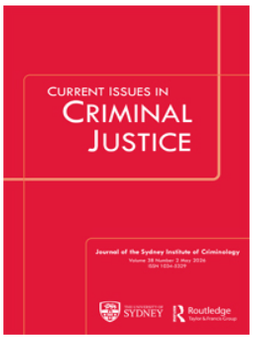

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Children as victims and offenders: rethinking the binary

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ABSTRACT

This paper challenges the binary between childhood victimhood and offending by examining the overlapping and often contradictory roles children occupy within systems of law, social control, and public discourse. Focusing on Spain and Sweden, the paper examines the non-punishment principle and gaps in domestic implementation that leave some children, particularly unaccompanied migrant boys, vulnerable to criminalisation. Adopting a humanitarian lens, it situates institutional responses within broader concerns for children's dignity, rights, and protection. The analysis highlights how legislative frameworks and prosecutorial practices shape victim recognition and reinforce barriers for children whose experiences fall outside dominant narratives.

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child criminal exploitation; children's rights; Juvenile Justice; non-punishment principle.

Introduction

Child criminal exploitation (CCE) is an emerging global concern that challenges conventional distinctions between victims and offenders within criminal justice systems. Across diverse contexts, children are increasingly coerced or manipulated into criminal activities under conditions of vulnerability linked to poverty, socio-economic marginalisation, migration, and unequal power dynamics (EUROPOL, 2018; GloTiP, 2024; von Bredow, 2019). While the exploitation of children in criminality is not a new phenomenon, the conceptual shift from offenderisation to victimisation marks a significant development in contemporary discourse. Despite growing international recognition, responses remain fragmented, with legal and policy frameworks often prioritising crime control over protection. Across Europe, thousands of EU and non-EU minors are trafficked and exploited by criminal networks, the 2015 migration crisis intensified these risks, bringing large numbers of vulnerable, often unaccompanied minors into the EU, straining support systems, complicating victim identification and movement monitoring (Europol, 2018).

Sweden and Spain have long served as host countries for refugees and migrants seeking safety and a better life. While some migrants successfully navigate life in their

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new environments, others struggle. Children are especially vulnerable within these precarious conditions (Europol, 2018) and may be drawn into criminal exploitative networks as a means of survival. Since 2012, a notable transnational pattern has emerged in which many migrant boys, living in risk environments in Sweden and exploited through criminal activity, initially arrived in Spain from North African countries, particularly Morocco (von Bredow, 2019). Notably, since 2017, some of these children have explicitly stated Spain is only a transit country, with Sweden as their intended destination (ibid.). This study takes Spain as its analytical starting point, marking the initial entry into the EU (EUROPOL, 2018), before tracing the pathway into Sweden. We adopt a humanitarian lens, offering a critical perspective more commonly applied in conflict settings but underexplored in non-conflict European contexts, explicitly aimed at safeguarding children from being framed as risks, thereby ensuring protection from harm via CCE. While the article addresses CCE broadly, the empirical evidence draws predominantly on the experiences of migrant boys, whose invisibility within trafficking frameworks forms a central concern.

This study uses documentary analysis of international child-rights and anti-trafficking instruments, alongside GRETA reports for Spain and Sweden, to examine how CCE is framed and addressed in national legal and institutional responses. By applying a humanitarian lens, and drawing where relevant on Heidensohn's double deviance hypothesis as a supplementary lens, the article assesses whether these systems recognise exploited children as victims, uphold non-punishment principles and align with international human rights obligations. By applying this humanitarian lens, one that critiques selective protection while advocating for dignity and prevention, we interrogate how Spain and Sweden's responses either emancipate or discipline exploited children, with implications for reframing CCE beyond punitive binaries.

Contextualising victimisation in CCE as a form of human trafficking

While trafficking in human beings (hereinafter THB) is conventionally categorised into sexual and labour exploitation, the full spectrum of exploitative practices is far more varied. Certain forms receive heightened attention, while others remain under-recognised or invisible. Among the less visible and under-researched forms is THB for the purpose of exploitation in criminality. This form of trafficking may be hidden or unfold in plain sight, but it is uniquely difficult to detect because victimisation is often concealed behind the appearance of criminal conduct. As a result, the crime itself becomes the focus of law enforcement, obscuring the underlying exploitation (Marshall, 2024). Children's involvement in criminality also positions them in conflict with societal expectations of childhood as a state of innocence and dependency. This tension can be understood through Heidensohn's (1989) double deviance hypothesis, which suggests that individuals are judged not only for violating the law but also for transgressing wider social norms. In the case of exploited children, their behaviour is constructed as doubly deviant: they are criminalised for breaking the law, while also being seen as undermining the idealised image of the 'innocent child'. While related, this dynamic is analytically distinct from ideal victim theory: double deviance concerns the social norm transgression that compounds criminalisation, whereas ideal victim theory concerns the external attribution of credibility and worthiness to victims (Christie, 1986).

The THB discourse often highlights characteristics that align with the ideal victim narrative, while omitting complexities that do not. CCE is a deliberate and profit-driven crime, constituting human trafficking, which involves the manipulation or coercion of children into illegal acts, typically through deception, abuse, or abuse of the position of vulnerability (APOV). The nature of CCE is well illustrated by Operation Goliat (2022), in which the Civil Guard dismantled a criminal organisation in Melilla that had systematically recruited minors from a youth care centre, exploiting their extreme vulnerability to use them as drug collectors at the Spanish-Moroccan border fence. Nine minors were rescued, having been used to retrieve packages of hashish thrown over the border—a role that exposed them to arrest while adult members of the organisation remained at a safe distance (Ministerio del Interior, 2022). Comparatively, GRETA's Sweden report notes instances where unaccompanied minors were recruited in care settings and forced to steal and collect cans for criminal networks, illustrating the same pattern of targeting highly vulnerable children and using their criminal exposure as protection for adult organisers (GRETA, 2023b, para.187, p.45). These cases exemplify the core dynamics of CCE: the deliberate targeting of children in state care, the exploitation of their vulnerability and precarious legal status, and the use of their criminal exposure as a shield for adult perpetrators.

Both countries incorporate the THB definition introduced in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter Palermo Protocol; United Nations, 2000), but with important divergences in scope. Spain's Article 177 bis of the Organic Law 10/1995 explicitly includes exploitation for criminal activity, enabling access to victim status and rights, whereas Sweden's Criminal Code (Chapter 4, Section 1a) does not recognise this as a distinct form of exploitation, and the legal bar for recognising trafficking remains high, often requiring evidence of extreme harm, such as violence or deprivation of liberty (Åström, 2014). In both jurisdictions, formal victim recognition is not guaranteed in practice.

Legal ambiguity and prevailing attitudes within the justice systems continue to hinder victim identification (Farrell et al., 2014). In Sweden, Åström (2014) argues that the security-oriented legislative approach often neglects victims' protection needs, particularly in cases involving labour exploitation and migrant men. A similar pattern is evident in Spain, where the institutional response to THB focuses disproportionately on foreign women trafficked for sexual exploitation (Villacampa et al., 2022). In both countries official data remains limited and strongly skewed toward sexual exploitation cases (Villacampa, Gómez & Torres, 2023; Smiragina-Ingelström, 2024), with prevailing stereotypes frequently rendering male victims and those exploited for non-sexual purposes invisible (Verdasco Martínez et al., 2024).

The conflicting mandates of law enforcement and NGOs produce fragmented responses: while criminal justice frameworks prioritise prosecution, the humanitarian imperative to identify and protect victims is frequently overshadowed (Spanger & Hvalkof, 2020; Skilbrei, 2012). This tension is particularly acute for children exploited through criminal activity, who risk being treated primarily as offenders rather than victims in need of protection. The anti-trafficking discourse does not recognise all victims equally: those whose characteristics deviate from the ideal victim narrative (Christie, 1986) receive markedly less recognition (Muraszkiewicz, 2019; Vijeyarasa,

2010). Victims are expected to embody innocence, passivity, and vulnerability; involvement in criminal activity complicates this image, excluding affected children from protection responses. Gendered assumptions further compound this, limiting recognition of boys as victims when their experiences conflict with dominant gender norms (Cohen, 2018; Smiragina-Ingelström, 2024).

Humanitarianism, human trafficking, and CCE

Although humanitarianism is conventionally associated with crisis response and acute suffering, Barnett (2011) argues in *Empire of Humanity* that it is a historically contingent project entangled with politics and power, evolving across imperial, neo-humanitarian, and liberal eras that balance moral obligation with foreign policy interests and global inequality. His work challenges romantic conceptions of humanitarianism as purely altruistic, highlighting its dual character as both emancipatory and disciplinary: a force that 'operates in the best tradition of emancipatory ethics,' while also enacting 'acts of control' over the very populations it seeks to protect (Barnett, 2011, p. 12).

Building on Barnett's critique, critical scholars emphasise humanitarianism's historically grounded and context-sensitive nature, shaped by diverse motivations and geographies, including South-South exchanges that adapt to local traditions and political contexts, rather than solely North–South dynamics (O'Sullivan et al., 2016, p. 3). They further stress that humanitarian actors, including NGOs, often pursue visions of 'welfare,' 'progress,' and 'modernisation' aimed at remaking humanity to fit global norms (O'Sullivan et al., 2016, p. 10). This complexity is essential for analysing responses to human trafficking, which are similarly influenced by national identity, donor politics, and global governance structures beyond purely moral imperatives. Hilton et al. (2018) further highlight the importance of viewing humanitarianism as a set of historically situated practices that oscillate between solidarity and control. This historical framing provides a basis for understanding how humanitarian logics influence contemporary responses to THB.

Contemporary responses to THB remain deeply shaped by histories of colonialism, moral paternalism, and unequal power relations, entangling ostensibly apolitical commitments to alleviate suffering with state interests, market logics, and the governance of vulnerable populations (Dal Lago & O'Sullivan, 2017; Roth et al., 2024; Shelley, 2010). This duality manifests in anti-trafficking responses that prioritise the visible moralised rescues of certain victims, particularly women and girls trafficked for sexual exploitation, over sustained structural change, while neglecting labour trafficking, criminal exploitation, and the experiences of men and boys (Yousaf & Kakar, 2024). As Yousaf and Kakar (2024) observe, 'humanitarianism directed towards prevention and assurance of resources that prevent people from living in deeply insecure conditions would be far more effective in the long-run' (p. 376). Yet prevailing short-term models often serve rescuers moral identity more than addressing systemic vulnerabilities rooted in globalisation, economic marginalisation, institutional corruption, and consumer demand (Shelley, 2010). Such selective protection echoes the double deviance framework noted earlier, compounding stigmatisation of boys whose behaviour deviates from normative childhood innocence and passivity.

Bhabha (2018) critiques this ambivalence in responses to child migration, where children are simultaneously viewed as vulnerable and suspect, leading to inconsistent

protection and criminalisation. She argues for a rights-based agenda that recognises children's agency and ensuring access to education, health care, and legal safeguards, noting that 'children should not be criminalized or subject to punitive measures because of their migration status or that of their parents' (p. 90). This critique directly informs CCE, exposing how institutional ambivalence perpetuates harm rather than upholding child protection imperatives.

Linking humanitarianism to CCE

The following analysis of Spain and Sweden applies a humanitarian lens to illustrate how institutional practices either uphold or undermine ethics of victim recognition and non-punishment. This tension is acute in responses to CCE, a concept introduced to reframe children involved in criminal activity as victims rather than offenders. However, as Marshall (2023, 2024) demonstrates, its operationalisation frequently reinforces criminalisation over holistic protection. Victim status emerges as 'interactional,' through negotiations between children and practitioners, requiring disclosure of exploitation and acceptance of care (Marshall, 2024, p. 1012), with refusal or resistance interpreted as 'choosing' a criminal lifestyle (Marshall, 2024, p. 1019). This conditional recognition privileges passive vulnerability, aligning with the ideal victim narrative (Christie, 1986), while marginalising children who display agency, mistrust, or resistance (Marshall, 2024).

Institutional dynamics further entrench exclusion, including 'bureaucratic risk management,' risk-averse practices prioritising institutional protection (e.g., avoiding liability or reputational harm) over children's needs. Structural barriers, including austerity-driven welfare cuts, delays in the National Referral Mechanism (NRM), and punitive immigration policies, further entrench the criminalisation of exploited children. In some cases, criminalisation is even rationalised as a form of safeguarding, exemplifying 'repressive welfarism' (Marshall, 2023, p. 1163). Children deviating from ideal victim expectations thus face barriers to recognition and protection.

Humanitarian ethics and systemic failures

Modern Slavery and Human Rights Policy & Evidence Center (PEC) reports (2024) highlight systemic failures across immigration, social care, and criminal justice systems that heighten children's vulnerability to exploitation. Prevention should form a continuum, encompassing early intervention, long-term recovery, and measures against re-trafficking. Crucially, three humanitarian principles, non-punishment, dignity, and prevention, are essential yet inconsistently applied (Modern Slavery PEC, 2024, pp. 4–9). Many children subjected to CCE face prosecution or deportation, contravening the non-punishment principle embedded in international instruments such as the Council of Europe Convention on Action against Trafficking in Human Beings (hereinafter CoE Convention, 2005). Likewise, the principle of dignity is undermined by reducing children to either offenders or passive victims, ignoring their agency, trauma, and socio-economic contexts. Prevention remains underdeveloped, as current responses are reactive and short-term rather than structural and holistic (Modern Slavery PEC, 2024, p. 6; von Bredow, 2019). Applying a humanitarian lens to CCE critically interrogates these

limitations, viewing the approach not merely as relief but as historically situated practices navigating power structures while aiming to alleviate suffering (Dal Lago & O'Sullivan, 2017, p. 6; Hilton et al., 2018, p. e12; O'Sullivan et al., 2016, p. 3). This foregrounds non-punishment, dignity, and prevention to challenge punitive paradigms that perpetuate harm.

Methodology

This study employs qualitative documentary analysis to examine how international, European, and national legal and policy frameworks address CCE, focusing on Spain and Sweden. Materials include key international and regional instruments, national legislation, and evaluation reports from the Group of Experts on Action against Trafficking in Human Beings (GRETA),[1] the independent monitoring body under the CoE Convention (2005). GRETA conducts periodic assessments via country visits, stakeholder consultations, and documentary reviews, providing comprehensive insights into legal frameworks, policy implementation, and victim protection effectiveness.

Documents were purposively sampled based on three criteria: (1) legal or interpretive authority in trafficking and child protection; (2) explicit or implicit reference to children's criminal exploitation; and (3) relevance to institutional responses in Spain and Sweden. The analysis adopted an interpretive and critical approach, identifying how these texts construct CCE, delineate state obligations, and operationalise key human rights principles. Analytical attention was devoted to two key issues: the conceptual framing of CCE (as THB or as a distinct offence) and the practical implementation of the non-punishment principle, which precludes the punishment of victims for offences directly arising from their exploitation.

Although lacking direct voices of affected children, due to ethical constraints (Professional Ethics Committee, PEC, 2024, p. 3) and data gaps in GRETA's evaluations, the study draws on empirically informed secondary sources to situate institutional responses within broader humanitarian concerns for children's rights and dignity. This aligns with Moyn's (2012, p. 121) call to interrogate humanitarianism's uses, exclusions, and transformative potential, reframing exploited children as rights-holders entitled to meaningful protection, care, and participation rather than mere offenders or crime victims.

CCE: at the intersection of youth justice and human trafficking

The Convention on the Rights of the Child (hereinafter CRC) provides the primary universal foundation for addressing child-related issues, embedding youth justice obligations within broader human rights protections. Given CCE's position at the intersection of exploitation, child protection and criminal justice, it must be analysed alongside specialised anti-trafficking instruments and youth justice frameworks. While there is no single binding international treaty dedicated exclusively to youth justice,

[1]GRETA reports on Spain, available at: Monitoring of the implementation of the Council of Europe anti-trafficking convention - Action against Trafficking in Human Beings. GRETA reports on Sweden, available at: Monitoring of the implementation of the Council of Europe anti-trafficking convention - Action against Trafficking in Human Beings.

binding obligations are embedded within broader human rights instruments such as the CRC. As the primary international instrument that (among other aspects) addresses youth justice, the CRC introduces several articles directly relevant to CCE. Articles 32–36 collectively address economic exploitation (Art 32); sexual exploitation (Art 34); abduction, sale, and trafficking (Art 35); and other forms of exploitation (Art 36). Article 37 establishes principles governing law enforcement's treatment of children in conflict with the law. It prohibits torture, cruel treatment, and unlawful or arbitrary deprivation of liberty, affirming the right to humane treatment in detention. It specifies that arrest, detention, or imprisonment of children 'shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time' (CRC, Article 37(b)). The procedural rights of children in criminal proceedings, and the broader youth justice architecture required of states, are addressed through Article 40, discussed further below.

When a victim of THB is 'treated as a criminal for offences committed as a result of the trafficking situation', their traumatisation is 'exacerbated and entrenched' (Hoshi, 2013, p. 54). For exploited children each stage of the criminal process (from minimal interaction with law enforcement to arrest, pre-trial detention, extended trials, and sentencing) exposes children to secondary victimisation. Children's involvement in criminal activities resulting from exploitation must be understood considering children's inherent vulnerability. Their developmental immaturity (both physical and psychological), limited life experience, and dependence on adults make them especially susceptible to coercion, deception, and manipulation (Committee on the Rights of the Child, 2019). These characteristics affect their capacity to make fully informed choices or to recognise and resist exploitative circumstances. Consequently, international legal frameworks consistently affirm that children cannot provide valid consent to exploitation. Instruments such as the CRC, the Palermo Protocol (United Nations, 2000), and the ILO Convention No. 182 on the Worst Forms of Child Labour all reflect this position, making clear that any apparent willingness or participation by a child in exploitative criminal conduct does not negate their victim status. Within the context of CCE, what may appear as voluntary offending should be looked at critically and recognised as the product of manipulation, control, and APOV.

Article 40(2)(b) of the CRC establishes a comprehensive youth justice framework, ensuring that children accused of offences are afforded fundamental procedural safeguards. These include the right to be presumed innocent, to be informed promptly of the charges, to have legal or other appropriate assistance, to a fair and timely hearing before an impartial authority, to protection against self-incrimination, to the examination of witnesses, to appeal or review, to free interpretation, and to privacy at all stages of the proceedings. Further, Article 40(3)(a) and (b) of the CRC require states parties to develop child-specific laws, procedures, and institutions within their justice systems. It calls for the establishment of a minimum age of criminal responsibility, below which children are presumed incapable of infringing the penal law, and for the adoption of diversionary measures that address offending behaviour without resorting to judicial proceedings, provided that legal safeguards are maintained. The CRC further encourages the use of a range of non-custodial and rehabilitative responses, ensuring that any intervention is proportionate and promotes the child's well-being and reintegration. While these instruments establish protective foundations, their

uneven implementation reveals humanitarianism's dual character: emancipatory in principle (e.g., no consent required for child victims), yet disciplinary in practice when crime control overshadows prevention and dignity.

Importantly, while not binding, the Committee on the Rights of the Child's General Comment No. 24 (CRC/C/GC/24, 2019) offers a more current clarification of the CRC's approach on youth justice considering developments in international and regional standards and new knowledge about child and adolescent development. It reflects evidence-based best practices, including those related to restorative justice, and addresses persistent concerns such as trends in the minimum age of criminal responsibility and the ongoing use of deprivation of liberty. The general comment emphasises the holistic implementation of child justice systems that protect children's rights at all stages, with a focus on prevention, early intervention, and strategies to minimise the harmful effects of contact with the criminal justice system. Key measures highlighted include setting an appropriate minimum age of criminal responsibility, promoting diversion from formal justice processes, expanding non-custodial responses, strictly limiting detention to the oldest children as a last resort, and ensuring its application is time-bound and subject to regular review.

Moreover, other soft law instruments also highlight the importance of focusing on child vulnerability in youth justice. For example, the UN Standard Minimum Rules for the Administration of Juvenile Justice (United Nations General Assembly [UNGA], 1985) emphasise rehabilitation and reintegration, while the UN Guidelines for the Prevention of Juvenile Delinquency (United Nations General Assembly [UNGA], 1990) stress the need to address the social and economic vulnerabilities that contribute to children's involvement in crime, vulnerabilities often exploited by criminal groups (Swedish National Council for Crime Prevention [Brå], 2023); von Bredow, 2019). These principles reinforce the need for protective, rehabilitative, and rights-centred approaches for child victim-offenders who encounter the justice system because of coercion or exploitation.

While CCE is not explicitly addressed as a distinct form of exploitation in the CRC, the Convention provides a broad protective framework through Articles 32-36, which collectively target multiple forms of child exploitation and trafficking. These provisions establish a legal foundation emphasising preventive, protective, and rehabilitative measures that are directly relevant to understanding and addressing the vulnerabilities that CCE exploits. Although the CRC does not refer to CCE directly, it begins to shift the focus on children in conflict with the law from offenderisation to victimisation, recognising their inherent vulnerability and right to protection.

The Palermo Protocol (United Nations, 2000) was the first international instrument to establish a universal definition of human trafficking. Critically for CCE victim identification, Article 3 (c) of the Protocol provides that where the victim is a child, this 'means' element (i.e., coercion, deception, or abuse of position of vulnerability) need not be established. The act of recruitment, transportation, transfer, harbouring, or receipt of a child for the purpose of exploitation is sufficient to constitute trafficking regardless of how it was achieved (Palermo Protocol, Art 3 (c)). However, neither this Protocol nor the subsequent regional treaty—the CoE Convention (2005), explicitly include CCE within their definitions of trafficking. Although both instruments recognise labour exploitation, criminal exploitation has typically been interpreted as a form of

forced labour (see for example United Nations Office on Drugs and Crime [UNODC], 2024), and Walk Free, 2023). This limited framing has confined interpretation to more conventional forms of labour exploitation, such as work within traditionally legitimate sectors, thereby increasing the risk of misidentifying or overlooking cases of criminal exploitation. The drafting of the EU Anti-Trafficking Directive (2011/36/EU, Article 2(3), *emphasis added*, hereinafter the EU Directive) marked a significant development by explicitly including exploitation in criminal activities as a form of forced labour or services:

> Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the *exploitation of criminal activities*, or the removal of organs.

While early instruments such as the CRC and the Palermo Protocol laid important foundations for safeguarding children from exploitation, the lack of explicit acknowledgement of forced criminality created interpretative gaps that left CCE unidentified. Alongside this expanded definition of exploitation, both instruments establish the non-punishment principle as a safeguard specifically applicable to child victims. Article 26 of the CoE Convention and Article 8 of the EU Directive require that competent authorities provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities where they were compelled to do so. This is a protection with particular significance for children exploited through CCE, who may otherwise face prosecution for offences directly resulting from their exploitation. This principle is examined in detail in the domestic context of Spain and Sweden below.

The EU Directive represents an important step toward bridging this gap, yet the absence of consistent recognition across the globe continues to challenge effective identification and protection of child victims of criminal exploitation. Both Spain and Sweden have made progress in aligning their legal frameworks with the standards established by the CRC and the international anti-trafficking legal frameworks. However, challenges remain in fully implementing these principles, particularly in cases of CCE.

Alignment with the international legal frameworks

Legal scholarship emphasises, that there is no single, uniform approach to incorporating the CRC into domestic law that fits all countries (Gadda et al., 2019; Lundy et al., 2013; Stern, 2019). Spain adheres to a monist tradition, under which international treaties, once ratified and duly published in the *Boletín Oficial del Estado* (Official State Gazette), automatically acquire the force of domestic law. This principle, set out in Article 96 of the Spanish Constitution, means that both the CRC and the international anti-trafficking legal frameworks became directly applicable within the Spanish legal order without the need for further legislative action, with the CRC ratified on 6 December 1990 and the Palermo Protocol on 1 March 2002. Contrary to Spain, where the CRC was fully and directly incorporated into domestic law and is 'accorded an elevated status in the legal hierarchy' (Stern, 2019, p. 268), Sweden follows a dualist approach, whereby an international treaty does not automatically become part of national law upon ratification. Consequently, although Sweden ratified the CRC on 29 June 1990 and the Palermo

Protocol on 1 July 2004, neither instrument was directly enforceable in Swedish courts until specific implementing legislation was adopted. In the case of the CRC, this did not occur until 2018, with the law entering into force on 1 January 2020. With the international anti-trafficking legal frameworks, however, Sweden ratified the UN Palermo Protocol in July 2004, after updating the national law to ensure compliance. This meant that, contrary to the process with the CRC, Sweden had already begun aligning its criminal code with the protocol's definition before the ratification.

This has important implications for the protection of children as victims of trafficking. In Spain, children could invoke rights under the relevant human rights treaties (such as the CRC and the CoE Convention) from the moment of ratification and publication, facilitating judicial reliance on international norms in areas such as victim identification, protection, and assistance. In Sweden, by contrast, the dualist approach meant that, although children's rights were substantively protected under domestic law and the state was internationally bound by these treaties, courts and authorities lacked a direct legal basis to apply the treaties until national legislation gave effect to them. This limited the direct enforceability of treaty-based claims before domestic courts, demonstrating the significance of constitutional approaches to treaty implementation for vulnerable groups such as child victims of trafficking.

Spain ratified the Palermo Protocol in 2002, followed by Sweden in 2004. Both countries are also bound by European anti-trafficking legal frameworks, namely the EU Directive and CoE Convention. According to these documents THB involves the exploitation of an individual or group of people through a particular act (i.e., recruitment, transportation, transfer, harbouring or receipt) with the use of specific means (such as coercion, deception, or APOV among others). However, when the victim is a child, the element of means is not necessary for the case to be classified as human trafficking. Accordingly, in cases involving minors, the mere occurrence or even the intent to exploit, combined with one of the acts is sufficient to establish the offence. Sweden and Spain follow comparable THB definitions as first introduced in the Palermo Protocol (see Table 1).

However, while Spain's criminal code explicitly criminalises THB for 'exploitation for criminal activities' (Article 177 bis), the Swedish criminal code limits the purposes of exploitation to sexual, labour, removal of organs, military service 'or some other activity in a situation that involves distress' (BrB 4:1a). While this broader 'distress' clause permits interpretive flexibility, its application to coercion into criminal acts such as theft or drug offences appears limited in practice, leaving a gap relative to international standards such as the Palermo Protocol and the EU Directive.

Table 1. The definition of human trafficking.

Elements	Definition
Action	'Trafficking in Persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons.
Means	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.
Purpose	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.

Source: Article 3 of the Palermo Protocol (United Nations, 2000).

The bill that first introduced THB into the Swedish criminal code was Proposition 2001/02:124 (Sw.: Straffansvaret för människorhandel). The proposition was submitted in March 2002, putting forward a new offence of human trafficking, only for sexual purposes and highlighting the cross-border nature of the crime. The law entered into force in July 2002 under SFS 2002:436. Shortly thereafter Proposition 2003/04:111 recommended expanding criminal liability to cover forms of exploitation other than sexual, whether or not it involved cross-border activity. These amendments entered into force in July 2004. Proposition 2003/04:111 marked an important development in Sweden's anti-trafficking framework by expanding criminal liability beyond cross-border trafficking to include domestic forms of exploitation. The reform aligned Swedish law more closely with international standards, particularly the UN Palermo Protocol, and recognised a broader range of exploitative purposes (such as sexual exploitation, forced labour, and THB for the purpose of organ removal). However, the proposition did not explicitly include exploitation for the purpose of criminal activities (such as coercing individuals to commit theft, drug-related offences, or other crimes), which is recognised as a form of trafficking under EU standards. This omission has had significant practical consequences: children and adults coerced into criminality often fall outside the scope of trafficking investigations and are instead treated as offenders. In practice, the Swedish criminal justice system tends to apply the trafficking offence narrowly, focusing primarily on sexual exploitation, while other forms remain under-recognised and rarely prosecuted (see for example GRETA, 2023b). As a result, although Proposition 2003/04:111 broadened the legal definition of trafficking in theory, its practical reach remains limited, especially for victims whose exploitation does not fit within conventional trafficking narratives. By contrast, Spain's approach demonstrates greater alignment with international norms from the outset.

Non-punishment provision

Both Spain and Sweden have closely aligned minimum ages of criminal responsibility (MACR) (14 and 15 respectively) which provide a shared baseline protection by excluding the youngest CCE victims from prosecution altogether. This convergence is a notable point of common ground before their approaches diverge significantly in statutory implementation. The non-punishment principle is a critical safeguard within international and domestic legal anti-trafficking frameworks, recognising coercive circumstances that compel victims into unlawful acts and preventing secondary victimisation through criminal prosecution. In Europe, it is enshrined in Article 26 of the CoE Convention (2005), and Article 8 of the EU Directive (2011/36/EU). The EU's revised Anti—Trafficking Directive explicitly recognises that organised criminal groups recruit and use children to commit crimes and requires Member States to strengthen identification, protection and specialist training for professionals who encounter such children (EU, 2024/1712, rec.23; art.2). The CoE provision states that parties shall 'provide for the possibility of *not imposing penalties on victims for their involvement in unlawful activities*, to the extent that they have been compelled to do so' (CoE:, 2005, Art. 26, *emphasis added*). While this article introduces the idea that victims compelled to commit crimes should not be prosecuted, it also frames non-punishment as optional, using the term 'possibility' (Stoyanova, 2017). This language, however, refers only to the discretion of

competent authorities in deciding whether to prosecute in individual cases, not the obligation of States to incorporate the non-punishment provision principle into their domestic legal frameworks (Rodriguez-Lopez, 2024). Accordingly, State Parties to the CoE Convention are required to establish procedures that ensure victims compelled to commit crimes are appropriately identified and processed, avoiding punishment where offences directly result from exploitation (EU Directive, 2024/1712).

Spain

The non-punishment principle has been incorporated, with varying degrees of effectiveness, into national legal systems, reflecting the humanitarian logic of protecting exploited children while also revealing the practical limits of implementing these protections within legal and institutional structures. In Spain, the non-punishment provision under Article 177 bis of the *Criminal Code* offers an instructive case through which to examine how states operationalise this obligation in practice. The Spanish framework illustrates both the normative intent to protect victims and the persistent challenges in implementation that result in the continued criminalisation of trafficked children.

In Spain, the non-punishment provision is codified under paragraph 11 of Article 177 bis of the *Criminal Code*. This provision establishes that, 'notwithstanding the application of the general rules of this Code, victims of THB will be exempted from the penalties corresponding to the criminal offences committed while being exploited, provided their involvement was the direct consequence of the situation of violence, intimidation, deceit or abuse to which they were subjected and provided there is adequate proportionality between the situation and the criminal act perpetrated.' Further guidance is provided in Section II-9 of Circular 5/2001 of the Prosecution Service, which requires prosecutors to conduct a 'proportionality test' in cases involving 'duress faced by the victim and the offence committed' (GRETA, 2013, p. 57). The circular specifies that the non-punishment provision should be considered where victims have been compelled to commit offences such as 'pickpocketing, shoplifting, [or] drug trafficking,' and extends to the 'use of fraudulent documents to enter [Spain] irregularly' (GRETA, 2013, p. 57).

Despite these legislative and procedural frameworks, GRETA (2013, p. 58) observed in its first evaluation round that 'the non-punishment clause is not effectively applied in practice,' and emphasised that it was 'incumbent on the Spanish authorities to ensure the full and effective implementation of the non-punishment principle', highlighting the gap between humanitarian ideals embedded in law and the realities of enforcement, where children continue to experience punitive measures despite formal recognition of their vulnerability. The report also demonstrated the need to integrate this principle into the training of relevant professionals, 'in particular law enforcement officials, prosecutors and judges' (ibid.).

In its second evaluation (GRETA, 2018a), the Committee again identified deficiencies in the implementation of the non-punishment provision. Based on information provided by NGOs, GRETA noted that victims 'continued to be held criminally accountable for offences committed as a direct consequence of violence or intimidation suffered during their exploitation' (GRETA, 2018a, p. 55). It reiterated the importance of training for all relevant authorities involved in trafficking cases and further recommended that the Spanish authorities 'examine the possibility of repealing administrative sanctions

imposed against victims of THB and providing compensation or reimbursement of fines paid by victims' (GRETA, 2018a, p. 56).

In its third evaluation report, GRETA (2023a, p. 26) 'notes positively the efforts of the Spanish authorities to improve the criminalisation of THB through proposed amendments to Article 177 bis of the [Criminal Code], envisaged in the draft comprehensive law on action against THB'. However, at the time of writing, this legislation remained in draft form and had not yet been voted upon by the Spanish Parliament.

Under Article 26 of the CoE Convention, States Parties are required to 'ensure the possibility of not imposing penalties upon victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so' (GRETA, 2023a, p. 30). Across all three evaluation rounds, GRETA has consistently 'stressed' that failure to uphold this principle 'contravenes the state's obligation to provide services and assistance to victims, discourages victims from coming forward and co-operating with law enforcement agencies, and thereby interferes with the state's obligation to investigate and prosecute those responsible for THB' (ibid.). The Spanish authorities cited as a positive example a case in Barcelona in which the non-punishment provision was applied to a female minor trafficked for the purpose of forced criminality by her parents and brother. The perpetrators were convicted of THB after compelling the victim to commit 'pickpocketing, shoplifting and other criminal offences,' while the victim herself was not convicted (GRETA, 2023a, p. 30–31).

Nevertheless, GRETA (2023a, p. 31) recorded ongoing concerns raised by NGOs regarding failures to identify victims appropriately, leading to instances where victims 'were not identified as such and were punished for immigration offences'. The Civil Guard also informed GRETA of cases involving Moroccan boys recruited by criminal networks in migrant reception centres or on the streets of Melilla, who were 'compelled through threats or violence to pick up packages of hashish thrown over the wall surrounding Melilla and deliver them to the criminal organisation' (ibid.). These incidents were uncovered during *Operation Goliat*, a May-June 2022 Civil Guard-led operation that dismantled a sophisticated cross-border trafficking ring blending human exploitation with drug smuggling in the North-African Spanish enclave. The network comprising 24 Spanish and Moroccan nationals engaged as recruiters, coordinators, and distributors who targeted unaccompanied minors (boys aged 14-17, housed in state-run protection centres). During the operation, nine unaccompanied children were used to transport drugs; seven of them were promptly identified as victims of THB, granting them immediate access to support and social rights without prosecution for their coerced acts. The remaining two, however, declined assistance (GRETA, 2023a, p. 31). The 24 perpetrators faced charges for THB, criminal organisation membership, and drug offences, with assets seised to disrupt financial flows. While acknowledging these positive examples, GRETA (2023a) nonetheless concluded that further measures are required to ensure consistent and harmonised implementation of the non-punishment principle in Spain. It recommended that the authorities:

1. Provide systematic training for law enforcement officers, prosecutors, and judges.
2. Strengthen information exchange between relevant agencies and judicial authorities; and

3. Ensure that the non-punishment provision is effectively applied to undocumented victims of THB, guaranteeing their prompt identification and access to appropriate protection and support services (GRETA, 2023a, p. 32).

The vulnerability of children within state care facilities to active recruitment by trafficking networks further illustrates the structural limits of Spain's protective framework. In November 2025, the National Police dismantled an international network under *Operation Tritón* that had trafficked minors from supervised centres in the Canary Islands toward France, via transnational routes involving Morocco and Côte d'Ivoire. The investigation was triggered by the disappearance of 14 minors from two youth centres between November 2024 and May 2025. The network operated with clearly defined roles, supplied falsified documentation, and used Spanish infrastructure to manage transfers to France, with 11 arrests resulting (Ministerio del Interior, 2025). At the time of writing, the investigation remained ongoing. The case reveals that children's disappearance from institutional care, which GRETA has repeatedly flagged as a concern requiring proactive response, can itself be a marker of active trafficking rather than voluntary absconding, and that Spain's legislative gains have not yet translated into protection at the point of recruitment. Despite legislative alignment, inconsistent application, evident in ongoing criminalisation of migrant boys, exemplifies humanitarianism's controlling tendencies, prioritising bureaucratic risk management over children's dignity and prevention of re-traumatisation.

Sweden

GRETA reports have repeatedly highlighted Sweden's insufficient measures to address trafficking for forced labour, begging, and criminal exploitation, alongside gaps in identification and support for child victims (GRETA, 2014; 2018b; 2023b). Among the urges put forward by GRETA were improvements in identifying child trafficking victims, preventing violence in accommodation centres, and addressing the disappearance of children from care. Early recommendations highlighted the need to broaden anti-trafficking efforts to include labour exploitation, forced begging, and criminal exploitation (GRETA, 2014). Later evaluations emphasised raising public awareness of the risks and various forms of child trafficking, including forced criminality, begging, and forced marriage, as well as to 'proactively identify unaccompanied and separated boys at risk of being trafficked for sexual exploitation and forced criminality' (GRETA, 2018b, p. 2–3).

In contrast to Spain, Sweden does not have a dedicated statutory provision establishing the non-punishment principle for trafficked or exploited children, pointing to the gap between humanitarian objectives embedded in international norms and their domestic operationalisation. Instead, the protection of minors compelled to commit crimes is largely dependent on prosecutorial discretion. Under Chapter 20, Section 7 of the Swedish Penal Code (SFS 1942:740), prosecutors may decide to waive prosecution for victims of THB or exploitation who have committed lesser offences as a direct result of coercion. The Prosecutor General has issued guidelines to inform this discretion, particularly in cases where victims were forced to commit minor offences, indicating that prosecution may be avoided in 'extraordinary cases' (GRETA, 2023b).

However, GRETA's latest evaluation (2023b) identifies two persistent challenges. First, reliance on discretion introduces variability in application, meaning outcomes can differ depending on the prosecutor handling the case. Second, this discretionary mechanism has not yet been applied in THB cases, raising concerns about the effective protection of minors exploited in criminality. GRETA recommends that Sweden align its prosecutorial guidelines more closely with Article 26 of the CoE Convention, ensuring prompt victim identification, proactive prosecution to uncover potential victims, and the elimination of negative consequences such as detention or immigration penalties.

In 2023, Sweden introduced a new provision on CCE (BrB 16:5a), criminalising the act of exploitation of children in crime. The law protects some children but has clear gaps that can leave certain minors unrecognised as victims. According to this provision, when anyone who is significantly older than the child '*for the purpose of committing a crime or engaging in criminal activity, employs, pays, instructs, or transfers property to a person under the age of eighteen—thereby involving them in the crime or criminal activity,'* they commit the offence of CCE.

On the one hand, this designates the child as a victim. On the other, the final sentence of the provision may complicate victim recognition, revealing the tension between humanitarian ideals of protection and legalistic criteria that may inadvertently leave vulnerable children exposed to criminalisation:

> If the involvement is clearly less serious due to the small difference in age or development between the perpetrator and the other person, or for other reasons, no criminal liability shall be imposed (BrB 16:5a).

For example, in an instance where a minor above the age of criminal responsibility (15-17 y.o.) recruits a younger child for CCE, the younger child may not qualify as a victim under the law if there is not a significant age or developmental difference between them. In this case, no crime will have been committed against that child, and victim status will not be granted. Another example is if the child recruiter is coerced into committing CCE, but the age gap is too significant to exempt them from liability. In this case, the provision is unable to offer protection.

Aside from diverging from European anti-trafficking standards, this reflects a broader tension in Swedish youth justice between recognising children as victims and holding them accountable as offenders, exacerbating the victim-offender overlap documented in research on gangs and criminal networks (Berg & Schreck, 2022; Levell, 2022).

GRETA has repeatedly emphasised Sweden's shortcomings on identification, protection and non—punishment of child victims (GRETA 2014; 2018b; 2023b). Swedish case law likewise shows the problem in practice. Johansson's (2025) review of judgments documents vivid instances where children placed in care or brought into Sweden were systematically used by older actors to perform criminal tasks: e.g., two 15-17—year—olds taken to Sweden and forced into repeated shoplifting trips (the 'Tonåringarna på stöldresa'), and an 11-14—year—old girl transported and repeatedly used to steal handbags—both earlier cases in which courts recognised the children's exploited status and found trafficking (Johansson, 2025, §§2.2.1-2.2.3). By contrast, recent drug-related cases involving Swedish minors (e.g., 'Sönerna och vännen' and the 'Organisationen' cases) show prosecutors and courts declining to treat similar patterns as trafficking: judges often emphasised apparent 'voluntariness', freedom of movement or lack of a

formal recruitment process, and THB charges were dismissed (Johansson, 2025, §§2.2.7-2.2.9). Johansson also shows that after BrB 16:5a's introduction in 2023 prosecutors increasingly pursue the new offence of 'involving a minor in crime' with adults being frequently convicted under 16:5a while the same proceedings commonly result in convictions of the children for the underlying offences (review of 50 cases, Johansson, 2025, ch.3). Taken together, these examples highlight that similar modalities of exploitation (recruitment from care, coercion, threats, use of minors as expendable operatives) can lead to very different legal outcomes in Sweden depending on whether authorities characterise the situation as trafficking (triggering protective and non—punishment safeguards) or as ordinary criminal involvement processed under BrB 16:5a and regular offence law (with children criminalised).

Despite these legal gaps, governmental agencies such as Brå frame CCE victims within a victimisation perspective, highlighting the coercion, manipulation, and long-term harms endured by children involved in criminal networks (Brå, 2023). Nevertheless, the absence of an explicit non-punishment provision and the limited scope of BrB 16:5a illustrate the challenges of operationalising a child-centred, protective approach in Swedish law. Without statutory recognition, protection is largely contingent on prosecutorial judgment, leaving exploited minors vulnerable to ongoing victimisation and contributing to their 'offenderisation' within the criminal justice system (Marshall, 2023). Reliance on discretion and the limited scope of BrB 16:5a illustrate a security-oriented approach that marginalises humanitarian imperatives, leaving exploited minors vulnerable to offenderisation rather than rights-based protection.

Conclusion: implications for child victims as rights holders (CRC responsibility to protect children)

A humanitarian lens reveals that fragmented implementation of non-punishment and victim recognition perpetuates harm in CCE, revealing the need for reforms prioritising emancipatory ethics: proactive prevention, dignified treatment that recognises children's agency, and structural supports addressing root vulnerabilities. Understanding CCE requires an interdisciplinary approach encompassing children's rights, child protection, anti-trafficking, and youth justice frameworks. International instruments like the CRC and Palermo Protocol lack explicit CCE definitions, creating ambiguity in identification and protection. Regional instruments, including the CoE Convention (Article 26) and the EU Directive (Article 8), advance the non-punishment principle, but domestic implementation remains uneven.

Spain and Sweden illustrate contrasting approaches. Spain's Criminal Code Article 177 bis (11) exempts trafficking victims from criminal liability for acts committed under coercion, bolstered by prosecutorial guidance requiring proportionality tests (GRETA, 2013, 2018a, 2023a). However, GRETA evaluations illustrate persistent gaps in victim identification, particularly among male minors and undocumented migrants, leading to criminalisation despite positives like Operation Goliat (2022). Consistent application, training, inter-agency coordination, and protection against administrative or immigration penalties are essential. Sweden, reliant on prosecutorial discretion, and the 2023 CCE law (BrB 16:5a) criminalises exploiters but offers no explicit victim status or non-punishment guarantees, heightening minors' criminalisation risks in a dualist system.

Both jurisdictions reflect humanitarianism's dual character: emancipatory in aspiration, yet selective and disciplinary in application. Points of convergence are significant: Spain and Sweden maintain broadly aligned minimum ages of criminal responsibility, are both bound by the same EU and CoE legal frameworks and have each attracted GRETA criticism for persistent implementation gaps across three evaluation rounds. Yet the divergences are equally telling. On the non-punishment principle, Spain benefits from statutory provision (Article 177 bis (11)), whereas Sweden relies solely on prosecutorial discretion, introducing structural variability in outcomes depending on individual prosecutors. On definitional scope, Spain explicitly criminalises child criminal exploitation within its trafficking definition, whereas Sweden's BrB 16:5a contains significant gaps that can exclude certain minors from victim status altogether. On dignity, GRETA's criticisms of Spain centre on uneven application of an existing framework, while its criticisms of Sweden point to the absence of statutory protection. The key divergence thus lies not in humanitarian intent but in the statutory architecture through which non-punishment is operationalised.

Across GRETA's three evaluation rounds for both countries, failure to uphold non-punishment has been consistently criticised as it undermines victim assistance, deters cooperation, subjects children to secondary victimisation, and impedes perpetrator prosecutions. Children deviating from the *ideal victim* profile encounter compounded barriers, reflecting *double deviance* dynamics (Heidensohn, 1989). Future research should prioritise institutional coordination and survivor voices to inform policies emphasising protection, rehabilitation, and recognition of children's status as rights-holders. Comparative studies of other European contexts could further illuminate more consistent emancipatory humanitarian responses across Europe.

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