁶

In this context, International Law instruments, as the Istanbul Convention¹¹⁷ and the Trafficking Protocol with a particular focus on women urge the States to reduce women's vulnerability by the implementation on specific measures to reduce discrimination and also violence against women. Moreover, if in one hand trafficking exposes women to high level of violence, I have also noticed that many women accept their exploitative situation due to previous experiences of violence and abuse. For instance, when it is applied the *lover boy* method with Romanian women, it is noted that the victims maintain themselves in exploitation, since they perceive their violence as domestic violence, often normally accepted due to their experiences. On the other hand, the use of extreme violence can also be the cause to force the women to flee from a situation of abuse and fall into a situation of trafficking (OHCHR, 2010).

1.5.2 Identification of the Abuse of Position of vulnerability for prosecution measures

On the Issue paper on "Abuse of position of Vulnerability" (UNODC, 2012) the concept of vulnerability was analysed within the National framework of different countries, such as Egypt, Republic of Moldova, Netherlands, Nigeria, United States of America, Belgium, Canada, Brazil, India, Mexico, United Kingdom and Switzerland. As a result of the inquiries on these countries, which were separated according to their inclusion of the concept of vulnerability on their national legal framework on Human Trafficking, the main features indicated that can influence the victims' vulnerability

¹¹⁵ Committee on the Elimination of Discrimination against Women, general recommendation No. 19, para. 15.

¹¹⁶ The United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences (2010), 15 years of The United Nations Special Rapporteur on Violence Against Women, its causes and consequences, E/CN.4/2000/68, para. 58

¹¹⁷ Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011. Istanbul

were: “age (youth and, less commonly, old age); irregular legal / migration status; poverty; precarious social status; pregnancy; illness and disability (mental and physical); gender (typically being female, but also transgender); sexuality, religious and cultural beliefs; isolation caused through inability to speak the language, lack of social networks; dependency (on employer, family member, etc); threats to disclose information to family members or others; and abuse of emotional / romantic relationships” (UNODC, 2012).

The mentioned vulnerability features were considered to be different in the origin country, mainly before and during the recruitment, and also in the destination country during and after the exploitation period. For instance, the UK has identified factors such as age, illness, gender and poverty that tend to pre-exist before the exploitation, being part of the push factors of the victims leading to the trafficker. Nevertheless, other features such as isolation, dependency and irregular status can be created vulnerabilities of the trafficker during the exploitation period, which can increase the victim’s vulnerability to the trafficking situation (Pascoal, 2016).

According to Gallagher (UNODC, 2012) in the UK’s analysis of the use of concept of vulnerability, there were some situations, which even though there was a pre-existing vulnerability, which was later increased during the exploitation period by the trafficker, the courts did not considered that the trafficker had abused the pre-existing vulnerability of the victim. On this case, Gallagher on the same document interrogates about the understanding of the abuse of position of vulnerability as a “mean” that can be strengthened so that “vulnerability that is created and abused during the trafficking process is also identified and appropriately prosecuted alongside the abuse of pre-existing vulnerability?”

The APOV has been mainly identified through the features that shape the victim’s context and environment that has been used to the identification of the trafficking situation. However, according to Gallagher, despite the existence of typical vulnerable patterns on trafficking, vulnerability should not be regarded as fixed, but as a group of a multitude of factors shaped by the trafficker’s interaction with the victim’s response (UNODC, 2012). Hence, the abuse of position of vulnerability in the Protocol tends to be connected with the “act”, *hic est*. “to recruit, transfer, harbour, or receive that person”. Thus, in order to prove the existence of APOV, the trafficker has to have

performed the “act”, normally accompanied by the presence of other “means” such as “deceit”, “fraud” and “coercion” used by the trafficker.

The presence of the “means” seems to confirm, according to the *Interpretative Note*, the definition of APOV provided by the Protocol and the following International legal Instruments. Therefore, the mere vulnerability of a victim should be sufficient to condemn the offender, whether there is or not the offender’s intention to take advantage of their vulnerability. For instance, in the case *PUDR v Union of India*, vulnerability was considered to be highly present in Indian citizens, due to deep poverty and unemployment. In fact, according to one of the Indian practitioners, the deep influence of extreme poor conditions faced by the majority of the Indian population leaves them frequently in a situation of the Hobson’s choice. However, despite the ever present situation of poverty in the country and the possibility that the exploitative situation provides more survival possibilities than unemployment, the general vulnerable situation of the population should not provide the employers to abuse their position of vulnerability.

The abuse of position of vulnerability tends also to be mainly connected with the “act” of “recruiting”, rather with other “acts”, occurring during or after the exploitation. Hence, it leads the investigators to associate the concept of vulnerability more as a pre-existing feature of the victim, during the recruitment, rather than a creation from the trafficker in other phases of trafficking. However, Gallagher (UNODC, 2012) affirms that in theory, the elements used to prove the APOV should be the same as for all other elements of crime, but in practice, there is the tendency to pay more attention to the vulnerability elements implicit on the victim, rather than the alleged abuse of those elements from the perpetrator. In fact, the abuse of position of vulnerability is easier to lead the victim in collaborating with the trafficker and despite that to maintain the exploitative situation other “means” can also be used by the trafficker, the APOV can also be used to proceed with the exploitation, especially when it is done without the victim’s awareness.

The difficulty in attributing an exact definition to the concept of vulnerability has been the source of several debates, which is confirmed on the *Travaux Préparatoires*. In fact, the concept was introduced after other suggestions of “means”, such as the “abuse of power”, mentioned on previous International Conventions.

Moreover, during the *Travaux Préparatoires*, the concept “abuse of authority” came into the debate, being mainly understood as “the power that male family members might have over female family members” (Gallagher, 2010). On the *Issue Paper on APOV*, Gallagher (2012) has also verified the relation between the “mean” of APOV and “abuse of power” in the four divided categories of countries, divided according to their adoption of APOV and “abuse of power”, as previously mentioned.”

The study has reflected the different opinions of “abuse of power” and APOV on different countries and sometimes within the same country and their application in human trafficking cases. For instance, according to an Indian practitioner, the concept of “abuse of power” is always relevant in trafficking cases, while another practitioner has argued that “the concept is the flipside of “abuse of a position of vulnerability”. Therefore, in this broad view of the latter, APOV would be mirrored by “abuse of a power”. According to a Mexican practitioner, “abuse of position of vulnerability” was included on a first phase on the Trafficking Mexican’s legislation¹¹⁸, yet it was later taken since it was agreed that every victim was intrinsically vulnerable and that such affirmation would broaden the concept of VoT.

In Dutch legislation, the concept of “abuse of authority arising from the actual state affairs” is regarded to be as a broader concept than “abuse of power”. For instance, APOV is easier to prove than the “mean” “abuse of power”, especially regarding the subject of emotional relationships. In the *Issue Paper on APOV* (UNODC, 2012), Dutch practitioners have mentioned that the distinction between these two concepts was not useful, although “abuse of authority” is more related to the relationship between the perpetrator and the victim.

On the second category, Nigeria¹¹⁹ that until the publishing of the document did not have a clear mention on APOV and “abuse of power” in its trafficking definition, includes the “mean” of “abuse of power” as coming from public officials or one that exercises control over another person.

On the third category, Belgium, in spite of not considering the “means” in their

¹¹⁸ Article 5 of the 2007 Federal Law to Prevent and Sanction Trafficking in Persons prohibited; “Promoting, soliciting, offering, giving, getting, transferring, delivering or receiving for himself or another person, a person, through physical or moral violence, deception or abuse of power to subject to sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of an organ, tissue or its component.”

¹¹⁹ Nigeria’s Act No. 24 of 2003, Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 14 July 2003. The legislation was previous to the legislation in force since 2015.

trafficking legislation considers “abuse of authority”, used by a person who has authority over the victim or abuses authority, such as an officer or public officer, custodian or agent of police force, as an aggravated offence that can increase the offender’s penalty. Furthermore, the Canadian practitioners in the issue paper (UNODC, 2012) have translated APOV as “abuse of position of trust, power or authority”, which is normally accompanied with other coercive instruments that undergo in order to keep the exploitative situation and that can have also similarities between “abuse of power” and “abuse of position of vulnerability”. Furthermore, the interesting approach of the Canadian perspective is that “abuse of power and authority” is also suggested to be mainly based on relationship of confidence and not being limited to the authorities.

The “abuse of power and authority”, despite being mainly identified in cases regarding the authorities, it has also been mainly connected to intimidate relationships, where a creation of trust and emotional attachment is used to obtain the victim’s consent (Netherlands government, 2011). However, despite being easy to prove in cases of biologic connection as families, it is more difficult to prove in cases where romantic relationships are established for the purpose of recruitment (Aninoşanu et al., 2016). For instance, Moldavian practitioners have considered that in order to assess the victim’s mental and physical vulnerability, other professionals as doctors and psychologist should evaluate the vulnerability’s state of the victim.

In fact, regarding the frequent recruiting method on Eastern Europe, the *lover boy method*, the Moldavian practitioners have referred that normally it is sufficient that the trafficker has a relationship with the victims, being easier to target the victim’s vulnerabilities. In most of the cases, for example connected to the *lover boy method*, the trafficker is the one that creates a situation of vulnerability in order to attract the victim to a situation of human trafficking (Pascoal, 2017). Actually, the trafficker creates an environment of dependency of the victim abusing from an emotional attachment in order to target the victim. The creation of such pull factors introduces the concept of vulnerability, not only to be thought from a passive situation of the victim, mainly based on her life experience and background, but also from an active situation, which is purposely created by the trafficker in order to target the victim.

Another created vulnerability by the traffickers indicated by the practitioners in the study refers to use of religious beliefs and oaths, which is the typical method used

by the Nigerian human trafficking for sexual exploitation purposes. The oath in these cases is not only used as a coercive instrument during the exploitation period, but is also used by the trafficker as an advantage of the victim's spiritual belief, convincing the victim about the power of the juju ritual. Furthermore, in order to enhance the psychological power used on the victims, the traffickers tend to use the presence of religious elements, such as religious statues or crosses during the ritual, which increases the victim's belief on the ritual, by also associating the ritual to their religious beliefs.

Despite that "juju" oaths were considered to be one of the APOV indicators on the *Issue Paper* (UNODC, 2012) and the acknowledge of the use of such method in the Nigerian human trafficking rings as a coercive instrument, Nigeria did not consider such instrument in its 2003 national legislation on human trafficking¹²⁰. In fact, the "mean" of APOV it was not cited on the trafficking definition, doing reference only to "coercion" and "deception" as human trafficking "means". However, as it will be further deepened, Nigeria has reformulated its legal framework in human trafficking with the Trafficking in Persons Act in 2015.

As previously mentioned, the *lover boy method* as well as the use of "oaths" demonstrates how APOV can be created by the trafficker rather than an intrinsic characteristic of the victim. However, despite our mainly attention on these methods being a created vulnerability by the trafficker used during the recruitment, other methods have also been used, such as drug addiction during the recruitment phase and in the following phases. In fact, the Mexican legislation has identified drug addiction as an aggravated offence that increases the offender's penalty. However, no further guidance is provided in case that the trafficker uses APOV in a victim who is already an addicted at the time of the recruitment or if it is the trafficker that induces the victim into the addiction.

The use of stupeficient on the victims does not only contribute to a better control of the victim, but also contributes to a better manipulation and exercise power over the victim. However, if the trafficker has created drug addiction to the victim,

¹²⁰ Article 64 of Nigeria's 2003 Trafficking in Persons (Prohibition) Law Enforcement and Administration Act states that: "Trafficking" includes all acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchases, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in force or bonded labour, or in slavery-like conditions.

would it be considered a creation of vulnerability or rather a coercion method? Furthermore, how it would be possible to demonstrate that the trafficker has intentionally drugged the victim for exploitation purposes or if it was a situation of APOV in which the victim was already consuming drugs? In case it is proven that, the trafficker has provoked the vulnerable situation of the victim through the inducement of drugs, would the APOV be considered mainly as an aggravation rather than a “mean”?

The use of psychological manipulation through the abuse and creation of emotional vulnerability as well as religious beliefs or emotional attachment has been seen as being more effective on the victim’s control. The use of psychological and emotional manipulation *per se* have been difficult to demonstrate on court during the procedures in several countries, especially due to the absence of physical violence, which also leads the victim in denying her victim’s condition. In order to overcome this difficulty, some countries as Mexico and Romania have created specific measures that can be used on the probation act to prove the APOV. For instance, Mexico has implemented in recent times multidisciplinary assessments in order to facilitate the establishment of the victim’s vulnerability in the crime.

The identification of such personal vulnerability can assess the “abuse of position of vulnerability” of cultural, economic, social and personal factors connected to “deception” and “coercion”. However, it is not clear how the victim’s vulnerability is abused. Romania instead has proven in court the emotional vulnerability of the victim by a psychological assessment. The evaluation has not only demonstrated to be successful in the victims, but also in victims accused of trafficking who through the *lover boy method* have also started to recruit other women into sexual exploitation¹²¹. Therefore, in this case, the psychological report not only proves that the trafficker has abused of the victim’s vulnerability, in order to achieve a scope, but also proves that the given consent by the victim should be considered irrelevant, as it is defined on the Trafficking Protocol.

The Trafficking Protocol is very clear regarding the consent of a minor (UNODC, 2013) in a situation of Human Trafficking, affirming that in case the victim is a minor, then the presence of the “mean” is not required. The Protocol also describes that in case of trafficking, where there is at least the presence of the “Act” and the

¹²¹ Private Interview with a Romanian law enforcement agent on human trafficking

“means” with the trafficker’s intention of the Purpose, the consent of the victim should also been considered irrelevant. The presence of the “mean” “abuse of position of vulnerability” itself is not sufficient without the element of offense, since the victim was given no alternative rather to submit to the trafficker. However, practitioners that have participated on the *Issue Paper on “abuse position of vulnerability”* (UNODC, 2012) have agreed that the elements used to prove the “mean” of “abuse of position of vulnerability” should be the same elements used to prove other aspects of the offence, since the abuse of these elements should be serious enough to demonstrate the intention of the purpose and the victim’s consent.

If from one hand, other “means” tend to support the APOV in order to consider the consent irrelevant, on the other hand consent can annul the application of the “means”, such as “deception”. For instance, in Nigerian cases¹²², where “deception” is being employed as a relevant “mean” in cases of sexual exploitation, the Court appears to be reluctant in convicting the suspect, since the victim was aware on working on prostitution. However, in the UNODC study (2012) Nigerian practitioners have admitted that APOV is implied in “deception”, since some of the victims are so vulnerable that they do not have the capacity to question the trafficker’s offer. Furthermore, the practitioners have affirmed that the “means” of APOV and “deception” tend to be present on the recruitment phase of human trafficking, while other coercive instruments tend to be used during the exploitation period, when the victim becomes less cooperative.

Moreover, the practitioners have also recognised some challenges in order to prove APOV, since many victims do not identify themselves as victims. Hence, in cases that the victims do not recognise themselves as victims, it is difficult for them to collaborate within the investigation procedures. This happens, especially when the victims might feel grateful towards their traffickers, since some victims have more economic autonomy and believe to be more independent during their exploitation than on the previous period. Furthermore, according to the *UNODC Model Law* (2009) APOV should not only be defined as a lack of alternative in submitting to the trafficker, but mainly on the conception that the victim ‘lacks from an alternative’. However, the *UNODC Model Law* also does not define the key concepts and how the state of mind

¹²² Case of AG v Hussaina Ibrahim and Idris Aminus Suit No. K.1TPP.2003, Case of AG v Samson Ovensari, Suit No. B.15c.06 and Case AG v Samuel Emwiovbankhoe, Suit No. B.20C.2005

should be assessed in order to understand the victim's concept of "lack of alternative". In order to overcome such obstacle, the practitioners involved in the *Issue Paper of APOV* (UNODC, 2012) have urged for a more multidisciplinary collaboration during the procedures, involving several professional backgrounds such as specialized psychologists, social worker anthropologists, cultural advisers and civil society actors.

1.5.3 The importance of APOV to demonstrate the irrelevance of consent

Proving the presence of APOV is highly important, especially to demonstrate the irrelevance of the victim's consent in cases not related to physical coercion (UNODC, 2012). The relationship of "abuse of position of vulnerability" and consent is important to be demonstrated, as mentioned above, especially in cases where the victim does not perceive to be herself/himself a victim. This usually happens in situations where the previous conditions of the victims were highly degrading or where psychological manipulation is also used. As mentioned before, the presence of "abuse of position of vulnerability" can also annul the guilt of the human trafficking victim, while imposed to practice illegal activities.

According to Gallagher (UNODC, 2012) the enlargement of the concept of APOV has also influenced on a lighter definition of exploitation. For instance, according to the Dutch High Court, on a Chinese workers case in a restaurant, the exploitation was recognised based on the payment of half of the minimum wage in Netherlands, for long working hours, few days off and shared bedrooms, while APOV was taken in consideration due to the irregular status of the workers, despite their consent to the exploitation. However, despite that in the case of the Chinese restaurant, the workers' exploitation was mainly based on the low salary, in another case in Netherlands; the Court has considered that low wages along with the possibility of APOV was not enough for defining a trafficking situation, since the victims were able to leave freely from their situation.¹²³

As previously mentioned, the "mean" of APOV tends to be highly connected with the "purpose", especially if it is applied to demonstrate the victim's innocence in the engagement of illegal activities. Therefore, application of this "mean" can avoid the

¹²³ Referred to in NRM, *Trafficking in Human Beings*, Seventh Report of the National Rapporteur, (BNRM, 2009)

victim's prosecution, by demonstrating the trafficker's intention of APOV.¹²⁴ In fact, the practitioners included on the *Issue Paper on APOV* (UNODC, 2012) have considered that APOV should be considered independently of the type of exploitation. Moreover, the practitioners have also agreed that the exploitation typology should not influence on the application of the APOV.

Victims of trafficking of Human beings can also be exploited in illegal activities, mainly regarding shoplifting, petty crimes and drugs' smuggling. Despite that the previously mentioned activities are clearly considered internationally illegal; sexual exploitation instead has not been clearly defined its position in the legal framework, due to the legislative adoption on the issue in different States. Actually, the Trafficking Protocol has deliberately left a bracket regarding this issue, giving the Member States the possibility to apply their own national legislation within the territory. Therefore, countries, which have considered sexual service as an illegal activity, proving the involuntary act of the victim in cases of human trafficking for sexual purposes can avoid the victim's conviction.

This consideration is not only regarding illegal activities, but also when the victim is a migrant with an irregular status. For instance, in Switzerland,¹²⁵ formal consent of the victims was not considered enough to convict a migrant; since it was recognised the need to understand if such consent was free of suppressing. This has permitted to the Court to establish that particular social and economic conditions should be considered as a "vulnerable state", especially regarding foreign prostitutes and thus, in these cases, consent should be considered irrelevant. The attention on the economic and social hardship situation tends to be considered by the Swiss Courts, especially focusing on foreign women from developing countries engaged in prostitution to be a vulnerable victim. Nevertheless, one Swiss practitioner on the study has considered that this was insufficient to establish vulnerability.

The possible conviction of human trafficking victims involved in illegal activities, if from one hand can raise their vulnerability towards the State, from another hand it can be also an impulse to raise the victim's collaboration with the law

¹²⁴ The Hague District Court, 21 November 2006, LJN: AZ2707, referred to in NRM, Trafficking in Human Beings, Seventh Report of the National Rapporteur, (BNRM, 2009).

¹²⁵ BGE 128, IV.117 see more details in http://relevancy.bger.ch/php/clir/http/index.php?lang=de&zoom=&type=show_document&highlight_docid=atf%3A%2F%2F128-IV-117%3Ade

enforcement. For instance, according to a representative from the ANITP¹²⁶, the Romanian National Agency Against Human Trafficking, when prostitution was illegal in Romania, human trafficking victims tended to collaborate more with the police, in order to avoid their conviction. Therefore, the victims would normally demonstrate their trafficking situation, mainly based on APOV.

1.5.4 Identification of Vulnerability for Protection measures

Despite that major focus is given to the concept of vulnerability as one of the “means” included on Art.3 of the Trafficking Protocol as well as on other International Legal Instruments focusing on Human Trafficking, vulnerability has also been mentioned as prevention measures, as well as a consequence of trafficking. Therefore, in this chapter after looking into the importance of the identification of the victim’s vulnerability in order to introduce preventive measures as well as prosecution measures, it is also important to regard vulnerability in order to provide a better assistance to the victim and also to avoid re-trafficking. This attention focused on the concept of vulnerability follows the proposal of tackling Human Trafficking from the 3 P’s Strategy (Protection, Prosecution and Prevention) included in several International Legal Instruments, in order to provide to the identified victims assistance services based on a physical, psychological and social recovery of VoTs. (United Nations, 2000, article 6(3)).

The protection phase has been identified as extremely important for the recovery of the victim of human trafficking, especially to avoid re-victimisation. Victims of crimes that include a continuous abuse and violence have been internationally recognised as particularly vulnerable in the recovery period, as at a physical level, as at a psychological level. The recognition has not only been demonstrated in the International Legal Framework on Human Trafficking, but also through the judgements of *Bevacqua and S. v. Bulgaria* (2008) n 71127/01 12 June 2008 and in *Hajduová v Slovakia* (2660/03 30 November 2010), where the ECHR recognises the victims of domestic violence being particularly vulnerable.

Protection measures tend to be normally perceived regarding group categories, normally based in gender, age or irregular situation, which are further analysed and

¹²⁶ Interview number 9 (Law enforcement), 03/10/2016, Romania

applied as general prevention measures that address root problems of human trafficking. However, despite this general approach, protection measures can also be divided at a 1) chronological level (long-term and short-term); 2) general or individual protection measures; 3) legal status.

After the victim's identification, a protection program is normally activated, provided by the States or third-sector organizations, generally applied on short-term solutions that provide basic supply to the victims' needs as food, accommodation, sanitary services or safety measures (Canapelle & Mancuso, 2013). In accord with the Trafficking Protocol, the States should inform victims on their rights, especially regarding their legal rights, while providing protection according to the victim's needs, gender, age and special needs. Moreover, the Trafficking Protocol, the Directive 2011 as well as the Warsaw Convention advise the States to give more attention to former victims, since they tend to be more vulnerable to re-victimisation and find themselves in a "position of great insecurity."¹²⁷ In addition, the EU Strategy urges a particular attention to the re-victimisation of children, since according to an IOM Study (2010), 84% of re-victimisation cases in a sample of 79 victims, were minors or recently adults.

On a first protection phase, the State members should not only concentrate on providing shelter and food to the victim, but also providing health assistance to the victim. Generally, human trafficking victims have been exposed to extreme hardship conditions lacking from a stable physical and psychological condition. Furthermore, victims of sexual exploitation are normally exposed to sexually transmitted diseases as HIV and Syphilis, since they lack of bargaining power on the use of condoms. The lack of contraception measures often leads the women to unwanted pregnancies, especially from the traffickers, which obliges the women to practice abortions. However, the health assistance should not only be based on a physical ground, but also at a psychological. In addition, depending on the victim's state, these measures tend to be extended also as long-term measures based on the individual situation of the victim.

On a first phase, protection measures should also be provided to the victims, by separating them from their exploiters as changing their location or sometimes changing their identity, normally addressing them to a secret shelter. The separation from the traffickers should not only be based on the geographic location, but also on the contact

¹²⁷ Article 12 of the Warsaw Convention- Assistance for victims of trafficking

between the victim and the offender, especially based through the use of technologies as cell phones and internet. Exploitation has a high psychological and emotional impact on the victims, which also tends to be increased by the fear of retaliation from the traffickers, especially after their denouncing. For instance, regarding the confront between the victim and the perpetrator in Court, the 2002 Brussels Declaration incentives the Member states to give the witnesses the possibility to use audio-visual records in Court procedures, in order to avoid the offenders' intimidation on the victims.

Furthermore, the protection of the victim, as well as the aspect of the crime should also provide protection to the victims' families in the origin countries, especially since the trafficker normally knows the victim's family. However, this measure seems to be applied mainly in the origin countries that are within the EU and not outside the European territory. Nevertheless, the high incapacity of the origin countries outside the EU territory in protecting the victims' relatives, the role of the destination country has also demonstrated to be important in protecting family members of the victims, especially when the victims have children in the origin country. For instance, after the conviction of the trafficker, a French judge along with the French Ministry of Foreign Affairs have decided to transfer a child of a Nigerian victim in France, in order to protect the child from the traffickers in Nigeria. The protection was provided through an urgent family reunification granted after the subsidiary protection to the mother. Another founded solution by French associations working against human trafficking was to gather the sum of 300 euro per year to provide accommodation to the families in other states far from the traffickers (Ac.sé, 2015).

Despite the importance of these granted protection and safety measures, they are only applied as emergency and temporary measures, normally within a reflection period, with the aim to secure a temporary comfort and establishment to the victim, yet they are not sufficient to empower the victim or even avoid re-victimisation. Therefore, other types of measures are activated with the aim to provide a better re-integration in society and also to act on the victim's vulnerability.

While short-term measures are normally provided on a general basis, regarding human basic needs as shelter, health issues and accommodation, other activated measures should be provided on a long-term period, in order to achieve a broader result. Despite that, long-term measures are normally connected with also personalized

measures, mainly focused on the psychological impact of the exploitation on the victim or his/her integration on society, through an education or employment basis, they tend also to be applied on a general basis such as nationality, age and gender (Andreatta, 2015). Furthermore, the provided protection measures are normally shaped for a similar victim's profile often connected to an economic and social background, where minors are normally integrating into education systems, even if most of them feel obligated to work in order to send money to their families in their origin countries, while adults tend to be empowered by work reintegration programs.

Notwithstanding that integration measures are normally based in a certain victim profile, Europol (Europol, 2011) has identified that due to adverse personal circumstances, several victims do not fit into a victim's stereotype. On the contrary, individuals with high education levels, self-confidence or acknowledge of foreign languages can also be vulnerable due to a major mobility and travelling, access to low cost international transports and working opportunities abroad. Therefore, although people with higher education and economic background have been identified as human trafficking victims, general re-integrated measures are provided to a standard low profile, since victims with a higher background normally have the social instruments to be reintegrated in society. However, even if the victims with higher profiles have not specific social or economic vulnerabilities that require a broader general protection, they still might need intervention regarding personal needs, especially regarding psychological support, due to the trauma that can be caused by the exploitative situation.

The implementation of reintegration measures has been highly advised by International Law Instruments on Human Trafficking, especially regarding former victims that are highly vulnerable and exposed to re-victimisation. Therefore, in order to have a deep level of integration, the Warsaw Convention identifies that language assistance should be given to the victims, since often, the lack of knowledge of the destination country's language leads to a major isolation of the victim. The language courses should furnish to the victims the possibility to be employed and broad their social connections with the local community. Along with the language course, working trainings should also be provided to the victims, yet due to the scarce employment possibilities to low skilled migrants, often these training courses are highly connected to

work segmentation of female migrants such as caregivers, cleaning jobs or sewing cooperatives. Therefore, unless the trainings are connected directly to a cooperative, such as Casa Rut in Naples or Irepo in Palermo, where the women can work as sewers (Caretta, 2015), the ex-victims can fall into re-victimisation, since the other two mentioned jobs are also profoundly linked to the exploitation of female migrant workers. These empowering measures also reflect that the standardization of protection of the victims is linked to the female gender, rather than the male victims.

As previously mentioned, International Legal Framework in human trafficking has adopted a gender mainstream approach, with a special focus on women and children. For several years, human trafficking has been limitedly regarded to sexual exploitation, rather than other exploitative types. This restrictive focus has led governments in applying general protection measures for only women and children. However, other categories can be also highly vulnerable to human trafficking, such as transsexuals and men, who also need particular assistance, especially regarding accommodation facilities. Hence, countries tend to have shelters mainly for women rather than for the other categories, for instance Portugal has included its first men shelter only in 2013. Furthermore, in a study taking in Israel on gendering shelter for human trafficking victims (Hacker, Levine-Fraiman, & Halili, 2015) the authors have identified that different approaches were taken regarding the two genders. For instance, the staff in the men's shelter has focused in empowering the victims of labour force or work reintegration, while the staff working on the women shelter has given less attention to reintegrate female women in the work market and has given more importance to their social skills. This gender's difference approach has also been confirmed by the researchers Mancuso and Canepelle (2013), which refer that men tend to receive more social assistance than psychological and labour consulting, while assistance to women victims of trafficking is more focused on sanitary assistance.

Generalized protection measures are not only disregarding males as human trafficking victims, but also transsexuals that need to supply specific needs. Transsexuals are normally marginalised, especially by their families when they start their sex transformation process. Due to the absence or insufficient support of the governments on their changing sex transformation, they normally direct themselves to the black market, which is highly expensive. Consequently to their marginalization from

society and engage on sexual services, they tend to be highly vulnerable and invisible, being extremely vulnerable to human trafficking (House, 2013). Since these subjects have only been recently focused regarding protection measures, if the presence of protection measures regarding men who are victims is scarce, the ones focusing on transsexuals are totally absent.

Human trafficking victims tend to be initially identified and treated as illegal migrants, prostitutes or criminals by the authorities (Beretta, et al., 2016). Hence, concerning to third countries' former victims, the International legal Instruments on Human Trafficking endorse the member states to avoid deportation of human trafficking victims in their origin countries, due to a higher vulnerability and exposure to the criminal organizations. As it was previously mentioned, former victims can also form a specific vulnerable group, since they share a specific element, based in their story usually involving persecution, reprisals or punishment. For example, in the case of *Rantsev v. Cyprus*¹²⁸ and Russia, the European Court of Human Rights has accused Cyprus for not identifying the individual as a human trafficking victim and deport her to her origin country, exposing the victim to her traffickers.

Therefore, the *Rantsev* case demonstrates that the identification of a situation of human trafficking is very important to the victim, since they are often identified in an illegal situation, due to the lack of their identification documents that are confiscated by the traffickers, their irregular status on the destination or transit territory or due to their engagement on illicit activities in other exploitation typologies. In order to protect third country nationals, Member States should provide them with the voluntary return programs to their origin country or residence permits on the destination country.

The voluntary return programs are normally established by bilateral agreements within countries destination and origin countries or by the Voluntary Return Program managed by IOM, where the victim returns to the origin country free of costs. Moreover, IOM's program is normally targeting third country nationals and providing reintegration within the origin country with entrepreneurial training and a microcredit financing to implement commerce activities that can support the victim in the origin country.

¹²⁸ For specific further reading on the *Rantsev* case, see for instance Allain, J (2010) "*Rantsev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery*", *Human Rights Law Review*, Vol. 10, No. 3, pp. 546-557

Since the investigation period tends to be long, the State members should provide a reflection period¹²⁹ to the victim during the investigation, not only focusing on the victim's collaboration to convict the trafficker, but also to provide a more secure and safe situation to the victim. Once the victim is identified, the State should provide a residence permit and introduce the victim in a protection program using individualised protection measures, mainly based on the exploitation's impact on the victim and his/her personal background. This psychological assessment is based on the victim's background, pre-existing to the exploitative situation as well as the impact of the exploitative situation on the victim. The psychological assistance provided to the victims not only should act on the abuse recovery, but as a consequence of the exploitation, but also on their pre-existing vulnerabilities, in order to avoid a possible re-victimisation. The assessment of the individual vulnerability of the victim has been taken in consideration by a Moldavian practitioner (UNODC, 2012) that has stated that in case the APOV was based only in one vulnerability factor, the victim's context has to be taken in consideration. For instance, in order to prove the social and economic vulnerability, probation acts can be provided by relatives and neighbours that have shared the same environment context, while doctors can prove physical or mental vulnerability and psychologists emotional and trauma related vulnerabilities.

The trafficking experience, dissimilar to other crimes is a continuous trauma involving physical, sexual and psychological abuse, deprivation, torture, manipulation, extreme hardship living conditions and forced use of substances. The percussion of these abuses provokes a deep trauma on the victim that normally develops post-traumatic stress disorder, anxiety, depression, alienation, disorientation, aggression and difficulty in concentrating. Moreover, studies have identified that these consequences tend to persist after the exploitative period, thus it is important to act on the psychological impact (UNODC, 2008).

1.6 The concept of vulnerability in the division between Smuggling and

¹²⁹ According to the Art. 13 of the Trafficking Convention 2005: "Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory."

Trafficking

Since the legal division of Smuggling of Migrants and Trafficking of Human Beings that scholars have put into debate the legal separation on these two crimes. The rise of this debate focuses more on the overlap that occurs during the mobility of individuals, rather than the clear legal limit. Furthermore, the definition of trafficking given by the Trafficking Protocol has been criticised on the last years for having a limit definition, widely vague and for its narrow application (Roth, 2012; Jansson, 2013; Gallagher, 2010). Therefore, despite the recent discussion on the subject, this chapter analyses the presence of the three elements given by the Trafficking Protocol: Act (transfer), “means” (coercion, abduction, abuse of position of vulnerability, deceit, fraud, Purpose (Exploitation) on the phenomena of Smuggling and Human Trafficking.

In spite, the explicit separation between THB and Smuggling of Migrants with the writing of the two Protocols in 2000, *the Legislative Guide on the Smuggling Migrants* admits the overlap between the two phenomena, by assuming that criminal networks operating on human trade can use the same routes and “means” to transport smuggled migrants and victims of trafficking, exposing these individuals to inhuman and degrading treatment. The overlap between the two phenomena is also considered by Gallagher (Gallagher, 2010), which affirms that “an individual can be smuggled one day and trafficked the next”¹³⁰, being difficult to precise chronologically and practically the clear limitation between transferring and exploitation.

On the last Internal Security Portuguese National Report (Geral, 2017), the Portuguese authorities have underlined that the phenomena of Human Trafficking and smuggling of Migrants are difficult to distinguish, being mainly associated with other crimes such as: the falsification of identity documents, money laundry, pimping and organised crime. Moreover, the report highlights that the overlapping of the two phenomena is mainly based on the crimes’ perpetration by well-funded criminal networks at a national and transnational level that have different individuals performing different roles. However, despite the acknowledge of the overlap of the two phenomena, it is true that the lack of the element of exploitation or at least its intention, of course along with the “means”, separates the guaranteed rights of smuggled migrants and

¹³⁰(2010), *The International Law of Human Trafficking*, page 52,

human trafficking victims in the destination or transit country, in an intent do discourage irregular migration flows (Parisi, 2016).

Furthermore, the criminalisation of irregular migration underestimates the risk exposure of migrants to criminal networks and violation of human rights (Colucello & Massey, 2015). Therefore, even if most migrants begin their path in a vulnerable situation, the journey is an added vulnerable fact that increases the migrants risk and exposure to criminal networks. For instance, in the Ordinance 3283/2015 R.G.A.C of the Court of Reggio Calabria, the judge has identified the psychological vulnerability of the asylum seeker, not only due to the suffered violence in the origin country, but also regarding the one suffered on the transit country that in this case, it was in Libya. In fact, the present situation on the Mediterranean routes challenge the conception given by Puglisi (Carchedi et al, 2003), in presenting the interest of the smuggling network in the safe arrival of the migrant to the destination country.

Smuggled migrants can be mixed within other particular vulnerable categories such as victims of trafficking, non-accompanied minors, pregnant women and asylum seekers, during the travel. Furthermore, smuggled migrants can also become victims of trafficking during the travel. All these categories will have the same treatment during the travel to Europe, yet by the end of the migration path, only some categories will have access to asylum, even though they have passed from the same situations. Therefore, despite the affirmation of the *Legislative Guide on Smuggling* about the similarities as well as the overlap between both phenomena, the application of victimisation and vulnerability has been applied differently on the different Protocols. In fact, while the concept of vulnerability has assumed an important relevance, especially on the identification of victims, on the phenomenon of Human Trafficking, on smuggling of migrants the concept of vulnerability was only merely considered.

The reason for this different position regarding the concept is accompanied by the perspective that if on Human Trafficking the victim is the individual that has been or there was the intention to be exploited, on smuggling of migrants, the aggrieved agent is the State. Furthermore, “the abuse of a position of vulnerability” is considered on Human Trafficking to be a possible “mean” used by the offender in order to achieve the victim's consent, which in this case is irrelevant, while on smuggling of migrants the

consent is considered to be always voluntarily present. The recourse of “means”¹³¹, which are only present on Human Trafficking are not identified in Smuggling, since the migrants are recruited “voluntarily” and the trafficker has not the purpose to exploit them. Nevertheless, regarding the consent, according to Jacqueline Bhabha (Bhabha & Zard, 2006), often migrants’ consent is linked to the absence of an available and adequate alternative, which is the definition of the concept of vulnerability given by the Legislative guide on Trafficking.

In the case AA (Iraq), R (on the application of) v Secretary of State for the Home Department 171, the Court of Appeal was invited to take a decision whether the migrant that has entered initially in the country through smuggling, but was sexually abused or coerced into having sex with her smuggler on route, was potentially a victim of trafficking who was being groomed for exploitation. According to an expert witness, the “mean” of “abuse of position of vulnerability” was taken in consideration, since the victim had no acceptable alternative, rather to submit to the abuse from the smuggler.¹³² In fact, during the travelling, especially regarding the migrants entering in Europe through the Mediterranean, the migrant is normally unaware of the geographical space and transit countries languages and laws. Furthermore, the travelling goes through isolated areas, where there is no possibility of survival, being the migrant totally in the hands of the smuggler. On the research of Van der Leun and Van Schijndel (Leun & Van Schijndel, 2015), the authors show that frequently, smuggled migrants are dependent from the smugglers during the course of the journey, especially when the smuggling is organised in large scale, in which often the smugglers take the migrants belongings as cell phone and identity documents. The APOV has also been considered in cases where the employer has taken advantage from the migrants’ irregular status cases¹³³ in order to maintain their exploitative situation, despite that the initiative was taken from the migrants.

Despite the main differences between the two Protocols, it is evident the plead

¹³¹“means” are considered to be “threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

¹³² 171 [2012] EWCA Civ 23 (24 January 2012), available from: <http://www.bailii.org/ew/cases/EWCA/Civ/2012/23.html>.

¹³³ Correctional Court in Ghent, 2007 in the Trafficking in Human Beings (Netherlands), Seventh Report of the National Rapporteur,

on addressing root problems such as unemployment, poverty as being one of the main push factors into smuggling and trafficking, as well as causes of individuals' vulnerability. In fact, if in the situation of human trafficking, poverty can be a considerable vulnerable factor; in the case of smuggling, it is not considered. However, the factor of vulnerability should also be counted on the asylum process taken by smuggled migrants, especially when exposed to harsh conditions during the smuggling process. Economic issues have also been recently recognised as a vulnerable factor to a Nigerian asylum seeker in Italy, by the assumption that in case the asylum seeker would return to his origin country, he would be confronted economic instability. The concession of the subsidiary protection permit was obviously based also on the political instability lived in the country that recognised the vulnerability of the asylum seeker in his origin country.¹³⁴

The synonym of poverty as a vulnerable position was given by the *UNODC Model Law on Human Trafficking* (2009), in which a vulnerable situation is considered as “being in a precarious situation from the standpoint of social survival”. Furthermore, the same document identifies individuals that have “entered the country illegally or without proper documentation” as also in a vulnerable situation. In fact, the Inter American Court of Human rights on 2003, on the legal status and rights on undocumented migrants, Mexico has declared that vulnerability makes unauthorized migrant workers an easy target for violations of their human rights. The suggestion that people who were smuggled illegally in the destination country are in a situation of vulnerability, not only admits the overlap between both phenomena, but it also highlights that the majority of smuggled migrants are potential human trafficking victims.

In fact, analysing the constitution of Nigerian human trafficking networks for sexual exploitation, the researcher Paolo Campana (Campana, 2015) has understood that smuggling networks work separately from the exploiters, yet both organizations are well linked. However, if we look into passive vulnerability as synonym of poverty, discrimination and inequality, are we not looking into the same features of the migrants arriving by the Mediterranean? Furthermore, should not those features be considered when someone is exposing himself or herself to a criminal network, especially when

¹³⁴ Tribunale di Napoli – Sezione Civile I Bis, 14/01/2017 RG n. 17649/2016

considering the active vulnerability, which is created by the trafficker/recruiter/smuggler? In fact, the exposure of criminal networks is considered on the Art.15 of the Smuggling Protocol, where the States are advised to cooperate in order to prevent “potential migrants from falling victim to organised criminal groups”. Moreover, Art.15 recommends also to the States to prevent “irregular migration” by working on the so-called push factors, which as I compared previously can be considered vulnerable social and economic features common to human trafficking victims, such as poverty and underdevelopment.

When Art.15 on the Smuggling Protocol confirms the existence of root socio-economic causes, such as poverty and underdevelopment, it is also assuming of the existence of such vulnerable groups that share a common feature, which exposes individuals to criminal networks. In this case, the sum of the active vulnerability, created by the criminal groups plus the passive vulnerability of the groups creates without doubt a potential abuse of the position of vulnerability. Furthermore, the recommendation that states should address the potential vulnerable groups in the Smuggling and Trafficking Protocol, recalls Fineman's (2008) theory on Vulnerability that vulnerable groups are a product of society, in which the state has failed to defend their rights or empower.

The Directive 2011/36 perceives the “abuse of position of vulnerability”, from the perpetrator side, which can aggravate the trafficker's prosecution, yet, despite that the *Legislative Guide on Smuggling of Migrants* agrees that exploitation might occur in smuggling of migrants, it is also only considered as an aggravating circumstance and not an element to identify a situation of Human Trafficking. It is interesting here, how the Smuggling Protocol annuls one of the most known Trafficking methods, usually also known as an indicator, in which migrants often do not pay for their travelling, putting themselves into a debt. Human traders use the debt method, based on “travel first and pay it later” as a recruiting method in order to create a demand for migration, based exactly on the lack of economic resources of the victims, currently named on the Trafficking Protocol as “abuse of position of vulnerability”.

The position of vulnerability, in this case, not only lays on the lack of economic resources, but also on the lack of education and awareness of the destination country, especially on the smugglers/traffickers’ expenses on the travel and the later amount that

has to be returned. Additionally, the debt contraction has been developed by the trafficking networks, especially by Nigerian traffickers for the purposes of sexual exploitation or the exploitation of Egyptian non-accompanied minors, which are categorised as vulnerable groups (Iacono, Petrillo, & Howard, 2017). However, recently during the migrants' arrivals in Sicily, it has been verified that migrants who are not considered within a vulnerable category, such as asylum seekers, or non-accompanied minors, did not pay for that travel, in order to pay on the destination country with their future salary. This situation indicates that human smugglers have better connections with the destination countries, in order to achieve a higher profit, therefore creating more supply of migrants to transfer, which creates a discount that will be paid later by the migrants' exploitation.

Migrants' stories also indicate that many migrants have been taken to work in camps in Libya or were abducted in order to pay for their travel (Graham-Harrison, 2017). The presence of exploitation, along with the elements mentioned by the subparagraphs (b) or (c) of Art.3 from the Trafficking Protocol can make a trafficking offence applicable. However, sometimes, it is difficult to identify the term "exploitation", which has been debated among scholars, since the Protocols do not apply an exact definition to the term. For instance, a larger focus has been attributed to the issue of sexual exploitation, which was mainly left "in blank" by the Protocol, since the states have decided that sexual exploitation should be established according to national legislation. For example, while in Sweden sexual work is always considered sexual exploitation, in other countries, such as Holland sexual exploitation is legally different from sexual work. In order to overpass the national legislation on sexual purposes, ILO presents a clearer definition of sexual exploitation that depends on the relationship between the employer and employee and not the activities itself.

As I have verified until now, the first two elements are easily identified on the phenomenon of Smuggling, yet the "Purpose" is the element, which is not recognised on the majority of the cases, even if the smuggling was done through the debt bondage. This might happen, since on the majority of the cases, the exploitation is present by the end of the process and not during the process (Lee, 2007). However, in the phenomenon of trafficking, exploitation can be considered even if it has not been put into practice, remaining only an intention of the perpetrator. Therefore, in the case of smuggling, why

the possibility of exploitation is not recognised? Furthermore, the Protocol has provided a vague definition of the “Purpose”, in which States are able to adequate to their National Legislation. For instance, Colombia has attributed: financial gain or other benefits to their “Purpose’s” definition.

Despite the evident overlap between human trafficking and smuggling of migrants, especially in the Mediterranean area, the two phenomena are still regarded as legally separated. However, more attention has been giving to the violation of human rights during the travel through the Mediterranean, especially after the operations Glauco I and Glauco II. According to the Palermo’s Prosecutor Ferrara (2015), smuggled migrants suffer more violation of human rights rather than human trafficking victims. Depending on the structure and power of the trafficking network, potential human trafficking victims are tendentiously saved from massive violation and abuse due to their future exploitation, whilst smuggled migrants have no further use for their smugglers. Therefore, even if trafficking situation is not recognise in smuggled migrants, due to the absence of the three elements, shouldn’t the governments be looking into the violation of human rights during the travel in order to provide protection to the victims, rather than if the process has achieved its full goal?

Conclusion

The analysis of the concept of vulnerability on this first chapter has been approached and dissected, from different fronts, in order to provide us the tools to proceed with an effective implementation of the concept in our theme of human trafficking for sexual purposes. As previously mentioned, the unlimited and undefined features of the concept of vulnerability have demonstrated from one hand, a concept that has introduced confusion and disagreement in the legal framework in human trafficking, while on the other hand, a concept that has proved to be able to be applied in delicate and ambiguous situations, where normally the considered “hard means” cannot prove a situation of trafficking. However, despite the effective use of the “mean” “abuse of position of vulnerability” in certain cases, it is well known that the “mean” has had a scarce application in the human trafficking cases, being mainly applied in cases in which the victims are underage, pregnant and disabled or in cases where the “mean” is normally enhanced with the presence of the so-called “hard means”.

The concept of vulnerability has also been identified as being normally seen, in cases of human trafficking as a feature of the victim that belongs only to the victim's background. However, on the contrary of the most literature on human trafficking, I distinguish two different types of vulnerability. On one hand, I apply the concept of "passive vulnerability", which can be described as all the push factors that lead the victim into a situation of trafficking and, on the other hand, the "active vulnerability" that is the vulnerability created by the trafficker on the victim, according to the pull factors of the trafficker. The proposal of both concepts provides a major reading of the concept of vulnerability that does not only depend on the victim, but as mentioned by Butler, it outcomes from the interaction of human beings.

Besides providing an insight on the concept of vulnerability on the International legal framework on Human Trafficking, the aim of this first chapter was to provide an extensive analysis of the concept of vulnerability, according to different philosophical perspectives. The application of different philosophical theories able to offer to the readers a diverse lecture of the concept applied in different and complex situations. In fact, this analysis has provided a deeper look into the different aspects that are normally considered when speaking about vulnerability, such as its universal and particular characteristics arriving until the concept of intersectionality.

At the beginning of the study, its core objective is presented to be mainly based on the concept of vulnerable group, recognised as being Universal. The adoption of the Universal theory has its pillars on the segmentation of a group of individuals, according to a common feature, being in this case the category of women who are victims of sexual exploitation. Therefore, the research presents its target group according to their universal characteristic that consequently segregates both groups from society, being normally seen as inferior or inadequate. According to Fineman (Fineman, 2008), the individuals who are segregated into vulnerable groups based on a shared feature are "those who cannot exercise their right to contract". Hence, putting individuals into a vulnerable group confirms that their discrimination origins from their particular features and not from a lack of the system that is not able to provide the same access to rights as the rest of the society (Fineman, 2010). Furthermore, by not being able to fully exercise their rights, the individuals are put into a situation of dependence from the State and institutions that turns into a Paternalistic behaviour from the State to the individuals

who are seen to be in need of being “monitoring and supervised.” Therefore, it does not empower the citizens to have access to their rights, but provides this vision that need to be maintained within a special category that needs particular attention.

However, along the research, the concept of vulnerability is taken into a more complex state, by adopting other visions of the concept of vulnerability, seeing that despite both groups belong to the category of “victims of human trafficking” the individuals that are being analysed substantially present all different layers. In fact, the different aspects of vulnerabilities that accumulate within a subject have led into agglomerating both groups in an intersectional analysis that did not only comprehend the concept of female victim, but all the other factors that could influence into the vulnerability of the subject.

Therefore, the consideration of the concept of intersection was not down to the aspect that both groups were in the condition of being a migrant, but it was taken according to their nationality and different access to their rights and citizenship, race and cultural background added to the chronological vulnerability such as motherhood. By integrating the concept of double vulnerability, within a chronological state such as motherhood, I am finally able to apply the concept of particular vulnerability. According to Fineman, the particular aspect of vulnerability accepts also the universal aspect of vulnerability of the subject, there is the inclusion of the subject within a segregated group that tends to be emarginated and discriminated due to specific characteristics, but at the same time, Martha Fineman understands that vulnerability is embodied. Therefore, the fact that the subject is considered inherently vulnerable, due to the “ever exposure to harm” can transcend the aspect of the universal vulnerability and the intersectional vulnerability that were previously mentioned.

In conclusion, the philosophical analysis of the concept of vulnerability, arriving from the concept of vulnerable group, until the concepts of intersectionality and vulnerable subject offers to the readers a more complex reading and interpretation of the concept within the phenomenon of Human Trafficking. By inserting the concept of vulnerable subject, Fineman is able to provide us a wider critique on the use of the concept of vulnerability on human trafficking that it is not only based on one or more characteristics of the victims, but it is able to understand the mutuality of the inherent vulnerability that can affect the individual

2nd Chapter

The vulnerability in the different phases of the Romanian and Nigerian human trafficking for sexual purposes

“Some vulnerabilities are natural, inevitable, and immutable. Others are created, shaped, or sustained by current social arrangements. While we should always strive to protect the vulnerable, we should also strive to reduce the latter sort of vulnerabilities insofar as they render the vulnerable liable to exploitation.”

Robert E. Goodin, *Protecting the Vulnerable*

2.1 Defining Sexual exploitation

Defining sexual exploitation can be a heavy task, in fact, besides the literature review made on the subject, I decided to deepen the subject with other qualitative methodology. Therefore, I have not only considered the opinion of second sources (people who work with individuals engaged in the sex industry), but I have also decided to listen to the primary sources. In this case, I have gathered elements from my participant observation method in the street unit with the sex workers, including from freely sex workers, collaborators, semi-autonomous and potential human trafficking victims (Pascoal, 2017)

The international agreement by the Member States in a common definition of the concept of human trafficking has been a considerable achievement for the International Community. However, in the book *Modern Slavery: A Comparative Study of the Definition of Trafficking in Persons*, Jansson (Jansson, 2013) demonstrates the complexity of applying the international legal framework into domestic law. This complexity has been caused by the limited definition of human trafficking, as well as its vagueness and narrow application (Roth, 2012; Jansson, 2013; Gallagher, 2010) that has been a target of several critics over the years. Furthermore, this complexity has also led to several tensions on the used terms that I will further analyse.

Besides the controversy on defining and delimiting the term vulnerability, used on the “mean” the “abuse of position of vulnerability” on the Art.3 of the Protocol, other terms, such as the concept of “exploitation”, have demonstrated to be quite

ambiguous and indefinable. In the definition of human trafficking, the term “exploitation” has been collocated under the element of “Purpose” that despite that at the beginning it was mainly based on sexual exploitation (UNODC, 2006), it has evolved during the *Travaux Préparatoires*, to the introduction of other “Purposes” that have been added to the Trafficking definition. In fact, due to the assumption of a flexible and dynamic characteristic of the phenomenon of Human Trafficking, some delegations at the ninth Session of the Ad Hoc Committee have advised to introduce the expression “at minimum”, which opens the concept of “Purpose” to new forms of exploitation that were still not considered (UNODC, 2006).

On the Art.3a of the Trafficking Protocol, in order to complete the combination of the three “elements” (“Act”, “means” and “Purpose”), the offender has to have at least the intention of the Purpose, which is translated as at least “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.” Furthermore, it is important to highlight the distinction on the Trafficking Protocol regarding sexual work and sexual exploitation, as one of the three elements above cited. As also above indicated, the Protocol inserts the terms for the “Purpose” as “sexual exploitation” and “exploitation of prostitution”, in which the term “exploitation of prostitution” refers to the “benefit from the prostitution of another person” (Gallagher, 2015). However, both terms, as previously verified in the concept of “vulnerability” have been highly debated among scholarship, due to an inexact definition of the terms.

During the *Travaux Préparatoires*¹³⁵, the Member States have decided to not define the terms “exploitation of the prostitution of others” or “other forms of sexual exploitation”, in order that each Member State could address these issues according to their domestic law. For instance, on the fifth session of the Ad Hoc Committee, Netherlands has presented a proposal regarding the submitted proposal of the United States (A/AC.254/L.54). On this proposal, Netherlands has suggested to replace the definition of “sexual exploitation” with the term “slavery”, which should mean “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including forced prostitution and servitude and other practices similar to slavery as defined in article 1 of the 1956 Supplementary

¹³⁵ Page 347, subparagraph b

Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.” (United Nations, Treaty Series, vol. 266, No. 3822).¹³⁶

This openness of the Protocol regarding these terms, has led into different applications of the concepts, in which some Member States opted into a more conservative legislation, while others have had a different consideration of the issue of “sexual exploitation”. Furthermore, during the study on the concept of exploitation by the UNODC (2015), this heterogeneous application of the concept of exploitation leads to a major inconsistency of the Protocol’s definition of trafficking. In fact, many practitioners during the study have revealed that it is often difficult to distinguish between trafficking and other crimes (Gallagher, 2015). This confront between sexual exploitation and sexual work has left a blank space at the international level regarding a fixed concept of “sexual exploitation”, leading into a binary concept that is applied according to the moral and legal background of the Member state.

In the last years, a scholarship debate has emerged regarding the issue of sexual work and sexual exploitation. From one side, feminists have understood sexual work as undignified and a form of maintaining the patriarchal violence on women (Barry, 1995; Hughes, 2002). For instance, Carole Pateman (Pateman, 1988) understands prostitution as being modern patriarchy, in which takes place a legal contract between unequal sides, where women continue to be submissive and victims of men. On the other side, authors started to defend the legitimacy and integrity of sexual work (Kempadoo & Doezema, 1998; Sullivan, 2003; Doezema, 2005; Augustin, 2007). Furthermore, sexual services were seen as an activity that empowered women (Campbell & Sanders, 2007) and acceptable within a contract of mutual respect (Nussbaum, 1999). For instance, according to the researcher Kempadoo, (Kempadoo, 2001) prostitution, instead of being the perpetuation of the paternalistic and oppressive violence against women, it serves as an independent activity that enhances women empowerment.

With the increase of migrant women in some destination countries in Europe, more attention has been given to migrant women involved in sexual work, being regarded normally as vulnerable individuals, which their consent is often linked to a level of “deception”, “threats” and exploitation (Kelly & Reagan, 2000). However, according to Laura Augustin (Augustin, 2005) this description of migrant women as

¹³⁶ Fifth session: 4-15 October 1999, Rolling text (A/AC.254/Add.3/Rev.4) “Article 2 bis1, “Definitions”

ignorant and naïve shows a paternalistic attitude towards them. In Augustin's study of *Migrants in the Mistress's House: Other voices in the Trafficking debate*, the researcher proves that women use their "social networks to travel, often aware of the sexual nature of the work." However, she also admits that women might not be aware of the work conditions in the destination country, especially when recurring to smuggling methods.

This division on the understanding of the issue of sexual work, especially of migrant women, has led to a policy making based mainly on moral values and on a vision of female inappropriate sexual behavior, in which women, especially migrants, are mainly seen as vulnerable individuals submitted to criminal networks (FitzGerald; 2010; Munro, 2005). For instance, the Home Office document on Coordinated Prostitution Strategy (Home Office, 2006) enhances the unacceptability of outdoor sex work, as something that 'is not an activity that we can tolerate in our towns and cities', passing the idea that sex workers are not valid citizens (Sanders & Campbell, 2007). On the other hand, Augustin (Augustin, 2005) demonstrates that only women are regarded as vulnerable individuals working on the sex industry, being excluded other individuals such as men and transsexuals. Furthermore, the researcher also highlights that men recur more to smuggling networks than women in order to migrate, yet even when exploited on the construction and agricultural sector, men are often denied to be protected and be considered as human trafficking victims.

For instance, in Italy, despite the massive labour exploitation, which affects both genders, especially verified on the domestic work as well as on agriculture¹³⁷, the majority of the victims that has taken a protective path in art.18 are women that were victims of sexual exploitation¹³⁸. The provided statistics are the reflection of a major

¹³⁷ For more information about migrant labour exploitation on Italy see :Dazed, Terra, Terrelibere.org, *Rapporto Filiera Sporca: Gli invisibili dell'arancia e lo sfruttamento in agricoltura nell'anno dell'Expo*, June 2015; Amnesty International(2012), *Labour Exploitation Migrant workers in Italy's agricultural sector*; MEDU (2016), *Asilo Precario: I centri di accoglienza straordinaria e l'Esperienza di Ragusa*; IOM, *Stagione Amara Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia Dicembre 2010*; MEDU (2015), *Terra InGiusta: Rapporto sulle condizioni di vita e di lavoro dei braccianti stranieri in agricoltura*; Medici Senza Frontiere, *Una Stazione all'Inferno: Rapporto sulle condizioni degli immigrati impiegati in agricoltura nelle regioni del Sud di Italia*.

¹³⁸ Data from the Ministry of the Interior for Gender equality, regarding 2013 and 2014. The statistics present the number of victims human trafficking victims identified that have followed a path of Art 18 and 13 of protection. The total number of the two years was 1180 victims, in which 860 were women, against 307 men and 623 were exploited sexually against a number of 177 for labour exploitation. It is also interesting to consider the concession number of Art 18 for juridical purposes, which was 216, mainly used for the migrant witnesses in the processes of smuggling. In fact, it is interesting to

attention to sexual exploitation (Van der Leun & Schijndel, 2015), since it is considered to be humiliating the selling of the human body (Parisi, 2017).

For the feminists that admit that prostitution can be regarded out of the patriarchal subject, another debate has emerged that has started to separate two groups of women that are involved on the sexual services, identifying one group as being: coerced; and the other group as being: volunteers, urging for a proper identification of trafficked women (Daniels, 2014). However, putting a clear line between trafficking and unregulated prostitution can be as hard and complex as dividing forced labour and unregulated labour. Furthermore, despite that many feminists find themselves in opposite sides of the binary opposition between the presence of human trafficking for sexual purposes and the presence of prostitution, it should be consider that both phenomena exist (Szörényi, 2014) and can be changeable among them through time (Aninoşanu; et all, 2016). Therefore, in my opinion, generalizing and establishing the place of “consent” in prostitution and sexual exploitation can be a herculean task, especially when assuming a general theory and ignoring all the complexities within both activities.

Within the scholar debate on the sex industry, I, in this thesis share the concept of prostitution as a business transaction that empowers women economically (Kempadoo, 2001; Augustin, 2005; Nussbaum, 1999) and rejects its comparison to the term of “sexual exploitation” (Raymond, 2003). Therefore, adults that provide a service with an economic transaction should already be subjects of rights, within a legal contract (Daniels, 2014). However, sexual workers are often regarded as a sexual vulnerable minority (Sanders& Campbell, 2007), as invisible subjects, whose rights are often not recognised and therefore, being highly exposed to discrimination. The category of sex workers being identified as a vulnerable group falls into Fineman’s (Fineman, 2012) theory as a group of individuals “who cannot exercise their right to contract”. This lack of power to contract tends to expose sexual workers to a higher risk of violation of their human rights. Moreover, the lack of laws protecting prostitutes

understand that despite the major labour exploitation regarded in Italy, the application of protection of for human trafficking victims has been provided in a higher number for witnesses in smuggling processes, rather than labour exploitation. Data retrieved from [http://www.archivio.pariopportunita.gov.it/images/stories/documenti_vari/UserFiles/II_Dipartimento/tratt a/DATI_EMERSIONI_2013-2014.pdf](http://www.archivio.pariopportunita.gov.it/images/stories/documenti_vari/UserFiles/II_Dipartimento/tratt_a/DATI_EMERSIONI_2013-2014.pdf)

leads them on relying to pimps, who can abuse their position of vulnerability (Carline, Ethics, 2010), hence criminalisation of prostitution or the lack of regulation leads sex workers into being in a position of vulnerability.

Despite there is a moral concern mainly with the migrant women that are engaged in the sex industry, that can be regulated or not, it has also been verified that other work segmentations normally attributed to migrant women can also expose them to higher risks as well as to a lack of protection. Therefore, even if women are inserted within an activity that is regulated such as caregivers or cleaning, the majority of the professional relationships are not based on a legal contract, since there is no control over the women's employers. However, these activities, despite the high level of exploitation do not tend to be object of society's concern, remaining mainly invisible and limited within private households.

For example, during my volunteer work on the street unit, I have encountered women who had previously been engaged on these segmented works that are "destined" to Romanian women in Italy, such as caregivers, agriculture workers or waitresses. In presence of a high level of exploitation in such activities, the women have decided to pass into prostitution (some of them is not clear if they are also exploited in prostitution or not), which they have declared that it is easier to endure than the exploitation in other activities. For instance, one of them has complained about the heavy work on agriculture as well as the amount of hours, while another has declared that she has worked for 12 years as a caregiver, where she lived with her employer, by working all day and six days a week. Both of them have declared that they preferred working in the sex industry, feeling less exploited and earning more than in the previous works. Furthermore, another girl has referred that once "one starts in the sex industry, one gets use to the amount of money that one earns, getting use to the activity".

In fact, the researcher Laura Augustin (2005) during her interviews has encountered many women that did not complain about prostitution *per se*, but the exploitation that can be endured within the sex industry. During one of my interviews with a Romanian prosecutor, he has repeated different statements made by minor girls who were identified as victims of human trafficking. In fact, I have encountered exactly a statement of a minor that has exposed Nussbaum's (1999) theory in which prostitution does not offer any harmful activities that cannot be found in other professions.

“I was talking with a prostitute: You are not afraid of them? No, because I am a good girl, they will not beat me, because I am a good girl. They never beat. P: What about STDs? G: Sir, if I work in a painting factory, I am not going to have any diseases? With a boss yelling at me all the time! And the head of department that also harasses you, for less than 500 euro? This amount of money I can do it in one day.”¹³⁹”

Actually, her position regarding what is exploitation is very interesting to be analysed, not only due to the demonstrated and clear concept of exploitation, but also due to her vision of sexual work as not being an undermined activity. Further on, during the interview, the prosecutor speaks about another girl, also a minor that has highly defended her engagement on prostitution, even refuting all the eventual vulnerable causes, as poverty and lack of stability that can lead to sexual work.

“I had spoken with girls that said: why you are so limited? It is a job like any other else”. “I met girls with 16 years, with two apartments in (Romanian city). And they say I am going to tell you everything, I know what I am doing, I know I won’t be able to do this all my life, but now I am on the top, I have in my bank account 13.000 euro”. ”I also met a girl that she said: “I am not doing this because of the money, but because I like it. I don’t understand what do you have to do with my sexual life and why is it subject of police?”¹⁴⁰”

Despite that the response of the minor of being engaged in prostitution has shown to be positive, this does not mean that all women who are engaged in prostitution are in the activity in their free will, but it also does not mean that all women are victims of human trafficking. During my volunteer work with the street unit, I have started to enquire about the girls’ opinion on the subject of the regulation of prostitution, which I have encountered different regards. For instance, during a conversation with one of the girls (one that I have identified as being free) about the possibility of the regulation of prostitution in Italy, she has declared that the regulation of prostitution would only provide to the sex workers more conditions to work. Another girl was instead planning to migrate to Brussels, since prostitution is regulated in Brussels, thus she could have

¹³⁹ Interview number 11 (Law enforcement), 03/04/2017, Romania

¹⁴⁰ Interview number 11 (Law enforcement), 03/04/2017, Romania

more conditions. However, in spite some of the girls have demonstrated to have a positive vision about prostitution, others, despite their involvement in the sex work, seem to have a reluctant perspective for the sexual work, particularly on the moral grounds. For instance, being quite angry, one of the girls have told us about a client that has approached her, with his girlfriend to make a proposal that has made her upset, which was noticed by her declarations :

*“They think that because we work in this, we are wh*res and we are here because we like, but that girl is more wh*re than us”.*

The comment of the girl regarding the fact that a woman could accept to share her partner with another woman demonstrates that she is quite disgusted with the attitude of the woman. However, it is interesting that she does not mention the attitude of the man, considering the woman to be a wh*re, which leads us to the conclusion that on the contrary of the other girls mentioned before, she is quite contrary to the sexual work. In fact, this was not the first time that she had expressed her feelings about being engaged in prostitution, since she has previously mentioned that she was in the sex industry because of her child. In addition, she has been referred by a friend from the same village in Romania that her husband beats her to obligate her to come to work in prostitution in Italy. However, despite her recent reluctance to work on the sex industry, she has never demonstrated any sign of being a human trafficking victim. In fact, during these three years during the volunteer work in the street unit, different levels of exploitation and willingness were detected with different girls. For instance, sometimes the girls within the same group have demonstrated different opinions. As matter of fact, I have noticed that sometimes girls from the same group can demonstrate different levels of willingness and exploitation, thus I cannot generalize a unique opinion within the individuals engaged in sexual industry, even if it is within the same group.

2.1.1 Lack of legislation in prostitution

According to Sander and Campbell (2007) the lack of policy on sexual services has shown to increase abuse and violence on sexual workers. Furthermore, the legislation of sexual work leads to an augmentation of inspection and “official

regulation and bureaucratization to brothels that decreases violence” (Brents & Hausbeck, 2005). For instance, in Utrecht, Netherlands, sexual workers are under the protection of the police, which has resulted in no murders of the sexual workers (Doornick & Campbell, 2006). Therefore, in this case, vulnerability of sex workers is not based on the range of their activity, but on the lack of protection and regulation of sexual work, especially on the contracting of the act, since clients do not feel repression in some countries to fulfil mandatory rules such as the use of condom.

On the other hand, Augustin (2005) affirms that despite that legislation on sexual work in Netherlands has emerged the labour rights of sexual workers on the country; the legislation has also augmented the gap between national sexual workers and migrant sexual works. This disparity within the sexual market is due to the maintenance of migrant women as a vulnerable group, since they were not able to have access to a permit for sexual work. Consequently, migrant women were seen as staining the level and the vision of independent sexual workers, not only due to the selling of sexual services for lower prices, but also due to the image of lack of freedom of women in the sexual industry, being mainly identified as being trafficked.

In countries or states that sexual work is not regulated, sexual workers are also often regarded as subjects of non-rights or non-citizens, especially migrant women, who are undeserving of protection. Furthermore, not only in the abolitionist countries, the authorities tend to see sex workers as undignified of being protected, as they are also often harassed by the police itself, being migrant women more exposed to the harassment (Stiching, 1999). In the book *La vittima* (Gulotta, 1976), the author Guglielmo Gulotta explains several factors of vulnerability that predisposes a person to be a victim. One of these factors is the people who are sexually deviant, as prostitutes that are considered immoral by several social contexts. Therefore, despite the numerous cases of prostitutes being victims of certain crimes, they are normally not taken in consideration, since the authorities did not feel the obligation in protecting them, because they are often considered to be “bad people”. Furthermore, groups who are normally criminalised by the state are generally avoided as subjects of political rights, being reduced to “bare life”, on its biological grounds (Peano, 2012; Agamben, 1998).

This reflects that the vulnerability of sexual workers of being mainly exposed to certain crimes is not limited to the nature of the activity itself, but to the cultural and

social stigmatization also present on the representatives of the state. Hence, if the crimes are not being prosecuted due to the characteristics of the target group, then there is a tendency of repercussion. For instance, volunteers of a street unit that I have interviewed for a previous research have declared that once, when they started to speak with the girls; they realised that they were scared, since there was a man threatening them. Therefore, the girls have decided to call the police, in order to look for protection, yet when one of the girls has called the police and said that she was a sexual worker, the person on the other line has hung up twice. Only when one of the volunteers, who belongs to a religious congregation, called the police was when the person on the line sent the police to inquire the situation.

This situation can demonstrate that in countries where prostitution is not legislated, the protection from the State is only provided when individuals engaged in the sexual industry are considered victims of human trafficking (Kapur, 2002), *hic est*. women who have regretted of being involved in sexual work. For instance, in Italy the grant of protection provided by Art.18¹⁴¹, when it was firstly applied it previewed that the woman abandoned the sexual industry by the grant of a residence permit, even though the woman was a free sex worker during the protection path. However, despite the application of the Art.6, comma 4 of the law decree 28th December 2006 n. 300, for the inclusion of Romanian and Bulgarian citizens, at the time, newly enters in the European Union¹⁴² (Mancini, 2007); many protection institutions still offered shelter to the victim, only in case of redemption.¹⁴³ Furthermore, the representation of irregular work and low payments into trafficking cases legitimizes the criminalisation and detention of trafficked and non-trafficked persons (O'connel & Anderson, 2003).

As previously mentioned, on this debate, I oppose myself to the idea that sexual exploitation is equal to prostitution, by denying the consideration that women who engage in this activity are all victims of human trafficking. Hence, I share Korvinus's definition (Korvinus, koster, & Heleen, 2007) that describes exploitation as "the attempt

¹⁴¹ Law Decree 25th July 1998, n. 286, "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero", published in Gazzetta Ufficiale n. 191 del 18 August 1998 - Supplemento Ordinario n. 139.

¹⁴² For more information, please read David Mancini's article, "La protezione sociale ex art. 18 del dlgs 286/1998 svincolata dallo status di cittadinanza L'art. 6, comma 4 del decreto legge 300/2006", in MeltingPot, retrieved from <http://www.meltingpot.org/La-protezione-sociale-ex-art-18-del-dlgs-286-1998.html#.WMgbhkrJdi>

¹⁴³ We will further discuss this issue on the following chapter regarding granting protection within the grey zones between asylum seekers and victims of human trafficking.

to obtain as much gain as possible’, abuse and, specifically in relation to a person, ‘to put [a person] to work under unfavourable conditions in order to gain as much profit as possible’”. Therefore, the pandering *per se* cannot be considered exploitation on my perspective, by only including the profit of a third person. Furthermore, employment of sex workers can often serve as a protection and a safety guarantee for many women (Augustin, 2005; Sanders & Campbell, 2007), depending on the conditions in which this person is submitted to. Hence, this means that, on the contrary to the major legislations on Europe, I do not consider procuring or pandering a crime, by itself, unless it is accompanied with the described “means” on the Protocol’s trafficking definition or in situations that are contrary to a normal condition of the worker.

According to the Dutch Government, human rights basics are the base to delimit exploitation from labour activity, which also includes sexual services, such as dignity, physical integrity or personal freedom (Korvinus et al; 2007). Of course, delimiting those aspects have also been a difficult task, especially since other Governments, such as the Swedish Government understands prostitution itself as a violation of human rights. Therefore, in order to determine a transparent definition of exploitation, by avoiding concepts that can present an ambiguous definition, I consider that within the debate on human trafficking for sexual exploitation and prostitution, the focus should be on the used “means” and the conditions of the purpose, rather than the purpose itself.

Furthermore, I do not underestimate the presence of the “means” as Hughes (2002), by considering that their free will was somehow coerced by trauma, substance addiction, poverty or violence. However, on the other hand, I do not also fully agree with Augustin (2005), since gray areas within sexual exploitation and prostitution have been verified, especially in cases where emotional ties and psychological manipulation is used. In this case, I use the term “sexual exploitation”, when a third person is involved that undermines the individual to inferior conditions and abuses the position of vulnerability of the victim. Therefore, in the case of sex work, an exploited person is the one who “is in a situation inferior to the circumstances in which an articulate prostitute would normally operate in the Netherlands”¹⁴⁴.

Defining sexual exploitation as the Dutch government does¹⁴⁵, seems to be a

¹⁴⁴ 13 e.g. Supreme Court 5 February 2002, which refers to the Explanatory Memorandum to the (old) Article 250 ter of the Criminal Code.

¹⁴⁵ Section 273f,5°, Inserted within the Part XVIII. Serious Offences against Personal Liberty, “° induces

very clear perception between the regular conditions of the worker and the abuse of the same activity as on a nature of hard work conditions, as a nature of schedule conditions. Therefore if the work is regulated, where are legally defined the acceptable conditions of a worker, the submission to an exploitative labour conditions should be easy to identify. The exploitation has also been defined based on the earnings of the victims rather than the work conditions that the victim endures. For instance, the Amsterdam Court of Appeal has declared that “the suspect also intended to exploit the complainants is, in any case, apparent from the fact that the complainants had to surrender half of their earnings from prostitution to the suspects and/or their fellow suspects, while there was no proportionate effort in return.”¹⁴⁶

On the article *Stealing Labour: an economic analysis of forced labour and human trafficking*, the author Sarrica (Sarrica, 2015) provides us with a very illustrative mathematic equation on what can be defined exploitation, by crossing four main elements as the desired salary and the obtained salary with the desired worked hours with the actual worked hours. According to the author, exploitation can be defined by the difference between the desired wage and the received wage as well as the difference between the desired worked hours of the worker for the received wage and the actual worked hours. Therefore, in order to perceive the level of exploitation Sarrica (2015) multiplies the desired wage by the number of worked hours, in order to achieve the total number of worked hours with the required wage by the worker. Furthermore, with the presented equation, Sarrica (2015) not only determinates and delimits an exact definition of exploitation, but also suggests its use for a possible compensation to the victim.

In these gray zones, where there is no presence of flagrant exploitative conditions, where exploitation can only be verified by the division of earnings and emotional manipulation between the victim and the trafficker, the victims normally do not percept their own victimisation. In fact, on these cases, in which the victims do not

another person to make himself available for the performance of sexual acts with or for a third party for remuneration or make his organs available for remuneration or takes any action in regard of another person which he knows or has reasonable cause to suspect will lead that other person to make himself available for the performance of these acts or services or make his organs available, whereas this person is under the age of eighteen years”. 2” Exploitation shall at least include exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery or practices similar to slavery or servitude.”

¹⁴⁶ Amsterdam Court of Appeal 26 October 2011, LJN: BU4222

perceive their own victimisation, there is practically a cancelation of proving the “means” such as “deception” and “coercion”. Furthermore, the level of awareness of victimisation can also depend on the cultural context and perceptions, which sometimes is not immediate to the victims (Gallagher, 2010). In fact, it has been difficult to prove the existence of human trafficking, in these cases, where the exploiters have been profiting through the *lover boy* method, without the application of harder “means”, being the exploitation only based on the use of APOV.

Different levels of exploitation have been identified in human trafficking, for instance Puglisi (Carchedi, Mottura, & Pugliese, 2003) explains that the coercion of taking the ID or the passport from the victim, is lighter than the total constrain of mobility and the violence application on the victim. Moreover, the author presents that these two situations belong to a range of infinitive coercion measures that can be found and identified on human trafficking.

According to Carchedi (Carchedi, Mottura, & Pugliese, 2003) human trafficking for sexual exploitation normally fades in a more extensive phenomena, such as foreign prostitution. The author further reflects on the fluidity on passing through the three different categories that he has identified within the phenomenon of prostitution (autonomous; semi-autonomous; exploited). In fact, during my field experience, I was able to verify the passage of one girl by being exploited by one group, passing to be autonomous in another group, in another different location, by developing an ambiguous relationship of friendship with limited coercion mainly based on soft “means” and later being emerged into a situation of semi-autonomous freedom with no engagement of physical violence. In this way, the coercion is masked by a psychological-affective dependency.

This situation is indeed quite regular, especially with Romanian citizens that in order to engage their conational in prostitution and later exploit them, they do not start by any kind of exploitation, but with a masked friendship. During my time on the street unit, we used to visit a group of girls, which at the beginning seemed to be free sex workers, yet after one year, one of the girls has emerged with potential indicators of being a human trafficking victim. One day, when she was alone with the members of the street unit she has explained that the situation that she has initially agreed with, based on the payment of the joint, has been followed by deceit in a friendship with the owner

of the joint.

The exposed situation is able to present us with two main elements in human trafficking for sexual purposes. The first one is the use of emotional relationships, firstly referred on the first chapter to engage the victims into exploitation. By recurring to this kind of soft “means” (deceit, fraud, APOV), the exploiters avoid being denounced by the victim, especially in cases in which the victim is a citizen from European Union. The second important element is that the submission process is normally taken softly, again through deceit, in which, the victim only understands the scheme after a long period, being already in a situation of submission.

This level of exploitation has been identified by Carchedi (Carchedi, Mottura, & Pugliese, 2003) as semi-autonomous, in which the “protectors” lead the sex workers into a partial submission. Partial submission has been one of the most difficult states to identify as exploitation, since in many cases the percentage of gains can go in majority to the sex worker, but at the same time, coercion instruments have been used to submit the sex worker. Despite the attention of the *lover boy* method as a strategy used by the traffickers, Augustin (2005) criticizes that every woman, who is engaged in sexual exploitation and gives a percentage of the profits to her boyfriend, is considered a victim of human trafficking. Furthermore, Carchedi (Carchedi, Mottura, & Pugliese, 2003) in one of the three levels within the phenomenon of prostitution identifies the possibility of the protection of a male figure in a consensual agreement. However, in my opinion, in these cases, the concept of exploitation should be understood, if there is, not due to the fact that the boyfriend profits from the sexual work of the girlfriend, but what is his role on her activity and if the amount of earned money is representative of his work.

Furthermore, it should not be irrelevant the fact that traffickers have perfect their strategies, especially with communitarian citizens, where physical coercion is avoided, while softer techniques tend to be used. In fact in these cases, women who are victims of trafficking should not be regarded as victims due to their engagement in sex work, but due to the manipulation and emotional abuse by their boyfriends that retracts the empower that they should achieve when recurring to a profession. Therefore, the regarding migrant women from one side as only sex workers or from another side only victims of human trafficking, seems to avoid the complexities of human trafficking,

since both sides provide a redundant and extremist perspective of prostitution.

2.2 The vulnerability of the victim of sexual exploitation

“Vulnerability isn't good or bad: it's not what we call a dark emotion, nor is it always a light, positive experience. Vulnerability is the core of all emotions and feelings. To feel is to be vulnerable. To believe vulnerability is weakness is to believe that feeling is weakness. To foreclose on our emotional life out of a fear that the costs will be too high is to walk away from the very thing that gives purpose and meaning to living.”

By Brene Brown (Apr 04, 2016)

With the development of victimology, researchers have started to analyse the crime through the characteristics shared by the victim, founding that these characteristics were a common attraction factor for the criminal (Lombroso, 1924). In fact, according to one of the fathers of victimology, Frederic Wertham (Wertham, 1949), “one cannot understand the psychology of the murdered, if does not understand the sociology of the victim”. With the advance of victimology, scientists have started to study several features of the victims, such as personality, gender, age, ethnicity, psychological, moral, social and cultural features. For instance, according to Franz Exner (Exner, 1949) the probability of becoming a victim is unequal between individuals, since some individuals according to their characteristics have more possibilities to be a victim of certain crimes, than other individuals. According to Fattah (Fattah, 1967) there are certain features that compose a so-called predisposed victim that influence the agent in choosing his/her victims, according to the type of crime.

Furthermore, the researcher Fattah (1967) affirms that there are several predispositions that can lead an individual into being a victim, being divided into three main groups, being temporary or permanent. The first group is the one considered as bio-physiologic; in each the person is considered according to his/her race, gender, age and his/her physical state. For instance, as it has been previously noticed, human trafficking victims tend to be women within a certain age. The second group is the social predispositions, which includes mainly the profession, economic and social conditions of life, as well as the general conduct of the individual. On this category, it is

easy to understand the use of the individual's features by the trafficker, especially regarding the economic situation as well as the marginalization of the victim in order to exploit her/him. The third category is called the psychological predispositions, where the author includes sexual deviation as a psychological feature, globing mainly promiscuity, normally recognised in individuals that were engaged in sexual work or homosexuals. Obviously that despite the recognition of psychological predispositions that can lead an individual into being a victim, nowadays most scholarship will not recognise homosexuality or prostitution as being a psychological sexual deviance. However, the author remarks the exposure of these two groups to a certain typology of crimes, in which as it is known, are not based on psychology, but mainly discrimination as mentioned in the subchapter 1.4.

The brief introduction of the victim's predispositions by Fattah recognised in the Bellagio Conference in 1975 as factors of vulnerability has been inserted in order to understand the different levels of vulnerability that can lead or been used by a trafficker to lead an individual to human trafficking. The sum of factors of vulnerability along with the use of consent can be relevant to determine the identification of the human trafficking victim.

2.2.1 Is the travel a factor of vulnerability?

In order to understand the level of vulnerability on the destination country of the victim, it is important to understand the vulnerability that the victims carry during the travel. However, despite that, I am analyzing as Romanian women as Nigerian women; this subchapter will be only regarding Nigerian women, since Romanian women have an easier mobility and accessibility between their origin countries and the destination country. Furthermore, this subchapter has only taken in consideration the present situation of Nigerian women, since that the travel factor for the Nigerian women has suffered alterations during time that I will further analyse.

The introduction of Nigerian women in the Italian territory was initially connected to the emotional relationships that have been established between the Nigerian women in the periphery of Benin City and Lagos with the male staff of AGIP of Italian Petrol. These relationships were mainly established through deception, with the hope of a marriage in Europe, giving the possibility to the women in exiting from

the situation of poverty (Carchedi F. , 2000). Consequently, this has led that the women have started to work on the seasonal tomato harvesting during the summer. Nevertheless, since the harvesting stopped in the winter months, the Nigerian women have started to engage in the sex industry (Cole, 2006). Hence, the women have started to see the sex industry as one of the main profit occupations for Nigerian women that have started to call their relatives and female acquaintances from Nigeria, through the payment of the debt.

According to PietroStefani (PietroStefani, 2000) in 1989, the main Italian cities had around 6.000 Nigerian women with a visa granted by the Italian Embassy in Lagos, while in the middle of the 90s this number has increased up to 15.000 Nigerian women. In fact, the period between 1991/1992 is what the researcher Francesco Carchedi (Carchedi F. , 2000) defines to be the second wave of the arrival of prostitutes, being mainly Nigerian women that arrive principally by plane from Lagos directly to Italy or entering in Europe through Amsterdam with a touristic visa and overstaying irregularly after the expiry of the visa. The high number of granted visas by the Italian Embassy in Lagos has led the Torino's Public Prosecutor's Office to investigate the involvement of the Embassy in the Nigerian criminal networks' activities. Consequently, the investigation has ended with the final judgment on the 28th June 1999 with the prosecution of four members of the Italian Embassy in Lagos. The operation and the loss of the network's pillars within the Italian Embassy in providing visas has subsequently led that the criminal networks have started to trail other routes and finding new sources to provide the travel documents. In fact, the criminal networks have started to spread the destinations' airports, in several European countries, such as Netherlands, England and Spain arriving later to Italy by land.

Until nowadays, the entrance in Europe from Nigeria has introduced the women in two ways: through the Mediterranean, mainly Spain, Malta, Greece and Italy or directly by plane in the other European countries. According to Frontex's report (Frontex, 2016) the main European cities that receive direct flights from Lagos with fraudulent documents are Madrid, London and Rome, while other origin airports were also used as Accra, Bamako, Casablanca and Dakar. The smugglers tend to have access to forged Nigerian or foreign passports, within a period of three weeks, being the Nigerian passport normally up to USD 1,000 (Malakooti & Davin 2015). There are four

recognised routes to exit from Nigeria: “ via Nigeria’s northern border into the Niger; from Lagos state, exiting via the southwestern border into Benin; from Borno state, exiting via the north-eastern border into Cameroon and Chad; and flying out of Lagos or Abuja airports” (Malakooti, 2016).

According to an interview in the report NoTratta (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014), the well-structured criminal networks working on sexual exploitation, still use the arrival of the women by plane, normally through touristic visas and family reunification. The choice of travelling by plane by the criminal networks is not only to make the women arrive faster, but it is also according to the level of their beauty, in the sense that it is worth it to spend the money in visas and plane ticket, which also normally is reflected on the price of their debt. Furthermore, it is not logic if criminal networks invest so much money in their “products”, to risk after in the desert or in the sea, risking also that the girl arrives in a fragile physical and psychological condition (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014). However, the opinion expressed in the report is mainly limited to well-structured criminal networks, which is the contrary of what it has been verified lately, due to the increase of Nigerian women arriving through Libya, probably brought to Europe by low-level criminal networks.

The choice of the arrival of Nigerian women through the Mediterranean, particularly by Libya has had a deepen impact on the exploitation of Nigerian women, which nowadays enter in Italy with the application of the asylum request and consequently decreases their debt that is between 15.000 and 30.000 euro, as I will further analyse on the research. In the past, the price of the debt of the women coming through Morocco was cheaper for the human trafficking victims than the Libyan route that previously imposed a debt to the girls between 50.000 and 60.000 euro (Frontex, 2016). The increase of the debt from the Moroccan route is mainly due to the control of the Nigerian criminal networks in the country and the presence of migrant communities, mainly observed in Nador and Oujda, as well as a smaller flow of victims, which inflates the prices’ passage of each victim. Furthermore, the decrease of the debt of the victims passing through the Libyan route is also connected to the conditions on the destination country, since that many women have a longer stay in the reception center for migrants in Italy, while in Spain the victim normally is directly to the control of the

Madam.

The vast majority of the women that arrive in Morocco are destined to sexual exploitation in Europe and do not plan to stay in Morocco, yet due to the problems in reaching Spain, many women stay in the country for a longer period. In fact, due to the long duration in Morocco, the women normally arrive pregnant or with a child in Spain, while the travelling in Libya has demonstrated to be shorter. The travelling is mostly organised by a man that acts like their agent, which I will further deepen his role on the chapter of Motherhood (Malakooti, 2015).

2.2.2 The Libyan route

The Libyan smuggling route has been mainly controlled due to the agreement on the 29th December 2007 between Lybia and Italy on the Additional Protocol techno-operative between the Italian Republic and the Great Libyan Arab Jamahiriya to tackle the phenomenon of smuggling of migrants. The Protocol consisted on the providence of vessels by the Italian Republic, in order to impeach the smuggling of migrants arriving from Libya, which has resulted in a high number of *refoulement* of migrants to Libya (Human Rights Watch, 2009).

The Protocol was enhanced by the signing of the Benghazi Treaty¹⁴⁷ on the 30th August 2008, in which Muammar Gheddafi has confirmed his collaboration on the prevention of smuggling of migrants leading towards the Italian territory. However, with the start of the civil war and the death of the dictator Muammar Gheddafi, many migrants that were living and were already established in Libya have started to arrive in Europe and the military forces have lost control of the smugglers. In fact, in a clime of instability, the smugglers have mainly used Libya as a transit country before the arrival in Europe. Furthermore, due to the dissolution of one of the Libyan armies, mainly constituted by subsaharian citizens, after the death of Gheddafi, many Nigerians have returned to their origin country and started to fight along with Boko Haram (Barlow, 2017).

Consequently, due to the increase of the recent conflicts and terrorism attacks in the North of Nigeria that have led the country into a state of instability in the last years,

¹⁴⁷ The friendship, partnership and cooperation Treaty between the Italian Republic and the Great Libyan Arab Jamahiriya

the migration from Nigeria has highly increased through the Mediterranean route (Nourhan, Monzini, & Pastore, 2015). Therefore, criminal networks operating within the African routes started to organise bus or car transportation to migrants in order to facilitate crossing the borders by bribing the border officials or by the presentation of forged travel documents. In fact, in the last years the criminal networks have seen the smuggling of migrants as a high profit activity, which has led to an increase of individual smugglers operating in the different countries within the route. Moreover, the smugglers do not seem to be connected to an hierarchical or a highly structure organization, but they rather seem to have transnational ties that allow a quick geographical changes in case of increase of demands or other institutional obstacles (Nourhan, Monzini, & Pastore, 2015). According to Paolo Campana (Campana, 2017), the number of smugglers increases also according to the increase of the demand from the same ethnicity or nationality.

The typical route leading to Libya passes normally from the cities of Kano, Ziden, Agadez, Gatron, Sabah, Brach, Tripoli and Zuwarah, where the criminal networks have fixed people in each point and it can last from two weeks to one month by lorry. In order to pass the borders, migrants normally are obligated to pay bribes to the border police. However, this amount of money tends to be higher than the amount previewed by the migrants, which can normally lead them into postponing the travel in order to collect more money. Consequently, this situation puts the migrants in a very vulnerable position, especially being exposed to traffickers or smugglers that offer them a passage in exchange of bonded labour in Libya. In case the migrants are not able to pay to the border agents, the smugglers offer sexual services of Nigerian women to the border agents in exchange of a passage. The body of women, accompanied by their husbands or alone is an used instrument of violence, being repeatedly exposed to sexual abuse by the smugglers on the route to Libya (Malakooti, 2016).

The entrance into Niger for the Nigerian women often passes from the region of Zinder and Marada, which is near to the Nigerian border and not from the urban centers of Kano and Katsina (Beretta, Bondi, De Masi, & Esposito, 2016). Once they have entered in Niger, the migrants are directed to Agadez, which is where many Nigerian migrants, women or men, who were not initially recruited understand that they have been trafficked, especially for those who started travelling voluntary (Malakooti A.,

2016). In fact, through the route of Libya, the migrants, men or women can have three profiles: they have been kidnapped by the traffickers or have departed involuntary from Nigeria; initially they were not planning to migrate until a recruiter suggested to go to Libya or to Europe; or they depart on their own without a formal recruitment from the traffickers. As for the women that have decided to migrate, without a formal recruitment in Nigeria they can become trafficked in Agadez, where smugglers lead them to Arlit, where there are fixed prostitution rings.

The Nigerian women can get engaged in sexual exploitation already in Agadez in the so-called *Connection Houses*¹⁴⁸ through the hands of the smugglers, even if they were not recruited by traffickers to depart to Europe (IOM, 2016), thus they become trafficked during the travel, initially in Agadez. In fact, a small community of Nigerian people have started to establish themselves in Agadez, mainly constituted by migrants that have returned from Libya or migrants that have stopped during the path to Libya. After Agadez, female migrants are also transported to Niamey, which has also been recognised for foreign prostitution, mainly coming from Ghana, Nigeria, Togo, Ivory Coast and Mali, in the zone of Harou Banda (Beretta, Bondi, De Masi, & Esposito, 2016).

When migrants pass in Lybia, they are normally arrested or detained, exposed to bonded labour or trafficked for labour exploitation purposes. However, through time, the smuggling organisations that operate in Libya have changed, since that until 2014, the detention centers were mainly managed by militia groups, while currently these centers have been transformed into hotspots for migrants. In fact, according to the researcher Arezo Malakooti (Malakooti, 2016) the migrants normally pass from three main stages during their time in Libya. They are chiefly being held hostage on arrival for the purpose of the smugglers that ask for a ransom to the family. The required ramson has not only been verified regarding the men, but also regarding the women that refuse to be engaged in prostitution in Libya for a price of 1500 euro (Iacono, 2017).

Consequently, in case the family is incapable to pay the release money, the migrant is put to work and only after in case he/she survives, he/she is led to the seaside

¹⁴⁸ Despite that initially the term ‘Connection houses’ was mainly used to describe places of sexual exploitation during the journey to Italy, being also recently entered in the Nigerian jargon as “house of prostitution” even when is referred to places in Italy, recently migrants have started to describe “Connection Houses” as, “where a large number of people were kept in captivity, sometimes in underground basements (REACH, 2017).”

to go to Europe (Beretta, Bondi, De Masi, & Esposito, 2016). The departure to Europe also comes unannounced, since migrants report that their “modir” normally takes them to the port or puts them into a truck, without payment the travelling (Malakooti, 2016). Once the migrant is released by the “modir” he or she can proceed to go to Europe. In case the migrant is in the North of Libya he/she normally proceeds to Italy or back to the origin country. On the other hand, if the migrant is in the South of Libya he/she returns to his/her country, due to the failing of their migration project, but normally to a city different from their hometown (Malakooti A., 2016).

The stay in Libya has demonstrated to differ during the last years and has passed from a transit country to also a destination country for the human trafficking victims (IOM, 2015), where the Nigerian criminal networks were also operative and normally would put the women working in the so-called *Connection Houses*. In fact, the money that is earned in these houses is not for the Madam that has recruited the woman from Italy, but for the groups that manage the house and have recruited the girl while in Libya.¹⁴⁹ The madam only earns the money once the girl arrives in Europe and not during the journey. However, during the instability on the last years, especially due to the control of the Libyans, the Nigerian criminal networks have had a lesser role in the management of the transition of the women. Actually, during the last years many migrants, women and men have been sold in the market to the Libyans, even if they have paid to the smugglers.

Therefore, on the contrary of the well organised Nigerian criminal networks present on the Libyan territory that were able to transfer groups of Nigerian women, nowadays Nigerian women are mixed with other migrants. At the beginning, these *Connection Houses* or hotspot of migrants were mainly a gathering point to wait for the exact number of migrants to fullfil a boat. However, currently these ghettos have also advanced to a hotspot of buying and selling migrants, controlled by Libyan men with weapons that impeach the migrants to run away (Malakooti A., 2016). Hence, while men are normally sold to work as a pumbler or in agriculture, women tend to be sold for sex slavery or as domestic workers. In fact due to the profit of the activity, women tend to have a higher value that is normally around 2000€, while men normally cost 400€ (Graham-Harrison, 2017). Consequently, the journey to Libya has deep psychological

¹⁴⁹ Interview number 22 (third sector), 27/07/2016, France

consequences to migrants, being reduced to a high level of vulnerability by the inhuman treatment and erasure of personhood.

Hence, Libya is the place where many Nigerian migrants understand that they have been sold by their conational (Malakooti, 2016) and the arrival in Libya for the women that have not been exploited in Agadez is when they realise that they will be used as sex slaves, especially when they are offered to the Libyan militaries in exchange of a passage for all migrants (Baltoni, Caldarozzi, Giovanetti, & Minicucci, 2014). The tellings of the women collected by the association Be Free report an actual selling and buying of women by the Arab men in the border with Libya (Beretta, Bondi, De Masi, & Esposito, 2016).

This treatment tends normally to reflect the power of the criminal network that has recruited the girls, since that normally the girls who are recruited by stronger or more experienced madams or big criminal networks tend to have more money in order to protect their victims from degrading treatment and violence (IOM, 2015). In fact, while the majority of the victims that are mistreated during the travel arrive in Italy already physically and psychologically vulnerable, the victims ordered by powerful networks are needed to be fresh at their arrival. Furthermore, the power of the criminal network also influences the time spent by the girls in Libya that in the past had a longer duration, also connected to their exploitation in Libyan houses, in domestic work or being sexually abused by the Nigerian criminal network.

Secondly to the conference report *Trails of Insecurity* (The Global Initiative against Organised Crime, 2016), the migrants tend to pay the travel by the end of each phase. Hence, in Libya, the time spent normally is from one week, to twelve days, to two months, while before the entire journey could last for two years. Therefore, it seems that the profit of the women during the route is not that much present in the recent arrivals.¹⁵⁰ In fact, during an interview with an organization working with Nigerian human trafficking victims¹⁵¹, it has emerged that the women that have arrived in the last six months in Italy do not mention any sexual abuse while in Libya. Nevertheless, despite of the lack of sexual abuse in Libya, the period in the country is still very traumatic, especially due to the violent environment. For instance, many women describe a context that is not safe for women, thus even if they try to escape from the

¹⁵⁰ Interview number 33 (third sector), 10/04/2017, Italy

¹⁵¹ Interview number 33 (third sector), 10/04/2017, Italy

detention facilities for migrants, there is a high level of violence in the streets and danger that the women are almost obliged to return to the place they were before.

The selling of Nigerian migrants by their conational directly to the Libyan traffickers, once they arrive in Libya (Malakooti A., 2016) demonstrates that many Nigerian women arriving to Europe are not arriving by the recruitment made in Nigeria of the trafficking networks operating on the sexual exploitation market as it was verified in the past. On the contrary, it demonstrates that for many women, the first initial phase, observed in the recent flows of Nigerian women arriving in Europe, it starts without a full connection to the trafficking network based in Italy, but originated from individual smugglers that profit to sell their conational in the Libyan markets, or at a first phase in the prostitution rings in Agadez.

This can also serve to explain the increased number of Nigerian women that has arrived in the last years in Italy (5.500 in 2015 and 11.006 in 2016) that were mainly brought by unorganised smugglers, rather than the Nigerian organised criminal networks that have been bringing Nigerian women through the Mediterranean, in the past. According to Be Free's report (Beretta, Bondi, De Masi, & Esposito, 2016) the increase of the Nigerian women is due to the strategy applied by the criminal networks, consequent to the loss of the control of the Nigerian criminal networks in Libya.

In the report *Piccoli schiavi* of Save the Children (Iacono, et al., 2017) there is the story of Faith that while in Libya is asked by the *arabs* to provide a payment of 284 euro, otherwise she will be sent to a *connection house*. Her aunt that has primarily suggested her to go to Europe on her own, in front of such situation in Libya, she advised the girl to go to the *connection house* in Tripoli in order to pay for her travel to Italy. This extract of the story of Faith not only proves that the Nigerian traffickers have lost their control in Libya for the *arabs*, but also that some exploiters do not pay themselves anymore the travel of their "merchandise", but as suggested, the migration flow tends to be paid by itself in the different phases of the Libyan route. Hence, there is an absence of the sponsor, that profits from the auto-payment of the girl, by being sold and exploited in prostitution during the path. Furthermore, the exploiters in Europe are aware about this enormous migration flow exiting from Nigeria and arriving naturally to Libya, especially after the economic crisis in Nigeria, which is where they also tend to approach their victims. In fact, in the same report of Save the Children (Iacono, Petrillo,

& Howard, 2017) some of the reported stories of the minors demonstrate exactly that the girls did not have a final scope to arrive in Italy or a fixed migration project, but that during their stay in Italy, they crossed a conational older woman that initially behaved like a protective guide and after obligated the girl to engage in prostitution.

Furthermore, in case of recruitment in Nigeria, the traffickers bet on a increase of women departing from Nigeria, previewing already a loss of the “product” during the journey for the Libyans and re-collecting a part of the women within the Libyan ghettos. Therefore, the criminal network profits only by the selling of these women to the Libyan traffickers. However, as previously referred, the first part of the travelling in most of the cases is not organised by the Nigerian criminal networks operating in the sexual business. On the contrary, it is organised by unexperienced and individual smugglers who have contacts in Libya and thus they only recruit the women in order to sell them in Libya and profit from the unstable situation in Nigeria. Therefore, the connection between the origin country and the final country does not exist as a massive way as it was before, but mainly through a connection between Libya and the final destination of the women.

According to Be Free’s report (Beretta, Bondi, De Masi, & Esposito, 2016) the women that pass through the *Connection houses*, can be sexually exploited for months or years, where there is high levels of violence, making the women arrive in Italy with marks of cigarets’ burns or sometimes the scars of being stabbed¹⁵². Moreover, the women in these *Connection Houses* are often exposed to non-protected intercourse leading to unwanted pregnancies, which often obligates them to do abortions with nocive substances. The use of the girl’s body would serve to provide the amount of money gathered during the exploitation period to pay the travel to Europe in case the Madam’s does not have sufficient money to pay the travel as also for the person that manages the house that the girl works in Libya.

“The money goes to the person that manages the house and not the final Madam. Each person has their own piece of profit. When the girls arrives in Italy is when the Madam starts to gain the money.”¹⁵³

¹⁵² Interview number 24 (third sector), 20/02/2016, Italy

¹⁵³ Interview number 22 (third sector), 27/07/2016, France

This use of the girls' body leads us to two conclusions on the traffickers that are transporting Nigerian women to Europe. The first conclusion is that with the increase of Nigerian women arriving in the recent years to Europe there was also consequently an increase of emerging new exploiters in the Nigerian sexual exploitation business in Europe. In fact, as it is acknowledged, Nigerian traffickers for sexual exploitation are former victims that have ascended on the trafficking chain (Lo Iacono, 2014). Therefore, the recent boom of the Nigerian traffickers can be characterised by a group of low experienced women and with a low economic stability traffickers, which is not probably connected to high experienced Madam as in previous years. Furthermore, it is known that many women bring their conational from Nigeria, in order to substitute them in paying their debt for them (Fernandez, Garzón, Juan & Contreras, 2017). This can also justify the reference to very small debts by the recent arrivals.

The second conclusion that can explain the absence of the Madam during the time in Libya, which probably has passed through the observation of the authors of Be Free's report, is that in many cases, the in some cases the travel is not organised anymore from the origin country by the trafficker, which is resident in Europe. On the contrary, in some cases, the travel starts by the recruitment of independent entrepreneurial smugglers, as observed before that in somehow profit from the transport of migrants from their origin countries to other countries by selling them. In fact, according to the witnessing of a member of Girl Power Initiative¹⁵⁴ the departure can start by auto-initiative, in case the girl has the means (not only material, but also contacts with smuggling networks) to arrive in Europe without a criminal network, she start her path without being in contact with a particular trafficker.

Therefore, the Madam has a more marginalised role that will mainly appear by the end of the travel (Beretta, Bondì, De Masi, & Esposito, 2016) and not often as accompanying the victim since the origin country as previously (IOM, 2015).

“Some of the families have paid the first stage of the travel of the girls and then the Madams take them from Libya.”¹⁵⁵

¹⁵⁴ Public conference “Nigerian Human Trafficking for sexual purposes”, taken by the Nigerian organization “Girls Power Initiative”, at Casa della Cooperazione, Palermo, 6th October 2017

¹⁵⁵ Interview number 33 (third sector), 10/04/2017, Italy

Of course that the question in this case is: how the women are put in contact with the Madam in the destination country? However, it is not difficult to understand the connection in the final phase of the transferring. Therefore, once the women arrive in Libya and are sold or are put in the *Connection Houses* that are the migrants' hotspot, it is when finally the Madam calls directly to the Libyan smugglers for the girl to proceed her journey to Italy.

“There was a story of a girl that she was expecting something and the ghetto’s manager says to her that there was someone at the phone for her, but it was not the woman that has recruited her. The Madam used to be as a conductive line from the recruitment until the end of the exploitation being as a kind of protection for the girl. Therefore, I believe that when the girl says that she has lost the telephone number and also that the person that has recruited her in Nigeria is not the same that has taken her from Libya. There is a true selling and buying in the Libyan border and in fact, the Nigerian traffickers know that in Libya there is panic and that corruption is not working anymore, the Nigerian that manage in Libya they do not exist anymore, the Libyans do that. Therefore, the Nigerian criminal networks recruit ten times the number of women as in the pass and let the Libyan control the ghettos or the connection houses, since many of these women are servants in the houses of the rich Libyans.”¹⁵⁶

This final exploitation can have two aims for the traffickers, since with the endure of the exploitation, abuse, violence and inhuman treatment suffered through the journey, the victim becomes more vulnerable once she arrives to Italy, thus the victim will not have the strength to rebel to the Madam. Furthermore, and it has also emerged in the interviews¹⁵⁷ the fact that the Madam appears to the girl as a saviour, by calling directly to the smuggler and choosing the girl and paying for her ransom, provokes a situation of dependence from the girl towards the Madam. When the Madam speaks with the girls, the proposal she makes is also based on the jobs that were also proposed in the past when the girls were recruited in Nigeria, mainly as babysitters or hairdressers. Hence, with this action the Madam obliges the girl not only to the payment of the debt regarding her release’s payment, but also to the eternal loyalty and

¹⁵⁶ Interview number 26 (third sector), 29/11/2016, Italy

¹⁵⁷ Interview number 33 (third sector), 10/04/2017, Italy

thankfulness of the girl towards her saviour. In fact, the consent of the woman is under a high vulnerable position of the victim, where any proposal is seen with relief and not as a recruitment for sexual exploitation, as it could be clearly seen if the recruitment was made in Nigeria.

Until the recent big flows that come through the Mediterranean, in the year 2015, it was verified an arrival of 5633 Nigerian girls through the African route, while in 2013 the number was only around 434 according to IOM, when the recruitment was a primary phase, well delimited from the exploitative phase. However, if in the past the recruitment was mainly performed in Nigeria, with the increase of the African flows, nowadays the phase of recruitment has become more complex to comprehend, in which the girl has no awareness when it starts and when it finishes. Furthermore, this confuses the girl, not only on the identification of the recruiter, but also of the network, which has developed several specific roles during the transporting phase.

“The girls say that they have never had contact with the traffickers before. You can speak about recruitment when it presupposes the awareness in being recruited, thus they say that in Nigeria there is awareness [about sexual exploitation]. However, it is also rare that the recruiter is someone unknown to the victim; it is someone that normally presents as a helper. In this case, it is like the recruiter is the organiser of the travelling that gives indications to the woman that departs without paying the travel. During this travelling, the woman is not alone, but departs in mixed groups, with other women and men. There is no awareness about the purposes of the other people of the group only that their only purpose is to find work.”¹⁵⁸

Despite the grey zones between exploitation and recruitment in alluring the girls to go to Europe, it has also been reported cases in which the girls were directly kidnapped from their school in Nigeria. The recurrence to these kinds of strategies demonstrates extreme actions from the traffickers that were not normally taken in the past (Longo, 2017). Furthermore, it has also been observed that in the last years, many women that have arrived in Italy have previously lived in Libya, having already an urban experience in a conflict zone. This experience in living in urban areas is also a

¹⁵⁸ Interview number 33 (third sector), 10/04/2017, Italy

cultural acquaintance that leads the Nigerian women that have arrived in the last two years to be more rational. Therefore, this can provide more instruments to the women to easily exit from the exploitative situation that differs from the women that have come from Nigeria, who normally come from rural areas.¹⁵⁹

The exploitation as well as the recruitment in the past were two well-defined phases, normally without overcrossing each other. However, the girls that are arriving in the last years seem to be living everything very quickly, by accumulating in a short period of time several experiences. Therefore, there is an overlapping of the trafficking phases, such as the arrival and the installation on the reception centers, the recruitment by other people and the abandon of the centers to lead to a specific house, where the girls are told that they will be exploited for some months and then runaway.

*“When the women arrive in Italy, normally is here that the women have a main role like proposing to the girls to go to the supermarket and put them in contact with the Madam. The girl has no idea that this woman knows the Madam, so there is always the element of surprise. There was a work that was proposed, so they knew they would meet someone, but then they are not active to find this person once they arrive in Europe. Therefore, once they arrive, when they are identified and redirected to the reception center, for them is like they have lost their contact. In fact, is like they do not search this person and undergo all the procedures without precise indications”.*¹⁶⁰

Normally, the origin country's communities tend to act as a protection or a support network to the recent arrived migrants within the destination countries, yet in Libya, somehow as also in some European countries with an established criminal network, Nigerian migrants can be often exploited, tricked or sold by their conationals. In fact, the researcher Arezo (Malakooti, 2016) explains how some Nigerian women did not feel safe within the Nigerian community in Libya, especially regarding other Nigerian women and if they were travelling alone, due to the their awareness in the possibility of being engaged in sexual exploitation. However, due to the hard conditions lived in Libya the women are desperate to leave the country and tend to accept any proposals or conditions to leave the country. Actually due to the mistrust regarding

¹⁵⁹ Interview number 3 (expert on THB), 29/11/2016, Italy

¹⁶⁰ Interview number 33 (third sector), 10/04/2017, Italy

Nigerian women, the main actors on the transferring of women to Europe are the men.¹⁶¹

Lately, in the stories of the women, men are the ones that mainly appear at the transferring of the women. For instance, in case the women are in a *Connection House* being exploited, normally appears a client who mercifully pays for the release payment and the travel costs. While in case, the women are able to run from the ghetto a Nigerian man normally appears as a benefactor on the moment of transferring the women (Beretta, Bondi, De Masi, & Esposito, 2016). According to the report of Save the Children (Iacono, Petrillo, & Howard, 2017) the men that accompany the women cross in their journey are defined as *black man*. In fact, until now, it was mainly identified the role of the men that would accompanied the girl in the different phases during the travel, normally denominated as *trolley* or *boga* (IOM, 2017). However, these roles were previewed during the travelling and the girl was aware about their contact with the person that has recruited them in the origin country. Instead, the term *black man* tends to be more generalized and is able to include the different roles of these men that pretend to appear surprisingly to the girl, without her awareness on his contact with the *Madam*. Furthermore, this role that has been recently spread in the Libyan route was verified to be often used by the Nigerian criminal networks operating in route of Morocco, normally known as *guideman*.

Women can also be present during the transferring, since the madams also recruit other victims as controllers, normally in exchange of as reduction of the debt or as a relief of some conditions (Beretta, Bondi, De Masi, & Esposito, 2016). According to the IOM's report (IOM, 2015) the women tend to arrive in Italy accompanied by a controller that can be the Madam; a girl who had a discount on the travelling or a man, known as *Boga* or *trolley* that arrives with the girl and declares to be her husband or boyfriend in order to avoid of being separated. Therefore, the man, once in Italy by claiming his attachment to the girl is able to be hosted in the same reception center in order to control the girl until she is in contact with the Madam (Beretta, Bondi, De Masi, & Esposito, 2016).

“There is always a man in Libya, who magically appears on the street and is

¹⁶¹ Interview number 33 (third sector), 10/04/2017, Italy

taken as the saviour of the moment. In the transferring phase it is mainly the men that occupy in transferring the girls, while the recruitment is mainly done by women. Some [women] tell of meeting a partner in Libya, others here. There are men involved in the business, but they are “experienced” as boyfriends and this already gives an indication how you tell your experience with this man. The man suggests normally the transfer in Italy, because he has friends in Italy that can take care of the girls. Another situation, where the men are present is when they encounter the girls inside or outside the reception centers for migrants that also suggest to the girls to move to another city. Normally, when the girls transfer themselves, they lose contact with the man and it is in this phase that they enter in contact with the Madam. These are not phases that are easily identified or clear. There are also other men that have this role and put the girl in contact with the Madam, but the girl does not tell the story like that, since the girls do not perceive what happens. Therefore, the responsibility is never given to the men.”¹⁶²

“The man gives a cell phone before the girl enters in the boat and says: You will need this when you will be in Italy, someone will call you. Then, when the girl arrives, someone says that a person should give her something to wear, she comes out, the voice that has called is from a woman, but outside the girl sees a boy and when they speak, the boy takes the girl to the Madam.”¹⁶³

On the contrary, of the other smuggling networks operating through Africa, sea-based Mediterranean smuggling criminal networks in recent investigations have demonstrated to have a more stable backbone (Nourhan, Monzini, & Pastore, 2015). However, a higher level of organization it is not a synonym of better conditions, on the contrary. For instance, in the past the smugglers used unseaworthy vessels in which sub-Saharan migrants normally travelled in the hold, without air and being beating during the travel (IOM, 2015); while nowadays smuggling networks normally use inflatable rubber dinghies who are unseaworthy for the Mediterranean passage. In fact, the trauma of travelling to Italy normally persists with the victims, especially due to the overcrowding of the inflatable rubber dinghies that are very low and their scarce conditions that lack the capacity of a full passage from Libya to Lampedusa (Nourhan,

¹⁶² Interview number 33 (third sector), 10/04/2017, Italy

¹⁶³ Interview number 22 (third sector), 27/07/2016, France

Monzini, & Pastore, 2015). According to Pietro Bartolo (Alos, 2017), the only doctor in Lampedusa that has been offering health aid to the arrived migrants, migrants develop the pathology of the “rubber dinghies” that affects mainly the women that normally sit on the bottom of rubber dinghies near, to the engine that drops gasoline and consequently provokes terrible burns on the women. Furthermore, there have also been rumours told by the migrants that smugglers divide pregnant women by the boats, since that the rescue ships in the sea tend to aid first the boats with pregnant women on board or with children.

“The women tell about their experience in Libya, yet they never tell about the time in the boats. The experience is so traumatic, that they mostly remove it from their heads.”¹⁶⁴

2.2.3 Vulnerability from the origin countries to the destination countries

2.2.3.1 Carried vulnerability from the origin countries

When the vulnerability of Nigerian and Romanian women in human trafficking is referred, it is not only important to understand what were the “vulnerabilities” that have led the victim into a situation of trafficking, but mainly understand the factors that lead the person to remain in a situation of victimisation. However, this does not mean that the vulnerability factors are separated according to the different phases of trafficking. On the contrary, it means that the accumulation of different factors can generate a higher or lower level of vulnerability as well as the balance of factors during the different phases. Therefore, in this subchapter I will generally analyse the different factors that can maintain the Romanian and Nigerian women in sexual exploitation.

When vulnerability factors in the destination country are referred within the literature, it is normally foreseen as the vulnerability factors that are created once the woman is arriving in the destination country. However, as it was presented in the first chapter, the concept of vulnerability is not isolated or divided, but it is a continuous accumulation of factors that can increase or decrease the vulnerability of the victim. Therefore, the vulnerability factors in the destination country are also the accumulation of the factors that had led the victim into a situation of trafficking such as the low level

¹⁶⁴ Interview number 33 (third sector), 10/04/2017, Italy

of education and access to information and the familiar context (OIM, 2017). In Benin City, for instance, it has been created a cultural framework around the migration to Italy and Spain within the “quick money syndrome” (Plambech, 2014). Therefore, the girls sometimes have high expectations in departing to Europe, which is also normally pressured by their families. For example, in Benin City, the expectation is so high on girls as money providers, that when a child is born, normally the family is disappointed if it is a male. In addition, due to the high culture on the migration to Europe, many girls that do not want to study are called Italian girls, because their aim is always to go to Italy and not to study. Therefore, some of them prefer to bet on boyfriends who are already established in Europe, the so-called yahoo boys, in the internet chats, who they have never met personally and their aim is to recruit them to come to Europe (Blessing & Pozzi, 2017). In fact, in Benin City, the European dream is well rooted within the community. For instance, the researcher Plambech (Plambech, 2014) has witnessed the presence of several language ads, including normally the main destination countries’ languages as Spanish, Italian, French and Swedish that are taught to the migrants that aim of migrating to these countries. However, the “European dream” even if normally entails the awareness of the involvement in the sexual industry, it is also normally marked by a deception of the income and the conditions, since often the victim thinks that there are higher earnings in Europe (Malakooti & Davin, 2015).

Despite that, the mentioned factors were mainly regarding the Nigerian women, it is possible to easily identify them also within the Romanian trafficking for sexual exploitation. Hence, I will start from the main aspect that has been demonstrated to be one of the most important influence factors, i.e. the family (European Commission, 2015). In fact, according to the philosopher Martha Fineman (Fineman, 2010) family is the main institution that provides social, cultural and economic resilience resources that can better address vulnerability.

In several Romanian cases of human trafficking, it has been verified that family has been involved in the trafficking situation, at least with the purpose of having a minimum gain to have access to a good house (Pascoal & Schwartz, 2016). However, the role of the family has demonstrated to have an ambiguous effect, since if from one hand it can maintain the women in the sexual exploitation, on the other hand, it has also demonstrated that the contact that Romanian women have with their relatives in the

origin country can be a resilience factor in their exploitative situation. In fact, their resilience is not only based due to their accessibility by phone, but also regarding the higher mobility from destination to origin country, especially comparing with the Nigerian women that lack from this mobility. Mobility that is not only regarding the physical distance, but also due to their legal status, especially with the increase of low cost airlines between Romania and Italy and the factor of being a European Union's citizen that can be resilient factors for Romanian women.

The involvement of the family in the trafficking situation is not only verified in the Romanian case, but it has been also been highly mentioned on the situation of Nigerian women (IOM, 2015). In fact, according to Sister Florence in the report Danish Immigration Office, half of the victims in Nigeria have been trafficked by their relatives, including mother, father, brother, boyfriend or husband (Office, 2007). The fact that the recruitment is normally done in a familiar environment (Okojie, Okojie, Eghafona, Vincent-Osaghae, & Kalu, 2003) and the recruiter is a family member, does not only compose a vulnerability factor on the recruitment phase, but it can also exercise a big pressure on the victim. Furthermore, the pressure increases when the victims have the responsibility of feeding all the family, which is normally attributed to the older sisters. Therefore, family can be a high resilience factor against the exploitative situation, but it is also one of the most influent factors, in maintaining the girl in exploitation, especially if the relatives are interested in receiving money of the girl. Moreover, the interest of the family in maintaining the girl in the exploitative situation is one of the most influenced factors, verified as a chronological level. In fact, the influence of the family does not only lengthen the chronological period of exploitation, but it also can lead the victim into a situation of re-trafficking or continuous victimisation.

Besides the family factor, another important aspect is the community that Romanian women display in Italy, especially due to the high migration flows in the 90s. On the contrary, the Nigerian community in Italy that has not a historic or cultural background, since as previously mentioned, it was based on the large percentage through the trafficking of women. In Italy, the Nigerian community was largely engaged in the trafficking for sexual exploitation, which leads to a more difficult intercommunity, demonstrating that these networks tend to be weaker than the ones

verified within the Romanian community¹⁶⁵.

According to the researcher Francesco Carchedi in an interview, another important vulnerability factor can be the age, especially since the girls tend to be more naïve when they are younger. In fact, when the girls are younger they tend to be tricked more often and pay more for the debt (Fernandez, Garzón, Juan & Contreras, 2017). Furthermore, since 2014 that Nigerian women that have arrived in Italy tend to be younger than Romanian women, being normally between 15 to 24 years old (IOM, 2015). Furthermore, even if there has been a decrease of the age of Nigerian women arriving in Italy, the traffickers normally oblige the women to declare that they are adults, in order to avoid a major protection from the state that is normally provided to non-accompanied minors (IOM, 2015).

Age, indeed, can be one of the main vulnerability factors in the destination country for Nigerian women, in this case in Italy, yet it is also true that many Romanian minors are normally trafficked at a domestic level before turning 18¹⁶⁶. In fact, being within the European Union, Romanian traffickers normally try to attract minors to human trafficking, especially those with an unstable childhood into trafficking, through the *lover boy method*, as previously mentioned and marry the minors, in order to avoid the power of attorney of the parents and being the husband the responsible for the minor¹⁶⁷.

2.2.3.2 Accumulated vulnerability in the destination country

After demonstrating the carried vulnerable factors that the majority of the victims bring from their origin country, in the destination country these factors are put together with an increase of influence factors that tend to determinate the level of vulnerability of the victim. According to the researcher Maria João Guia (Guia, 2008) there are several external factors that can increase the vulnerability of a migrant such as the: “Labour market oscillations; economic crisis; increase of lack of state funds;

¹⁶⁵ Interview number 3 (expert on THB), 29/11/2016, Italy

¹⁶⁶ Interview number 18 (Romania). Supported by analysis of the SIMEV statistics provided to the author by the Anti-trafficking National Agency. According to the crossed data of internal exploited victims and age, it was verified on the 2015 statistics of Simev that 69% of the victims internally exploited were under 17.

¹⁶⁷ Romanian High Court of Cassation and Justice, 19 April 2010, Decision no. 149, <https://www.unodc.org/cld/case-law-doc/criminalgroupcrimetype/rou/2010/2228542008.html?lng=en&tmpl=htms>

increase of unsafety feelings in emarginated neighbourhoods, where normally migrants are pushed in; increase of rejection and xenophobic feelings normally manipulated by the media, especially regarding the concepts of migration and crime; increase of crimes related to drugs' smuggling; the lack of family support and migrants' community"¹⁶⁸. These factors can influence not only directly the migrant, but it also affects the population's perception of the destination country on immigrants. Consequently, being mainly also dependent on the economic situation of the destination country, the migrant's community are normally used as an excuse for the economic instability, which normally is reflected on the difficult social and labour access within the destination country, leading often into a more rigid legal framework regarding immigration.

The subject of citizenship and right to mobility leads to one of the main factors that can distinguish the vulnerability of Nigerian and Romanian victims: the access to free mobility for Romanian citizens within the Schengen area, while the Nigerian women have more difficulty to enter in the European territory. Therefore, the plus vulnerability of Nigerian women, that it was also felt by Romanian women until the entrance of Romania in the European Union in 2007, is reflected on the body that acts as a state's border that can protect or permit the control of citizenship and access to rights (Peano, 2012). This lack of access to a legal status to the destination territory or the imposition of legal obstacles in order to obtain a legal status of the territory for the third country's citizens leads to an uneven distribution of prosperity between Romanian women and Nigerian women. Therefore, in this chapter, besides all the vulnerability factors that were previously mentioned in the subchapter of *Carried Vulnerability*, I will try to analyse if the lack of a communitarian citizenship of the Nigerian women, can be an added vulnerability, regarding the Romanian women.

The issue of legal vulnerability leads us again to the question that was mentioned in the first chapter of what is vulnerability. In fact, in this case it can be easily answered by Fineman's concept of vulnerability (Fineman, 2010) on the vulnerable subject. By separating Nigerian women and Romanian women regarding the issue of group's vulnerability, we are neglecting the attribution of Fineman's concept of vulnerability of the vulnerable subject. However, at the same time the application of the concept of vulnerable group can be suitable, since, according to Fineman's theory (Fineman,

¹⁶⁸ For further information see in Guia, M. J. (2008), *Imigração e Criminalidade: Caleidoscópio de Imigrantes Reclusos*. Coimbra: Almedina Pp 71-72

2012): individuals that are considered to belong to vulnerable groups are “those who cannot exercise their right to contract”. Consequently, the absence of a right holder as third country immigrants in European Union leads that migrants are dependent individuals from the state that block them from fully exercising their rights within a territory.

“I don’t know, and I don’t like to say that there are victims that are more vulnerable than others, there are people who are potentially more vulnerable than others to be a victim, conflict contexts, addiction and cognitive problems. Therefore, there is this group and also the particular vulnerability of the victim, regarding their history, condition, criminal networks’ modus operandi.”¹⁶⁹

Hence, in this case if the legal obstacles put by the destination State to a full exercise of citizenship can be a plus vulnerability of the Nigerian women, does this mean that Nigerian women are more vulnerable than Romanian women? Therefore, the vulnerable legal status can be an added factor prompting the vulnerability of the Nigerian women that is created by the destination State? Can the Nigerian vulnerability be solved by the granting of legal status, such as International protection or humanitarian status of human trafficking victims?

The concept of “victim”, due to a situation of suffering includes the access to the rights that should be already guaranteed to the individual as a person. In fact, the individual is only a recognisable body of rights, when considered a victim, a concept that is produced by the social institutions (Taliani, 2011). Furthermore, in order to have access to these rights, the individual accepts the role of a victim, by, for instance, in case of Asylum accepting the status granted. Regarding this subject, I will further analyse the granting of Art.18 for protection of victims of trafficking that have been already exploited in the territory and the new dilemma of women that have recently arrived in Italy that were still not exploited in the territory, but arrived already with a “story of suffering”.

The “story of suffering” is the instrument that grants rights to the victim, not only regarding their legal status, but also to a “reintegration model” that allows the

¹⁶⁹ Interview number 32 (Law enforcement), 09/01/2017, Portugal

person to exit from the state of the victim that is attributed by the own destination state. In this case, the entitled person has access to her/his rights, since she/he belongs to a category that has the privilege to have more rights than those who do not belong to this category. In this case, the individual accepts to assume the concept of “victim”, not always because she/he has the awareness or feels that she/he is a victims (often some individuals feel that they are less victims, while involved in human trafficking in the destination country, then when they were in their origin countries (not as human trafficking victims), where they had no basic rights or access to food), but because the concept permits access to certain rights that would not be provided to a “non-victim”.

With this affirmation, I can again return to the previous question: if Nigerian women are more vulnerable than Romanian women due to their lack of comunitarian citizenship. In this case, it is impossible not to highlight the previous subchapter *Is travel a factor of vulnerability?*. In fact, regarding the past that the majority of the Nigerian women would come directly by plane, the travel could not be considered a vulnerability factor for Nigerian women. However, despite of not being considered a factor of vulnerability, the arrival by plane in the past was always considered to be more expensive than the arrival through Libya, due to the cost of the plane ticket and fraudulent documents. Consequently, the way of travelling incises directly on the cost of the debt that will be paid by the victim. Hence, if from one hand travelling through Libya is an added vulnerability factor due to the violence and abuse suffered during the journey, on the other hand travelling by plane would increase the time of exploitation, due to the higher amount of the debt (Baye, 2012), leading the Nigerian women to work until 8 years to pay their debt (Carchedi, 2000). However, since nowadays the majority of the Nigerian women arrive in Italy through Libya, even if the “story of suffering” from the origin country is not sufficient to have access to an International Protection permit, the “travel of suffering” lately can be considered to grant protection to asylum seekers¹⁷⁰.

Therefore, on the contrary of the Romanian women that normally access to the Italian territory without any inhumane treatment and abuse, the Nigerian women have arrived in Italy already in a state of victimhood that has provided them, access to International Protection. However, it is important to highlight that the state of

¹⁷⁰ Court of Reggio Calabria RG °2687/2015 18/07/2016

victimhood, it is not a consequence of a situation trafficking, but it is a consequence of the denial in accessing the Italian territory in a legal way, which happens even before the arrival in the destination country. In fact, in the past the “mean” of deception” would normally occur when the victim was already in the destination country (Okojie, Okojie, Eghafona, Vincent-Osaghae, & Kalu, 2003), while nowadays this “mean” has been almost camouflated with a continuous subjection of violence through the all trafficking process.

Hence, I would consider that Nigerian women arrive already more vulnerable to Italy in a situation of trafficking, due to their origin country and their access of rights than Romanian women. However, while in the destination country, it is important to understand all the factors that influence on the continuous subjugation of human trafficking victims from Nigeria and Romania, with the aim to understand that if the legal status can be considered a continuous vulnerability. In order to answer this question, I might have in consideration two main issues 1) the Romanian women’s awareness of their rights as European citizens; 2) the access to a legal status for the Nigerian women. Having access to a right is not the same as being aware of using the right, thus, even if Romanian citizens have privileged rights regarding third countries’ citizens, it cannot be assumed that they are aware of this possibility. In fact, many traffickers tend to take their victims’ identification documents by informing them that without their ID documents the victims are illegal in the destination territory and thus, they can be detained. Furthermore, even if the victims are aware about their rights, they can also still succumb to the trafficker for other reasons such as fear, manipulation or emotional attachment.

For instance, during my experience in the street unit for Romanian women that are engaged in the outdoor sex industry, I have once encountered a girl that one or two weeks before Christmas happily declares that she would go home for the festivities. Nevertheless, when we visit the same place that the girl is normally at, we noticed that she was still there. Consequently, we asked her what happened and why she was not at home, she replied very angrily that her boyfriend had taken away her documents and she could not travel anymore. Therefore, despite of her legal access in pressing charges on her boyfriend about her documents’ confiscation and even being aware that he has committed an offence, she has still obeyed to him and remained in Italy for Christmas.

As demonstrated in the mentioned case, the lack of access to identification documents it is not *per se* a vulnerability within the European Union, yet, it can be considered a vulnerability when added to the lack of information about rights or other factors such submission on other fronts to the trafficker. In fact, in case a person is legally in the territory, he/she can always claim that they have lost the identification document. This leads us to the first question whether if even having access to a legal permit Nigerian woman can be considered more vulnerable than Romanian women.

“You are less exposed to blackmail, if you have the right provided from the State, but at the same time this is neutralized, because you are a victim of human trafficking, so you have a right, and you know it. In theory: the expectation is that a citizen is a less vulnerable person. Therefore, the question is if a person has a right, what leads this person in not using it? My answer, is that for instance in the case of Loverboy method there are many similar cases with domestic violence. Therefore, in my opinion, we can apply the same literature that we apply to domestic violence victims that do not exit from a situation of abuse. This is also gender vulnerability, thus the Italian victim of domestic violence that has all the rights and also speaks the language, why she does not press charges?”¹⁷¹

As discussed below, in the section of protection, access to a legal status to a Nigerian woman in the last years has become more feasible, due to the overlap between asylum seeker and human trafficking victim. In fact, while in the past Nigerian women would normally remain illegal in Italy, nowadays most of the women have normally an asylum claim that allows them to be temporarily legal in the territory or have already access to an International Protection permit. The access to the legal permanence on the territory has been mainly given to the thousands of Nigerian women that have arrived recently in the Italian territory, yet as it will be further analysed the access to the permit has not protected them from being exploited. On the contrary, it has provided more security to the traffickers to exploit the women while being legal in the country. This does not “mean” that being legal in one territory can serve more to the traffickers than to the victims, but it reflects that the legal status of the territory does not guaranty either

¹⁷¹ Interview number 2 (expert on THB), 12/04/2016, Italy

protection to the victims. In fact, even because many Nigerian women sometimes are not even aware that they have presented an asylum claim, since most of the times they obey to the traffickers' requirements. Furthermore, Nigerian women that have access to an asylum request are sometimes unaware about the true meaning of the asylum claim or even if they do, they also tend to provide the documentation to the trafficker, since they do not understand the importance of it (Skilbrei & Tveit, 2007). Therefore, the legal permanence in the European territory has not been demonstrated to be *per se* a problem for Nigerian women. However, the problem can be the lack of awareness of access to rights or the manipulation that is exercised by the traffickers, as it happens with Romanian women.

Due to the massive arrive of Nigerian women in the recent years in Italy a major attention has been given to this group, especially in terms of legalizing their status and recognising them as human trafficking victims. This has led that a major attention was given to Nigerian women, principally due to the high numbers and the presumed vulnerability of being potential human trafficking victims. Consequently, the attention provided to Nigerian women has diverted the attention of other nationalities of the victims as Romanian women. Therefore, while there is a major attention regarding Nigerian women being mainly regarded as a vulnerable group and ignoring Fineman's theory of the vulnerable subject, the Romanian women have been mainly regarded as invulnerable, thus invisible to the attention of institutions.

This leads us to the conclusion that what is important in human trafficking is not only what it is visible to the eyes, but what has become common to the mentality of the destination's country's population and institutions working against trafficking. In fact, while what is visible to the eyes can be immediately judged as unacceptable and thus solved, in case a phenomenon has become invisible to the eyes it can lead to a permanent chronological vulnerability that it is regarded as unimportant to solve. During an interview with a human trafficking expert in Portugal, it has been highlighted that if I want to compare the vulnerability of Nigerian and Romanian women due to their legal status, I should firstly define what is vulnerability. Furthermore, it was added that vulnerability it also regarded to the acknowledgement of human trafficking by the institutions. Here, maybe it is important to emphasize that on the contrary of the majority of the other European Union countries, Portugal has a majority number of

victims of labour exploitation, originally from Portugal, being followed in number by European Union citizens as Romanian and Bulgarian (OSHT, 2017). In fact, it is interesting how the perspective of victims of human trafficking is mainly considered in a full context of victimhood in different types of exploitations.

“I would say that some years ago the professionals did not have the training that they have nowadays, and now they even have a continuous training, also because the phenomenon is always changing. Therefore, some years ago this was more present [the fact that Nigerian women were more vulnerable than Romanian women regarding their illegal status and that it was also confused with smuggling rather than trafficking], but this was due to a bad flagging of the phenomenon.”¹⁷²

In fact, a continuous training of the anti-trafficking institutions does not only act on the vulnerability of the victims during the exploitation period, but also during and after the protection period as I will further analyse. However, it is very difficult to keep track of the victims’ vulnerabilities after their flagging or even after their protection path in order to avoid revictimisation. With the aim of overcoming this difficulty at a transnational level, also because many victims escape to other countries after being flagged, Portugal is trying to keep records of the flagged victims. However, the problem is that Portugal has only a statistic database that does not keep a record of the personal data of the victims. Therefore, the Portuguese National Anti-Trafficking Observatory wants to broad their database at a European level, not based on the names of the victims, but on data that can be crossed with the other countries’ data on the victims. This system can help in understanding in how countries can act on the vulnerabilities of the victims after the trafficking or to avoid re-trafficking and especially also on the policies of voluntary assisted return¹⁷³. Furthermore, this will also allow the analysis process of integration of the victim and the different approaches and concepts of integration used in different countries. For instance, as I will discuss in the subchapter of protection, only recently the Veneto Municipality has defined integration indicators for human trafficking victims that can be used as a measuring instrument to understand

¹⁷² Interview number 32 (Law enforcement), 09/01/2017, Portugal

¹⁷³ Interview number 32 (Law enforcement), 09/01/2017, Portugal

the level of vulnerability of the victim to re-trafficking.

The issue of follow up a victim, not only can help the institutions to evaluate the impact of the protection paths and the voluntary return, but it also can provide a realistic estimate on the time that someone can be designated as a victim. Also because, for instance, in Portugal (where the majority of the victims are European citizens) there has been a refusal from the majority of the victims to accept support that derives from the denial of accepting the concept of victim. Therefore, the institutions at this level should mainly inform the victim about her/his rights and duties, but then the institutions also have to accept if the victim does not require any kind of support, especially since many of them only require returning to the family.

2.2.4 Created vulnerability and coercion instruments

In sexual exploitation, it is verified different gray zones that vary, according to the level of autonomy and coercion exercised on the victim, which results in different possible combinations (Giammarinaro, 2000). According to Carchedi (Carchedi, 2000) the balance between coercion and autonomy can determinate the freedom of the individual engaged in the sex industry. For instance, if more coercion is exercised by the individual, less power is given to the individual and consequently, less autonomy, while more autonomy of the individuals is a demonstration of less coercion exercised by the individual. On this issue, Carchedi (Carchedi, 2000) indicates five levels that balance these two elements that can define the relation between the individual and the pimp/exploiter. The relationship where more coercion is exercised is the one based on emotional relationships (*natura compromissoria*), which, according to the level of violence that the victim is subjected, it demonstrates the disadvantage of relationship to the woman. The second level is based on the contraction (*contrattualistica*), in which it is recognised a certain level of autonomy of the women, but within the aim of continuing on prostitution. The third one is the compatible nature (*natura compatibile*), where the women obtain a level similar to independence, but are still subordinated to the pimp, thus in this level normally there is a continuation often leading to a relation where more coercion is used or more autonomy is granted to the individual. The fourth level is considered to “taking advantage of” (*strumentale*), in which both sides are aware that can be advantageous for both, while the fifth level is the shared nature

(*natura condivisa*), where there is a balanced consent from both sides.

In order to have a better understanding of vulnerabilities in the two systems of exploitation, the Nigerian and the Romanian, it is important to consider Carchedi's theory on the balance between autonomy and coercion, especially regarding also in the chronological aspect. This understanding regards the coercion indicators normally reflected on social agility, choice of place of prostitution, direct management of gains, auto-determination, subjected sovereignty, and freedom of movement, adequate sociability, affection, and freedom to stop the activity (Carchedi, Mottura, & Pugliese, 2003). The control of the victims can be either at home, either on the street normally made by distance or with the use of cars, which is normally used by the Eastern criminal networks. According to the report *Vittime di tratta/ricipienti/titolari protezione umanitaria* (Baltoni, Caldarozzi, Giovanetti, & Minicucci, 2014) several street units have identified that the women tend to look in certain directions while speaking with the volunteers of the street unit, demonstrating to be agitated. Besides the distance control, the exploiters also tend to pass by car, normally pretending to be clients.

During my volunteer work at the street unit, I have identified a constant passage of cars while speaking with the girls. Despite that, for the exploiters the street unit is considered "harmless", there was a situation, in which one car has passed to pick some of the girls, while we were speaking with them and took the girls away. Furthermore, we also have noticed in the last period that while before we were able to speak with the girls separately in groups, in the last month the girls gather to speak with the street unit, including with the presence of the controllers. If from one hand, we have noticed this kind of control by the exploiters in a specific group, on the other hand, we also have noticed cases where there is a single exploiter. This situation happens normally when a man understands that he can profit from the activity of the girl and controls the girl by distance in order also to count the number of clients by night.

Generally, violent, coercive means affect directly the victim and have the scope to maintain the victim in exploitation through the exercise of pressure through physical violence, sexual and non-sexual violence, or for instance, force the victim to have a tattoo, have an abortion or to have unprotected sex (Mensenhandel, 2012). Having a tattoo is generally identified as being typical of the Eastern criminal networks that mark their women, by normally putting the initials of the exploiter's name (Baltoni,

Caldarozzi, Giovanetti, & Minicucci, 2014). Nevertheless, despite that having a tattoo is considered to be a violent act, sometimes it can be done under the consent of the woman, which normally outcomes from an emotional relationship that the exploiter uses to control the victim. This kind of method has demonstrated to have a greater success rather than using only violence, since it does not leave physical bruises or scars, which is less likeable to be proved in court. Therefore, the traffickers under this method normally recur to threats, emotional manipulation, verbal insults and humiliation or psychological threats by using fictional debts or other excuses. Besides using these methods that are normally more difficult to use on the Court against the trafficker, some of the traffickers, as already explained in the first chapter, introduce what I have dominated an active vulnerability.

The use of this kind of vulnerability it is not based on the victim's background or status, but purposely created to emerge a dependency of the victims during the phase of recruitment, by inducing the victim in administering drugs or create an emotional relationship. Besides the active vulnerability, during the recruitment phase, traffickers tend to also abuse from a weak economic, psychological or social position of the victim, which is normally enhanced in the destination country with the confiscation of ID documents, illegal residence or language barrier (Netherlands, 2010). For instance, even if the women are legal in the destination territory, which normally happens with the Romanian women, the traffickers exercise control over the girls through the confiscation of their documents, as previously mentioned. On the other hand, with the Nigerian women, the traffickers normally profit from their ignorance on the asylum claim or even if the women are aware about the importance of the residence permit, they see themselves as lacking from an acceptable alternative (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014).

Despite the different use of violence on the victims, it has been difficult to compare which type of "means", manipulative "means" of coercion or physical violence, can have harder consequences for the victim. In fact, psychological violence or manipulation has demonstrated to cause as much harm and distress to the victim as physical violence (Mensenhandel, 2012). According to the Dutch report on human trafficking (Mensenhandel, 2012), the majority of the traffickers involved in sexual exploitation use manipulation (99% of the cases) as well as coercion as a control

method. However, as previously explained in the first chapter, when emotional manipulation is used, normally the judge is only based on the victims' witnessing, which, of course, depends on the victims' cooperation. Consequently, this leads that less traffickers are convicted (Farrel, et al., 2012). Therefore, it is also important to study the use of the coercive instruments by each criminal group and the success of these instruments, not only regarding the submission of the victim to the exploitation, but also on the awareness of the victim herself of being a victim.

“The two [criminal] organised models [the Nigerian and the Romanian] are totally different. The Nigerian is less linked to the emotional ties, more linked to religious ties, to the families that sell the victims, thus there is an emotional tie with the family, since there is a feeling of duty towards the family. It is not based on emotional ties, but on a business like. So, there are two different models and it is fair to compare them. However, I would look at the time of exploitation, because the Nigerian one is defined, normally not going more than three, four years and then there is the possibility to have a step forward in the career.”¹⁷⁴

The Nigerian as well as the Romanian strategies of human trafficking tends to be applied to different methods that can also reflect a cultural, social and economic context. For instance, the imposition of the debt in the Nigerian human trafficking system comes from a habit of borrowing money to money lenders, family members, social networks and criminal networks, since it is very difficult to borrow money from the bank in Nigeria (Plambech, 2014). On the other hand, the Romanian criminal networks have understood that the fact that Romania has entered into the European Union has positively affected the rights of the victims, thus they have started to use softer coercive methods.

Despite that IOM has declared a higher level of physical abuse of the Nigerian trafficker (IOM, 2015), the efficiency of the coercive instruments, it is not always a synonym of violence and abuse. On the contrary, traffickers have identified that smoother strategies can be more efficient, especially on the chronological aspect. For instance, regarding Nigerian women, many Madams tend to be violent with their

¹⁷⁴ Interview number 2 (expert on THB), 12/04/2016, Italy

victims, especially if the victim demonstrates to be ignorant of her situation. Nevertheless, traffickers have been more careless in the last years, with the tendency of playing the role of a saviour that impeaches the victim to be aware of her subjection to the exploiter. For instance, if in the past the passport was confiscated from the victim through the use of violence, nowadays traffickers tend to use excuses, such as the renew of the residence permit or the application for asylum claim in order to have access to the victim's passport. With these mechanisms, the exploiter remains in a gray zone acting as a saviour that intends to help the victim and normally profiting from the victim's ignorance on the legal procedures on the Italian territory (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014).

The researcher Shelley Cavalieri (Cavalieri, 2011) reflects perfectly the friendship manipulation used in the role of the Madam. In the article, the researcher describes a scene she has assisted at the hospital when she did volunteer work in Sicily. In her article, she describes that a Nigerian exploiter went to the hospital to try to see her victim that was taken to the hospital due to a heart condition, yet, the doctors have tried to impeach the exploiter from seeing the victim, since the social worker has identified her as an exploiter. The victim appeared at the time the staff was impeaching the entrance of the exploiter and understands that the social worker was trying to avoid the exploiter to see the girl. Once the girl realises the situation, she asks the staff why they were trying to separate her from her only friend.

This situation described by the researcher Shelley Cavalieri reflects the feeling of gratitude that many victims have for their traffickers that have permitted their arrival in Europe. Obviously, that this feeling has to be balanced between the conditions that the victim had in the origin country (many victims actually improve their situation while being victims of human trafficking in Europe, compared to their situation on the origin country) with the conditions that are offered within the destination country. Furthermore, while in the Eastern criminal networks, there is a demand for quick money, in the Nigerian human trafficking what it is important is not the speed that the money is given to the trafficker, but that the victim pays the fixed sum that has been imposed. As previously mentioned in reports and academic research, the debt is normally informed, while in Nigeria, to the victims in Naira, the Nigerian currency, which of course diminishes the value to be returned to the exploiter (Skogseth, 2006;

Baye, 2012). Even those who have had the information on euro, they are allured that in Europe that amount of money is easy to get in only a couple of months (Carling, 2006).

Despite that the debt is a fixed amount that was pre-established by the exploiter, the Madam has also all the intention of extending the payment of the debt, by using pretexts such as food, accommodation and the joint. This aspect, it will be deepened in the chapter of motherhood, where it is very clear to observe that the Madam arranges excuses to prolong the debate, using not only the ignorance of the victim, but also the submission that has been created between both of them. Moreover, the Madam is the one that establishes the relationship between victim and exploiter, also based on the flexibility regarding the accommodation and food. However, even if the relationship between the Madam and the victim is not balanced, sometimes there is a protective aspect by the Madam towards the victim (Finnish Immigration Office, 2015).

In the book *Le ragazze di Benin City*, the author Isoke Aikipitanyi (Aikipitanyi & Maragnani, 2007) it is explained how the Madam behaves as a friend of the victim giving advice, providing certain advantages as sleeping in the Madam's sister's bed and pretending to call the girl's family in Nigeria. According to one of my interviews, the Madam tends to be softer as an exploiter, since she is a woman than the men, who are normally the exploiters in the Romanian human trafficking for sexual exploitation¹⁷⁵. Nevertheless, I would not remark on the gender characteristics regarding the exploiter, I would rather precisely that each gender normally profits from their roles according also to the characteristics of the victims. Therefore, while men, tend to use the *Loverboy* method, women use the older respectable figure of Mother/Friend.

According to Carhedi (Carchedi, Picciolini, Mottura, & Campani, 2000), in the past Nigerian women would be exploited at least for four years and could reach a maximum of 8/10 years (Carchedi F. , 2000). The time of exploitation of the Nigerian women depends not only on the factor debt that it is normally established before the departure, by adding the travel costs and the interest rate, but also how the trafficker manipulates the debt, on the resistance of the woman towards the used coercive instruments and the resources that the women can display to combat their situation. In fact, despite that the debt is already established from the recruitment, sometimes the women pay only one third of the debt and avoid paying the rest of the debt by

¹⁷⁵ Interview number 3 (THB expert), 29/11/2016, Italy

displacing themselves to other cities (Plambech, 2014). For instance, many victims by the end of their debt in Italy move to the Southern cities, where there is a more pleasant climate, probably through connections that they have in the cities, as well as the fact of being less expensive cities (Candia & Garreffa, 2011).

“Many women before they finish paying their debts, they move to Palermo. They normally say that they came through a friend, someone that was able to provide them a house, but they also refer that in Palermo there is less control in the streets regarding outdoor prostitution and documents.”¹⁷⁶

Nowadays, as previously observed, the political context has influenced on a shorter period of exploitation imposed to a large number of victims, going generally up to three years. During one of my interviews with a psychologist that works in an association that provides assistance to human trafficking victims, it came out that nowadays, the new generation of Nigerian community tends to help more their conational, which provides more resources to escape from the situation of trafficking. The provision of information, as well as the guaranty of a safe place has provided to many women the instruments to escape, normally with a reduced period of exploitation, which consequently means that the girls do not suffer from the effect of a long period of exploitation. Furthermore, the fact that there is a constant number of Nigerian women that arrive in Italy makes that the trafficker does not invest much in a single victim, since there is always a substitute. Consequently, this situation does not only reflect that the amount of the debt returned to the trafficker is very reduced (there are cases that mention a return of only 300 euro), but that the trafficker does not apply anymore a high level of violence and threats to the victim and her family. In fact, lately, many women have escaped without declaring any type of danger towards them or their families in the origin country.¹⁷⁷ The absence of threats to the family of the victim in the origin country can be also related to what has been exposed in the subchapter of the Libyan route, *i.e.*, it is due to a lack of recruitment in the origin country, thus a lack of knowledge about the victim's family.

While the Nigerian women are attached to their traffickers due to the debts based

¹⁷⁶ Interview number 33 (third sector), 10/04/2017, Italy

¹⁷⁷ Interview number 33 (third sector), 10/04/2017, Italy

on an animistic ritual, the Romanian women's relationship with their traffickers is not based on a debt payment, i.e., a fixed amount, but a continuous earning that is divided normally between the trafficker and victims, being established under an emotional relationship. The use of earnings as a symbol of equality or at least the presence of non-submission provides to the idea of a more equal relation. Furthermore, the lack of awareness of victimhood gives to the trafficker a longer period of exploitation. In the next two subchapters, I will deepen both use of created vulnerability of the two criminal groups, as the use voodoo as the use of the *Loverboy* method.

2.2.4.1 The Oath and the link with religion

As previously mentioned on the first subchapter, traffickers tend to foster the conditions that make their victims vulnerable, in order to create the attachment. In fact, on the contrary of the factor of violence, other types of coercion, especially at a psychological level have demonstrated to be more efficient. In the Nigerian case, this vulnerability is created through the use of religion, not only to the recourse to *juju*, but also regarding the role of priests in the sexual exploitation business. Furthermore, as seen in the first chapter, in order to intensify the power of *juju* the priest tends to do the ritual in a church.

“There are Christians that they have done the ritual in a church, thus it is even stronger, so they think that Jesus did not protect them in that moment.”¹⁷⁸

The ritual is normally done in the origin country, but sometimes it is also enhanced in the destination country through the intervention of a *Babaloa* that uses the parts of the girl such as nails, pubes and hair mixed with body fluids such as blood and menstrual blood to perform the ritual (Dijck, 2001).

When the westerns anti-trafficking organizations have been confronted with the use of the animistic oath within the sexual exploitation of Nigerian women in the late 90s, it has burst a moral alarm, since they have found themselves unprepared in front of this exotic and alien practice (Dijck, 2001). Moreover, the Europeans were not prepared for the binary meaning of voodoo and its importance on the use of sexual exploitation.

¹⁷⁸ Interview number 23 (third sector), 27/07/2016, Italy

However, despite that the ritual of voodoo is normally seen as a negative aspect from the western, it is also connected to a magic ritual of protection (Beneduce, 2009). For some of the girls, the voodoo is a symbol of protection and devotion to the spirits while others consider a contractual agreement ritual without any magic power (Skilbrei & Tveit, 2017).

The *juju* is considered also by the victim as an instrument of protection linked to the powers of Mami Wata (Mother Water).

Some of the girls are not afraid of the *Juju* after the deception that they feel by the traffickers, since that the *Juju* was made under the agreement of the work proposed that the trafficker has made to the victim. In fact, the curse of the *juju* should only have an effect in case there is a break of the path from the part of the victim (Carling, 2006). Obviously, that it is the Madam that decides what are the limits of the *juju* and what can “possibly harm” the victim. However, despite that the Madam establishes the limits of the *juju*; the real psychological influence of the ritual is not on the threats of the trafficker, but in the imaginary blanks that the *juju* leaves to a potential evil on the victim (Beneduce, 2009). Therefore, it is also common to see the influence of *juju* penetrating in the daily life of the victim, even if the victim has not actually done any action to break the path. The continuous presence of the *juju* in the life of the victim is especially remarked by the used symbols that were used during the ritual, for instance the piece of the animal in the soup, the panties of the woman or even the soap used for the shower. All of these objects continuously remind the girl of the oath that was made and it justifies the panic attacks (Taliani, 2016). Furthermore, the *juju* comes to explain everything that “went wrong” in the victim’s life, since it controls her mind. In fact, the power of voodoo on the victim it is not only limited to the victim’s life, but also to all that surrounds her, especially family and friends that can be also threat by the trafficker or through Babaloo (Mensenhandel, 2012).

This power of the oath that includes other people that are within the victim’s social circle, but did not take the oath, demonstrates that the oath has embodied the victim and affects every aspect of her life, independently of the body border and the national borders. Despite that the debt can be renegotiated, the oath has been always faithful to the first ritual agreement, and it is considered to be over only when the victim complies with the full agreement. Actually, the fact that the oath has embodied the

victim means that it accompanies the victim in her life, passing the frontiers of the body and the geographical frontiers. This leads us to reflect that the oath has a transnational impact, thus even if it is made in the origin country, which normally occurs and it binds the trafficker and the victim at a spiritual level for the duration of the debt. According to an Austrian social worker in human trafficking, it has been registered cases in which the manipulation is not done by the trafficker itself, who is in the destination country, but also by the wizard that calls the girls directly from the origin country, once the girl has decided to stop paying the debt, to remind her about the oath's consequences¹⁷⁹.

The bond between the victim and the *Babaloa* is not only done through the spiritual oath, but it takes a physical form when all the collected objects that were previously mentioned, such as nails, pubes and blood of the victim (Carchedi, et al., 2010) are gathered in the pack with other objects such as cola nuts, pieces of twisted metal, powder and soap (Dijck, 2001). In case the recruiter is the girl's boyfriend, then the package has also items from the boyfriend, such as sperm in a ritual that both have to eat from the same cola nut and they both utter the oath (Dijck, 2001).

Once the victim pays the debt, the pack is normally returned to the victim, being this a synonym that the oath has been respected (Carchedi, et al., 2010). As a matter of a fact, some social professionals working with human trafficking victims have encountered this magic pack that represents their life (Beneduce, 2009). Moreover, sometimes in order to secure the victim from the effect of voodoo, once she decides to abandon the exploiter, the social workers tend to ask for the pack from the trafficker. The spiritual bonding of the victim and the trafficker has a more efficient effect, since it is more than the physical control; it is a psychological control, based on an endless amount of possibilities that manipulates the victim according to the desires of the trafficker. For instance, in an interview that I had with a Nigerian priest for my Master thesis (Pascoal, 2013), it was referred that the ritual is not only psychological, but it is also physical. This happens since "sickness when affects the body, it is because the body and soul are together." Therefore, even though westerns tend to see the power of *juju* only as a psychological coercion instrument, for the Nigerian women it is already a physical thing.

Juju can create a big distress to the victim with symptoms similar to a post-

¹⁷⁹ Interview number 34 (third sector), 31/03/2017, Austria

traumatic stress disorder that relates any real event with a consequence of the voodoo due to a misbehaviour (Agathise, 2002). The symptoms are normally demonstrated as if “they have something in their body”, of feeling cold in the members or formication (Taliani, 2016). This relation is also enhanced by the defective conditions that normally affects the victim’s life, such as working for many hours standing, pregnancy or sexual transmitted diseases due to unprotected intercourse. In fact, the power of voodoo has been demonstrated to be so strong that it is often found as a cause of several psychiatric consequences that can have a long chronological duration (Agathise, 2002). Furthermore, the oath inflicts in the victim as a permanent fear, for them and for their family that can last even if the woman has access to a residence permit (Danish Immigration Office, 2007). Therefore, many victims, even when they are followed by an association, they avoid the cooperation with the authorities. Therefore, the associations try to have the humanitarian permit through the social path, which is not normally attributed, rather than the judicial path. In fact, in case the authorities do not consent the social path, many victims normally return to their exploiters (Dijck, 2001).

In order to combat the power of *juju*, some organizations turn to religion or *counter-juju* priests. For instance, in the operation Kolvis in The Netherlands, the police was able to get the witnessing of 10 girls after calling a Nigerian priest that has convinced them that the *juju* could be reversed (Rasmussen, 2011). However, voodoo is not only contrasted by a reversal ritual, but also through the Christian religion. The Nigerian association working against human trafficking for sexual purposes, Girls’ Power Initiative has been described as also using the power of the Christian religion in order to contrast the power of *juju* (Danish Immigration Office, 2007). Actually, Suor Bonetti (Bonetti, 2009), coordinator of the Office “Tratta donne e minori” of the Unione delle Superiore Maggiori d’Italia highlights the fact that many health professionals limit the treatment to the use of pills rather than a religious accompaniment that can provide safety for the women.

“Consider that the religious element is very present in the life of Nigerian women, thus it can be a shield in a protective network that also works in the spiritual path. In order to regain a positive spirituality in order to take the bad one. This is a requirement that is even spontaneous from the victims once they have awareness of their

*victimhood. In fact, once they arrive here they ask immediately for a place to pray.*¹⁸⁰

Despite that, some staff workers are able to identify the connection of the psychological distress of the victims with a cultural and religious aspect and try to soften the effect of voodoo working through religion, it is also known that some workers do not connect the psychological distress with the cultural and religious aspects of the victims. In fact, the western approach of treatment is not always the best approach when dealing with these kind of distress, being normally focused on the prescription of medicines. For instance, according to a research by Gruppo Abele, from fourteen cases where there was a presence of psychological distress, eleven cases were treated with pills (Gerli, 2009). The choice of a treatment is normally established according to the western cultural patterns rather than according to the victim's origin country. Therefore, when the victim presents lack of appetite, troubling, aggressivity, insomnia, hallucinations or depression (Gerli, 2009), it is normally connected with western distress, rather than distress originated from a cultural background. However, the assumption of the presence of western types of distress in the victim is normally linked to the symptoms presented by the individual that difficult in finding the origin of the problem: if it is the influence of the voodoo; or an outcome of a situation of violence and exploitation.

The world of voodoo does not explain that much about the criminal aspect of the Nigerian human trafficking, yet it provides a reading of the symbols and aspects of the world, where the women come from (Finnish Immigration Office, 2015). According to Beneduce (Beneduce, 2009) in order to overcome the power of voodoo in the Nigerian human trafficking, it is needed to give time to the victims, especially because the individual needs time to adapt to a new "language of cultural symbols". Therefore, when this language of symbols is used to manipulate the victim into a level of submission regarding another person, the individual needs time to "digest" her own relationship with the ritual itself through its acceptance disconnected from the debt or to its total ignorance, mainly through religion. In order to support this reflection, the author Beneduce (Beneduce, 2009) affirms that "Nigerian women that declare to refuse the "witchcraft" of Mami Wata as an experience accompanied of confusion, associate it

¹⁸⁰ Interview number 33 (third sector), 10/04/2017, Italy

to an imperious requirement of becoming modern.”

2.2.4.2 The *Loverboy* method

Traffickers from Eastern countries tend to be known for the extreme use of violence on their victims. The big networks, as it was the case *Cap de Porc* have resorted to high levels of violence, having access to electronic platforms where they would keep their victims’ information as identity, destination country, residence of the family, and the income of the victim, in order to be able to have a higher control on the victim (Guia, 2008). However, small criminal groups or individual traffickers have started to adopt less physical violent behaviour, especially after the entrance of Romania in the European Union (Baldoni, Castelli, László, Stoian, Ulrich, & Aminosan, 2012). In fact, traffickers have realised that the lack of physical violence or the use of a balanced violence avoids any kind of rebellion by the victim and her flee from the exploitative situation (OHCHR, 2010).

“In many situations, it is very difficult to prove human trafficking, because the girl comes as a victim of human trafficking and she cancelled her complaint, thus no complaints, no felony. The number of cases that I treat has decreased, because, I think, it started to be invisible, since the people that are managing this, they are very clever and careful and avoid situations that can put them under arrest. Knowing the laws, or having friends that deal with law, makes them able to overcome the legal aspects. So they do it in order that it does not look THB. Ten years ago, THB was kidnapping, crossing the borders and selling [the girl] to someone else. So many people come to me, that it seems to be [a situation of] prostitution, but it is THB.”¹⁸¹

The absence of physical violence is substituted by other methods that are used in an emotional and familiar context (Aninoşanu; et al, 2016). The use of such context tends to serve as an excuse of every single action of the trafficker that might inflict an abuse over the victim. In fact, in this case, the trafficker does not only play with the emotional dependency of his victim, but also with the regard that the victim has over the trafficker as “a person that knows better”. This submission has been observed in cases

¹⁸¹ Interview number 11(Law enforcement), 03/04/2017, Romania

regarding bureaucracy or any other business relationships that based with the external world, such as accommodation, documents, lawyers, relationship with other criminal groups within the territory, etc... In fact, it is in this relationship of trust between victim and perpetrator that it is easier to subtract money from the victim, not only regarding the amount earned directly from the so-called “protection” of the victim, but also regarding other aspects.

For instance, during my research with Romanian women engaged in outdoor prostitution, it has been observed that many girls were living together in the same building, but not on the same house, that are normally more expensive than the real estate market. The choice of living alone can be simply connected with avoiding any suspicion from the housemates on their work, but since the girls in the street demonstrate to be friends, it is also strange that they decided not to share a house. Furthermore, by sharing a house, the girls would be able to economise the money, since they tend to complain about the amount of money spent in accommodation.

Despite the number of possibilities that I have posed on this fact, the problem of the accommodation was only understood after the police has arrested four men and two women considered to be engaged on the crime of sexual exploitation. While in prison, one of the men that was considered to be a pimp has written six letters, all with the same content to six different girlfriends that were also engaged in the sex industry, claiming that even being in prison he was faithful to each one of them and that he loved them¹⁸². This situation has explained the fact that the women were not leaving together due to the assumptions that were previously mentioned, but on the fact that the trafficker was the contemporary boyfriend of six of the girls, which he manipulated them to work in prostitution in order to build a future together with all of them.

The *lover boy* method, here described has been highly used by the traffickers and developed at different levels. In fact, it can be used only during the recruitment phase, normally performed by individuals that start a relationship and then sell the girl for 1000 or 3000 euro, finishing the relationship between recruiter and victim; or it can proceed during the exploitation period, sometimes even ending in marriage. Obviously that the second method is more efficient than the first method, since that when the *lover boy* method is only used during the recruitment, once the girl realises that she has been

¹⁸² Interview number 13 (Practitioner), 10/6/2016, Italy

sold, there is a high level of deception. On the other hand, when the *lover boy* method is taken through all the exploitation process, it does not reach a level of deception in the beginning, but normally after some years (Netherlands G. o., 2014). Actually, the level of deception it is normally done through a level of violence that generally recurs to verbal and psychological violence that is often accepted as “domestic violence” (Baldoni, Castelli, László, Stoian, Ulrich, & Aminosan, 2012).

At the beginning of my field work in the street unit, I have encountered one girl that has reflected exactly the lack of awareness on her victimhood and that in fact, it has led me into confusion about her state of being a victim of human trafficking or not. In one of the first days that I have started to do volunteer work with the street unit, this girl has said that she had a headache; thus, she was thinking to leave earlier (it was around 11pm). This has induced me to think that she had no restriction, thus she could not be a victim. Nevertheless, on the following times that we did the round, the girl has started to tell us something that has happened and she said: “the girls left earlier, because they leave at 1am, while me and G. we have to stay until 3am”, yet her affirmation has confused me since it was the same girl that said some weeks before that she was able to go home earlier, so I asked her why she had to stay longer (in fact, the two mentioned girls were the most recent acquaintances on the group). At this point, the girl has abruptly responded that they were the ones that needed more money.

This situation, despite being unclear, did not still prove any state of submission, in fact the proofs, I had some months later with a police operation that has arrested two girls and four men. On the newspaper’s article there were some excerpts of wiretapping that referred the fake names of the girls, which gave us the possibility to identify the people. Therefore, in the newspaper article, there was a line in which the same girl that was previously mentioned has asked to her boyfriend to go home earlier because she was feeling sick. However, in the wiretapping it was reported that he did not allow her in going home earlier and has started to complain that the controller, who was one of the girls, has said to him that she was always unhappy, so she had to smile more for the clients and only this would make her work. It is easy to understand here that despite of the bad treatment from the boyfriend, the girl that according to the article also suffered from verbal violence, was not either aware about her restrictions of going home earlier, or aware about her submissive situation on the relationship as “acceptable domestic

violence”. Despite of being a very discussed and contradictory concept, almost despicable to be used by a researcher, the expression “acceptable domestic violence”, in my opinion is the perfect expression that can reflect the situation of the victims of human trafficking by the *lover boy method*. In fact, the concept transmits that often the victim is aware about the situation of being an object of manipulation and violence of the trafficker, yet as it happens with domestic violence, the offender is able to induct the dynamics of dependence of the woman, even when she is aware of her lack of autonomy and abuse. This incapacity of reaction by the victim can be noticed on the story illustrated of the page of 71 on the report of Save the Children (Iacono, Petrillo, & Howard, 2017).

“In some cases [violent cases of boyfriends that exploit their girlfriends], they prefer this kind of attachment than to return to the family and this is why they stay in exploitation for years.”¹⁸³

The use of such method is not based on the intellectual aspect of the recruiter, since normally the *lover boy*’s profile presents a low level of education (Weatherburn, Constantinau, Tamas, Saykosvka, & Pavlova, 2015), but on what it can be called “street smart” and charismatic ¹⁸⁴, which normally is developed by the “popular” boys of the village. They tend to present a narcissistic profile that is mainly used in sexual exploitation (75%). The individuals that use this method normally use also their social skills as well as the support of their social and familiar network to be engaged with the loverboy scheme (Weatherburn, Tamas, Saykosvka, Pavlova, & Constantinous, 2015). Furthermore, due to the social skills of the boy, sometimes he is also able to get the support of the family members of the girl, which makes the girl feel isolated (Weatherburn, Tamas, Saykosvka, Pavlova, & Constantinous, 2015).

In the article that I wrote along with the researcher Adina Schwartz, this situation is well reflected during of one of our interviews with a cultural mediator that was also an interpreter during a wiretapping between the mother of the boy and the boyfriend of the girl. “During the wiretapping, the police understood that the boyfriend was sending money to his mother back in Romania, but during the telephone

¹⁸³ Interview number 18 (third sector), 05/10/2016, Romania

¹⁸⁴ Interview number 10 (Law enforcement), in 04/10/2016, Romania

conversation, his mother refers that his girlfriend's mother has complained that she did not send any money. Thus, in order to maintain the figure of a good son-in-law, the boy says to his mother to give 50 Euro to his girlfriend's mother. With this gesture, not only the exploiter is able to avoid further complaining of the mother-in-law about the financial aid of the daughter, but he also manages to pass the image that he is the perfect son-in-law, by granting her 50 Euro, from her daughter's exploitation (Pascoal & Schwartz, 2016).”

As it can be observed, the involvement of the social network of the trafficker comes to enhance the trust that the victim has on the trafficker, which also improves all the context of manipulation. In case, that the trafficker is not able to gain the girl's family trust, they act on the other way around and try to separate the girl from the family. Consequently, this increases the lack of awareness of victimhood on the girl, which also prolongs her time of exploitation and also makes inherent an unconditional sense of dependence towards the boyfriend, typical of the Stockholm syndrome (Baldoni, Castelli, László, Stoian, Ulrich, & Aminosan, 2012).

“The lover boy creates an environment, in which he is the only person that the victim has, but it is very simple, and they are going to the victims that don't have attachment with other people. Can be children with abuse, but also children from very restrictive families, they are not good or bad families, you will see on the film [speranta la vanzare]¹⁸⁵ that, because that her mother was very important in the city hall of a very important city in Romania. Nevertheless, she explains very well that the trafficker has provided her attention, and he acted like he was there for her and he was also very open, even with the illegal things that he was doing. Because, she thought that if he is so open, this is the person that I can trust, even if she was kidnapped. This is more than stockholm [syndrome], it is more complicated than this. This is connected why so many victims don't see themselves as victims.”¹⁸⁶

Furthermore, it has been observed that traffickers tend to target youngsters under the *loverboy* method, which tend to be a easier target, especially when they feel lack of love or a present family model by having a difficult familiar background or growing up

¹⁸⁵ You can watch the film on the following website <http://www.sperantelavanzare.ro/>

¹⁸⁶ Interview number 18 (third sector), 05/10/2016, Romania

in shelters or orphanages (Pascoal & Swchartz, 2018).

“The relationship with family members, it is not a healthy relationship. They are a lot of poor people in Romania, but this does not mean that they will all become human trafficking victims. There are victims with a lot of relationship problems within their families. They target people who have bad relations within their families, not necessarily poor. I will give you an example; we have a 16 years old girl, she was a victim of trafficking internally, her father is a policemen, her family has 3 children, but the father is aggressive, even physically, but with the girls and not with the boy. Because there is this gender difference. So, both girls tried to escape from the house, because the mother is not supporting them at all, the mother called them whores, and this is another kind of vulnerability. And that is why the first boy that comes and say you are very beautiful, they are attracted to him.”¹⁸⁷

Despite the fact that minors are an easy target to traffickers, it is also true that this also impeaches them to pass through the borders, which normally leads the traffickers to exploit them at a domestic level¹⁸⁸. In order to pass the border, the traffickers tend to use four options 1) wait until the minors have 18 years old to be able to travel without a declaration of the parents (Tinere sărace din România, 2017); 2) ask the authorization of the family to show at the border; 3) make fake documents, declaring they are over 18; 4) marrying them, which provides the traffickers to be the legal tutor of the minor when crossing the border¹⁸⁹. In addition, by marrying them, the trafficker does not only has the permission to take the minor out of the country, but he also possesses the attorney power towards the minor that can enhance the power of the emotional manipulation exercised over the minor.

Therefore, the combination of roles performed by the trafficker, normally connected with different roles of power, but at the same time with a strong emotional link to the victim, exercises a powerful influence on the girl that approves that the

¹⁸⁷ Interview number 18 (third sector), 05/10/2016, Romania

¹⁸⁸ This conclusion has come out from the data crossed that I have developed based on the statistics of SIMEV, the Romanian statistic system for victims of human trafficking, using the variables of age and internally exploited victims.

¹⁸⁹ Romanian Olt Court, case 2228/54/2008; 3rd instance: High Court of Cassation and Justice, 19 April 2010, Decision no. 1491 that can be accessed at <https://www.unodc.org/cld/case-law-doc/criminalgroupcrimetype/rou/2010/2228542008.html?lng=en&tmpl=htms>

trafficker has the right to the agreed amount of money, even if it is not balanced. In fact, the gains of the girl in the sex industry are “shared” with the boyfriend, normally not through the use of force, but often they are presented as a couple’s “joint-plan”, under projects to build a house together and having a car. Obviously that the gains, despite being shared, in order that the victim’s family has also a part, are also mainly managed by the boyfriend that meanwhile tends to put everything in his name.

2.2.4.3 Not a loverboy method

The emotional manipulation is not only used on the Loverboy method, but also in terms of friendship. During my participant observation method in the street unit with Romanian women, I have encountered a girl that once she started to be aware of the excessive constraints used by the leader of one group and she has decided to move into another group. Therefore, once she has arrived in the new group, the girl that receives a commission for the place has started to develop a friendship and has shown kindness to her. As it is known, the majority of the Romanian girls that are in Italy have the prospects to build a house in the origin country. Therefore, since both of the girls had this scope, the owner of the joint has proposed to the girl that since the owner of the sidewalk had already a plot of land that they could build a bigger house together, rather than two houses. This proposal was accepted by the girl that has given 10.000 euro to the owner of the joint to start building the house, but without any kind of legal contract. Meanwhile, the girl has started to understand the level of fraud and that she has been deceived. Therefore, once the girl has told to the street unit volunteers what has happened, which has resulted in more pressure from the leader that has also forbidden the girl to speak with the volunteers in general and has obliged the girl to continue her work. In the last period, the woman has demonstrated the willingness to change her place of prostitution, saying that she had met a man, who says that he is in love with her and that he also had a “prostitution place” where she would move to, thus she did not have to comply with the demands of the girl that was the owner of the previous place. Actually, despite the fact that the girl was already deceived twice and had changed group, also with one relationship that has shown that the man has only seduced her to get some money from her, the girl still demonstrates the need to fulfil a blank space of love that it is open and can be easily used by people that want to profit from her.

This situation, developed in a context of friendship is a reflection that the emotional manipulation is not only used by men, but also by women that profit to replace a loving absent role that leads into a situation of submission. However, despite that, this manipulation is effective in the different type of roles, mother, lover and friend, it is also obvious that it has a longer duration when the exploiter embodies the role of a lover.

2.3 Vulnerability in the denounce and victims' assistance

“Naïve vulnerability secretly wants to be saved. Awake vulnerability is saving herself by respecting her truth.”

By Danielle La Porte

2.3.1 Defining victim

If in human trafficking legislation terms as vulnerability, exploitation and consent have emerged as being debatable, due to their inexact and ambiguous characteristic, in recent years, the term of the victim has also emerged as being controversial. In fact, despite the definition of victim provided by the Directive 2012/29/EU that establishes the minimum standards of support and rights to the recognised victims, it seems that the process to define legally the concept of victim is still regarded within a certain undefined limitation, even if the concept brings along a full package of rights, when it is officially recognised. The unlimited use of the term has brought into the public debate in the sex industry the concept of victim applied to all female individuals involved in prostitution¹⁹⁰ who are seen as being invaded within their bodily borders (Szörényi, 2014). In this case, women that engage in sex work are normally seen as victimised body, which is unable to speak, thus, it is assumed that the consent on the engagement of the sex industry is an outcome of a lack of valid choices (Szörényi, 2014). In fact, prostitutes are normally socially accepted, especially when they try to redeem themselves from their “prevarication” and usually explain their engagement on prostitution deriving from several abuses (Peano, 2012).

¹⁹⁰ I would like the remark here the use of the concept of prostitution, rather than sex industry, since pornography tends to me more morally accepted by society, where individuals are not normally regarded as victims, but celebrities.

The concept of victim in prostitution has been further applied by the implementation of the Swedish model, in which the client is penalized rather than the woman, since the woman who is engaged in prostitution is always considered to be a subject of violence from the male (Hubbard, 2008). This idea is normally connected to the representation of gender and how they should perform according to the given patternised and paternalist behaviour (Butler, 2004). The provided gender model is often reflected in Law, which provides allegedly recognition and unrecognition of accepted behaviours (Carline, 2009) and liveable lives (Loizidou, 2007).

This concept comes to separate the two senses of life that Butler has emerged from the life lived in a biological ground, which is mainly based on survival and the sense of a recognised human life (Butler, 2006). However, despite the binary concept of liveable lives can be a model on the acceptance of prostitution, models can fall into the dichotomy between on making a life bearable and a life unlivable (Carline, 2009). This dichotomy leads us to the remark of distributive justice and the recognition of the vulnerability of bodies in being social and the ever presence of risk, especially regarding vulnerable groups and their intersection (Butler, 2006).

The line between human trafficking for sexual purposes and prostitution can be quite blurry and difficult to delimit (Szörényi, 2014; Augustin, 2007; Andrijasevic, 2010). In fact, anyone who has ever worked with sex workers and human trafficking in sexual exploitation is well aware that the concept of victim can be placed in a grey zone, in which prostitutes can also be victims of other crimes, while human trafficking victims cannot even realise their level of victimisation. The regarding of certain criminalised groups as subjects within a situation of “bare life” has led them into urging recognition of their embodiment integrity through the use of “undignifying acts”, by exposing their lives to risks or inhuman and degradation behaviour, since “injured bodies can get access to documented status” (Peano, 2012). Therefore, in the sex industry, sex workers can easily pass to human trafficking victims, especially regarding their vulnerability, yet it is difficult to define legally this passage or even the time that can be concluded between one situation or another¹⁹¹ (Mensenhandel, 2012).

Is in the dichotomy of bearable life and life unlivable that the victim is normally limited and stereotyped by being an individual with a visible vulnerability, which is

¹⁹¹ See the case Arnhem Court of Appeal 20 December 2010, LJN: BO8406

recognised by a certain pattern and appropriate behaviours of a victim. In fact, it is the shown behaviour that will be the main key into a credible story, which can influence during the prosecution process. Furthermore, the exposure of the victim to the risk can also likely influence the concept of victimisation from Law enforcement agents, which can “raise questions about the blameworthiness of victims for their own victimisation”. These situations are also normally current when the exploiters engage their victims in illegal activities, inflicting a feeling of guilt in the victim (Jack McDevitt, 2013).

Normally in these cases, law enforcement agents are initially induced to treat the victim as an offender, generally in cases where prostitution is forbidden or in cases of illegality in the territory, which is normally “confirmed” by the victim’s behaviour that emerges from their fear of retaliation or due to their sense of guilt. Furthermore, even if the victim is aware of her/his victimisation, she can also have post traumatic disorder, depression, and anxiety, which can be considered to be unreliable as proven against the exploiter. In these cases, law enforcement agencies tend to rely on organizations, which have a long period contact with the victim, in order to prove their status of victimisation (McDevitt, 2013).

In recent years, the international scholarship has seen emerged the debate about the identification of sex workers as “people to save” from their exploiters and their recognition as human trafficking victims. This demonstrates the willingness of the State to protect VoTs, but not to supply basic rights of sex workers, such as equal rights to protection, labour rights and full citizenship which have an inappropriate behaviour (FitzGerald, 2010; FitzGerald & Munro, 2012). However, despite that the subject of human trafficking has been strumentalized against the regulation of prostitution, it is undeniable that human trafficking victims are individuals in need of protection. That being said, recognizing their victimisation, in many countries, is recognizing their access to their rights as victims particularly vulnerable.

2.3.2 Vulnerability after the denounce and secured rights

As previously mentioned, determine a human trafficking victim can be a Herculean task, especially if no path was made within a third sector organization. Therefore, the recognition of a human trafficking victim, usually is based on a press charges of the victim that is foreseen to assume the “role of the victim” with

“measlinging and dehumanising stereotypes”(Cojocaru, 2016). Is in the fact on these terms that law enforcement agents point into intensive interrogatories that can induce into a secondary victimisation that revives the victim’s traumas lived during the exploitation period. The process of retelling the lived experience to law enforcement agents can lead the victim into a secondary victimisation, by reliving the events of the abuse. Therefore, in order to avoid a systematic victimisation of the individual, law enforcement agents should provide the access to recording interviews allowed to be used in court, also avoiding direct contact between the victim and the offender. Furthermore, special attention should be given to the data of the victims, by avoiding the disclosure of identifiable data, such as name, phone number and address.

The prevention of inducing of repeated victimisation by the exploiters, through retaliation and intimidation, as well as secondary intimidation is foreseen by the paragraph 9 of the Directive 2012/29/EU that in order the victim should have access to facilitate her recovery¹⁹² as well as legal support¹⁹³. The retaliation and intimidation are not only previewed to be directly to the victim, but his/her family can also be a target of the exploiters. At this point, family members should also be involved in the protection process, according to their needs, previewed by the Art.8 of the Directive 2012/29/EU.

The recognition of human trafficking victims, as cited above is linked by International Legal Instruments Directive 2012/29/EU; 2011/36/EU and the European Warsaw Convention to a package of rights that should supply and support the victim during the identification process. After the potential identification of the victim, anti-trafficking agents or third sector operators should activate a vulnerability assessment of needs, in order to fully guarantee to the victim the foreseen protection. The protection should be immediate to the victim¹⁹⁴ as well as the investigation of the case, in order to avoid any situation of danger to the victim (Parisi, 2016).

The referred assessment, which is based on the personal characteristics of the

¹⁹² “Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.”

¹⁹³ Art 13, “Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings.”

¹⁹⁴ L.E vs Greece. 21/01/2016. A case of a Nigerian woman, in which Greece was not able to provide immediate protection to the victim, exposing in this way the victim to danger. The ECHR, based on Art.4 has declared that the States should activate immediately the investigations, regardless of the press charges of the victim,

victim¹⁹⁵; the type or nature of the crime; and the circumstances of the crime, are mentioned by the Directive 2012/29/EU that has the “extend the benefit of special measures during the criminal proceedings¹⁹⁶. Therefore, victims should have access to an integrated approach, having in consideration also the relationship “between victims, offenders, children and their wider social environment”. Immediate needs of the victim can be a safe accommodation and medical support, yet, it has been verified that victims, for instance, from origin countries in Europe, as Romania,¹⁹⁷ often do not need accommodation, or even legal status of the territory, thus in case the family is not related to the trafficking situation, many victims opt to return to their houses.

Despite the provision of these special measures to the victims, due to their particular vulnerability to secondary victimisation and revictimisation, the process of individual assessment is previewed to be in accordance with the national procedures. Therefore, despite of the concept of vulnerability being initially presented as an entrance to further rights, it is a precarious concept that can vanish, according to personal conceptions and ideologies (Parisi, 2016)

2.3.3 The Italian Legislation on the protection of human trafficking victims

The protection of victims of trafficking in Italy has started to be regulated in 1998 with Art.18¹⁹⁸ of *Testo Unico della Migrazione*. At the time of its conception, Art.18¹⁹⁹ was considered to be quite advanced regarding the protection of foreign

¹⁹⁵ “Personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.”

¹⁹⁶ Article 23 and 24 of the Directive 2012/29/EU

¹⁹⁷ Art 38 Directive, 2012/29/EU)

¹⁹⁸ Legislative Decree 286/98

¹⁹⁹ Article 18, paragraph 1, of the Consolidated Immigration Act reads: “Whenever police operations, investigations or court proceedings involving any of the offences set out in Articles [inter alia, 600 and 601 CC], or whenever the social services of a local administration, in the performance of their social assistance work, identify situations of abuse or severe exploitation of a foreign citizen, and whenever the safety of the foreign citizen is seen to be endangered as a consequence of attempts to escape from a criminal organisation which engages in one of the afore-cited offences, or as a consequence of statements made during preliminary investigations or in the course of court proceedings, the chief of police, acting on the proposal of the Public Prosecutor, or with the favourable opinion of the same Public Prosecutor, may grant a special residence permit enabling the foreign citizen to escape from the situation of abuse perpetrated by the criminal organisation and to participate in a social assistance and integration programme.”

victims of exploitation in danger of a criminal organization²⁰⁰. The consideration that Art.18 was *avant garde* to the European legislation was due to the binary grant of a six month renewable residence permit in two different paths (Goodey, 2004),. With the aim of “equal standing of victims with the state’s concern to punish perpetrators of serious criminal offences” (Savona E.U., 2003), the residence permit provided by Art.18 intends to provide safety and protection to the victims, in order to establish a relationship of safety that leads the victim to press charges against her/his exploiters and to avoid the offender retaliation. Furthermore, the permit of Art.18 is provided to the victim the safety in pressing charges without the danger of being deported at the end (Giammarinaro, 2000). At the time of its implementation, Art.18 was mainly thought to victims of human trafficking for sexual purposes, as I will further analyse, that intended to exit from the criminal networks (Carchedi, Picciolini, Mottura, & Campani, 2000). Therefore, the protective measures provided through Art.18 were mainly thought to the victims that had already experienced exploitation, being principally recognised as a granted prize to the repented victims. I will also further analyse that the protection measures previewed under the Art.18 have been difficult to be applied as a preventive measure, in cases where it has been identified a major overlap between human trafficking victims and asylum seeker.

The integration of such best practice has mainly provided to the law enforcement agents the opportunity to gain the victims’ trust, through the mediation of non-profit associations working with the victims, in order to proceed with a further investigation of the traffickers (Kelly, 2005). In order to prove the exploitative situation of the victim, it is the association that reports the case to the authorities, as providing witnessing of the “victim’s situation”. As a successful model, there was the “Rimini case”, in which law enforcement agents have understood that by the immediate deportation of “sex workers” who were not identified as human trafficking victims, would not only be an effective weapon against the criminal networks, but would also result in the victims’ immediately return to Italy (Ventrella, 2010). Therefore, even if at the beginning, the witnesses were reluctant to cooperate with the authorities due to the threats of the criminal networks, after being offered a stable period, the victims started to cooperate and trust in the authorities.

²⁰⁰ “and his safety is seriously threatened, as a result of attempting to escape from the control of a criminal organisation”

The Art.18, in case the victim's story is acceptable, furnishes two possible paths: the judicial path and the social path. While the judicial path foresees immediately the pressing charges of the perpetrators, the social path allows the victims to have access to protection without denouncing their exploiters, including shelter, sanitary and legal support and an integration path with a language course for studies or work, for the victims who are afraid of their exploiters. In the social path, the request to the Chief of Police (*Questore*) for the issuing of a residence permit is made by associations, NGOs or public social services as referred in the letter a) of the Art. 27²⁰¹. The permit can be renewed after six months, for another six months, being renewable for a work or study permit. The permit allows the victim to be integrated in the social context, normally providing a traineeship in the work sector, yet, it has been regarded that sometimes one year is not enough to the victim to become independent.

Despite the innovative regard on the protection of the victim by the granting of the residence permit for social reasons, it has been verified that many *Questore* have demonstrated to be reluctant to grant the permit for humanitarian reasons, due to the lack of pressing charges (GRETA, 2014; OSCE, 2013; IOM, 2015). In fact, many women are reluctant to press charges against their exploiter, not only because they might be afraid of the consequences for them and their family, but also because not always the woman feels that she is a victim, since she thinks it is fair to pay the debt (Fernandez, Garzón, Juan & Contreras, 2017). Giving the inadequate application of Article 18, - especially of its "social path" - throughout the country, in 2007, the Ministry of Internal Affairs sent a circular letter²⁰² to all Prefecture and *Questore*, requiring them a homogeneous application of the granting of the Art.18 residence permit. Regarding the lack of application of the so-called "social-path", it is worth it mentioning that the association ASGI has directed a case of a Nigerian human trafficking victim that has seen the denial of her permit and recognition of her rights on the closing of the sentence of the Council State n. 6347 deposit on the 22.12.14. Her appeal to the European Court of Human Rights will be based on the violation of the Art.4 of the Convention that regards the "Prohibition of slavery and forced labour".

Unfortunately, there is no data regarding the application of Art.18 according to the application of the social path and the judicial path and this impedes to understand

²⁰¹ Art. 27 of the Decree of the President of Republic 394/1999

²⁰² Rome, 28th May 2007

the real influence of providing witnessing to the authorities (OSCE, 2013). The only data provided is regarding the Art.18 and Art.13, which is the one available on the Department on Equal Opportunities that demonstrates the decline of the number of human trafficking victims²⁰³, not because of the reduced number of identified victims, but due to the insufficient financing in the last years. Furthermore, the provided data only demonstrates the number of victims that have actually proceeded with the Art.18 path, which in the majority of the cases ignores the cases that have started and did not finish that are mainly attributed to the victims that have pressed charges. Therefore, in order to have a full framework of the flagged victims that have been involved in an Art.18's protection path, it is needed to have not only the number of granting permits Art.18 divided by social path and judicial path, but also the number of victims that have started the protection path and for any reason did not finish. Furthermore, in case the victim decides to undergo with the social path, the protection structures that are also connected to the anti-trafficking system of Art.18 have also demonstrated in some cases to deny the protection due to the absence of the permit (IOM, 2015).

In Italy, the official number of human trafficking victims, until the exit of the National Plan in February 2016 that has merged Art.13 and Art.18, is provided by the Ministry of Equal Opportunities in the granting of the previously mentioned articles. In fact, in 2015, the Eurostat report has declared that Italy had from 2010 until 2012, around 6572 victims. However, these numbers are not the result of all the victims that have been identified as human trafficking victims, but from the addition of the human trafficking victims that have been granted the Art.13 permit with the Art.18. Therefore, even if many victims before have been granted the permit of Art.18 had a three month permit through Art.13, the EUROSTAT has doubled counted the same victim that had previously done an Art.13 and then, has passed to an Art.18 permit. This was also before the main granting of International Protection to human trafficking victims and Humanitarian Protection.²⁰⁴ Hence, now the data regarding the granting of permits to

²⁰³ 2011: 1955 (Art.13+Art.18); 2012: 1650(Art.13+Art.18);; 2013: 756 (Art.13+Art.18); 2014: 424(Art.13+Art.18)

²⁰⁴ In Italy there are three types of protection to an asylum seeker:

- Refugee Status: This permit has duration of 5 years and allows the access to study and work, being renewable for a work permit. It also allows family reunification and a travelling title with the same use as the passport (Art. 28 of the Geneva convention1951). Furthermore the refugee has also access the treatment as an Italian citizen regarding social and sanitary support and public accommodation;
- Subsidiary Protection: This permit has duration of 5 years and allows the access to study and work, being

human trafficking victims should not be only the granting of Art.18, but also the granting of International and Humanitarian Protection for the motive for human trafficking victims. This is mainly due to the fact that the system of asylum seekers is an exact counting system that can provide the exact counting of International Protection granted to human trafficking victims. However, until the moment there has been no monitoring on the number of International and Humanitarian Protection granted to human trafficking victims.

In 2003, by amending the Italian criminal code, with the implementation of the Law Decree 228/2003, the Italian government initiated to apply the ratification of the UN Protocol on Human Trafficking, proceeded by the revision of the articles regarding human trafficking, such as art. 600 “Placing or holding a person in a condition of slavery or servitude”²⁰⁵, art. 601 “Trafficking in human beings” and art. 602 “Purchase and sale of slaves”. The final application of the Palermo Protocol was implemented in Italy through the law 16th March of 2006 n°146. In 2013, the Representative of OSCE has elaborated a report during her visit in Italy, in which she was able to identify the low number of prosecutions in Italy under the Art.600 and Art.601 of the Italian Penal Code. The presentation of such low number of cases was clarified based on the complexity of the definition provided by the Art.600, especially in cases regarding labour exploitation, where it is difficult to prove the “continuous subjection”, due to strategies such as

renewable for a work permit. Access to a travelling permit in case the asylum seeker cannot have access to a passport through the embassy in Italy. Furthermore the asylum seeker has also access the treatment as an Italian citizen regarding social and sanitary support and public accommodation;

•Humanitarian Protection: This permit has duration of 2 years, allowing access to study and work and being renewable for a work permit. Access to the right of family reunion according to the requirements of the law Decree n. 286/1998. . Furthermore the asylum seeker has also access the treatment as an Italian citizen regarding social and sanitary support and public accommodation (according to the art.14, comma 4 del DPR 12 January 2015, n.21, that previews the biannual of the residence permit for humanitarian purposes, in case that the asylum seeker is interested to have a working activity as required in the Art. 40, comma 6 del Law Decree n. 286/1998, the asylum seeker can have access to public accommodation.

²⁰⁵ Art. 600. – (Placing or holding a person in conditions of slavery or servitude). – Whoever exerts on any other person powers and rights corresponding to ownership; places or holds any other person in conditions of continuing enslavement, sexually exploiting such person, imposing coerced labour or forcing said person into begging, or exploiting him/her in any other way, shall be punished with imprisonment from eight to twenty years.

Placement or maintenance in a position of slavery occur when use is made of violence, threat, deceit, or abuse of power; or when anyone takes advantage of a situation of physical or mental inferiority and poverty; or when money is promised, payments are made or other kinds of benefits are promised to those who are responsible for the person in question.

The aforesaid penalty becomes harsher, increasing by one third to 50%, if the offences referred to in the first paragraph above are perpetrated against minors under eighteen or for sexual exploitation, prostitution or organ removal purposes”.

psychological manipulation and the use of debt bondage (OSCE, 2013). The definition yet, has been changed with the Law Decree No. 24/2014²⁰⁶, which has entered into force on 28th March 2014.

With the same law decree of 228/2003, Italy applies Art.13²⁰⁷, which grants to the victim the permit “for the reflection period” of three months, being renewable for another three months. This short-term permit provided to the victim it is also a supply of basic needs that would include accommodation, health care, counseling and legal assistance. However, with the recent implementation of the National Anti-Trafficking Plan, released on 26th February 2016, the implementation of Art.13 was annulled, by putting Art.13 and Art.18 together. The funding of these protection paths is provided through the application of a call for tenders by the Department of Equal Opportunities, which provides 70% of the budget for the Art.18, while the other 30% is provided by the local authorities.

Despite that a large number of victims has been protected under the Art.13 and Art.18²⁰⁸, the funds provided for the protection of victims have been reduced during the years, which, until 2013, has consequently reduced the number of assisted people. In fact, the GRETA group in its 2014 Report (GRETA, 2014) has urged to the Italian government to adequate the protection funding to the real number of the victims. Due to the noticed crisis in 2013, there was a huge delay on the allocation of funds, which has led the representative of OSCE for THB to propose the application of Art.12 of the Law

²⁰⁶ “A term of imprisonment of from eight to twenty years shall be applied to whoever recruits, introduces into the territory of the State, transfers even outside said territory, transports, yields authority over a person to another person, offers lodging to one or more persons who are in the conditions specified in Article 600, or performs the said conducts against one or more persons by deceit, violence, threats, abuse of authority or taking advantage of a situation of vulnerability, or of a weaker physical or psychic condition or a condition of need, or by promising or giving money or of any other advantage to the person having control over that person, for the purpose of inducing or forcing him/her to perform work, sex or to beg or, in any case, to perform unlawful activities entailing his/her exploitation or removal of organs. The same penalty shall apply to whoever, even without using the “means” provided for in the first paragraph, performs conducts set forth therein against a minor.”

²⁰⁷ 1. “Excepting all cases envisaged by Article 16-bis of decree-law n. 8 dated January 15, 1991, converted and amended by Law n. 82 dated March 15, 1991 and subsequent modifications, a special support programme is hereby launched for the victims of the offences envisaged by Articles 600 and 601 of the Penal Code, as replaced by Articles 1 and 2 respectively of this present Act. Said programme shall be carried out within the limits of the resources referred to in Paragraph 3; it shall aim at temporarily guaranteeing adequate accommodation, food and healthcare conditions to the aforesaid victims. The above-mentioned programme shall be defined by a regulation to be adopted under Article 17, paragraph 1, of Law n. 400 dated August 23, 1988, upon the proposal of the Minister for Gender Equality, liaising with the Minister of the Interior and the Minister of Justice.”

²⁰⁸ Civil society organizations have assisted around 65,000 persons between 2000 and 2012, of whom 21,378 received a residence permit, according to the data of the Department of Equal Opportunities.

228/2003 that allocates the funds for the social integration of the victims, through the confiscation of assets from the criminal networks (OSCE, 2013). In 2016, the last call has provided an amount of 13 million of euro, which, despite of its increase regarding the past years (in 2013 the funding from the Equal Opportunities Department was 8 million) the anti-trafficking protection system based on the Art.18 is foreseen to be in crisis. This crisis is mainly based on the increased number of Nigerian women that have arrived in the last three years (85 in 2012, 433 in 2013, 1454 in 2015, 5.633 in 2015 and 11.009 in 2016).²⁰⁹

*“At the moment the demand is very high and the protection paths need to be taken with time. Some years ago, it was very difficult to find a human trafficking victim, yet, nowadays, they are so many, that now the funding that it is provided is not enough and the department of Equal Opportunities is shocked [that despite there was a rise of the funding, in the last year it has demonstrated to be insufficient to the number of victims seeking for protection]”.*²¹⁰

As noticed until now, the protection under Art.18 was deeply connected with the grant of residence permit that would also allow a protection path of the victim by the supply of main basic needs, such as accommodation, but also complementary support, such as psychological, legal and work integration. Therefore, tutoring the victim and granting a humanitarian permit were deeply dependent from one another. As for Art.13, its introduction also came to complement the tutoring of human trafficking victims that did not exactly need the grant of a permit to stay in the territory, such as EU citizens that were not able to have access to the protection measures provided by the Art.18. Therefore, in order to avoid being confronted with a major number of Romanian and Bulgarian victims that from 1st January 2007 would be considered EU citizens, the legislators have approved the Art.6, comma 4 of the Law Decree 300/2006 that separates the victim’s tutoring from the grant permit for humanitarian purposes. Therefore, with the implementation of this decree, the EU citizen, including also Italian citizens has started to have access to all the protection measures previewed by the Art.18, in case of danger. In this way, the legislator separates the protection, assistance

²⁰⁹ Data provided by IOM Italy.

²¹⁰ Interview number 30 (third sector), 22/02/2017, Italy

and social integration of the victim from the granting of the humanitarian permit of Art.18.

“We are fighting for this, clearly the authorities should do a report of the offence, and we are doing a work of awareness on this, with the Procura there is an openness that is giving us hope. Then, from the Penal point of view, they have to say how to put together the types of offence, but they want the witnessing, also because the women tend to say yes in one day and, in the next day they change their minds for being afraid and they do not see the advantage.”²¹¹

However, the application to the path of the Art.18 was still based with the collaboration of the stakeholder from the civil society with the *Quaestor* that has to verify the imminent situation of danger to the victim in order to approve the social path. With the application of this Law, Decree, the main characteristic of Art.18 that was granted a protection permit as a “prize” to the victim, as a result of exiting from sexual exploitation has vanished (Macini, 2007). Therefore, the application of this Law Decree not only has provided the access to protection measures to the EU citizens that were not in need of a residence permit, but also has put the tutoring of the third country victims as a separated issue that I will further analyse on the situation on the current overlap between asylum seekers and human trafficking victims.

2.3.3.1 Protection policies for victims of sexual exploitation and Labour exploitation in Italy

In a land of massive migration flows, as Italy is, where different vulnerable categories, such as refugees, non-accompanied minors and victims of human trafficking are crossed with the so-called economic migrants, it is difficult to provide a regular status²¹² to all migrants that arrive. However, the refusal of permanence permission on the Italian territory leads migrants from third countries into a major vulnerability and exposure to exploitation (Carchedi, 2003). This exposure to exploitation followed by the smuggling phase has led that victims of trafficking have received more attention from

²¹¹ Interview number 30 (third sector), 22/02/2017, Italy

²¹² The regular statuses are divided on Refugee Status, Subsidiary protection, Humanitarian protection and protection for human trafficking victims.

the States (Van der Leun, Van Schijndel, 2015) rather than other categories. However, despite the large numbers of potential human trafficking victims for labour exploitation, the granting of Art. 18 has been mainly attributed for victims of sexual exploitation, since there is more attention on sexual exploitation rather than labour exploitation, especially from the associations (Bosco et al., 2009; Wijers and van Doornick, 2005) and also because many victims of labour exploitation do not perceive themselves as being victimised, since they probably have had similar treatment in their origin country (Carchedi and Orfano, 2007).

As previously mentioned, Italy has improved its legislation on the protection of victims, as well as prosecution of the exploiters. This “protective perspective” opposes to the legal irregular migration control perceived in the country, being understood from a punitive perspective (Guia, Van Der Woude, & Van Der Leun, 2013). The application of both perspectives can lead into a legal conflict, in which the legal framework is not clear, as it has been demonstrated in cases of potential labour exploitation (Van der Leun, Van Schijndel, 2015). Therefore, the implementation of a national legislation on human trafficking in Italy has stretched migration policies into two different directions, not only on protection measures, but also on prosecution measures.

In Italy, despite the labour exploitation of irregular migrants in segmented work that has proliferated in the last decades due to the massive migration flows (Ambrosini, 2012), only in recent years the country has applied more restrictive prosecution measures to tackle labour exploitation²¹³. In fact, it is not difficult to find massive

²¹³ The social attention to the problem has mainly emerged with extreme situations regarding labour exploitation in the last years. Among these cases was the manifestation of migrants being exploited on the fields of Rosarno that has led to the famous Law of Rosarno. The other one, was the death of a Senegalese migrant in Campobello di Mazara in 2013, while was cooking. After the death of the migrant the undignified and exploitative conditions have come to the surface and emerged the creation of a group of citizens have put themselves together to found the movement “LibertAria”. The group has started to work on the living conditions of the migrants, yet not that much attention, besides people engaged on the social sector was raised. The one that has emerged more social uprising was the publication of Newspaper Espresso, in September 2014 of the article Raped in the silence of Ragusa. The new horror of the Romanian Slaves. (Please see: <http://espresso.repubblica.it/inchieste/2014/09/15/news/violentate-nel-silenzio-dei-campi-a-ragusa-il-nuovo-orrore-delle-schiave-rumene-1.180119>). As we can understand from the title, the revolt was not mainly regarding the labour exploitation of the Romanian migrants in the camps, including women and men, but the sexual exploitation suffered by the women. Again, despite the noticeable exploitative labour conditions of the migrants, the major focus was given only to the women. The third one was the death of an Italian woman from Puglia in 2015, while she was working in the harvesting of strawberries. The happening has emerged the uprising of hard working conditions of Italian agricultural workers, in which has taken the Minister of Agricultural, Food and Forestry Policies, Maurizio Martina declared that gangmastering, the so-called “Caporalato” in agriculture is as phenomenon to tackle as it was the mafia and in order to do that it is needed the mobilization of all:

exploitative situations of irregular and regular migrants, especially in the agricultural enterprises.²¹⁴ Nevertheless, these situations are where grey areas cross, since, from an imprecise and unlimited definition of exploitation, it is difficult to position between severe labour conditions and human trafficking for labour exploitation (Skrivankova, 2010). Therefore, is in these grey areas that the State defies the recognition of protection and labour rights to a large number of irregular migrants, since it can be an unwanted proposal for the State. Furthermore, irregular migrant workers, especially male are tending to see as offenders, especially in possession of false documents, rather than human trafficking victims (Leerkes, Engbersen, & Van Der Leun, 2012).

The Italian legislation regarding exploited migrants has seen an evolution in the last two decades. On the National Legal framework regarding migration, *Il Testo Unico sull'Immigrazione*²¹⁵, the prosecution of the exploiter and the protection of labour exploited victims it was not directly confronted. It has though, obliged the employer in declaring the residence and employment of the migrant, through Art.7, coma 1, and through Art.22 coma 10. The prosecution of labour exploitation was only later introduced in the penal code with the Art.603 bis²¹⁶, through the Law Decree 13 July 2011, n. 13, in an attempt of being in conformity with the European Directive 2009/52/EC. In order to identify a potential exploitative situation, the Article describes potential indicators, such as wage, working hours, health and safety in the workplace and general working and living conditions. However, critics have been made to the application of this Article²¹⁷, since, before being amended in 2016, it addressed mainly the gangmasters, who are normally conational of the victims, rather than the employer himself, who is normally an Italian citizen (Amnesty International, 2012; GRETA, 2014). Furthermore, the legislation is formulated in a way that has been difficult to be applied, leading the GRETA group (2014) to advise the Italian government to adopt legislation that criminalises the use of exploitative work.

institutions, enterprises, associations and work unions”.

²¹⁴ See the cases mentioned previously: Rosarno, Ragusa, CampoBello di Mazara

²¹⁵ Law Decree 25th July 1998, n. 286, "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero", published in Gazzetta Ufficiale n. 191 del 18 August 1998 - Supplemento Ordinario n. 139.

²¹⁶ Introduced by Law Decree No. 138/2011 converted into Law No. 148/2011) and defined as “conducting organised brokering activities by recruiting workers or organising their working activity with a view to exploiting them, through the use of violence, threat or intimidation, or taking advantage of their vulnerable condition or state of need”. The crime is punished with detention from five to eight years and with a fine ranging from 1 000 to 2 000 euro for each of the workers recruited.

²¹⁷ Article 603-bis of the Criminal Code, introduced by Article 12, Law No. 148, 14 September 2011

Until the application of the “Law of Rosarno”²¹⁸ in 2012, the application of protection provided by Art.18, normally applied to sexually exploited victims, has demonstrated to be difficult to be applied to human trafficked victims for labour purposes. The Rosarno Law has introduced aggravating factors to the employment of irregular migrants, mainly based on the exploitative conditions that migrants are subjected. Furthermore, the Law has also a victim-centred approach, since, it persuades the migrants to press charges against their exploiters by granting a humanitarian permit (Amnesty, 2012). However, as said above, despite the difficult application of the protection previewed, often due to the absence of demonstration of imminent risk of the victim subjugated to a criminal organization, the application of this protection has seen an increase in the last years, through the judicial path.

The application of protection for labour exploited victims was mainly applied after, by the Legislative Decree 109/12 (that amended the art. 22 of the Consolidated Law on Immigration 286/98), with a very low rate of granted protection permits. However, again the law leaves space to ambiguities, since it does not give any parameter for “a specific labour exploitation” and it has to be accompanied by the aggravated forms previewed in Article 603-bis, paragraph 3, of the CC (i.e. at least three persons are concerned, or at least one of the workers concerned is less than 16 years old, or the person is exposed to serious dangers related to the characteristics of work or the working conditions). Furthermore, on the contrary of Art.18, the Art. 22-bis obliges the victim into a judicial path, which is not always considered desirable for the victim. However, as Art.18, Art.22 it is attributed to irregular migrants, while the majority of the agriculture workers in the last years are European Union’s citizens (Palumbo, 2016).

Since the beginning, that the Law of Rosarno has demonstrated to not be fully applied, especially since that many of the offenders in labour exploitation are Italian citizens, which has taken François Crépeau²¹⁹ to advise the Italian government to fully apply the law. In fact, is not only important the writing of the legislation, but its implementation, since state representatives can still not apply the legal procedures

²¹⁸ D.Law. n. 109 of 16 July 2012 (“legge Rosarno”), which is the application of the Directive 2009/52/CE of the European Parliament and European Council of 18 June 2009, that introduces minimum sanctions to the employers that

Hire migrants from third countries without a residence permit, profiting their irregular residence situation to exploit them.

²¹⁹ Special Rapporteur of United Nations for Human Rights of Migrants, François Crépeau, Addendum: Missione in Italia (29 September–8 October 2012), UN Doc. A/HRC/23/46/Add.3, 30 April 2013, par. 87.

(Lipsky, 1980). Furthermore, the law has not fully transposed the Directive 2009/52/CE, as it does not strike economically the Italian employers by the non-provision of exclusion from EU and national funding; exclusion from participation in public contracts; closure of the work establishments or withdrawal of necessary licenses; imposition of an obligation to make back payments of outstanding remuneration to the irregular migrant workers (ASGI, 2012).²²⁰

The avoidance of the implementation of such measures reflects the denial of the Italian government in striking its own citizens. However, recently, the Art. 603-bis has been modified by the Law 199/2016, in the act since 4th November 2016, which also represses the employer²²¹. The development of the Italian laws on the repression of human trafficking, as well as the protection of victims reflects the migration agenda of Italy, in criminalizing mainly exploiters who are migrants, rather than Italian citizens.

2.3.4 The overlap between asylum seeker and human trafficking victims

As previously referred, the grant of Art.18 has been a struggle to the human trafficking victims that do not want to press charges, when there is the submission and subjection of the person, but not an actual danger. Furthermore, the legislation foresees that the victim has already been exploited. Therefore, with the increased number of Nigerian women arrived in the last three years, in which, according to the Head of OIM' mission in Italy, Federico Soda, 80% of them are destined to sexual exploitation (Sironi, 2016), the Italian protection services have been confronted with a new profile of human trafficking victims. In this case, the Italian government has found itself in a situation of an exponential arrival of potential human trafficking victims, before a confirmed exploitation within the Italian territory.

²²⁰ For more information on the subject: ASGI, Osservazioni allo schema di Decreto Legislativo recante attuazione della Direttiva 2009/52/CE che introduce norme minime relative a sanzioni e a provvedimenti nei confronti di datori di lavoro che impiegano cittadini di paesi terzi il cui soggiorno è irregolare, 14 May 2012, p3.

²²¹ Following the amendments, the provision provides sanctions (with imprisonment from 1 to 6 years and a fine ranging from 500 to 1,000 euro for each recruited worker): o the illicit conduct of the so-called 'gangmaster', which according to the current wording includes the recruitment of labour on behalf of third parties, under exploitative conditions, taking advantage of the state of need; o the conduct of the employer who uses, hires or employs workers recruited in the manner referred to above. The law provides a more severe penalty (with the application of imprisonment from 5 to 8 years and a fine of 1,000 to 2,000 euro for each worker recruited), in relation to 'gangmastering' committed with violence and threats (paragraph 2). Finally, the reformulated offence continues to provide for (paragraph 3) the enumeration of some symptomatic indices of worker exploitation, as well as three specific aggravating circumstances of the crime (under paragraph 4), increasing of the sentence from a third to a half;

The arrival of these women by boat that come within the mixed flows²²², combined with an enhance of rescue of migrants in the Mediterranean and a major coordination system for the identification of migrants and the procedures of asylum, has led to a major overlap between potential human trafficking victims and asylum seekers. In fact, in the report of the visit of OSCE's representatives of Human Trafficking, it is urged to the Italian authorities the access and ensure of legal counselling and orientation services to asylum seekers and undocumented foreigners that are hosted within CDA²²³, CARA²²⁴ and CIE²²⁵ in order to identify potential human trafficking victims.

The access to the asylum seekers in the structures is very important, since during the disembarkation, despite that there is a majority of potential human trafficking victims among Nigerian women, it is also true that all the asylum seekers arrive in Italy with high levels of distress, which renders the identification of human trafficking victims very difficult. Therefore, only when associations have access to the centre that they are able to identify potential human trafficking victims, since they tend to demonstrate a state of depression, normally with symptoms of hyperactivity and anger or dissociative disorder that can also be within the complex of Post Traumatic Stress.

“We work with the victims of torture, yet we realise that sometimes the victims of torture are also potential victims of human trafficking, which normally present important dissociative disorder symptoms. For instance the alternation of the state of consciousness, the mind goes to another place. In order to understand this we normally ask the girl: does it normally happens to you in loosing yourself in your thoughts and you do not realise that has passed an hour and then somebody comes and they scare you, because you did not realise that someone was coming? Which they normally

²²² According to UNHCR, mixed migration flows are “A movement in which a number of persons are travelling together, generally in an irregular manner, using the same routes and “means” of transport, but for different reasons. Persons travelling as part of mixed movements have varying needs and profiles and may include asylum-seekers, refugees, trafficked persons, unaccompanied/separated children, and migrants in an irregular situation.” Also referred to as mixed movements or mixed migration.” Source: UNHCR, Refugee Protection and Mixed Migration: the 10-Point Plan in Action (Geneva, 2011), p. 291.

²²³ CDA- Reception Centers (Centri Di Accoglienza), Law no. 563/95, emergency and first assistance centers. Migrants are kept in these facilities for the time necessary to establish identity, legitimacy of entry and possible immediate removal to the country of origin.

²²⁴ CARA-Reception Centres for Asylum Seekers (Centro di Accoglienza per Richiedenti Asilo).

²²⁵ CIE, Identification and Expulsion Centers (Centri di Identificazione ed Espulsione), legislative decree 23 May 2008, no. 92 and art. 14 law no. 286/1998, are closed facilities where undocumented migrants are hosted from 180 days to 18 months, pending their identification prior their forced removal to the country of origin.

*answer: yes, but I was not here I was in another life!*²²⁶

*“There were these three women that the Territorial Commission of C. has seen the indicators of vulnerability, and we have analysed the hypothesis of human trafficking, but this would come out of our certification. Therefore, the humanitarian protection was given at the base of a psychological evaluation and not regarding the situation of human trafficking. For instance, girls that have been recognised as human trafficking victims by the Territorial Commission have still not have their protection, because there is an absence of identification of the anti-trafficking referent.”*²²⁷

Since 2015 that the Anti-Trafficking system has changed due to the increase of Nigerian human trafficking victims, including not only the central responsibility of the anti-trafficking system, but also the inclusion of other stakeholders. For instance, in the Region of Emilia Romagna, this has changed all the procedures and the nature of their projects, where the passage to a path of Art.18 is not the same as it was before. Hence, the nature of Art.18 as it was known, cannot be considered as it was before, even if it is not publicly affirmed. This situation is not only a result of the arrival of the 11.009 Nigerians in 2016 that are all included in the asylum seeker system, which previews the obligatory hosting in the reception centre, but also a cross of several factors that have derived from the new trends and uses of the criminal networks operating within the Italian territory.

These reception centres provide accomodation as well as other services such as psychological, and legal support as well as Italian courses for the asylum seekers during the asylum claim. The procedure can last two, three years until the final exit of the Territorial Commission²²⁸, plus the time for the appeal to the Court, in case of denial. The migration peak numbers that Italy has received after the Arab Spring, along with the agreement on the Dublin Regulation III (No. 604/2013) that was approved in June 2013, has emerged a Migration business in Italy, especially regarding the provision of accomodation that for a long time were not an object of control. Therefore, in order to

²²⁶ Interview number 24 (third sector), 20/02/2016, Italy

²²⁷ Interview number 24 (third sector), 20/02/2016, Italy

²²⁸ The Territorial Commission is composed by a member of the Prefecture, a member of the State Police, a member of UNHCR and a member of the local institutions.

supply the demand of asylum seeking requests in Italy, the Internal Affairs Ministry presents a Call for Proposals in order to achieve the necessary number of beds to host asylum seekers. This has given the possibility that people who were mainly tourism entrepreneurs and had a building, were able to present the call and start operating in the third sector without the required training, experience and capacity.

The CAS are structures that were supposed to host the asylum seekers only for three months, in order for them to proceed to a SPRAR reception center. However, due to a high verified number of migrants, the asylum seekers tend to overstay in the CAS, passing the previewed three months that do not require so many activities or school. Furthermore, the lack of control of these structures along with the lack of experience of the workers have led that the traffickers would profit from this grey situation in order to exploit the women while hosted within these reception centres. This situation has been witnessed by many structures, in which sometimes the girls found themselves living in the same reception centre as their traffickers or their controllers. Furthermore, the structures' staff that is not trained to identify human trafficking victims, often declares to not be able to control the situation, especially because in many centres, such as the CAS there is no staff during the night who controls the exits of the asylum seekers. According to an interview to volunteer in a street unit²²⁹, there have been girls, who had just disembarked in Sicily that were being hosted in a centre, where some people inside the Center would mark their presence, while other people would give them a ride to the place where they were being exploited.

In order to better identify victims of human trafficking, IOM, which is responsible of VoTs in Italy, has set two main teams present at the disembarkation of the rescue boats. Their main goal is to provide legal information to all the potential human trafficking victims, being their selection normally based by nationality and gender, which is chiefly Nigerian women. At the arrival, many victims are accompanied by the Madam's collaborator, thus the IOM's team tend to identify the traffickers' collaborators and try to separate them from the victims, with the excuse of a sanitary visit. Another used strategy is to contact the authorities that are placed at the disembarkation and try to separate them, by leading them to different regions²³⁰, where normally the potential

²²⁹ Interview number 1 (third sector), 22/03/2016, Italy

²³⁰ When migrants disembark there are several coaches that take the asylum seekers to different regions in the Italian territory.

victims are directed to special centres (IOM, 2015). After the arrival, the team that is displaced through Sicily and Apulia in the different reception centre tries to identify potential human trafficking victims through the arrangement of interviews where “pattern indicators” can be identified. In a second round of interviews, the staff normally describes a different behaviour of the human trafficking victim with major angry, anxious, scarce self-esteem, depression mistrust, going normally away from the centre and being normally long hours on the telephone (IOM, 2017).

Furthermore, IOM has developed an informal agreement with the Territorial Commissions of Bari, Foggia, Lecce, Catania, Palermo, Siracusa, Trapani, Caltanissetta e Agrigento²³¹, in which in case of the identification of potential human trafficking indicators, the IOM team proceeds with special interviews with the potential human trafficking victim. In these cases, the potential victim is normally accompanied by a protection program and is able to choose the granting permit, in this case the International or Humanitarian Protection or the Art.18 permit (IOM, 2015).

By going into the several reception centres, in order to identify potential human trafficking victims, the IOM’s team is able to have a safe and quiet interview with the asylum seekers, normally with a major attention to Nigerian women. Therefore, during the interview and in order to provide a safe environment for the victim, the only allowed people are the interviewer, the cultural mediator, a legal counsellor and in case of a minor, the tutor. The enhance of a deepen acknowledgement on the asylum seekers after their arrival on the Italian territory by a specialist on human trafficking has allowed to a major identification of the victims before and during their exploitation. For instance, in 2014, IOM was able to identify around 2024 in Sicily and 754 victims in Apulia²³² (IOM, 2015). However, the identification of human trafficking victims among asylum seekers is still not easy, due to the factors of shame, fear, trauma, subjection or proximity to the traffickers, threats or absence of effective information on the procedures (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014).

Despite the large number of potential human trafficking victims identified by the IOM, the Ministry of Interior has issued only a number of 494 permits of Art.18 until August 2016, from which only 139 permits were granted to Nigerian women, for a total

²³¹ The number of victims reported by the mentioned Territorial Commissions to IOM until October 2015 was 73 (IOM, 2015).

²³² These numbers are from April 2014 until October 2015.

of 9477 Nigerian women that have arrived until August 2016 (GRETA G., 2016). The problem that has emerged in the recent years was that despite the Art.18 had had an enormous success at the beginning of its implementation, it was very difficult to be applied in these situations for three main reasons. The first reason was that many asylum seekers presented a situation of potential human trafficking victims due to the presented pattern indicators. Nevertheless, it was verified that many of them were still not exploited, which put in difficulty the granting of Art.18 that is previewed after the exploitation period of the victim. The second motive, still related to the element of exploitation is that many asylum seekers were actually exploited, but in transit countries and not in the Italian territory. This situation has also emerged the impossibility to undergo with a deepen investigation of the case, especially since many victims were very confused and not aware about the identity of their traffickers. The last obstacle to the grant of Art.18 is the element of proving “ a situation of danger on the destination territory”. In fact, since many victims were still not in contact with the traffickers, the presence of being threatened on the national territory has not demonstrated to be effective in many cases. However, most of the Nigerian asylum seekers, who were potential human trafficking victims have demonstrated to be in a situation of danger, in case of returning to their origin country.

In fact, it is based on motives of insecurity on the origin country that the Territorial Commissions have started to grant the International Protection to potential human trafficking victims²³³. Furthermore, the several judge statements present Nigeria as a country, which citizens are in a position of danger being also at risk of inhuman and degrading treatment. Other arguments have also been presented to grant International and Humanitarian Protection permits to human trafficking victims, such as belonging to a particular vulnerable group. As mentioned in the first chapter, on the judgement 10012810 of the French National Court for Asylum Rights (La court nationale du droit d’asile)²³⁴, in which the judge has declared that the victim would be exposed to several typologies of risks. On the Judgment, it is possible to read the affirmation of exposure in Nigeria to 1) the juju ritual in front of the Temple of Ayelala, where a priest will require to the victim the total debt owned to the exploiter; 2) the danger of the victim’s family and the risk and exposure of the victim and the victim’s family; 3) the human trafficking

²³³ Please see the Judgment 3236/2015, Trial court of Trieste

²³⁴ Audience, 3rd March 2015, Lecture on the 24th March 2015.

victims coming from Europe are normally emarginated from the society, being mainly recognised as an impure emarginated group with diseases due to their “immoral behaviour in Europe”; 4) the lack of a proper protection and implementation of effective penal prosecutions due to the high level of corruption in the country. By the gathering of all these features combined on the situation of the Nigerian human trafficking victims that are deported in the origin country, the National French Court on the Right of Asylum has declared Nigerian women from Benin City as a vulnerable group.

Despite that previously there was a reduced number of asylum grants to human trafficking victims Italy, the International and Humanitarian Protection was mainly based on the UNHCR Guidelines (UNHCR, 2006) that recognises the overlap between human trafficking and smuggling of migrants. Furthermore, the UNHCR Guidelines are based mainly on the fear of persecution in the origin country that is based on “serious human rights violations, including a threat to life or freedom, as well as other kinds of serious harm or intolerable predicament, as assessed in the light of the opinions, feelings and psychological make-up of the asylum applicant²³⁵”. Human trafficking victims can be particularly granted the refugee status through the motive of race or nationality, since “in the absence of armed conflict, members of one racial group may still be particularly targeted for trafficking for varied ends, if the State is unable or unwilling to protect members of that group²³⁶” or a particular social group as “Women are an example of a social subset of individuals who are defined by innate and immutable characteristics and are frequently treated differently to men. As such, they may constitute a particular social group²³⁷” .

The UNHCR Guidelines describe that in spite that not all human trafficking victims enter on the definition of refugee, as observed on the judicial statement earlier mentioned “the Office has a responsibility to ensure that individuals who have been trafficked and who fear being subjected to persecution upon a return to their country of origin, or individuals who fear being trafficked, whose claim to international protection falls within the refugee definition contained in the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (hereinafter “the 1951 Convention”) are

²³⁵ Paragraph 14, Page 6

²³⁶ Paragraph 34, Page 12

²³⁷ Paragraph 38, Page 14

recognised as refugees and afforded the corresponding international protection.”²³⁸

The UNHCR Guidelines that are in harmony with the Art.14 of the Protocol of Palermo, as well as with the Art.10 of the 24/2014 Decree Law that is the adoption of the Directive 2011/36/UE recognise the need to provide to the victim the necessary protection and assistance. In fact, the article previews the coordination between institutions working on the asylum seeker and organizations working on the Art.18, by the provision of the Art.18 protection path, under an International and Humanitarian Protection permit.

*“Whoever has a status, humanitarian or subsidiary protection the project is always the same as Art.18 and the protection paths are always personalized. Because, if they don't have a migration project, they will do it here.”*²³⁹

However, despite the evolution of the legislative framework of the relation between human trafficking, protection system and asylum seeker system, there are some Territorial Commissions that interrupt the asylum claim, in the presence of human trafficking indicators, in order to start a request for a humanitarian protection under Art.18. In this case, despite that the victim has still access to the full protection under the Art.18, chronologically the International and Humanitarian Protection are an advantage, since it can be from 2 years to 5 years. On the other side, it has been verified that some recognised human trafficking victims by the Territorial Commission did not have access to the particular support previously provided by Art.18 that included, besides the accomodation, the access to legal and psychological support as well as the introduction to a work grant. Therefore, the victims that have continued to be in the same structures as before, by lacking a purposed access to tutorship have continued to be exploited, even in possession of an International or Humanitarian Protection.

In December 2016, the Ministry of the Internal Affairs, along with the UNHCR (UNHCR, 2016) has provided a manual of guidelines for all the Territorial Commissions, with the aim to recognise and to guide the procedure of the identification of human trafficking victims. However, the main problem has not emerged on the identification of human trafficking victims, but on the possibility in providing them an

²³⁸ Paragraph 5, Page 3

²³⁹ Interview number 31 (third sector), 22/02/2017, Italy

adequate protection path. In fact, due to the unlimited possibilities provided by the guidelines, the guidelines were adopted by the different Territorial Commission in a heterogeneous way.

This has been verified because despite the recent call disposal of funding under the Art.18, which is normally though for a number not higher than 3000 people, the associations have demonstrated to have already overcome the number of victims under protection, due to the large numbers of victims in need of protection. For instance, an association funded by the Art.18 has declared to receive a call for protection each day. In fact, the National Plan that was finally published in 26th February 2016 (Affairs M, 2016) has provided a fund of 15 million euro to the protection of human trafficking victims, and despite that the amount is higher than in the previous years, with the increased human trafficking victims, the funding has revealed already to be insufficient to the current number of victims asking for protection²⁴⁰.

Furthermore, the guidelines preview the integration of the asylum seekers under the Art.18, when as previously mentioned, the majority of the identified victims have not the features previewed by the Art.18 victim, since that they have not been previously exploited or they have not been exploited in the Italian territory or are not in a situation of danger in the destination country. In fact, the victims that enter now as asylum seekers in the territory and are identified as human trafficking victims during the asylum request can have access to the Art.18 path after October 2015 under the Art.17 of the law decree 142/2015, even with other permits' categories. Of course that this situation has caused parallel circumstances, since that the protection path previously provided by Art.18 was deeply connected with the granting of the Art.18 permit, while the International Protection provided under the Art.17 of the Law decree 142/2015 is completely separated from the granted permit. Therefore, the International and Humanitarian Protection permit do not oblige the victim into a full protection programme, since the permit and the protection permit are totally separated.

As previously mentioned in this chapter, the granting of Art.18 was fully connected with a full conscious desire of the victim to not only exiting from the situation of exploitation, but also being forbidden on the exercise of prostitution. Therefore, now the International and Humanitarian Permit that is not attributed as a

²⁴⁰ Interview number 31 (third sector), 22/02/2017, Italy

prize to the victim that wants to exit the exploitation, but an independent legal permit in the territory, can also help the exploiters in maintaining the victim in the exploitative situation. This is the difference of the access between the “polo right” and the “polo tutorship” that are not the same thing. After two years of experiencing this overlap in the field, the anti-trafficking organizations are now more aware about the situation and are trying to understand the best solution in providing both access to rights and tutorship, in a situation that these instruments are not taken in advantage by the exploiters.

According to one of my interviews of a member of the anti-trafficking network²⁴¹, some Territorial Commissions, as the one from Ancona along with the National Commission of Rome want that the victims demonstrate the willing to escape from her exploitative situation or from liberal prostitution.

“This is because, only now they [Territorial Commissions] are learning what is human trafficking, since the Territorial Commissions has as component members of Questure, Prefecture, local entities and UNHCR. This is all new to them, so they use the same characteristics that we had twenty years ago, when Art.18 has started. Like: Did she know or did she not know [she was coming for prostitution]? Did she want it [to be engaged in prostitution]? Therefore, it is like the debate was still there, so when you understand that, the Ministry of the Internal Affairs is still there [on the debate prostitution/human trafficking].”²⁴²

As a result, from the interview it has come to the surface that people who work in the field, still confuse human trafficking for sexual exploitation purposes with prostitution, identifying prostitution as an exploitative activity *per se*. In fact, this mentality is still attached to the application of Art.18, which is considered to be a prize for the exiting of sexual exploitation. Therefore, and as mentioned before, the grant of the humanitarian permit of Art.18 should be only applied in case the woman exits from the sex industry, independently if she is exercising prostitution on her free will or being subjugated to the exploiters. The interesting fact in this case is that the organizations that are involved in the protection of victims of trafficking by Art.18 lack from a

²⁴¹ Interview number 29 (third sector), 06/03/2017, Italy

²⁴² Interview number 29 (third sector), 06/03/2017, Italy

uniform approach. In fact, on the call for proposals of Art.18, it is not mentioned if the victims are allowed to be engaged in prostitution during the protection period, the only referral in this case is that the victim is obliged to cut the relationship with the trafficker.

The problem in this case is that some of the women that engage in Art.18 still want to continue paying their exploiter, due to being afraid of the repercussions of threats and voodoo, which is one of the clauses that can be an obstacle to granting the permit Art.18. Furthermore, other victims intend to continue to be involved in sex industry even if they are still not engaged with their traffickers, since they still need to send money to their families back in Nigeria. Another common situation in this case is the women that start a path of Art.18, but with time, and due to the long duration of the path, they tend to abandon the path. According to Canepelle e Mancuso (2013), the statistics report an autonomous integration of the victim, who are mainly 26.1 % of the victims, while it has been verified an abandonment of the program of 9.6 % of the people assisted.

In fact, sometimes, due to the lack of information about the legal procedures the women try to return back to the Protection path that they have started, in which not often they are accepted. In this case, even if the woman is accepted by the anti-trafficking organization, sometimes the woman is transferred to another anti-trafficking organization in the Italian territory. During my interviews a referent for an anti-trafficking project explained that:

“We take the woman again, but we try to find another collocation with other anti-trafficking network, because this is educative for her, so she can understand that the path will be done with another structure that is not ours. Therefore, we do it like that, as from us to the other structures, as from the other structures to us, in fact we also have taken care of women that have started with other anti-trafficking organization that have interrupted the path and then they have finished with us.”²⁴³

However, even if the woman is accepted by the structure, in case of interruption of Art.18 and the intention to return to the protection path, it is not always accepted by the Questure, in order to restart the program to have access to the permit Art.18. Some

²⁴³ Interview number 30 (third sector), 22/02/2017, Italy

judicial statements have had a positive exit regarding the granting of Art.18 permit to victims that have interrupted their path, since that the Court has decided not to interpret literally the clause 4 of the Art.18 of the Law Decree 286/98.²⁴⁴

The heterogeneous approach of the different associations can sometimes be within in the same Art. 18 project. For instance the project “Oltre La Strada” of the Region Emilia Romagna englobes different municipalities and organizations that have different backgrounds and approaches regarding the sex industry. Therefore, there are organizations that even if the woman is within a path of Art.18, the staff is aware that the woman is still engaged in the sex industry, without having an exploiter, with the only scope to have money, while there are also other organizations that do not allow the engagement on the sex industry.²⁴⁵

There were attempts to write that the engagement in prostitution within the protection structures was forbidden, but since prostitution is not considered a crime in Italy, it has been considered invalid. On the other hand, in order also to avoid the engagement of the women in prostitution, these centers forbid the night exits, yet instead of avoiding prostitution, the restriction of going out during the night has shifted that many women would be involved in daily indoor prostitution.²⁴⁶ This situation has caused an internal debate, in which the Prefecture says that despite prostitution is not a crime in Italy, it should be forbidden during the protection path, since the women are being paid by the government. However, with the emergent typologies of CAS that are considered for asylum seekers that can also be victims of trafficking, it is already foreseen that the girl decides to interrupt the protection path and abandons the structure, which is forbidden in the normal typologies of CAS.

“We had a case of a girl that was pregnant and the street unit took her to do an abortion. This was a way to take her into protection in Bologna and thus we were wondering if it was better to take her to an anti-trafficking structure or if she could go to a reception center for asylum seekers. With the report of the girl’s story that she wants to continue her protection path, she was able to enter in a CAS. Of course that in

²⁴⁴ Court of Abruzzo judgment 24 of 12.01.12; Court of Veneto judgment 1150 of 13.12.06 TAR Friuli Venezia Giulia judgment 338 of 19.06.04; Court of Emilia Romagna judgment 4155del 9.12.04.

²⁴⁵ Interview 29 (third sector), 06/03/2017, Italy

²⁴⁶ Interview number 31(third sector), 22/02/2017, Italy

these CAS, we can put the rules that the hosts are forbidden to be involved in prostitution and that this person has to go to another CAS. Another possibility is to demonstrate that the asylum seeker has access to an income through prostitution and therefore they can expell the person or impeach the person to have access to pocket money. In fact, the pocket money is given through material things and not money, and in case the woman brings to the CAS material things that were not given by the CAS, then it is understood that the women have access to money from other sources.²⁴⁷

However, it is avoided to come up publically that some victims of human trafficking continue to be involved in prostitution, since their protection should be applied based on “the regret of being prostitutes” and not on the fact that “prostitution is an acceptable profit activity”. In fact, many projects Art.18 are well aware about the change that the protection instrument has had during the last years. Furthermore, despite it is not declared publically, it is well known that since 2007, when Romania has entered in the European Union²⁴⁸ that the protection permit has been separated from the protection path of the victims. As a matter a fact, at the time of the law, the majority of the identified victims of human trafficking were from Romanian origin (Barberi, 2007), who do not needed anymore the permit, but only the protection measures. Therefore, from the implementation of the Art.6, clause 4 of the Decree Law 300/2006, the grant of Art.18 is not connected anymore with the protection measures provided by the full package of Art.18.

2.3.5 Difficulties and Best Practices on the asylum seeking system for human trafficking victims

As previously mentioned, since 2013 that with the large increase of Nigerian women being redirected to the reception centre during the asylum claim that the Territorial Commission identifies some of these women as potential human trafficking victims. In fact, from the 11.009 Nigerian women that have arrived in Italy, IOM has declared that 8.000 of them are potential victims of sexual exploitation (Ziniti, 2017). Due to the large number of requests, the Territorial Commissions tend to take longer than the expected six months to determine the exit of the request. In fact, the duration

²⁴⁷ Interview number 31 (third sector), 22/02/2017, Italy

²⁴⁸ Art.6, clause 4 of the Law Decree 300/2006.

for the exit of the Territorial Commission, with the waiting of fulfilling the *Modulo C3* can go up to a year and up to two, three years in case of appeal to the Court.²⁴⁹ The long waiting for the exit of all procedures, in which migrants, despite of being able of working legally after two months²⁵⁰ in the territory, leads that the migrants normally search for underpaid jobs.

While male migrants are normally exploited in activities such as agriculture, construction or selling on the markets, Nigerian women are normally initiated in prostitution inside the reception centre. For instance, microcriminal activities, such as sexual exploitation and drug trafficking have started to emerge in large centres, such as CARA, where there are more migrants placed in one building and less control of the practitioners. For instance, near to Rome, some migrants and social workers have declared that the CARA, managed by the association Arci, has been a place of sexual exploitation as well as drug trafficking (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014). Another well known CARA in Italy for the overflow of hosted migrants is the CARA of Mineo, which is also known for a huge number of Nigerian girls who are sexually exploited during their stay in the centre (Condorelli, 2016).

*“We believe that the people that recruited the girls was within the centre, since that there are 3700, there is no control, thus you can also find there the exploiter. Often the women go to Catania, and they go out with a certain type of clothes.”*²⁵¹

Furthermore, the Cara of Mineo is also known for a long legal Process of Mafia-Capitale²⁵², in which the managers are accused of corruption.

With the opportunity of the residence permit for six months granted to the asylum seekers that attend the final exit,²⁵³ the Nigerian criminal networks have started

²⁴⁹ Recently the Italian government has approved the Law Decree 13/2017 (Minniti- Orlando Decree) has taken the level of the appeal during the asylum request, being based mainly on the jurisdiction of the Territorial Commission and after on an audit.

²⁵⁰ Law Decree 142/2015, Art.22 that consents the access to work to the asylum seekers two months after presenting the asylum request. However, the permit is not convertible for a work permit or another typology of permit

²⁵¹ Interview number 24 (third sector), 20/02/2016, Italy

²⁵² Name given to the process with official and political corruption on the providing the bids to certain organizations.

²⁵³ Decree Law, 18 August 2015, n. 142, implementation of the Directive 2013/33/UE, laying down standards for the reception of applicants for international protection and implementation of the Directive 2013/32/UE, on common procedures for granting and withdrawing international protection, (OJ n.214,

to profit from this sponsorship of the Italian government to induct Nigerian women in prostitution while inside the reception centre. According to the declarations of a social worker working on a reception centre, there have been some cases of potential human trafficking victims for sexual exploitation with Nigerian women. However, the women tend not to denounce the situation, being also very difficult to find a good solution for the situation, especially in the first period of exploitation.

“We are trying to have a direct relationship with the Territorial Commission, since there are women within the SPRAR that after a year of the path they have never told their true story.”²⁵⁴

Only when the women understand the difficulty in paying the debt along with the negative exit of the Territorial Commission and the establishment of ties with the practitioners from the reception centre is when the victims try to find other ways to obtain the legalization. According to the report *Vittime di tratta/ricipienti/titolari protezione umanitaria* (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014), all the girls are instructed to claim for asylum, which in case the situation of trafficking it is not identified, the Protection is normally denied, at a second step they go to appeal, which typically means another year or two,. Therefore, the duration of the asylum request is the perfect time to exploit the victim until the final exit of the Territorial Commission.

The gain of the Nigerian exploiters, while the women are in the reception centre, is not only based on avoiding the deportation, but also on the provisional accommodation and other basic services to the victims, while they are being exploited. In fact, it is also due to this “sponsorship” of the Italian government that the traffickers have started to decrease the amount of the debt, that previously was from 40.000 to 60.000 euro to an amount of 15.000 to 30.000 euro. However, the decrease of the debt is not only related to the “sponsorship of the state”, but it is also connected to the amount, though to be paid in one or two years, which is the time for the asylum procedures²⁵⁵. Furthermore, as previously mentioned, the profile of the traffickers has also changed, since that with

15/9/2015). The Law Decree previews the grant of a permit for six months, being renewable until the final judicial exit. During the stay on the national territory, the asylum seeker has the access to sanitary assistance through the Art.21.

²⁵⁴ Interview number 30 (third sector), 22/02/2017, Italy

²⁵⁵ Interview number 31 (third sector), 22/02/2017, Italy

the augmentation of victims has led to an augmentation of traffickers or also victims that have started to recruit other women to pay the debt for them (Fernandez, Garzón, Juan & Contreras, 2017). Since that these new exploiters do not belong to the trafficking network, it can also be understood that they do not have the means to threaten the girl's family in the origin country.

The reduction of the debts reflects also the bet of the criminal network in having a large quantity of exploited girls that pay less money, rather than a smaller quantity of girls that has to pay more money. Furthermore, the causes of the large "importation" of girls coming from Nigeria has also influenced the exploiters in not being so strict with the girls and diminishing the level and the number of threats as in the origin country to the family, as in the destination country to the girl. During one of my interviews, a social worker/grant coordinator has declared:

"It impresses me the easiness in which the girls are able nowadays to run away. Before there were more threats to the family in the origin country and more pressure to pay the debt. I think the exploiters are getting softer, but maybe it is also due to the quantity of the girls that they are sending from Nigeria. Some of them have paid 300 euro in three months others 1.500, at the beginning I didn't think that they were saying the truth, but now I can see that there is a tendency."²⁵⁶

With these amounts, along with the scarce funding provided by the anti-trafficking network on Art.18, the Italian government as well as local anti-trafficking networks have tried to adequate the asylum seeking system to the potential human trafficking victims, by giving them access to the International and Humanitarian Protection and at the same time, provide the adequate tutorship to the victims of human trafficking. In fact, despite the lack of accurate data on the granting International and Humanitarian Protection permits based on human trafficking, in practice, Italy has witnessed an increase in the provision of International and Humanitarian Protection based on these grounds (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014).

"The Law Decree 142/2015 for asylum seekers and human trafficking victims

²⁵⁶ Interview number 33 (third sector), 10/04/2017, Italy

has influenced in the emergence of this category of hybrid CAS, where you make the first reception of migrant that are not CAS and neither anti-trafficking services that could serve for the women that haven't still been exploited, but have already suffered violence in Libya, so they could not even access to an Art.18, since there was no exploitation in Italy."²⁵⁷

However, the grant of International and Humanitarian Protection permits, despite on guaranteeing more legal rights to the asylum seekers, is not always connected to a full protection to the victim.

"The girls that have a humanitarian permit Art.18 have access to the permit only after achieving all the goals of the protection path. But now, the things have been inverted, now you have a permit and then you do the protection path, while before it was the contrary". The situation of the CAS or of the SPRAR is that the woman wait a year and a half that they could use this period as we use it, since that in the CAS, there is not the aim of work integration, only in the SPRAR. The problem is that for those that are in the SPRAR, it has to be the person to make the request of having access to work integration and not the reception centre, but of course the persons within the SPRAR often are not informed about this possibility. In fact, they don't know what a SPRAR means and that they have the right to make a different path."²⁵⁸

Furthermore, due to the overlap between the two legal status, the organizations working in the asylum system tend to consider the Nigerian women that have done the asylum procedures as human trafficking victims, while the organizations that work with human trafficking victims tend to recognise them as asylum seekers (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014). For instance, I will further analyse a case of forced return, in which appropriate protection measures were found to be very difficult, due to the imprecise and non-comprehension of the intersectionality between both legal status by the protection organizations.

Despite the lack of accurate data of asylum seekers who are potential human trafficking victims as well as the confusion and unawareness on the overlap of both

²⁵⁷ Interview number 31 (third sector), 22/02/2017, Italy

²⁵⁸ Interview number 31 (third sector), 22/02/2017, Italy

phenomena, the most aware institutions on this matter are the institutions that protect human trafficking victims under the Art.18. This awareness is due to the averigation of their legal status in the territory and the frequency in which these women tend to present already a claim for International protection. The study of the overlap between human trafficking victims and asylum seekers (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014) has demonstrated that many of the women have entered in the program of Art.18 with a negative exit of the Territorial Commission, thus the women try to have access to other permits as Art.18. However, it is important to highlight the importance of the year of publishing the report of *NoTratta*, since in 2014 it was the beginning of the increase of the arrival of Nigerian women in Italy through the Mediterranean. At the time of this research²⁵⁹, the author has found a different situation based on different interviews²⁶⁰ with lawyers and social workers working on the protection of victims of trafficking that have affirmed that the majority of the victims has had a positive exit on their asylum claim. This can also be a consequence of the Art.17 of the law decree 142/15 that foresees the hosting measures to asylum seekers that are considered to be part of a vulnerable category, such as human trafficking victims. Furthermore, the Art.17 of the law decree 142/15 also previews the access to an assistance program with the inclusion of a social integration path, as foreseen by the Art. 18 law decree 286/98.

In this case, on the last years, some regional groups, working on the tackling of human trafficking in different fronts have gathered and formed a multidisciplinary group, especially between the Territorial Commission and the anti-trafficking projects. For instance, in 2014, the Territorial Commission of Torino along with the Anti-trafficking Office has signed a collaboration Protocol (Affairs, 2014),²⁶¹ in which in case of identification of a potential human trafficking victim during the asylum claim, the Territorial Commission calls directly the anti-trafficking network, which proceeds with specific interviews in order to evaluate the asylum seeker's situation. The process includes a cultural mediator who has also experience on the issue of human trafficking as well as two educators, also experts on the subject (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014).

²⁵⁹ In 2017

²⁶⁰ Interview number 33 (third sector), 10/04/2017, Italy , 25 (third sector), 05/04/2017, Italy and 14 (Law enforcement), 12/04/2017, Italy

²⁶¹ For more information, visit the website <http://www.prefettura.it/FILES/docs/1233/Protocollo%20%20Antitratta.pdf>

This collaboration between the Territorial Commission and the anti-Trafficking network inserts the victim in an Art.18's protection Path, even if the identified victim is within a process of asylum claim, according to the Art.17 of the Decree Law 142/2015. The Prefettura of Milan has also signed a Protocol on the 30th September 2014, with the aim to exchange data and information among the different stakeholders, as well as identify potential human trafficking victims, mainly for labour exploitation. While, in Emilia Romagna, in the project "Oltre la Strada", the two Territorial Commission in the territory also are in contact with the regional anti-trafficking network that operates at a regional level, in order to recognise potential human trafficking victims, during the asylum seeking procedures. Furthermore, due to the higher experience on the field, as well as the connection with the anti-trafficking networks, some Territorial commissions are able to identify re-used stories that have had a positive exit, improbable stories or the presence of strong indicators of a situation of human trafficking. In fact, the traffickers tend to use stories mainly regarding the North of Nigeria, connected to terrorism attacks from Boko-Haram in Christian Churches, or being related to Christian priests and a target for extremist terrorists. However, despite the suspicions, often the victims deny that they are being exploited by another person, even if they are engaged in prostitution (Baltoni, Caldarozzi, Giovanetti, & Minicucci, 2014).

During the awaiting of the International or Humanitarian protection that grants at least two years of permanence in the territory, the protection path can also be made within the CAS, especially since it has emerged the concept of CAS for vulnerable subjects that are attentive to the vulnerabilities of the hosted individuals. These CAS are trying to be adapted also to the overlap between human trafficking victims and asylum seekers, in order to avoid the old protection model that has been applied since 1998.

*"I have asked to two cooperatives to make a plan of how these women pass their journeys, since their daily lives are terrible without any kind of stimulation"*²⁶².

Furthermore, undergoing the protection path within the CAS, can also be considered more economic and also a way in using the migration funds rather than the scarce anti-trafficking funds provided for the Art.18. However, this experience has been

²⁶² Interview number 31 (third sector), 22/02/2017, Italy

made in small numbers and especially since it is known that the CAS system does not provide the adequate measures to exit a human trafficking situation. Obviously that the protection path evaluates the situation of the victim within the reception structure, passing sometimes to a SPRAR and verify if the structure offers the right conditions and no danger to the victim.

*“Once, we had to take away the victim from the CAS, since the exploiter that has brought her to Italy was also in the same CAS”.*²⁶³

Despite that these are all best practices against human trafficking, the most considerate one has been the Parma model whose stakeholders are the Prefettura of Parma, Parma’s Municipality, the Questure of Parma and CIAC Onlus (Parma & Parma, 2016). In this model, the municipality has understood that it is not wise to pass first the women who are potential human trafficking victims to a CAS and then to an Art. 18’s Path. Therefore, the first interview to the asylum seeker is made by a specialist of anti-trafficking who individualises the Nigerian women with trafficking indicators, which are directly headed to a special Center for vulnerable people with the attention to human trafficking victims. Therefore, from the beginning, the structure establishes the rules as they are in Art. 18’s protection path, such as: not being able to go out of the structure and not be able to have access to cell phone. During the first month, the staff has the opportunity to speak with the potential victim mentioning immediately the issue of human trafficking and once confidence is established, the staff informs about the International and Humanitarian Protection’s permit and collects the real life story. Furthermore, on the contrary of Art.18, it is explained to the victims that they cannot use the cell phone only in the first month, while in the Art.18 the women cannot have access to a cell phone for three months, which provides the woman a feeling of freedom.

Once the potential situation of trafficking is identified, the women are headed to a CAS that belongs to the Art.18’s system. Therefore, on the contrary of the normality, the Parma model first identifies the victims and introduces them into a protection path. This procedure permits that once the woman arrives in the Commission, they can

²⁶³ Interview number 31 (third sector), 22/02/2017, Italy

present already a report from the anti-trafficking network that declares that the woman is already within a Protection Path. However, this initiative has started in June 2016, which means that many of these women still have not had the final exit of the Territorial Commission. On the other side, many of the women that are accompanied by the Municipality of Parma have had already access to the Sussidiary or Humanitarian Protection permit.

This system does not only has been a success applying preventive measures, mainly engaging women that have been exploited in Libya and avoiding their exploitation in Italy, but also in the matter of financial resources, since their protection path is used under the funding for CAS and not under the financing of Art.18. However, the project has presented a gap, since that in case that the woman goes to the Territorial Commission and has a positive result some time after, she is obliged to leave the CAS. This can be a problem in the future since the project of Art.18 has demonstrated to be overloaded, not only by the women who are arriving from Libya, but also by the women arriving from other countries.²⁶⁴

2.3.6 The outcasts

Despite the increased number of women that have initiated an asylum request at the arrival in the Italian territory and their hosting at the reception centre, it is not always easy to identify human trafficking victims during the hosting period. Therefore, the lack of preparation from the reception centre along with the lack of time to gain the trust of the victim can be an obstacle to lead the victim in declaring her exploitative situation. In fact, in this situation, where the victim normally is not well aware about the reality around her and well informed about the procedures of the request of the International Protection, the victim tends to stick to the false story provided by the traffickers, especially due to the threats, fear and shame of being judged. Furthermore, the victims who have a scarce sense of autonomy and self-esteem tend to isolate themselves and show mistrust towards the reception Centers' staff, by normally refusing activities and medical checkups (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014).

The asylum claim of the Nigerian women engaged in sexual exploitation is normally managed by the criminal network, sometimes even with the involvement of

²⁶⁴ Interview number 29 (third sector), 06/03/2017, Italy

lawyers who have been assigned by the traffickers, in order to avoid deportation and profit the duration of two, three years to repay the debt. In fact at this point, it is not important to the criminal network the final exit of the Territorial Commission, but that the girl is able to stay the mentioned period that is enough to pay the debt. Furthermore, the staff, especially the ones from the CAS, since the ones from the SPRAR begin to be more prepared to identify potential human trafficking victims, are not psychologically prepared to act in a potential situation of human trafficking.

Therefore, during this phase the women probably are not identified by the reception centres themselves, but by the street units, since they have a larger overview of the situation. In fact, according to the study *NoTratta* (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014), 30% of the women engaged in the outdoor sex industry were also identified as asylum seekers. However, especially due to the misuse of the concept human trafficking in cases of prostitution, it is also important to understand that if the analysis was being made between human trafficking victims or sex workers. In this case, it is also difficult to be aware about the situation of the person engaged in the sex industry, if there is no detailed information on the trafficking indicators.

In recent years, many organizations that work on the protection of human trafficking victims have received Nigerian women that have abandoned the reception centres, due to the pressure of the Madam²⁶⁵.

“There was this girl that we found in the CARA that she was taken by a conational to Milan, where she was obliged to be engaged in prostitution. After being mistreated by a client, her trafficker came and hit the girl with a bottle. At this point, since the CARA was her only reference place, she has decided to return to the CARA without having a permit to get into the CARA.”²⁶⁶

In fact, due to the high number of Nigerian women that have started to abandon the reception centres for asylum seekers, several organizations working against human trafficking²⁶⁷ have presented a letter (PIAM, TAMPEP, Abele, Speranza, Porto, &

²⁶⁵ Interview number 33 (third sector), 10/04/2017, Italy, interview number 14 (law enforcement), 12/05/2017 and interview number 29 (third sector), 06/03/2017, Italy

²⁶⁶ Interview number 24 (third sector), 20/02/2016, Italy

²⁶⁷ PIAM onlus – Asti; Tampep – Torino; Gruppo Abele – Torino; Liberazione e Speranza – Novara; Comunità San Benedetto al Porto - Alessandria, Genova; CISSACA – Alessandria.

CISSACA, 2017) to different Prefectures and Territorial Commissions²⁶⁸, on the 31st January of 2017, highlighting the problematic situation. The alarm has emerged during the interviews with social workers, that Nigerian women are often contacted by the exploiters, once they are within the reception centre and obliged to abandon the centre for the purpose of forced prostitution. Furthermore, the organizations declare that the abandon is normally before the fulfilling of the C3 Form²⁶⁹, which makes them invisible and illegal in the territory.

“Many women have declared to abandon the reception centres for migrants due to the fact that they have been contacted inside the centre by someone of the criminal network, which normally is a woman, but also sometimes a man. Therefore, the women are not directly contacted by the exploiter as in previous years, but by someone who is in contact with the trafficker. In other cases, the women are contacted directly on the phone by someone who is in contact with the Madam or with some women who also live in the structure and leads the girl to the Madam outside of the structure.”²⁷⁰

The major problem in this case is when these women decide to leave their exploiter and try to present formally their asylum claim to the immigration offices, which can lead to an expulsion, based on the fact that they have abandoned the reception centre, before fulfilling the C3 Form. Therefore, the associations require to the *Questure* to facilitate the asylum claim, as it is required legally or to identify them as potential human trafficking victims and lead them to the anti-trafficking network, where they can proceed with a humanitarian permit, through the Art.18. In fact, by avoiding the protection path to these women and leaving them in an irregular legal status in the territory, the women easily can reintegrate in the criminal networks that exploit them.

Once the women abandon their exploiters, they try to reconstruct their legal path, also going to private organizations, normally religious that are not within the system Art.18, but that still offer a protection path.

²⁶⁸ Sent to the Prefettura di Torino; Prefettura di Asti; Prefettura di Alessandria; Prefettura di Novara; Commissione Territoriale per il riconoscimento della protezione internazionale di Torino; Commissione Territoriale per il riconoscimento della protezione internazionale di Genova; Commissione Territoriale per il riconoscimento della protezione internazionale di Novara.

²⁶⁹ The name of the official document to do the asylum request.

²⁷⁰ Interview number 33 (third sector), 10/04/2017, Italy

“Once they arrive, the victims undergo with a first interview in order to understand the general situation of the woman, especially to understand the status of the territory, identify the main priorities and understand the background of the victim. For instance, many women arrive with a temporary asylum claim, that have passed already the deadline or that were near to the deadline. Other women also arrive with a denial exit of the Commission, in this case we undergo with the legal support, in order to proceed with an appeal, or in the cases that the permit has not still passed the deadline, we make pass a period of one two months, while our project supports the person and wait for the final exit of the Territorial Commission. Among the asylum seekers there is a high number of negative exits.”²⁷¹

As mentioned before, the negative exits are an outcome of the stories that are provided by the criminal networks, which normally are not related to the real situation of the victim. Therefore, when the woman abandons the reception centre and arrives to the organization asking for support, the organization is not aware if the story that was told to the Territorial Commission was the real one, in order to provide a report of support to the victim.

“The problem is this, when the woman arrives with a temporary permit and has already been seen by the Territorial Commission, we are not aware about the story that she has told to the Territorial Commission or if she has told what she is telling us. For instance, there was a case, in which the woman had brought a minute of the Territorial Commission and we have noticed that what was written on the minute was incongruent of what she has told us. Therefore, I deduce that the women normally do not tell the true story to the Territorial Commission. However, in the phase of the asylum claim, we might have an opportunity to make the victim tell the truth to the Territorial Commission. Otherwise, we have to wait for the appeal.”²⁷²

Normally when the girls arrive, they are very confused when they ask for help, not only due to the travelling that they have undergone until Europe, in which maybe

²⁷¹ Interview number 33 (third sector), 10/04/2017, Italy

²⁷² Interview number 33 (third sector), 10/04/2017, Italy

there is more awareness about the danger, but mainly on the situation of exploitation. Moreover, the women undergoing a situation of exploitation tend to demonstrate also psychological problems such as anxious, low self-esteem or depression (IOM, 2015), which can influence the telling of their story, especially due to the memory gaps, normally verified in the situation of trauma. Due to the traumas that the victim suffers, consequently to their exploitation, many women do not admit their exploitative situation and thus ignore alternative protection models. Hence, many victims tend to accept the International or Humanitarian Protection, so they do not have to manifest their exploitative situation (Baldoni, Caldarozzi, Giovanetti, & Minicucci, 2014). Besides the confusion of the victim, consequently to the exploitation, some women arrive also unaware about their legal status and if they have made the asylum claim. In fact, as previously mentioned the women who seek protection nowadays are normally already within a process of asylum seeking.

“There are rare the cases that the woman comes without any kind of permit, since this hosting system is working and thus, we are able to do the identification. Sometimes the woman can come with an out of date permit, or she has made the asylum claim, but it is on standby and she has to take the documents to the Questure. We ask if they have a lawyer and if they need a mediator to interact with the lawyer, in order to understand the situation, but in case there is an objective problem, it is normally connected to the fact that the person cannot demonstrate that she is a resident in this city. There is no use to accompany the person to the Questure, if the problem for instance is regarding the house’s contract or if the problem is the passport and the person is not able to go to Rome, in this situation we begin the process with an extraordinary assistance.”²⁷³

The resistance of the Nigerian Embassy in Rome to issue the passport has been indicated as a continuous problem by the associations within the anti-trafficking network, in order to proceed with the Art.18 permit. For instance, when the women require the passport, which normally happens once they are engaged or start the protection paths, the Office of the embassy finds several obstacles regarding the

²⁷³ Interview number 33 (third sector), 10/04/2017, Italy

passport, normally connected to the exploitative situation of the victim (Nicodemi, 2016)

2.3.7 The full protection package under Art.18

As previously mentioned, the protection provided through the Art.18 of the Law Decree 286/1998 is given through a call for proposals that in this moment has twenty one projects that are active. The call for proposals is renewed each year, by the Ministry of Equal Opportunities that funds projects from the civil society that apply for the fund. The coordination of the projects is centralized by the Venice Municipality, through the anti-trafficking hotline that works seven days a week and 24 hours a day and puts in contact the local anti-trafficking association with the potential identified victim. The majority of the calls of the hotline is from Nigerian women involved in sexual exploitation, representing 60% of the calls, mainly with an age from 18-24 years old.²⁷⁴

As observed until now, the application of the Art.18 is not applied as in the past, normally with a full consciousness of the victim, willing to exit from her exploitation situation. They come out of an outnumbered potential human trafficking victims before and during the exploitation that has led many anti-trafficking organizations would work with the hosting centres to identify potential human trafficking cases. In case the situation of trafficking is confirmed, the organization tends to provide the best solution for the victim, especially according to her legal situation, which normally implies the application of the full package of Art.18. Since 2006 (Avviso 8) that in order to collect data on the victims, the Department of Equal Opportunities has started to require to the association the compilation of an “entrance form” and of an “exit forms”. In the form, the required information was referring to past experiences of the victims during and before the exploitation (Caneppele & Mancuso, 2007).

The girl does an individual project with the social worker and the mediator to evaluate the personal situation of the victim. The evaluation of the personal project should take in account the personal characteristics of the victim such as age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship with or dependence

²⁷⁴ Interview number 31 (third sector), 22/02/2017, Italy

of the offender and previous experience of crime.²⁷⁵ During the identification of the vulnerability of the victim, the staff should be attentive to avoid the exposure of the victim to secondary victimisation by retelling the story several times, according to the Art.55 and Art.57 of the Directive 2012/29 EU.²⁷⁶ Furthermore, at the beginning of the project the anti-trafficking organizations proceed also with a psico-social evaluation of the victim that it is taken until the end of the project in order to understand the specific needs of the victim and how to supply these needs.²⁷⁷

“All entities within the national network do an evaluation of the request of the victim that presents human trafficking indicators and has other types of permit [International and Humanitarian Protection], also because the Call for Proposals [of the Art.18] required it specifically to study the grey zones between human trafficking and asylum seekers. Then, every association has made their own proposals. For instance, we are doing training with the CAS and the structures for non-accompanied minors, and it is highly participated. We have become a reference for human trafficking cases that they find within their own structures. Therefore, we try to do a mediation and giving advice and it has been a very positive experience. Then, there are the CAS that are not adequate for human trafficking victims and we understand that there is no will, so we don't even have a relationship with them. On the other side, others call us and participate and this is one of the goals that we have achieved.”²⁷⁸

In fact, at the moment, while Art.18 can offer a better protection path to the victim, the humanitarian permit is normally correlated to ex-victims of sexual exploitation and therefore connected to prejudices, especially for the future employers, while the International Protection is a more general permit. Secondly, many victims start Art.18 with a social path, but normally only Romanian citizens can proceed with the

²⁷⁵ Art.56 of the Directive 2012/29/EU

²⁷⁶ Directive 2012/29/EU of the European Parliament and of the council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA: (art 57) “Victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures

²⁷⁷ Interview number 31 (third sector), 22/02/2017, Italy

²⁷⁸ Interview number 30 (third sector), 22/02/2017, Italy

social path, unless the anti-trafficking associations have a deep relationship with the *Questure* to issue the Art.18 with the social path for the Nigerians.

“It is true that the International Protection provides more rights to the woman at a chronological level, but it is also true that it is needed more time to grant the victim with the International Protection, while Art.18 can be issued in two months.”²⁷⁹

However, with the high number of potential victims within the reception centers, especially regarding the number of Nigerian women,²⁸⁰ the organizations are obliged to give priority to the victims that are more at risk, or the ones in the situation before the exploitation, especially when the victim arrives with a phone number in order to contact her exploiter.

“Therefore, if within a structure of a SPRAR the situation is less dangerous, maybe the protection path is done first within the SPRAR structure and than in a structure for Art.18. These situations [women who do their protection path within the reception structure, but receiving support from the anti-trafficking organization] are statistically written, so we are responsible for a certain area and we try to identify potential human trafficking victims within the reception centers.”²⁸¹

At the beginning of the protection path, the victims tend to show of being afraid of retaliation of the traffickers and difficulty to be adequated to the protection sytem and also difficulty to trust someone, due to their experience.

“The victim needs to feel safe, in order to start her path with serenity. We start by supplying the primary needs like health issues, even if it is not easy to make them realise that this is a primary need. Normally, sexual exploitation produces more difficulties than labour exploitation, therefore the psychological support for victims who were sexually exploited tends to be longer. However, also when there was segregation during the labour exploitation also the psychological support is longer. In these cases,

²⁷⁹ Interview number 30 (third sector), 22/02/2017, Italy

²⁸⁰ Interview number 31 (third sector), 22/02/2017, Italy

²⁸¹ Interview number 30 (third sector), 22/02/2017, Italy

normally there is a dependency on the exploiter, a deception and there is the need to rebuild an identity”²⁸².

For the protection path, it is imposed to the victim a certain model of rules with limitation of mobility, schedule and also contact, based on the confiscation of cellphone that at the beginning, especially to the Nigerian women is a motive for some resistance. In fact, in this case, the organization facilitates some of the measures according to the evaluation of the vulnerability risk of the victim that was made at the beginning of the protection path, despite the fact that most of the measures within the structure are applied to all the victims that are doing a protection path.²⁸³ However, sometimes, the application of these measures is not understood by the victim, which leads the victim in feeling frustrated and abandon the protection path. Therefore, here enters the second part of the protection path in which the cultural mediator has the role in explaining the purpose of the established measures, as well as to do an evaluation of the victim’s capacities along with a person from the anti-trafficking network.

In a third phase of the project, the woman starts an Italian course or an alfabetization course that allows her to slowly be integrated in the cultural and social context of the destination country. The last phase is regarding the work integration, which is prepared by a group of people especialized on this issue in order to put together the capacities of supply with the request of the work demand. Therefore, in this phase the group prepares the range of possibilities to integrate the person in an internship, since many of these people have never had a work before.

“The schedule, the dress code, how to be at work, these are the things that are learnt during the internship, first an observation internship and then a practical internship, in which in Veneto we take advantage from the tourism sector. We have protocols with services agencies that ask for cleaners, for the restaurants or in case the person has knowledge of more languages, even for being a receptionist.”²⁸⁴

Despite of the impreparation of many women regarding the job market in the

²⁸² Interview number 30 (third sector), 22/02/2017, Italy

²⁸³ Interview number 30 (third sector), 22/02/2017, Italy

²⁸⁴ Interview number 31 (third sector), 22/02/2017, Italy

Western context that as it was observed, lacking from a specialization in a certain task and a more strict work's conduct, which is based in laws that the women are not use to, another major obstacle that has been observed is also the prejudices and racism that exist from the part of the potential employers. In fact, in this case, it has been demonstrated to be a major success the work integration of Romanian women that can benefit from the "white Christian hard working woman's" prejudice that was mostly gained from the migration flows of Romanian women, coming to Italy to work on the domestic sector (Barberi, 2007).

*"Seven years ago, it was impossible to speak about work integration of a Nigerian woman in the touristic sector, instead in the last seven years, we have done a lot of work integration of Nigerian women in this sector, because we were able to do an important accompaniement, mainly because there were a lot of prejudices, for instance there was an agency that every time we were going there, they would say that they were not interested, until we went there with a lawyer and we made them understand that what they were doing it was not legal and now we have many Nigerian women that work in the hotels in Venice for years."*²⁸⁵

The internship that has a duration of three months provides a work grant and also pocket money for the expenses, yet, in case the employer has the intention to take the intern, it is conceded an extension to the intern to have more experience. Normally the project's aims are determined by the typology of work that is provided to the person, especially since it is connected to the residence permit. Therefore, the individual can only be considered autonomous when having a full time contract that provides enough money to be autonomous .

"Our projects have a success rate around 90%. If you are able to give a concrete alternative, people stay, the motivation is always economic, depending on the individual's motives. Unfortunately, the ones that get out of the protection path are the weaker ones, the less capable or the ones that were exploited for a longer time. The moment of work integration, is when more things emerge, everything that we were not

²⁸⁵ Interview number 31 (third sector), 22/02/2017, Italy

aware during the hosting period. When they start their internship, the work grant we make are individual projects in order to give work to the girl after. It depends from the labour market, in Rome most of the economy is in the third sector, there are no factories. For instance, many Nigerian women want to work in a factory. So, maybe it is easier to integrate them in the North of the country. There is mainly a requirement for manual work, with precise schedules, because we know that for Nigerian women the Sunday must be free, thus there are requirements to their wellbeing.”²⁸⁶

Despite that in the North of the country it has been easier to integrate the women at work, after interviewing three different projects, in three different regions, including Veneto, Lazio, Campania and Sicily, I have verified that the work integration depends of the labour market that is also applied to the autochthones. Therefore, if for instance, in Veneto tourism is the main sector, in the region of Lazio, the majority of the victims are inserted within the sector of services²⁸⁷.

“The Nigerian always want to be hairdressers and in the last years, we were able to have agreements with the hairdressing schools. We are able to offer a training experience of 4/5 months that is far beyond of what it is required to Italians, since normally to Italians, it is required to have three years of school to be a hairdresser. We realised that it is a context that the girls are easily integrated. For instance, we now have one girl that is doing a training in a bakery, but there you don’t have much contact with the public, since there is still a lot of racism. Another has made a nice experience in plants’ nursery, since she had already experience in the agriculture sector and she was older. For instance, for the moment, many are doing the integration internship in the canteens and we have noticed that it can work, due to the contact with children. At last, the sewers, but then it is difficult to find the tailoring that employs them. Furthermore, tailoring in Italy is normally of a high level, therefore even if they bring an experience from their origin country, in Italy it has been demonstrated that this kind of sector normally does not offer a job.”²⁸⁸

²⁸⁶ Interview number 28 (third sector), 29/11/2016, Italy

²⁸⁷ Interview number 28 (third sector), 29/11/2016, Italy

²⁸⁸ Interview number 28 (third sector), 29/11/2016, Italy

It is interesting that in the examples above cited, the women are normally integrated in a market that in somehow has still a demand for workers. However, in Italy there is a huge segmentation of work for immigrant women that are normally required in the domestic work as caregivers, babysitters or cleaners (Ambrosini, 2011). In fact, as previously mentioned in this chapter, this typology of jobs are highly characterised by long hours work, lack of privacy and social network, low income and lack of contract that does not allow the person to renew the humanitarian permit. Therefore, normally the women see themselves in new forms of exploitation, leading that sometimes they prefer to return to sex work.

“The caregiver as a typology of work, even if they ask, we avoid. Since that for a person that has already lived, has already been violated in her freedom or received an income that does not guarantee a stable economic situation, sometimes because they don't pay the taxes, others because you have to sleep in the same house of your employer, also with the family's situation.”²⁸⁹

However, despite that the sewers and domestic services have been avoided by the anti-trafficking networks in the North and in the Central region of Italy, in the South and Sicily many women are being integrated in this kind of sector, especially as caregivers and sewers. In fact, despite the exploitation verified²⁹⁰ in the domestic sector, along with the agriculture sector in very harsh conditions, as it has been observed in the situation of Ragusa (Palumbo & Sciarba, 2015), it is one of the few work segments that still offer work opportunities to immigrant women. Furthermore, some of the internships that are foreseen for human trafficking victims are only previewed for women with a permit of Art.18 or International or Humanitarian Protection, excluding in this sense, women who were also victims, but did not enroll on a protection path.

“The internship is previewed by the Regional Directive²⁹¹ that despite it guarantees the training to the so-called vulnerable categories, it does not preview the involvement of a permit ex-Art.31, for assistance of minors. Therefore, we almost

²⁸⁹ Interview number 28 (third sector), 29/11/2016, Italy

²⁹⁰ See for instance the book of Alessandra Sciarba, *La Cura Servile*

²⁹¹ Law 15th May 2013, n9

involve individuals or with an International Protection Permit or with an Art.18 permit.”²⁹²

Despite that the protection path offers the possibility of an internship, finding work has demonstrated to be one of the most difficult phases of the Protection Path, especially in the South of Italy, where there is a high rate of unemployed people or people working without any contract or in exploitative situations. Furthermore, added to the lack of job opportunities, the women normally do not have work experience that can be demonstrated during the interviews. Therefore, especially in the past, sometimes the person was displaced in other structures, especially in the North of Italy in order to have an easier working integration in the labour market.²⁹³

*“Some years ago, before this situation with the Nigerian women, we had 10% of the women within the anti-trafficking network that would come here to the North of Italy, mainly from Apulia, Sicily and Campania, not due to the matters of safety, but to have a wider access to work. However, nowadays this matter has started to be more difficult. We are still able to find work because there is a small number, because so many women have started the program, but only a small number is able to finish it”.*²⁹⁴

*“Here in Sicily the big problem is to find work, in fact we have noticed that in recent years there were some transfers to the North of the country. In this, we have accompanied them through the orientation phase, by helping on the writing of the CV, or directing the person to the recruitment channels or answering to some job offers, yet the interest from the other part is very low. Our colleague has personally dedicated herself to help a woman by doing the CV and send it, but then, there was not even the possibility to have access to an interview, since they ask you for experience or at least that the candidate speaks Italian. Therefore, it cannot be 2 years of training that are enough for these women. Normally the women find jobs in the South as caregivers or cleaning ladies, without any contract and living with the families that employs them.”*²⁹⁵

²⁹² Interview number 33 (third sector), 10/04/2017, Italy

²⁹³ Interview number 31 (third sector), 22/02/2017, Italy

²⁹⁴ Interview number 31 (third sector), 22/02/2017, Italy

²⁹⁵ Interview number 33 (third sector), 10/04/2017, Italy

Besides the lack of employment, the anti-trafficking organizations find also the presence of other problems connected to cultural aspects and prejudices. For instance, Romanian women tend to find a job quicker also due to the culture and the language's similarities and their age, since the Romanian women tend to be older and with work experience.²⁹⁶ Furthermore, due to the high level of racism, Italians tend to employ more Romanian women, because they are white and Christian. While, on the other side Nigerian women have only experience on the selling on the market, which normally requires more time for them to adequate to a certain pattern of western behaviours. The problem is not only to find work for the victim, but also the availability of the labour market due to a high segmentation related to the female immigrants' work, especially in the fields of domestic work, as caregivers or cleaning ladies or catering, the women tend to normally find themselves in situations of exploitation (Anderson, 2004). However, on the contrary of sexual exploitation, the exploitation of domestic work tends to be more culturally accepted and more difficult to define and identify, since it passes within the private sphere (Palumbo, 2017).

The fact that the person finishes the project without a stable job, normally leads the person with problems regarding their legal status, since Art.18 can only be renewed by a work or a study permit (Andreatta, 2015). Furthermore, the person also has to show certain living conditions, such as having a contract and demonstrate that the habitation has a certain dimension, required by the legal framework²⁹⁷. However, as previously mentioned, most of the projects in human trafficking do not preview a follow up of the victims once the individual finishes the protection path. In fact, the only contact between the association and the victim is normally based on the assistance in finding a residence and the legal counselling, which is the only service that is provided beyond the protection path, especially until the reception of the ID document²⁹⁸.

“They make the request at the Embassy, normally in a very autonomous way; they do the passport because, when you renew the permit of Art.18 for a work permit,

²⁹⁶ Interview number 31 (third sector), 22/02/2017, Italy

²⁹⁷ Circular Minute 7170 of 18th November 2009 that provides the Law Decree of 5th June 1975 of the Health Ministry

²⁹⁸ Interview number 30 (third sector), 22/02/2017, Italy

*you have to have a job, a passport, a house, a positive report from the anti-trafficking referral. However, all these are propaedeutic actions, because if you don't have a job, you can't have the house and if you don't speak Italian you cannot do the internship.*²⁹⁹

In fact, besides the one year follow up to see if the victim was able to renew her legal status to a work permit, the projects do not preview a longer follow up, due to the high numbers of victims that are inserted in the projects (Canneppele & Mancuso, 2012). Therefore, at this point, there is no real evaluation of the result of the projects in a long-term for the beneficiary, being the evaluation normally compacted at a short-term and only limited to the protection path. However, the Venice's Municipality in the new project that was presented on the last call for proposals has decided to put some indicators for each phase of the protection path. Therefore, in order to provide a better review of the follow up, the project has inserted indicators such as the typology of residence (room, shared house); the acquisition of a legal status (work permit); the improvement of the Italian language and the improvement of the education level³⁰⁰.

The provision of a follow up provides to the anti-trafficking networks and to the assisted person the evaluation of instruments (lack and the need) to avoid a situation of re-trafficking. One of the measures that has been introduced by the European Directive 2004/80EU, established in Italy through the Law Decree 204/07 and the Law Decree 4 March 2014 n°24³⁰¹ that foresees to the victim a compensation of 1500 euro provided by the government, equal to every victim, in the absence of a compensation from the victim's exploiter. However, the guaranty of 1500 euro as compensation to human trafficking victims has been highly criticised, since not only it is not adequate of the level of suffering of the victim, as also identifying an unique amount for all victims does not recognise that exploitation can have a different impact in different victims (ASGI, 2014). Furthermore, in Italy the application of compensation by the traffickers to the victims has been very rare, being summarized in two judgments, by the Aquila High Court, judgment no. 2/2012, 25 May 2012, in which each the victim had been awarded

²⁹⁹ Interview number 31 (third sector), 22/02/2017, Italy

³⁰⁰ Interview number 31 (third sector), 22/02/2017, Italy

³⁰¹ Gazzetta Ufficiale 13 March 2014 n. 60 Attuazione della Direttiva 2011/36/UE, relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime che sostituisce la decisione quadro 2002/629/GAI.

50,000 euro being 350,000 euro in total (Melting Pot, 2012) and by the Court of Assizes of Bologna (Carlo, 2014) that has awarded to a human trafficking victim a compensation of 100,000 euro.

2.3.8 The protection of the Romanian women

The observation of data regarding the granting of Art.18³⁰² and Art.13³⁰³ shows us a major change between 2006 and 2008, with an increase of humanitarian permits given to Nigerian women (+72.3 %), in comparison to a drastic and significant

³⁰² 1) Art. 18 of the Consolidated Act of measures regulating immigration and the norms on the condition of foreign citizens (hereinafter referred to as Legislative Decree No. 286 of 1998) foresees the granting of a special residence permit for victims of trafficking for reasons of social protection. The main objective of this law is to allow trafficked or exploited persons to escape from the conditioning of the criminal organization or individual exploiters they are subjected to and to offer them the possibility to start a new life in Italy or in their country of origin. The granting of the special residence permit is independent from reporting the traffickers/exploiters to the law enforcement authorities by the victim. The only necessary condition to obtain the permit is to meet the requirements provided for by the law, to participate in the “article 18” assistance programme and complete it. The residence permit can be issued on the basis of two procedures: • The “judicial path”, when a report to the police has been made or when criminal proceedings have been started. It implies that the victim will co-operate with the police and public prosecutor. They will be instrumental in bringing charges against the perpetrator; • The “social path”, when the NGOs or public social service assisting the trafficked persons consider that they are in immediate danger. The trafficked person is not obliged to report traffickers to the police, but is expected to give extensive information (“statement”) to law enforcement agencies through the public social services or the private sector accredited NGOs. The requirements for the issuing of a residence permit can be summarized as follows: • existence of situation of violence or serious exploitation and of concrete danger for the personal safety of the foreigner; because of his/her attempt to escape from the criminal organisation • the aforementioned situation can be identified during police operations, investigations or proceedings, or in the course of social service assistance provided by local authorities or NGOs • the proposal for granting a residence permit can be made both by the District Attorney – if a prosecution has already been started – and by the Local Authorities’ social services or NGOs in charge of social protection projects. The permit is issued for 6 months and may be renewed for an additional year; it does not oblige the person to go back home once the programme is over. Furthermore, the residence permit for humanitarian reasons can be converted into a residence permit for education or for work, allowing the foreigner to remain in Italy in accordance with the regulations governing the presence of foreigners on the national territory. In 2007, a law came into force that extended the target group for Article 18 provisions: – Law 17/2007 turning Law Decree No. 300 of 28 December 2006 into law and containing the extension of limits provided for by legislative provisions. Article 6, para. 4, provides that Article 18 shall be applied also to victims of trafficking that are EU-nationals. They can therefore access the Programme of social assistance and protection and benefit from all services offered.

³⁰³ Law No. 228 of 2003 “Provisions against Trafficking in Human Beings”. The law acknowledged the definition of trafficking provided in the Palermo Protocol. The law introduced the offences of ‘Reducing to or keeping in slavery or servitude’, ‘Trafficking in persons’, and ‘Trading in slaves’, amending the related provisions of the Criminal Code (art. 600, 601, 602). For these offences, the law establishes harsh penalties ranging from eight to twenty years’ imprisonment, with an increase of one third to a half when the victims are minors, or when reduction into slavery or servitude condition aims at further sexual exploitation or removal of organs. Furthermore, within Article 13, Law No. 228/2003 includes a provision for the creation of a short-term protection programme for both Italian and foreign victims of slavery, servitude and trafficking aiming at “temporarily guaranteeing adequate accommodation, food and healthcare conditions to the victims”.

reduction of humanitarian permits granted to Romanian victims (-34.1 %) (Caneppele & Mancuso, 2013). Nowadays, since the entrance of Romania in European Union, it can still be observed that there is a tendency of having an access to a protection path under Art.18 mainly to Nigerian women rather than Romanian women (145 Romanian were under protection, the number of Nigerian amounted to a total of 765 persons)³⁰⁴, even if it has been recently reported that 38% of the outdoor prostitution is composed by Eastern women (Numero Verde anti-tratta, 2017)³⁰⁵, while 36% are Nigerian. Observing the data provided for the granting of Art.18 and Art.13 after the integration of Romania in the European Union, it can be noticed that not only the protection system had a major impact in third country nationals rather than European citizens, but also, as previously observed, it can also be deduced that the Romanian traffickers have started to use smother strategies (Canappelle & Mancuso, 2013). Therefore, if from one hand Romanian women have more advantages since they do not have problems with their legal status, on the other hand, the connection of a protection path with the humanitarian permit, normally allures the third country nationals to do a protection path, which is not verified on the Romanian women.

*“To exit exploitation, a Romanian woman does not have to worry about many problems, since she does not have to worry about the documents, pressing charges, etc... she can also leave the criminal network without pressing charges. Instead, a Nigerian woman that wants to exit from her trafficker has to press charges.”*³⁰⁶

Besides the connection between legal status in the destination country for European citizens and the protection path, it is also important to compare their level of mobility between origin and destination country, as it has been previously mentioned. Furthermore, both nationalities have different migration projects, since the majority of Nigerian women would like to remain in the destination country, while Romanian

³⁰⁴ Data provided by the anti-trafficking hotline regarding the nationalities of the victims that have had access to the protection of Art.18.

³⁰⁵ The study, at a national level, on 26th October 2017, was taken by the street units of the organizations that are part of the Natinal Anti-trafficking Platform. The statistics report that 38% of the outdoor sex workers in Italy are from Eastern Europe, being 75% Romanian and 17% Albanian. Furthermore, the report counts with 16% of sex workers from South America, mainly transsexuals and 2,3% of Italian women. From the reported data, the majority of the sex workers are women 82,9%, while 15,9% are transsexuals and 1,2% are males.

³⁰⁶ Interview number 21 (third sector), 30/05/2016, France

women usually want to return to their origin country. In fact, while Nigerian women aim to establish themselves in the territory and sending remittances to maintain their family, Romanian women keep sending money to built their house in Romania, dreaming about returning to their origin country.³⁰⁷ Furthermore, Romanian women due to their resources, such as the European Union citizenship, which permits them to have a high possibility of mobility between the origin country and the destination country, are able to establish a deeper contact with the origin country as well as with their family. This range of resources, provides to the Romanian women a more secure background, especially regarding the support of the family in the origin country³⁰⁸.

“In Italy, while there is a protection of 80% of Nigerian women, the protection of Romanian women is only around 5%, this means that they do not arrive to our services, this does not mean that they do not exist, also because they are free to return to their origin country. The Romanian prostitution has changed a lot, for instance, it is less violent also because the police was able to decimate the Romanian criminal groups dedicated to sexual exploitation.”³⁰⁹

This range of resources also provides to the Romanian women more independence than Nigerian women, not only regarding the issue of the residence permit, as previously observed, but also regarding the language and cultural similarities regarding the destination country. In fact, as a community, Romanian women are used to be breadwinners and being autonomous as also use to work under difficult conditions (Sciurba, 2013), which leads them often not being aware of their level of exploitation. Furthermore, many Romanians do not want to cause any trouble while in the destination country, having the only scope to earn enough money for their family³¹⁰.

As previously mentioned, on the contrary of Nigerian women, Romanian women due to their lack of need in possessing a residence permit in the destination country, which can outcast them from the police investigations tend to neglect their need for assistance, including psychological and legal counselling. Therefore, many victims have

³⁰⁷ Interview number 30 (third sector), 22/02/2017, Italy

³⁰⁸ Interview number 3 (THB expert), 29/11/2016, Italy

³⁰⁹ Interview number 30 (third sector), 22/02/2017, Italy

³¹⁰ Interview number 30 (third sector), 22/02/2017, Italy

shown difficulty in accepting help from anti-trafficking organizations. Once there is a police raid or when they want to escape from their exploiters, normally they go directly to their origin country without the intervention of the authorities or civil society. As it can be seen in the Romanian statistics of human trafficking victims, since 2007, the year that Romania has entered into the European Union (1780-2007; 1240- 2008; 780-2009; 1154-2010; 1048-2011; 1041-2012; 896-2013; 757- 2014),³¹¹ the number of identified human trafficking victims in Romania has largely decreased. Nevertheless, this decrease does not necessarily represent a diminution of the number of victims, but a less capacity of the authorities to identify them or less request of the victims to receive assistance. In addition, in case the women accept to start a protection path, they also tend to abandon the protection path, especially since their families depend on their remittances or simply return back to their origin country.

During my street unit experience, I have met C., who is a Romanian girl who has previously worked in Spain and on the first day that we met her, she happily explained to the street unit the amount of money she could earn in prostitution in Palermo. When I asked her why she came to Palermo³¹², she said that some people said that in Palermo she could earn more. Therefore, in order to deepen the answer, I asked who has said that. My second question has obviously made her suspicious, making her giving me a vague answer. Despite her vague answer, she was one of the girls that has never shown any trafficking indicators. However, months later, she has met my street unit colleagues and has started to explain that she was coerced by her boyfriend to be on prostitution and that she has given most of her money to him. She has finally decided to speak, since she has found out that her boyfriend was also having an affair with another girl, who was also involved in prostitution. Furthermore, she has explained to my peers that she would just go home to Romania and no assistance was needed. In fact, after some days she has returned to Romania, neglecting any kind of provided assistance that could be given in her case.

The case of C. provides a clear image of the neglect that Romanian women normally have of protection paths that does not only occur in the destination country,

³¹¹ Data provided by the Monitoring system of the Romanian National Agency Against Human Trafficking.

³¹² I tend to ask this question so I can understand the ties and contacts that the women have with the territory, especially before their arrival.

but also in the origin country. In fact, despite of the high number of human trafficking victims in Romania, there is only a small number of shelters for VoTs in the country. Besides the main associations that receive governmental funds in Romania for the purpose of protection of human trafficking victims such as Generatia Tanara, AIDRom and Adpare, there is not a major investment on this subject in Romania. In fact, in the main origin country of human trafficking victims in the European Union (Eurostat, 2015), many victims once they arrive in the origin country they go directly home, without requiring other services, even if they present some indicators of psychological trauma. Furthermore, it is important to reflect that since traffickers have started to adapt their coercion methods, many women are not aware of their victimisation (Pascoal & Schwartz, 2018)

“Normally, they are not able to have control of their lives, or be clear in their situation, which leads them often to deny any kind of exploitation. Therefore, the first step is that the victim accepts to be helped.”³¹³

“Some victims do not see themselves as a victim, since they have received some sum of money, so even though there was deception, the victim does not consider herself/himself as a victim”³¹⁴.

Besides the fact that normally Romanian women are not aware about their victimisation, it has also been verified that protection measures for human trafficking victims are not provided in every Romanian county³¹⁵. For instance, the present shelters for victims of human trafficking are normally restricted to the major concentration counties of transit and origin of the victims, such as Timis and Botosani (Greta group, 2016) and Bucharest, where the victims arrive by plane. Furthermore, many victims once they return home, even if they are provided with information on their right of assistance services, the National Agency is not able to provide assistance in every town or small villages, since the principal services are mainly provided in the big urban areas.

³¹³ Interview number 20 (civil society), 02/03/2017, Romania

³¹⁴ Interview number 7 (Law enforcement), 23/08/2016, Romania

³¹⁵ Interview number 7 (Law enforcement), 23/08/2016, Romania and 11 (Law enforcement), 03/04/2017, Romania

“Sometimes it is impossible to do work integration, because we have these services on paper, but then we don’t have these services locally. We can have services also from other entities, but sometimes they are not real.”³¹⁶

In fact, despite the Romanian legislation provides assistance to victims of trafficking for a renewable period of three months,³¹⁷ in the most inaccessible areas of Romania, it is very difficult for the National agency to have the funds to maintain employees in these areas or even to dislocate their employees to the origin town of the victim. Consequently, the lack of services for human trafficking victims in their origin town leads to a major difficulty in accompanying and engaging the victim in an integration work path. In addition, added to the absence of services, the victim tends to be more exposed to revictimisation, which is normally aggravated by the “quick money syndrome” mentioned by Pambelch (Plambech, 2014). Unfortunately, many victims do not have the educational background to achieve high paid jobs, which influences the work integration offered by the National Agency, mainly based on low paid jobs.

“The women normally require to do aesthetic work, but of course we have to offer them options according to their school level. We also can offer them the possibility to go to school, but normally they start it, but they don’t finish. Because they are not motivated, they want to have something quick and a lot of money, quick money and they don’t want to wait and they expect to have a lot of income. So, we have to work something that their family did not work on. They did not have this education at home, they did not know how hard it is to earn money and how important it is to go to school. They are like adult persons that think like children. In consequence, if they don’t want to go to school the only option is to do cleaning and they don’t want to do this. They don’t earn a lot of money as they expect in doing this and therefore they do not take the responsibility of work, they don’t even inform their boss about their absence.”³¹⁸

³¹⁶ Interview number 7 (Law enforcement), 23/08/2016, Romania

³¹⁷ Article 63 of Law No. 292/2011 on Social Assistance provides the social services to which victims of human trafficking are entitled, namely residential centres (shelters) providing assistance, care and protection, day care centres which provide information, counseling, psychological support and social reintegration, and services at the community level, consisting of social care services, psychological counseling, legal advice, professional guidance and social reintegration.

³¹⁸ Interview number 7 (law enforcement), in 28/08/2016, Romania

The present declaration from an employee of the National Agency Against Trafficking in Persons is very clear on the obstacles of engaging a victim of human trafficking in a protection path, even without the need of accommodation for the victim. In fact, in Romania, on the contrary of Italy, the majority of the victims does not require accommodation, since they live with their family. However, despite that, the family has a very important role in the empowerment of the victim; it has also been demonstrated to be more difficult to intervene in cases that the victim chooses to be outside the shelter, due to geographic and mobility problems. Therefore, the victims in Romania that have a family, normally do not even require psychological and legal counselling and even if they are identified by the police as human trafficking victims, in case the police is not located in the workplace of the National Agency, the police often do not call the experts from the National Agency, since they are aware about the lack of financial resources. However, the absence of resources can deprive the National Agency in having contact with the victim, since that after the victim's identification of the police, sometimes the victims tend to disappear.

“Because we only have one car, and there is no money for gas and sometimes they do not call us and they only send the papers and when we try to speak with the victim, she is not reachable anymore. And they ask if she wants assistance she says no and they mark this and therefore we cannot offer assistance to the person.”³¹⁹

The lack of awareness of the individual about the state of victimhood can be seen as a sign of resistance, where the individual rejects the state of victimhood in order to avoid a paternalistic protection of the State that is normally provided to human trafficking victims. In this case, a vulnerability that is often seen as passive feature of the victim, becomes a justification for the State to exercise control on the victim's power, thus many victims avoid this control by neglecting the State's assistance. However, this denial of victimhood and resistance of Romanian women is not the opposition of vulnerability, on the contrary their resistance is a synonym of their vulnerability. According to Butler (Butler, 2016) “vulnerability requires and implies the need for protection and strengthening of paternalistic forms of power” that can lead to a

³¹⁹ Interview number 7 (law enforcement), in 28/08/2016, Romania

collective form of resistance and social transformation. Furthermore, the victim's protection tends to be often based on an aid-based approach, rather than empowerment, which enhances the forms of control (Meyers, 2014). However, it is important to reflect that resistance is not the solution to vulnerability, since the victims that deny their state of victimhood neglect any possible assistance, which continues to affect the condition of the victim and continues to expose the victim to a situation of vulnerability, in this case of revictimisation.

The fact that Romanian women have the goal to return to their origin country and do not need an access to a humanitarian permit also enhances the denied of assistance of the Romanian women in the destination country. This denial is an outcome from the relation between victimhood, which is normally attributed to third country national citizens and paternalism that as it has been noticed, it comes to fulfil the lack of access to rights to the victims that are not legally bound to the destination country. However, despite that the lack of requiring assistance of Romanian women results in a less paternalistic protection by the State towards the human trafficking victims, it is also true that it can lead the individual into a situation of re-trafficking. On the other hand, women can also achieve a level of resilience, by recovering from their trauma and returning to their previous state.

2.3.9 Voluntary Assisted returns

In the last years, some Nigerian victims have started to demonstrate the desire to return back to their origin country, especially after understanding the European difficult context (Andreatta, 2015). IOM is one of the main organizations that provides the Assisted Voluntary Return and Reintegration (AVRR) to human trafficking victims as also to migrants in general, since 1st July 2016. Until 31st July 2017, IOM has assisted a total of 442 people from 56 different nationalities, being Nigeria in first place, followed by Bangladesh, Senegal, Ghana and Peru (IDOS, 2017). The program not only provides the flight back to the origin country and the granting of an identification document, but also an economic and social support that varies from 1600 euro to 2000 euro. The provided money serves as a push factor to the migrant, to have an economic activity in the origin country. This is one of the main support programs that provides assisted returns to human trafficking victims in Italy, yet, it is only provided to third country

victims. Therefore, the return of European victims is normally done in an independent way or through the destination country's organizations that redirect the victim to personal contact's organizations working in the origin country³²⁰.

Despite the IOM's program is also for human trafficking victims, the main beneficiaries in the last years in Italy are migrants or non-accompanied minors. Actually, IOM has declared that human trafficking victims did not participate in their return program in the last years (GRETA, 2016). However, other associations, mainly religious with established partners in Nigeria, have started to also support Nigerian human trafficking victims to return to their origin country. For instance, the Association Slaves No More has started in 2012 a project funded by Caritas Italy and the Italian Episcopal Conference that provided the opportunity for Nigerian human trafficking victims to start an economic activity in their origin country. The project that started in 2013 was able to voluntarily repatriate 35 women³²¹ that have shown to have positive results, especially because the women do not speak about their experience in Europe. In fact, due to the large discrimination regarding the Nigerian women that return poor from Europe, there have been cases in which the women were obliged to close their activities, since they did not have clients that are highly discriminating. Therefore, sometimes the women avoid in returning to their hometown, by changing the city. Furthermore, the nuns from the hosting association are normally very careful when they visit the women at their business, in order to avoid that the locals suspect on the origin of their relationship³²².

Once the girl decides to proceed with the project, the Association has an interview with her, especially to understand the main factors that have influenced her decision, in addition, this interview serves also to understand if the girl is being pressured by someone. In case she is not being influenced on her decision by others, the association proceeds with the analysis of business interest or an education plan for the victim. In case the woman is in the CIE, the priority assistance is related to the arrangement of the identification documents, in order to consent them to travel. Furthermore, in case the girl is within the CIE, the organization working in Nigeria is provided with a brief historical background of the woman.

³²⁰ Interview number 20 (civil society), 02/03/2017, Romania

³²¹ Information given until the date of the interview on the 19/01/2017

³²² Interview number 27 (third sector), 19/01/2017, Italy

“Before the departure we prepare the things for them, about what they can give to their siblings and brothers, so they don't feel frustrated, we always prepare 300 euro for them and then, the project's money is transferred for the sisters through bank and we pay for the flight ticket”³²³.

“The success of the voluntary returns depend on the girl, because sometimes they also want the money in their hands and we say no. They are accompanied to be trained. There is also the problem of some priests and churches.”³²⁴

The activity in Nigeria is supported by the Conference Nigerian Religious Order that receive the women at the airport in order to start their path in Nigeria. Their business plan initiates by focusing on the geographic area, the renting building, the equipment from the shop as well as the basic necessities for their house. The monitoring process is done by the nuns of the Conference of Nigerian Order periodically and communicated through emails to the coordinator nun in Italy that is from Slaves NoMore that also goes to Nigeria each two years in order to evaluate the project.

“She is 19 years old and her child is 2 years old, she had the baby when she was a minor, now she does the internship in tailoring, but she has already affirmed that she wants a food business, because with food it is always possible to make profit. She will be supported by the nuns there, then she takes 5/6 thousand euro to rent a place for two years in Benin City.”³²⁵

This is the normal procedure when the Association has time to design a business plan along with the victim, yet, since the Association Slaves NoMore provides also this opportunity to the women that are within the CIE, not always the procedure can be thought at this level. In fact, in this case, the nuns are not able to properly prepare the women that are within the CIE. Therefore, the girl decides before the departure her destination, between Benin City or Lagos, thus the evaluation of the process starts only

³²³ Interview number 27 (third sector), 19/01/2017, Italy

³²⁴ Interview number 22 (third sector), 27/07/2016, France

³²⁵ Interview number 22 (third sector), 27/07/2016, France

when she arrives in Nigeria, taking normally around three to four months, passing initially through on an evaluation of her situation with the trafficker and her family³²⁶. In case the women, for instance, does not want to disclose her situation to her family, which normally happens due to their feeling of guilt and shame, the process can be more difficult, especially if the trafficker is looking for the girl. Furthermore, in case the woman decides to go to another city that it is not her origin city, it also avoids that the victim has to explain to her family the motive of the decrease of her remittances to their family (Plambech, 2014). Besides the factor of remittances

“We had two cases where the girl had to disclose the information, because one of the family was pressuring her to go to the rural area, and even the mother broke down when she knew what have happened.”³²⁷

“We evaluate the girl’s situation, if the trafficker is pushing her or is after her and how can we protect her, so we discuss about this with the family. So they [the girls] choose if they want to see their family and if they want their family to know that they are alive. We try to stimulate them to have liberty of choice. Normally the girls don’t want to be with their families, they just go and greet the family. They want to stay near where they have their business. We also evaluate if they have been trafficked by the members of their family since it can be a risk”³²⁸.

“For instance, there was a girl that required to go to a different city from her provenience city, in order to avoid crossing her family members due to unsolved matters”³²⁹

The voluntary return is normally accepted by the migrants with a certain age, that after many years of a failed migration project, especially when they have children in the origin country, they see the voluntary return as an opportunity (Plambech, 2014). In Sicily, another Religious association also offers the possibility of returning to Nigeria

³²⁶ Interview number 27 (third sector), 19/01/2017, Italy

³²⁷ Interview number 27 (third sector), 19/01/2017, Italy

³²⁸ Interview number 27 (third sector), 19/01/2017, Italy

³²⁹ Interview number 33 (third sector), 10/04/2017, Italy

by the implementation of an activity back in the origin country. On the contrary, to the situation of the women that are found in the CIE and have a quick return, the association in Sicily prepares the women by integrating them into a commercial activity, normally required by the women. Therefore, the association designs an individual project along with the woman regarding her specific situation, such as family constitution, skills and geographic location. In case the woman has been previously prepared for her protection path for a certain commercial activity, the preparation is only one month, while in case there was no precedent involvement in the activity, the training goes from four up to six months³³⁰. There is a one year contract, with an amount around 9000 euro, which is given to the hosting association for renting a house, products or material to sell. The follow up is normally done by the association located in the origin country and after the first phase, the girl is considered autonomous.³³¹

2.3.12 Potential human trafficking victims in forced returns

In the last decade, Italy, in cases of big *migration waves* has been accused of forced returns without considering the International Legal Framework regarding refugees, as it was the case of *Khlaifia and Others v. Italy*. In fact, despite of the highlight of the Warsaw Convention 2005 on the avoidance of forced return of potential human trafficking victims, due to the possibility of re-trafficking as well as the exposure of the victim to the criminal networks, as in the *Rantsev vs Cyprus* case, Italy has demonstrated the lack of willingness in the providence adequate identification of VoTs (Rigo, 2016).

With the massive migration pressure that has arrived in the recent years, Italy has implemented six Hotspots³³² in the main Italian ports that migrants disembark, such as the one in Apulia and Taranto and five in Sicily (Lampedusa, Augusta, Pozzallo, Porto Empedocle and Trapani), for a total amount of 2100 beds. The main goal of these structures was to identify the migrants arriving in Italy and Greece, after the implementation of the relocation system within the European Union. Therefore, at the migrants' arrival, they should be provided with the information regarding their asylum

³³⁰ Interview number 33 (third sector), 10/04/2017, Italy

³³¹ Interview number 33 (third sector), 10/04/2017, Italy

³³² Disembarkation prepared for the Identification structures

seeking procedures, in order to proceed with their relocation process for other European Members.

However, the Italy's Road Map to other countries has presented to be a failure, since other countries have demonstrated to not be willing to accept a certain number of asylum seekers. In fact, in the last months of 2016, only 200 asylum seekers were relocated comparing to the outstanding number of disembarked people in the Italian Ports (Stefano & Paleologo, 2016). Therefore, the Hotspots of Pozzallo, Porto Empedocle, Trapani and Lampedusa have still continued to use the immediate identification centre, where many migrants are put directly within the category of "economic migrants" and being immediately rejected at the border, without being able to present their decision on applying for an asylum (ASGI, 2016).

On the 8th January 2016, the Ministry of the Internal Affairs has issued a Ministry Circular that has demonstrated the preoccupation of National and International organizations on the rejection at the border of migrants not recognised as "in clear need of International Protection". Furthermore, the Circular urged to provide adequate information to the migrants, referring to the Art.8 of the European Directive of 2013/33/UE. In effect, after the issuing of the Ministry Circular, the Questure of Trapani has started to avoid the border rejections, while the Questura of Agrigento and Pozzallo have continued with the rejection at the border of the so-called "economic migrants". Consequently, the Courts of Palermo and of Trapani have accumulated a high number of suspensive clauses (Stefano & Paleologo, 2016). The rejection at the border consist of a document that orders the migrant to leave the Italian territory in seven days through the airport of Fiumicino.

Hence, the hotspots have demonstrated to be inadequate to receive asylum seekers or identify human trafficking victims. In fact, according to UNHCR and IOM, the structure does not present good conditions to have private interviews and to have contact with individuals, such as the Hotspot of Pozzallo. In addition, at the entrance of the Hotspots the migrants are provided with a form, in which they are asked to declare the reason for their irregular entrance in Italy, being presented with the specific options by: "to seek work", "to escape poverty", "to seek asylum" or to "reunite with family" (GRETA, 2016).

It was based on these tendentious answers that the Questura of Agrigento has sent 66 Nigerian women on the 23rd July 2015 into the CIE of Ponte Galeria with a collective border rejection, in which it is considered that the migrant has not even entered in Italy.³³³ According to a response to the Senator Valeria Fideli from the Vice Minister Internal Affairs “the transferring was necessary due to the fact that the Nigerian citizens have declared at the time of the identification to come to Italy to find work, and this not being in accordance with the permanence rules, they were destined to a collective border rejection from the Quaestor of Agrigento and Siracusa”³³⁴ (Beretta, Bondi, De Masi, & Esposito, 2016).

Therefore, before being sent to the CIE, the women had proceeded with a health check up that declared that the women were able to travel. However, once the women have arrived in the CIE Ponte Galeria, they have done another medical check up that has resulted that four of the women were pregnant (Rigo, 2016). Hence, in the same day, two of the women were sent to “*Casa delle Suore della Redenzione*, while the other two were moved out of the CIE on the 24th and 25th July 2015. None of these four women claimed asylum”. In a letter to the Ministry of the Interior and Frontex³³⁵ Barbara Spinelli, Italian Member of the Parliament inquiries about the procedure on the averigation of the pregnant women before taking them to the CIE, since that one of them was noticeably pregnant of 7 months (GRETA G., 2016).

Due to the circumstances of the forced returns in Italy and the CIE conditions, on the 30th January 2017, the Greta group has released the Report on *Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings* (GRETA G., 2016). The report has taken in consideration the legal procedures to identify potential human trafficking victims in the Center for Identification and Expulsion, known as CIE. The report that urges the Italian authorities on the conduction of the rights of trafficked victims as well as providing the information regarding their protection procedures has come out as a consequence of the attempt of the deportation of 20 Nigerian girls on 17th September 2015, by the Italian government. The deportation was in a joint operation “from Rome to the Lagos airport and organised and co-ordinated by the European

³³³ Interview number 26, (third sector), 29/11/2016, Italy

³³⁴ Translation of the author

³³⁵ On the 14th October of 2015

Agency for the Management of Operational Co-operation at the External Border of Member States of the European Union (Frontex)”, with a charter flight that has made some stops in other European countries (Stefano & Paleologo, 2016).

Regarding this case that I analysed through the interviews with lawyers and NGOs that have followed the case, the GRETA group has sent a letter to the Italian authorities pursuant to Rule 7 of the Rules of procedure for evaluating implementation of the Convention by the Parties, requiring some information regarding the deportation procedures³³⁶. The answer has been given by the Italian government with scarce information regarding the procedure of identification of human trafficking victims and non-development regarding the consequences of potential re-trafficking in the origin country (GRETA G., 2016). Furthermore, the Italian government has also mentioned that according to the Presidential Decree No. 21/2015, the immigrants are all informed about their rights, at the moment of their arrival.

Nevertheless, the women have declared to have waited five days in Lampedusa without any information on the required procedures (Stefano & Paleologo, 2016), being after sent to the CIE of Ponte Galeria by a commercial plane, among with Italian passengers that has stopped at least in another airport in order to embark other passengers that were going to the CIE. Once the women have arrived in the CIE, they were immediately identified by the Nigerian authorities. Nevertheless, despite the quickness on the identification, the formal presentation of the asylum request of 64 women (four did not present the asylum claim since they were pregnant) has had some delays, since some women after a week within the CIE were not able to present their asylum request,³³⁷ being mainly excused on the high number of women (Beretta, Bondi, De Masi, & Esposito, 2016).

³³⁶ What measures are being taken to screen asylum seekers and persons detained pending deportation for indicators of human trafficking, with a view to identifying victims of trafficking among them and referring them to assistance as required by the Convention? What measures were taken as regards the Nigerian women subjected to forced removal by air on 17 September 2015, to ensure full and effective screening for indicators of human trafficking and identification of possible victims of trafficking?

- What follow-up is given following removal operations by air to avoid re-trafficking and revictimisation of returned persons and to assist with their reintegration into society in their country of origin? Specifically what follow-up actions were taken concerning the persons that were returned on 17 September 2015 to Nigeria?

- How many forced return flights to Nigeria or other countries have taken place in 2015 and the first four months of 2016, and when are the next such flights planned?

³³⁷ Interview number 26 (third sector), 29/11/2016, Italy

Their administrative detention has been first validated by the Justice of Peace and then, 90% of the women had made the claim that was sent to the Judge for the International Protection. The women that have made the asylum request were transferred to a reception centre, normally a CAS, since the administrative detention is not validated by the ordinary judge. In general, the women are not released from the CIE, unless they present the asylum request or in case of health or age issues such as minority, pregnancy, transmissible diseases or psychological problems.

In fact, along with the 66 Nigerian women that have entered in the CIE, four of them were in the state of pregnancy.³³⁸ Therefore, the person in order to be accepted within the CIE should undergo with an initial checkup, yet this check up made by the women seems to have been insufficient, since the women that have arrived in the CIE did not have any medical documentation. Therefore, the procedure that was taken by the staff was based on asking the women if they were pregnant, or when the women had their last cycle, in order to preview current pregnancies. Furthermore, during the visit of the group *LasciateCIEntrare* a Nigerian woman has declared to have been a victim of sexual abuse and wanted to do a pregnancy test that was not provided to her, which justifies the lack of attention of the CIE's staff regarding potential pregnancies. Consequently, after the visit of the group *LasciateCIEntrare*, the CIE has done a Protocol with *ASL- Azienda Sanitaria Locale*³³⁹ to perform the check up before accepting of the women within the CIE (Stefano & Paleologo, 2016).

According to a lawyer's clerk, on 25th July 2015, in less than three hours, three judges have performed sixty-seven hearings and decided in all cases to validate the detention (Rigo, 2016). The Territorial Commission has started to interview the women in the beginning of September, redirecting 13 of the women that have demonstrated indicators of human trafficking to the association *Be Free* and the association *Differenza Donna*, which is another Association working within the CIE³⁴⁰. However, the association *Be Free* did not limit the accompaniment to the 13 women, but also to the

³³⁸ The Senate of the Republic, Assemblee of 14 January 2016: "Interrogazione a risposta orale con carattere d'urgenza n. 3-02164 dell'On. del Sen. Valeria Fedeli ed altri sulle procedure di identificazione e di accoglienza di 69 donne nigeriane provenienti dalla Libia." In particular the number recalled by the vice Minister of the Internal Affairs that included three women that were not sent to the CIE due to their pregnancy.

³³⁹ Local Sanitary Enterprise

³⁴⁰ *Be Free* has been active within the CIE Ponte Galeria through the participation on the Call for Proposals to identify potential human trafficking victims under the project "Prendere il Volo" and later called "Fuori Gioco".

other women that were not identified as potential human trafficking victims by the Territorial Commission. The accompaniment was done mainly through private and group interviews that have identified the presence of the criminal networks for sexual exploitation.

Actually, the women presented high vulnerability and human trafficking indicators such as most of them have been helped by a friend with the aim to escape Nigeria, they had scarce alphabetization, lived in extreme poverty situation in Nigeria, lack of memory of the travel events, lack of knowledge of the people that were encharged in transferring them, receiving the indication of calling a particular phone number, once the women arrived in Italy (Beretta, Bondì, De Masi, & Esposito, 2016), and provided with the information in Libya that in Italy they would have received protection (Stefano & Paleologo, 2016).

Despite that it was still not possible to determine a larger number of human trafficking victims due to the lack of time to establish a trust relationship, Be Free was able to get an International Protection to 13 of these women (Beretta, Bondì, De Masi, & Esposito, 2016). Furthermore, due to deception of the travel and the exploitation, the Nigerian women, which are normally very confused once they arrive in Italy, were still very distrustful, since they do not understand the role of the “white woman”. The lack of establishment of trust was mainly due to the non-application of the period of reflection of 90 days, ex-Art. 13, which provides the time to the organization to establish a trust relationship with the potential victim, in order to decide to undergo to a protection path or return to her country.

“There were girls that have told all the situation, but they did not want to press charges, while the other girls have told all their story and have decided to press charges. Some of them have said they would press charges, since their plane was on the following day, but once the plane has departed, they have changed their idea. However, even if the women press charges, the permit is not immediate you can receive your permit within one or six months. There were also women that have never pressed charges even when they have received a negative exit from the Territorial Commission.”³⁴¹

³⁴¹ Interview number 26 (third sector), 29/11/2016, Italy

One of the hearings for the validation of the detention of the 12 women was inside the CIE, rather than in the Court, in order to avoid the access of activists, associations and media (Stefano & Paleologo, 2016). The rest of the women were lately dismissed from the CIE, in which 32 of them have received the suspension order of being in detention in the CIE and were put in a CAS, where they were after collected by the people that have paid their travel to Italy.³⁴²

“On one hand it is easier for the exploiters to take the women from these centres, on the other hand the structures of Art.18 are different from what the women are used to, like taking the cell phone, so it is normal that the person trusts more someone from the Nigerian Community, also because, once she has arrived, she was put in detention. However, I can tell you a story about a girl that has finished well. She was one of the women that did not say anything while she was in the CIE, and once she was at the CAS, she stayed there until December, when she disappeared. In March 2016, she has re-contacted her lawyer after being sexually exploited for two months in Tuscany, she was finally ready and she has pressed charges against her Madam and now that she had a Humanitarian Protection, she is in a centre for human trafficking victims in the North.”³⁴³

Seven of them have been granted the humanitarian Protection, one a refugee status and three have received the subsidiary protection. For the women that have received International and Humanitarian Protection being recognised as human trafficking victims, since it was in 2015, it was difficult to find a protection centre for them, since they were one of the firsts to be recognised asylum seekers for human trafficking victims. Furthermore, on the contrary of Art.18, some organizations had difficulty in hosting the women since they started to be sexually exploited, while in the protection institutions. In fact, the institution has demonstrated to be contrary to provide dormitory for the women that have started to be engaged in sex exploitation, saying that the women were attached to an Art.18, instead of being asylum seekers (Rigo, 2016).³⁴⁴

³⁴² Interview number 26 (third sector), 29/11/2016, Italy

³⁴³ Interview number 26 (third sector), 29/11/2016, Italy

³⁴⁴ «From the stories collected [...] there is no clear evidence that these four girls, currently housed by our

Furthermore, the Territorial Commission did not refer to the decision of International Protection for human trafficking that the women were obligated to be introduced in a particular kind of protection project (Rigo, 2016).

“It was very difficult to find a centre for them. It was very serious, since they were not ready for Art.18, and they were also not still exploited within the Italian territory. For the women that have received the International Protection based on their situation of human trafficking, it was possible to insert them in centre for human trafficking victims in Rome, but other institutions were not available to receive the women with other type of Protection Permit. Because Art.18 is a full package, even if it is very fragile, since it is only 6+6 months, while the others had a longer permit. Therefore, this situation has led that the anti-trafficking centres have denied the women, since they were asylum seekers, while the reception centres for asylum seekers declared that the women were human trafficking victims. This was a dialogue that has started to emerge in a situation that was an emergency. Many women went to auto-managed houses, with the collaboration of the Association Lucia Siesta.

Therefore, from the 64 women that stayed in the CIE, 45 of them have received a negative exit from the Commission, from which 15 had seen their expulsion orders suspended by the pending appeal. However, despite that the other women were still on appeal, due to the fact that this event was before of the applicable Law Decree 142/2015 that forbids the deportation of asylum seekers during the asylum request, 20 women on the 17th of September were being deported through a Frontex’s flight. The alarm of the deportation happened at 7 am on the same day, when the women have called their lawyers due to the fact that they were separated from their peers without any information (Rigo, 2016).

In fact the appeal did not block automatically the deportation, since it was also needed the suspension clause granted by the Judge of the Civil Court. This has led that the lawyers, mainly volunteers working at the *Clinica del Diritto d’Immigrazione e*

association, are victims of human trafficking. From our experience we are convinced that they might all be exposed to great danger but, on the basis of our willingness to continue to help them, they must each choose to enter a specific social rehabilitation programme consisting of rules and of goals to reach. [...] The shelter that we provide should not be thought of as a dormitory where the girls can do what they like and consider the structures of the association merely as a place of residence»

della Cittadinanza of the University Roma 3³⁴⁵ that were engaged in the case, tried to reach the prosecutors' office in the same day of the deportation,³⁴⁶ being able to get the suspensive clause of one woman that was able to get out of the plane and later released on the 18th September 2015, since she has exceeded the maximum duration within the CIE (GRETA G., 2016).

Each one of the women were accompanied by two police officers and in spite of the information provided by the Italian authorities stating that no rights' abuse has taken place, the UN Subcommittee on Prevention of Torture (SPT) that was present at the moment of the transferring from the CIE has declared that "the forced expulsion was conducted with inhuman and degrading treatment and violated Italy's human rights obligations for a number of reasons, including because the migrants subjected to expulsion displayed clear signs of suffering extreme stress, anxiety and fear throughout the forced expulsion, were unaware that they would be expelled, many were still involved in legal procedures to determine their entitlement to remain, and women were carried by male officers, often in a degrading manner" (United Nations, 2016).

Notwithstanding of the high media attention to the case of the 66 Nigerian women, the number of Nigerian women has continued to arrive in the following months to the CIE, directly from the Port of Trapani and Lampedusa. For instance, when the group *LasciatiCIE*Entrare visited the CIE in the 30th November 2015, they have encountered 105 women, from which 85 were Nigerian, mainly between 18 and 25 years old. As the others presented high vulnerability indicators, such as being analphabetic, not having money with them and with a similar background, being mainly orphan and being fostered by a relative that mistreated them. Furthermore, while in the CIE, the girls tend to ask for a Wind SIM card with the purpose to contact people in Italy (Stefano & Paleologo, 2016).

Organizations have declared the poor conditions within the CIE, especially regarding the lack of hygiene products and hot water as well as the long permanence of migrants within the CIE. For instance, GRETA Group and OSCE (GRETA G. , 2016; OSCE, 2013) have reported that migrants have declared to be more than three months within the CIE. Besides the lack of conditions within the CIE, the women have also declared of not being aware of the possibility to nominate an independent lawyer or to

³⁴⁵ Interview number 15 (Law enforcement) 07/03/ 2017, Italy and 26 (third sector), 29/11/2016, Italy

³⁴⁶ Interview number 15 (Law enforcement) 07/03/ 2017, Italy and 26 (third sector), 29/11/2016, Italy

even be unaware of the name of their lawyer. In fact, while in the CIE, the women normally have a lawyer indicated by the Prosecutor's Office that tends to be present for the hearings, but normally does not comply with a forward work, in case there is a negative exit from the Territorial Commission (Stefano & Paleologo, 2016).

Besides the mentioned case, the Association Be Free has encountered from 2013 (the time that the association has started to work inside the CIE) until 2015, 15 cases of potential human trafficking victims that have been deported. The cases were mainly regarding women that have pressed charges against their exploiters, but instead of having been granted protection, they have been taken to the CIE and then deported due to the lack of identification documents (Beretta, Bondi, De Masi, & Esposito, 2016).

For instance, in 2013, the association Be Free has also denounced the lack of application of the ex-Art.13 of the Law Decree 228/03 and the Art.18 of the Law Decree 286/98 also regarding a Nigerian woman. The authorities have declared that the non-application of the mentioned protection articles was due to the fact that the exploitation did not occur in the Italian territory. Hence the girl was still deported to Lagos, being assisted at a reception centre of the association USMI (Unione Superiore Maggiori d'Italia). Actually, the women once they arrive in Nigeria, they do not have any support and they arrive to Lagos airport, without any other assistance. The only provided assistance is not from the government, but some contacts of the Italian organizations operating in Nigeria³⁴⁷. Furthermore, there have been reports that many Nigerian women when deported were arrested by the Nigerian authorities at the airport (Skilbrei & Tveit, 2007). In order to receive a bribe, the police tends to ask to the girls to present an "AIDS certificate" at the airport, which is obviously another excuse to receive money, since such certificate does not exist.

Besides the Association Be Free, in 2013, the Association MEDU also denounces a high presence of Nigerian human trafficking victims for sexual purposes that were in detention along with their exploiters in the three CIE of Turin, Bologna and Rome (Zanchetta, Francini, Novella, Peca, Tavoso, & Barbieri, 2013). Effectively, this has been demonstrated to be another problem within the CIE, since the women that go to the CIE are the ones that are in an irregular legal situation in the Italian territory.

³⁴⁷ Interview number 26(third sector), 29/11/2016, Italy

Therefore, it is normal that within the CIE, human trafficking victims can also be placed with their exploiters.

“We realise that there is a Madam in the CIE for the number of women that arrive in our front-office, or due to the behaviours of some of the women, for instance, if we pass the women tend to mock us or say something in particular; or when you go to a girl and the girl says directly: “no one has brought me to Italy.” Also for the number of interviews that we do. Some of the Madam can be in an irregular situation, for instance, they can be in Italy for 20 years and maybe they have lost the permit in the last months. There was also a situation of women that would call directly to the CIE and asked to speak with the girls.³⁴⁸”

Other joint operation between Frontex and the Italian authorities has taken place on the 17th December 2015 that was evaluated on the 16-18th December 2015, by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). During the visit to the CIE, the delegation was able to interview 13 Nigerian women that were listed to be deported, all in the situation of appeal for their asylum request, even if there was no information on the pending legal procedures on the women’s files. Despite the lawyer of the women has confirmed the launch of their appeals, the authorities have proceeded on the 17th of December on the deportation of 7 women, yet one woman has received the suspension clause that was only communicated to the State Police after the departure of the plane to Lagos (GRETA G., 2016).

On the 14th of July, another joint charter flight has deported 22 Nigerians, including three women coming also from Switzerland (5) and Belgium (2). This has been the first return flight that was monitored by the National Preventive Mechanism (NPM) activated through the application of the Optional Protocol to the UN Convention against Torture (OPCAT) and in accordance with the Article 8 (6) of Directive 2008/115/EC (the Returns Directive)³⁴⁹. In fact, after the verification of the women’s documentation at the CIE it has been encountered that two women had presented an asylum request, which has led to a suspension of their deportation. However, despite the implementation

³⁴⁸ Interview number 26 (third sector), 29/11/2016, Italy

³⁴⁹ The article obliges the application of a monitoring system during the forced returns’ flights

of the monitoring system to the forced return flights, on the charter flight to Lagos on the 4th May 2017, 40 Nigerians were deported, in a situation that the Association *Diritti e Frontiere* has denounced that the migrants lacked information in being able to present the asylum request (Ruta, 2017).

On the 26th January 2017 the *Prefetto* Giovanni Pinto, director of the *Direzione Centrale dell'Immigrazione e della Polizia delle Frontiere*, has emitted a Circular Order in collaboration with the Nigerian Embassy entitled as “Contrast activity to smuggling of migrants”³⁵⁰, in which is presented the urgency of finding Nigerian irregular migrants within the Italian territory until the 18th February of 2017. The migrants would be forward to the four CIE (Rome, Torino, Brindisi and Caltanissetta) where there are 95 vacancies “reserved” for this nationality (50 places for women in the CIE of Rome, 25 for men in Turin, 10 for men in Brindisi and another 10 for men in the CIE of Caltanissetta). Besides the atrocious persecution to a particular nationality, the Circular Order demonstrates exactly the lack of provided time to identify potential human trafficking victims within the CIE.

According to a Ministry of the Interior’s letter on the 18th April 2016 (GRETA G. , 2016), Italy has organised seven return flights to Nigeria with a total of 215 persons and another flight between Nigeria and Ivory Coast, in which six people were expelled. However, during a GRETA’s meeting with the Ministry of the Interior on the 21st September 2016, the number of Nigerian citizens deported in 2015 and 2016 was 477 of which 73 were women. Some of the deportees were potential human trafficking victims that were not identified in the destination country and that the only provided advice once they have arrived in Nigeria was to go to the IOM’s Office in Lagos (Plambech, 2014).

Besides the deportation being the harsh strike to the migration project of many migrants, it can also augment their vulnerability in their origin country, especially since many migrants are only taken to the country’s capital and there is no accompaniment after the arrival in the origin country. In fact, many women when they arrive to the airport in Lagos, they are obliged in sleeping on the street before finding their way back to Benin City (Plambech, 2014). Furthermore, Nigerian women tend to be deported at the beginning of their migration project or at least, during their debt’s payment, which

³⁵⁰ "Audizioni e charter Nigeria. Attività di contrasto all'immigrazione clandestina",

does not provide them any economic support to survive in their origin country. However, Nigerian families tend to rely on the remittances sent by immigrated Nigerian women, which obviously finishes once they are deported. In fact, deportation of Nigerian women tend to be embarrassing as well as a synonym of failure, being the women normally stigmatised from the family or the society (Plambech, 2014).

2.3.11 Victim or Perpetrator?

According to the Art.8³⁵¹ of the Directive 2011/36/UE that introduces the “non-punishment clause”, and in a less explicit way the Art.26 of the Warsaw Convention, the victim of human trafficking, in case he/she has committed offences during the time of exploitation should be exempted from criminal investigation, prosecution, conviction and detention or either type of offences. It is not difficult to understand the presence of such Articles in an irregular and complex phenomenon as human trafficking, where often the traffickers oblige the victim in committing offences as fraud, petty crimes or even becoming collaborators in the criminal hierarchy. Furthermore, criminal networks working on human trafficking, especially in sexual exploitation, not only tend to provide false documents to the victims, engaging already the victim in legal offences against the State, but also often inform the victim that sexual services are illegal in the destination country, independently of the national legal framework.

The involvement of the victims in criminal activities provides to the trafficker the exact space, not only to profit from a collaboration of the victim that can present a dual model, especially when they control others, but also avoiding that the victim presses charges on the trafficker, by getting his/her hands dirty in the crime chain. It is, in fact, in this grey zone that influences the victims in not collaborating in the investigations, which consequently affects the number of investigations in human trafficking (Farrel, Owens, & McDevitt, 2014).

The researcher Edna Erez (Erez, 2010) in this case exposes the selection of two models, the first one, where there is the need to ascertain that the offences have been a

³⁵¹ “Member States shall, in accordance with the basic principles of their legal system, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred on Article 2.”

result of a based coercion, either physical either psychological or the second hypothesis, in which the role of a victim of human trafficking is enough to demonstrate that the consent is a consequence of the entire situation. The non-obligation of the Member States to comply with the principal of non-punishment (Fredette, 2009), along with the detailed precision of the European Directive³⁵², which the principal should not be applied to the criminal offences that were voluntary committed by the victim, demonstrates that the principal of fully absolved of the victim is not totally required by the International Legal Framework, but limited by the voluntary acts. However, in this case it should be considered that the context of sexual exploitation tends to be a particular situation, where the line between victim and offender tends to be very thin. In fact, academic research verifies that women tend to be involved in the criminal network in order to defend themselves from the exploitation (Erez, 2000). Furthermore, once the woman has paid her debt and she is not legal in the territory, advancing her career to be an exploiter, a Madam, seems to be one of the few possibilities, especially because the women have scarce knowledge of other work activities in Western countries.³⁵³ This situation leads us to an ambiguity of the role of victim-accessory, in which, despite that the victim is not coerced into accepting the advantages provided by the exploiter, it is well known that the context of human trafficking can be widely complex lacking from an acknowledged alternative. This also leads that the exploiters tend to be quite young, often lacking power on the criminal network (GDS, 2017)

In sexual exploitation, especially in the Nigerian trafficking system for sexual purposes, it has been studied the grey zones between the offenders and the victims, within the criminal network hierarchy (Lo Iacono, 2014). Among the victims, the Madam chooses the most trustful and obedient girl, normally providing better conditions at work or a discount of the debt (Carchedi, et al., 2010), which not only creates an environment of mistrust among the girls, but also their willingness of becoming the Madam's favourite, being always submissive and obedient. Moreover, this leads that the women see their Madam as someone that can be gentle, which also avoids future pressing charges of the victims. In order to avoid also the press of charges the Madam also can present to the victim a discount, normally around 5000 euro, by

³⁵² “This safeguard should not exclude prosecution or punishment for offences that a person has voluntary committed or participated in.”

³⁵³ Interview number 21(third sector), 30/05/2016, France

offering to the girl to recruit a new girl for her from Nigeria and at the same time, gathering money from the joint from the new Madam (Pascoal, 2013).

“We know that in that case, the Madam tries to keep the girl, because she has learned how to be a prostitute and she even knows how to manage the other girls, thus she can help the Madam. The Madam is intelligent, she gives her two of the girls and in this case, the hierarchy of the Madams is extended and since not all Madams are equal, we need to see them as a pyramid.”³⁵⁴

In fact, as also referred on the subchapter “The Libyan route”, there has been a change in the profile of trafficker, in fact, it has been highlighted that many victims, instead of paying their debts, automatically bring other women to work for them (Fernandez, Garzón, Juan & Contreras, 2017), which can also justify as the lack of experience and network contacts, as the low debt that it is imposed to the victims. The possibility of progress within the criminal network, through the collaboration with the trafficker, such as controlling and accompanying the new girls is seen for many victims as the only survival strategy in the European countries (Erez, 2010). In this case, I should consider again the chronology of the concept of victim, i.e. should a woman that has been exploited in the past be still consider a victim of human trafficking? In case case the answer is positive what should be the time lapse attributed to a victim and when can it be considered that a victim is no longer a victim?

In the case of Nigerian women, as previously mentioned, the debt tends to delimit the concept of victim. However, in human trafficking it is also known that despite that the trafficker has no longer a relationship with the victim, the exploitation can have long repercussions as physically as psychologically. In fact, the potential answer to my questions are the social, cultural, linguistic and economic indicators that should be measured at the follow up. Moreover, the indicators, not only prevent the revictimisation, but also can potentially avoid that the victim enrolls on the exploitation of further women. As previously seen, vulnerability is not a permanent factor that can be altered, even within the exploitation period, actual vulnerability, when transformed in resistance, can coincide with the strength motive of the victim in exiting exploitation. According to one of mine interviews the exit of trafficking can be unexpected, since that

³⁵⁴ Interview number 3 (expert on THB), 29/11/2016, Italy

the victim can define strategies on exiting the exploitative situation through a client, or displacing herself to another city or becoming an exploiter herself.³⁵⁵

The fact that the victim herself has become an exploiter, outside the exploitation period, normally has been considered as a penal offence, since that the concept of human trafficking victim normally includes a level of exploitation that in this case does not longer exist. However, in the Nigerian criminal networks for human trafficking, it is known that there is a local vertical pyramid that permits that older entrepreneurs are normally paid by the new arrivals in the chain. This classification of importance in the network, typical of the mafia's structure allows for the old entrepreneur in maintaining her importance in the network, as well as gathering more money, normally justified by the conceiving of the joint (Carchedi, 2016). At this point the new Madams gain the respect of their victims, since they are also former victims that were once poor and were able to achieve higher levels in their criminal career, providing a vision of ambition of this role model (Iacono, Petrillo, & Howard, 2017). Furthermore, some of the Madams, continue to work on the street, obviously reducing their work schedules or limiting their number of clients, which gives to the victims a sense of equality (Lo Iacono, 2014).

While the Nigerian women tend to collaborate mainly to have some advantages during their exploitation, aspiring for a higher role in the network, to diminish their debt or to gain the trust of the exploiters, the Romanian women tend to recruit new women and control them, mainly because they are emotionally connected to their exploiters (Broad, 2015). As analysed in the Nigerian system, in the Romanian system many of the victims, who are the girlfriends of the traffickers, are given some benefits as a commission or better working conditions in exchange of controlling their peers, attributing to the girl a higher position in the network. However, despite that it has been verified the same characteristics between the two criminal networks, it needs to be highlighted that in fact, the Romanian girl rarely is able to ascend on the hierarchy as an exploiter. This lack of equality among the network is not only derived that the victim will always remain a victim, since there is no limit of exploitation as it is verified in the Nigerian criminal networks with the debt, but also due to the fact that there is always a sense of superiority of men in the Eastern criminal organizations that cannot be attributed to women. Therefore, this leads us that the role attributed to the Romanian

³⁵⁵ Interview number 3 (expert on THB), 29/11/2016, Italy

women within the criminal networks, has mainly a psychological power from the girl as being the chosen one by the boyfriend, instead of being a full package of advantages for the woman. In fact, the major advantages that are normally revealed are based on an inferior level of violence suffered by the girl, as well as more emotional manipulation from the trafficker towards the girl.

By providing visible special conditions to the collaborators, the traffickers can ruin the vision of the collaborator as being a peer of the rest of the victims, since that brings a sense of inequality and inferiority between the collaborator and the other girls. During my volunteer work in the street unit there was a very particular situation that demonstrates exactly what is described above. In 2015, the police has done a blitz in the group of Romanian women engaged in the sex industry arresting four Romanian men and two Romanian women as their collaborators. The women were accused of being the controllers and recruiters of the rest of the group, and despite that one of them was not anymore in the city, the other one had already been identified by the volunteers as being a potential controller.

After this happening, the volunteers approached the other girls to understand their reaction to the arrest of the collaborators, seeing that they were mainly revolted. In fact, we were very amazed with their reaction, which we later understood when the girls have described their collaborator as “being one of them”, since she was also a prostitute. Consequently, the role of the collaborator was only later understood, when the girl, after being released, has started to stay more at home and being given more advantages than the other girls. The controller was one of the girlfriends of the men that were accused and once she was released, she has returned to the outdoor prostitution, presenting the street unit’s volunteers to the new arrivals, being one of them, her aunt. In fact, we have noticed that despite that she has been arrested, she has still continued to be engaged in the network as a recruiter, claiming that she was still in love with the trafficker that was arrested.

This episode confirms the theory of the researcher Eva Lo Iacono (Lo Iacono, 2013) that the role of the recruiter is normally given to Romanian women in the criminal network, since women tend to trust more other women than men.

“It is easier for the girls being the recruiters, because the other women trust

them more and they can also get a part of the money. Nevertheless, these girls are also victims, in these cases in Court we gather the psychological proves that the woman is a victim and there, you can see the psychological profile. In so many cases, we have demonstrated that the women were victims due to the syndrome of Stockholm.”³⁵⁶

As it was referred on the subchapter of vulnerability as a prosecution measure, we have identified that despite the “mean” “abuse of position of vulnerability” tends to be difficult to be proved in court, in Romania it has been highly considered, especially in cases that the victims have assumed roles within the network. In fact, the demonstration of a position of vulnerability through psychological exams, it has been indicated as one of the main solutions for the cases of victim-offenders in human traffickers.

“There was a case, in which the girl was a victim for 8 years in France with the lover boy method. When she was taken to France, in 2003, she was not aware about going into prostitution. At the beginning she was psychologically constrained, her father had died, her mother did not know what to do with her daughters and the trafficker exploited this condition of vulnerability. She was exploited there for 8 years, on the first year the situation went slower and then the exploitation went further and faster. So he was able to create a situation in which he was the only person in her life and he used every indicator that it has been used in the Stockholm syndrome. She was earning lots of money, so during this time they bought two houses, they went to Germany to buy a 37 thousand euro BMW. But he was beating her up and controlled her with all the controlling methods that we knew. The worst psychological impact on her was when he cut her veins and the judge has seen her scar. So, in the moment that she understood that there were other victims that she was responsible for, since he has said to her to bring her sister and cousin, she managed to run away. She was able to go forward because she was very intelligent and aware about the psychological happenings in her relation with the trafficker; she was also very aware about the situation and willing to start a new life. She has gone through several abortions, because he gave her the contraception pills of his wife, but they would have no effect on

³⁵⁶ Interview number 9 (Law enforcement), 03/10/2016, Romania

*her. So, the judge has understood that the exploiter has abused her and also abused her position of vulnerability. He was accused of pimping, but when he got out of jail, they got back together, and she started to be exploited again and this was when the police intervened. While he was in jail, she did not have any boyfriend, since she was still attached to him and he was still calling her, but she wanted to restart her life. Whenever she wanted to start with a boyfriend, he would call her. She was almost getting married. She had years of psychological assistance, her strength was the police officer that has accompanied her, she pursued her studies and now she is a nurse, she is pregnant and married. However, no one of her friends knows she was a trafficked victim...*³⁵⁷

As it can be seen in the exposed case, the involvement of the victim in the criminal activities was not connected the interest of gaining economic advantages or to receive a better treatment, as observed in the Nigerian human trafficking for sexual exploitation, but mainly to obtain an emotional award.³⁵⁸ In fact, in these cases it could be inserted the crime of Plagio that was previewed by the Art.603 of the 1930 Italian Criminal Code: “Whoever submits a person to their own power, aiming in having a total submission of the person, is punishable with the penalty from five to fifteen years”. However, crime of Plagio was considered unconstitutional in 1981, but in case of human trafficking, the total submission of a person can be seen as the “abuse of position of vulnerability”.

2.3.10 Non-accompanied minor and human trafficking victim

Besides the increment of the arrival of Nigerian women in the Italian territory, the local authorities have also identified an increase of female Nigerian non-accompanied minors. In a letter sent to several Prefecture by several organizations working against human trafficking (PIAM, TAMPEP, Abele, Speranza, Porto, & CISSACA, 2017), it was highlight the increase of minors, registered by IOM in the Italian territory and the need to enhance the protection measures, previewed on the Italian legal framework. The urgency of an adequate legal framework on non-

³⁵⁷ Interview number 8 (Law enforcement), 29/09/2016, Romania

³⁵⁸ The crime of Plagio in Italy was cancelled by the Constitutional Court in 1981 with the decision no. 96 of 8 June 1981, based on the unconstitutionality of the crime, erasing the legal prosecution, since in contrast "with the principle of obligatory nature of the case contained in the absolute reservation of law in criminal cases, enshrined in Article. 25 of the Constitution.

accompanied minors has come from the noticeable increase of non-accompanied minors, being exploited in the last years. According to the mapping on outdoor prostitution, the Anti-trafficking Platform has identified from a total number of 3280, the number of 167 minors, who were potential human trafficking victims in all Italy. According to IOM, in 2016, the number of Nigerian non-accompanied minors that have arrived in Italy were 3040, with an increase of 197% regarding the preceding year that has counted with an arrival of 1022. In 2016, in Italy, 524 Nigerian girls have arrived, which were 40% of the Nigerian non-accompanied minors (IOM, 2017). With the increase of non-accompanied minors, the organizations have urged the Italian government the need to inform non-accompanied minors about their rights and the procedures of the asylum request. Furthermore, they have also urged the government to comply with the adequate protection of minors, according to the Art.4 of the Law decree 24/14, in case of doubt of the age until its final verification.

In fact, recently, the Italian Government has approved the Law 234/2016³⁵⁹ that entered into force on the 6th January 2017, on the new proceedings of the identification of a non-accompanied minor in case of doubt. The Law decree previews the assessment by a multidisciplinary team at a public health facility, with professionals from the sanitary field, whose aim is to do a social interaction, a pediatric evaluation and a psychological or neuropsychiatric evaluation, in the presence of a cultural mediator. The age assessment has to be followed with the appropriate measures and conduct, according to the origin, cultural and ethnicity of the non-accompanied minor. The procedure that respects the tutoring of religion, gender and culture starts three days after the authorization and it can be contested.

On 28 March 2017, the Chamber of Deputies has approved the Law Decree 47/2017, with 375 positive votes against 13 negative votes. The law through Art.17 specifies the protection program with adequate conditions of assistance at a psychological, social, health and legal level to the minor human trafficking victims, innovating the ex-Art.13 of the Law Decree 228/2003, foreseeing its development after the minor turns 18 years old. Furthermore, the minor victims of human trafficking have the right to access to a compensation and legal support; the government will put a total amount of 15.080 euro per year, in order to fulfil their right to compensation.

³⁵⁹ <http://www.gazzettaufficiale.it/eli/id/2016/12/22/16G00248/sg>

According to the report *Piccoli Schiavi* (Iacono, Petrillo, & Howard, 2017) Nigerian minors, victims of human trafficking that have arrived in 2016, on contrary of the previous year tended to be younger, increasing the quota between 13-14 years old, mainly coming from Benin City, Lagos and Anambra. With a scarce education and being very poor the girls tend to be the sacrifice of the entire family, normally being the oldest or the youngest daughter of the first wives of the father, since he is not obligated to provide for the children of his first wives (IOM, 2017). The increase of minors is also due to the fact that they tend to be more naive and ignorant about their right, thus it is easier for the exploiter to extend their debt and have more control of them (Fernandez, Garzón, Juan & Contreras, 2017).

“In this case, the pressure on the girl goes beyond the power of juju, since she is responsible for her entire family. The Nigerian girls nowadays, it is more difficult to make them exit the exploitative situation, also because they do not have a migration project. The Nigerian women of some years ago, they had a migration project, economic, their goal was to pay the debt and then, have an economic income. Furthermore, the women inside the criminal organization, they knew how to behave, they honoured the debt, while the women today, no. Nevertheless, the women today do not even have respect for their Madam, they look like our teenagers. First, we mainly had women of 24-34 years, now the majority is 18 years old. Very Americanised and overbearing, since they assert that you have to host them and provide them all the necessary services.”³⁶⁰

Criminal networks normally advise the girls, when they arrive in Italy, in declaring that they are more than 18 years old, normally saying that if they declare they are minors, they will be deported or go to prison, in order to avoid the victims after being tutored by the State (IOM, 2017). In fact, many minors tend to declare that they have turned out 18 years old some days before arriving in Italy. This leads that many non-accompanied minors disappears from the centre, even if they are more protected, being after almost impossible to trace them (GRETA, 2014).

When the victim is a minor, normally the degree of vulnerability towards the

³⁶⁰ Interview number 30 (third sector), 22/02/2017, Italy

network as well as the difficulty in exiting the exploitative situation, leads normally to the inclusion of a familiar decision that influences on the courage of starting a protection path. In fact, sometimes the family disapproves the integration on a protection programme which leads to a cut of relationship with the family in the origin country (IOM, 2017).

Despite that lately main attention has been given to Nigerian minors due to their verified increase, according to the Report *Piccoli Schiavi* (Iacono, et al., 2017), in the first three months of 2017, Save the Children has flagged 376 Romanian minors. However, as previously mentioned, the scarce presence of Romanian minors in the Italian territory is due to the fact that it is more difficult to make them pass through the national borders in Romania. In fact, normally traffickers prefer to exploit them at a domestic level, before they turn up 18 years old. On the other side, there have been cases in which the traffickers marry the minors in order to be their legal tutor while abroad, avoiding at this point any declaration from the parents.³⁶¹ Furthermore, the traffickers also tend to declare false familiar ties with the victims, in order to avoid problems at the border.

The Romanian minors, mainly between 16 and 17 years come from the Counties of Bacau, Braila, Neamt and Suceava (Iacono, Petrillo, & Howard, 2017), being normally recruited through the *lover boy* method and through their friends, as described in the subchapter of “Created vulnerability”. Furthermore, traffickers tend to target minors without family ties, going normally to orphanages, where the minors have more need for affection (Pascoal & Schwartz, 2018).

Despite the augment of non-accompanied minors who are victims of trafficking³⁶², legislation in Italy does not permit specific protection houses for minors who are victims of human trafficking. Therefore, when the minor arrives in Italy he/she is normally inserted on a facility of so-called 1st assistance (*prima accoglienza*), which

³⁶¹ Romanian High Court of Cassation and Justice, 19 April 2010, Decision no. 149, <https://www.unodc.org/cld/case-law-doc/criminalgroupcrimetype/rou/2010/2228542008.html?lng=en&tmpl=htms>

³⁶² The protection services for instance of the association Penelope has passed for a protection mainly regarding adults in 2013 to a total of 50%/50% in 2016. Furthermore, the association has reported that despite the average age in the past was around 17/18, nowadays there has been also an augment of young girls of 13/14 years old, which also requires more funding and services in a long-term. Information provided by the Speaker Orianna Cannavò, during the Seminar “Catania non tratta: esperienze di contrasto della tratta di esseri umani a scopo di sfruttamento sessuale e lavorativo” of the Association Penelope, in 09/11/2017, Catania, Sicily

tends to host large numbers of minors, having the necessity of passing to a reception centre of 2nd assistance (seconda accoglienza), in order to have a more relevant accompaniment. Furthermore, some of the regions, especially due to the costs regarding the tutorship of the minor, tend to give the responsibility of non-accompanied minors to the Municipality that normally inserts that in centres for minors, along with the services of the anti-trafficking platform.

“We have decided that all non-accompanied minors would be responsibility of the Municipalities, because in our opinion the funding of Art.18 should not be redirected to the minors. In this case, it should be the municipality in providing the facilities and the anti-trafficking network provides its services. The tutorship of a minor costs a lot, regarding the protection of an adult.”³⁶³

The city of Bologna, for instance, has implemented an experimental model for minors, victims of human trafficking, in which the facilities for minors had to adequate to the situation of human trafficking victims. Consequently, the concentration of minors who are victims of human trafficking in the municipality that is also responsible for asylum seekers facilitates the process of integration of the minor. On the contrary of the Region Emilia Romagna in Italy, especially in the South the responsible for the anti-trafficking projects are associations and not the municipalities or the region, which obligates the association in being supported by the structures of non-accompanied minors.

The protection of non-accompanied minors tends to be different, mainly regarding education, since the minors should finish their education until at least 16 years old. The problem is that, as mentioned before, many minors arrive in Italy illiterate, in addition, they have to learn the language of the destination country, which is normally difficult to acquire when all the women in the protection facility are Nigerian and they speak Italian among themselves.³⁶⁴ Furthermore, according to the Italian Legislation, all non-accompanied minors should have a tutor, yet often the legal tutor of the minor is often the Mayor or one of the Municipality’s counsellors that are

³⁶³ Interview number 29 (third sector), 06/03/2017, Italy

³⁶⁴ Interview number 30 (third sector), 22/02/2017, Italy

responsible for hundreds of minors. Consequently, the tutor is not able to accompany the minor in all his/her path, being normally absent in important meetings. Furthermore, due to the high number of non-accompanied minors, there is an extreme need of legal tutors, which tend to be rare to find. Consequently, the Municipalities have not been focused on training or selecting the legal tutors, leading to an availability of untrained people, especially in cases of potential human trafficking victims among the minors. This also leads that often the tutors do not represent the rights of the non-accompanied minor, but often their own rights, according with their moral judgement. Unfortunately, this situation has been often verified when the girls arrive pregnant to Sicily, from the sexual abuses that they have suffered in their route, and the tutors that are representing them do not give them the permission to perform an abortion³⁶⁵.

Conclusion

The present chapter initially had the scope to analyse the different types of vulnerability of Nigerian and Romanian women during all phases of sexual exploitation, recruitment, travel, exploitation in the destination countries, protection and re-trafficking. The analysis of the evolution of vulnerability, during the trafficking process, would not only provide a more complete framework within the trafficking context of the two nationalities, but would also provide guidance in comparing both nationalities. The comparison was mainly based on the concept of vulnerability with an intersectional approach (Crenshaw, 1989), regarding the legal status of human

³⁶⁵Law 194/1974, clause 12. “Where the woman is under 18 years of age, the consent of the person exercising parental authority over the woman or her guardian shall be required for the termination of pregnancy. However, during the first 90 days, if there are serious grounds rendering it impossible or inadvisable to consult the persons exercising parental authority or the guardian, or if those persons are consulted but refuse their consent or express conflicting opinions, the counselling centre or medicosocial agency, or the physician of the woman's choice, shall carry out the duties and procedures set out in Section 5 and submit to the magistrate responsible for matters of guardianship [giudice tutelare] in the locality in which it (he) operates, not later than seven days following the request, a report giving its (his) views on the matter. Within five days, after interviewing the woman and taking account of her wishes, the grounds which she puts forward, and the report submitted to him, the magistrate may issue a decision, which shall not be subject to appeal, authorizing the woman to have her pregnancy terminated. Where the physician finds that termination is urgently required in view of a serious threat to the health of a woman under 18 years of age, he shall make out a certificate indicating the conditions justifying the termination of pregnancy, without requesting the consent of the persons exercising parental authority or the guardian and without applying to the magistrate. The certificate shall entitle the woman to obtain, on an emergency basis, the termination and, where necessary, hospitalization. In the case of a pregnancy termination after the first 90 days, the procedures referred to in Section 7 shall likewise be applicable to women under 18 years of age, without regard to the consent of the persons exercising parental authority or the guardian”.

trafficking victims in the destination country, adding the concept of vulnerability of Martha Fineman as regards to the dependence on the State (Fineman, 2010) as regards the chronological vulnerability of the vulnerable subject (Fineman, 2008). Therefore, this vulnerability is not only focused on the legal status in the destination country, but on all the vulnerabilities that have been brought from the origin and transit countries added to the ones created on the destination countries (Gallagher, 2013). In addition, this chapter, as mentioned in the first chapter, does not only regard to the “passive vulnerabilities” of the victims, which are normally analysed on the reports of human trafficking, such as poverty, level of education and age (IOM, 2017; EASO, 2015), but it is focused also on the created vulnerabilities that differ in the two groups, according to their nationalities and the strategies and methodologies used by the traffickers (Gallagher, 2013).

Despite that human trafficking is normally regarded on the basis of the relationship between the trafficker and the victim, this chapter in order to have a full notion of the situation of vulnerability of the victims has also included, based on Fineman’s theory (Fineman, 2010) the involvement of the state in the destination country and its influence on the level of vulnerability of the victims (D’Elia & Serughetti, 2017). This analysis of the victims’ vulnerability, including all factors that can condition the victim as in the origin country, as in the destination country, offers a wider perspective of the phenomenon of human trafficking, including all its agents, with a particular attention on the vulnerability that outcomes from the interaction of victim/trafficker, and denying the theory on “passive vulnerability of the victim” (Gallagher, 2013). Furthermore, literature on human trafficking tend to disregard the role of the State and its influence on the victim’s vulnerability, assuming that the only responsible agent is the victim’s exploiter.

The responsibility of the State tends to be observed only after the situation of exploitation, when the victim seeks for protection as in the case of the ECHR L.E vs Greece³⁶⁶ or when the state is not able to protect a victim of human trafficking as it has been considered in the case *Ratsev v. Cyprus and Russia*. The attention regarding the

³⁶⁶ For further information on the case: Milano, V. (2017), *The European Court of Human Rights’ Case Law on Human Trafficking in Light of L.E. v Greece: A Disturbing Setback?*, in *Human Rights Law Review*, Volume 17, Issue 4, Pp 701–727

post-exploitation's period of the victim demonstrates that the role of the State is not often considered during the trafficking situation, dismissing the importance of the established legal framework in force in the country.

The consideration of the role of the State in the situation of human trafficking victims that have had somehow accessed to an organization or that have been identified as potential human trafficking victims neglects the chronological aspect of exploitation. Furthermore, it is also important to ponder on the concept of victim that is attributed by the State and especially insert the concept within its political context (Munro, 2013). It is exactly on the attribution of the concept of victim of human trafficking that it can be recognised the importance of the role of the State and its influence of separating the group of the victims (those who deserve to benefit from a prize) from the group of non-recognised victims (who do not deserve from benefits) (Peano, 2012).

The separation of these groups is normally observed in Italy between labour exploitation and victims of sexual exploitation (Parisi, 2016). In fact, despite that Italy is well known by the phenomenon of labour exploitation in agriculture, by looking into the protection permits granted on Art.18, it can be noticed that the majority of the permits is given to victims of sexual exploitation, rather than to victims of other exploitative typologies. However, this is not only regarding the context of the state, but it is also influenced by the social context, in which the victim is inserted, since there is more social concern regarding the moral aspect of the sex industry, rather than the labour market, independently of the conditions of the victim (D'Elia & Serughetti, 2017).

This analysis is well represent in Italy with the case on the exploitation of Romanians in the agriculture in the provinces of Ragusa and Vittoria (Palumbo & Sciorba, 2015) that it has been a subject of the public awareness in 2010 (Galesi & Mangano, 2010), yet the case only caught the media's attention due to the inclusion of sexual exploitation suffered by the women (Mangano, 2014) and not regarding the labour conditions of the workers (based in the coercion methods used by the employers, their salary of 25/20 euro a day; working hours 12/14 hours a day; lack of equipment when working with pesticides and the living conditions of the workers) (Palumbo, 2015). Obviously, that one type of exploitation should not annul the other type of exploitation, but regarding the Ragusa's case, the discomfort among the society was

mainly regarding the sexual exploitation rather than the labour exploitation.

With the analysis of all factors of the destination state, including the social context and the concept of victim within a social context, along with the influence of the traffickers and the background's vulnerabilities of the victims, not only I have access to the complex overview of trafficking that contributes to the vulnerability of the victim, but I can also compare the influence of vulnerability during the exploitation of victim, between the two analysed groups.

As previously demonstrated, Romanian women on the subject of human trafficking in Italy tend to be regarded as invulnerable, especially being overshadowed by the attention on Nigerian women that are not European Union citizens. The access to certain rights by Romanian women, due to their European Union's citizenship, predicts their invulnerability, by focusing only on the aspect of their legal situation in the Italian territory and trivializes the complex situation of Romanian women who engaged in the sex industry. Furthermore, by having access to certain rights, Romanian women in general are seen, and also normally they tend to confirm, as giving fully consent for their situation, which is normally added to a lack of awareness of victimhood by the woman (D'Elia, C. & Serughetti, G., 2017).

Obviously, that when I refer to their situation, I do not exactly mention that their engagement in the sex industry, but to the full framework of conditions in a certain activity (Augustin, 2005). Otherwise, the problematic regarding the consent of Romanian women on the sex industry, without regarding all the involved factors, especially on the role of the boyfriends, would be quite hypocrite from my part regarding also the situation of Italian women engaged in sex industry. In fact, I believe that any person that has also worked with outdoor Italian sex workers, as I did, would also refer that the background of the Italian women does not tend to be that different from the Romanian sex workers. Therefore, the status of victim cannot be only limited to the individual's background, as it is normally applied in the outdoor sex industry, but on the interaction of complex factors that fulfil the embodiment of the individual. For instance, in the book *Libere Tutte* (D'Elia & Serughetti, 2017) the authors invite to a reflection on the concept of women's agency regarding their relations within their social and cultural context as well as their symbolic and material impeachments, in order to open a debate with the institutions that perpetuate the sexual male dominance.

In conclusion, I would like to refer that despite initiating this chapter with the theory vulnerable groups, by comparing two different groups that share common features and are exposed to a pattern of coercion instruments used by their conational traffickers, by the end of the chapter, it is relevant to highlight Fineman's theory of the vulnerable subject (Fineman, 2010). Furthermore, by inserting Fineman's theory, the chapter also analyses the capacity of resilience of the vulnerable subject by the access of the individual to certain assets (Kirby, 2006). As previously mentioned, Romanian women normally have more access to their social assets through the large Romanian community in Italy as well as the human assets, through their connection with their families in their origin countries, while Nigerian women normally lack from these assets. However, at the same time that family can provide assets to resist leading to the agency of women in a situation of trafficking, it can also produce resistance, which is not the contrary of vulnerability. In fact, while analyzing the situation of Romanian women, the engagement of emotional attachments, as regarding their exploiters who are their boyfriends, as regarding their proximity of the family can provoke resistance of the Romanian woman towards the exploitation. According to Butler (2016) the presence of vulnerability presupposes also the presence of resistance and resilience, which is not inherent to the victim, but an outcome of social relations. However, it is also important to refer that despite Romanian women might be less exposed to violent instruments and provided with "a certain level of autonomy", their resistance tends to prolong their exploitation period, in a situation of human trafficking.

Therefore, in spite that it can be verified on the context of human trafficking that the lack of access to certain assets leads a subject to a more vulnerable situation, as it can be observed with the Nigerian women, the conclusion of this chapter leads us to the idea that resistance as intended by the philosopher Judith Butler (Butler, 2016) *di per se* can also be a vulnerability factor. In fact, as analysed during the chapter, the factor of resistance during exploitation, as well as in domestic violence can also lead the victim in enduring the exploitative situation for a longer period. Furthermore, despite the reference of social and human assets be referred as factors of resilience of combating vulnerability (Kirby, 2006), it is not deepen the type of social and human assets that can prevent one's vulnerability in human trafficking. In fact, it is normal, as previously verified, that family is a resilience asset contrasting one's vulnerability, yet when there

is the interest of the family in maintaining the exploitative situation of the victim, it enhances the exploitative situation of the girl, especially at a chronological level. For instance, social and human assets that Romanian women have regarding the Nigerian women have demonstrated that can be a binary cause of vulnerability on human trafficking. In fact, if on one hand the community and family can be a support to the victim in exiting from an exploitative situation, on the other hand, it has been demonstrated that these assets tend to increase the duration of exploitation in Romanian human trafficking.

According to Butler (2006), the concept of resistance is often confused with the concept of resilience, explaining that resilience it is the contrary of vulnerability, while resistance presupposes vulnerability. The resilience of women who were victims of human trafficking has been verified in many cases after their period of exploitation. According to the Oxford English Dictionary resistance is “rebounding; recoiling; returning to the original position”, being normally associated to one’s capacity to return to the original state. According to the philosopher Bracke (2016) women are resilient, since they survive to the patriarchy on their evolution of their original state. The same attribution can be applied to victims of trafficking that have become resilient not only by overcoming their exploitative situation, but also the factors that have led them into a situation of trafficking. Resilience is an attachment to life (Bracke, 2016), which can also be observed on a situation of motherhood.

3rd Chapter

Motherhood in sexual exploitation

“We are never so vulnerable as when we love”

Sigmund Freud

3.1 Motherhood as a vulnerable condition

On the evolution of this study, I have finally arrived to the third chapter that overlaps the ultimate vulnerability factor on the female human trafficking victim, arriving into the situation of motherhood. Pregnancy has been identified as a particular vulnerable stage during exploitation (Gallagher, 2012), sometimes increasing the situation of vulnerability, within the exploitation (Brotherton, 2016). Furthermore, it is, in fact in the moment of motherhood, in a situation of sexual exploitation that the majority of the victims starts to fear for the safety of the newborn, even though until then they would not fear for themselves (Sloss & Harper, 2004;). Pregnancy being such a particular moment in the life of the woman can also help in the situation of awareness of victimhood (Levesque & Chamberland, 2016), as it is also observed in domestic violence. Since many women are aware that the newborn depend on them, they start to be afraid for their own safety, which sometimes before was not verified, feeling fear of being of incarcerated, hospitalized or killed (Sloss & Harper, 2004).

Therefore, it is in the concept of motherhood that it can be better understood the concept of dependence among human beings, especially in terms of age and illness (Fineman, 2004). The social imposition of the paternalistic family based on the definition of roles (Eichner, 2005) is the social reflection of the derivative dependency. Furthermore, is in the single motherhood that it can be verified the autonomous liberal subject. According to Fineman (Fineman, 2012), despite being placed in a situation of major dependence on social and human assets, it is highly stigmatized from the Paternalistic state. Furthermore, motherhood tends to be in conflict with other needs of the woman, such as individual freedom and the goal of a career, for the education of children is normally delivered to the mother. It is exactly on the position that women

have the biological mission to give birth and the moral mission to educate the children that deviant sexual behaviour can enter in conflict with the role of “the perfect mother”, in a “relation between the body and the norms, between subjectivity and the body, between freedom and responsibility” (D’Elia & Serughetti, 2017). In fact, motherhood under those circumstances is in conflict with the “immoral behaviour” of the mother, often related to adultery or sexual orientation (Fineman, 1995), even despite the absence of a violent behaviour, often being recognised as being destructive, since motherhood is the pillar of the new generations.

According to Butler (Butler, 2004) women are assigned as “ the symbolic mothers of the nation”, which gives to the State the authorization in having control of the women’s bodies, sexuality and reproductive rights. Therefore, in this case, prostitution can be compared to the damaging of the reproduction organs and thus a synonym of being unable to assume the role of a parent in the future (Kohm, 2005). Mothers are considered to be the base of society and within societies, since all people have or had a mother, but only some of us can be mothers (Fineman, 1995). In fact, motherhood is a symbol of the cultural construction, being normally attached to the roles of a husband and a child, by forming the concept of “traditional family.” Family is seen as a primary social group, being regarded as the base of the relation between society and the State that after impacts the participation of family and its structure of a law public level (Fineman, 1995). Furthermore, motherhood is also a loss of autonomy, based on the ultimate control of the state on the women’s body and the relationship with the child, especially in the presence of a considered “deviant behaviour”, using “the best interest of the child” (Kohm, 2005) as a justification to separate the mother from the child.

Despite that, some researchers have started to study the intersection of motherhood in prostitution (Kohm, 2005; Sloss & Harper, 2004), this intersection has been scarcely looked at within the context of human trafficking (Pascoal, 2013). By analysing motherhood on a situation of human trafficking, the vulnerability of the victim is not only regarding their embodiment, but also in relation with others, as well as with their child, which within such context can expose the victim to others’ vulnerabilities, consequently increasing the victim’s vulnerability.

Furthermore, the analysis of the concept of vulnerability within a situation of

motherhood in human trafficking for sexual purposes can shake the concept that women within the sex industry cannot be good mothers. However, it is also true that the concept of human trafficking victim can reflect the image of a mother that it is obliged to be involved within the sex industry. Therefore, the concept of motherhood within the sex industry for a human trafficking victim can be related to the aspect that she is not voluntary within the sex industry, thus she deserves to have access to the child (Peled & Parker, 2013).

3.2 Motherhood and the travelling

The subchapter of *motherhood and the travelling*, as well as the subchapter of *Is the travel a factor of vulnerability*, in the second chapter will be dedicated only to the Nigerian women, since the Romanian women, not only tend to leave their children in the origin country (Pascoal & Swchartz, 2016), but also their migration travel does not require long periods, since they are European Union citizens. Despite that some of the women had already children when they leave Nigeria (Kastner, 2010), for many of the Nigerian women, motherhood starts during the travel, through Morocco and through Libya. In both paths many women get pregnant, yet, it is important to differ both paths, since the Nigerian criminal groups tend to operate differently in the transit countries, according to other factors such as the socio-political contexts of the territory, the presence of the Nigerian diaspora in the country and also according to the legal framework for migration in the destination country (Fernandez, Garzón, Juan & Contreras, 2017).

3.2.1 Morocco

As it is known, when someone speaks about the travel to Europe by Nigerian women, people normally think about Libya as a transit country. However, despite that the major migration flows pass in Libya, due to the instability of the country and due to the high protective border of Morocco, the major aspects regarding motherhood during the travel have been observed, when the women are in Morocco³⁶⁷. In fact, this is not

³⁶⁷ The provided information on motherhood of Nigerian women in Morocco has been mainly transmitted to the publications of the Spanish NGO Women's Worldwide Link, through the presence of the Activist Elena Garzón in the field, while the situation in Libya impeaches the presence of activists or NGOs on the territory.

only due to the arguments previously mentioned, but also to the establishment of Nigerian communities, women and men that live in Morocco, especially in the cities of Oujda and Nador that permit a higher concentration of Nigerian criminal networks (Worldwide, 2014). Furthermore, due to the impeachment in passing to the European territory, women are obliged to stay longer in the country, which consequently provides them the time to get pregnant or give birth.

The route to Morocco is not easy and obliges the women to pass in several countries such as Algeria, Ghana, Burkina Faso, Côte D'Ivoire, Sierra Leone, Guinea, Guinea-Bissau, Mali, Senegal, Mauritania or Morocco or instead choosing another route passing through Mali (Tin Zaouaten), Algeria (Tamanrasset) and then Morocco (Oujda) (Kastner, 2010). Due to the extensive road, as well as to the dangers during the travel, many women prefer to be accompanied by a man, since it is safer than being alone (Freedman & Jamal, 2008). This is where the figure of a *guideman* appears. On the contrary of the Libyan route, the *guideman* is normally a Nigerian migrant that was stranded in Morocco and has started to earn money as a smuggler due to his knowledge of the migration route. The role of a *guideman* is not only connected to the role of the smuggler, but he is also connected to the criminal network, since they tend to be in contact with the Madams who propose them to recruit women in Nigeria. Their role as partner is also enhanced by their experience in the Moroccan territory, since they use the women's trust on their experience by providing misleading information in order to scare the women by saying that they cannot go into the street without being accompanied by them, since they can be arrested (Diego, 2012).

The figure of a *guideman*, is often denominated by the women as their husband or boyfriend (Real & Venys, 2014), since they tend to create a relationship with the women during the journey. Despite that IOM (IOM, 2015) has declared that many women have reported fake husbands that in reality were their "Bogas" in the route to Libya, the figure of boyfriend has only been confirmed recently in Libya, as previously mentioned in the second chapter (IOM, 2017). In fact, on the contrary of the role of *guideman* in Morocco, in Libya this man does not take the role of a *courier* as the *guideman*, but of a man that appears when the girl is in Libya offering a possibility to escape from the Libyan territory. Therefore, while in Libya the role of this boyfriend mainly appears to do the transfer of the woman to Europe in a short time, in Morocco,

due to the long waiting periods in a well established community, in a stable country, the *guideman* assumes a longer role of a lover, leading often the woman in being pregnant (Worldwide, 2009).

Due to the assumed role within the Nigerian criminal network in Morocco, the *guideman* establishes relationships with several women at the same time (Real & Venys, 2014) and can be the father of several newborns. Once in Spain, the women tend to mention these men as *husbands*, despite the fact that they did not contract a legal marriage, but more a survival relationship. (Diego, 2012). In spite that the women are protected, by avoiding sexual abuse and other type of physical violence, by establishing this kind of relationship, the protection is still paid in the exchange of sexual services and domestic work (Worldwide, 2009).

Furthermore, the babies that are born in Morocco serve also as a kind of a “residence permit” for the man due to the Law 02-03, Art. 26/7, Art. 26/8 and Art. 29/c³⁶⁸ that guarantee their stay in Morocco. However, the Moroccan authorities do not always comply with the legal framework in migration. For instance, the association Women’s Link worldwide has reported cases of women that have been deported from Morocco, even being pregnant or with children or having a refugee status (Worldwide, 2009). Furthermore, the deportations in Morocco are done without any guarantees for the migrant, since sometimes the women are left in the desert at the Argelian border.

Motherhood is not only explored by the man and the Madams, as I will further see, but also regarded as a way of survival while being in Morocco. According to Kristin Kastner (Kastner, 2010) the women also profit from the fact that they cannot be deported when having babies.

“I don’t have papers, but I have a baby. The baby is my paper, you understand? Because when I carry my baby to stroll out, they don’t talk, you know, they don’t harass me, they don’t catch me. Because I have a BABY! If you have a baby, they won’t do you anything. . . “(Kastner, 2010).

³⁶⁸ Moroccan immigration law prohibits the deportation of pregnant women and minors, according to the *Loi n° 02-03 relative à l’entrée et du séjour des étrangers au Royaume du Maroc, à l’émigration et l’immigration irrégulières*, available in http://www.gadem-asso.org/wp-content/uploads/2016/05/Loi_02-03.pdf

Nigerian women that stay in Morocco are often used by the criminal network³⁶⁹ in forced begging, especially if they are pregnant or if they have newborns, since it increases the empathy of the Moroccan citizens. The period in Morocco is normally seen as a period of uncertainty, thus the women give names to the newborns as Hope and Destiny, while the children born in Spain are normally called as Success, Will or Progress (Kastner, 2010). Despite that, from one side having a child in Morocco can avoid the women's deportation and also be used to create empathy for Moroccan citizens, on the other side the presence of the child can increase the difficulties of the mother, especially due to the access to food and water. Furthermore, at this point of the travel, the women leave a double motherhood, since they not only have to provide for the newborn, but also the children who are left in their origin country (Kastner, 2010).

Despite that, some Nigerian women normally declare that they hang into relationships of survival, there is still a high record of violence in the Moroccan route to Spain. In fact, according to a study of Médicins sans Frontiers, 63% of the women coming through Morocco have declared to have suffered violence during their route and 17% has declared to have suffered from sexual violence (Medicos Sin Fronteras, 2005). This violence is not only regarded as normal violence, but it has also been related in the last years to the Nigerian criminal network that operates in Morocco. Therefore, the pregnancies can be caused in three different situations according to Blessing (Martin-Arroyo, 2016): 1) 30% get pregnant due to sexual abuse in the route; 2) 50% get pregnant within the relationship with their boyfriends or husbands; 3) 20% get pregnant to avoid being deported.

During the travel, not all women accept in being in a relationship, thus the *smugglers* are the ones that rape the women and decide if the woman should proceed with the pregnancy or perform an abortion. For example, in case that the criminal network does not need the baby to enter Spain, since the network has other babies to give to the woman in order to enter in Spain, the *smuggler* decides if the woman should do an abortion and provides misoprostol to the woman by determining the dose, without having any knowledge on the matter (Worldwide, 2011b). The women sometimes often

³⁶⁹ AP Pontevedra, sec. 5ª, S 11-6-2015, nº 292/2015, rec. 80/2014

ingest 30/40 pills of Cytotec that they buy for 30 euro, which leads to major health problems (Garzón, 2009). Therefore, normally the migrant women tend to receive assistance only in extreme situations after a bad experience of abortion (Diego, 2012).

The control of the Nigerian criminal network of the pregnant women was confirmed in 2013 with an investigation of the Spanish police that has emerged after the authorities noticed an increase of the arrival Nigerian women that were pregnant or accompanied with children in Spain. The women would enter pregnant in Europe on purpose, in order to avoid deportation, by profiting from the Art.57, clause 6 of the Organic Law 4/2000 11th January.³⁷⁰ Furthermore, once the women arrive pregnant or with children in Spain, they were normally directed to the reception centre of the Red Cross, instead of going to the *Centro de Internamiento de Extranjeros*, where women can have more freedom in leaving the structure and the traffickers can have an easier access to their victims.

The use of the motherhood of the Nigerian criminal networks, it was verified not only regarding pregnancy, but also to exchange of children. This method has been verified in 2013, when a member of the criminal network has given to a Nigerian woman one of the twins of another Nigerian woman while they were on the rubber dinghies. Both women have arrived in Spain, each of them accompanying one child, yet when the biological mother has realised that one of the twins was missing, the police started the search and found the other twin with the other woman in a reception centre. Consequently, the woman was arrested for kidnapping. Since she was not identified as a human trafficking victim, the Spanish government lacked in applying the art. 177, line 11 of the Law 10/1995 of 23rd November of the Spanish Penal code, in which victims of human trafficking are exempt from the committed crimes. The woman was only released, once she was identified as a human trafficking victim by an association that would visit her in prison. Due to the lack of the victim's identification, the association Women's Link WorldWide put the case on the European Court of Human Rights that had later neglected the case. However, in Spain, the woman has been finally recognised as a human trafficking victim through her asylum claim. Another case that confirms the use of the motherhood by the Nigerian criminal network in Morocco, was the case of the eight women de Puente Genil that have arrived in Spain as migrants on the 10th

³⁷⁰Guardia Civil, 05/04/2013 <http://www.guardiacivil.es/ga/prensa/noticias/4376.html> last accessed in 01/09/2016

September 2013, accompanied by seven minors, being one of them pregnant and being directed to the centre of Red Cross. The results of the DNA exams have demonstrated that none of the women were the mothers of the children, yet at the time that the results came out; the women had already disappeared from the centre (Malavia, 2016).

Despite that the mentioned case was the most known case recognised for the exchange of children at the arrival in Spain, the Spanish authorities have identified 25 children in 100 Nigerian women that were not related to the women that they were accompanied them (Fiscalia, 2013). On the contrary of the previous events concerning the biological link between the women and the children, recently it has been verified that the majority of the children that arrive with, the women are in fact their biological children (Reyero & Adroher, 2017). In 2014, 47 Nigerian children have arrived in Spain, each of them accompanied by a woman (ESTADO, 2015). According to the staff of the Spanish Red Cross, the 97% of the minors that have arrived in 2014 to the reception centres of Red Cross have disappeared and they were not identified as human trafficking victims (Reyero & Adroher, 2017). Instead, in 2015, 35 mothers have disappeared from the reception centres in Spain with 39 children and 13 pregnant women (Malavia, 2016). In fact, despite that the women once they are in Spain with the children have access to certain services within the associations, they lack of the particular services addressed to human trafficking victims, since they tend to deny their victimisation (Fiscalia, 2014)

The women accompanied by their children, normally arrive in Spain without any birth certificates, since that in Morocco, even if they are able to go to the hospital, they cannot have a birth certificate for being illegal. However, due to the influence of the criminal networks, the women are sometimes able to have access to birth certificates, normally obtained in an illegal way and with false information. Therefore, due to the use of false information provided in the birth certificates, the criminal networks are also able to manipulate the women, through the data provided in the certificates. The power of the certificates is also used by the criminal networks, since they require to the women to get pregnant more than one time, so they can use the children to accompany other women on the way to Spain (Worldwide, 2014). In fact, the children, whose many parents are the *guideman* are denominated as the *niños del*

*clan*³⁷¹. The decision of the criminal networks is influenced by the number of deportations that have been taking place in the destination country (Worldwide W. L, 2011b).

According to the vice president of the social services in Spain, the number of cases in social services of children whose mothers are human trafficking victims for sexual exploitation purposes is not relevant, being around eight or nine in 15.000 cases.³⁷² However, understanding the hidden nature of the phenomenon, by giving a major attention and understand the complexity of such cases, it is necessary to fulfil the best interest of the child, along with a support to the biological mother. The lack of birth certificates has led that Spanish authorities have started to mistrust the biological ties of the mothers with the children. For instance, in 2012 Laura has arrived in Spain without any provision of a birth certificate, since she was not able to certify her child while in Morocco. The lack of documents, as well as the unsure of the mother regarding the child's information has put the Red Cross in alarm. Consequently, this has led into taking temporarily the guardianship of the child from the mother, which in 2016 has passed into being definitive, since the social services have identified that the mother was engaged in the sex industry. After a period of two months without being able to see her child often, the social services have put the child into a foster family, which consequently has stopped the mother's visits to the child. Laura was only able to be with her child, after cutting the relations with her trafficker, yet, she was still illegal in Spain and she was afraid of not getting a job in order to keep her residence permit (Carranco, 2016).

With the lack of the birth certificates that would be able to identify the parenthood of the women along with the entrance of women accompanied by children that are not theirs has led that the association DNA Pro Kids from the University of Granada to start to do DNA exams, in order to verify the biological link between the child and the mother. The offer of such exam is provided voluntary by the Comisaría General de Policía científica del Cuerpo Nacional de Policía that does not require a legal order from the judge, once there is the consent of the adult, according to the Dictamen 5/2014 of the Spanish Fiscalía.

The application of the test taken by the National Police is implemented

³⁷¹ "The children of the gang"

³⁷² El Pais, Rebecca -Carranco 7/05/2016, Una madre traficada: "Quiero que todo el mundo conozca mi historia"

according to the Art.35.10 of *Ley de Extranjería y la Convención de los derechos del niño* and the Art.8 that preserves the identity of the child, in order to avoid different implementations used by different institutions. While expecting the result from the exam, the authorities tend to take the child from the mother, without any declaration that the child is orphan or that there are mistreatments. In this case, the women stay a month apart from their children until a visit system is established, normally one hour a week (Fernandez, Garzón, Juan & Contreras, 2017). Once the biological tie is confirmed, the woman who is recognised as being “ a potential human trafficking victim or an individual deprived of moral and material assets” should recognise her victimisation and accept a protection path as human trafficking victim, otherwise, the woman would be recognised as being illegal, according to Dictamen 5/2014 of the Fiscalía.³⁷³ By assuming the victimisation, the woman is able to live with the child in a maternal center for human trafficking women, yet, it is important to highlight that as well as the traffickers, the State uses the woman’s children as a coercitive instrument.

Therefore, the protection will be guaranteed to the child, according to the Art.158 of the Spanish Criminal Code and to the mother, only in case she assumes that she is a victim of trafficking. However, the identification of a human trafficking victim is normally based on suspicious, without a specific examination of the individual case and if the situation of trafficking influences directly the child (Fernandez, Garzón, Juan & Contreras, 2017). According to the Art.17 of the Law LOPJM, regardless of the situation of the mother, the authorities should guaranty the wellbeing of the child. Hence, in case of imminent danger for the child, as the abandon from the reception center, the authorities can proceed with a preventive withdrawal of the minor from the mother’s tutoring. This measure from the Spanish government is supported by the

³⁷³ Unidad de Menores de la Fiscalía de Extranjería. Dictamen 5/2014 sobre protección de menores extranjeros que acceden irregularmente al territorio en compañía de personas sin vínculo acreditado de parentesco y/o en riesgo de victimización [en línea]. Página: 25. Disponible en: www.fiscal.es/fiscal/PA_WebApp_SGNTJ_NFIS/descarga-/DICTAMEN%205-2014%20sobre%20protecci%C3%B3n%20de%20menores%20extranjeros%20que%20acceden%20irregularmente%20al%20territorio%20en%20compa%C3%B1a%20de%20personas%20sin%20v%C3%ADnculo%20acreditado%20de%20parentesco%20y-o%20en%20riesgo%20de%20victimizaci%C3%B3n?idFile=2b76c647-1b22-4361-ad05-33171de9683a.

Art.14.2 of the European Directive 36/2011³⁷⁴ on children who are victims of trafficking, even if here the preventive withdrawal is based on the concept that the child is a victim of human trafficking, which is not immediate, in cases where the mother is the victim.

In case that there is the suspicion that the mother is being a potential human trafficking victim, the authorities should observe the control of the trafficker on the children and their exposure to abuse. In this case, the Protocol establishes that for the security of the child it is foreseen a petition from the *Fiscal* of precautionary measure referred in the Art.158 of the Spanish Criminal Code, to avoid abandoning the child at the reception center in case there is an imminent risk. These children are normally abandoned at the shelters of the Red Cross, since the traffickers tend to go and pick up the women by pretending to be their relatives (Estado, 2013). According to the report of *Son niños y niñas, son víctimas*, the women normally tend to abandon the centers when they stop the breastfeeding, leaving in some cases the babies to the voluntaries in the center until they would be able to return (Reyero & Adroher, 2017).

In case, that the DNA result confirms that there is no biological relation between the woman and the child, the Protocol foresees the separation of the child from the adult (ESTADO, 2015) funded on the application of the art.158 of the Spanish Criminal Code. However, it is also important to indicate that sometimes, despite the lack of biological ties with the children, the women can have affective ties, since they can be their “aunties”. In order to better recognise the family ties of these children the Red Cross in Spain has provided some indicators in its webpage (Andalucía, 2014).

In 2011, a woman enters in Spain with a child that she proclaims of not being her child but her nephew from a sister that has died in Morocco. The child is taken in the Red Cross program “Familias Canguro” with a Spanish family. Once the DNA test was done, the result has demonstrated that there was a scarce genetic compatibility (92,85%), which cannot declare that the boy is not her nephew, but it neither denies it. Consequently, the child has passed into pre-adoption, especially due to the lack of documentation, since the one that was presented from Morocco was false. The Spanish

³⁷⁴ “Members States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child’s best interest and/or from representing the child.”

authorities have opened a process against the woman that proclaimed to be the aunt of the child for false documentation, yet, at the end of the judicial process, the woman was considered innocent. Furthermore, in this case, the woman could not present herself to the pre-adoption claim, since they were considered without any consanguinity and since the woman was more than 45 years old, as mentioned on the Art.3, 6 and 8 of the law 46/2000, 1st June on the fostering and adoption of minors.³⁷⁵

Besides the problem of the accompanied Nigerian children that enter in Spain, there were also cases of non-accompanied Nigerian children. According to Reyero and Adroher (Reyero & Adroher, 2017) there was a case in which the child has crossed the Gibraltar Channel without the mother that has remained in Morocco with another child. Once in Spain, the child has remained in a children's residential facility, yet since the child was quite young, she has passed to a family. Meanwhile, her biological mother has tried to cross the channel several times and still tries to maintain the contact with her child. However, the child being in a Spanish family has forgotten English language, thus the contact with the mother has become very difficult (Reyero & Adroher, 2017).

In Spain there has also been registered a number of pregnant women that the babies are born in the destination country, since many women arrive in the last months of pregnancy and do not register their children. This problem was mainly highlighted due to the lack of coordination among the local institutions of Andalucía (El fenómeno de trata de menores: la esclavitud de nuestro tiempo, 2014). In order to prevent the escape of the women with the children from the reception centers, the *Unidad de menores de la Fiscalía General del Estado* has implemented the judgment 5/2014 on the protection of foreign minors that enter in the Spanish territory accompanied by relatives in risk of victimisation, in partnership with other institutions, such as *Entidades locales y servicios de protección de las Comunidades Autónomas*, in order to act with a collective consent. The evaluation of the risk, according to the Art.158 of the Spanish Criminal Code, acts without waiting for the final result of affiliation of the DNA test, by searching a judicial pronouncement of protection of the child in order to prevent the risks (ESTADO, 2015). Furthermore, the children's data, based in the place origin, a photo and fingerprint is included in the *Registro de Menores Extranjeros No Acompañados* (Andalucía, 2014). Since that the fingerprints of the newborns change

³⁷⁵ AP Asturias, sec. 6^a, S 19-12-2014, n° 334/2014, rec. 405/2014

with time, the recognition is mainly done through a footprint, while the recognition of the rest of the babies is through a fingerprint (Reyero & Adroher, 2017). Once the children are identified, they have an Identity number (Número de Identidad de Extranjero) inserted in data base of ADEXTRA that it is also connected to the identity of the mother through the recognition of fingerprint.

3.2.2 Libya

As previously mentioned the situation in Libya has changed in the last years, passing from a stable context for the Nigerian diaspora into a situation of conflict, in which the Nigerian criminal networks have lost their power within the territory (Beretta, Bondi, De Masi, & Esposito, 2016). The loss of power of the Nigerian criminal networks within the Libyan territory has exposed many of the women, as well as the men to higher levels of violence, including sexual abuse, which consequently has increased the number of women that have arrived pregnant to Italy (IOM, 2017).

Despite that in all my interviews there has been reported an increase of pregnant women arriving in Sicily in the last years, I should also put this data within the context that the number of women in general arriving in Sicily has also augmented. Therefore, in this case, I might consider that the increase of pregnant women arriving in Italy is also proportional to the number of Nigerian women arriving in general.

“We personally think that it has always been stable [the arrival of pregnant women]. The augmentation of Nigerian pregnant women in Italy has been verified in 2010, but we did not understand the reason for this.”³⁷⁶

Since that before, the number of pregnant women was not high enough to give particular attention to this situation, in the last years, the staff working at the disembarkation has started to be more attentive to the needs of pregnant women while arriving in land, especially regarding their health needs. According to the health care team working in the hotspot of Pozzallo, there is an increase of transmissible diseases, injuries and pregnancies that result from the sexual abuses and violence suffered in Libya (GRETA G., 2016). Furthermore, despite that the Libyan route has a shorter

³⁷⁶ Interview number 35 (third sector), 24/07/2017, Italy

duration than the Moroccan route, it has been verified that longer waits in Libya have affected psychologically the mothers that need to send money back to their origin country. Besides the psychological impact regarding the children left behind, it has also been reported that the long duration in Libya obliges many women to give birth while in Libya, within the ghettos. In this case, due to the scarcity of conditions, for instance, instead of providing warm water to the mother to give birth, the smugglers have provided salty water (Unicef, 2017).

“There was no immediate medical attention given, instead, we have started a work that now it is done, because the priority is to identify them. Instead, they now are sent to the local hospital, but since there are no interpreters in the hospital they are immediately sent back. In fact, there was this woman that she has arrived, she was sent to the hospital and they dismissed her in the same night, but in the morning after she has started to have contractions. Therefore, she was sent to the hospital again.”³⁷⁷

In the report *Un viaggio fatale per I bambini* (Unicef, 2017) it is reported that the women from Eritrea, Ethiopia and Somalia have injected into themselves contraceptives as well has taken contraceptive pills, since they were aware about the sexual abuse during the travel and the consequence of being pregnant. Staff working with Nigerian women has also reported that a small number of Nigerian women have also injected into them contraceptives. According to the doctor in Lampedusa (Alos, 2017) some of the Nigerian women are also aware of the suffered violence in Libya and have started to use some pills to be temporarily sterile. In the referred article, it is explained that the women take the pills, since they know “that they can get pregnant in the market of prostitution”. Nevertheless, in my opinion, this affirmation is quite strong, firstly, because if the women take the pills, I don’t think that their aim is not to be pregnant for the prostitution market, but rather not being pregnant in general, as any woman that wants to avoid being pregnant from a violence, and secondly if the women really take the pills for this motive then the pills must be provided from the criminal networks, rather than taken automatically by the women.

³⁷⁷ Interview number 24 (third sector), 20/02/2016, Italy

Managing a situation of motherhood with a child that is a result from a situation of abuse it has been revealed as not being easy, in fact many women have Post Traumatic Stress, depression or feeling of powerlessness and do not feel able of being mothers. NGOs working in Sicily with migrants that are victims of torture have started to think in launching a program dedicated to motherhood, since some of the children are born out of traumatic experiences leading sometimes to the abandon of the children in the hospital. Furthermore, motherhood can also have a double impact on the woman, since she not only arrives pregnant in Italy, but she is also located in a shelter with people from other countries, without understanding their language and the cultural customs of the autochthones (Déborge, 2017).

*“A child, who is a result of violence, maybe is easier for women from other nationalities, but we noticed that it is more difficult for women of Nigerian nationality, due to their character, they are more distant from their children. So, maybe the other women ask you: “Why I cannot look him into his face?” Therefore, the woman brings out the problem, while the Nigerians do not do it, regardless she sees as an estrangement behaviour. To us it is important that this child is seen that there is a correspondence in the look. The women, they feel that the children belong to the community.”*³⁷⁸

Despite that the IOM’s 2015 report (IOM, 2015) puts the hypothesis that women arrive in Italy pregnant is a strategy from the criminal networks to avoid deportation, that I had already also approached in my previous work (Pascoal, 2013), yet, in the report of 2017, the organization has shared a different opinion (IOM, 2017). In fact, IOM mentions that, on the contrary, pregnancy is an obstacle to the Madams, since once that the Madams find out that the girl is pregnant, they tend to abandon the girl in Libya or they sell her to another Madam in Libya. In fact, as I have referred in the previous chapter, the fact that the majority of the women ask for asylum, dismisses that the criminal networks need to use other vulnerable categories such as mothers and non-accompanied mothers. In only one of my interviews, I had the response that there is the exploitation of pregnancy in order to avoid deportation by the Nigerian criminal

³⁷⁸ Interview number 24 (third sector), 20/02/2016, Italy

networks. In fact, the majority of the interviewees had contraposed this theory. However, it is important to consider the time span of the interviews, since that the interviewee that has affirmed that the woman was put pregnant on purpose is dated on July 2016, when the situation of asylum seeker was still recent and unclear. Therefore, the interviewee was probably referring to a potential situation before 2016.³⁷⁹

“I think that this manipulation of the use of asylum [referring to pregnancy] does not exist, also because nowadays the women normally have access to the International Protection and I think that the criminal networks are aware of it. I think that it is a part of the course, also because they don't use any contraception instruments, not here, nor during the travel.”³⁸⁰

“Lately some women have arrived in Italy already pregnant, because of the violence that they suffer during the path. Therefore, in the recent cases it has happened frequently [women arriving pregnant]. I do not know if this is connected to the residence permit. Some in the past, for instance with Romania, when Romanians were not within the EU, they used this method, but not in this case, because many of them don't know about this method and they do the asylum claim for other reasons. In fact, all of the women that arrive through the Mediterranean do the asylum claim, thus maybe they come with this method and then they get pregnant.”³⁸¹

Besides the level of violence suffered in Libya, which has been pointed as one of the main causes for the arrival of pregnant women in Italy, especially after the loss of control of the Nigerian criminal networks, other individuals during the interviews have indicated that the cause of the arrival of pregnant women in Italy is due to a major stop in the Libya territory by the women. This major stop is consequent to the loss of control of the Nigerian criminal networks or because they are sold by some Nigerian traffickers that have a *connection house*.³⁸² Therefore, after two, three months that the women are in Libya, when they arrive in Italy, sometimes they don't even realise that they are

³⁷⁹ Interview number 22 (third sector), 27/07/2016, France

³⁸⁰ Interview number 31 (third sector), 22/02/2017, Italy

³⁸¹ Interview number 28 (third sector), 29/11/2016, Italy

³⁸² Interview number 31 (third sector), 22/02/2017, Italy

pregnant, which consequently can influence in their legal time to perform an abortion.

From the stories collected by IOM (IOM, 2017), it appears that since at the moment, there is no need to use pregnancy to avoid in being deported, the *Madam*, once that she is aware about the pregnancy of the victim, decides to abandon the victim in Libya, since the pregnancy can be an obstacle for the sexual exploitation. In some cases, it has been reported that the Madam that is present in Europe sells the girl to another Madam who has a *connection house* in Libya that will oblige the girl to perform another voodoo ritual and to interrupt the pregnancy in order to be able to work. The exploitation time in Libya normally does not give access to the women to the contraceptives, thus they often use the cotton of the mattresses placed in the connection houses (Beretta, Bondi, De Masi, & Esposito, 2016).

In my previous research, in some cases, pregnancy has been used as an excuse for the trafficker to increase the woman's debt in 10 thousand euro. In fact, as I will further analyse, the trafficker tends to profit from the expenses of the baby to ask more money from the girl and also money for babysitting (Pascoal, 2013). Furthermore, this theory has also been demonstrated on the story of Prudence written on the report of *Piccoli Schiavi* (Iacono, Petrillo, & Howard, 2017), where the woman finds a man that advises her to go to Italy and once she arrives pregnant her Madam profits to increase her debt (1000€ to be accompanied by the staff; 100 for the pregnancy test; 100 for the pills, etc). In other cases, once the woman arrives pregnant in Italy, she can be also obliged to do an abortion, normally avoiding the official structures, especially if the time to perform the legal abortion has already passed (IOM, 2017)³⁸³.

As also been referred in the chapter on *the Libyan route*, as well as in the subchapter *Morocco*, there are Nigerian men that appear to the girls and establish a relationship. As mentioned by the report *Piccoli Schiavi* (Iacono, Petrillo, & Howard, 2017), in Libya these men are referred as *black men* that are Nigerian men often connected to the Madam. This role, as in *guideman*, permits that the man plays an ambiguous role, by one side playing the lover and on the other side encouraging the girl to pay the debt to the Madam. Nevertheless, this figure often can be only the courier of the girl, profiting from being a man and claiming emotional ties with the girl and demonstrating care on her regard.

³⁸³ In Italy, according to the Law 194/1978 the legal period to perform an abortion is 90 days.

“There was this girl that was four months pregnant, that she was at the disembarkation in the medical tent and I have started to ask: With who are you travelling with? - “with my husband.”- “What’s the name of your husband?” , and she has said the name. “How old is he?”- “I don’t recall it.”- “Where does he come from?”- “I don’t recall it.” In this moment, I have said that it was strange that she did not remember where her husband was from. Therefore, I have flagged her as a potential human trafficking victim. There were indicators, but when she realised that I was asking too many questions she said she had a headache.”³⁸⁴

Besides the use of emotional ties in order to be able to escort the girls into their final destination, some traffickers also get a residence permit for declaring the parenthood of the baby (Pascoal, 2013).

“We also have children that have been born during the route, the women have had a longer permanence in Libya. The two or three situations that we had during this period are all born from the partner. Therefore, they declare to know their partner there that maybe has taken them out of the exploitation and they got pregnant. There are very ambiguous situations. Therefore, the partners start to ask for a family reunification in Italy. What we see is that the women are submitted to the demands of the partner that is no longer the partner, but the father of the child.”³⁸⁵

As noticed in the previous declaration, the roles within the Nigerian trafficking network have become naturally separated to provide advantages for each one of the involved members. This assumption comes to affirm what was previously mentioned that in many cases there is the theory of the lack of a continuous criminal Nigerian network that provides all the reunited phases to the girl. Instead, as observed, migration flows leading to exploitation are an ensemble of members that can have different types of personal advantages disconnected from the final exploitation of the girl. However, this does not assume that every man that the women find during the route are potential traffickers or that a love relation cannot emerge during the path.

³⁸⁴ Interview number 24 (third sector), 20/02/2016, Italy

³⁸⁵ Interview number 25 (third sector), 05/04/2017, Italy

3.3 Motherhood as a legal document

3.3.1 The Residence permit

Despite that in the past, motherhood and pregnancy in Italy were a “well played card” to avoid deportation, nowadays, due to the fact that the majority of Nigerian women are asylum seekers, motherhood tends to be more a consequence of a precarious travel full of abuse (Dèbarge, 2017) than an instrument to have the residence permit based on the ex-Art. 31 of *Testo Unico della Migrazione*. However, the increase of the arrival of pregnant women has been not only verified in Italy and Spain, but also in other countries such as France. According to the Dispositif Ac.sé (2015), only in 2012, 48 Nigerian women have arrived in France accompanied by their children, being verified an increase from 2002 until 2012 to 44% pregnant women.

Due to the increase of pregnant women in France, in 2012 the Association Amicale du Nid has emitted an official communication on the subject that these women are in an illegal situation. In fact, Nigerian women are denominated in France as “*sans*”, referring to their situation of: “without papers, without rights, without employment and resources” (Dispositif Ac.Sé, 2015). Therefore, the majority of the mothers in France do not normally have access to a residence motherhood permit, coming often to France, without any recognition of their status of victim from their previous passages in countries such as Italy and Spain (Ac.sé, 2015).

In countries as Austria and Finland, where women have hard access to be identified as human trafficking victims, Nigerian women tend to have children in order to have access to a legal permit within the national territory. Two different German practitioners have told me about the increase of Nigerian women that arrive pregnant in Germany from Italy. The women arrive in Germany searching for the father of their children, a German citizen or a Nigerian or Cameroon with a German permit, in order to have the documents for the child and consequently for the mother. A German practitioner working with human trafficking victims has claimed that the women declared that these men were their boyfriends while in Italy.³⁸⁶ However, the second practitioner has exposed this situation in a different way, revealing also some worrying

³⁸⁶ Information gathered from a meeting of associations working with Nigerian human trafficking victims in the mentioned countries.

for the women, declaring that these women lived for some time in Italy, which I presume that they are out of the debt, but once they are in Germany they tend to have more than a child from different fathers. The pattern reveals that normally the first child has a father with a German document, while the second child normally has a father which is someone from Nigeria or from Cameroon. The perplexity of the practitioner was that some of these women have revealed that the German men were not the fathers of their children, seeming that there was some kind of document scheme regarding the issue. In Germany, as well as in France, the women also tend to find local men as a partner, not only to guaranty their permanence in the country, but also to enhance their access to rights and especially of their children. In fact, in order to assure their rights, the women normally try to get pregnant from their partner, so they can give German or French nationality to their children (Fernandez, Garzón, Juan & Contreras, 2017).

In Italy, where most of the women have started an asylum claim or have access to an International Protection, it is important to refer that despite this *card*, it is not necessary to be played in the beginning of the stay of the girl, there are two situations, where it has been revealed to be important. The first situation is regarding the partner or for the trafficker, in case it is a male that declares that he is the father of the child, while the second situation is in case the woman does not have access to the International or Humanitarian Protection, as at the final exit of the asylum claim, as at the end of the protection path. Furthermore, it is also important to understand that some of the women who are human trafficking victims do not always present an asylum claim, especially if they arrive by plane in another country.³⁸⁷

The situation of the residence permit, as well as the problematic travel is only regarding the Nigerian women and not to the Romanian women, since they are considered European Union citizens. Therefore, as previously regarded, the Nigerian women when arrive pregnant in Italy, despite that they are able to stay in the territory during the asylum claim, the Territorial Commission normally considers the presence of a child³⁸⁸ to be a clear justification to have the humanitarian protection. According to Taliani (Taliani, 2011), despite that the women are granted with the humanitarian due to their pregnancy, it is important for them to speak about their condition, especially regarding

³⁸⁷ Interview number 22 (third sector), 27/07/2016, France

³⁸⁸ Art.19 of Testo Unico sull'Immigrazione. Women cannot be deported if pregnant or with newborn until 6 months old.

the trauma that is consequent to the abuse, during the interviews in the Territorial Commission. However, due to the fact that the “western system of hosting” is very limited in time, not being focused on the therapy of the asylum seekers, but mainly on the causes of the asylum claim, the women tend to be frustrated to see that the only interest of the Territorial Commission is that the woman has a visible pregnancy, instead of the abuse behind the pregnancy (Taliani, 2011). In Italy, the granting of humanitarian protection for the women that have children is provided to pregnant women or women with children with 6 months years old, thus there have been records of women that have had a denial from the Territorial Commission with children more than 2 years old.

“There was a woman that she has had a negative exit from the Territorial Commission. She has a two years old son.”³⁸⁹

In the case KAB v. Spain has taken to the European Court of Human Rights, a Nigerian woman that has been deported from Spain and taken to Nigeria, even if she has declared that she had a child in Spain. The child remained in Spain with a couple that the woman trusted and which has asked to be his foster family in 2001. The father that was also in Spain asked to do a paternity test, which he later refused to do, due to its price (1202 euro), without being informed that he could have had a financial support for it. A year after, the *Proteccion de menores* has asked to start the adoption process by the foster family, which the father asked to be interrupted and required starting a regime of visits. In 2004, the adoption process is interrupted and in 2005, the father does the DNA test. However, in 2006 the Court does not accept the requirement, since the Court declares that the applicant did not comply with his father's obligations, when the child was taken by the social services, declaring that he had not lived more than 3 months with the minor and that he has consented the mother of the child to be engaged in prostitution. However, the father has declared that the institutions did not inform him about the possibility to be financially supported to take the DNA test. Furthermore, the father lacked from any documentation regarding the child, being resumed to an application to the register of foreigners lacking from appropriate identification. However, in 2007 the judge of Murcia has authorized the adoption of the child by the

³⁸⁹ Interview number 24 (third sector), 20/02/2016, Italy

foster family. The case has arrived to the European Court of Human Rights, which has condemned Spain for the Violation of Art.8 of the Convention.³⁹⁰

3.3.2 The father of the child?

In Nigerian culture, having a child without a partner is normally not well accepted by society, thus when the women get pregnant, especially during the travel, they feel the pressure to find a father to assume their child. Furthermore, when the woman has a child, her shame sometimes is considered to be perpetual, especially in case if it is a boy, since if it is a girl, one day she will have the surname of her husband, but if it is a boy, then he will carry his mother's maid name forever (Dispositif Ac. sé, 2011). The importance of carrying a partner's surname has been demonstrated in Kastner's research (Kastner, 2010), when the researcher tells the story of this Nigerian woman that is very proud of having her husband's name in her daughter's certificate. However, once she got in Spain she has started to change her attitude regarding her partner, due to his "demands for luxury items".

Hence, the women express the necessity of a father that it is often profited by the man, not only regarding the possibility that the man can have access to a residence permit due to fatherhood, but also regarding the fact that the man also tends to profit economically from the woman, especially if she is engaged in prostitution. In one of the articles of the anthropologist Taliani (Taliani, 2012), the author tells that in one of her encounters with Nigerian women, one woman refers that "everything is upside-down (...), in which it is the man that expects to be maintained economically by the Nigerian woman (...), it is not the man that marries the woman anymore, but the woman that marries the man."³⁹¹ This perspective reflects the use of Nigerian man from the women's body, not only regarding the access of the residence permit, but also regarding their economic situation. Therefore, if from one hand a partner can be often an advantage to the women, especially regarding in relation to their children, on the other hand, partners can be also an economic bare weight to the women.

When the conational understand that a woman is pregnant during the travel, since they are aware that often male Nigerian citizens do not have access to Internation-

³⁹⁰ K.A.B. v. Spain, European Court of Human Rights, sec. 3^a, S 10-4-2012, n° 59819/2008

³⁹¹ Free translation of the author

al Protection, they tend to ask the girl to declare that they are married (Europol, 2011), in order that they can fulfil her need to have a partner and spare the “embarrassment” of being pregnant without a partner, while he can have access to a legal permanence in Italy (Giornale di Sicilia, 2013), since they can ask their residence permit through the Art.30 of Testo Unico sulla Migrazione (286/98). The residence permit guaranties to the parents the possibility to live legally in Italy, in case there is an effective cohabitation and that the scope of marriage isn’t only to obtain the visa.

“The girls get also pregnant during the protection path. We are trying to diffuse the use of contraception for them to use with their lovers. In fact, we are very strict with the people that the girl meets, we make preliminary meetings. They don’t have total freedom, but in the hours that they can leave, it is also important that they are responsible for themselves, thus we have sometimes surprises [referring to pregnancies]. Some ask to do an abortion, but not so many, the majority keeps the baby.”³⁹²

As previously referred to in the subchapters regarding the *Libyan route*, during the last years it has emerged the figure of the male, who presents himself to the girl as a potential lover. Obviously, that this assumption does not refer to all cases in which the lover of the girl is someone with “second intentions”, otherwise this research would redeem every single relation to a matter of interest by the man and “naivety” of the girl. However, this has been a tendency that has been verified, especially in the last year. In this case, the man tends to send the first pregnant woman to Italy, so the man is able to come over and asks the residence permit for parenthood. In this case, not only the man is able to exercise the power of controlling on the victim, but also he is also automatically able to guaranty his legal stay in Italy.

“Regarding the women that are in the CAS, where we go for counselling, we have understood that in one or two cases, the boyfriend, if he is not directly the exploiter, he knows at least who is and sometimes he can also have the role of mediator. There is also the role of enhancement in the exploitation, there is non-opposing to the situation of exploitation, but also non-violent. We have seen two cases of Nigerian women with

³⁹² Interview number 30 (third sector), 22/02/2017, Italy

*children born in Libya from their boyfriends that after they have revealed themselves to be in connection with the Madam. There is the idea that the boyfriend is the one that gives you gifts, spends time with the baby, because they [men] know that they will get advantages sooner or later, as for the documents as for the money.*³⁹³

The legal permanence in Italy is not only limited to the arrival of the girl, but also during her *séjour* in Italy. In fact, as previously observed, due to the lack of use of contraception, the women can get pregnant during the exploitation. In order to overcome the isolated pregnancy, often remarked by their emotional and inferior condition culturally imposed, the women tend to seek for a partner. According to a social assistant working at a shelter for Nigerian mothers, who are victims of human trafficking, some conational approach the girls with children, while in Italy in order to recognise their children.³⁹⁴ Even though the women are aware that the men can be using them in order to get the residence permit, the social worker claims that the women are not aware about the power that the men might have regarding the child. Furthermore, she has recognised that probably the men can also use the child as a coercive method, in order to re-induce the ex-victim in sexual exploitation.

*“We have the intuition that the women are “put pregnant” in Italy on purpose. There are women on the streets that leave exploitation because they are pregnant. Therefore, in these cases there is a partner that wants a baby, and after he can have access to a legal permit, we have made this reflection, that they use it as an advantage. We have had women that have left the street because of their conational boyfriends. They support the exit of the situation of exploitation, thus the boyfriend does not oppose if the girl does the protection path. Therefore, these are not exploiters, it is also all a matter of advantage.”*³⁹⁵

³⁹³ Interview number 25 (third sector), 05/04/2017, Italy

³⁹⁴ Interview number 22 (third sector), 27/07/2016, France

³⁹⁵ Interview number 25 (third sector), 05/04/2017, Italy

“We had a case, in which a partner, since he has had a denial of the International Protection, was able to have access to an ex-Art. 31. Because nowadays the women have or International Protection or the humanitarian permit of Art.18.”³⁹⁶

As observed in these reflections, the possibility of remaining legal in the Italian territory is not only profited by the traffickers, but also by the boyfriends of the victim, who are often conational. However, I would also like to enhance that despite that some practitioners have defended this theory, it would be wrong to generalize that every single case is reduced to advantages, by ignoring simple love bonds. Nevertheless, it is also present that the *lover boy* method is not only used in the Eastern trafficking networks, but it has been lately encountered in the Nigerian trafficking networks.

“I am worried about a girl, because this Nigerian boy that she has met at the train station has come and he wants to give his surname to her child. She does not say anything, the men are the ones that decide and do whatever they want, and they can do it. For her, having a child without a father is embarrassing. Think what a family from the village would say if she is expecting a child without a father.”³⁹⁷

In fact, despite that in the past the higher roles in the chains were mainly dedicated to women, the increase of Nigerian male citizens has proportioned an augmentation of roles within the network that would not normally appear in the past. Furthermore, due also to the guaranty of legal permanence by the asylum claim, the Madams are aware that they cannot turn to high levels of violence and abuse as in the past, thus they have started to seek help from the men through the *lover boy method*. On October 2012, a Nigerian girl that was an asylum seeker hosted in a shelter in Sicily was brutally beaten and raped by her partner that was trying to obligate her to engage in prostitution³⁹⁸. Her partner has taken advantage of her vulnerable situation and seduced her through the *lover boy* method. In fact, in my research in 2012 (Pascoal, 2013) a social worker has declared that there were situations in which they have found out that the men were the women’s exploiters and the fathers of their children.

³⁹⁶ Interview number 30 (third sector), 22/02/2017, Italy

³⁹⁷ Interview number 22 (third sector), 27/07/2016, France

³⁹⁸ <http://palermo.blogsicilia.it/palermo-nigeriana-violentata-non-voleva-prostituirs/105148/>

“Sometimes it happens, some months ago, two exploiters, from these girls, they were also the fathers of these children. I am talking about two different cases with the same scope. He was the child’s father and then we became aware that he obligated his partner into prostitution. Often, the women cannot even be free and this means beaten and rape.” (Pascoal, 2013)

3.3.3 The Art.31

Besides that the partners of the women are the ones nowadays that are often interest in the legal residence through parenthood, there are also some situations, in which the women are not able to have access to another kind of permit, normally such as the international protection or the humanitarian permit through Art.18. The women often find themselves lacking from an access to a permit through the identification of human trafficking victim, especially since as previously noted, Art.18 it is generally conceded only through a press of the charges of the victim. Furthermore, since that many victims also suffered exploitation in other territories, during my interviews it was also affirmed that the associations tended to substitute the permit of Art.18 by the one provided through the ex-Art. 31 and normally it would come accompanied by the full package provided by the Art.18.³⁹⁹

The information regarding the possibility of access to a permit of Art.31 is normally given by the associations to the women, especially after a protection path under Art.18 or when the women have been victims in the past and are no longer in an exploitative situation. However, some of the women at the beginning feel reluctant to present the requirement for such permit, since they are dependent of the control of the social services and the Juvenile Court. In fact, normally the mothers demonstrate a certain resistance regarding the social services, especially based on the cultural gap and the rumours from their conational. These rumours normally spread a prejudice towards the social services that are often felt as a threat in the relationship of Mother-child.⁴⁰⁰

When the Nigerian women are out of the protection system, having a child can be a Herculean task, thus in this case some associations try to act as a mediator between

³⁹⁹ Interview number 25 (third sector), 05/04/2017, Italy

⁴⁰⁰ Interview number 33 (third sector), 10/04/2017, Italy

the Nigerian women and the institutions, in order that they have access to the subsidies. In fact, despite that the woman has the right to have access to the same services as most Italian citizens, it is important to understand that many women are not aware about their rights and especially, they are not aware about the entities that they need to contact in that case. Furthermore, once they are out of the protection system or the asylum seeker system, the women tend to need immediately accommodation.

“Normally the women arrive here because they have the contact of a friend, but this is not a stable contact, in the sense that they are normally hosted by a friend, which normally has a deadline for their accommodation. Consequently, this leads that the woman has to find other accommodation. Therefore, they try to have access to the accommodation for free. They arrive here and tell us that they are being hosted by a conational, but that they cannot stay anymore in that place, so they seek urgently a house. During the interview with them, we realise that the emergence it is not only regarding the accommodation, but for example, if there is a situation of danger, because the woman for instance knows that her family back in Nigeria has been contacted by the trafficker. In that case we contact the anti-trafficking referral association. Then, there are cases where there is no danger to the girl, since maybe she does not contact the family, or she has changed her cell phone number or she has changed city.”⁴⁰¹

In case the woman is not at risk, the associations try to fulfil the main needs of the women, such as the sanitary card in order to accompany their pregnancy. Since that many women stay in a rented room, they normally lack of information on the legal procedures on resting, such as the right to have a contract. Moreover, a rental contract is also required as a proof to the social services of the living conditions with their children and consequently to have access to the residence permit. Besides the residence legal paperwork, the woman also needs to provide elements of a social and work integration, which normally depends from the legal situation of the women. However, for instance, in case the woman is considered within a vulnerable category, such as asylum seekers or human trafficking victims, they are entitled to an internship after at least 60 days from their asylum claim. The internship is only available, not only to the person who is legally considered a human trafficking victim or an asylum seeker, but also if the individual

⁴⁰¹ Interview number 33 (third sector), 10/04/2017, Italy

has a legal residence. However, the internship previewed by the Regional Directive is not guaranteed to all vulnerable categories, since it does not preview the involvement of a person with an ex-Art. 31 permit, for assistance for minors. At the moment, the association is trying to engage also individuals who have a permit for minors' assistance by presenting a formal request to the centre of employment that is the promoter entity of the program.

*“In one case, we were able to manage and insert the woman in our program, but when it becomes 3, 4 cases, it is difficult to use the “extraordinary clause”.*⁴⁰²

3.4 Unwanted Pregnancies and the influence of the State

3.4.1 Abortions

As Nigerian women, especially during the travelling as Romanian women when involved in sexual exploitation tend to use scarcely the condom, especially when there is the pressure of the exploiter in accepting the request of the client. Furthermore, women also tend to be resistant to use oral contraception or chemical contraception. Romanian women are the ones that turn more to family planning services, despite that their main aim is to control sexual transmitted diseases, rather than cases of unwanted pregnancy. There has been registered also an alteration of the Nigerian group that also tends to trust more in familiar planning services, probably due to their inclusion in the reception centres or their absence of a life in mobility as has often occurred in the past.

“I can tell you that the Nigerian group that lives in Rome lives mainly in Casalina, there is an establishment of the Nigerian community. Therefore, along the years, the girls have started to go to the local services. If it is not an urgent situation, within the three months, we send the girls to the San Camillo hospital, because many times the women arrive and they are in the limits of the three months. Therefore, we need to accelerate everything, all the exams that should be done first and they are done there. In all the other cases we try to send them to the hospitals where they live.

⁴⁰² Interview number 33 (third sector), 10/04/2017, Italy

*This thing has functioned with the Nigerians, because most of them go to this hospital.*⁴⁰³

However, despite that there is an increase attendance to the family planning from the Nigerian women, which does not exclude that these women can also be the exploiters or former victims, since they are the ones that are often able to establish within a community, many women also turn to the illegal abortion. Furthermore, despite that pregnancy can be used as an excuse to raise the debt or also to enhance the avoidance of being deported (Pascoal, 2013), it is also true that some Madams might see it as an impeachment to engage the woman in the sex industry (IOM, 2017), especially since the women are normally secured in the territory by their asylum claim. Hence, many Madams oblige the women to perform an abortion, even after the legal period, often turning to illegal methods. In Italy, abortion became legal in 1978 if it is performed during the first 90 days of pregnancy. Women are allowed to require an abortion free of charge for health, economic or social reasons under the official law 194/1978⁴⁰⁴.

Despite of the free access to voluntary termination of pregnancy in Italy, many exploiters often prefer to contact a “Nigerian native doctor”, not only to avoid public institutions such as hospitals, but also to use the money of the abortion as an excuse to raise the debt. Therefore, as also referred in the subchapter *Morocco*, the exploiters are the ones who detain the reproduction rights of the women (Fernandez, Garzón, Juan & Contreras, 2017), establishing the prices according to the time of pregnancy. In Castel Volturno, a Nigerian man would ask 300/350 euro for a pregnancy of 4/5 weeks and around 2500 euro for pregnancies passing the fifth month of pregnancy (Repubblica, 2017). In some African countries, illegal abortions are often performed using chloroquine and soap (Dijck, 2001), while in Italy, the abortion consists in administrating a certain amount of pills, mainly cytotec. Cytotec is a pill used to cure

⁴⁰³ Interview number 28 (third sector), 29/11/2016, Italy

⁴⁰⁴ Clause 4, “In order to undergo termination of pregnancy during the first 90 days, women whose situation is such that continuation of the pregnancy, childbirth, or motherhood would seriously endanger their physical or mental health, in view of their state of health, their economic, social, or family circumstances, the circumstances in which conception occurred, or the probability that the child would be born with abnormalities or malformations, shall apply to a public counselling centre established under item (a) of Section 2 of Law No. 405 of 29 Jul 1975 or to a fully authorized medicosocial agency [struttura socio-sanitaria] in the region, or to a physician of her choice.”

stomach ulcers that has the contraindication of being used on pregnant women.⁴⁰⁵ When induced in large quantities, it has strong collateral effects, provoking uterine contractions and consequently, vomiting, diarrhoea, nausea and haemorrhage. Many victims can undergo a homemade abortion without any anaesthetic (Brotherton, 2016), mixing mainly with herbs and blood and sometimes performing a ritual (Agathise, 2002). Besides turning to “native doctors”, traffickers tend also to menace the women with violence and oblige them to work during the pregnancy, in order to induce miscarriage (Ac.sé, 2015).

”I can say that we have accompanied a woman to do an interruption of pregnancy, but it is also difficult to establish a relationship with the women. At the moment, there is a high number of human trafficking victims that are within the reception centre that can easily do an abortion. There were cases that the women trust their conational who performs illegal methods that were also very danger to the women. We have received flagging of other reception centres and hospitals of strange modalities [of abortion], that are also much known to us.”⁴⁰⁶

Not only the Madams are the ones that oblige the women to a voluntary termination pregnancy, but also the women’s partners who also tend to get the profit from the activity by through the use of high levels of violence as a way to induce the abortion (TG24, 2009). The lack of turning to a legal health provider to perform the abortion can lead into serious health problems to the girl as well to a legal penalty.

As mentioned before, traffickers tend to avoid public institutions, by preferring contacting native doctors. Consequently, the women often arrive at the hospital with serious heart conditions with haemorrhage, sometimes in near-death situations. Furthermore, when the women have negative consequences from the “homemade abortion”, they are often abandoned by the traffickers on the street or near to the hospital. Hence, when a Nigerian woman arrives to the hospital in critical conditions, consequent of an attempt self-induced abortion, she is normally considered as a potential human trafficking victim.⁴⁰⁷ However, not all cases of

⁴⁰⁵ Interview number 36 (third sector), 01/09/2017, Spain

⁴⁰⁶ Interview number 26 (third sector), 29/11/2016, Italy

⁴⁰⁷ Interview number 28 (third sector), 29/11/2016, Italy

“homemade abortion” are obliged by the traffickers, especially when the women arrive from Libya coming out from situation of trauma or from exploitation.

“The girls ask to interrupt the pregnancy, especially when they arrive pregnant from Libya, but also while in Italy, there are people that get pregnant and then ask to do the abortion.”⁴⁰⁸

Despite the legal access to a free abortion in a public institution, not always the reception centre is prepared to accompany the women to perform an abortion, since there is a formal procedure that requires the availability of a psychologist. During one of my interviews a practitioner has declared that even if the woman has required performing an abortion within the legal time. While the woman was hosted in a CARA, the structure was not able to properly respond to the woman’s request, which led that the woman has passed the three months of pregnancy. In this case, the staff of the organization that was interviewed has started to move quickly by trying to pass a report declaring the risk of the mother’s health⁴⁰⁹, since the woman has declared that she would kill herself, in case she would not be able to have an abortion. The procedure required to have an appointment with the psychiatrist from the local hospital that is the only person that can write the required declaration. However, since the procedure took longer than expected, the woman did not believe that she would be able to do the abortion, thus after two days, she left the structure and once she returned she declared that she had a miscarriage.⁴¹⁰

“It is difficult when we have a girl that says: - “This thing inside me, I don’t want it!”. For us, it is also difficult, since all the doctors in the province are conscientious objector, for us, it is very difficult to do this. The girls never say that they have done the abortion by themselves. There was another situation, in which the girl was pregnant and we have put the papers to do the voluntary termination of

⁴⁰⁸ Interview number 25 (third sector), 05/04/2017, Italy

⁴⁰⁹ Law 194/1978, clause 6. “Voluntary termination of pregnancy may be performed after the first 90 days: a) where the pregnancy or childbirth entails a serious threat to the woman's life; b) where the pathological processes constituting a serious threat to the woman's physical or mental health, such as those associated with serious abnormalities or malformations of the fetus, have been diagnosed.”

⁴¹⁰ Interview number 24 (third sector), 20/02/2016, Italy

pregnancy, but then the girl went away from the centre and when she came back, she did not have the baby anymore. I think that they [the girls] do the abortions along with voodoo rituals, but they never say it. Anyway, normally after the abortion the women disappear, even if we provide them information on the risks of abortion.”⁴¹¹

In the CARA of Mineo there are around 3100 migrants, despite that its maximum capacity is about 3000 people, sometimes achieving a total number of 4000 hosts. The majority of the hosts are Nigerian citizens, counting with a number of 40 families (Stefano & Paleologo, 2016). The centre counts with the project Eva that is regarding potential human trafficking victims that are accompanied with medical visits. Despite of the high risk of performing abortions in unsafe conditions, according to the report *Accogliere la vera Emergenza* (Stefano & Paleologo, 2016), the centre’s staff declares that there are only situations of miscarriages.

As previously exposed by the interviewee, the lack of trust in the Italian organizations to perform the voluntary termination pregnancies is mainly based on two main aspects 1) on the high number of conscientious objectors that are 80% of the doctors in Sicily (Redazione, 2016) 2) the second aspect is that within the Nigerian community there are some figures that are known by performing illegal abortions, involving mystic and rudimental instruments. In 2017, a Nigerian man was arrested in Palermo for doing illegal abortions within the Nigerian community in Sicily. The abortions would consist in the administration of expired pills; the situation has come into surface after the woman has turned to the hospital consequently to the fact that the man has obliged her in performing an unsafe abortion (Palermo, 2017).

The impact of an unsafe abortion is not only physical, but it can also be psychological. In fact, despite that Nigerian women who are victims of human trafficking for sexual exploitation tend to do an abortion at least two or three times in her life (Iacono, Petrillo, & Howard, 2017), they normally regard the abortion as being as a sinful act, due to their culture and relation to motherhood (Agathise, 2002). If Nigerian women can go up to three abortions, in some of my interviews it has emerged that Romanian women could exceed three abortions during their lives. However, the number of abortions performed legally by Romanian women has

⁴¹¹ Interview number 24 (third sector), 20/02/2016, Italy

decreased of requests in some regions of Italy,⁴¹² since the women or their exploiters tend to find alternatives.

“The Romanian [women] ask more [to do an abortion] than the Nigerian. The psychological aspect of the abortion is relative, in some women is very noticeable, in others not really, but I think that it is an internal path. I think that the Romanians are the ones that perform more the illegal abortion, or they go in Romania if they discover that they are pregnant after the legal term to do a legal abortion.”⁴¹³

“Here comes around 120, 125 people, but there was a decrease on the request of this service. We work with the public, for the service we do the inscription to ENI, thus the registration in the national system. The problem is that the emission of the ENI is scarce due to the reduction of budget in the Lazio region. Therefore, the emission of ENI, that is for a pauper, the reimbursement should be provided by the Romanian government. Since Romania has not been responding to this necessity, at the beginning the registrations did not occur often, but now these mechanisms have entered in the system. Hence, one that declares to be a pauper here, should also be a pauper in Romania, but if after it comes up that the person has a house, then they are not pauper and have to pay 400 euro per year to have access to the Italian health system. In this case, many of them go to Romania to do the abortions and if you go near to the airport of Bucharest there are a lot of private clinics. Furthermore, when we say you have to do an electrocardiogram, the appointment with the anesthetise and that there are different steps to take, the girls often get nervous, because when they go to Romania they can do all this in a day and it costs less. Therefore, for this reason I think that the number of requests have diminished.”⁴¹⁴

In the report *Piccoli Schiavi* (Iacono, Petrillo, & Howard, 2017) some minors have declared to return to Romania to perform the voluntary termination of pregnancy in illegal clinics, demonstrating to be disturbed by being subjected to the used methods.

⁴¹² Interview number 28 (third sector), 29/11/2016, Italy

⁴¹³ Interview number 30 (third sector), 22/02/2017, Italy

⁴¹⁴ Interview number 28 (third sector), 29/11/2016, Italy

*“Not many girls ask assistance on that [abortion]. They tend to keep the children, even if the families try to make them make an abortion. When they are in exploitation the traffickers take care of the abortions, even in unconventional ways, with doctors and homemade abortions. In the film speranta la vanzare, there is a girl who is pregnant with her second child by her husband and he sold her. He sold her, because she was pregnant with a boy and not a girl, since they were Roma and it is more important for them to have a girl than a boy. This is due to arranged marriage, and then they can have money from the boy’s family. So he sold her when she was 5 months pregnant, and the second buyers tried to push her to abortion with pills, yet the pills did not work. Consequently the girl now has health problems and the baby had a tumour in his head.”*⁴¹⁵

During my experience in the street unit, one of the girls have declared that she went to Romania to perform an abortion for 300 euro when she was four months pregnant. In fact, besides the fact that an abortion can be easier to do in Romania, especially if the trafficker has the contact with a specific doctor and the fact that it can also cost less, another main reason to perform the abortion in Romania is due to the legal time to do an abortion. Therefore, while in Italy the legal time for an abortion is 90 days, in Romania the legislation in force admits the abortion until the 14th week⁴¹⁶, which is two more weeks than the Italian legislation. Furthermore, according to the Romanian Criminal Code, in Art.201, clause 6 it is allowed to overpass the legal time in case of a medical condition of the mother, without specifying what are these medical conditions⁴¹⁷. The Romanian legislation also does not incriminate women that provoke the loss of the child, even if it is conducted at home with her and independent of the time of pregnancy⁴¹⁸.

⁴¹⁵ Interview number 18 (third sector), 05/10/2016, Romania

⁴¹⁶ Romanian Criminal Code, Art. 201 clause “c) if the length of pregnancy exceeded fourteen weeks, the punishment shall be of no less than 6 months and no more than 3 years of imprisonment or a fine and a ban on the exercise of certain rights.”

⁴¹⁷ “Termination of pregnancy for therapeutic purposes performed by a physician specialized in obstetrics and gynecology, up to the pregnancy length of twenty four weeks, or subsequent termination of pregnancy for therapeutic purposes, in the interest of the mother or of the fetus, shall not constitute an offense.”

⁴¹⁸ “A pregnant woman who terminates her own pregnancy shall not be punishable.”

The number of abortions can lead the women in having serious problems in their gynecological system, which can have a deep impact on the woman regarding their exploitative situation and her willingness of exiting from the sex industry. During my volunteer work with the street unit, one of the girls have demonstrated to have problems and went to the doctor that was recommended by us. The doctor said that she had an infection due to the number of abortions that she has done in the past, and consequently, she could have the risk to have a miscarriage in the next pregnancy. After receiving this information and understanding she could might not be able to be a mother, the girl has decided that in case she would get pregnant, would have the baby.

Despite that, it is frequent that many women return to their origin country to perform the abortions, it's important to reflect that not all women, especially if victims of human trafficking might have the assets, material and social, to travel to their origin country. In Italy, the zone of Vittoria, in Sicily, is known for its high number of abortions, mainly performed by Romanian women. According to the researchers Letizia Palumbo and Alessandra Sciorba, the high number of abortions is mainly due to the women's level of exploitation as in labour exploitation as in sexual exploitation by their employers (Palumbo & Sciorba, 2015). Normally, every week eight abortions are performed at the Vittoria Hospital, out of which six are by Romanian women, who are normally accompanied by men, being the majority Italians who are presented by the women as friends (Sciorba& Palumbo, 2015). The high presence of Romanian women has also been witnessed by one of my interviewees, which claims that since Nigerian women in that area are within the reception centre, they normally turn to these services by being accompanied by the centres' staff, which is not verified with the Romanian women.

“We provide services at the clinic of Vittoria, twice a week before the abortion. So, we have a direct experience with the women. In this area, there are only Romanian women, because the Nigerian women, maybe they are all in the reception centre, thus probably they are accompanied by the Centers' employees. The Nigerian women are accompanied by a man, sometimes a conational, because maybe they pay for the car... Regarding the access to health they [the Romanian] don't have access to cure, there are people that maybe give birth and they have never gone to do a control during the

pregnancy.⁴¹⁹

Despite that the number of legal abortions of Romanian women tends to be very high in this zone of Italy, it has also been referred that many women tend to do a self-induced abortion at home, especially if the women realise that they are pregnant after the legal period to perform an abortion. The self-induced abortions by turning to rudimental methods that were used by “doctors” in Romania during the Communist period 1967 – 1989, when abortions were forbidden, as previewed by the Law Decree 770, “only women older than 45, women who have already had four children, women who had critical medical conditions (or the foetuses that were malformed or women who were pregnant based on rape or incest were allowed to have abortions” by request” (Pascoal & Schwartz, 2016).

On the contrary of the Romanian Legislation, the Italian legislation does not preview the exoneration of the women in case the abortion is performed after the established legal period, without the conditions mentioned in the law 22nd May 1978, n° 194. Therefore, it is important to recognise the situation of the victim, when the women arrive to the hospital after passing the legal period.⁴²⁰ In 2017 a Nigerian girl has fainted in the street (TG24, 2017) and was found with a fetus in her bag. She was presumed to be a human trafficking victim, since she was obliged to work even when pregnant until she was obliged to undergo with an abortion. The presumption of a situation of human trafficking has exonerated the woman from being accused of a “homemade abortion”.

“With the Casilini Policlinic we have a collaboration, we have an agreement for years, with the staff from the triage, the gynaecologists, because also in this situation this entails responsibility for the doctors, also because some women have committed an offence under the Italian legislation, but in a complex vulnerable

⁴¹⁹ Interview number 30 (third sector), 22/02/2017, Italy

⁴²⁰ Law 194/1974, Clause 19. “Any person who induces a voluntary termination of pregnancy while failing to observe the conditions laid down in Sections 5 or 8 shall be liable to up to three years' imprisonment. The woman shall be liable to a fine of up to 100,000 *lire*. Where voluntary termination of pregnancy occurs without the medical examination provided for under items (a) and (b) of Section 6 or in any event without observing the conditions laid down in Section 7, the person bringing about such termination shall be liable to from one to four years' imprisonment. The woman shall be liable to up to six months' imprisonment”

situation of the person. Also because, being a human trafficking victim, there is a suspension of these aspects, but after that, it activates the protection, thus the girl is flagged and accompanied and I have to say that this has become a good moment to take the women out of the traffickers. For an exploited woman, in front of such traumatic moment, the loss of a son in such way is painful, it can be a good moment to break with the organization. We have had more than one case that the girl has left after doing the abortion. Also, when they become mothers, because they [the Nigerian] are very religious and it becomes more difficult, comparing to the Romanians that tend to be more detached. Instead for the Nigerians it is never painless, but it is also problematic, when they decide to go ahead with the pregnancy. More than once, we had the occasion to take the girl out of the exploiter, when she was pregnant. At that moment the girl takes the decision of curing herself, not only them, but also the person that they are putting in the world.⁴²¹

3.4.2 Adoptions

Besides the abortions, unwanted pregnancies can result also in adoptions and forced adoptions normally imposed by the traffickers. The decision of going ahead with a pregnancy and keeping the baby, since not always belongs to the woman, but mainly to the exploiters. Furthermore, as also mentioned previously, some women have arrived already in Italy passing the legal period to perform an abortion or due to the lack of professionalism of the reception centres' staff, the women are not able to have access to a voluntary interruption of pregnancy. On the other hand, giving the child to adoption sometimes can be the best alternative for a situation of an unwanted pregnancy discovered after the legal period to have an abortion.

“We had a case two years ago, when the mother did not want to keep the baby, because she was sexually exploited outside Romania, so she came to Romania to have the baby that is already adopted.”⁴²²

“This is a very difficult thing. I have to say that sometimes we propose it [the adoption] to the women, and I think that in situations that the pregnancy has arrived in

⁴²¹ Interview number 28 (third sector), 29/11/2016, Italy

⁴²² Interview number 16 (Institutional services), 20/09/2016, Romania

a complicated moment, sometimes the women were already in protection when they get pregnant, and thus sometimes it becomes a motive of conflict. It is never easy. I remember a case of a girl with a mental disorder that it was very difficult.”

“There is this girl, she has four children, two already in foster care in Romania and the other two at home, with her mother. She lives with her husband near the station and works almost 24 hours a day. I have taken her to the doctor, since she thought to be pregnant of 4/5 weeks, but in the end she was 5 months pregnant, thus she had to have the baby that she has left in the hospital. Some months after she was again pregnant, she says that she takes the pill, but meanwhile her boyfriend takes all the money and some time ago, she said that he tried to suffocate her. She is 26 years old, but she is like a child. Her boyfriend has slipped her ID card and she has put it again together with tape. Therefore, she has not taken the pill anymore, because she did not have any money, and we are talking about a girl that is on the street at 9 am, at 3 pm and at 10 pm. She is not able because her boyfriend gambles. She was on the street until the last day of pregnancy and when she started to feel the contractions, she went to the hospital. We have told her that she could stay in a facility for mothers until the baby was 3 years old, but she abandoned again the child.”⁴²³

In some cases, the adoption it is not always done with the woman’s consent, but as a consequence of trusting the children to the social services for a period, with the aim to reinsert the child in the biological family, once the mother has gathered the minimal conditions. It is in this period that the system often disapproves the way that these children are educated. According to Taliani, (Taliani, 2014) due to a western cultural’s perspective, it is often required that the baby goes to adoption, since the mother is regarded as being inadequate. This western regard that is normally imposed on the foreign mothers, normally leads them to confusion, since they try to adopt the western behaviours, but often falling into their misuse. Furthermore, the adoption is mentioned by the anthropologist Taliani (2014) as being also a quick legal instrument that provides the Italian citizenship to the child, without providing any rights to the mother.

In 2012, F. was born in Spain and abandoned by her mother at the hospital due to her personal, economic and social conditions. Despite of the abandonment, the wom-

⁴²³ Interview number 23 (third sector), 27/07/2016, Italy

an after did not ratify the adoption papers, manifesting that she will try to be with her child once she has access to better conditions. For three months, according to the social services, the mother has been supported by the social services, despite that the mother has affirmed the contrary. By the end of the three months, the woman was still not able to offer any alternatives to her child, neither to renounce her. In this way, the social services have deduced that the woman has decided to give her child to adoption, since also the mother was often unreachable and would barely come to see her daughter. Consequently, in October the child has passed to an occasional foster family, in the modality of pre-adoption, according to the *Resolución 1326/2012, de 11 Octubre*, which leads to the interruption of the visits of the mother to the child. In 2014, the mother opposed herself to the adoption requiring that the girl would pass to a simple foster family, with the goal to be later reintegrated in the biological family. However, the social services have declared that while the foster family is able to provide stability to the girl, the instability of the biological mother is not in line with “the best interest of the child”. Furthermore, the mother has moved to Norway during the process and being unaware about the situation, she has signed the papers giving the child to adoption. Finally, the judge has decided that the child should be maintained in the system of simple foster family and not pre-adoption.

The situation of trafficking of the mothers can often lead to the adoption of the children, especially when the women are obliged by the criminal networks to displace to other countries, yet not always the mothers are aware of the final decision to give the children to adoption. According to the report of Women’s Worldwide Link (2017), a woman reports that while her son was taken by the social services in Spain, she was obliged by her trafficker to go to Denmark. Consequently, the woman was not aware that her child has been given to adopt, without her consent. Other cases also demonstrate that the women trusted the child to the trafficker or the trafficker has obliged the women to leave the child with her and after the exploiter given the child to the social services, without the women’s consent.

According to the researcher Reyero and Adroher (Reyero & Adroher, 2017) there has been cases in Spain of Nigerian women that tend to go to the police and say that a friend has abandoned their children with the women. Consequently, the child enters the child system, not only as an abandoned child and, but also as not having any

parents, thus it is quite complicated that the women are able to find their children once they return to Spain. According to one of my interviews,⁴²⁴ in France, an association has accompanied cases in which the trafficker has obliged the women in giving their children to the social services. In one case, besides obliging the victim in abdicating the child, she has also obliged the victim in renouncing to the visits, which has led the case into a process of availability for adoption; in spite the efforts in the Court of the association's staff. In the same interview, the worker has exposed also the case of a mother of four children that were given to the social services, during her exploitation. Unfortunately, her children being in a French environment and with the absence of the mother and her infrequent visits, the children started to speak only French. With her exploitative situation, the woman, consequently has lost the guardianship of her children.

“We had cases in which the babies were given to the social services, because the Madam has obliged the mother at the birth to give the child to the social services, a baby has been declared adoptable, I do not know how the situation now is, because the colleagues have gone to appeal. The other case is a baby that was trusted to the social services, while the mother was in our reception centre, she was still being exploited and the Madam did not allow her to keep the baby.”⁴²⁵

The separation of the child from the mother, even when the visits are guaranteed to the child can have serious consequences in their relation, not only regarding the relationship between the mother and the child, but mainly on the fact that the child starts to be reluctant to the language of the mother and develops only the language of the destination country (Fernandez, Garzón, Juan & Contreras, 2017). The mentioned cases that normally aim in achieving “the best interest of the child” only evaluate the situation of the child, without normally identifying the trafficking situation of the mother. Actually, in these cases the authorities have the tendency to analyse the relationship between mother and child regarding separately the mother's situation from the child's situation, rather than analyzing the complex situation itself. In this case, when social services verify a lack of adequate conditions for the child, there is a major preoccupation with the

⁴²⁴ Interview number 21 (third sector), 30/05/2016, France

⁴²⁵ Interview number 21 (third sector), 30/05/2016, France

child, putting aside the abuse situation of the mother. However, both situations should be analysed together in order that the mother is able to overcome the complex situation, by providing a safe environment to the child. Unfortunately, until the return of the mother some time has passed and the child is already placed within a family for adoption, being the Court often reluctant in taking the child from the adopted family.

When Lana was ten years old, she was sold for 1000 euro by her mother to forced marriage. Her trafficker has forced her to steal and sleep with two men and has also beaten her. She was able to return to her mother that has claimed to be unaware about her situation, yet after 15 days, the mother has decided to sell her again for 1000 euro. She was obliged to domestic servitude by waking up every day at 6:30 to do the domestic chores. She was then introduced to her future husband, a 12 years old boy. The family has hidden her birth certificate and passport and she was obliged to lie to the social assistants saying that the children of the couple were her brothers. She was also obliged to steal when the subsidies finished. Only in 2014, after complaining with one of the neighbours is that the police came to the house asking for Lana's documents. After being rescued, Lana has revealed that she had a baby that was not confirmed by the register in the hospital. In fact, the records reported that the youngest child of the couple, Iasmina, at the time resident in Spain had a baby and not Lana, since her traffickers have used the daughter's documents instead of the real documents of Lana. At the time, the exploiter has declared that Lana was abandoned by the father of the child and signed the adoption documents by Lana (Caneco, 2017). As observed, the story described above exposes the facility in which some traffickers are able to convince social services as well as other public services on the identity of the parents or their story. The reason for this facility is due to the lack of identification documents or birth certificates, leading that public employees trust the traffickers.

It is also important to highlight that, besides being able to fake the victim's identity, often traffickers also tend to enhance to the public services the immorality of the mothers, since they are engaged in prostitution. It has been often verified that traffickers tend to use this argument as a coercive instrument to maintain the women in prostitution, by menacing that they will say to the public services about their "immorality". In fact, in certain cases, institutions tend to not accept the role of the mother once she is engaged in prostitution, judging the mother as being immoral and not giving the ade-

quate conditions for the children (Kohm, 2005). Furthermore, besides considering the mother as “inadequate” it is often regarded that social services are not aware of the trafficking situation of the women, not being able to see the complex context of the victim. I have myself encountered this situation during my volunteer work in street unit. We have been contacted by a social assistant that has had a deepen training on the subject of human trafficking requiring a Romanian mediator for the following case.

“M. was recruited by a friend whom she knew from school. The recruiter informed her that being deaf, she could go to Italy, where she could receive some disability funding. Since her husband had recently passed away and she had three children, the proposal seemed the best option. She decided to go to Italy with her younger boy of 1 year old, where she was received by an Italian family that arranged a marriage with an Italian man, who was also deaf. After some months, M. was coerced into indoor prostitution by the family that has received her and her husband. Since the child was considered a problem to the traffickers, the family went to social services to report that M. had no more interest in being with her son. Practically, during a year, the social assistant that was taking care of the case did not grant access to M. to expose her true will regarding her son. M. was deaf and only knew Romanian sign language, so she needed at least a person who was able to understand basic sign language or, since she was able to write in Romanian, she also could need the assistance of a Romanian cultural mediator. However, after a year, a social assistant who was aware of human trafficking indicators has called a Romanian mediator in order to listen to M. After the first session with M., the Romanian culture mediator perceived that M. was trafficked and that she was desperate to be with her child. At this point, the exploitative situation was proved and M. went to a shelter with her son”, yet due to her long traumatic experience, she suffered from psychological problems, thus she has dismissed the lawyer that was trying to make a case against her husband for human trafficking (Pascoal & Schwartz, 2016).

The obligation of giving the victim’s child has not only been required by the trafficker to “get rid of the children”, but it has also been profited by the trafficker in order to have some money. According to Brotherton (Brotherton, 2016) some victims were put pregnant on purpose to sell the children. In fact, during one of my interviews in Romania, it was claimed that some of the women have given away their babies to the exploiters.

“The children are given away to the exploiters, we have had three, four cases in which the women did not know where their babies went and they were obliged to give the children for adoption, while in Italy, which obviously brings profit to the exploiter.”⁴²⁶

Other cases have been reported in Italy, also during one of my interviews in which, in the hospital, the association has understood about the selling of a baby through the intervention of a mediator that has been put in contact the couple that could not have children with the leader of the Roma community. In this case, the traffickers in order to avoid any bureaucratic problems asked the man of the couple to assume the paternity of the child, so the child goes to the couple by adoption of the mother and being registered in the name of the father that has assumed the paternity, without being necessary to pass by any services. The same situation has been reported in other countries (L’Homme, 2015), such as Portugal, where a couple has bought a newborn (Coelho, 2017), using the same method as mentioned during my interview.

“They have seen the girl on the street, so they have approached her, because they have seen her with a big belly. “Do you work here?” We have understood the modalities and she went to the hospital to give birth. An Italian has come to the hospital, the man of the couple and has recognised the baby. Therefore, the adoption has been done mainly through the father. She has given birth in safety, in a public hospital. This has been told us more than once, but always within the Roma ethnicity and with girls with no more than 18 years old.”⁴²⁷

As also verified in the subchapter *Morocco*, social services can also lead the children to foster system in cases of a lack of identification of the women. Normally in these cases, the presence of anti-trafficking institutions is often necessary in order to recognise the women, especially when they don’t have access to an identification document.

“We have had a case this summer that was very complex. There was this girl that had problems with her documents and this girl did not have a passport. Therefore,

⁴²⁶ Interview number 20 (civil society), 02/03/2017, Romania

⁴²⁷ Interview number 28 (third sector), 29/11/2016, Italy

we were doing the procedure and trying to organise all the documents and we have not quantified the exact duration of her pregnancy and we thought that she was in her 7th month. She had her contractions and the birth, maybe a bit before time. We have flagged to the hospital her situation that she was a human trafficking victim, thus she did not have a passport and since they did not give much attention to the subject, the legal identification comes only three days after. Inside the public hospital there is a judicial entity that is able to recognise the child. Therefore, she was not identified, except only through our identification and they did not warn us about the problem, because three days after the birth, the identification is possible, but the procedure is more complex. With the registration office of the Municipality there is a different procedure, thus the women were having some difficulty and the hospital has said that it was better that the baby would remain at the hospital. Therefore, we were in a paradoxical situation, in which she was dismissed from the hospital, while her child was still not identified. In this case, there was a father, who was Italian and was willing to recognise the child, but he was in Bari and she did not have any documents, thus this baby was risking to go for adoption. We had to go to the registration Office with two witnesses, then we had to go in the same day to the hospital.”⁴²⁸

3.4.3 The role of the State

This is a very delicate subchapter that has been analysed with information as from Romania being the origin country, as Spain, France and Italy as a destination country for Nigerian women. Therefore, in this case, not only I should make a distinction of motherhood, between the past and the present in Italy regarding the Nigerian women, when they were more controlled by the trafficker, while nowadays they have more access to a network of services, but also enhancing the geopolitical aspect of the destination country. This observation is based on the difference between the collusion between the concept of motherhood at the response of the government in different countries as Spain, highly characterised by the problem of the “niños ancla” that have a high probability to disappear or countries such France where there is a major attention to the vulnerability of these children regarding their mothers’ life, as well of

⁴²⁸ Interview number 28 (third sector), 29/11/2016, Italy

the concept of Children Left Behind in Romania.

Despite of the importance that Nigerian women feel when they become mothers, as having a more important role in society, it is important to refer, also as mentioned in the precedent chapter that often their parenthood is badly regarded in the eyes of western society, being mainly considered as primitive. The role of “good European mother” that sacrifices herself has modelled the western perspective of the mother (Serughetti, 2016a). In fact, the lack of awareness of some cultural aspects of the Nigerian society can implicate conflicts in the role of mothers (Taliani, 2016), leading sometimes to the separation of the child from the mother by the social services. According to the report of Worldwide Women’s Link (Fernandez, Garzón, Juan & Contreras, 2017) associations working with Nigerian mothers tend to designate them as authoritarian, with a distant relationship from their children or overcome by motherhood. Furthermore, social services sometimes demonstrate to only trust European organizations to guaranty the capability of the woman in being a mother.

“We have had a case of a woman that was assisted in A. at a nuns’ facility and from there they have communicated with the Minors’ Court. Therefore, when we took her, we have received a pre-trial order of the Minors’ Court of A. to proceed with an investigation, thus they have started to question the pater potesta of the woman, even before the child was born. However, in this case the solution was easy, since they have resolved the problem with our report claiming that the woman would take care of the child.”⁴²⁹

A Nigerian woman has had a child in 2006 and in 2007, after several problems of the mother; the social services have declared automatic tutorship of the child. After 2007, visits were no longer authorized to the mother and she has entered in a psychiatric hospital with persistence delirious disturb, the consequence of some episodes of violence with the child on the street. In 2008, the social services have decided to integrate the child in a provisional foster family with the aim of pre-adoption. Despite that it was agreed a simple foster family model, with a system of visits from the mother; the child went to a pre-adoption system. The woman has taken the situation to the Court and fi-

⁴²⁹ Interview number 31 (third sector), 22/02/2017, Italy

nally, the Court has decided to put the child in a simple foster system, in order not to break the relationship with the mother.⁴³⁰ Furthermore, the critical regard towards Nigerian women is normally enhanced when they are involved in the sex industry, since that prostitutes are normally seen as having a detrimental behaviour in relation to their children (Kohm, 2005).

“In France the social services intervene in a protective way as we try to do mediation between the mothers and the State. Therefore, in the moment that they realise the mother is in prostitution... not all are in favour of leaving the child with the mother. It is up to us to try to solve the situation, because only once they press charges they can have access to the services.”⁴³¹

The critics from the social services tend to augment the sensation of the mothers that being a prostitute and a mother is something that is incompatible (Garofalo Geymonat, 2014). Therefore, many women, while being engaged in prostitution do not feel like being capable of taking care of their children, especially when they have a limited situation by their traffickers, leaving normally the children with the social services. In the same interview the practitioner has exposed a case, in which the mother that was being hosted by the association was obligated to give her child temporarily to the social services, since her Madam did not allowed the victim to be with her child. The woman was able to see her daughter each fifteen days, yet the child is still in the care of social services, since the mother is still in an exploitative situation.⁴³²

“The only Romanian case that I followed, was this woman that had a child last year, when she has witnessed against a criminal network and when she was transferred to another region she was flagged from the hospital to the Minors’ Court. The Court instead of expressing that she was a vulnerable person that did not have many resources has expressly declared that she was a prostitute. There are many women that were not referred to their husbands that they were prostitutes, thus the problem of these women is not tell for the umpteenth time their story, but to justify to their husbands what they were

⁴³⁰ Tribunal Supremo Sala 1^a, S 17-2-2012, n° 60/2012, rec. 1242/2010

⁴³¹ Interview number 21 (third sector), 30/05/2016, France

⁴³² Interview number 21 (third sector), 30/05/2016, France

doing.”⁴³³

When becoming mothers, human trafficking victims in sexual exploitation tend to be more visible, to society, yet not often as people who are in a limited condition, but they are often seen as “bad mothers”. In my previous research (Pascoal, 2013), a psychologist has mentioned the witnessing of some situations, in which the children presented irregular and alarming behaviour. Consequently, some of these cases were mentioned in the social services that lack of having a specific training on the subject and have taken away the children from their mothers, declaring that their mothers were engaged in prostitution. In fact, in this case, a further analysis should have been done in order to understand the mothers’ limitations in raising their children, in order to provide a better support to the mothers.

*“There were also a situation in which we had to manage that was connected to the parents’ function. In which a woman enters in contact with a service, as a school or social services and there were situations of risk, which the children were taken from the families and put in children’s residential facilities. In that case, we have understood that the context was not healthy for the child, where there was also the exploitation of the mother. If you have to go to the streets at a certain hour, you have to leave your child with someone.”*⁴³⁴

As it was previously affirmed, this subchapter, is not a critic to the social services, since it is important to have “the best interest of the child” in first plan. Nevertheless, the problem is when the children pass from provisional situations of foster care into pre-adoption or adoption systems without the consent of the mother or without any support from the social services regarding the complex situation of the mother. Furthermore, often the mothers are not aware about the possibility that the social services can take the child from the mother, since motherhood is different from their origin country. In the report of Worldwide women’s Link, the authors tell the story of the mother of Favour that the social services, with the possibility that she might run away decides to take the child from her, at this point the woman decides to stay in the

⁴³³ Interview number 31 (third sector), 22/02/2017, Italy

⁴³⁴ Interview number 33 (third sector), 10/04/2017, Italy

shelter without a total awareness of the situation. Furthermore, the social services would also psychologically threaten the mother asking her not to cry during the visits, otherwise, she would never have her daughter again (Fernandez, Garzón, Juan & Contreras, 2017).

In 2012, a Nigerian woman in Spain has been accused of not taking proper care of her child, since she has left her two years old child for weeks, while she practiced prostitution, with another woman without any contact. The child that has entered in the hospital with constant vomits and several injuries as well as undernourishment has consequently suffered from lack of physical and psychological development as well as social and emotional consequences. In this case of negligence, the mother was accused of non-compliance of her role of a parent. Despite that, the woman has been characterised as having total disinterest of taking the child from such situation by the Court, she had declared that it was her exploiter that was impeaching her from having contact with her child, being absolved in the end and being identified as a human trafficking victim.⁴³⁵ As it is verified in this case, the imposition of the trafficker towards the woman has led her under a legal process for not taking care of her child. Within the Nigerian human trafficking system, it has been registered also cases, in which the trafficker takes the child from the victim, in order to control her and increase the debt, as I will further see in the Toledo case. Furthermore, in this case, the identification of a situation of trafficking, not only has prevented that the child would have been taken from the mother, but also that the mother as being a human trafficking victim is absolved from the offences that were committed under her exploitation.

3.5 The use of motherhood in sexual exploitation

During my interviews, motherhood has been presented as having an ambiguous influence in the exploitation of the women, by one hand being presented as one of the main reasons that women enter in sexual exploitation, especially verified within the Romanian women and, on the other hand, when it is at the beginning, it is identified as one of the best moments to take the girl out of exploitation. According to Kohm (2005), women during pregnancy are particularly sensitive to the changes in their body, especially by feeling the child inside them. During my volunteer work some Romanian women have referred that they were within the sex industry due to their children, in fact,

⁴³⁵ AP Almería, sec. 3ª, S 13-10-2016, nº 501/2016, rec. 226/2016

during all the research it has been observed that many women fall into trafficking in order to seek a better future for their children. On the other side, I have to say that it was also quite homogeneous among the interviewees the opinion that motherhood, mainly pregnancy has a positive influence that pushes the woman into exiting her exploitative situation. In fact, more than three interviewees declared that pregnancy or the moment after an abortion, it is the perfect time to try to get the woman out of the situation of exploitation as for the Romanian as for the Nigerian women⁴³⁶

“We have had several Romanian women that by going ahead with the pregnancy, they have started to think about their relationship with the exploiter. With the Romanian women we have several difficulties in hosting them, since they do not recognise the validity of the model that we propose. However, in the case of pregnant women, maybe they are the ones that stay more within our protection path, sometimes more autonomously, others more independently. Therefore, what we see is that at least, at that time, the women stop going out the street. Then, we had some women that have stopped completely by going to the street.”⁴³⁷

Furthermore, during the exploitation, while pregnant, the women are normally still obliged to go to the streets, which leads that the situation is more visible to the citizens that tends to denounce more.

“In these cases, the citizens tend to flag more often and I have to say that this summer we have had two cases that have arrived, because the women were flagged by the citizens.”⁴³⁸

However, despite that the influence of motherhood is important in both nationalities; it has been referred in some of the interviews that normally Nigerian women tend to feel more the aspect of motherhood than Romanian women, consequently having a more positive result regarding the exiting of the exploitative

⁴³⁶ Interview number 33 (third sector), 10/04/2017, Italy, 25 (third sector), 05/04/2017, Italy, 29, 22 (third sector), 27/07/2016, France

⁴³⁷ Interview number 25 (third sector), 05/04/2017, Italy

⁴³⁸ Interview number 28 (third sector), 29/11/2016, Italy

situation.

“I have to say that in the past this was a very strong motive to leave the exploitation, mainly for the life of the baby and during the period of pregnancy. Many women say that they have exited from the exploitation because they were pregnant, since the [Nigerian] women say that they cannot long do prostitution while being mothers. The experience of motherhood for the Nigerians is very strong and it is normally felt already during the time of gestation, thus their behaviour is already connected with this experience, thus they are already protecting the baby and the baby is seen as someone that needs to be saved.”⁴³⁹

“There are so many cases that pregnancy has helped the women in leaving the exploiter, especially the Nigerians. Because they are afraid for the life of their own child, also because not always the babies are a result of violence, but from a particular relationship that they have with a client and this gives them strength to leave. What is a situation of vulnerability, and then it can turn into a situation of strength.”⁴⁴⁰

In this case, I should consider the differences between motherhood according to both nationalities and also understand that while Nigerian women have their children with them in the destination country, being more subjected to violence, the children of the Romanian women are predominantly based in the origin country. These differences were remarking on the subject of motherhood, between the two nationalities while being victims of human trafficking. In fact, in motherhood, there are two main subjects that distinguish both nationalities, the first is obviously related to the necessity of the residence permit that as previously seen can be exploited in cases of motherhood for Nigerian women and the second is, as previously mentioned the fact that most of the Romanian women live a transnational motherhood that tends to separate them a bit from the role of a mother. In this case, despite that the majority of Nigerian also lives a transnational motherhood, they easily start a binary motherhood in the transit or destination country (Kastner, 2010), which is normally avoided by the Romanian women, as it will be seen in the subchapter of Children Left Behind (Pascoal &

⁴³⁹ Interview number 33 (third sector), 10/04/2017, Italy

⁴⁴⁰ Interview number 22 (third sector), 27/07/2016, France

Schwartz, 2016).

Furthermore, this leads us also to other main influences on the subject of Nigerian motherhood, since that while in the past the women would normally live with their Madams or at least with the group of victims of the Madam that would normally include a controller, nowadays, the women are normally hosted in reception centres with their children, which influences all the motherhood's dynamics during the exploitation period. The experience of being a full-time mother lived by the Nigerian women in the destination country opposes to the experience of transnational motherhood lived by the Romanian women that, as previously mentioned has an easiest access to their family in the origin country, as for the use of low cost airline companies, as for the possibility of moving freely within the European Union's borders.

It is due to these main differences that the motherhood inflicts differently in the two nationalities. In fact, motherhood has normally a strong influence in Nigerian women (Agathise, 2002), since they normally live a daily role of the mother, by also being in contact with different services. On the other side, Romanian women leave the task of motherhood to other members of the family in the origin country, not only avoiding to live a full experienced motherhood, by passing the role of mother to another female within their kinship (Trask, 2013), but also they lack the contact with the local services that can provide further services, mainly "to the best interest of the child."

Another important aspect has been remarked during my interviews in Italy and in Romania on the importance of motherhood as being a push factor to exit from the situation of exploitation. The remark was based on the fact that while in Italy the interviewees have declared that pregnancy was also a pull factor for Romanian women leaving their exploiters, in Romania all my interviewees have declared that it does not have any particular influence on the women. This aspect has emerged antagonist to the declarations of their peers in Italy, thus I have tried to understand the main implications of this fact. One of my potential hypotheses given on this issue is that when women get pregnant in Italy, pregnancy can lead them to a context out of their exploitation, since they start to have more connections with services regarding the care of the child. Furthermore, it has been verified that Romanian women that exit exploitation in Italy are normally involved with Italian man, while in Romania, the women are normally involved with Romanian man that are their own exploiters.

“It is true that motherhood of Romanian women leads to exploitation, because we have seen that who has children in Romania it is more difficult to exit from the situation of exploitation from those that have a child here and get pregnant here [in Italy]. Furthermore, we have also seen that motherhood, here also coincides with the departure from the Romanian context. Therefore, they have found an Italian boyfriend and have found a definitive settlement. It is in this situation that they stop going to the street, the pregnancy of their first child and an Italian boyfriend. We have seen three situations in which, after the umpteenth abortion, the women decided to go forward with the pregnancy, but they do, because they have by their side an Italian man that sometimes is not even the father of the child, but is someone that has assumed that role.”⁴⁴¹

Many women resume their life dream in finding “the prince charming”, normally from the destination country that will probably support them and their family (Peled & Parker, 2013). However, this mostly happens with the Nigerian women who see western man as being kinder and richer than Nigerian men, since western man is normally seen as someone who can provide them a good life as well as citizenship and rescue them from the sex industry. On the other side, Romanian women do not often fantasise about having an Italian partner, since most of them have the vision of Italian men as clients. Furthermore, the women tend to feel unworthy, especially after bad experiences with men (many of the Romanian women that I have met, when they engaged in sexual exploitation they were normally out of a situation of violence with their husband and were single mothers) and see themselves as independent women, being able to economically provide for themselves and their family.

“We had the case of a girl, she was 19/20 years old and she has grown up in an orphanage, she was very aggressive, but also against herself. I remember that she was 7/8 months pregnant due to the exploitation, but she said that she was pregnant from her husband, yet she did not want the child and she would punch her belly. Only

⁴⁴¹ Interview number 25 (third sector), 05/04/2017, Italy

*when she saw her big belly, she knew she was pregnant and I have asked her, if no one have taught her that if she did not have the menstrual cycle than this could mean that she was pregnant, but she said no. She had very naïve behaviours, she got angry with her partner because when he knew that it was a girl he said that he did not want wh*res at home. This was the time when she called me and we were able to transfer her in several shelters, her partner was looking for her everywhere, he has even threatened me. However, she did not change, not even for the love of the baby, since I know that she has returned to the streets and she left the baby in the shelter.*”⁴⁴²

As it can be observed, besides the influence of the male in the pregnancy of the women, which normally happens with the Romanian women, but not often in the life of Nigerian, the role of services connected to a newborn can also be a push factor to leave exploitation. Actually, in this case, the public assistance of a child not only represents a continuous contact with a network of services (Brotherton, 2016) that can identify the particular situation of the mother and provide more detailed information on the mother’s rights, but also a threat to the relationship mother/child. This pressure regarding the mother can lead the woman in feeling the need of abandoning the exploiter, especially when there is a high level of violence towards the victim. Furthermore, pregnancy normally gives a purpose to the victim that was absent before, since many victims feel that for the first time they have a goal in their life and someone to love and love them back (Brotherton, 2016).

“If you can work right, it can also be a moment of rupture with the world of exploitation, so we are also the ones that should give an opportunity. Especially, when we do a follow up after the birth of the child. This girl, she was very young and she came in Italy pregnant, she has given birth and she has declared immediately to the IOM about her exploitation, thus, according to us, she has done the protection path and she has broken the ties with her exploiter. However, when the child was two years old, the woman has abandoned the program, thus probably the network was re-activated. Maybe it was not the same, maybe it was another exploiter, but she

⁴⁴² Interview number 23 (third sector), 27/07/2016, Italy

probably got scared for the age of the child. For this reason, I have said that it is important to accompany motherhood through the years.”⁴⁴³

As portrayed, the fact that many women do not have a support after the protection path, especially with the lack of a partner can lead them to despair and restart being engaged in sexual exploitation. However, this does not mean that the women are re-victimised, but that they might seek support for their children through prostitution, since it is often the only activity that they know.⁴⁴⁴

3.5.1 The motherhood of the Nigerian women

The modalities of the Nigerian motherhood in Italy have suffered two main changes in the last years, the first one is regarding the factor of travel. In fact, many women in the previous years would arrive in Europe by plane, avoiding any kind of violence during the path and possible consequences as unwanted pregnancies, while, motherhood nowadays can emerge from a situation of violence, especially during the travel, which sometimes determines the relationship between the mother and the child. Actually, as previously mentioned, many practitioners report a detachment that is from the mother towards the child that can sometimes result in anger. The second main aspect is the fact that while in the past many women during the exploitation lived their motherhood in a house with other conational and sometimes often with their exploiter, nowadays by presenting the asylum claim, many mothers live within the reception centres. This leads that Nigerian motherhood tends to be more accompanied and controlled by the staff as well as a more profound knowledge of the situation of motherhood during the exploitation. Furthermore, the women in the past also tended to be older, which made them live motherhood in a more mature way, while nowadays many Nigerian women are mothers very young in Europe.

The women normally support each other by babysitting the other’s children as it is in Nigeria, where the child is seen as the community’s responsibility, yet some of the women have also started to adapt to the western approach and started to request money for the babysitting services. Therefore, the mothers have normally three options when

⁴⁴³ Interview number 35 (third sector), 24/07/2017, Italy

⁴⁴⁴ Interview number 33 (third sector), 10/04/2017, Italy

they cannot be with their children 1) normally leave the children with close friends; 2) pay for babysitting services or leave the children in local social kindergartens; 3) normally leave the child with the exploiter (Fernandez, Garzón, Juan & Contreras, 2017).

“We have had in the past mothers that would go to the streets, but in a very residual way. In that case, the other girls, since they would do shifts, would serve as babysitters.”⁴⁴⁵

“It is clear that these days we have to think on the CAS and the other reception centres, in that place there are the women with their children and sometimes with the husband or the pseudo-husband. Therefore, it is possible that the girl has to leave the babies with someone when she has to go to the streets. I remember that a year ago a Nigerian with a baby of one year in the CAS has said that one of the reasons that she fought with her partner is that he accused the woman leaving the house to find the clients. The impression that the workers had was that he did not have a problem with what the woman was doing, but the fact that he had to stay with the baby.”⁴⁴⁶

Motherhood tends to be the self-affirmation of women in society (D’Elia, C. & Serughetti, G., 2017), thus for Nigerian women it is a symbol of great importance (Ac.sè, 2015), this has also been transmitted during one of my interviews with one practitioner working with the women that has said: “If you don’t have a child, you are nothing!”⁴⁴⁷ In fact, the relevance of being a mother is reflected on the substitution of the woman’s name start for “Mama”, followed by the name of the child (Fernandez, Garzón, Juan & Contreras, 2017). The importance of motherhood is verified especially when it is identified within a situation of human trafficking, since normally the concept of the mother comes to oppose to the concept of a prostitute, which is normally attributed to the Nigerian women in Italy (Taliani, 2012). In fact, according to Kohm (Kohm, 2005) moral concerns influence the relationship between motherhood and prostitution, and consequently the women try to decrease their work on the street, since

⁴⁴⁵ Interview number 33 (third sector), 10/04/2017, Italy

⁴⁴⁶ Interview number 25 (third sector), 05/04/2017, Italy

⁴⁴⁷ Interview number 22 (third sector), 27/07/2016, France

they feel that it is morally wrong (Kohm, 2005).

Normally, a woman that becomes a mother ascends her role, seen as a provider for society, by being respected due to the assumption of the role of mother (Acsé, 2011). It is exactly in this sense that going forward with pregnancy is a symbol of challenging coercion and exploitation by resisting towards the traffickers. Furthermore, women tend to feel the exploitation as a dangerous situation to the baby (Bhandari, 2013), feeling also responsible for the other life. In the novel *Incidents in the Life of a Slave Girl* (1861), by Harriet Ann Jacobs, the slave mother, despite that her children are her attachment to life, on the other side, she was aware that her exploiter knew that her life was attached to her children, thus, that he could maintain her to slavery by threaten her children (Sherman, 1990). In fact, motherhood contemporarily can also augment the vulnerability of the woman, depending on the power exercised by the trafficker on the victim (Pascoal, 2013).

“The women that I met in 2012 until last year, they were older, each one of them with children, but not always in a monoparental situation. They had big issues in telling their problems, especially when the subject of motherhood crossed with their exploitative situation. I can say that only recently women have started to tell more about their condition of victims and it is in this moment that the child is a motivation to exit their exploitative situation.”⁴⁴⁸

Studying Nigerian motherhood in sexual exploitation for five years have led me into comparing the difference between the present and in the past (Pascoal, 2013), especially due to the substantial modifications in the phenomenon, as it is the situation of overlap between asylum seeker and human trafficking (Pascoal, 2017). As previously mentioned, these changes are mainly present on the issue of accommodation as well on the subject of residence permit, as I will further mention in the next subchapter. Many women in the past would live or with their exploiter or at least with the other women, being mixed along with the controllers or with the exploiter. This co-habitation among the exploiter, controllers and victims can often lead the child into confusion, especially since the child approaches the housemates of the mother using familiar terms as

⁴⁴⁸ Interview number 33 (third sector), 10/04/2017, Italy

“aunties”. Furthermore, the child does not understand the dynamics in the relationship of the mother with the other people inside the house.

Despite the subject of motherhood in human trafficking is not often referred in the academic literature (Brotherton, 2016), some attention has been given in the last three years, especially due to the situation of “*niños-ancla*” in Spain (Fernandez, Garzón, Juan & Contreras, 2017). Studies in France from the Association l’Amicale du Nid have revealed that in time, the number of women with children on their premises has increased, reaching in 2013 a number of 1200 children, while according to the French Association Dispositif Ac. sé, 30% of the women that were hosted had at least one child or they were pregnant (L’Homme, 2015). In the study taken in the UK (Brotherton, 2016) around 25-50% of the trafficking victims are pregnant or have children. Moreover, the study refers to the scarce mention on motherhood and parenthood in human trafficking in the UK legislation.

However, it seems quite impossible to not approach such issue, since the women get pregnant and consequently, being mothers out of a precarious situation. According to a study of Dispositif Ac sé, (Ac.sé, 2015) 63% of the practitioners that work with mothers engaged in prostitution (the study does not refer in specific if it is in a situation of human trafficking or not), have replied that the women have difficulties to deal with motherhood in prostitution. Furthermore, the relationship between the child and the mother is normally influenced according to the situation that the child was born. For instance, in case that the baby is a result out of a situation of trauma, normally during the pregnancy, the baby can be affected by the distress of the mother. Furthermore, after being born, the women normally associate the child with the trauma having normally psychological effects as depression, suicidal behaviours, anxiety and disturbed sleep, establishing with their child a relationship of “love and hate”. In fact, for the mother, the child can be a continuous reminder of the trauma that can be an obstacle for the establishment of a bond with the child. On the other side, in case the child is born from a love story, then the mothers are normally more attached to the child (Brotherton, 2016).

The experience of motherhood, being a victim of human trafficking not only can develop psychological problems with the child in the future due to the trauma of the mother, but it normally tends to be an obstacle for the mother. In fact, sometimes

prostitution can impeach the fully exercising of the role of the mother, not only due to the distress felt in such situation, but also due to the incompatibility of schedules and availability of services in certain hours. Furthermore, being victims, the women can live in a situation of isolation and also has difficulty in finding a partner or help in case they need to leave the child, while they will go to prostitution. According to Brotherton (Brotherton, 2016) there are several occasions in which the victim does not have anyone to leave her children, especially when the woman encounters law enforcement and support services, in which the child is often obliged to be present during the mother's declarations.

According to the declarations of Helen Bamber Foundation (Bill, 2013) the separation of the caregiver from the child can provoke in the child obstacles in interpersonal relationships as adults. However, I have to refer that these difficulties are the normal difficulties that many single mothers, who are often marginalized feel in their role of mother. The biggest problem is when the victim does not have support to leave the child with someone, especially because the women mostly go out at night and there aren't services of babysitting for that time of the day⁴⁴⁹. This absence of services in the night shift can direct some women in giving the pills to the children to make them to fall asleep in their absence (Pascoal, 2013). These situations can influence the child that sometimes can demonstrate distress by having violent behaviour with other children or adults, night terrors and difficulty in accepting the mother's authority. Moreover, sometimes the children can also be exposed to their mother's exploitation, which can lead the child in assuming aggressive or sexualised behaviours (Brotherton, 2016). According to Taliani (Taliani, 2011) sometimes Nigerian mothers do not have enough resources to explain to their children, their story, once the children will be aware about their migration project, they can show their frustration of a discrimination suffered by the Italian society.

An important subject while speaking of Nigerian motherhood on human trafficking is that, it is referred to very recent communities that have been established in Italy in the past two decades. According to IOM, Nigerian victims of human trafficking are nowadays within 14-28 years old (IOM, 2017), then, since normally the children are born in Italy, the mother tends to be quite young. In fact, during my research (Pascoal,

⁴⁴⁹ Interview number 35 (third sector), 24/07/2017, Italy

2013) the children of the women were no up than four years old, except just in one case, since the majority of the women has arrived in 2008 and the research was done in 2012.

As nowadays, the time of exploitation has been reduced to two, three years, than motherhood is less influenced by the exploitation of the mother and more influenced by the network of services provided by the anti-trafficking network or the social services. However, despite that many women are within the reception centre, as previously mentioned, there are still a pendolarism verified within human trafficking victims, in order to avoid the establishment of contacts within the territory as well as to keep renewing the market. Obviously, that in this case, not only it is impossible to accompany the women in the different European countries, but also the system looses track of the children, being impossible to pass the information of the mother and the child among the European states (Fernandez, Garzón, Juan & Contreras, 2017). While with the Romanian women, the children do not suffer the continuous transferring of the mothers, since they are in the origin country, the children of the Nigerian women are often obliged to transfer at a national or international level. For instance, if a client falls in love with a girl, then the network tends to move the girl in another city (Pascoal, 2013). Furthermore, despite of the homogenization of the national legal framework on human trafficking, in order to adopt the European Directives, the European member states have different migration policies that sometimes are not in accordance with the European legal framework on human trafficking.

There are three situations that were verified in case that the girl gets pregnant 1) the girl can be transferred to the child to another city and since the child is normally under four years old, contacts at school will not report any absence; 2) the Madam obliges the woman to give her child to the social services, as previously seen in the subchapter of *Adoptions*; 3) the Madam keeps the baby by reporting that the child is hers.

Despite that it is rare that the women have a power of choice in this case, some organizations in Sweden have claimed that Nigerian women present in this country have chosen this destination according to their level of educational opportunities for their children, as well as the possibility of integration. However, these social assets do not prevent their exploitation, since they tend to cross the border to Denmark in order to be able in still paying their debt to their exploiter. In the report *Madres en la red de trata:*

Derechos robados (Fernandez, Garzón, Juan & Contreras, 2017), the authors refer that Nigerian mothers, while in countries as Germany, Denmark and France often claim that their children are in the European transit countries such as Spain and Italy. However, besides some cases that have emerged in Spain, the subject of children left with the traffickers tend to be highly unknown.

According to a practitioner,⁴⁵⁰ there was a situation in Spain in which the child has declared at school that her mother was not the woman that she was living with, but that her mother was in another part of the country. However, once the school has started to understand more about the situation, the woman had already disappeared with the child. In fact, according to the Association Amaranta, within their centres, 60 minors have been stolen in 2015 (Malavia, 2016). Furthermore, these children, while in the hands of the trafficker, can be the object of mistreatment and be used as a coercive instrument as it will be seen in the next subchapter.

3.5.2 The coercion methods

Despite of the lack of attention given to this subject, it is well known that traffickers, especially those who know the victim's family use their children in order to exercise control over them, normally with menaces of harming the child or to give the child to the social services (Pascoal & Schwartz, 2016). This leads that often the children of the victims are exposed to the risk of violence, which normally can lead into future development problems (physical and psychological) (Brotherton, 2016). According to the report *Memoria (2013)*, the Fiscalía of the Spanish government, after innumerable cases about the abuse of Nigerian children, has started to understand that the victims' children would normally stay with someone of network, in order to pressure the exploited mother. Furthermore, by staying with the child, the trafficker is able to raise the victim's debt, with the excuse of the baby's costs, prolonging also the exploitation's duration.

The use of children as coercive instruments by the Nigerian women's exploiters has come out to the public in 2013, when one eight-months old baby that was under the care of the mother's Madam in Cordoba has died due to mistreatment. The trafficker has

⁴⁵⁰ Interview number 36 (third sector), 01/09/2017, Spain

moved the woman to Barcelona⁴⁵¹ and has kept her baby and gave her amphetamines. Subsequently, another Madam was also detained because she caused serious injuries in a seven month old baby of another Nigerian woman. In addition, the woman was also accused of giving drugs to her son.⁴⁵² In the same year, two Nigerian children were found in a room in Toledo, being tied to the bed with denoted undernourishment, with a percentile of three and being subjected to drug's assumption.⁴⁵³ Another baby was also found with burns, scars and with a problem in his right foot. The mothers of the children were the victims of the couple that were obliged to move to other places to do prostitution. Since, one of them did not have the documentation of the child; the exploiter has advised the victim that the baby should stay in Spain with the exploiter, asking a monthly amount of 250 euro, in order to keep the child. While the woman was in France, the exploiter would call her often in order to remind her about the owed money for maintaining her child and for the debt that she contracted when coming to Spain. The couple has kept the babies, increasing the women's exploitation debt in more 250 euro a month for the costs of the baby.⁴⁵⁴ The keeping of the babies would also serve to have control on the mothers and oblige them to pay the required sum. Furthermore, the traffickers would also menace to abuse the children or even throw them out of the balcony.⁴⁵⁵ The children presented high levels of lack of hygiene, dystrophy problems and incapacity to control their sphincter.⁴⁵⁶ Consequently, due to this situation, the mother has developed Post Traumatic Stress, which has affected her capacity of decision. She would also live frighten and anxious, since she desired to survive, in order to protect her child. Furthermore, she was not able to come to take the child since she did not have her documents, neither the documents of the child.⁴⁵⁷

As it can be seen in this case, the traffickers not only tend to use the children to menace their mothers in giving the required money, but they also can serve to prolong the duration of the exploitation by the increasing of the debt.

⁴⁵¹ <http://www.guardiacivil.es/ga/prensa/noticias/4376.html>, 05/04/2013

⁴⁵² Guardia Civil, 05/04/2013 <http://www.guardiacivil.es/ga/prensa/noticias/4376.html>. Last accessed in 01/09/2016

⁴⁵³ AP Pontevedra, sec. 5ª, S 11-6-2015, nº 292/2015, rec. 80/2014

⁴⁵⁴ http://www.jn.pt/PaginaInicial/Mundo/Interior.aspx?content_id=3558550&referrer=FooterOJ

⁴⁵⁵ <http://www.farodevigo.es/sucesos/2015/03/28/red-trafficaba-mujeres-traia-cayucos/1210248.html>

⁴⁵⁶ http://www.lavozdeg Galicia.es/noticia/vigo/2015/04/28/lider-banda-vudu-alega-solo-cobro-trabajos-peluqueria/0003_2015041430209011236115.htm

⁴⁵⁷ AP Pontevedra, sec. 5ª, S 11-6-2015, nº 292/2015, rec. 80/2014

*“I lived four years with her, until she came to Mallorca. She took me to the street with other women. She taught me how to do it (...) Then, I got pregnant. She got mad because her brother was the father of my child. He was my partner, even if she didn't want to. Every month, I had to pay 400 euro, besides the debt, so I could see my child. They kept me there until I have paid everything. They were controlling my daughter.”*⁴⁵⁸

Besides the use of violence, the traffickers also menace their victims in giving the children to the social services or sometimes the children were also flagged to the institutions due to their state of mistreatment (ESTADO, 2015). This was the case of Eli that has seen her child being taken by the social services in 2004, while the child was in her Madam's care, due to undernourishment. At the time, Eli was always visiting her child in the hospital, yet the traffickers have started to exploit her again, thus her visits were less frequent. The social services have seen the decrease of visits as a lack of interest from her part and wrote on the process that “she does not follow the visiting period; comes at strange hours when the child is asleep and usually comes accompanied by a man.” Consequently, after being consider a non-appropriate mother for the child, the social services have passed the child from a minors' shelter into a foster family that has started an adoption process. At the time, being yet under the restriction of the criminal organization, the victim had to sign the adoption papers by force and when she was able to be out of the network, she could not be able to regain her child's guardianship.⁴⁵⁹

The same situation has happened in Madrid, where a trafficker has obliged the women that would arrive with children, to leave the children in the house of the trafficker in Madrid, while the mother was sent to Las Palmas. This technique would also serve to control the victims with the loss of the babies, since the traffickers would menace to give the children to the Spanish authorities, saying that they would abandon the babies. The threats would serve to constrain the women in continuing to be sexually exploited and provide the requested amount to the trafficker. Furthermore, by having the

⁴⁵⁸ (Free translation from the author) In Real, M., Venys, X., 2014, Historias de Tráfico, Trata e Prostitución. Proceso migratorio de mujeres nigerianas a Mallorca. Casal Petit

⁴⁵⁹ Lucas, Beatriz, 17/09/2015 De la violación a la patera: así utilizan a los bebés las redes de la trata en España <https://news.vice.com/es/article/violacion-patera-asi-utilizan-bebes-redes-trata-espana> last accessed in 01/09/2016

babies, the trafficker would also require an extra amount, including accommodation, food as well as babysitting for 200 euro. The mother was only able to see the child in 2010, when she asked for a police intervention, since the trafficker has taken the child to Madrid in order to separate the child from the mother. The trafficker, in fact, has given the child to the social services saying that the mother has abandoned the baby. Consequently, the minor was put into a system of foster family with the aim of pre-adoption.⁴⁶⁰

Another case has been recorded in Spain, in which the trafficker has used the child not only to control the mother, but also to increase the mother's debt. The victim has entered in Spain with her son that was born in Morocco, once she arrived in Spain; her trafficker has obliged to engage in prostitution until 2004. When she was detained and deported, her exploiter has advised her not to inform the police about her child, since that, even if she would be deported, the exploiter would try to bring her back to Spain. Consequently, she was deported without her son and the trafficker was able to control the victim through her son. Therefore, when the victim was deported, the traffickers started to identify themselves as the true parents of the child as in school as in other official institutions, being also able to get a birth certificate that was sent to Nigeria on the 19th July 2007. In the same year, the trafficker has claimed to the girl that they would bring her back to Spain and that she would be able to get her son, even if the aim of the trafficker was to sexually exploit the girl. Therefore, when the girl has arrived in Spain, the exploiter declared that she had to return 40.000 to the exploiter as for the travel as for babysitting her child during 3 years. In 2008, the victim has been informed that her child was taken to a reception centre, despite that the exploiters have denied in providing further information to the girl. In 2013, the victim has pressed charges in order to recover her child, while in 2014 the *Comisión de Tutela del Menor de la Comunidad de Madrid* has put the child in a permanent foster family, obligating the mother to stop exercising prostitution, in order to get her child. The Court has decided for a penalty of two years to the traffickers and a compensation of 6000 euro to the victim.⁴⁶¹

The case mentioned above not only demonstrates very clearly the use of children to control the victims, but also the lack of capacity of the institutions in identifying the

⁴⁶⁰ Tribunal Supremo Sala 2ª, S 4-2-2015, nº 23/2015, rec. 10144/2014

⁴⁶¹ Tribunal Supremo Sala 2ª, S 2-3-2017, nº 137/2017, rec. 1617/2016

biological parents of the child. In fact, as previously mentioned in the subchapter *Morocco*, the identification at the arrival has been a hard task to the Spanish authorities. Nevertheless, in this kind of situation, the authorities, especially in case of giving a child to the social services should immediately try to identify if the couple that has given the child to social services are the real parents of the child. Furthermore, these children even when the mothers press charges at the police, they still pass from a simple foster family model to a pre-adoption model that can separate the biological mother from the child. In this case, even when the biological mother is recognised, there is the lack of tendency of supporting the mother, often in a situation of exploitation with limited mobility as in exiting the exploitative situation, as in being able to provide better conditions to their children.

In 14th October 2002, Brigida has given birth to a child in the Hospital Principe de Asturias, yet since the trafficker has provided false documentation to the hospital, the child was registered as being the daughter of the trafficker. The trafficker has kept the child of the victim and has taken the minor to Nigeria, given the child to the exploiter's sister that was married to a relative of the victim. In Nigeria, there were problems between the two families, since that the trafficker has claimed that she should have been compensated by the costs that she had with the child. To the woman in Spain it was communicated that her child has died, yet after she acknowledged through her aunt that the child was in Nigeria, Brigida's family went to see the child, and the trafficker has asked for 15.000 euro, claiming that the amount corresponded to the costs for keeping the baby. The case has come to public, in 2006, when another woman has pressed charges against the trafficker, claiming that Brigida, the mother of the child was unaware of her child's location, and that the trafficker obliged Brigida to prostitution, using her child as a coercive instrument. The *Ministerio Fiscal* has charged the trafficker in paying a compensation of 20.000 euro to Brigida, due to moral damages and a penalty of one year and nine months of prison. Furthermore, the victim has been legalised now in Spain and she was absolved from the crime of falsification of documents regarding her daughter.

The case of Brigida has demonstrated to be relevant for two motives, the first one is that on the contrary of the other cases, not only the trafficker was able to stay with the child of the victim, but has also easily provided false documentation to register

the child as hers. Consequently, this not only proves officially that the trafficker is the mother of the child, but it also permits to move the child easily to other countries. The other relevant aspect of this case is that the trafficker instead of using the child to augment the debt, as seen in other cases has directly asked for a kind of ransom to the victim's family.

Despite that, there were numerous reported cases in Spain, in which Nigerian traffickers have taken the victim's child and use it as a coercive instrument, with a high level of attention given in the media, in Italy; it is an issue that it has not yet come to the surface. However, in the past, I have crossed social workers that have claimed that traffickers would use these children in order to control their mothers (Pascoal, 2013). However, nowadays, I would have to mention that the fact that women nowadays in Italy are normally exploited while they are at the reception centres provides that the children are more protected than in the past. In fact, while in the past the women would probably stay illegally in Italy, being invisible, nowadays, pregnancy is often accompanied by the practitioners that are within the reception centre. Consequently, this leads that the traffickers do not have much access to the victim's children as they had in the past.

Despite that the majority of the cases until now were mainly referred to Nigerian victims, also because it is related to the deportation of the women or in somehow, to the identification papers of the baby that it is easier to deceit the institutions due to cultural aspects, children of Romanian women are also often target of threats. Furthermore, in the Eastern trafficking networks the situation normally tends to be more complex, since often the father of the children is the trafficker.

"I consider them [the children] as direct victims, because they suffer a lot, I told you there are three types of situation. And the mother is going to another place and she is missing from home, because they need their mother. Especially when the father is involved in the exploitation, they say that the mother is sending money, but this is not the first need of a child and of course we have children that come during the exploitation period, we have two cases now, one minor and one adult, both in Bucharest and they don't know who is the father, because the children are from one of the clients,

so they will not have access to a biological father.”⁴⁶²

*“The traffickers are smart and so they have started to marry their victims and have children and exploitation becomes a family business. This is not only in Romania, it starts here, but then, they go to countries where they can profit more. The children usually go to forced begging.”*⁴⁶³

In fact, when there are emotional ties involved, it is easier for the traffickers to use the children as a coercive instrument, since they normally use the family’s needs as an excuse, without needing to use further violence.

*“Last year we had a situation of a girl that was trafficked to Germany with her partner and they were in a relationship for 3 years. The child was left with the mother of the father and on the day of her repatriation with the German police that has proved her exploitation, it was very fast, because he was in jail and had already started to pressure her and threat her again, since the child was with the father’s mother. The child was ok, because he was a boy and this is important. I see a lot the difference between girls and boys on this.”*⁴⁶⁴

*“There was this case of two sisters, in which the trafficker was the neighbour and while the oldest daughter that was in Italy was afraid to tell the truth to their parents, the trafficker has invited the youngest sister to come to Italy. Since her daughter was also 12 years old, the trafficker has also menace to bring her child to prostitution.”*⁴⁶⁵

According to the Art.17 of the Directive 2012/29/EU, “women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.” Furthermore, in the Art.18 of the same

⁴⁶² Interview number 18 (third sector), 05/10/2016, Romania

⁴⁶³ Interview number 8 (law enforcement), 29/09/2016, Romania

⁴⁶⁴ Interview number 18 (third sector), 05/10/2016, Romania

⁴⁶⁵ Interview number 23 (third sector), 27/07/2016, Italy

Directive, specific attention is given to the victims within families, especially since the partner is someone that the victim normally trusts and thus the victims might need particular type of protection, especially in presence of children, who under the Art.19 of the same Directive should also benefit from protection measures. In the case the father is the trafficker, the authorities should proceed with a process of taking the *pater potestas*, since in the future this can always be an instrument to approach the victim and threat her.

3.5.3 Can the children of human trafficking victims be also a victim?

According to the UNICEF's 2006 Guidelines on the protection of child victims of trafficking (UNICEF, 2006), "whenever applicable these guidelines should also apply to children who are conceived and subsequently born of traffick of person". In 2017, a report from UNICEF (Reyero & Adroher, 2017) has clearly asked, after several episodes in which the children of human trafficking victims have been used to coerce the mother, that the children would officially considered also human trafficking victims, instead of indirect victims of the phenomenon. This request was based on the fact that the children often suffer in the hands of their mothers' exploiters. Furthermore, this official requirement would also give the possibility to provide statistics in order to bring visibility to the phenomenon. Since I have started researching on the subject of human trafficking that with one association that we have started to urge, through official requests on the importance of the subject of motherhood on human trafficking and also taking into account the children of the victims. Furthermore, since that many women in sexual exploitation are obliged to be in prostitution even when they are pregnant and normally being with the clients even in the 9th month of pregnancy, I might say that the children of human trafficking victims in sexual exploitation are already victims, from the period of pregnancy, due to their exposure of mistreatment and bad conditions for pregnant women as being standing several hours or being exposed to violent clients.

According to the French National report on Human Trafficking (L'Homme, 2015), due to the high increase in recent years on situations involving the subject of human trafficking and motherhood, it is advised that the accompaniment should not only be focused on the mother, but also for their children. The fact that these children have also witnessed their mother's situations of lack of freedom and violence also

influences the children psychologically and physically. In the report *Son niños y niñas, son víctimas*, (Reyero & Adroher, 2017) one Romanian woman is able to integrate her child in her protection path, when she escapes from her violent boyfriend that is the father of the child, since that in Spain in 2011, the *Ley de Extranjería* has been amplified for the children of human trafficking victims in order that they can also receive the same services of protection and assistance as the mothers.

“The children are not considered to be victims, because the victims are the ones that are in a penal process. We say victimised-person, someone that has loss something, but the child is an indirect victim.”⁴⁶⁶

Nevertheless, despite that there is the importance in considering that the children of human trafficking victims have also access to protection rights as psychological support, this subchapter is not centred if the children of human trafficking victims should be also considered as human trafficking victims, but if the traffickers also use the children as an instrument of profit during their mother’s exploitation. I had somehow answered to this question on the subchapter of *Adoptions*, since I understood that some traffickers sell the victims’ children to couples. It is important to understand in these cases that victims tend to be in a very vulnerable situation, normally exposed to sexually exploitation or sexual abuse even when they are engaged in other types of exploitations. Therefore, it is not difficult to think that they optimize the situation of pregnancy.

In 2017, a police operation in the UK has linked human trafficking victims from Romania and Slovakia, especially from Roma background that would marry Pakistani, Indian, African and Afghanistan men in order for them to have the European Union citizenship. The sham marriages would be reinforced by putting the women pregnant, which would guarantee the European citizenship to the solicitant. The victims, after, would stay under the control of the traffickers, as well as under the control of the husbands as domestic servers are being held captive until their marriage papers were signed, abused by their "husband" and his friends, used for sex and drug trafficking or even obliged to marry more than once. Moreover, in order that the child would serve for more than one person, the traffickers would leave the birth certificate of the baby in

⁴⁶⁶ Interview number 9 (Law enforcement), 03/10/2016, Romania

blank, being able to use with several “clients” (News, 2015). Therefore, not only the mother was exposed to abuse, but the child was also denied access to a true birth certificate.

According to the report *Time to deliver*, (Brotherton, 2016) the majority of the people who were interviewed were unaware about cases in which the trafficker also profited to exploit the women’s children. Nevertheless, there cases have been reported in which all family has been exploited, especially for begging and fraud and mainly within the Roma community. During one of my interviews in Romania, a law enforcement agent has explained one of their last operations in Germany with Romanian citizens where mothers and children were exploited.

*“There are so many Roma victims that went to Germany with their children to receive the subsidies of the children. They have done all the documents, because the subsidies are not for the adults, but for the children who are born in Germany and many of these children that were not even born in Germany were not registered. The traffickers have taken the money from the children. The maximum amount given in Germany is 480 euro per person, thus the traffickers have started to get more pregnant women in order to have more money. These women had their children in Romania, but after they were transferred to Germany, the traffickers have started to use force and violence in order to get them pregnant as from the trafficker as from their husbands. This is a new type of human trafficking to get social funds, because in this sense the traffickers are able to get 1100/1500 euro per month, since each family had at least four children. These women are abused and live in situations of decadence, in filthy barracks without any windows. Furthermore, the social assistant only checks the documents, for them it is better if the public employee sees them in a decadent situation, because in that sense they are able to have the maximum amount provided.”*⁴⁶⁷

*“There was a case with Roma people, in which the mothers were used for sexual exploitation, while the children were used for forced begging.”*⁴⁶⁸

The answer to this subchapter is that indeed traffickers often can use the children

⁴⁶⁷ Interview number 9 (Law enforcement), 03/10/2016, Romania

⁴⁶⁸ Interview number 8 (Law enforcement), 29/09/2016, Romania

of the victims of trafficking in order to have a profit, as selling the children, as it was noted in the subchapter of *Adoptions*, as in some cases using them to get subsidies or for begging. However, in the presented cases there is a continuous common characteristic that appears in the case of Romanian women, the victims are all from Roma ethnicity. In 2003, in the book *Il lavoro servile e le nuove schiavitù* (Carchedi, Mottura, & Pugliese, 2003) the researcher Francesco Carchedi raises an important question: if the case of Roma children being victims of trafficking is an exception or a representation of normality. Therefore, regarding the case that the children of human trafficking victims who are often used also for extra profit normally come from a Roma background, I would also put the same question, since it seems discriminative that I assume that this is only typical within the Roma community. Furthermore, despite that I am not an expert in Roma culture, it is important to mention that new forms of human trafficking recently recognised by many national legal frameworks as begging, pickpocketing and forced marriages have been often used in the Roma culture. This transforms a community that has been using certain techniques to survive in potential human traffickers.

“We have also seen cases, especially in the Roma community, where the parents went firstly alone to the UK, Spain, France or Italy and then they came back to take their children to make more money. The very small children – babies, they would use to steer compassion from the by passers, the older ones – 3-7 years they would send them alone to beg, but under their supervision and collect periodically the money from them. The young boys would be forced to commit crimes like stealing from pockets for example. Also, these boys would be used to wash the windows of the cars or to sell newspapers on the streets. Their living conditions are very bad, poor hygiene, lack of food and proper clothing, lack of a house where to live – mostly they live on the streets. However, it is affordable, because they make a lot of money so this is a situation in which parents exploit their very own children...” (Pascoal & Schwartz, 2018)

Within the Romanian nationality, there is an ultimate case that I would like to refer that is the case of the Romanian women working in Ragusa (Palumbo & Sciorba, 2015). Many Romanian women that work in the fields in Ragusa, in Sicily are often victims of trafficking for labour exploitation, being also often sexually exploited by

their employers. The level of work and living conditions added to the sexual exploitation has been reported by the association working with human trafficking victims in the area. In this specific case, the condition of the children normally is reported as being used as a coercive instrument to oblige the woman in having sexual intercourse with the employer, as working in the fields.

“These people are transferred here in group, entire families, with children. The migration project is one that even if there is deception at the beginning, we take months to make them understand about the exploitation. We have taken people to the Guardia di Finanza that has denied everything, even if there were abuses. Furthermore, the presence of minors in the fields is very high, but not because they have arrived now, but because these children were born in the fields and most of them do not go to school and they have started to work.”⁴⁶⁹

“There is also the problem of the lack of the registration of these children in the Municipality services, but it is almost impossible to map all the children in the fields.”⁴⁷⁰

Despite that, the majority of Romanian women has migrated to Italy to work as caregivers, where the women are normally not allowed to bring their children, since they normally live with their employers and they have to be almost currently available; the work in agriculture normally provides to the women a chance to bring their children to Italy. Actually, many of the women who are exploited in agriculture were previous caregivers that have left their children in the origin country and have decided to pass to agriculture in order to be able to take their children with them.

As it might have been noticed in this subchapter, most of the cases in which the traffickers have used also the children were mainly regarding the Romanian nationality and not to the Nigerian. However, this does not mean that Nigerian children are also not optimized by the traffickers, in fact, in Nigeria the issue of Baby factories (Huntley, 2013) has been known for using women that were pregnant or sexually abuse women in order to use the children for adoptions or voodoo rituals. The lack of known cases of

⁴⁶⁹ Cooperativa Proxima

⁴⁷⁰ Cooperativa Proxima

Nigerian children being also used as human trafficking victims can be explained by three aspects: 1) Nigerian criminal networks based in Europe are more focused on human trafficking or sexual exploitation than other typologies of exploitation; 2) it would be more difficult to identify, as it has been seen in the subchapter Morocco, in case the child is taken by another person; 3) there is a major collaboration of Romania as an origin country to identify the data regarding the children with the destination country.

3.6 The Children Left Behind

It is almost impossible to speak about motherhood in human trafficking without speaking about transnational families and children left behind or white orphans. In fact, on the contrary of the Nigerian women that despite of having most of their children in the destination country, during my research of participated observation with Romanian women engaged in outdoor prostitution, I understood that all of them who had children had them in the origin countries with their relatives or even husbands. In fact, whenever they got pregnant, they would normally abandon the city for a period. At the beginning, I thought that it was mainly to perform an abortion, especially since as previously verified, it is easier to do it in Romania, yet during an interview, it came out that when Romanian women are pregnant, they often return to their origin country to give birth there, since that without the agreement of the father, they are not able to travel without a consent.⁴⁷¹

“We had a case of a girl that she was always sad, but when she had the child I did not see her on the street anymore. She had already two children in Romania; the male was with the father that was very violent. The husband did not let her take the children away from Romania and she had to kidnap the baby, so she went to Romania, without the consent of the father, she has spoken with someone, because when you go by coach or by plane you have to have the consent of the father, but inside the European Union with a private car you can take the child without the requirement of any docu-

⁴⁷¹ Interview number 23 (third sector), 27/07/2016, Italy

*ment. So she was able to take the baby girl from the father, but the boy she expects that he turns 18 years old.”*⁴⁷²

The particular characteristic of children left behind has led me into pursuing the majority of my research on the children of Romanian human trafficking victims in Romania and not in Italy.

3.6.1 In Romania

After the fall of the dictator Ceausescu, a wide Romanian diaspora has been established in countries such as Spain and Italy. The female migration flows were mainly call directed to the segmentation of domestic work, in order to substitute the empowered Italian and Spanish women, in the patriarchal society of the destination country (Campani, 2007). Therefore, Romanian women tended to work on the domestic dimension as caregivers or domestic employees, which has impeached them in taking their children to the destination country, since they tended to live on their work place (Sciurba, 2013). The children were mainly left with other women that would substitute the role of the mother, in the patriarchal society (Chodorow, 1978).

According to the report of Salvati Copii (Copii, 2013), in 2007, Romania has counted a minimum of 82,464 children that were left behind, being 47,154 left in the care of one parent and 35,310 left with their relatives, while 2500 entered into the social protection system. Despite that, the phenomenon has been mainly verified after the beginning of the 90s, it has reached one of its peaks in 2008, with the global economic crisis (IOM, 2008). Consequently, since many parents would migrate without indicating a legal guardian of the children, in 2010 the lobby of several Associations, including Salvati Copii was able to lead to the modification of the Articles 104-108 of Law 272/2004 on the Protection and Promotion of Children's Rights with the aim to provide more protection to the children of parents working abroad (Pascoal& Schwartz, 2018).

The Law was amended and supplemented by the Law No. 257/2013 that guarantees special laws regarding the protection of children whose parents work abroad. Despite that the Law is quite strictly for the parents that do not assign a guardian to their children, many parents still are afraid to refer to the Municipality that they are immi-

⁴⁷² Interview number 23 (third sector), 27/07/2016, Italy

grating and decide to depart without declaring to the Municipality a guardian for their children.

*“Last year we had a case and also this year, in which the person who was taking care of the children was a friend of the mother and this year also. For instance, it happens, if the child has to go to the hospital, this is the worst problem and when we speak with them, we make them realise that this is very important and that if the children get sick, no one can sign the papers, but we never had such situation.”*⁴⁷³

For instance, in Romania the number of children who have been registered with a legal guardian are 85.194 children, while the Regional Education Ministry counts with a total of 212.352 children left behind (statistics from the DGASPC/ISJ 2015). In order to mitigate this problem, *Salvati Copii* is doing an awareness campaign aiming at informing the parents that they should protect their children by assigning a legal guardian that can take responsibility over the children.

*“No, they don’t want to report, because they are scared of losing the children and they don’t understand, since their educational level is very low and they don’t understand lots of things. For instance, I usually go to the countryside and speak to the parents, within our prevention campaign for this project and I try to explain to them that there is nothing to be afraid and nobody wants to take their children. After the discussion, normally they understand and then report to the social services.”*⁴⁷⁴

Migrant women are normally uninformed about the legislation in their country regarding the *pater potestas* or the procedure of birth registration. For instance, one of the girls that I met during the street unit is still married to her first husband, even if they are separated for 6 years. During our conversations, she has explained that she wanted to give birth (the child is from her actual partner) in Italy, since she has heard that in Romania the hospital registers the child directly with the surname of the husband. Therefore, she was afraid that they would put the surname of the first husband and she has sent a lawyer to understand the situation. Another situation regarding the misinfor-

⁴⁷³ Interview number 17 (practitioner), 26/08/2016, Romania

⁴⁷⁴ Interview number 17 (practitioner), 26/08/2016, Romania

mation from the country of origin regarding the children was told by one association that has noticed that every time the police would come to the centre, one of the women would hide herself. Therefore, they have asked the woman if she was afraid of something and she claimed that in Romania, if the woman migrates, even if the children are with the father, the mother is obliged to send money to the children, otherwise she would go to jail⁴⁷⁵. This kind of myths normally influences the women in not asking support from the authorities and consequently, it impeaches the women in not having access to their rights.

In case also there is no family, the woman can leave the child with a neighbour, since it is previewed in the law that the child can stay with any person that is from the contact network of the child. Furthermore, the government provides to the guardian an amount of 150 euro in case the child has no disabilities and 200 euro for the children that present some kind of disability that should be justified under the presentation of invoices and receipts of costs related to the child. Therefore, every month a social worker contacts the guardian to check all the documentation in order to send to the institution that is funding the process. However, despite that most of the times, the parents migrate, leaving an adult responsible for the child, during one of my interviews, a law enforcement agent has also declared particular cases in which the children were found without any adult supervision.

*“There were also cases, in which the parents have left the children of 2, 3 years old at home alone that were found by the neighbours after two or three days without eating, in these cases the social services had to intervene. In these cases, the mother normally does not take the children back, but if she comes back and she asks for the children, if she is able to demonstrate that she was a victim of human trafficking, then she is able to take the child again, but these are not all the cases.”*⁴⁷⁶

Despite that many women leave their children with their relatives, normally to the females of the kinship, there have been cases in which the woman has no family to leave the children, thus they trust them to the social services.

⁴⁷⁵ Interview number 30 (third sector), 22/02/2017, Italy

⁴⁷⁶ Interview number 9 (Law enforcement), 03/10/2016

“We have different situations, for example, even if the parents are leaving the children; they are always entitled to have their children back. They have to fulfil some requirements, for example the house they are living, that can be rented, they have to be employed or have some money, they have to have a social security number and they can have the children back. They have a temporary period of 6 months of experimentation and then it is ok. It is not important if she was a prostitute or not. Nevertheless, sometimes they cannot fulfil all the requirements and so they blame the authorities, but if you really want your child home, you can have your child in two months and then the file is moved to the judge. In case the parents have no one to leave the child, we leave them to what is called a single placement in Romania, the children are coming to the protection system and they are going to foster families. That is it, so if the mother comes, there are some papers to be done. For instance, if it is the father of the child and they are not together, they can go to the local municipality office and make tutoring, it is simpler for the father or sometimes also for the grandparents, if it is the same house they are leaving.”⁴⁷⁷

From my interview with the social services, on the contrary of what has been reported in France and Spain with the Nigerian mothers, the responsibility for the children social services has denied cases in which the children would go to adoption, in case the parents leave them with the social services, before their departure. The problem is verified normally when the victims are back to Romania and are not able to fulfil all the terms that are required by the social services. Therefore, they tend to not understand the complexity of the situation and to blame the foster families for taking the children.

“They are always saying that they want their child back, but this takes some requirements such as a job, adequate living place, but they will not take those efforts. The foster family didn’t take the children, but they always think that the foster family took the child. –It is very hard for them to understand what really happened and that they also made a mistake.”⁴⁷⁸

⁴⁷⁷ Interview number 16 (Institutional services), 20/09/2016, Romania

⁴⁷⁸ Interview number 7 (law enforcement), 28/08/2016, Romania

“Usually, is the mother that gives the child to social services before going. In the cases that I have, she decided to give the child for a period, maybe she left in a shelter, but now she does not understand why the child is in a foster family. Sometimes social services decide that since the child is for a long time in the shelter, it is better to put her in a foster family. The cases are different from Nigerian women who have their children on the destination countries, because these mothers leave their children at home.”⁴⁷⁹

“If the mother after a year or after some months is able to have a residence and an income she can take her child back, but it is very difficult for the victim to be able to fulfil all the requirements to have her children back.”⁴⁸⁰

The women normally contact the children through phone, Facebook and Skype, being nowadays less difficult to have access to the children than in the beginning of the 90s. During my contact with Romanian women engaged in outdoor prostitution, some of them were identified by me as potential human trafficking victims, others not, but the majority of them would have a wide access to their children and would show their photos on their phone. Furthermore, since the traffickers have adopted more flexible models of exploitation, the women are able to get almost half of the profits or are freer to go home, being more able to perform their mother’s role and also being able to return more often in Romania.

“Since now the exploitation is less rigid, the women are able to go home in the summer, when the children are not in school.”⁴⁸¹

According to one of my interviews with the Romanian social services, only 30% of the mothers of children left behind who are not trafficked do not contact their children when they are abroad, while the total percentage of women who might be victims of human trafficking that take their children to the social services is around 15%.⁴⁸²

⁴⁷⁹ Interview number 9 (law enforcement), 03/10/2016, Romania

⁴⁸⁰ Interview number 20 (civil society), 02/03/2017, Romania

⁴⁸¹ Interview number 31 (third sector), 22/02/2017, Italy

⁴⁸² Interview number 16 (Institutional services), 20/09/2016, Romania

“So many of them have said that they do not miss their parents, but when they call them, the mothers know that they are missing them. Often they are not able to return home due to the exploiter, also because I have understood that many of the girls do not have their ID card with them. For instance, there is one girl that wants to go home, but first she said that her ID card has expired, and I have advised her to go to Rome to the Embassy and get the travel permit. After she said that, she had lost it and it is in this moment that you realise that there is an exploiter. They live in this mental prison.”⁴⁸³

During one of my interviews in Romania, the representation of social services in the county of my research has claimed that when she was in the United Kingdom on exchanging information with her peers and authorities from the UK, she was informed that many women were deprived from contacting their children and families during the exploitation period⁴⁸⁴. Consequently, the lack of contact of the mother can have deep consequences for the children that normally feel that they were abandoned. Studies on children left behind have demonstrated that they can undergo a traumatic process for the separation of adapting to the new primary caregiver (Busch-Armendariz, Nsonwu, & Heffron, 2011).

“The children of the human trafficking victims that have disappeared for so long feel this separation and think that they have been abandoned. In fact, the children “are more victims” than the mothers.”⁴⁸⁵

Furthermore, many of the victims come from small villages, where there is a high stigmatism against the women that have migrated and have left their children, since they are not considered good mothers.

“There are cases of children that knew what their mothers did and in the small villages there is stigmatization, thus consequently marginalisation of the children.”⁴⁸⁶

⁴⁸³ Interview number 23 (third sector), 27/07/2016, Italy

⁴⁸⁴ Interview number 16 (Institutional services), 20/09/2016, Romania

⁴⁸⁵ Interview number 9 (Law enforcement), 03/10/2016, Romania

⁴⁸⁶ Interview number 20 (civil society), 02/03/2017, Romania

“In case the community knows that the mother is exploited, she will suffer, because in some communities the people are on the side of the offenders, because they will judge the child, because they will judge the mother, because she is stupid to be exploited. Especially in small communities, not necessarily rural, but also in Bucharest, in some zones. Even if they know she is not happy, and she is forced, of course the community will refer this to the child.”⁴⁸⁷

However, despite that the mothers of children left behind are normally criticised by the community and identified as bad mothers, in my research it has emerged that the majority of the Romanian victims enter human trafficking because they are mothers. In fact, while pregnancy in the country of destination and especially with Nigerian women, as previously mentioned, has a maternal effect on the woman to leave sexual exploitation (in this case it should be noticed that pregnancy is deeply connected with the woman’s body, which consequently enhances the bond with the child having no physical border), motherhood is one of the main reasons that Romanian women can be engaged in sexual exploitation. This perspective on motherhood on human trafficking for sexual purposes is what the researchers Peled and Parker (Peled & Parker, 2013) has identified as “the sacrificed mother”, which has been highly recognised in their study with women from ex-URSS. The “sacrifice mother” is the one that “wants first of all to do herself good”, providing to the child the opportunities that she was not able to have, even if this decision is normally connected to a feeling of guilt and criticism from herself and some of those around her. However, they present the role of “good mother”, normally by sending their love through gifts and constant contact with their children.

The role of the “sacrifice mother” does not only emerge in the perspective of a migration project leading to the separation from the children, but also, sometimes in the town of residence, it exposes the children to a feeling of shame. The role of the mother is also put in discussion, since it is normally related to the “Madonna” ,and being a prostitute is often morally criticised by society.

⁴⁸⁷ Interview number 18 (third sector), 05/10/2016, Romania

“There was a case in T., in which the victim had 3 children and the vulnerability factor was financial, so in order to sustain the children, the mother had engaged in prostitution and the children were aware that the mother has engaged in prostitution. During the exploitation period, this situation was very complicated, since protection was not a solution for the children, because they could not be taken away from her mother, so the only solution was for the mother to be inserted in a social program. When we managed to separate the mother from the trafficker, the mother realised about the danger for her and for the children, because she was not aware about her position of being a victim. However, as a police officer, we were not able to separate the mother from the exploiter.”⁴⁸⁸

As previously mentioned, children left behind normally are trusted to the female relatives, yet as also mentioned before, sometimes it is the father of the children that is the exploiter. In this case, when the woman is allured to go abroad, in order to manipulate the woman, the exploiter influences her in leaving the children with his mother, thus the children are in control of the father’s family as it has been mentioned in the case of Lana (Mermin, 2016). In this case, the father can also threaten the victim in sending the children to the social services, or use the fact that the mother did not indicate a legal guardian to claim that the children were abandoned by the mother and take the *pater Potestas* from her.

“We had a case that after 3 children with her husband and after being together for 7 years, the husband has proposed to his wife to leave the children with the paternal grandmother and go to Sweden to work in a house. However, he started to exploit her sexually and then he came back to Romania to the child protection in order to make a complaint against the mother, saying that she was a bad mother and has abandoned her children. Therefore, he tried to make her lose the custody of the children and it was very difficult with the lawyer, in order to prove that she was a victim of human trafficking. He was involved in human trafficking and contemporaneously, he has started a relationship with another woman in order to exploit her as well. In fact, he was a trafficker before; she just did not know it. It was simple to prove that she was a victim, since when

⁴⁸⁸ Interview number 8 (Law enforcement), in 29/09/2016, Romania

*the trial started in Sweden, she was referred by the International Organization Migration and they communicated all the phases of the trial there, and our lawyer on the child custody had used all the proves of her victimisation when she was in Sweden under exploitation. She was a witness in a trial in Sweden for the prosecution of the second trafficker and she has received a big amount of compensation. meanwhile the children were with the father and the mother of the father, but now she is fine and she is with the children.*⁴⁸⁹

Having the child with the trafficker can result an arduous task, not only to the victim that often is not aware about her victimisation, but also to the authorities that often cannot aware the victim about the danger that she and her children are exposed. In fact, in this case, the victim often tries to convince herself that the trafficker will not harm the children or her. In cases that the trafficker is the father, sometimes the children accompanied the parents in the destination countries, since the father is able to stay with the children, while the mother is away.

*“We have had a case of a victim that was in Poland, she had her mouth cut and we had to sew her mouth in the hospital in Romania. Nevertheless, she had to return to Poland because she had three children with the trafficker and the children have stayed with the father, when she came to Romania.”*⁴⁹⁰

The fact that the children are in the destination country, with the mother that is a victim and the father that is the trafficker, can lead to some problems, especially when the father is arrested and the mother is not able to take care of the children due to her vulnerability. In this case, the Romanian authorities try to bring the children to Romania in order that they can be primarily protected by the social services, especially until the mother is able to have the children back.

“There was another girl that she had a baby that she had left in Romania with her parents, but not with the trafficker. When she was in Poland, she sent photos through Whatsapp and we saw that she was pregnant of the trafficker, in this case we

⁴⁸⁹ Interview number 18 (third sector), 05/10/2016, Romania

⁴⁹⁰ Interview number 9 (Law enforcement), 03/10/2016, Romania

made the request via Interpol or Eurojust and we asked support from the Polish police in order to make the children return. This process is very long, the trafficker was arrested in Poland, and now we are in the bureaucratic phase. The procedure is like this: we make the documents for the Polish, they have the proofs and arrest the person and the children are sent to Romania. First, they go into the social services and then, if the mother is able to be with them, they can stay with the mother. In this case, we give more attention to the children, because they are the ones in a situation of danger. In this case, when there are mothers with children in the destination country, we make a request for them to come to Romania.”⁴⁹¹

“We had a case that the child protection in Sweden found the mother with the child and while the mother was exploited sexually, the child was in the room. The trafficker took both of them in Sweden and the child was witnessing everything that happened in the room, and when the trial procedure has started, the authorities in Sweden have asked us to escort the child in Romania. Because the mother was also mentally ill and now the child is in a social house. Now, the mother is in Romania, she came with a private plane, she lost the guardianship of the child, but she was also aggressive with the child and she did not know how to be a mother. He was happy when our colleague went to pick him to come to Romania. Now he is in a family house that it is called “cazusa di tip familiar”- it is a house with maximum six children, paid mother and father that live there, it is a social house. We have also foster family, but this is different. They don’t need to be a couple, so they are paid mother and father. They can be a social worker. They have different ages, so when the children grow up they become also “mother and father”. However, the mother of the child is not ok, because she is not sticking with the treatment.”⁴⁹²

In my experience of street unit, the majority of the women have their children in Romania with their relatives for whom they are building the house. In fact, as previously mentioned, Romanian women, on the contrary of the Nigerian women, rarely lose the contact with the origin country, having normally the goal to return in a near future.

⁴⁹¹ Interview number 9 (Law enforcement), 03/10/2016, Romania

⁴⁹² Interview number 18 (third sector), 05/10/2016, Romania

Generally, the period of return is marked by the end of the construction of the house, which the girls tend to show proudly the photos on their mobiles to the street unit volunteers. Nevertheless, then one family member gets sick and she often stays longer in the sex industry. The truth is that during my street unit, I have seen that families depend on the money sent by the girl and many girls provide the monthly amount for the entire family that is often composed by several brothers and sisters. For instance, during my participant observation, one of the girls had to give 40 euro a day to her mother, due to a health problem of her brother, in order to pay the hospital. It happens often that the girls are the ones that the family asks for money in case of need. Another girl, for instance, besides the money that she sends for the house that she is building, she has also to provide monthly 100 euro for her mother, in order to pay the rent, since she is the one taking care of her child.

The parents of children left behind in order to fulfil their absence tend to spoil them with extra toys and material things, which can get them use to a high economic level that cannot be kept once the parents return. One of the girls that we attended at the street unit, when her child came to visit her in the destination country, she would give him all the sweets he asked, since she felt guilty that she was not often with him. Consequently, this has led that he has developed a disease called ketonomia, which has required a hospital treatment (Pascoal & Schwartz, 2016). Moreover, these children tend to have more access to money than the other children, which can lead to increase their appetite to consumerism and the use of drugs or to “be cool” in front of their friends or to fulfil the absence of the parents (Pascoal & Schwartz, 2018). On the other side, the children left behind that do not have access to money can engage in drug gangs in order to be able to consume. In fact, according to the study of UNICEF, the phenomenon of children left behind in the Caribbean is highly connected with the increase of juvenile delinquency (UNICEF, 2009). This last conclusion leads us to a question remark: Are the children left behind a vulnerable group of human traffickers?

3.6.2 Children left Behind as a vulnerable group to human trafficking

Last year, in my research period in Romania, I have started to understand during my interviews that the phenomenon of children left behind could be a considered a particularly vulnerable group of human traffickers. In fact, I have raised this first question

in the article with the researcher Adina Schwartz (Pascoal & Schwartz, 2016), published in the book *Managing Difference in Eastern-European Transnational Families* (Ducu & Telegdi-Csetri, 2016). After some days of the submission of the article to the book editor, the editor has sent me a link from the Guardian on human trafficking (The Guardian, 2016), saying that everything that I have highlighted in the article was mentioned in the Guardian's video report. The editor mentioned the fact that I have mentioned: the trafficker was the partner of the trafficked girl and the father of her child, the girl was a child left behind by her mother being consequently a human trafficking victim and since she departed for Switzerland, her child has stayed with the paternal grandparents. The protagonist of the video, Maya has grown up alone when the mother decided to migrate, created an absence of a mother role in her life and leaving her small chances in providing for her. The information that I gathered in Romania along with the video has pushed me into writing an article on the vulnerability of children left behind in Romania (Pascoal & Swchartz, 2018)

Despite that, in the last decade the phenomenon of children left behind has been highly studied, scarce attention has been given to its connection with human trafficking besides Greta's report (GRETA, 2012) and the European Commission's report on high-risk groups for human trafficking in human beings (European Commission, 2015). If I take a closer look to the phenomenon of children left behind, it is not difficult to understand their vulnerability to human trafficking, especially if I have in consideration that children with dysfunctional families, without parental care and institutionalized are normally potential targets to human traffickers as well as more vulnerable to subtle strategies such as the *Loverboy* method (Europol, 2011). According to the Report of the European Commission on *Vulnerable groups Exposed to Human Trafficking* (2015), 25% of the trafficked children comes from a disrupted family, including the so-called children left behind, being a stable family a factor of resilience against human trafficking. However, being a child left behind it is not always a synonym of an unstable family, for this reason in the article *Are children Left behind a Vulnerable group to human trafficking?* (Pascoal & Schwartz, 2018), the authors have proposed four categories of children left behind, assuming an intersectional vulnerability that can vary according to the contact that is maintained by the parents while abroad: 1) children who have only one parent abroad; 2) children with both parents abroad in the care of extended fami-

ly/neighbors/family friends; 3)children who have been left home without any tutoring; 4)children who have been left at social institutions.

In one of my interviews in Romania,⁴⁹³ a social worker has immediately affirmed that one of the most influenced causes of human trafficking for sexual exploitation is the phenomenon of children left behind.

*“In the case of sexually exploited Romanian girls, the children left behind who lack from the presence of their mothers, because they are working abroad, even if they are living with their grandparents or fathers, they still look for attachment. The traffickers know this lack of affection, which they highly exploit. I connect the phenomenon of children left behind and human trafficking.”*⁴⁹⁴

However, at the time, the answer has seemed to me quite general, thus it had led me into a further introspective on the subject; does this mean that every girl that lacks from a female role is vulnerable to human trafficking? Or again, should I look into the intersectionality that can lead a person into being a victim of human trafficking, since that not all children left behind are in the same situation? In fact, studies have analysed that the more critical problems with children left behind are with the families that had already problems before the migration project (Irimescu & Lupu, 2006). By proceeding with the interviews on the subject, the answer to this question came during another interview with a practitioner that has claimed that the main problem was not the departure of the parents by itself, but the lack of contact and accompaniment that the parents have with the child in the origin country.

*“This affects especially girls, who need affection, girls who have stayed with their grandparents who are too old to take care of them (economically and emotionally). But these girls have no contact with their parents, after the departure, they do not maintain the contact with their parents.”*⁴⁹⁵

As mentioned on the interviews with the practitioners that relate with human trafficking, victims, traffickers tend to target mainly girls who are already marginalized

⁴⁹³ Interview number 18 (third sector), 05/10/2016, Romania

⁴⁹⁴ Interview number 18 (third sector), 05/10/2016, Romania

⁴⁹⁵ Interview number 20 (civil society), 02/03/2017, Romania

and in need for attention, usually profiting from those who are lack of affection. This has not only been verified in the physical absence of the family, but also in families who were present physically, but not emotionally. Furthermore, studies on children left behind come to the conclusion that many children are emarginated from society, once they stay with their grandparents, since they tend to substitute them in the domestic and agricultural tasks. Consequently, the children are obliged to drop off school, especially the girls who are directed to do the domestic chorus (Sanduleasa & Matei, 2015). Therefore, the lack of contact from the parents added to the marginalization felt by the children within the society can be one of the main causes that leads the children to a situation of human trafficking.

“Children left behind are a very vulnerable category to human trafficking; we had a case of underage girls that were exploited because their parents were not by their side, because they have grown up with their grandparents and so they have escaped. Also because, there is an effective absence of the parents, in many cases, the parents went abroad and they did not come back, or the mother has married and has another family, thus there is a lack of interest from the parents, because they did not have maintained the contact with their children and consequently, the children did not have a person to confess their problems. Also because, they start to be marginalized by society, the teachers change their behavior and it is very painful for them. They also come often from children’s institutions, mainly for the children that turn up 18, the Romanian State does not do anything for them and often when people know that that person comes from a “casa copilului”, they tend to discriminate and think that she/he is not a serious person.”⁴⁹⁶

Besides that children left behind who are trusted to relatives can often be marginalized from society, especially from school, the children who are trusted to social services tend to be more exposed to traffickers than the ones raised by their relatives. According to the researcher Maria João Guia (Guia, 2008), many traffickers point directly to the children that are raised in care children facilities promising them high profits. In addition, since the cultural context tends to determine the conception of exploita-

⁴⁹⁶ Interview number 20 (civil society), 02/03/2017, Romania

tion (Gallagher, 2015), children with a rough background are also normally grateful to any kind of money that they can access. Furthermore, in order to have a more efficient impact on children, the traffickers tend to profit from insiders in the facility to recruit other girls.

“Two years ago, a shelter from the west of Romania has been confronted with the presence of a victims’ recruiter within the shelter. In order to target the victims, the traffickers have profited from the hosting of a 15 years old girl into the shelter and engaged her as a recruiter. By being physically present in the shelter, the girl was able to persuade one 13 years old girl into running away to her friend’s house, using the strategy of false promises of “easy money” and by highlighting the “lack of freedom in the shelter”. Eventually the girl was abducted (...) social services have contacted the police. The search for the girl has obliged the trafficker to abandon the youngster near the shelter and run away to a foreign country” (Pascoal & Swchartz, 2018)

“Among Romanian women, I have found many girls that come from orphanages, disrupted families, parents that were separated or single mothers. This, because the traffickers normally do not seek the girl from a good family without problems. They will target definitely a family with so many children and poor.”⁴⁹⁷

3.6.3 In Nigeria

Despite that, the attention of Nigerian motherhood is mainly concentrated on the children born in the destination country; many Nigerian women that arrive in Italy have already children in the destination country. The perception that Nigerian women do not have children in the origin country, normally comes from the fact that they often do not mention them, except when they refer the payments that they need to make regarding their children, such as school and food. In fact, as well as Romanian women, one of the main push factors for their immigration path is related to the fact that they are single mothers, normally being widows, separated or abandoned by their husband.

⁴⁹⁷ Interview number 23 (third sector), 27/07/2016, Italy

“We have seen in the last two years that even if the women that arrive are younger, some of them already have children. As for the women present in the CAS, as for the women that we encounter in the street unit, but there are several of them that even being younger they already have children in Nigeria. In fact, they say that one of the motives for their departure is exactly the fact that there is the absence of a father figure to their children. Maybe I only know 1 or 2 women that have their husbands in Nigeria.”⁴⁹⁸

“There is one of them that has four children in Nigeria and her sister [who is taking care of her children] has three children, and they need the money, thus she is obliged to send the money. I see that this girl, even if she tries she says that she is willing to do everything and of course that they see the Madams with a lot of money. Furthermore, many women were abandoned by their husbands because they had only girls and then they mistreat them because they did not have males. When these women are 30 years old, the men search for another younger partner.”⁴⁹⁹

Since that many women do not have a husband, the children tend to stay with their relatives, normally with the grandmothers or aunts or even with some acquaintance, depending on their nuclear family in Nigeria. The migration project normally comes from the perception of the economic difficulty in supporting their family, especially for the women that have big nuclear families.⁵⁰⁰ Furthermore, Nigeria counts for a long child-fostering tradition, since the concept of family is wider than in western perspective and the role of mother does not necessarily need to be present as long as the mother sends the remittances to keep the child’s education and welfare and keeps in contact (Kastner, 2010). In fact, “for these children, the absence of parents has become a common feature of their live” (Cebotari, Mazzucato, & Siegel, 2016).

“All the 99% percent of the asylum seekers or human trafficking victim try to send money home. They have to send the money to their children or their parents. The

⁴⁹⁸ Interview number 25 (third sector), 05/04/2017, Italy

⁴⁹⁹ Interview number 22 (third sector), 27/07/2016, France

⁵⁰⁰ Interview number 33 (third sector), 10/04/2017, Italy

*children in general remain with their mother or with the father, otherwise with an aunt.*⁵⁰¹

*“Many Nigerian women have their children in the origin country. Often we only find out that later, since it is not the first question that we make, mainly when they are very young, as the ones that are arriving in Italy, but even though they still have children in their origin country. This is an element that influences their path, especially in an economic matter, which normally requires us to accelerate the process, in order that they have to wait to send money home. On the other side, it is also an element of stability, but is always accelerating. The best thing now is the technology because they can do skype calls and often they see themselves by phone. The grandparents are the ones that are with the children in the origin country. Nigerians have this thing that they typically also have children here, in fact, while here the children can be an opportunity to exit the exploitation, in the origin country the children are almost used as a coercive instrument from the families, thus it is an added element to manage that affects the serenity of the women. The majority of the women are single mothers.*⁵⁰²

As verified in the interview above exposed, the children in the origin country are often used as a coactive instrument from the families in order to get more money from the girl (Agathise, 2002). In the book *Le Ragazze di Benin City* (Aikipitanyi & Maragnani, 2007), the author mentions the story of a Nigerian girl, which the family continuously ask to send money to her son, using the child’s health as an emotional manipulation, even being aware about her exploitative condition. This constant manipulation used by some of the families has been verified as an obstacle to leave sexual exploitation, since it often burdens the mother that the child in Nigeria does not have resources. Even if the women do not have children in the origin country, they are normally the ones who are sacrificed to provide for the entire family, especially if they are the older or the youngest women in their family.⁵⁰³ Furthermore, many Nigerian families as it has been observed also with Romanian families get used to a certain amount of money that the girl sends monthly through western union.

⁵⁰¹ Interview number 35 (third sector), 24/07/2017, Italy

⁵⁰² Interview number 28 (third sector), 29/11/2016, Italy

⁵⁰³ Interview number 33 (third sector), 10/04/2017, Italy

“They always speak about the money that they need to send home [the observation was not only limited to the children in the origin country, but to the entire family]. Anyway, the girls that decide to maintain the contact with the origin country they continue to support them economically. This is an element that we often invite them to reflect, mainly if they have started a family also here, so we advise them to put at first place the family that was created here [in the destination country].”⁵⁰⁴

According to Kastner (Kastner, 2010), until 2010, there was little regard on the subject of the Nigerian transnational families and multilocal households. Furthermore, the author divides the Nigerian families in three different types of family ties, referring to: ties to their own children, ties to the family of origin, and ties to the husband. However, as previously mentioned, many women tend to interrupt the contact with the family of origin, especially during the post trafficking situation, focusing more on the family that was created in the destination country. Therefore, when women are deported, they tend to maintain their children in the destination country, not only to provide them the possibility of having a better education and more access to resources, but also to guarantee them their possible return (Plambech, 2014).

3.7 The Protection of the victims with children

Until now, it has been mentioned the protection path to victims of human trafficking in Italy through Art.18, according to the chronological availability of the program, yet it has been verified that in case the victim is a mother, the protection path tends to be longer and attentive to the particular needs of the mother. In fact, even if the women are mothers, they have to go through all the phases of the program, which consequently enlarges the one year of protection for a period of two years. The enlargement of the program happens, especially when the women are pregnant or are already mothers, since the anti-trafficking network tries to “hook” the woman to be able to go through the entire protection path, firstly with the residence permit and later with the assistance.

⁵⁰⁴ Interview number 33 (third sector), 10/04/2017, Italy

“Here in V., the women come already flagged by other Minors’ Court and we tried to understand why. Because they were victims of trafficking that were pregnant that gave birth, the flagging was automatically to the social services and to the Court. Therefore, we tried to explain to the social services that the women were just temporarily vulnerable, also because this vulnerability is not eternal. We have had women that have made a wonderful path that have had their children and have started to work, but with the help of the services, as also the Italian women receive, because they are residents and as residents they are entitled to have free meals.”⁵⁰⁵

It is also important to mention that this subchapter, as previously verified will be mainly dedicated to the Nigerian women, since Romanian women normally do not have their children in the destination country and when they have, they tend to take them to Romania.

“We have in our projects Nigerian women with babies, but the number of Romanian women with children is very limited.”⁵⁰⁶

If I consider that the protection path of victims of human trafficking tend to be difficult, it is not difficult to understand that the inclusion of a woman on a protection path with a child requires more instruments, as well as more time. Notwithstanding that, in the past many Romanian women were engaged in the protection paths, mainly before the entrance of the European Union in 2007, due to the residence permit⁵⁰⁷. Nowadays, the majority of the Romanian women in sexual exploitation does not have children while in Italy, since having a child while being involved in sexual exploitation is not normally accepted by the exploiter and the trafficker fears of loosing control over the girl. Therefore, normally the woman tends to have the child with her the first months and then, they go back to Romania to leave the child with her relatives. On the other side, the Nigerian women, as it was observed in the previous chapter, do not have a strong relationship with the origin country, while in Italy, not only due to the distance and residence permit, but also due to the threats that

⁵⁰⁵ Interview number 31 (third sector), 22/02/2017, Italy

⁵⁰⁶ Interview number 29 (third sector), 06/03/2017, Italy

⁵⁰⁷ Interview number 30 (third sector), 22/02/2017, Italy

they can receive while in Nigeria, since normally the recruiters are their acquaintances (Carling, 2006). Furthermore, Nigerian women tend to support motherhood among them, more than Romania women, even within the environment of exploitation.

*“There is an acceptance of the motherhood [within the Nigerian community], thus they are more willing to keep the baby. Consequently, there is more acceptance of the pregnancy of the woman. Of course, that sometimes there is an initial refusal and this baby is not accepted, but with time, then it is recovered. For instance, within the CAS, we realise that there is an element of protection within a group of five women towards the one that has the baby and there is a lot of sharing, especially in the daily moments.”*⁵⁰⁸

Furthermore, it is also important to analyse, as previously mentioned, that due to the fact that the majority of the women comes through Libya, being normally exposed to sexual exploitation during the route or to sexual abuse, it has been verified an increase of pregnant women that arrive in Italy. This can lead us to a conclusion of an augment of pregnant women; even if it might be proportional to the number of Nigerian women arrived.

*“We are a project that has always had a part dedicated to women during pregnancy or with small children, so we have a constant demand for our services, but for instance, in the last 2 weeks, 4 women [Nigerian] have arrived pregnant. Hence, I can say yes [if there is an augmented of pregnant Nigerian women], but not all arrived in Italy pregnant, but remained pregnant in Italy and not in Libya.”*⁵⁰⁹

The fact that the mother is hosted by a project can change everything, because it includes the Municipality services, thus the protection path of the woman is also fulfilled with the presence of practitioners that are related to the presence of the child. However, many of the projects for Art.18 are directed to women without children and sometimes, the referral agent has to dislocate the mothers into other regions that have

⁵⁰⁸ Interview number 35 (third sector), 24/07/2017, Italy

⁵⁰⁹ Interview number 25 (third sector), 05/04/2017, Italy

the possibility to host the women with their children. Of course that the protection path for mothers and children are those who require more funding resources, especially because the children have the right to stay until they are 18 years old, in the Italian territory. This normally also provides the woman the security to stay in the Italian territory at least with a humanitarian protection⁵¹⁰.

“The protection path is different, we have to find a particular reception centre, and these are longer protection paths, due to the situation of maternity. Then there is also the other phase, since that the autonomy process of the woman is slower, but we are prepared for this, especially because of the high number of Nigerian mothers.”⁵¹¹

Obviously that, has previously exposed, the fact that the Territorial Commission gives the humanitarian to the women, does not oblige them into going under protection with the Art.18 in order to have a residence permit.

The Art.18 penalizes the women, since with the humanitarian protection, they have two years and, if they are pregnant, it is better. I also find myself in difficulty in knowing what it is better for the women and what is convenient.⁵¹²

When a woman enters in protection normally, she does a protection path of two or three years and after, the situation is normally accompanied by the protection services of the municipality. In fact, despite that, the municipalities are normally not obliged to provide protection to human trafficking victims, in the presence of the minor, this role is mandatory, since that even if the woman gains autonomy with the protection path, the minor is always the responsibility of the Municipality.

“The path is long [for the victims with children], because during the pregnancy we cannot think about the work integration, only six months after, when the child is born, it is only when we can think about that. The capacity of the mother

⁵¹⁰ Interview number 29 (third sector), 06/03/2017, Italy

⁵¹¹ Interview number 28 (third sector), 29/11/2016, Italy

⁵¹² Interview number 22 (third sector), 27/07/2016, France

*and the will of the child in being with the mother, thus mediate this relationship, the integration in a kindergarten, the search for work. It is also difficult, for instance, when the child is a result of violence.*⁵¹³

As it can be verified in the affirmation above exposed, despite that pregnancy can be a phase to “fish” the woman in getting out of the trafficker, it can also be, has previously reported a result of a trauma lived during the exploitation or the travel in Libya. Therefore, the practitioners tend to mediate this conflict in the relationship between mother and child, especially in the first months of life of the new-born. The facilities have workers that can help in the “western” parenting, creating the conditions to be contemporaneously a mother and a worker.⁵¹⁴

*“We had a lot of pregnant women, they had mainly psychological problems and trauma and they normally affirmed that they are not capable of taking care of the child and be able to do everything that a mother is supposed to do for a child. They do not trust in themselves, but they are also realistic, because they do not have the resources and many come from a background that they can’t help the child and often it is better to be given to the State, so the child can go to a family with conditions.”*⁵¹⁵

*We put the mothers in a single room, because many children here are a result from violence, we don’t know who the father is and often neither them. We try to keep them calm, because this baby is often seen for them as an impeachment, for their future and they should understand that they have this anger.”*⁵¹⁶

According to the practitioners working in the sector, pregnancy it is the most important moment to get the women out of the exploitation (Ac.sé, 2015), since it probably changes something in the person and gives strength to protect also the new-born. In fact, many women with the information provided from the associations in France were able to exit prostitution, especially when the mothers understand that being

⁵¹³ Interview number 30 (third sector), 22/02/2017, Italy

⁵¹⁴ Interview number 28 (third sector), 29/11/2016, Italy

⁵¹⁵ Interview number 20 (civil society), 02/03/2017, Romania

⁵¹⁶ Interview number 22 (third sector), 27/07/2016, France

engaged in prostitution can be an obstacle to keep the guardianship of the child. Furthermore, this link also allows the women to have more acknowledged of their rights and benefits of social services and third sector, creating a network able to fulfil the main needs of the mother and the baby.

“In 2015 we have had a total of 18 children in our services with their mother. For the protection of the child, there is the “aide sociale par l’enfance” that supports the mother and the child and the problem normally are the documents of the mother, in case they are not hosted in our centres.”⁵¹⁷

Since human trafficking victims are normally lonely people, isolated from society, mothers in this condition normally do not have the support that society, especially regarding the emotional ties that can be provided to a mother. On the contrary, when women are in protection programs, they are normally supported by the practitioners that from one side tend to emancipate the mother by having Italian courses and especial trainings and at the same time providing to the woman services that can permit her to frequent this type of courses. For instance, some of the facilities have private kindergartens inside their structure.

“There was this girl that she did an internship with us, she had a baby child and she had to breastfeed, I could not send her to the Cooperative, so she stayed here, doing the cleaning and she learned how to cook, we want them to learn also this.”⁵¹⁸

It is not only important the availability of the services such as kindergarten to the mothers, but their particular characteristics that are normally not provided by normal services, as for the schedule, as for the experience in relation with women from other culture and backgrounds.

“For instance, here we have the possibility to have a babysitter at a very low price, or situations in which it was possible to take the baby to the internship. Doing an autonomy path without resources is very complicated, since the baby goes to kindergar-

⁵¹⁷ Interview number 21 (third sector), 30/05/2016, France

⁵¹⁸ Interview number 22 (third sector), 27/07/2016, France

*ten from 10 am to 5 pm, meanwhile she probably needs it in another schedule, because she has to do cleaning and there is no kindergarten from 5 pm to 10 pm. These are the difficulties of a mother without network that has no one to leave the child when she is going to work.*⁵¹⁹

In one of my interviews, interesting aspects have emerged regarding the exploitation during the assistance to the pregnant women by the traffickers. In the last two, three years there were several cases of Nigerian women that have left the reception centres after their arrival in Italy and that came back normally after 6, 9 and 10 months, with a pregnancy. Therefore, from one side, Nigeria women turn up to services, mainly when the trafficker does not accept the baby, and on another side, it is the trafficker that sends the women on purposed to the assistance program.

*“For Nigerian women, children are a benediction, firstly because they cannot be deported and secondly because it can be a motive to escape from exploitation. When a woman starts to create too many troubles, because she is sick, or she is too confused or she rebels, the traffickers are not as the ones before, they have started to change and since there are so many girls, they expel the girls from their house.”*⁵²⁰

According to the Italian law, the minor has to be tutored, thus if the woman comes back to the assistance programme on her own, she will probably not be assisted, since according to the Law Decree 12/2015, if the woman abandons the CAS, she is not entitled to be assisted anymore. On the other side, if she comes with a child, no structure can deny assistance to the woman in the CAS. Therefore, practitioners working in this issue have started to suspect that the traffickers induce these pregnancies on purpose, in order to make the women return to the assistance system.

“These women return, not because they want to return, but because the person that manages them has established that it is the moment to return within the protection system and if there is a pregnancy, no structure will deny their assistance. Hence, there

⁵¹⁹ Interview number 35 (third sector), 24/07/2017, Italy

⁵²⁰ Interview number 23 (third sector), 27/07/2016, Italy

is a pause in the exploitation, because it is very “comfortable” to return to the assistance programme.”⁵²¹

When the women arrive to a protection referent, as the Municipality services, counselling offices for International Protection or the anti-trafficking hotline, the practitioners are aware that the story that they are telling is only to enhance their acceptance in the structure. Therefore, the professionals tend to work on their first patterned version of facts, normally saying that they went for a walk and when they got lost, they found a Nigerian man at the train station, normally without mentioning the exploitation part. In fact, depending on the agreement that these women have with their exploiters, they can still maintain the contact with their exploiters or not.

*“There is this girl that once in a while has to go to the street and she has a child with her and she goes to the street because she needs to keep him. The Madam kicked her out of the house when she was pregnant, even if she did not have paid all the debt, almost 15 thousand euro. Therefore, instead of having problems, because when the women are pregnant they are guarded, the Madams prefer to send the women away.”*⁵²²

“We had a case of a woman that has entered during the winter and we have had in a month four requests, from four different cities, all from our region. The calls were to the anti-trafficking hotline and it was this Nigerian woman that was at the train station of one city and declares that she wants to exit from prostitution, consider that we don’t have so many calls saying something like that. Therefore, we go to the train station and we contact the woman, trying to establish a first contact, in that moment she does not want to exit prostitution, she only wants to be hosted and a bed. The women all know the name and surname of our cultural mediator.”

“There was this case of a Nigerian woman in Modena that she went to the office of international protection to do the asylum claim, since she is pregnant, the office calls immediately the anti-trafficking referral agent, which arrives and they do an interview together, in which the woman has a moment of weakness and affirms to be engaged in

⁵²¹ Interview number 29 (third sector), 06/03/2017, Italy

⁵²² Interview number 23 (third sector), 27/07/2016, Italy

prostitution, telling where she lives, giving the address and accepting immediately to go in a structure, which after 24 hours she abandons. However, she is still a woman in her 8th month of pregnancy, so she decides to go to the counseling Municipality office of Modena (the one that provides house and economical subsidies) and asks for a subsidy on her own with another name. Since we are all in network and well organised, the employee calls the anti-trafficking referral that finds the same person, but once they meet, the Nigerian girl goes away without saying anything. A week later the anti-trafficking referral office of the region receives a flagging from the municipality of Bologna of a street unit for homeless people that a Nigerian woman that was pregnant that has asked for a bed, but she affirms that she was at the hospital at Modena and we understand that it is the same person. So, this woman has searched for three different types of hosting, but even in the last situation the employees have called for the third time the anti-trafficking referral and it was in this moment that she was taken into a facility. So the child is still small and the organization has all the interest that the woman remains in protection during that period, since a woman with a baby can give more problems to the organization when she is a mother.”⁵²³

After the concession of Art.18, it is difficult to have a permit for work, since that many women have difficulty in finding work. Therefore, often the humanitarian permit for Art.18 is substituted by Art.31, even if nowadays with the increase of the attribution of International Protection, the attribution of Art.18 tends to be scarce.

3.7.1 The reunification of family after trafficking

According to the researcher Francesco Carchedi (Carchedi, Picciolini, Mottura, & Campani, 2000) the majority of Nigerian women would leave their children behind, since prostitution is difficult to be compatible with being a mother. Being a mother in western society requires a work contract and a fixed domicile. Therefore, while in debt, women tend to find irregular ways to bring their children to the destination country or to leave their children back in the origin country with their extended family. Actually, women tend to gather the basic conditions to have a family in the destination country. However, since the women normally interrupt their involvement in the sex industry to

⁵²³ Interview number 29 (third sector), 06/03/2017, Italy

be able to bring their children in the destination country, once the child has arrived, they often stop sending the remittances to the origin country to the relatives that have grown up their children (Busch-Armendariz, Nsonwu, & Heffron, 2011).

“They normally choose to go first in the destination country. We have had cases in the follow up that after four years Nigerian women were able to bring their children in Italy, but a long time after the exploitation.”⁵²⁴

Besides the women that try the family reunification mainly after a period of establishment, as at an economical level as at a social level, urgent family reunification has been required in situations where there is the perception of a situation of danger to the child in the origin country. For instance, in 2015 after the prosecution of the trafficker, the judge along with the French Ministry for Foreign Affairs has decided to support the transferring of a Nigerian child in France. The urgent family reunification was possible due to the subsidiary protection of the mother. Nevertheless, even in emergency cases, the reunification tends to be very rare. In case the family reunification is not possible, French associations in case of retaliations of the families in the origin country provide a sum of 300 euro in order to pay a year of accommodation in another state of the country (Ac.sé, 2015).

“Here in France, the women with children are protected by the social services. We have had a case, in which a Romanian woman had one child here with her and another one with her grandmother. In this case, we have contacted an association in Romania and we have helped the woman in taking her child to France, because, she has pressed charges against the man that exploited her. She had to change city and she was hosted in one of our centres with her child.”⁵²⁵

As observed, on the contrary of Nigerian familiar reunification, Romanian familiar reunification, since it is within the European Union it tends to be easier, without the need of legalizing the woman in the destination country. Furthermore, it is also easier to have official and institutional contacts that can support the familiar

⁵²⁴ Interview number 30 (third sector), 22/02/2017, Italy

⁵²⁵ Interview number 21 (third sector), 30/05/2016, France

reunification. However, despite that in France there were cases of urgent family reunification, in Italy, the imminent danger seems to be solved by other methods.

“There were cases of two Nigerian women with moment of alarm, and they have asked to enter immediately in Nigeria, since it was perceived a danger to the child [in the origin country]. In these cases, the impression that we have is that the woman has treated the problem directly with the organization and paid directly to them for the protection of the family.”⁵²⁶

Despite the importance for the well-being of the victim that can bring family reunification, most of the protection programs do not include them in the protection path of the victim (Busch-Armendariz, Nsonwu, & Heffron, 2011). In fact, a stable familiar reunification can be one of the success indicators of a protection path, especially since it tends to be very stressful and demanding after a long time separation and with the influence of traumatic events. Women sometimes during the reunification feel insecure in the role of being a mother. Therefore, it is important that during the reunification is supported by the social services in order to provide added support for the family, especially at a psychological level and to empower the family at a practical, educational and social development.

Conclusion

Motherhood is considered to be one of the main pillars of society, having a fundamental role in every culture (Fineman, 1995). Therefore, the role of the mother, initially attributed biologically, not only is patterned by society, but it can also be decided by the Patriarchal society that can use the justification “of the best interest of the child”, in order to decide who is dignified of this role. Society normally represents the role of the Mother by the Madonna, the virgin mother (Kristeva, 1985). The attribution of the symbol of Virgin Mary counteracts to the possibility of mothers in having other roles in society, especially considering when immoral behaviours are assumed as being engaged in the sex industry (Castañeda, Ortiz, Allen, Garcia, & Hernández-Avila, 1996). This contraposition of both roles can normally bring a sense of

⁵²⁶ Interview number 25 (third sector), 05/04/2017, Italy

guilt to the women that are engaged in sexual exploitation. However, many women that were already mothers before the exploitation, have entered into this situation due to their situation of mothers, mostly lacking support from a partner in order to be able to provide their children better conditions (Avgerinos, 2006).

The role of “the good mother” is normally given to someone that is devoted to her children, who are able to sacrifice themselves for their children, without assuming any deviant behaviour. However, by being involved in sexual exploitation, in order to increase their social level, these women tend to assume the role of the “sacrifice mother” that despite their suffering and exploitation, they prefer to resist to their exploitation in order to provide what they understand to be a better life for their children. For these women, the ability in providing gifts, frequent care and love demonstrations normally compensates the suffering of the exploitation as well as the distance from the children. According to Peled (Peled & Parker, 2013), there are three types of mothers in human trafficking for sexual purposes: “the good mother”; “the sacrificing mother” and “the mother that wants for herself”, which is mainly observed in the transnational motherhood. Actually, the researcher Peled reports on her article the geographic space as being also the chronological measure, between before and after the departure, i.e., their involvement in sexual exploitation.

Motherhood is also highly shaped by the context of the mother and defined by the different factors that can influence the relation between mother and son (Ruddick, 1989). In fact, if from one part, motherhood is one of the main causes that leads the women into exploitation, especially when the women are already mothers in the origin country; on the other hand motherhood can be one of the main causes that leads also the women in exiting sexual exploitation. Motherhood is embodied by the individual as a renewing, changing factor that affects the body allowing transformation (Söderbäck, 2010). This is not only remarked by the protection that women tend to have towards the new-born, but also regarding the bond that is felt mainly during pregnancy as well as the bipolarity that women feel once they are divided between the role of mothers and sex workers contemporarily. In fact, pregnancy tends to increase women’s self-esteem and agency (Bhandari, 2013), since that until being a mother, most of the women were seen with disapproval by society an often marginalized.

The lack of literature on the issue of motherhood in human trafficking

(Brotherton, 2016) has led that this chapter has become the shortest chapter of the entire thesis. In fact, my results in this chapter are mainly derived from my qualitative research based on the participant observation, the analysis of judge statements mainly regarding the situation of Nigerian women in Spain and numerous interviews in Italy, Spain, France and Romania. As in the preceding chapter, the motherhood of Nigerian and Romanian women in sexual exploitation has completely different factors that influence both situations in a very distinct manner.

The first aspect to be considered is how motherhood is lived by the women and the children, since the majority of the Romanian women tend to leave their children in the origin country (Pascoal & Schwartz, 2016), while Nigerian women, not only due to the distance from their origin country, but also regarding their legal permanence on the European territory, have their children in the destination country. This leads that, while the majority of the Romanian mothers lives in a situation of transnational motherhood, sending their remittances to their children in the origin country, the majority of Nigerian women lives a double motherhood, between the children that they have in the transit and destination country and the children that were left behind (Kastner, 2010). Furthermore, the entrance in the destination country it is also an important factor, since that while Romanian women, being citizens of European Union can enter legally without any recurrence to smuggling network or hazardous travelling, Nigerian women often are obliged to enter in Europe through smuggling networks that put at risk their lives. Therefore, Nigerian women often arrive pregnant in Europe as a result from their exploitation and exposure to sexual abuse during their travelling (IOM, 2017).

The two different ways of living motherhood in human trafficking for sexual exploitation had deep influence on the exploitation of the women and how they live this motherhood, according to the chronological and geographical space that they share with the children. In this case, it is verified that motherhood of the Romanian women is mainly lived at a distance in which the only effect that it has on the women is that they need to send money to their relatives that are educating her son, which can prolong their time of exploitation. Furthermore, since Romanian women are European citizens, even if they get pregnant during the exploitation, they prefer to leave their children in the origin country, since they do not need motherhood to be legal in the destination country. On the contrary, Nigerian criminal networks have been using motherhood in order to be

legal in the destination country, leading to an excessive use of the women's body, not only in sexual exploitation, but also on the reproduction rights. In fact, it is normally the criminal network that controls the women's body, deciding when they should have children, do an abortion or if their children can serve to legalise another woman in the destination country (Fernandez, Garzón, Juan & Contreras, 2017).

Due to the *loverboy method*, often Romanian women have children with their own exploiters (Pascoal & Schwartz, 2016), which can influence directly the duration of the exploitation, since often the exploiters use the family's need to maintain the victim in exploitation. In this case, motherhood tends to be a factor of resistance (Butler, 2016), i.e. a continuous vulnerability, which is tolerated and opposed, but that does not arrive to the point to resilience (Bracke, 2016)⁵²⁷ as observed in Nigerian women.

Despite that the criminal networks normally control the motherhood of both nationalities, mostly verified on the Nigerian trafficking, due to the presence of their children in the destination country, it has also been observed that motherhood, once in the destination country can positively influence the exit of the woman from exploitation (Brotherton, 2016). When the women are mothers in the destination country, the control of the State, as well as the services that the women have access, while being a mother can furnish the woman instruments to exit the situation of exploitation. However, it is also necessary to refrain that in the past, due to the fact that many Nigerian mothers were illegal in the country, they tended to be more invisible to the public services, while nowadays the majority of them have an asylum claim and also more instruments to request aid.

In conclusion, Romanian women normally do not assume the role of a "mother", which is normally attributed to another female relative of acquaintance (Sciurba, 2016). This implies that while Nigerian women are able to have access to a certain network of contacts as mothers in the destination country, Romanian women tend to have less social assets, which leads to a more confined social network. On the other hand, the fact that the children are in the origin country, also avoids that they become an easier target for the traffickers, unless, as also observed, the traffickers are from the same village as the girl. Nigerian women, on the contrary of Romanian women, are deeply influenced by motherhood, being normally one of the main causes for their exit from exploitation.

⁵²⁷ Bracke (2016) defines the experience of resilience as the attachment to life, which can be experimented with motherhood.

Conclusion

In recent years, significant attention has been given to vulnerability as a critical concept that reconsiders the ethics and politics of our neoliberal times (Sabsay, 2016). Consequently, the notion of vulnerability has been the object of an intense scholarly debate regarding its imprecision and lack of limitation, being often defined as confusing, complex, vague and ambiguous (Solbakk, 2001; Ruof, 2004; Fineman, 2008). The first chapter of this study has gone through an extensive analysis of the concept of vulnerability, in order to guide the reader through the study with a clear and delimited concept of vulnerability. This complex analysis has passed from its legal use on the phenomenon of human trafficking, to its application by the European Court of Human Rights. Consequently, the use of vulnerable groups, mainly identified by a Universal categorization, based on the sharing of a common feature, by the European Court of Human Rights was put in discussion by the Martha Fineman's concept of vulnerable subject. Finally, the application of the theory of the vulnerable subject, not only has put aside the concept of vulnerable group, but it has also replaced the concept of Intersectionality (Crenshaw, 1989).

The beginning of this study has mainly departed with the application of the concept of Intersectionality (Crenshaw, 1989), due to its broader vision of vulnerability, applied in different layers that can be overlapped in a person such as race, nationality, gender, age, sex, religion, physical ability. In fact, the two analysed groups were mainly divided in regards to their nationality, which could provide them legal privileges as well as race that could activate some discrimination. However, the term intersectionality has been overcome with the concept of the "vulnerable subject", since intersectionality it is still regarded as being static, while the vulnerable subject assumes the chronological changeability of vulnerability, especially regarding the aspect of motherhood. Vulnerability, unlike trauma shapes an open-ended temporarily (Hirsch, 2016) that is ever exposed to risk, not only regarding the one from the past, but mainly the one that can come in the future (Fineman, 2008). In this case, the author has defined vulnerability as the possibility of choice within a context, which can be translated into lack of opportunities. As the individual is continuously influenced by his/her own choices, limited within a context, then his/her vulnerability is also changing with the

establishment of relationships, the providence of assets, cultural and social integration.

In 1861, Harriet Jacobs writes on her novel *Incidents in the Life of a Slave Girl*: "Slavery is terrible for men," "but it is far more terrible for women", mentioning in particular the exposition of women to sexual exploitation (Sherman, 1990). The observation of the writer Harriet resumes the focus of this study, on the intersectional vulnerability of women within a situation of human trafficking. In this case, it's important to analyse the level of importance of the hierarchy of layers (Marchetti, 2013). Obviously that the research is not claiming that women are collectively vulnerable, thus men are invulnerable, since it can be a risky affirmation (Butler, 2016). However, the forward attention on women is on their higher exposure to sexual exploitation than men (UNODC, 2016) and consequently, motherhood on a situation of human trafficking.

By assuming that women are intersectionally more vulnerable than men enhances the paternalistic approach (Fraser, 2009), as well as the notion of victimisation that leads to the justification of the control of the state of women's bodies. Furthermore, the notion of victimisation tends to be highlighted by other influenced factors, such as citizenship (the lack of access to certain rights) and age, which is also denoted within the two groups. Therefore, the applied concept of vulnerability regards as the dependence of the individual on the State (Fineman, 2010) as the chronological vulnerability of the vulnerable subject (Fineman, 2008). It is in this comparison between Nigerian women and Romanian women that I also question their vulnerability, connecting the concept of vulnerability with privileged access to rights. Are Romanian women less vulnerable than Nigerian women, due to their citizenship? In my research, based on the complexity of the vulnerable subject, the answer is NO.

In the chapter *Violence against Women in Turkey: Vulnerability, Sexuality, and Eros*, of the book *Vulnerability and Resistance* (Butler et al, 2016), Meltem Ahiska (Ahiska, 2016) debates the invisible connection between sexuality, violence and politics in Turkey. The author argues that the perceived concept of violence is limited to women's conducts within a social context of accepted norms, otherwise, the used violence can be justified. The reflection of Ahiska provides us the example that the concept of victim is formulated within a cultural and social environment, depending on the accepted norms. Moreover, the reflection on the awareness of victimisation can lead

to the invisibility of considered “invulnerable group”. It is, in fact, on the perspective of an invulnerable group that Romanian women tend to not consider themselves human trafficking victims in need of protection, thus also not be considered as victims of human trafficking by the society. With the analysis of all factors of the destination country, including the social context and the concept of victim within a social context, along with the influence of the traffickers and the background’s vulnerabilities of the victims, not only I have accessed to a complex overview of trafficking that contributes to the vulnerability of the victim, but I was also able to compare the influence of vulnerability during the exploitation of the victim, between the two analysed groups.

Romanian women nowadays are able to enter in Italy without recurring to any smuggling organization, on the contrary of what has happened until 2007, when Romania became a member of the European Union. In 2005/2006, Romanian women were around 31% of the identified human trafficking victims in Italy, while Nigerian women were the 37% of the identified victims (Barberi, 2007). In the last years, the number of Romanian women that had an Art. 18 permit has decreased to a total of 57 permits of Art.18, while 177 humanitarian permits under Art.18 were given to Nigerian women (Osservatorio Anti-tratta, 2015). However, the decrease of granting of the Art. 18 for Romanian women it is not necessarily a synonym of the reduction of Romanian human trafficking victims, but it can reflect the lack of capacity of the state to recognise them, especially regarding the improvement of strategies of the criminal network. In fact, the use of softer “means” based on APOV, deception, emotional manipulation and coercion with an improvement of treatment, by raising the percentage of the received money of the women, the individuals do not feel as being victims. Furthermore, the women have started to be able to return more easily to the origin country, which has led that once the victim would recognise herself as a victim, she would be able to go directly to her origin country, without passing by a protection path. On the contrary, Nigerian women need to be recognised as victims in order to have access to their rights.

The access to certain rights of Romanian women, due to their European Union’s citizenship, predicts their invulnerability by focusing only on the aspect of their legal situation in the Italian territory and trivializes the complex situation of Romanian women engaged in the sex industry. Furthermore, by having access to certain rights, Romanian women in general are seen, and also normally they confirm, as giving fully

consent for their situation. Obviously, that when I refer to their situation, I do not exactly mention their engagement in the sex industry, but the full framework of conditions in a particular activity. Furthermore, my conclusion does not want to impose the concept of victim to the women engaged in prostitution and annul their auto-determination, but to aware for a broad framework regarding their relation with their exploiters. Broad feminist literature has been dedicated to the place of autonomy and consent that is reduced by the political, familiar and cultural context and economic deprivation (D'Elia & Serughetti, 2017). In order to provide attention to all the grey zones in the sex industry, sex workers should work in two levels, the one regarding their freedom and the placement of consent and the one regarding the protection of the ones who are sexually exploited (Tatafiore, 1997).

Victimisation is often associated with violence, yet in the neoliberal society, victimisation can also be present within an autonomous space, where the individuals are controlled by the moral norms. Therefore, the more society identifies a group as autonomous, the more the group can be a victim, not directly by the offenders in this case, but by the society that judges the concept of vulnerability and violence. With the analysis of all factors of the destination state, including the social context and the concept of victim within a social context, along with the influence of the traffickers and the background's vulnerabilities of the victims, not only I have access to the complex overview of trafficking that contributes to the victim's vulnerability, but I can also compare the influence of vulnerability during the exploitation of the victim, between the two analysed groups.

The submission embodied by the women can be a weapon to avoid the exploiters' aggression, but at the same time, it also can reveal to be a vulnerability (Sherman, 1990). Resistance is the tolerance of a vulnerability that is not inherent to the victim, but the "conception of social and material relations" (Butler et al, 2016). Hence, resistance can be evaluated as the balance between vulnerability, as an addition of negative external factors, with the person's agency. Therefore, resistance can be also the acclimatization to the vulnerability, having a perception of vulnerability as something normal and thus, not giving the individual the ability to tackle it. Furthermore, since vulnerability is not a static factor, added factors of vulnerability can lead the victim in exiting from a situation of exploitation, such as a situation of pregnancy. According to

Cavarero (Cavarero, 2014), subjectivity is structurally characterized by an exposition to a dependency, stamping each connection with a new and structural vulnerability.

My last research question in this thesis is if motherhood is an added vulnerability to the Nigerian and Romanian women involved in a situation of sexual exploitation. I would have to remark that the outcomes were very surprising and that motherhood has completely different effect on the two nationalities. Despite that motherhood and human trafficking for sexual exploitation are one of the main issues debated on the feminist cause, scholarship has been neglecting the overlap of the two issues (Brotherton, 2016). In fact, conducting research in such topic has demonstrated to be very exigent, for the lack of literature, having based almost all my study on field research.

While the role of the mother and its importance has been changing in the last century (D'Elia & Serughetti, 2017), women's body is still the symbolic and cultural embodiment of the moral society (Benhabib, 2005), since mothers are considered the pillars of society (Fineman, 1995). Motherhood, in our society, is highly marked by religion, reflected in the image of Virgin Mary (Kristeva, 1985), immensely praised by the patriarchy (Badinter, 2012). Motherhood is the recognition of the women's competence, "the relation between the body and the norms, between subjectivity and the body, between freedom and responsibility" (D'Elia & Serughetti, 2017). Therefore, in the patriarchal state, the role of the mother normally it does not overlap with other roles, especially if it includes considered "immoral behaviours" as prostitutes. This is probably the reason that much attention has not been given to this subject, particularly, since women engaged in the sex industry tend to separate the two worlds and hide it from the public sphere.

In a study in the UK, practitioners working with mothers engaged in prostitution (the study does not refer in specific if it is in a situation of human trafficking or not) have replied that the women have difficulties to deal with motherhood in prostitution (Brotherton, 2016). On the other hand, motherhood can be embodied by the individual as a renewing, changing factor that affects the body allowing transformation (Söderbäck, 2010). In fact, the impact of motherhood on a victim of human trafficking, normally depends: 1) if the victim was already a mother when she engaged sexual exploitation; 2) if maternity provides the woman with the possibility to assume the role of a mother during the exploitation; 3) if the woman receives a support from the father

of the child.

Despite that scholarship tends to neglect the fact the women engaged in the sex industry can be mothers, during my research it was clear that many victims were already mothers when they were recruited. In fact, it was also very evident, especially with the Romanian women that maternity was a push factor to enter into an exploitative situation, while the Nigerian women was the responsibility of all family, besides their children. This motherhood is lived mostly at a transnational level, apart from the migration project of the women and being only the cause of the remittances that are sent home (Pascoal & Swchartz, 2016; Kastner, 2010). Furthermore, in transnational families, the role of the mother is normally assumed by another female that cares for the child (Chodorow, 1978) and maintains a relationship with all the individuals within the child's network. Hence, motherhood, lived before the trafficking situation tends to be a factor of resistance to the situation of trafficking.

Women that are engaged in sexual exploitation tend to assume the role of the "sacrifice mother" that comes to resist the exploitative situation, in order to provide what they understand to be a better life for their children (Peled & Parker, 2013). In this case, motherhood is a resistance factor (Butler, 2016) for the exploitative situation. Despite that resistance is a positive aspect, because it helps to survive and endure a situation of trafficking, as previously mentioned, it also can lead to a longer chronological vulnerability that does not end the exploitation. This resistance is mainly verified, when motherhood was previously to the exploitative situation and not during the exploitation. Furthermore, due to the *Loverboy method*, if motherhood arrived during the exploitation, Romanian women assume that the father is their boyfriend, which is normally the exploiter (Pascoal & Schwartz, 2016). In this case, the exploiter uses the children as a coercitive instrument, normally not in a violent way, but often manipulating the victim by using the family's need to justify the sacrifice of the mother. On the other hand, the exploiters also often tend to play with the opposition between the role of the mother and prostitute by threatening the women in going to the social services and expose the immoral behaviour of the mother.

In the novel *Incidents in the Life of a Slave Girl* (1861), by Harriet Ann Jacobs, the slave mother, despite that her children are her attachment to life, she was aware that her exploiter knew that her life was attached to her children, thus, that he could maintain

her to slavery by treating her children (Sherman, 1990). In the majority of the cases, Romanian women live in a situation of transnational motherhood, in fact, being European Union's citizens, Romanian women do not have their children with them in the destination country, since they do not need to use motherhood in order to legalise their permanence in the country as Nigerian women. On the contrary, Nigerian women often assume their motherhood in the destination country also due to the necessity to be legally resident in the destination country. The role of mothers, on the contrary of Romanian women, permits them to become visible, not only due to the contact with the external world outside the network, but mainly with the all the service providers that care for the child.

Motherhood is shaped by the context of the relationship (Ruddick, 1989), in fact, in a situation of trafficking, motherhood can also be a burden, especially if it comes as a result of trauma or violence. This is another important aspect to consider on the difference between Romanian and Nigerian women, which is also connected with the legal entrance in the destination country. Nigerian women, in the past would mainly arrive by plane with a tourist visa, staying often illegal in Europe after the three months that were granted. On the contrary, nowadays, Nigerian women arrive in Europe, mostly through the Mediterranean, after a long travel in the desert, suffering high levels of abuse (IOM, 2017). Unfortunately, these abuses are often the cause of unwanted pregnancies, which influences directly the relationship between the child and the mother, especially since the child can be a constant reminder of the mother's trauma (Brotherton, 2016). Furthermore, motherhood being a legal instrument that avoids the deportation of Nigerian women has also been used and controlled by the criminal networks (Fernandez, Garzón, Juan & Contreras, 2017).

Motherhood is considered to be a factor of mutation in the embodiment of women (Söderbäck, 2010), especially since it is connected with a new identity that it is growing. The responsibility of this new life, which during the pregnancy is not detached from the body, but it is part of the woman's identity, gives to the women a new responsibility to protect. It is, in fact, during a situation of pregnancy that women start to feel the need to protect the baby, by protecting themselves (Bhandari, 2013). Furthermore, by being pregnant, women can feel for the first time that they are the owners of their own body and they have the power to be in control. Therefore, despite

that pregnancy in a situation of trafficking can be considered an added vulnerability, it can light the trigger for the first step to resilience.

According to Bracke (Bracke, 2016), resilience is experienced as an attachment to life, which can lead the person in returning to the original state, before a situation of trafficking. However, it is important to highlight that often the original state of the victim does not take the victim from a vulnerable state. In fact, despite that pregnancy can lead the victim into resilience, this resilience should be added to further assets, such as social, educational and cultural, often provided to the victims by the protection programs. Therefore, the ultimate resilience of the victim of trafficking is not only exiting from the exploitative situation, but being able to have control of her own life, evolving to a posterior state of resilience, different from the original state.

In conclusion, motherhood can be a resilient factor when it comes in the destination country, during the period of exploitation and it is assumed in its total shape. Otherwise, motherhood that is lived before the exploitative situation can be one of the push factors into a situation of trafficking, being in this case a cause of vulnerability. Once the woman is already in a situation of trafficking, “the sacrificed mother” tends to resist to the situation of trafficking, without trying to overcome it.

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