



AGREE PROJECT

Phase One: Desk Research

Catalonia. Spain



*With the financial support of the Prevention of and Fight against Crime Programme
European Commission - Directorate-General Home Affairs*



Desk Research by Daniel Garrell Ballester, Fundació Cipriano Garcia. Carried out within the framework of the AGREE Project.

Barcelona, 27th June 2014

INDEX

CHAPTER 1. Employment characteristics of the Spanish agricultural sector

- 1.1. Comparative analysis of employment in the agricultural sector by groups of origin*
- 1.2. Living and working conditions*

CHAPTER 2. Territorial analysis. Areas at risk

- 2.1 Andalusia*
- 2.2 Murcia*
- 2.3 Comunidad Valenciana*
- 2.4 Castilla La Mancha*
- 2.5 Aragon*
- 2.6 Catalonia*
- 2.7 Canary Islands*
- 2.8 Castilla y León*

CHAPTER 3. Human trafficking for purposes of labour exploitation and severe forms of labour exploitation in Spain

- 3.1 The 2008 ACCEM Study*
- 3.2 The 2012 Report by the Spanish Ombudsman*
- 3.3 Conclusions*

CHAPTER 4. The Spanish regulatory and legal framework

- 4.1. The transposition of Directive 2009/52*
- 4.2. The Spanish regulatory and legal framework*
- 4.3. An analysis of the jurisprudence and rulings on cases of severe forms of labour exploitation*

CHAPTER 1. EMPLOYMENT CHARACTERISTICS OF THE AGRICULTURAL SECTOR

In this chapter we will firstly attempt to offer a quantitative description of the presence of foreign workers in the Spanish agricultural sector and of the characteristics of the agricultural employment market for which we dispose of statistical data. We will then offer a description, necessarily approximate due to the lack of data, of the living conditions, mainly in terms of accommodation, and the working conditions of foreign agricultural workers, especially those migrants working in irregular conditions in Spain.

For our first objective, we will use what all specialists consider to be the best source of statistical data on the Spanish job market, the *Encuesta de Población Activa* (Economically Active Population Survey). This is a quarterly survey, carried out by the *Instituto Nacional de Empleo* (National Employment Institute), which publishes statistical data on Spain's working population and job market. It analyses a number of variables including the type of activity carried out by the company for which an individual employee works, the job or profession the individual workers carries out, and their contractual conditions, when applicable. These variables are subjected to a cross analysis with socio-demographic variables such as age, sex, nationality, country of origin in the case of foreign workers, and educational level.

Since this survey is the result of in-person fieldwork, in which subjects are interviewed at home, in a partially random way, it does have a certain ability to capture data related to irregular and informal employment, though probably not to a sufficient extent as to outperform any official administrative register.

We have also chosen this data source because we have the possibility of working directly with the original data matrix thanks to an agreement with the Instituto Nacional de Estadística (Spanish National Institute of Statistics). By processing the data in line with our information needs, we can measure in general terms the numbers and distribution of foreign workers in the agricultural sector, according to their place of origin and, in the case of the main collectives, also according to their nationality.

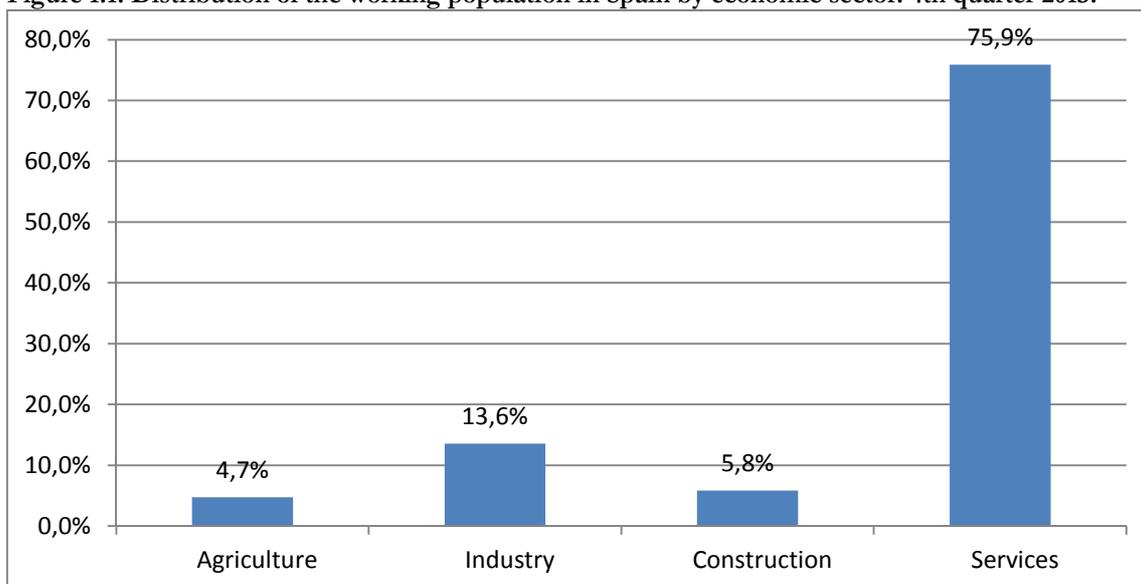
In any case, this statistical treatment has certain limitations when it comes to breaking down the data. In a country in which, as Figure 1.1 shows, the population employed in agriculture is less than 5% of the total employed population, if we disaggregate the data geographically, data insufficiency gives rise to a statistical error that invalidates it for the purposes of statistical validity. This is especially true in the case of the foreign working population, the number of which is logically lower than the total working population. This is a problem that we will come across again and again in this chapter.

Finally, we should point out that the data used in this report are extracted from the EPA (Working Population Survey) corresponding to the fourth quarter of 2013. These were the latest data available at the time of writing this chapter.

1.1. Comparative analysis of employment in the agricultural sector by groups of origin

As in the majority of European countries, the agricultural sector in Spain is the one that employs the fewest workers. As can be seen in the graph below, more than three quarters of the active working population works in the services sector while the agricultural sector accounts for only 4.7% of the total.

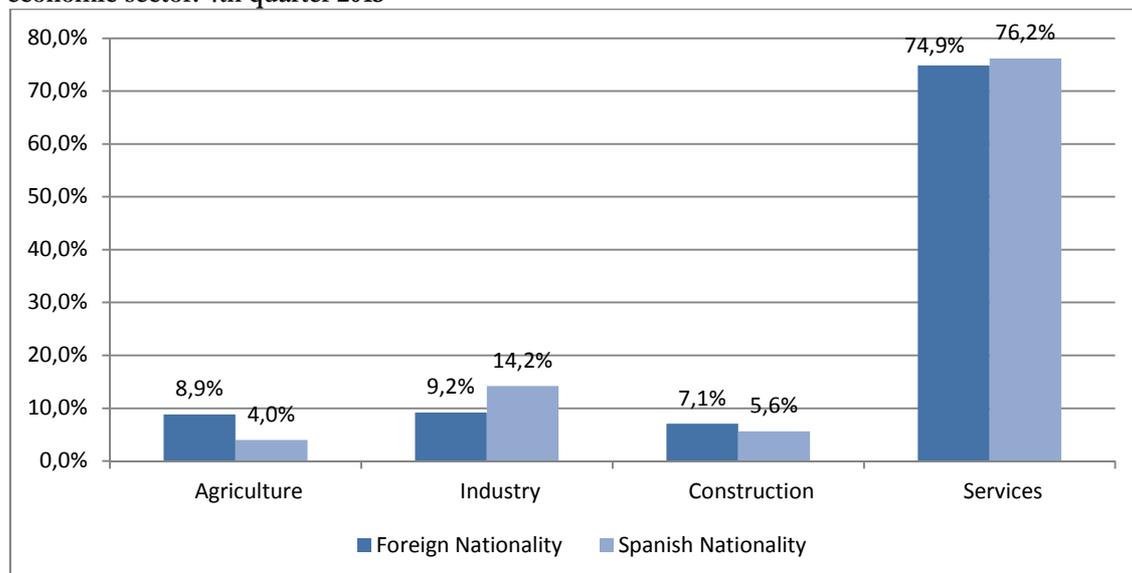
Figure 1.1. Distribution of the working population in Spain by economic sector. 4th quarter 2013.



Source: Economically Active Population Survey. Spanish National Institute of Statistics

On the other hand, if we compare this distribution in terms of workers of Spanish or foreign origin (Figure 1.2.), we observe that the percentage of foreign workers employed in the agricultural sector is more than twice as high as that of the working population with Spanish nationality, the percentage is also slightly higher in the construction industry, and lower in the industrial and service sectors.

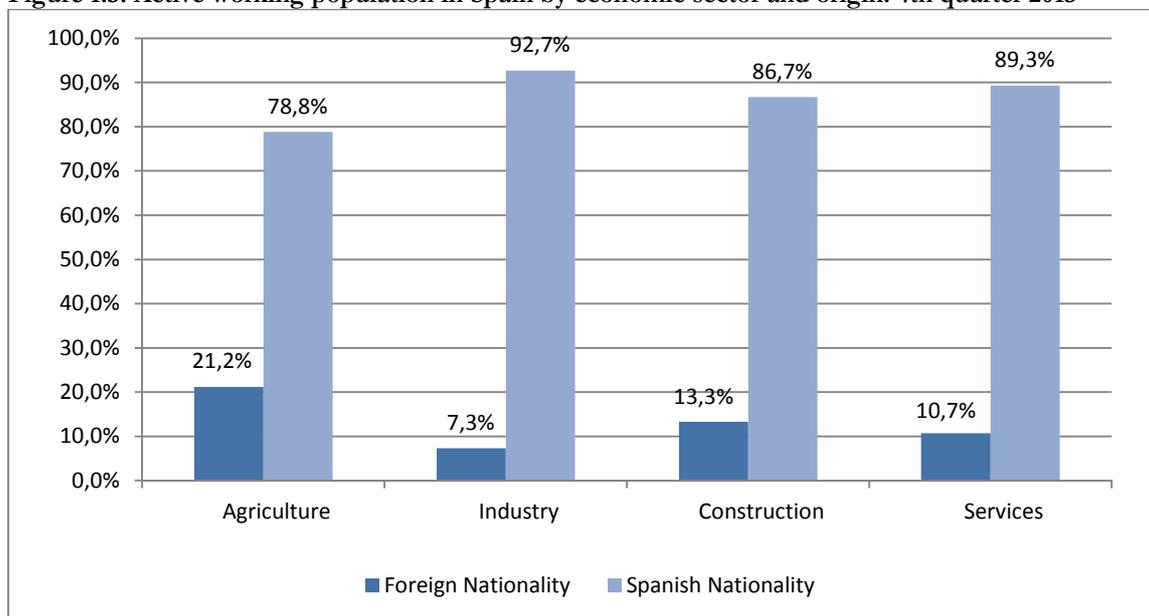
Figure 1.2. Comparison of the distribution of the Spanish and foreign working populations by economic sector. 4th quarter 2013



Source: Economically Active Population Survey. Spanish National Institute of Statistics

These differences in the sectorial distribution of employment by nationality logically imply a differential weight of the foreign working population in each sector. As the figure below shows, the presence of foreigners in agriculture is much higher than in other sectors and doubles the average percentage of active foreigner workers (10.9%).

Figure 1.3. Active working population in Spain by economic sector and origin. 4th quarter 2013



Source: Economically Active Population Survey. Spanish National Institute of Statistics

If we distinguish between active workers of non-EU and EU origin, we observe that the percentage of non-EU migrant workers is almost twice that of EU migrant workers, and that this difference only exists in the agricultural sector, though non-EU workers also have a greater presence in the services sector.

Table 1.1. Non-EU, EU and Spanish working population by economic sector. 4th quarter 2013

	EU nationals	Non-EU nationals	Spanish nationals	Total
Agriculture	7.8%	13.4%	78.8%	100.0%
Industry	3.6%	3.7%	92.7%	100.0%
Construction	6.8%	6.4%	86.7%	100.0%
Services	3.9%	6.8%	89.3%	100.0%
Total	4.2%	6.7%	89.1%	100.0%

Source: Economically Active Population Survey. Spanish National Institute of Statistics

Finally, if we compare the weight of each collective in the total population of foreign workers, we observe that the proportion of non-EU nationals working in agriculture and services is actually slightly higher than the average weight this groups has in the total population of foreign workers (61.3%), while it is lower than the average in industry and

construction. In contrast, the percentage of EU nationals in agriculture is lower than their average weight in the total working population.

Table 1.2. Percentage of EU and non-EU workers in each economic sector. 4th quarter 2013

	EU	Non EU	Total
Agriculture	36.9%	63.1%	100.0%
Industry	49.8%	50.2%	100.0%
Construction	51.4%	48.6%	100.0%
Services	36.4%	63.6%	100.0%
Total	38.7%	61.3%	100.0%

Source: Economically Active Population Survey. Spanish National Institute of Statistics

These data show that the population of active foreign workers in Spain has a considerable presence in the agricultural sector and that their level of engagement in this sector is the most important of all the sectors. They also show foreign workers of non-EU origin have a greater level of engagement in this sector than EU nationals.

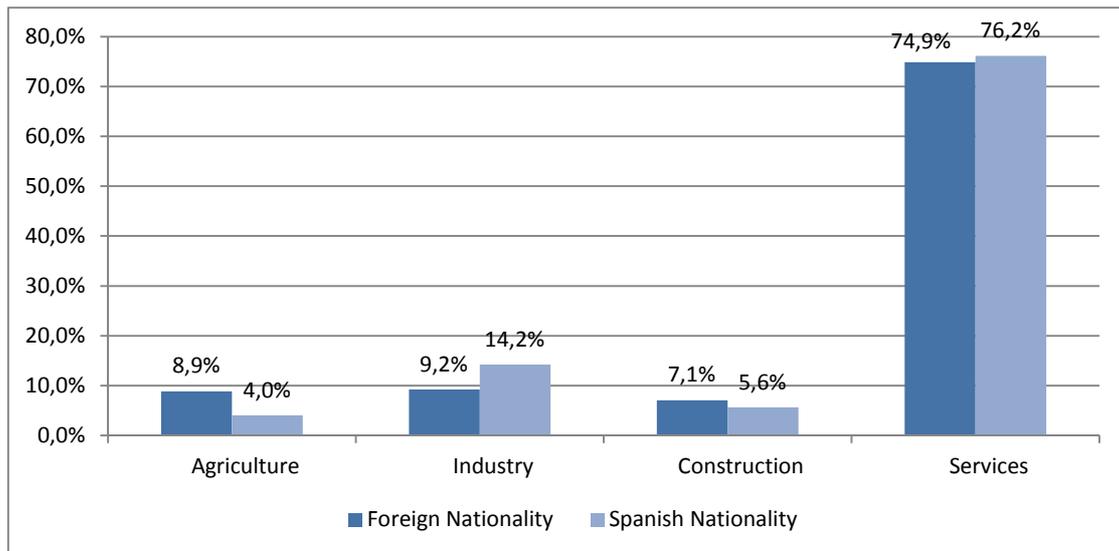
Agricultural work is also mostly seasonal in nature. As a result, temporary work is the most common form of employment.

At this point it's important to bear in mind that only 42.8% of the Spanish agricultural workforce are salaried employees. The remaining 52.7% are farm owners. The Spanish working population survey does not detect foreign nationals who are farm owners.

Although this 42.8% of salaried Spanish workers are also affected by temporary employment, the phenomenon affects different nationality groups differently. In the following graphs and tables we present data on temporary employment in the agricultural sector, broken down as much as the statistical validity of the data allows, with reference to the geographical origin and nationality of foreign migrant workers. But they will allow us to go beyond the simple weight of EU and non-EU workers and identify the continents or large geographical areas and countries of origin of the main collectives of foreign workers.

In figure 1.4 we can observe how temporary employments affects the foreign salaried employee population to a much greater degree than the equivalent Spanish population, with a difference of more than 10 percentage points.

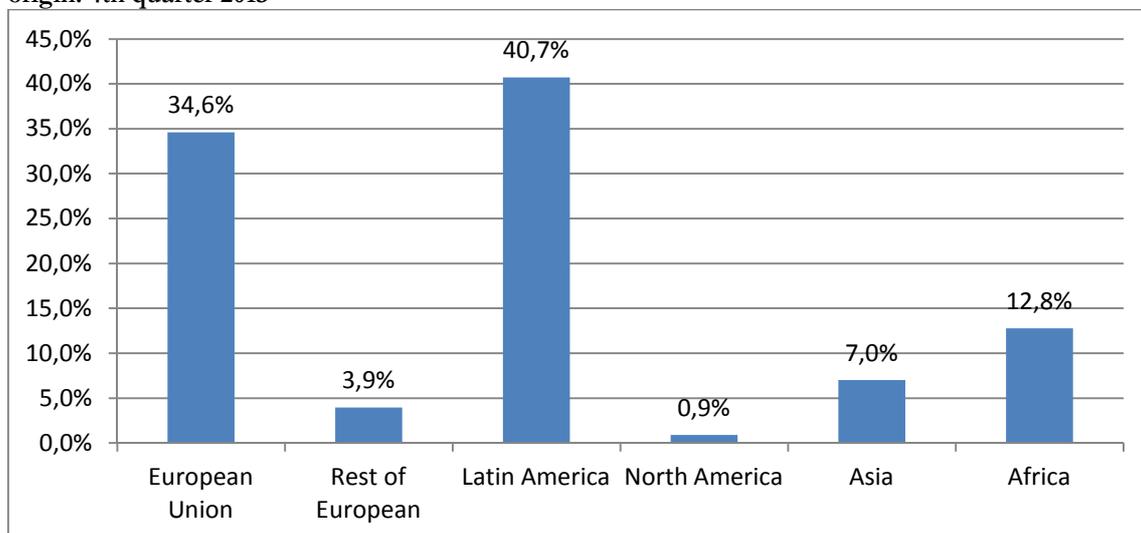
Figure 1.4. Rate of temporary employment in agricultural activities by nationality. 4th quarter 2013



Source: *Economically Active Population Survey. Spanish National Institute of Statistics*

The following figure shows the distribution of the foreign working population in Spain by origin. The areas used for this classification follow the standard geographical and political criteria used for public administration statistics. As we can see, the largest group is from Latin America, followed by EU nationals. The sum of these two groups accounts for three quarters of total foreign working population. The African collective stands out among the remaining groups.

Figure 1.5. Distribution of the foreign working population in Spain by large geographical areas of origin. 4th quarter 2013

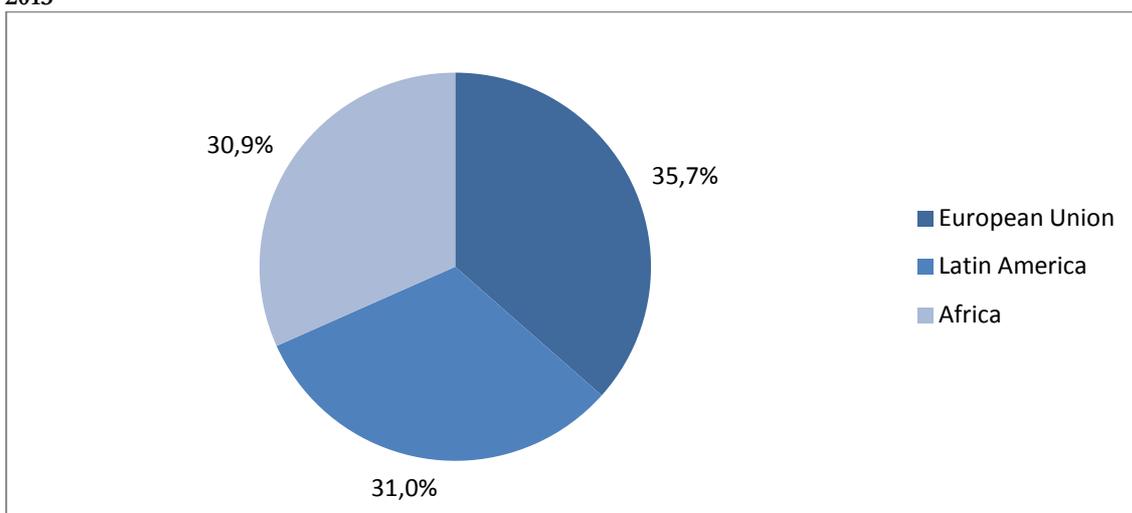


*Oceania as a geographical area has not been included in this graph since the corresponding figures are so low that they give rise to an unacceptable statistical error.

Source: *Economically Active Population Survey. Spanish National Institute of Statistics*

In contrast, if we focus only on workers in the agricultural sector, we can observe that the African group has an important weight within the total foreign population employed in the sector. Their weight is slightly less than that of the groups of EU nationals, which are the most important collective, and equals the percentage of Latin America workers who are not the main collective in the agricultural sector.

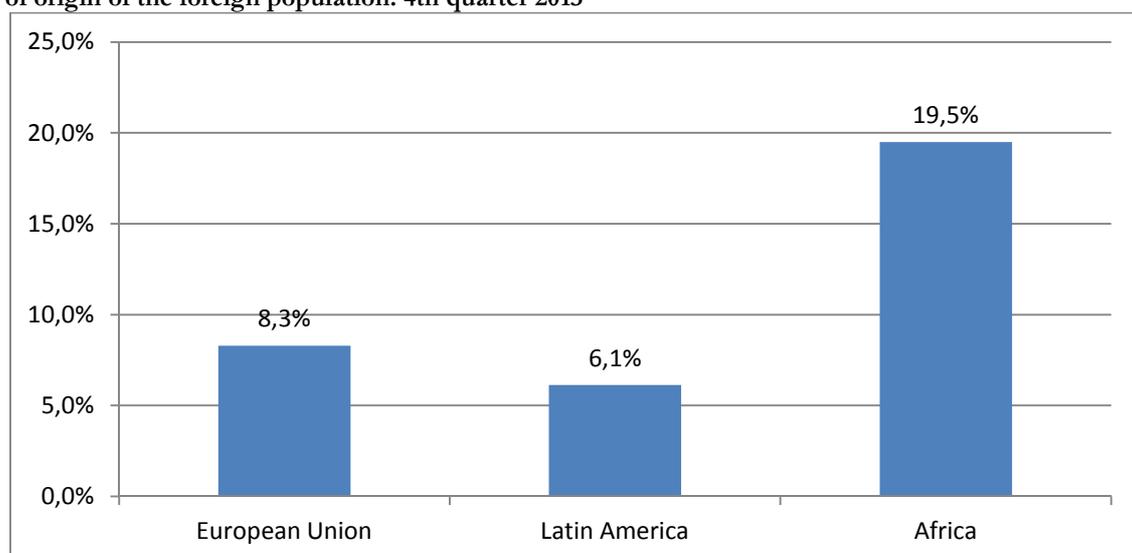
Figure 1.6. Distribution of foreign workers in the agricultural sector by area of origin. 4th quarter 2013



Source: Economically Active Population Survey. Spanish National Institute of Statistics

This difference between their weight in the total number of employees and their weight in the agricultural sector is related to the unequal involvement of each collective in this sector, as we can see in Figure 1.7.

Figure 1.7. Percentage of workers in the agricultural sector vs. the total working population by area of origin of the foreign population. 4th quarter 2013



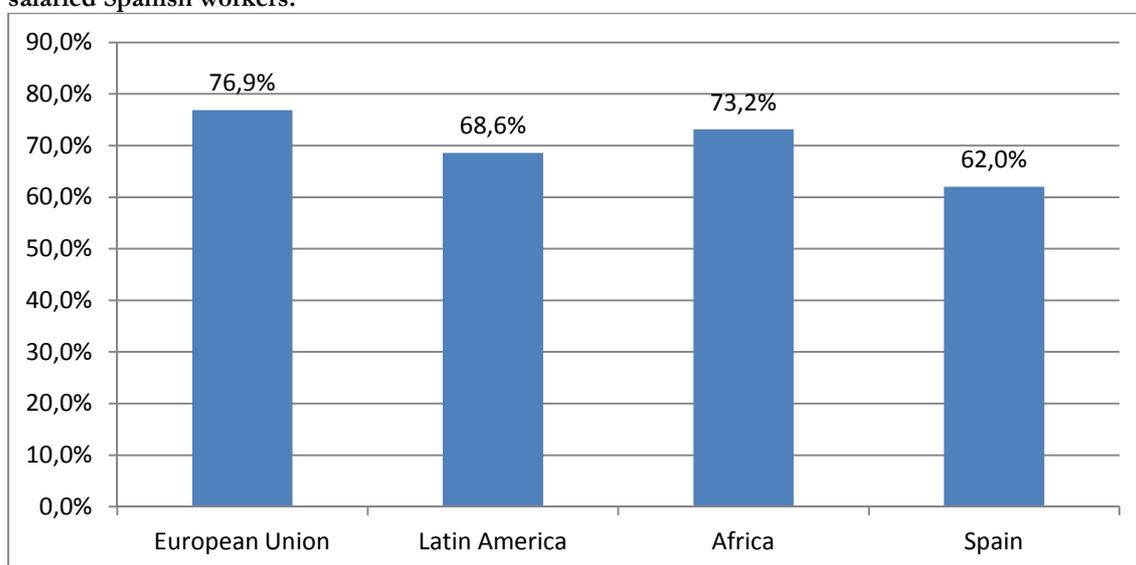
*Asia, North America and Oceania has not been included as geographical areas in this graph since the corresponding figures are so low that they give rise to an unacceptable statistical error.

Source: Economically Active Population Survey. Spanish National Institute of Statistics

As we can see, the number of Africans working in the sector more than doubles the number of EU nationals, and is three times that of the Latin American collective, therefore, despite being the fourth largest collective in the total foreign working population, its presence in the agricultural sector is as important as that of the EU national and Latin American groups.

The largest group of foreign workers in the agricultural sector is also the most affected by temporary employment. As we can see in Figure 1.8, more than three quarters of EU workers are working on a temporary contract, which is 15 points higher than the number of agricultural workers of Spanish nationality. Among foreigner workers, Latin Americans are those with the lowest rate of temporary employment.

Figure 1.8. Temporary work rates in the agricultural sector of the three main areas of origin and salaried Spanish workers.



Source: Economically Active Population Survey. Spanish National Institute of Statistics

If we break down these data even further, we can identify the national collectives with the highest number of migrant workers in Spain. In Table 1.3, we can see the distribution of the foreign working population in Spain by county of origin.

Table 1.3. Distribution of the foreign working population by country of origin. 4th quarter 2013

	Working population	Percentage of total
Romania	360,633	17.9%
Morocco	206,373	10.2%
Ecuador	141,517	7.0%
Colombia	95,522	4.7%
Bolivia	95,480	4.7%
Italy	75,698	3.8%
Argentina	70,573	3.5%
China	70,503	3.5%
Peru	61,290	3.0%
United Kingdom	59,077	2.9%
First 10 countries	1,236,666	61.4%
Remaining countries	776,865	38.6%
Total	2,013,531	100.0%

Source: Economically Active Population Survey. Spanish National Institute of Statistics

The Romanian group is the one with the largest number of employees and accounts for almost 18% of the total of foreign workers. The Moroccan and Ecuadorian communities are the other two groups with more than 100,000 workers. The top ten groups account for more than 60% of the total.

However, when we restrict the data to agricultural workers, our possibilities of analysis are reduced considerably. As we can see in Table 1.4., only four groups present figures that are acceptable from the point of view of their statistical validity, the other groups cannot be treated individually since the number of salaried agricultural workers is too low. As we can see, the foreign working population employed in agriculture in Spain, is mainly from four countries, one of which, Romania, is in the EU community, one, Morocco is African, and two, Ecuador and Bolivia, are Latin American. These four countries account for 80% of the total. The Romanian group alone, which has the largest number of foreign workers in the sector, makes up almost 30% of the total, while the percentage of Moroccan workers is close to that of the Romanian group.

Table 1.4. Percentage of salaried foreign agricultural workers by country of origin. 4th quarter 2013

Country	Salaried workers	Percentage of total
Romania	52,344	29.5%
Morocco	46,696	26.3%
Ecuador	31,678	17.8%
Bolivia	11,765	6.6%
Total four first groups	142,483	80.3%
Others	35,025	19.7%
Total	177,508	100.0%

Source: Economically Active Population Survey. Spanish National Institute of Statistics

The difference in the number of agricultural workers from each country is due to several factors that vary depending on the country of origin. In the following table, we can see the percentage of salaried agricultural workers from each national group. As we can see, the Moroccan collective is the one with the largest number of its employees in the agricultural sector; one in every four Moroccan workers is employed in agriculture, while the number of Romanian workers in agriculture is less than two out of every ten.

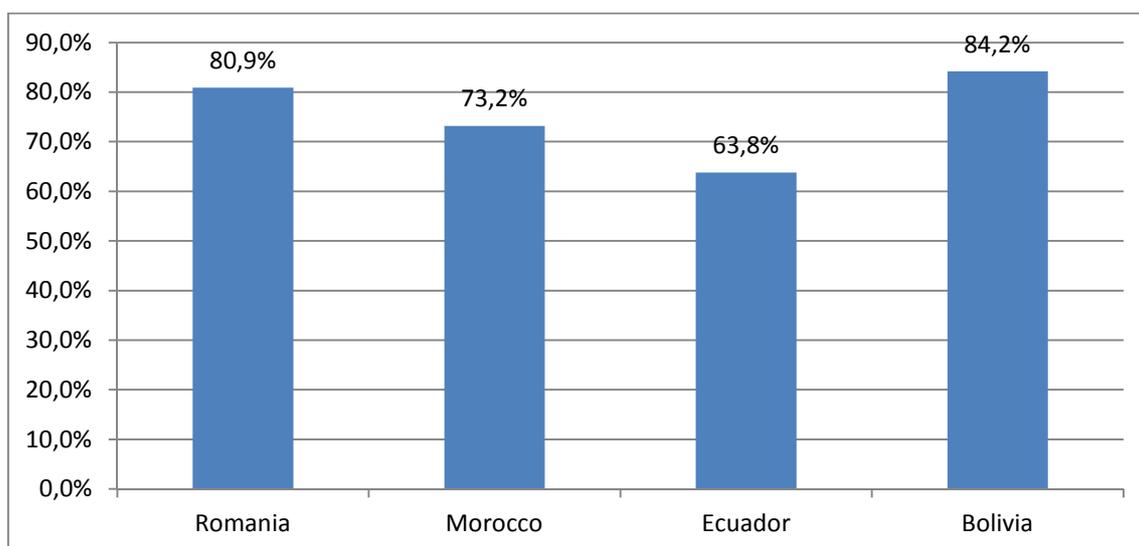
Table 1.5. Percentage of salaried agricultural workers vs. the total of salaried workers by country of origin. 4th quarter 2013

Country of origin	Percentage of total number of salaried workers
Romania	16.0%
Morocco	25.5%
Ecuador	23.7%
Bolivia	12.6%
Total four main countries	19.3%
Others	3.7%
Total	10.5%

Source: Economically Active Population Survey. Spanish National Institute of Statistics

Moreover, there are a number of important differences between these four groups. The Bolivian group is the one with the highest number of temporary contracts, followed closely by the Romanian group. In contrast, Moroccan and especially Ecuadorian employees have significantly lower rates of temporary work contracts. We should remember that the percentage of Spanish nationals employed on temporary contracts is 62.0%, only 1.8 percentage points lower than the Ecuadorian group.

Figure 1.9. Temporary employment rates in the agricultural sector of the four main groups of salaried workers. 4th quarter 2014



Source: Economically Active Population Survey. Spanish National Institute of Statistics

To summarise this chapter, we can say that the foreign working population has a higher rate of employment in agriculture than the Spanish population, and is a totally salaried

working population, while more than half of the Spanish population is engaged in agriculture as farm owners. There are more non-EU foreign workers than citizens of the European Union, although the Romanian group is the most important. The Romanian group is the first group of foreigners employed in all sectors and also the first in terms of salaried employment in agriculture. Moroccans are the second most important national collective in agriculture and more than a quarter of Moroccan workers are employed in the sector. Although the percentage of agricultural workers in the Ecuadorian group is almost as high as that of the Moroccan group, their presence in agriculture is lower because, overall, the group has fewer individual workers than the Romanian and Moroccan groups.

Temporary employment is more prevalent among agricultural workers of EU origin than in the African and Latin American groups. By country of origin, Moroccans and Ecuadorians have a lower rate of temporary employment than the Romanians and Bolivians. Ecuadorians have the same rate of temporary employment as agricultural as Spanish nationals.

1.2. Living and working conditions

We have no statistics, surveys or records to facilitate an evaluation of the living and working conditions of foreign agricultural workers. We only dispose of a number of qualitative reports, typically focussing on cases of forced labour exploitation and human trafficking, in which the cases of agricultural workers do not have a particularly significant presence. Judicial decisions referencing working conditions, and in a few cases, living conditions, can also be informative. This specific issue will be addressed in chapters 3 and 4 of this paper.

Based on knowledge generated by union work and institutional contacts in the field, we know that foreign agricultural workers usually live near farms. But there is an important difference between regular workers, who spend a long time settled in an area and work on farms which, due to the type of crop or combinations of crops, maintain a fairly regular activity throughout the year, and seasonal workers who appear in an agricultural area for a particular season or harvest.

Regular workers tend to be relatively well-integrated in their environment and normally form part of social networks with their own group of national origin. Their living conditions are generally comparable to those of the native population. The majority of the workers in this situation are Moroccan and Latin American, mostly of Ecuadorian origin, and in some agricultural areas there are also some sub-Saharan African communities. These are the groups that have spent the most time in the host country working on farms. They are mostly foreign workers who have work permits and long-term residence permits and in many cases have brought their spouses and children to Spain through family reunification processes. In some cases, when workers do not have long-term permits, their situation depends on them keeping their jobs and the corresponding work contracts, and loss of regulated work can result in a situation of illegality and, therefore, their general situation, including their living and housing conditions, may be jeopardized.

In the case of seasonal workers, however, their accommodation and living conditions during the working season are more closely linked to the specific agricultural holding on which they are working. In the cases of migrant workers who come to Spain legally for seasonal agricultural work, accommodation is included in the conditions of the employment contract and is usually controlled by both the labour administration and through inspections, carried out by the trade unions and employers' organizations involved in the design of the specific seasonal campaign. However, as we shall see, there may be

cases of breaches of the conditions of the contract that can go undiscovered for two basic reasons, lack of inspection and the employee's prospects of staying in the country after the end of the season. The latter consideration can persuade workers to accept worse conditions than those initially foreseen.

In situations of irregularity, i.e. workers without residence and work permits, cases of workers living in overcrowded housing, sometimes without basic sanitation, have been detected. In chapters 3 and 4 we will see how official complaints and inspections have discovered this kind of abuse by some employers, and also by intermediaries in cases of human trafficking for labour exploitation and cases that verge on the status of human slavery.

In terms of wages and working conditions, from the detected cases of extreme exploitation discussed later, based on judicial sentences and information gathered by trade unions, we can say that, in general, foreign workers tend to have worse working conditions than Spanish workers, though the possession of a residence and working permit is the key factor that separates exploitation and overexploitation. The situation of necessity, weakness and helplessness of foreign workers without permits, allows the employer and possible intermediaries to abuse them. In this sense, we see that most of the cases detected are related to extremely long working hours, lack of weekly rest, a lack of adequate safety and hygiene conditions and wages far below those stipulated in the applicable labour legislation. Cases of non-payment of wages and salary deductions in some cases by intermediaries, i.e. workers in situations of slavery or near-slavery and human trafficking, have been detected.

In any case, this aspect of abuse by employers and intermediaries is one of the factors to which we expect the findings of the field work to be performed in the 2nd phase of the investigation to make a significant contribution.

CHAPTER 2. AREAS AT RISK

To define the main agricultural areas of Spain, likely to be the scene of serious labour exploitation situations or human trafficking for labor exploitation, we will use as our criteria the percentage of people employed in agriculture and foreign workers employed in agricultural activities in each Autonomous Community (Spanish political region).

We will continue to use the Economically Active Population Survey of the Instituto Nacional de Empleo as our data source. The regional level is the maximum level for the breaking down of data that allows us to have valid data on employment in the agricultural sector, since, as we mentioned in the first chapter, it is a sector that employs a small percentage of the population of Spain. Furthermore, data from some regions cannot be taken into account since they offer excessive amounts of data subject to statistical error.

The following table shows the weight of the foreign agricultural working population in each region. As we can see, only eight regions have valid figures from the statistical point of view, the remaining seven regions and two autonomous cities have excessively low figures for an individual analysis. In any case, the eight regions for which we have valid data account for over 95% of all foreign employees in agriculture in Spain according to the Economically Active Population Survey (Economically Active Population Survey). This means that for the analysis purposes, we have data on virtually the entire foreign population employed in agricultural work.

Table 2.1. Salaried foreign workers in Spain by Autonomous Community. 4th quarter 2013

	Salaried foreign agricultural workers	Percentage of total
Andalucía	55,561	31.3%
Murcia	42,393	23.9%
Com. Valenciana	28,506	16.1%
Castilla La Mancha	11,216	6.3%
Aragón	9,135	5.1%
Cataluña	8,569	4.8%
Canarias	7,171	4.0%
Castilla León	6,758	3.8%
Total valid	169,309	95.4%
Others *	8,200	4.6%
Total salaried foreign employees	177,509	100.0%

*Seven regions and two autonomous cities.

Source: Economically Active Population Survey. Spanish National Institute of Statistics.

Table 2.2 shows the importance of agriculture in each of the regions included in this description, from the point of view of their weight in regional GDP and their importance in terms of regional employment.

Table 2.2. Weight of agriculture in the regional economy. 4th quarter 2013

	Agricultural production as a percentage of regional GDP	Employment in agriculture as a percentage of total regional employment
Andalucía	4.5%	8.8%
Murcia	4.9%	13.4%
Com. Valenciana	1.8%	3.4%
Castilla La Mancha	6.8%	7.9%
Aragón	3.9%	5.7%
Cataluña	1.2%	1.6%
Canarias	1.0%	3.8%
Castilla León	5.8%	7.2%
National average	2.4%	4.5%

Source: Economically Active Population Survey y Economía Regional de España. Spanish National Institute of Statistics.

Finally, Table 2.3 shows the temporary employment rate of salaried agricultural workers in each region.

Table 2.3. Temporary employment rate in the agricultural sector by Autonomous Community. 4th quarter 2013

	Temporary employment rate
Andalucía	83.1%
Murcia	59.7%
Com. Valenciana	67.6%
Castilla La Mancha	61.8%
Aragón	46.2%
Cataluña	36.2%
Canarias	43.1%
Castilla León	40.7%
National average	66.3%

Source: Economically Active Population Survey. Spanish National Institute of Statistics.

2.1 Andalusia

In this region, which spans the whole of southern Spain, agricultural production accounts for 4.5% of GDP, more than two points above the national average (2.4%). The main crops are grown on rainfed land, especially wheat, olive trees and vines. There is also a very important horticultural and fruit growing sector, in which most crops grown under plastic (in greenhouses).

Andalusia is the region with the largest number of foreign agricultural employees, who account for 31.3% of total number in Spain. 8.8% of the working population is employed in agriculture activities. 83.1% of the agricultural employees in this region are in temporary employment, the highest rate in Spain and seventeen points above the national average.

2.2 Murcia

The region of Murcia is located in southeastern Spain, on the Mediterranean coast between the regions of Andalusia, Valencia and Castilla la Mancha. Agricultural production accounts for 4.9% of the region's GDP, and, as in Andalucía, is more than two points above the national average. The main crops are horticultural products and fruit, both citrus and sweet fruit, with a major presence of crops cultivated under plastic (in greenhouses).

It is the region with the second highest percentage of agricultural workers, who account for 23.9% of the total for Spain. 13.4% of the employed population works in the agricultural activities sector, which is the highest percentage of population employed in the sector in Spain and three times higher than the national average (4.5%). 59.7% of the salaried employment in the region is of a temporary nature, more than six points below the national average.

2.3 Comunidad Valenciana

Located in eastern Spain, along the Mediterranean coast, between the regions of Murcia and Catalonia, Valencia has an agricultural GDP with a comparatively low weight in the total GDP of the region. Agricultural activities account for only 1.8% of total economic activity. It is a region with a more diversified economy than the previous two, with significant industrial activity and tourism and commercial sectors with major economic weight. Agricultural production is based on the cultivation of olives, grapes and almonds on non-irrigated land, and citrus fruits, especially oranges, and rice on irrigated land.

Foreign agricultural employees in Valencia account for 16.1% of the total for this group in Spain. Only 3.4% of the employed population works in the agricultural sector, one point below the national average. 67.6% of agricultural employment in the region is temporary, a figure that is very close to the national average (66.3%).

2.4 Castilla La Mancha

This inland region occupies most of the Iberian southern sub-plateau, and is bordered to the north by Castilla y León and Madrid, on the west by Extremadura, on the east by Aragon and Valencia, and on the south by Murcia and Andalusia. Agricultural production accounts for 6.8% of region's GDP, more than four points above the national average (2.4%). Arable land in this region is mainly rain-fed, and wheat is the main crop (37% of total agricultural production), along with olives, barley and vines.

Foreign salaried agricultural workers in the region account for 6.3% of the total for this group in Spain. 7.9% of the working population is employed in agriculture activities. The rate of temporary employment in the region is 61.8%, less than 6 points below the national average.

2.5 Aragon

Aragón is located in the north of Spain, bordered in the north by France, on the west by the autonomous communities of Castilla-La Mancha, Castilla y León, La Rioja, Navarra and in the east by Catalonia and Valencia. Agricultural production accounts for 3.9% of regional GDP, slightly above the national average. The arable lands are mostly rainfed and the main crops here are cereals and fodder.

It is the fifth region in terms of the number of foreign salaried agricultural workers, who account for 5.1% of the total for this group in Spain. 5.7% of the working population is employed in agriculture activities, more than one point above the national average (4.5%). The rate of temporary employment in the region is 59.7%, more than 6 points below the national average.

2.6 Catalonia

Located in the northeast of the Iberian Peninsula, Catalonia is bordered to the north by France and Andorra, to the east by the Mediterranean Sea, along a 580 kilometre long coastline, to the south by Valencia (Castellón), and to the west by Aragon. Agricultural production in Catalonia accounts for 1.2% of the region's total economic activity. It is a region with a highly diversified economy with a strong industrial sector and an important and diverse service sector. Agricultural production is also highly diversified. It has dry crops such as vines, cereals and fodder, olives and fruit as well as fruit and irrigated crops grown under plastic, especially strawberries and flowers.

Salaried foreign agricultural workers in this region account for 4.8% of their total group in Spain. Only 1.6% of the working population is employed in agriculture activities, almost three points below the national average. The temporary employment rate for salaried agricultural workers in Catalonia is 36.2%, well below the national average.

2.7 Canary Islands

The Canary Islands are a group of islands in the Atlantic Ocean which together constitute one of the seventeen autonomous communities in Spain. The archipelago is located in the north of Africa, off the coast of southern Morocco and the Sahara. Agricultural production in the region accounts for only 1% of regional GDP, and the service sector, especially tourism, is the main activity on the islands. The main crops are tropical: pineapples, bananas and avocados. Potatoes, grapes and greenhouse flowers are also grown. Foreign salaried agricultural workers in the Canary Islands account for 4.0% of their total group in Spain. 3.8% of the working population is employed in agriculture activities. The rate of temporary employment of agricultural employees in this region is 43.1%, twenty-three points below the national average.

2.8 Castilla y León

Castilla y León is located in the northern part of the plateau in the Iberian Peninsula and mostly corresponds to the Spanish part of the Duero basin. It is the largest autonomous community in Spain. To the north lie Cantabria, Asturias and the Basque Country, to the west it is bordered by Galicia and Portugal, to the east by La Rioja and Aragon, and to the south by Extremadura, Madrid and Castilla La Mancha. Agricultural production accounts for 5.8% of regional GDP, more than 3 points above the national average (2.4%). Agricultural production is on both rainfed and irrigated land. The main rainfed products are cereals, legumes, sunflowers and vines, while beets, potatoes, alfalfa and vegetables are produced on irrigated land.

Foreign salaried agricultural workers in the region account for 3.8% of their total group in Spain. 7.2% of the working population is employed in agriculture activities. The temporary employment rate of salaried agricultural workers in this region is 40.7%, twenty-six points below the national average.

CHAPTER 3. HUMAN TRAFFICKING FOR THE PURPOSES OF LABOUR EXPLOITATION AND SEVERE FORMS OF LABOUR EXPLOITATION IN SPAIN

Both the phenomena of Trafficking for Labour Exploitation and Overexploitation or Severe Forms of Labour Exploitation are, by definition, difficult to detect and it is impossible to obtain sufficient high quality quantitative data to help us to gauge their extent. We are dealing with the underground economy in which activities are not registered or detected in general statistical estimates.

That is why the approaches that have been made to the phenomenon in Spain are based on interviews with professionals working in this area and data derived from the records of complaints, registered by both public administration offices and the police and criminal justice systems.

Given the scarcity of existing sources of data on this phenomenon in Spain, we have selected data from these two main sources of information those have investigated this issue in depth, using interviews with professionals, court records, and reports by Social Security and Labour Inspectorates.

Firstly, in this chapter, we present the conclusions and most noteworthy aspects of a study published in Madrid in 2008, by ACCEM entitled *Human trafficking for labor exploitation*. ACCEM is a nongovernmental organization that provides support, advice and assistance to refugees, migrants and people experiencing or at risk of social exclusion. The study was funded by the Spanish Ministry of State for Immigration and Emigration.

Secondly, we have consulted the report of the Spanish Ombudsman, published in Madrid in 2012, and entitled *Trafficking in human beings in Spain: invisible victims*. The Ombudsman is the Parliamentary High Commissioner responsible for defending the fundamental rights and civil liberties of citizens by monitoring the activity of public administrations.

3.1 The 2008 ACCEM Study

The first general idea posed ACCEM is the difficulty demonstrated by both the respondents and the documentation used for the study, to distinguish between **Human Trafficking for Labour Exploitation**, and **Severe Forms of Labour Exploitation** or **Overexploitation**. In fact, in the study itself, it is often difficult to distinguish whether they are talking about trafficking or overexploitation.

Trafficking is particularly difficult to detect, although the known cases seem to indicate the existence of a higher undetected volume. The main reason is that the detection of cases of **Human Trafficking for Labour Exploitation** (hereafter TFLE) mainly depends on the existence of some kind of official labour or criminal complaint or report, and victims generally do not report their cases for the following reasons:

- ◆ Lack of knowledge of the language of the country of destination
- ◆ Lack of knowledge of existing rights and measures of public protection
- ◆ Economic necessity
- ◆ Debts to the trafficking network

◆ Threats and coercion

The most vulnerable groups are those from countries with no tradition of emigration to Spain. However, when there is a significant presence of immigrants from the country of origin, newcomers may have received prior information before starting their journey. They also find it easier to relate to their environment through the presence of compatriots who have already settled in the area and who can act as complementary sources of information. This is the case of Ecuadorians and Moroccans in Spain. These groups have social networks of family and friends that can facilitate their entry into the social environment and labour market, even though the work they find may be irregular. Most interviewees consider that, not only are these cases not cases of TFLE, but that Severe Forms of Labour Exploitation are less likely to happen in this context. The authors conclude that both TFLE and Severe Forms of Labour Exploitation are closely related to the evolution of the migration and immigration policies of the host country.

The profile of a prototypical victim, according to interviewees, is a middle-aged man with a low level of Spanish language skills and a low educational level. However, according to UCRIF¹, the number of female victims of severe forms of labour exploitation is increasing in domestic service and agriculture.

Regarding geographical origin, the collectives with the largest number of victims are from South America, Eastern Europe and Sub-Saharan Africa. But the most extreme cases of exploitation, with situations of near slavery, have been detected in the Chinese collective. Most respondents feel that cultural differences are an important factor in this case, since job insecurity is the norm in industrial relations in China.

There have also been cases of EU citizens from Portugal with a marginal profile and people of Angolan and Brazilian origin with Portuguese passports who are completely ignorant of Spanish labour regulations and the public protection to which they are entitled.

Most respondents believe that the actions of organizations dedicated to TFLE in Spain are exceptional, and that the most common situation is a severe form of labour exploitation. This is caused by the abuse by some individuals and companies of the position of weakness produced by the illegal status of those immigrants who have neither residence nor work permits. Nevertheless, the authors of the study consider that some of the conditions detected may be indicative of cases of TFLE. These are cases that have been reported to the authorities, usually by trade union organisations,

And have proven to be cases in which a climate of social isolation and fear have been created, along with cases of limitation of movement combined with induced mistrust towards the authorities, passport retention and even threats to the immigrant's family.

The figure of the intermediary, whether as part of a network or simply as a person who puts the irregular immigrant in contact with businesses willing to hire workers without a residence permit in exchange for working conditions that are inferior to those that he or she is legally entitled to. These intermediaries can also be legally constituted businesses that, apart from their legal activities, also carry out these illegal acts of intermediation.

Regarding the role of employers, while their ignorance of the abusive actions of some intermediaries is a possible consideration, it has been proven that there are employers who are aware of it. But beyond that, working conditions and the need for a residence permit are responsibilities that employers cannot elude. The reason for employing workers without work permits, whether they are subject to or not trafficking, is to impose working conditions that are inferior to those required by the legal framework established by applicable labour laws and collective bargaining agreements. Many entrepreneurs justify

¹ The anti-Illegal Networks, Illegal Immigration and Document Forgery Unit of the Spanish National Police

themselves by saying that they are doing the immigrant without a work permit a favour, since he or she does not have access to legal employment, and many victims think the same. This is one reason, along with the fear of deportation, for the fact that there are no official complaints. The situation is only reported when the worker without a work permit believes that the situation is unsustainable and he or she has no other alternative.

In this sense, we must take into account of the fact that the framework in which severe forms of exploitation takes place is the same as that of undeclared work or irregular work in general. Undeclared work is accepted by the employee, who often has no other choice, but can also be in the form of a second job that supplements his or her regulated work. For the employer it is a way to reduce costs by not paying taxes or Social Security contributions. But when the worker's situation is one of obvious weakness, many employers add the element of overexploitation, with both foreign and Spanish workers. The fundamental question is whether or not the employee has an alternative.

That is the fundamental difference between overexploitation or severe forms of exploitation and unregulated work. Unregulated work does not, in itself, imply working conditions that are worse than those stipulated by regulations or collective bargaining agreements. It may even be the case that the worker also benefits from the non-payment of taxes, thereby achieving a net remuneration higher than that obtained for declared work, while obviously not paying contributions in exchange for social benefits, such as a pension or unemployment benefit, and that is a distinct disadvantage in the medium and long term. Overexploitation or severe forms of labour exploitation begin when working conditions are abusive, working days are systematically longer or interminable, wages are much lower and there are no rest days, among other factors.

Foreign workers without a residence permit are in an especially weak negotiating position, which makes it possible for their unregulated work situation to become one of severe labour exploitation. In most detected cases of severe forms of labour exploitation involving immigrants, the conditions of the immigrant's place of residence were very precarious. These were quarters in poor condition, with overcrowding or a far higher number of residents that is reasonable and, in many cases, at the place of work.

Added to the abuse suffered by workers without residence permits, they are in some cases also victims of scams related to the processing of work and residence permits in exchange for money or entering into a debt agreement.

Finally we must take into account cases of non-EU workers who come to Spain legally, with residence and work permits, but are also subject to severe forms of labour exploitation. In the Spanish legal framework, there are three types of contracts for this type of worker, based on bilateral agreements between Spain and the country concerned:

1. A *quota of foreign workers* to cover vacancies that are not easily covered by the Spanish labour force.
2. The recruitment of temporary workers for specific seasonal agricultural activities.
3. *Nominative recruitment* in the country of origin based on bilateral agreements between Spain and the country concerned.

These are mechanisms that ensure access to employment in Spain, in terms of legality, and, formally at least, guarantee working conditions in line with Spanish legislation and decent housing conditions. Despite this legal framework, cases have been detected in which the working and living conditions are far inferior to those that were offered initially, with interminable working days, wages that are far lower than is normal in the industry and working characteristics far more onerous than those offered initially. The problem is that their work permits are tied to the performance of the work for which they were hired, and

if there is no union control or intervention by labour inspectorate officials, abuse is a real possibility. It is important to bear in mind that many of the foreigners entering Spain in this way aim to remain in the country after the finalization of their initial contracts. The prospect of continuing to work in the same place, or to be provided with another job that allows them to renew their permit, is a weapon in the hands of employers and intermediaries to make these workers accept abusive conditions. Moreover, if they do not return to their countries of origin once their initial contracts and permits have finalized, as we stated in Chapter 1, they find themselves in a situation of irregularity with everything that it implies for their chances of becoming victims of exploitation.

The main sectors in which severe forms of labour exploitation have been detected are the hotel and catering industry, commerce, construction and agriculture. According to most interviewees, the sector with the highest number of such cases is agriculture, although data from the Spanish Work Inspectorate suggest that there are more cases in the restaurant and hotel industry. This difference between the perception of the professionals working in the field and the work inspectorate data may be due to the greater degree of *invisibility* of this situation in agriculture. What the data analysed in Chapter 1 tells us is that the percentage of foreign workers in the agricultural sector is higher than in any other sector. We also know that the temporary and seasonal nature of farm work facilitates a mode itinerant mobility in which abuse can multiply.

3.2 The 2012 Report by the Spanish Ombudsman

This report, entitled *Human Trafficking in Spain: Invisible Victims*, is based on the complaints received by the Spanish ombudsman institution, visits made by the institution and by other Spanish and international public institutions and cases detected by trade unions and other entities belonging to the Spanish Network to Combat Human Trafficking. This information was complemented by the records of the Spanish Labour Inspectorate and from police operations against human trafficking for the purposes of labour exploitation.

According to the report, cases of severe forms of labour exploitation and a number of cases that could constitute TFLE were detected in 2011. However, it proved impossible to interview victims and no direct complaints were received from victims. That is why the data from the inquiries have been used.

According to the data gathered, between 2009 and 2011, only 21 cases of TFLE were detected in Spain, although every year more than 100 cases of the severe forms of labour exploitation of foreign workers were detected. In 68% of these cases, the victims did not take up the option of requesting the recovery and reflection period provided for by the Spanish Immigration Act. Fear of retaliation and of actions brought against them by the Spanish authorities are the main reason for not taking up these measures. Therefore, the Ombudsman institution suggested a number of measures with the aim of improving this situation:

1. Increase the involvement of the Spanish Labour Inspectorate in the detection of forms of severe exploitation of immigrant workers.
2. The creation of an integrated plan to combat TFLE.
3. Lengthen the time between the victim's period of recovery and the decision to cooperate with the authorities.
4. Ensure that the authorization of residence of the victims is a guarantee of their protection.

3.3 Conclusions

The ACCEM study and the report by the Spanish Ombudsman coincide on the following aspects of the phenomenon in Spain:

This is a phenomenon that is difficult to detect, especially cases liable to be classified as human trafficking, but there are also difficulties in detecting cases of severe forms of labour exploitation due to the lack of cooperation by the victims. This lack of collaboration is due to the extreme weakness of their position and their ignorance of their environment, both terms of their legal rights and duties, but also in terms of the local language and culture. Ex officio action by labour, judicial and police administrations, together with the involvement of social support organizations, especially trade unions, together with compensation for legal cooperation, seem to be, at present, the paths most likely to lead to success in this field.

CHAPTER 4. THE SPANISH REGULATORY AND LEGAL FRAMEWORK

4.1. *The transposition of EU Directive 2009/52*

Directive 2009/52 of the European Parliament and the Council of Europe ‘providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals’, was incorporated into Spanish legislation through Organic Law 2/2009 of 11 December, ‘The Reform of Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration’. The objectives of this reform were:

1. To incorporate the jurisprudence of the Constitutional Court that is contrary to the restriction of a number of fundamental rights, such as the right to assembly, association, union membership and to strike, only to foreigners with work permits.
2. To adapt the law to the changes in the phenomenon of migration in Spain.
3. To incorporate in Spanish law the EU directives on immigration that were totally or partially pending transposition, especially those aimed at combating irregular immigration, as is the case of Directive 52/2009/CE and Convention 197 of the Council of Europe.

It is important to note that many of the issues that are regulated by this directive, were already covered by Spanish law, by Law 4/2000 or by Royal Decree 2393/2004 of 30 December.

Below we highlight the aspects of the Directive 52/09/CE that have been transferred to Organic Law 4/2000 that are related to the severe forms of labour exploitation of foreign workers and trafficking for labor exploitation.

Among the general premises are the employer's obligation to request authorization for the foreign worker to reside and work in Spain before the hiring process is finalised, and the specification that when a breach of this obligation is detected, the penalty shall be for the employer, not the workers, and that the labour rights and benefits that the foreign workers have gained through their employment will be respected, except the right to unemployment benefit.

Infractions

The infringements of corporate obligations to foreign workers are classified as serious or very serious. Serious violations include the failure to register the foreign worker for the corresponding Social Security System scheme or failure to register the contract in the appropriate register.

The following infractions related to the recruitment of foreign workers are considered to be very serious:

1. To induce, encourage or facilitate illegal immigration for profit.
2. Discrimination on racial, ethnic, national or religious grounds.

3. The recruitment of foreign workers without having obtained prior authorization to live and work in Spain. An infraction is committed for each worker recruited.
4. To simulate a working relationship with a foreigner, when it is done for profit.
5. The transportation of foreigners (by any means of transport) to Spanish territory without checking the validity of their passports or visa when required.

If the sanctioned employer is a subcontractor, the primary contractor and intermediary subcontractors that were aware of the fact that this company hired unauthorized workers will both be liable for both the sanctions and their responsibilities to the administration and the employee.

Use of the optional aspects of the policy

Article 15 of Directive 2009/52/CE leaves it to member states' discretion to adopt dispositions that are more favourable to the nationals of third countries to whom this policy is applied. In Spain, this optional aspect is reflected in Organic Law 2/2009 of 11 December which modified article 59 B of Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration.

The reformed Article 59 of the Organic Law 4/2000 on cooperation against organized networks, incorporates the possibility that the victim of illicit trafficking for labor exploitation should be free from administrative liability and should not be deported, when the victim denounces the perpetrators of or collaborators in the crime and cooperates with the authorities. If there is such collaboration the victim will be granted temporary residence and work permits. This is where the period of reflection for cooperation with the authorities is introduced through the incorporation of the amended Article 59 B, entitled "*Victims of human trafficking*." The administrative bodies that authorize the disciplinary proceedings will inform the competent authority of the period of recovery and reflection when they consider that there are reasonable grounds for believing that they are dealing with a case of human trafficking. This period will last a minimum of thirty days and during this time, the victim will be granted temporary residence and the disciplinary or deportation proceedings will be suspended. During this period the authorities will ensure the victim's subsistence and protection, while facilitating his or her assisted return to his or her country of origin or an authorization of residence or work for exceptional circumstances, in exchange for their cooperation.

4.2. The legal framework in Spain

A report on human trafficking for labour exploitation in Spain, conducted by the Gabinet d'Estudis Socials (GES) and funded by the Programme for Preventing and Combating Crime of the Directorate of General Affairs of the European Commission, was presented in August 2013. Among other contributions, the authors present an overview of the legal treatment of human trafficking for labour exploitation in Spain. In this section we will use this work as our basis, since it provides a summary of the contemporary Spanish legal framework for combating trafficking for labour exploitation.

The first thing to bear in mind is that Spain ratified the so-called Palermo Protocol to prevent and combat human trafficking, supplementing the United Nations Convention against crime and organized crime, signed on November 15, 2000. and, more importantly, it recently ratified Convention 197 of the Council of Europe Convention on Action Against Human Trafficking signed in Warsaw on May 16, 2005, which, as we have seen,

was one of the references used to update the country's immigration laws, but also to update the Spanish criminal code through Organic Law 5/2010 of June 22, in which trafficking in human beings is typified as a crime and is differentiated from simple illegal immigration for the first time.

In accordance with this update, to be considered a criminal offense, an activity of human trafficking for the purpose of labour exploitation it must bring together a number of elements:

1. The offence must be linked territorially to Spain, in the following ways:
 - The criminals operate from Spain. The process is managed from Spain with the aim of bringing the victims to the country for the purpose of labour exploitation or to send them on to a third country.
 - Part of the offense is committed in Spain; for example, the transport of the victim.
 - Spain is the final destination, where the exploitation of the victim takes place.
2. The instruments and resources used for achieving the planned goals are defined:
 - Violence and intimidation or any form of coercion such as violent kidnappings or threats of violence to family members.
 - Deception, fraud or fraudulent actions.
 - Abuse of a position of weakness need or vulnerability of the victim, in which the victim has no choice but to yield to the abuse, including payment of services such as transportation. Those who collaborate in the abuse are considered to be an accessory to the crime.
3. The crime is committed on people, regardless of their condition. Neither the legal status of the victim, nor their nationality, nor their EU or non-EU status, nor their possession or not of a residence permit is of importance. Therefore, trafficking also exists in cases in which the victim has a residence and work permit.
4. The following types of actions are considered to be crimes of human trafficking:
 - The recruitment or “capture” of the victim employing any of the instruments described previously.
 - The transportation or entry of victims into the country, understood as an action of intermediation and interpreted in a broad sense.
 - Providing accommodation as an act of intermediation. This includes the reception of the victim and the “transfer” of the victim from one criminal to another.
 - Receiving the victim, either directly, waiting at a contact point, or getting the victim delivered by the dealer to the point where he or she is to be located.
5. The actions carried out should be for the purpose of the crime of human trafficking for labour exploitation. Adopting the approach used internationally, according to which labour exploitation exists when there is the imposition of forced labour or services, slavery or practices similar to slavery, servitude or beggary. A criminal offense will be considered to exist when any of the actions mentioned above are carried out, regardless of whether they end in the successful implementation of labour exploitation.

For these cases, Article 177 B of the Spanish legal code establishes sentences of five to eight years in prison. More severe sentences are provided for the following cases:

- When the victim is in danger as a result of the actions involved in trafficking.
- When the victim is a minor.
- When the victim is especially vulnerable due to illness or handicap.
- When the actions are carried out by a person with public authority or who belong to the public administration.
- When the individuals sentenced belong to a professional association, a registered trade mark, an association of more than two people, an industry or a business.
- When the criminal activities described are performed by a legal entity.

Moreover, enticement, provocation and conspiracy to commit the offence are punishable by less severe sentences than those applied to offences of human trafficking.

These additions are not limited only to the scope of human trafficking but extend to the legislation on labour exploitation. Articles 311 and 312 of the Criminal Code define the practices that should be considered:

- Forcing workers to work in harmful conditions, or in detrimental situations with regard to the social security system (Art. 311 of the Penal Code). The sentences to be imposed range from 6 months to 3 years in prison, and a fine for those who, through deception or the abuse of a position of need, impose on those working in their service, working conditions or Social Security conditions that impair, suppress or diminish their rights.
- Providing inferior working conditions for foreign nationals without valid work permits (Article 312.2, section 2) in order for them to provide a service in worse conditions than those to which they are legally entitled, depriving them of their rights under the applicable collective bargaining agreement or employment contract, will be liable to a sentence of imprisonment ranging from two to five years.

With regard to the crime of trafficking, understood as being the recruitment, transfer or receipt of persons from their place of residence to another place by any means for the purposes of labour exploitation in conditions of slavery or servitude, in March 2010, the Spanish Secretary of State for Security issued Instruction 1/2010 implementing the procedure for the detection of victims of human trafficking and the application of the recovery and reflection period provided by law, until new regulations are applicable for the implementation of organic Law 4/2000.

The Spanish General Commission for Immigration and Borders published a service note to different police units specifying the actions to be carried out with victims of human trafficking, implementing a model of the proposal for a period of recovery and reflection.

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

Moreover, Organic Law 4/2000 was amended again by Organic Law 10/2011 of July 27, in order to extend to the children of the victims the protection that is given to female victims of trafficking who agree to report their exploiter. This protection also extends to any other person who has family ties or bonds of a different nature with the victim at the time of certifying his or her defenseless against the traffickers. It also establishes the obligation of justifying the denial of this period of reflection, as well as the right to administrative appeal.

Regularization through social and labour integration and collaboration with the administration

Spanish law provides for three ways for foreign workers to regularise their situation when they are working illegally in Spain. They are the result of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration and, especially, of its amendments in 2001, 2004 and 2009. The legal concepts established are: Social Settlement, Labour Settlement and Collaboration with the Administration.

Social Settlement is a concept that existed in the first version of Organic Law 4/2000, although it was partially modified in 2004. The other two concepts were incorporated in the 2004 amendment following a proposal of the trade union Comisiones Obreras de Catalunya and the Spanish Ombudsman.

1. *Social Settlement*: According to this legal concept, a foreign worker who can demonstrate three years of residence in Spain, provide a contract of employment signed by the employer and a social integration report issued by the regional government, or local council in some autonomous communities, will be issued a renewable residence and work permit that is valid for one year. The term of three years of residence is an amendment introduced in 2004, as the first version of the law stipulated a residence period of five years.
2. *Labour Settlement*: According to this legal concept, a foreign worker who can demonstrate two years of residence in Spain and a minimum period of 6 months employment without a contract will be issued a renewable residence and work permit that is valid for one year. The term of six months of employment is an amendment introduced in 2009 following a proposal by the trade union Comisiones Obreras, since the 2004 version of the law stipulated an employment period of one year.

This period of employment can be demonstrated in two ways:

- a. By a court ruling or conciliatory settlement in court that recognises it.
 - b. Through an administrative ruling confirming an infraction accredited by an inspection by the Work and Social Security Inspectorate.
3. *Collaboration with the Authorities*: A foreign worker can obtain a residence permit, without having to prove a specific period of residence in Spain if he or she is collaborating with the administrative, police, fiscal or legal authorities. These authorities are responsible for requesting that the competent authorities proceed to grant the permit.

In the 2009 amendment, and also acting on a proposal by the trade union Comisiones Obreras, the concept incorporated the possibility of collaboration specifically with the Inspectorate of Work and Social Security, since they considered that this section of the public administration had an especially important role to play in combating the overexploitation of foreign workers. If the employee agrees to cooperate with the authorities after making a complaint to the Labour Inspectorate, a complaint that the worker can make through a trade union, the Labour Inspectorate acts in such a way that the employer does not know that there has been complaint. In this case the inspectorate writes a report recommending the granting of a residence permit and the worker must then apply for a work permit.

In the cases of Labour Settlement and Collaboration with the Authorities, if the employer decides to fire the employee, the labour courts will consider it to be unfair dismissal with the corresponding rights to compensation, provided employment can be proven in court through material evidence or witnesses. The worker is not entitled to receive unemployment benefits at the time of dismissal, but the period of employment acknowledged generates entitlement to benefits that will be added to subsequent employment contracts.

It is important to highlight the value of the protocol for the Framework of Protection for the Victims of Human Trafficking, signed by the Ministries of Justice, Interior, Labour and Immigration, Health, Social Policies and Equality, the General Council of the Judiciary and the Public Prosecutor, for the joint action of all the state authorities involved. This protocol sets out forms of collaboration between the government and the social organizations that are in contact with the phenomenon.

In the Autonomous Community of Catalonia, an agreement was made with the UCRIF of the National Police for a model of how the complaint to the Labour Inspectorate should be handled in order to avoid the opening of a deportation order on the foreign worker. During the process, the police must consider the worker to be the victim in the police investigation and a process of regularization will be initiated for the special circumstances mentioned above.

4.3. An analysis of the jurisprudence and rulings on cases of severe forms of labour exploitation

We have decided to begin this review of the rulings on the labor exploitation of foreigner workers in 2010, since we are interested in evaluating the effects of the Reform of Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration, which dates from December 2009, and the amendment to the criminal code through Organic Law 5/2010, which was published on June 22, 2010.

The first thing to note is that **none of the sentences in the body of jurisprudence consulted involve cases of the labour exploitation of foreigner working in agricultural activities**. The cases consulted do not affect agricultural workers, employers or businesses. Notwithstanding, there follows an analysis of the body of jurisprudence from 2010 to the present which, though involving cases in other economic sectors, may give the reader an idea of the trends in the implementation of the current legislation on human trafficking for labour exploitation.

We focus particularly on the sentences in which a criminal offense has been committed and therefore the criminal code as it relates to *crimes against the rights of foreign citizens* and *crimes against the rights of workers* was applied.

The results recorded for Crimes against the rights of foreign nationals are for crimes of human trafficking or human smuggling. No convictions were recorded, usually due to lack of evidence for the particular offense, except for a number that are related to sexual exploitation, in which trafficking for exploitation in prostitution is considered to be proven.

Referring to judicial results of crimes against the rights of workers, we found a majority trends as well as some rulings that contradict, at least in part, the majority trend.

In most of the cases analysed, the employment of foreign workers without work permits was only considered to be a crime when it was accompanied by inferior working conditions

and the impairment or suppression of the workers' rights. This is embodied in the existence of harsh labour conditions such as excessive working hours, lack of holidays or weekly rest days, or much lower wages than those that correspond to the job profile. In general, there exists an abuse of the weak position of the worker or workers exploited. We can cite the following cases: Provincial Court of Santa Cruz de Tenerife (Section 2) 338/2013 of 8 July, Provincial Court of Lugo (Section 2) 18/2013 of 7 February, Provincial Court of Barcelona (Section 10th) 403 / 2012 of 13 April, Provincial Court of Navarra (Section 1) 97/2010 of 14 June, Provincial Court of Lugo (Section 2) 41/2010 of 29 March.

However, we did find some cases that considered the mere fact of illegal recruitment to be a crime on the consideration that this illegal form of employment deprives the worker of rights to affiliation to the Social Security system and other benefits provided by existing labour regulations: Zaragoza Provincial Court (Section 3) 139/2011 of 10 June.

The Provincial Court of Barcelona ruled it a criminal offense and sentenced the defendant to imprisonment for forcing a foreign worker to pay an alleged debt and for collecting a large sum of money for regularizing irregular immigrants; offenses which were considered to be forced labour exploitation and fraud, respectively (Provincial Court of Barcelona, 10th Section, 403/2012 of 13 April).

Although case law is limited, the ability to prove abuse working conditions and the fact that the employer has taken advantage of foreign workers' situation of necessity and irregularity, are key factors, at least in cases of severe forms of labour exploitation.