

DETECTING AND TACKLING FORCED LABOUR IN EUROPE

Nick Clark

Based on studies in nine European countries, this report considers how those exposed to forced labour are supported across Europe.

The study looks at a number of aspects of forced labour:

- evidence for its presence;
- the way in which it is treated by national and international law;
- how it is perceived and understood by authorities, media and public;
- its relationship with trafficking and the problems this presents;
- how and where it is detected;
- government, regulators and civil society responses to it;
- the provision of support to those exposed to it;
- how affected workers themselves respond.

It draws conclusions about the manner in which forced labour is understood and approached in Europe, and how this can guide responses in the UK.

CONTENTS

Executive summary	03
1 Introduction	05
2 The presence of forced labour in Europe	09
3 Forced labour and the law	18
4 Recognising forced labour	27
5 What remedies are available?	40
6 Supporting those subject to forced labour	48
7 Conclusions	57
8 Implications for the UK	62
Notes	65
References	66
Appendix A	68
Appendix B	69
Acknowledgements	73
About the author	74
List of tables	
1 Selected labour exploitation indicators relevant to forced labour	07
2 Forced labour cases prosecuted or investigated in nine EU countries	10
3 Industries where forced labour is referenced in national reports	16
List of boxes	
1 Trafficking and forced labour in German strawberry fields	12
2 An asparagus criminal in the Netherlands	13
3 French seasonal workers supported in targeted litigation	23
4 'Hollywood' awareness raising in Poland	28
5 Campaigning against forced labour in private households	30
6 Chinese forced labour in Spain	32
7 Latvia and Italy: cross-border legal cooperation	35
8 Housing and forced labour in the Netherlands	37
9 Mobilising in Italy for the regularisation of building workers	42
10 Berry pickers in Sweden: a case study in forced labour	51

EXECUTIVE SUMMARY

This report considers how those exposed to forced labour are supported in nine EU member states: France, Germany, Italy, Ireland, Latvia, the Netherlands, Poland, Spain and Sweden. Forced labour occurs when a worker cannot freely choose to leave an abusive employer, but officialdom may associate it exclusively with trafficking and unlawful crossing of borders – activities that in turn are conflated with the abuse of women and children forced into sexual activities.

The International Labour Organization (ILO) estimates the number in forced labour in Europe to be 880,000, but we found few reliable national studies to confirm this; there is hard evidence confirming its presence, however, including data on numbers of cases prosecuted or investigated under trafficking for labour exploitation, or associated classifications. They illustrate the worrying presence of forced labour practices across all the nine countries studied. The main findings of the research were as follows:

- Migration is a major source of vulnerability, although not in all cases.
- Domestic service, construction, agriculture, hospitality, cleaning, food manufacturing/processing, and textiles and clothing were frequently identified as industries where forced labour occurred.
- Numerous international instruments relate to the suppression of forced labour, such as the Council of Europe Convention on Action against Trafficking in Human Beings and the Universal Declaration on Human Rights.
- Forced labour is imperfectly understood, and therefore not widely recognised as a phenomenon occurring in the developed world. Where it is acknowledged, it is approached as being caused by the vulnerability of ‘victims’ rather than by deficiencies in the regulation of labour markets and the economy.
- Although forced labour practices do not always take place across borders, they often do, and so international initiatives were found, some focusing on awareness raising and crime reporting, others involving more detailed cooperation, over prosecutions, for example.
- Examples of worker resistance were found in nearly all the countries researched, in the form of self-organisation, strikes, litigation and demonstrations. These were a catalyst for support, policy development or simply publicity for the problem of forced labour practices.
- Fresh initiatives have begun, such as pilot inspections of private households with domestic staff, or the development of international cooperation between law enforcement bodies to deal with abusive employers operating across borders. The need for organisations to respond supportively and effectively to resistance organised by the workers themselves is also being recognised.

-
- Those who have experienced forced labour are likely to be working in undeclared jobs or even (by virtue of their immigration status) unlawful ones. In some countries, this means that their contracts are unenforceable by inspectors or through application to the courts. A further hurdle may be the processes for restitution themselves – only in some cases can an intermediary, such as a trade union, conduct a case on the worker’s behalf.
 - Although excessive working hours features regularly in reports of forced labour, there is little evidence of inspection or enforcement of working time rights being used to detect or prevent it.
 - Workers may be exposed to further difficulties even after their exploitation has been detected – where employers have provided accommodation, loss of a job can render the worker homeless, and their status as ‘irregular’ may also leave them outside state healthcare and social security.
 - A focus in the national reports was the provision of support relating to immigration status, reflecting the close (but by no means exclusive) relationship between migration and forced labour.

The twin aims of enforcing immigration controls and submitting trafficking perpetrators to criminal sanctions take precedence over protecting the employment or human rights of those subjected to forced labour. This offers little to those who are not migrants, or who may be EU nationals. Criminal sanctions are deployed in defence of the public good, but if this prevents or delays unduly the redress most immediately needed by those subject to forced labour, it is no surprise that they may decline to participate in such proceedings.

Many government agencies, labour inspectors, advice organisations and trade unions are often unfamiliar with the indicators of forced labour. This lack of knowledge is even more marked among the media and public in general.

The key lesson is that the stronger the extent of labour market regulation and associated inspection and enforcement powers, the more likely it is that forced labour practices will be detected, and that those subjected to it will be offered potentially acceptable routes to restitution.

1 INTRODUCTION

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible universal values of human dignity, freedom, equality and solidarity. (Preamble to the Charter of Fundamental Rights of the European Union)

This report considers how those exposed to forced labour are formally and actually supported in nine European Union (EU) member states: France, Germany, Italy, Ireland, Latvia, the Netherlands, Poland, Spain and Sweden. It is not intended to be a review of the prevalence or nature of forced labour, or of detailed legal provisions. Rather, it summarises the international legal measures outlawing forced labour, and how they have been implemented at national level, illustrating the current situation with reports on the range of legal actions (civil and criminal) as well as other responses by state bodies, trade unions and non-governmental organisations (NGOs).

Forced labour takes place within national boundaries. States, and various actors within them, are therefore of great significance. Their responses are shaped both by internationally established programmes and standards and by national histories.

The main historical contexts inspiring the prohibition of forced labour are:

- the abolition of slavery, as in France which outlawed it in 1848 but where, despite ratifications of the 1926 and 1956 International Labour Organization (ILO) Anti-Slavery Conventions, no specific offences were created in national law until 2003;
- the response to the experience of forced labour under fascism;
- the emergence of a post-Second World War human rights discourse, as in the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms whose Article 4 prohibited slavery and forced labour, and more recently in the 2000 United Nations (UN) Palermo Protocol to prevent, suppress and punish trafficking in people, especially women and children, which was adopted alongside the overarching Convention against Transnational Organised Crime.¹

To contextualise what can be learned for practice in the UK from that in other EU member states, we first recall the recent positions taken by the current Coalition UK government, which has decided not to ratify the ILO Domestic Workers Convention. A government spokesman told *The Guardian* newspaper:

The UK already provides comprehensive employment and social protections to domestic workers and we do not consider it appropriate or practical to extend criminal health and safety law, including

inspections, to private households employing domestic workers.
(Guardian, 2011)

The government also decided to opt out of the EU directive on sanctions and measures against employers of illegally staying third-country nationals. Immigration Minister Damien Green explained:

There were significant aspects of the draft directive which the UK did not support. These included the creation of additional administrative burdens on both employers and the public sector in requiring employers to notify the authorities every time they recruit new third country national employees and in requiring compliance inspections. The directive also extended the legal definition of employment in a manner, creating further costs and liabilities to both employers and the authorities. This would mean, for instance, that enterprises utilising subcontractors might be held liable for instances of illegal employment by the subcontractor. The directive also guaranteed additional rights to illegally-staying employees, *including provision of back payments where an employee has earned less than the minimum national wage, which would be difficult to administer and would send the wrong message by rewarding breaches of immigration legislation.* (Written Statement to the House of Commons, 24 May 2011; emphasis added)

This report shows how other countries have judged it best to respond to the challenge of forced labour, and what that can show us about the adequacy of the UK response.

What is forced labour?

Forced labour is defined by ILO Forced Labour Convention No. 29 (1930) as ‘work or service which is exacted...under the menace of any penalty, and for which [the worker] has not offered himself voluntarily.’ In several countries its juridical presence is related to four preconditions: deprivation of liberty; vulnerability on the part of the worker; the worker’s agreement or otherwise to the conditions; and the presence of exploitation. The terms ‘vulnerability’ and ‘exploitation’ are, however, subject to imprecision and therefore a variety of interpretations.

Skrivankova (2010, p. 6) argues that the key precondition is ‘the freedom of the worker to leave the abusive employment. The involuntariness of forced labour relates to the freedom of choice.’ As the same Joseph Rowntree Foundation (JRF) research suggests, confirming the approach adopted by Anderson and Rogaly (2004), forced labour should thus be seen at one end of a spectrum of offences against employment and human rights, where at least two of the strong labour exploitation indicators identified by the ILO and European Commission (2009) are present.

Although conceived of as 67 ‘operational indicators for trafficking in human beings’, the ILO and European Commission indicators also constitute a helpful description of forced labour practices (ILO, 2009). They are grouped in six categories, with some indicators being described as ‘strong’ and others ‘medium’ or ‘weak’. The stronger indicators directly relevant to employment rights and hence to forced labour (whether involving trafficking or not) are shown in Table 1 below.

Forced labour is thus best understood as concerning workers who cannot freely choose to leave an abusive employer, and the indicators above provide

Table 1: Selected labour exploitation indicators relevant to forced labour

Main category	Strong indicator	Medium indicator
Deceptive recruitment	Deceived about the nature of the job, location or employer	Deceived about conditions of work Deceived about content or legality of work contract Deceived about travel and recruitment conditions Deceived about wages/earnings
Coercive recruitment	Violence on victims	Confiscation of documents Withholding of money
Recruitment by abuse of vulnerability		Control of exploiters Economic reasons
Exploitative conditions of work	Excessive working days or hours	Bad living conditions Hazardous work Low or no salary No respect of labour laws or contract signed No social protection (contract, social insurance, etc.) Very bad working conditions Wage manipulation
Coercion	Debt bondage Isolation, confinement or surveillance	Threat to impose even worse working conditions Threats of violence against victim
Abuse of vulnerability		Dependency on exploiters Difficulty living in an unknown area Relationship with authorities/legal status

Source: ILO (2009)

a useful heuristic list of what constitutes abuse. An example of the types of abuse detected can be found in the Netherlands Labour Inspectorate's annual report for 2010 (Arbeitsinspectie, 2011), which reported identifying 2,397 illegal workers and 564 violations of the Minimum Wages Act from among 1,263 complaints about labour conditions and 9,440 complaints about violations of the Aliens Employment Act and the minimum wage.

Yet in much of Europe, when the term 'forced labour' is used, it is often exclusively associated with trafficking and unlawful cross-border mobility – activities that, in turn, are often conflated with the abuse of women and children suborned into sexual activities. This can lead to a policy focus on this type of abuse, rather than on the less evocative phenomenon of work that involves deception, coercion and/or exploitative practices in the workplace.

This report

Forced Labour in Europe focuses on policies and actions taken in relation to workers who have been exposed to the multiple practices identified by Skrivankova (2010) and by the ILO and European Commission (2009), whether or not their experiences fall within the national legal interpretations of forced labour. We do not use the term 'victim', as this carries a normative assumption of powerlessness, consistent with a focus on sexual exploitation.

Our aim is to throw light on the ways in which existing institutions and actors within Europe provide support for workers subject to forced labour.

The nine countries studied provided a balanced sample of older and more recent EU members, of larger and smaller states, and of different legal and employment relations systems. They are the four EU founder member states (France, Germany, Italy and the Netherlands), and more

recent accession countries from Europe's north (Sweden), south (Spain), east (Latvia and Poland) and west (Ireland). The sample thus included the five largest EU labour markets outside the UK, and countries from each of the EU's five main employment relations systems described by Visser (2009: 49) as: organised corporatism (Sweden), social partnership (Germany and the Netherlands), state-centred (Spain, France and Italy), liberal (Ireland) and mixed (Latvia and Poland).

The project was led by Nick Clark of the Working Lives Research Institute (WLRI) of London Metropolitan University with national partners in six other countries, whose details are presented in Appendix A. It involved three phases, carried out between February 2011 and July 2012:

Phase 1: Producing national reports structured around an agreed template on the policy, context and debates on forced labour for each country (available from the JRF website at www.jrf.org.uk). These identify official and NGO data concerning forced labour, and the presence (or absence) of certain labour market features associated in the literature with the potential for forced labour:

- a) Certain migrant groups – the undocumented or those with restricted rights to work (such as migrants in particularly exploitative industries)
- b) Particular employment relationships – false self-employment, work in private households, undeclared work and agency work (particularly for unregistered agencies)
- c) Exposed vulnerable individuals – those with mental impairments and the economically vulnerable (such as those who do not have access to national social security safety nets)
- d) Extreme exploitation contexts such as organised begging and theft, often considered components of relationships tantamount to forced labour.

Phase 2: Researching and writing up one case study of good or illustrative practice for each country (edited versions of which are included in this report within the boxes).

Phase 3: Conducting a comparative analysis of the national reports and case studies and writing this report.

The full country reports and case studies are available at www.workinglives.org. Further details of the methodology are included in Appendix B at the end of this report.

Section 2 examines what data there is on the extent and distribution of forced labour across Europe, and in particular, in the nine countries studied. Section 3 looks at the international and national legal context, and how forced labour practices might be penalised under various types of law, followed by a discussion, in Section 4, of how responses to forced labour are framed at international, national and local level, before going on to describe in Section 5 the remedies that might be available to those exposed to forced labour. Section 6 sets out support that goes beyond the employment relationship of those experiencing forced labour, followed by general conclusions in Section 7 and a final section on the implications for the fight against forced labour in the UK. Throughout the report the case studies prepared as part of the national reports are summarised in a series of boxes, as practical illustrations of aspects of Europe's responses to forced labour.

2 THE PRESENCE OF FORCED LABOUR IN EUROPE

While the EU claims to be founded on values such as human dignity and freedom, our studies show that evidence of forced labour abounds and could be found in each of the nine countries examined. This section discusses the sources of information available and what they can tell us about the probable presence, extent and distribution of forced labour in the EU.

Sources of data

IN 2012, the ILO prepared a fresh, global estimate of the number of people in forced labour (ILO, 2012). Their methodology involved a major review of all media reports and local and national government sources, as well as accessing NGOs, trade unions and employers' organisations. This led them to estimate that in the 10 years between 2002 and 2010, 20.9 million people were in forced labour at any given time. The range for the estimate was between 19.5 and 23.3 million, representing about three out of every 1,000 people. Their estimate of the rate for Europe was lower, but at 1.4 per 1,000 of the EU population, this still amounts to 880,000 workers. Of these, the ILO suggests one-fifth were subjected to sexual exploitation and 70 per cent to labour exploitation, with most of the remainder being involved in forced begging. No separate country-level figures were published, although the methodology was tested at the national level in several countries.

Our more modest research of selected government and NGO sources in nine EU member states finds that while there are few reliable studies of the wider extent of forced labour, there is hard evidence confirming its presence and locations. Sources include data on numbers of cases prosecuted or investigated under trafficking for labour exploitation, or associated

classifications, as shown in Table 2 and, significantly as we shall see, suggest an association between better developed systems for identifying and recording cases of forced labour and the quality of available support systems.

However, even where short time series do exist, local experts suggest the data tends to understate the problem and cannot reliably show trends, nor, for methodological reasons, can the ILO estimates referred to above. Thus increasing numbers of detections or prosecutions are as likely to be associated with improved techniques and awareness as with changes in the frequency of abuse related to forced labour. Equally, the level of detection of forced labour is clearly related to the level of resources devoted to it.

Table 2 has been derived from the national reports. The national experts quote figures provided from a variety of sources, which may not be directly comparable. Some are extracted from official data for trafficking detections or prosecutions for trafficking for labour exploitation. Others originate from NGOs providing support to various groups of workers (and others). Taken

Table 2: Forced labour cases prosecuted or investigated in nine EU countries

Country	Cases	P/year	Description and source
Germany			
2006–10	224 cases	22	Completed cases involving charges of trafficking for labour exploitation (BKA and Destatis)
Italy			
2003–06	5,000	1,500	Trafficked for labour exploitation (Italia Caritas)
2003–05	516	172	Investigations for slavery (Article 600 of the Penal Code)
2007	76		Cases of severe labour exploitation making use of social protection (Save the Children, Italy)
2008	163		As above
Ireland			
2011	7		Complaints of abuse made by domestic workers in diplomatic households. Three references to Anti-Trafficking Unit
2006–09	250+	62+	Exploited migrant workers assisted by MRCI
Latvia			
2010	716		Fines issued for illegal employment in construction (state Labour Inspectorate)
	184		Fines in processing industries
	175		Fines in arts and entertainment
	132		Fines in wholesale distribution
	124		Fines in personal services
	104		Fines in agriculture, forestry, fisheries
Sweden			
2010	400–600		Trafficking victims (primarily for prostitution), <i>police estimates</i>
2008	8		Forced labour investigations
2009	28		Forced labour investigations (two convictions for labour trafficking)
Spain			
2009	21		Court decisions on labour exploitation (10 acquittals)

(continued)

Table 2 (continued)

Country	Cases	P/year	Description and source
Poland			
1995–2009	3,000	200	Trafficking victims (all types of exploitation) identified by Polish prosecutors
2010	500 workplaces		Inspections detecting abuses of migrant workers' rights; 170 workers underpaid (Labour Inspectorate)
2006–10	23	4	Assisted victims of forced labour under programme for assisting victims/witnesses of trafficking
Netherlands			
2007–09	161		Victims of trafficking for labour exploitation (CoMensha)
France			
2009	120		Various victims of trafficking and exploitation of the vulnerable (OCLTI)
2008	84		As above
2008	32		Non-payment of, or manifestly inadequate, wages due to vulnerability (Ministry of Justice)
	117		Working or living conditions contrary to human dignity due to vulnerability (Ministry of Justice)
2007	24		Non-payment of, or manifestly inadequate, wages due to vulnerability (Ministry of Justice)
	63		Working or living conditions contrary to human dignity due to vulnerability (Ministry of Justice)
2006	32		Non-payment of, or manifestly inadequate, wages due to vulnerability (Ministry of Justice)
	45		Working or living conditions contrary to human dignity due to vulnerability (Ministry of Justice)
2010	81		Domestic workers assisted by CCEM

Note: Reports where it is likely two or more strong indicators (ILO, 2009) of labour exploitation are present are shaded dark grey; those where it is possible one or more indicators are present are shaded light grey; reports where it is likely at least one indicator applies are left un-shaded. MRCI: Migrant Rights Centre Ireland; CoMensha: national coordinating body dealing with trafficking; OCLTI: Central Office for Combating Illegal Work; CCEM: Committee Against Modern Slavery.

together, however, they illustrate the worrying presence of forced labour practices across all nine countries studied, confirming the ubiquity of forced labour identified by the ILO, if not its magnitude. The table attempts to show how each of these sets of data is likely to relate to the forced labour indicators identified by the ILO and European Commission (ILO, 2009) (see Table 1).

Variation in national legal and social systems also leads to different types of exploitation being featured. In case studies from Germany (see Box 1) and the Netherlands (see Box 2), 'trafficking for the purposes of labour exploitation' is clearly highlighted, while according to the national reports, in Ireland and Poland forced labour may also be taking place where cases of 'exploitation' of migrant workers are identified. Other countries have specific national categories of 'unacceptable' exploitation where, as in France, for example, pay and working conditions may be deemed incompatible with human dignity, and which probably overlap with forced labour but are not entirely contiguous with it.

Different national economic contexts also play a major part in shaping the potential for widespread labour abuse. In Italy, for example, the substantial underground economy supports widespread irregularity. Over one in ten of the workforce is classified as 'irregularly employed' and while most are legal residents, as many as 400,000 workers comply neither with residence nor employment contract requirements. Italian research suggests many employers of undocumented workers prefer not to help them get papers 'to maintain these workers in a condition of being liable to be blackmailed at the socioeconomic as well as psychological level' (Carchedi, 2010: 53).

Box 1: Trafficking and forced labour in German strawberry fields

In 2007, a German strawberry field owner (a police officer on parental leave) in Augsburg, Bavaria, recruited 100 Romanian workers through a Romanian-speaking German citizen. The workers were transported to Germany for the strawberry harvest. Romanian nationals do not require a residence permit to enter Germany, but a work permit was required during the transitional period of Romania's EU membership. With it the seasonal workers should have had the same legal rights and wages as German workers in strawberry fields, including the application of collective wage agreements and appropriate measures for the protection of workers.

However, the defendant ignored all legislation when employing the Romanian seasonal workers, and they were not provided with employment contracts. He had previously been prosecuted for doing the same with Polish workers.

The Romanian workers had been offered €1.80 for each 5kg box of strawberries picked, and were promised that they could earn up to €5.50 an hour if they worked hard. Upon starting their duties it became very clear to them that it was not possible to earn €5.50 per hour, and they therefore attempted to negotiate with their employer. Due to the approaching strawberry harvest, the employer appeared to accept their demands.

They worked for at least 110 hours over 12 days in June 2007 and managed 116 boxes. They should have received €5.16 per hour and at least €208.80 for the 12 days. However, the employer deducted €50 for subsistence (food). Some workers worked up to 160 hours over 16 days and received only €150 compared to the wage rates in the sectoral collective agreement, by which they should have received €816.

The employer was aware the Romanian workers did not have enough cash with them to survive, abused his position and took advantage of their predicament to secure his strawberry harvest. He failed to pay their full wages, and gave them little option but to spend the little money they had buying food from his ex-partner's shop.

The local *Augburger Allgemeine* paper then published an article that was critical of the conditions of these Romanian seasonal labourers. Customs officers raided the field the next day and found only 55, the rest having disappeared. They arrested the employer and a Romanian-speaking German citizen (allegedly present only as an interpreter).

The customs officers' report stated that the farmer had failed to provide the workers with adequate accommodation or essential necessities such as mattresses, bedding or fridges. They had been left to live in deplorable conditions in containers near the strawberry field, with inadequate access to food and drink, and no water connection for the preparation of meals or bathing. During an inspection of the field it was recorded that there were only seven double cookers to cater for 100 people. In addition the electric installation was faulty, pipelines were partially open and there was no fire prevention equipment: the workers were living in overcrowded and unsafe accommodation.

The employer was sentenced to three years and three months in prison for human trafficking for the purpose of labour exploitation. The judge justified the sentence by focusing on the helplessness of the workers arising from them being in a foreign country, a specific provision for this being made in Section 233 of the Penal Code. The decisive criteria were the workers' lack of knowledge of the German language; their lack of cash, preventing them leaving the field, and making them dependent on the farmer; and the farmer's surveillance of the workers and their lack of opportunity to leave Germany.

The farmer was also guilty because he employed foreign workers without permission (under Section 11 of the Clandestine Employment Act). The Romanian workers' lawyer took further legal action against the employer through an employment tribunal to recover the outstanding pay of about €20,000.

The judge determined that the farmer had benefited from his harsh piecework rate and by not making the promised advance payments. The employer had also failed to inform the workers about their rights. The judge commented that, "None of the Romanians had a clue of the legal position of an employee in German legislation. They had received no information about wage rates." The judge insisted that the defendants were involved in "exploitive commercial employment" and showed that Section 233 could be used not only for trafficking for labour exploitation, but for all relevant cases in the context of forced labour.

The Romanian-speaking German citizen was sentenced to two years in prison for assisting with exploiting people under 21 years old, and aiding and abetting the employment of foreigners without approval. In addition he had to pay a fine of €10,000 to the state and €1,000 to each of the three Romanian witnesses who, significantly, after the court case, were permitted to stay and work in Germany.

Author: Janroj Keles

Box 2: An asparagus criminal in the Netherlands

An asparagus farmer continued to illegally employ and accommodate foreign workers after already being fined over half a million euros between 2005 and 2009. After 'tripartite discussions' (*driehoeksoverleg*) between the mayor, the chief of police and the public prosecutor, the municipality took action under the Housing Act, and when the premises were evacuated on 15 May 2009, 55 workers of Romanian, Polish and Portuguese nationalities were found. The mayor declared their conditions were "reminiscent more of a form of slavery than a modern business."

Under public pressure, the Public Prosecution Service began criminal investigations into trafficking for labour exploitation, identifying about 70 workers, three-quarters men and one-quarter women, 15 of whom were eventually interviewed after their return to their home countries. The workers had not been informed about the B9 procedure to provide support and temporary residence for subjects and witnesses to trafficking, nor had they been registered with CoMensha (the national coordination body dealing with trafficking). All the interviewed workers later received a letter in their own language with information about the possibility of joining the criminal proceedings and submitting a claim. Five did so.

Although they had a claim for unpaid wages, 36 Romanian workers preferred to return home without their money. The municipality arranged for a bus, but required them to sign an agreement stating that they would repay the cost. Twenty workers chose to remain at work, hoping to be paid at the end of the season, and the municipality gave permission for them to be housed in tents at the farm. The UWV (responsible for handling social security remittances) then granted 35 work permit applications made by the farmer, despite the pending criminal prosecution.

On 4 October 2011 the farmer was sentenced by the District Court to 30 months' imprisonment for labour exploitation and to pay €7,200 compensation to each of the claimants.

The fact that the farmer was a serial offender known to some of the authorities for years, as well as the decision to put witnesses on a bus and ask them to pay for their own journeys home, indicates poor coordination and knowledge of the law in relation to trafficking for labour exploitation.

Authors: Mijke Houwezijl and Conny Rijken

Originating countries

Not all those subjected to forced labour are undocumented or, indeed, migrants of any kind. Thus the Netherlands report cited two cases where nationals vulnerable through mental incapacity were subject to exploitation, while the Irish report recalled the Magdalene Laundries, where young women used to be made to work by a religious order. However, migration is a major source of vulnerability, and using media and court and other official reports, the countries of origin of those who experience forced labour can often be distinguished. This information may, however, be distorted either by the expectations of the investigatory authorities or of the media, who may be more likely to look for or identify forced labour among some communities than others, or when workers might deliberately misidentify their countries of origin.

Subject to these qualifications, in the nine EU member states researched, the countries of origin most frequently cited in the national reports as supplying forced labour were Bulgaria, Poland and Romania (within the EU), and China, Morocco and Turkey (from outside the EU). Other countries of origin referred to by only one national report were Algeria, Egypt, Moldova, Thailand and Tunisia. In these single country references there might be a

particular sector connection, as with Thai berry pickers in northern Sweden (see Box 10) and Egyptian strawberry pickers in Parete Province, Italy.

Figures on trafficking collated by the EU Commission show a similar picture, with most states reporting that the majority of trafficking 'victims' came from Romania, Bulgaria, Poland and Hungary, with the major non-EU source countries being Nigeria, Vietnam, Ukraine, Russia and China (European Commission, 2012).

This mix of EU and non-EU originating countries for forced labour is confirmed by the ILO (2012). Its figures show the majority of cases involve citizens of other EU countries, most of whom (with the exception of Romanian and Bulgarian citizens) now have a right to work anywhere in the EU. This suggests that while uncertain immigration status may be a contributory factor to workers' vulnerability to exploitation and forced labour, it is not an essential one.

This distribution and frequency of reports of non-nationals subject to employment abuse follows population movements. According to Eurostat, the largest group of all resident non-nationals in the EU comes from Turkey (7.2 per cent), followed by Romania (6.6 per cent) and Morocco (5.7 per cent) (see <http://epp.eurostat.ec.europa.eu>). Between 2001 and 2010 Romanian citizens had shown the largest increase, followed by Polish and Chinese citizens.

Not all of the reports provided any numerical breakdown or comparison between countries of origin, but in the Netherlands, the 2010 Labour Inspectorate report identified 25 per cent of workers in 'illegal' employment as originating from Bulgaria, 12 per cent from China and 9 per cent from Turkey. Half of the workers considered underpaid originated from new EU member states, one-fifth were Dutch citizens and nearly one-third originated from non-EU countries.

In 2008 and 2009, of 291 migrant workers who received social assistance through various projects across Italy, most came from five countries: Romania (50), Morocco (30), Egypt (28) India (24) and China (20). A study of 82 workers given legal assistance because of their labour exploitation between 2007 and 2010 identified three of the same countries: Egypt (66), Morocco (1) and China (1), and two others, Moldova (10) and Algeria (2).

In France, the Committee Against Modern Slavery (CCEM) that works primarily with domestic workers in the Paris area reported that of those it advised in 2010, half came from West Africa, just under a third from Africa north of the Sahara, and 10 per cent from East Africa, with another 8 per cent from Asia and 5 per cent from Europe. An NGO in South West France working with seasonal agricultural workers reported workers from Tunisia and Morocco as being most susceptible to exploitation.

Employer origins

What can be said about the countries of origin of the employers of forced labour? It is often assumed that forced labour is conducted by foreign nationals on their own co-nationals. However, our research suggests that this may be an over-simplification. The Spanish national report (produced for this research), using figures from the Public Prosecutor's Office, suggests that only in a minority of cases were the employers co-nationals of the workers, with a large majority (70 per cent) being Spanish-origin. The Italian case study also cites a study of 82 cases of extreme exploitation, where all the employers except three were found to be Italian (Bussadori *et al.*, 2009). The common factor to forced labour is thus the nature of the work and of the workplace and the employer–employee relationship, not their nationality. In France, both worker and abuser were found to be French in 30 per cent

of cases of exploitation (CNCDH, 2009). There is also some evidence that in certain industries exploitation, even if it is by co-nationals, forms part of a supply chain reaching into more prominent national or multinational enterprises. This is dealt with in more detail below.

Industries involved

The work and workplaces that appear most likely to tolerate forced labour are where work is physically hard and where workers are either isolated from each other, or work in small groups or workplaces, and where they are reliant on the employer to provide accommodation. The industries most frequently mentioned in the nine national reports as experiencing instances of abusive employment relationships are listed in Table 3.

These may, however, only be the industries in which the authorities expect forced labour, and where it is therefore more likely to be detected or identified. Actions taken by enforcement bodies to detect illegal work and irregular migration in 2008 in France, for example, prioritised workplaces in construction, agriculture and hospitality.

The EU Commission, in their recent strategy document on human trafficking, also identified (in addition to sex work) agriculture, construction and tourism as being sectors with a higher risk of labour exploitation, and reported that Europol, while not regarding tourism as a risk, add textiles, healthcare and domestic service (European Commission, 2012). Forced labour may thus also take place in small corners of other industries that are less in the legal spotlight.

Supply chains

Forced labour is not taking place solely on the fringes of the economy, but also in other sectors, where we see forced labour appearing in chains of value which lead into significant sectors of the economy. The berries picked by exploited migrant labour in Sweden, for example (see Box 10) go into the pharmaceutical and health food industries. The clothing workshops described in the Spanish case study (see Box 6) are making goods for major fashion labels, while the fields of Bouches-du-Rhône, where the 'seasonal' workers, aided by CODETRAS labour (see Box 3), produce 30 per cent of all French tomatoes, 20 per cent of the salad and over 36 per cent of the courgettes. Unions in both Germany and Ireland have complained about 'slavery' in construction, sometimes on major projects, while the Italian case study (see Box 9) identifies exploitation and forced labour practices as being systematic in a major construction firm.

Table 3: Industries where forced labour is referenced in national reports

Sector	References in national reports
Domestic service	8
Construction	7
Agriculture	6
Hotels, restaurants and catering	5
Cleaning	4
Food manufacturing/processing	3
Textiles and clothing	3

Immediate exploiters of forced labour might be hard to pursue for restitution due to their mobility or insolvency, but measures in some countries to make main contractors responsible for their subcontractors' wages or social security contributions might show the way to offer those subject to forced labour the prospect of recovering unpaid wages. A recent study of 28 European countries found eight that made main contractors liable for the wages of all workers in their subcontractors, including from the studied countries, Germany, Italy, the Netherlands and Spain. Taking Italy as an example, rules first adopted in 2003 (as part of a wider, fundamental review of labour regulations known as the 'Biagi' review) have since been strengthened. They now extend joint and several liability for wages and social security contributions throughout subcontracting chains, and claimants have up to two years to present claims (Jorens *et al.*, 2012). It is only in the event that none of the liable parties is able to pay that the workers may turn to the state-run insolvency fund (Fondo di Garanzia). The notion of worker in this case includes undocumented workers, but those illicitly subcontracted are, in any case, considered to be the responsibility of the main contracting party.

3 FORCED LABOUR AND THE LAW

EU member states are largely subject to similar international regulatory frameworks regarding immigration, employment and human rights, although among European regulations, the UK and Ireland do not apply all the Schengen Area procedures,² and the UK has, of course, an opt-out on the maximum working week. However, the states covered by this report differed in their approaches to labour exploitation, and to forced labour in particular. These differences arise from the historical context in which forced labour is viewed, and to different roles for labour market regulation. While EU directives and the European Convention on Human Rights (ECHR) are enforceable in law, the ILO conventions are much less so. States must ratify them in order to be bound by them, and even then there are few powers to enforce them; indeed, enforcement action on forced labour has only once been enacted (against Burma), in the form of a proposal that states be invited to take ‘appropriate measures’.

In this section we briefly review the principal international regulations, conventions and directives related to forced labour, and then we examine the national approaches and the problems they encounter. Some forced labour practices would be unlawful or illegal in most states, even without there being a specific offence of forced labour, such as non-payment of wages

(usually, but not always, a civil offence) or kidnapping (a criminal offence), for example.

The issues examined here are separated from those covered in the subsequent section on support, which includes actions taken outside of judicial processes (although they might include actions aimed to support those wishing to take up legal claims).

International regulation

There are four main measures or groups of international regulation covering forced labour and the practices surrounding it, and that apply to European states. Some apply further (the European Convention on Human Rights, for example, applies to all Council of Europe states), and some are optional – ILO conventions apply only if a decision to ratify has been made by a specific country.

European Convention on Human Rights 1950

Article 4 prohibits slavery, servitude and the requirement to perform forced or compulsory labour (exempting certain circumstances such as prisons, the military and national emergencies).

Council of Europe Convention on Action against Trafficking in Human Beings (2005)

This prohibits both national and transnational trafficking, defined to include recruitment and transportation by means of coercion or deception for the purpose of exploitation. Where coercion is used the apparent consent of the victim to the exploitation 'shall be irrelevant'. While its remit includes trafficking within national borders, much of it is devoted to border controls and repatriation. There is provision for compensation for victims from perpetrators, and it requires states to provide accommodation, psychological and material assistance, emergency medical treatment, translation and interpretation services, advice on legal rights, representation and access to education for children.

UN actions

- The Universal Declaration of Human Rights (1948) includes in Article 4 the statement that 'No-one shall be held in slavery or servitude.' This is generally seen as the foundation on which subsequent human rights legislation has been built.
- The Palermo Protocol to prevent, suppress and punish trafficking in persons (2000). This is an element of the Convention against Transnational Organised Crime, and primarily addresses offences against women and children; it came into force in 2003. It defines 'trafficking in persons' as 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.' It considers exploitation to involve 'forced labour or services, slavery or practices similar to slavery.' Repatriation may not be used for those at risk if returned, for those participating in prosecutions and on humanitarian grounds. Confiscation of the proceeds of trafficking and related offences to be used for the benefit of trafficked people is possible. States signing

the protocol are required to 'consider' providing victims with housing, counselling, information, healthcare and opportunities for education and employment. Its terminology has been widely used as a basis for national level legislation.

- Convention on the Protection of the Rights of all Migrant Workers and their Families (1990). This prohibits forced labour and servitude, but there are no EU ratifications of this convention.

International Labour Organization actions

- Convention No. 29 (Forced Labour, 1930). Signatories agreed to suppress forced labour in national legislation except in specific circumstances, such as a national emergency.
- Convention No. 105 (Abolition of Forced Labour, 1957). Signatories agreed to suppress forced labour, and not to use either forced or compulsory labour as a punishment.
- In addition to these, a number of conventions relate to working conditions, most particularly restrictions on working time, for example, Convention No. 1 (Hours of Work [Industry], 1919), which restricts working hours in industry (broadly, manufacturing and construction) to eight per day, 48 per week, subject to various conditions, and Convention No. 14 (Weekly Rest [Industry], 1921), which guarantees at least one period of 24 hours' rest per week. Some EU states have ratified these in full, some with reservations and others (such as the UK) not at all. Convention No. 95 (Protection of Wages) meanwhile, requires the regular payment of wages, restrictions on what and how deductions may be made, and mechanisms for making workers with outstanding wages preferential creditors in the event of insolvency of the employer. A number of EU member states have ratified this, including France, Italy, Poland and Spain.³

EU instruments

- Charter of Fundamental Rights (2000). Article 5 prohibits slavery and forced labour. It separates slavery and servitude from compulsory or forced labour, and both from trafficking.
- Council Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (replacing Council Framework Decision 2002/629/JHA). This extends trafficking to taking advantage of a person's position of vulnerability (defined as a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved). It sets out minimum penalties for perpetrators, and a level of support for victims, which is not conditional on them assisting in the prosecution of their abuser(s), which should include at least subsistence support, accommodation, medical treatment, counselling, information and interpreting services. While member states must ensure that victims of trafficking have access to 'existing schemes of compensation to victims of violent crimes of intent', there are no provisions for compensation for excessive hours or unpaid wages, or other distress. Denmark has opted out, but the UK and Ireland have opted in. Transposition by states is due by 6 April 2013.
- Council Directive 2009/52/EC, providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. This deals primarily with penalties against employers of 'irregular' (undocumented migrant) workers, but Article 6 makes employers liable for back pay (equivalent to the minimum wage, collective

agreements or established practice), gives 'illegally employed' third-country nationals the right to make a claim for such outstanding pay, and requires information about that right to be made available to them. It specifically excludes regularisation of workers concerned, and the UK has opted out.

- Council Directive 2004/81 on residence permits issued to third-country nationals who are victims of trafficking. While this requires that where residence permits are issued they should be for at least six months, and include the right to work, they are subject to the pre-requirements that the individual's presence 'serves a useful purpose for the investigation' (of the trafficking); they have shown a clear intention to cooperate and have severed relations with those suspected of the offences.⁴ It also refers to the need for support such as accommodation, medical and psychological support and legal aid (if provided under national law).
- Council Directive 2004/80/EC on compensation in cross-border situations. This applies to 'violent intentional crime' and to habitual residents of member states. It requires member states to have a compensation scheme for victims of violent intentional crime committed in their territories, and has set up a system facilitating access to compensation for victims of crimes in cross-border situations.
- The European Commission (2012) has also recently published a strategy document on combating trafficking over the next five years, identifying a number of priorities, including the need for those trafficked to be made aware of their rights (especially to residence permits).

Just as with ILO conventions, there are a number of EU directives dealing with the regulation of work and employment that may offer protection to those exposed to forced labour practices. Most significant is the Working Time Directive (2003/88/EC) which restricts working time to 48 hours per week (with some exceptions),⁵ entitles workers to four weeks' paid annual leave, and requires daily and weekly breaks between periods of work (11 and 24 hours respectively). The 1989 Health and Safety at Work Directive (89/391/EEC) is significant because it specifically covers all workers (not just employees), although it also specifically excludes domestic workers. Potentially, the Agency Workers and Posting of Workers Directives may be relevant, but the likelihood of those affected by forced labour not having lawful employment contracts may mean that these rights cannot be applied.

Finally, in 2009 the ILO and European Commission jointly published a list of indicators of trafficking for labour or sexual exploitation based on a Delphi experts' consultation.⁶ Although this is not strictly speaking a regulation, it has been widely accepted as a benchmark for national enforcement practice (ILO, 2009).

National regulations

Implementation of the measures listed varies according to the measures available to challenge forced labour, whether through employment, human rights, immigration or criminal law.

While the offences could therefore potentially be contested in these different branches of law, this also creates practical problems, both in determining who should take action – the state, the individual or a third party – and in deciding which grounds are most likely to secure a result that will punish the employer concerned and deter others while simultaneously supporting the worker who has experienced forced labour.

This study was not intended to be a full review of legal provisions, and our national experts were not asked to engage in detailed analysis of the law in each state, although in some cases their reports on this point are quite detailed. Nevertheless, the legal basis for any responses to forced labour is significant, and based on the national reports produced by our team of experts, we consider there are four areas of law that may prove relevant for a discussion on forced labour.

Criminal law

This renders offences against workers such as kidnapping, deprivation of liberty, theft and assault liable to punishment. In Italy, some prosecutors have used criminal charges of fraud or forging documents or aiding unlawful immigration to prosecute perpetrators when there is no clear evidence of trafficking. However, compensation was normally available only to those exposed to violent crimes in the nine countries researched. No examples were cited in the national reports of this having occurred in cases of forced labour alone.

Labour law

Severe breaches of employment regulations constitute extreme exploitation. In Latvia, for example, legislation providing employees with the right to decent work and equal treatment could be applied to prosecute forced labour occurrences. All states have some protections regarding working time (see the sections on ILO conventions and EU directives above), breaches of which could result in prosecutions, since excessive hours are a health and safety consideration. Entitlement to wages at a specified level may be covered by minimum wage legislation or contractual law, but may sometimes be dependent on the existence of a legally enforceable employment contract.

Human rights law

This could potentially lead to detailing a specific forced labour offence, but was rare in the nine countries. Forced labour may be illegal, however, where countries, such as Italy, have constitutions that specify protections regarding work, human rights and equality. Italy's Article 36 guarantees workers a wage 'sufficient to ensure them and their families a free and dignified existence.' Its constitution also promises work breaks, paid holidays and a ceiling on weekly hours of work, while Article 41 requires that the freedom of private enterprise should not conflict with the public good, or damage safety, liberty or human dignity.

The French Penal Code outlaws slavery (Article 121-1) and conditions of work and lodging contrary to human dignity (Article 225-4-1), but the absence in France of specific protection from forced labour was the subject of a landmark ECHR judgment in 2005 (*Siliadin v. France*, 73316/01, Council of Europe: ECHR, 2005). France was condemned because there was no proper restitution for forced labour – judges at one level had determined that since Ms. Siliadin (a domestic worker) could leave the house in which she was employed, she was not 'forced to remain', and that very long working hours looking after children could not constitute labour exploitation because this was 'normal' – many mothers did this for their own children.

In theory, all legislation should be compliant with human rights, so the distinction between this and other branches of law is not precise. Ensuring such compliance in practice can be very time consuming, and possibly expensive.

Immigration law

Legislation in this area tends to conflate trafficking with smuggling and/or unlawful migration. Restrictions on the right to work (or to employ certain migrants) come into this category.

The issue of support for the subjects of forced labour is often crucial in determining their readiness to cooperate with legal actions. In France the potential for seasonal workers to gain residential status, and with it a host of previously denied entitlements, gave them the motivation to work with an NGO to see a lengthy court case through to success (see Box 3).

Box 3: French seasonal workers supported in targeted litigation

CODETRAS (Collective for the Defence of Foreign Workers in Agriculture) is an association of trade unions, a small farmers' union (the Confédération Paysanne), anti-racism organisations, the Human Rights League and a number of rural social workers, activists and researchers. It was founded in 2001 in the Bouches-du-Rhône *département*, in the south of France, one of France's main fruit and vegetable producing regions, to challenge the legalised exploitation faced by seasonal workers who are the backbone of the labour force in the fields and greenhouses of the region.

Since the 1970s several thousand Moroccan and Tunisian citizens have come to France each year on OMI contracts (l'Office des Migrations Internationales), that allow them to work for up to six months in agriculture, with the possibility of a prolongation 'in exceptional circumstances' to eight months. They are physically in France, but as far as their rights are concerned, they are in Morocco or Tunisia. While they paid social security contributions at the normal French rate, the family allowances and pensions they receive are based on the Moroccan/Tunisian rate, which is over five times lower than the French rate. They have no right to unemployment benefits or to wage increases related to their skills (unlike other, permanent workers) and do not receive seniority bonuses. Their weekly working hours vastly exceed the legal limit, but they are not paid overtime rates. Most are obliged to live on farms, often in dormitories or mobile homes without sufficient showers or sometimes even running water.

OMI workers rarely protest against the abuses they suffer. As their contracts are nominal, they are tied to their boss and may not change employers without a 'certificate of freedom'. It is their boss who every year decides which workers he wishes to employ the following year. Workers are aware that anyone who complains will not obtain a new contract the following year.

When CODETRAS first denounced this situation in 2002, a scandal that had existed for almost 30 years suddenly came to light, forcing the *préfecture* (the local state authorities) to take the Collective's allegations seriously and to hold discussions with all concerned. Some workers took their employers to the labour court with CODETRAS' legal support.

One man, Baloua, had worked for 23 years for the same employer, and every year his contract had been extended to eight months. He only lost his job when his boss sold the farm and did not even bother to inform his workers that their contracts would not be renewed. Every year since 1986, Baloua had noted down the hours he had worked every day and

the wages he had received. This enabled his lawyers to argue that he had been cheated out of a total of about three years' worth of wages and that in those eight months each year he had worked for more than the equivalent of a full year.

Naïma is the only woman ever to have been granted an OMI contract, officially to carry out agricultural work. In fact, she was recruited by a fruit farmer who already employed several members of her family, to do domestic work. She was treated as a maid and obliged to work 12–16 hours a day, seven days a week. When she announced that she wanted to marry, her employers finally accepted but insisted that she should not have any children. According to her CODETRAS lawyer, “she was kept in a situation of financial, administrative and social dependency, her own family pressing her to accept this situation for fear of the consequences which a refusal to work in such conditions would have.” They knew only too well that all of their jobs were at stake.

When she had an accident at work in 2000, her employer refused to declare it. She and her husband were later fired and obliged to leave their lodgings, and found themselves without work, resources or papers. She finally decided to react, and with the help of the CGT union, the MRAP anti-racist organisation and then CODETRAS, she began a legal marathon in 2002, which is ongoing. In reprisal, her ex-employer refused to renew the contracts of the other members of her family.

CODETRAS first won a residence permit for Baloua. In September 2006 the Marseille Administrative Court ruled that Baloua was ‘in reality a permanent worker’ and that ‘if Mr Ait Baloua was forced to return to Morocco each year for four months, during 22 years, this was only to respect the legal pretence that his employer and the administration had agreed to give to his employment and his residence in France; Mr Ait Baloua must therefore be considered legally to be a resident in France, in a regular manner for over 10 years.’ In 2010 Baloua received €40,000 and 19 other workers a total of €110,000 back pay in an agreement negotiated with their former employer, in exchange for the cessation of legal action.

CODETRAS organised regular group OMI complaints, with 20 or 30 workers appearing in court at the same time, eventually forcing the *préfecture* to systematically grant residence permits to all OMI workers who had worked regularly in France for over six months a year. Some 1,300 to 1,500 Moroccan and Tunisian citizens have so far succeeded in obtaining permits. In January 2011, 24 workers were awarded a total of over €1.1 million against their employers.

The government responded by ending the possibility of prolonging OMI contracts beyond six months, although to help the employers, it decided that staff could have overlapping seasonal contracts, thereby still avoiding employing full-time staff with full access to all rights.

This legal campaign by CODETRAS was spectacularly successful, but it has also had negative consequences. Most of the North African ex-OMI workers who obtained a year's residence permit were then excluded from the agricultural labour market. And the overall number of OMI contract workers has fallen as temporary employment agencies legally established in other EU countries increasingly bring in migrant workers who charge them as little as €5 an hour per worker.

Author: Nicholas Bell, European Civic Forum and CODETRAS

While forced labour-related offences might be prosecuted through different channels (depending on the country), these may also be combined, so, for example, criminal law may encompass employment law, and human rights principles should apply in all cases. Some of the sanctions under the laws may have been determined by international conventions and EU directives; others purely by national legislature. The states examined in the national reports varied in the emphasis placed on the various branches, as well as the extent to which they implemented the international instruments.

Several states have used the same definitions as the Palermo Protocol in defining 'trafficking in persons', and Latvia, for example, has inserted an anti-trafficking clause into its Criminal Code, making unlawful 'recruitment' as well as other transfer activities for the purposes of labour exploitation. Italy has ratified ILO Conventions 29, 105 and 182 (prohibiting child labour), but has still not made forced labour a specific offence outside of the context of trafficking for labour exploitation.

But the Palermo Protocol's terminology does not consistently ensure that forced labour and intensive exploitation is unlawful, although the Framework Decision required all states to create a criminal offence for *trafficking*. In Ireland, the Criminal Law (Human Trafficking) Act was passed in 2008. This has led to legal debate as to whether forced labour can only take place where it has involved cross-border trafficking, or whether the act of 'recruitment' does not presuppose that a border has been crossed. The Irish Employment Permits Act (2006) created the offences of retaining workers' identity documents, and making deductions for recruitment fees and their travelling expenses (where they actually have work permits). In Sweden, courts have ruled both that unlawful labour exploitation in the context of trafficking occurs only if a worker's freedom of movement was restricted, and also that the *intentional* misleading of the worker had to be proved in determining that trafficking had occurred.

The Netherlands Penal Code provisions derive from the Palermo Protocol and the EU Framework Decision on trafficking, as well as a previously existing clause against sexual exploitation. However, interpretation of the international legislation has largely been left to the judges who use case law to define what might constitute vulnerability, the intention to take advantage of vulnerability and exploitation. They have determined tests for establishing vulnerability as: there being a combination of illegal residence, poor economic circumstances on the part of the subject and inability to speak Dutch. 'Taking advantage of vulnerability' proved more difficult to define, as judges were concerned that workers might have actively sought the employment in question. A Netherlands Court of Appeal judgment then ruled the employer would have had to show 'initiative and action' aimed at intentionally abusing the workers' vulnerability.

Initially judges in the Netherlands applied tough tests on 'exploitation', ruling that even if they were 'socially undesirable', poor labour conditions were not sufficient to establish exploitation for the purposes of trafficking. However, in October 2009 the Netherlands Supreme Court considered the case of Chinese restaurant workers who had worked (without legal authority to do so) six days a week, between 11 and 13 hours per day, for between €400 and €800 per month, sleeping several to a room. Lower courts had determined that this was not enough to determine exploitation, as it could not be shown that the workers had no other alternative. The Supreme Court judged that while no general definition of exploitation was possible, consideration had to be given to the nature of the employment, restrictions placed by that employment on the individual and the financial gain of the employer, and determined it would be incomprehensible to consider that the

employer had no intention to exploit. In future 'acceptable' Netherlands work standards had to be used as a frame of reference rather than the workers' view of the conditions.

4 RECOGNISING FORCED LABOUR

This report is specifically focused on forced labour as distinct from ‘trafficking’, and while there may be internationally accepted definitions of this, it is not always clear how these might apply in the national context. This section examines the variety of national approaches to describing, publicising and examining the phenomenon of forced labour, as set out in the national reports and case studies prepared for this project.

Accepting that forced labour occurs

Despite clear and well-publicised examples, forced labour tended not to be widely acknowledged as a significant phenomenon within the countries examined. Thus although in Germany over 200 cases of trafficking for labour exploitation have been investigated, enquiries made during the preparation of the German national report were referred to organisations dealing with Second World War reparations for forced labour, and the Germany Labour Ministry (BMAS) replied that “certainly, in Germany, there is no forced labour in work and professional life.”

In a case involving two of the countries studied, Polish migrant workers were abused by gangmasters in Foggia, Italy – they were not allowed to move freely and had deductions illegally made from their wages. This was investigated in both Poland and Italy, with police evidence to a 2009 Italian parliamentary enquiry stating:

The[y] do not show any sign of humanity towards their slaves, they are rather ready to beat them, torture them, even to kill them, “just as an example” for others; gangmasters do not tolerate any type of reaction by the exploited, because they must perform, and always, in silence, accept the harassment of their superiors; it even happens that the

slaves should bring a woman to the gangmaster so he sexually abused her in exchange for a daily work. (Interrogazione no. 168, 29 April 2009)

Despite coverage given to this extreme case, awareness-raising campaigns (see Box 4 for an example) and one person in ten knowing someone who had experienced deception over their employment abroad, opinion polls in Poland show that respondents nevertheless considered trafficking to be more associated with sexual exploitation and prostitution (26 per cent of replies) than with forced or unpaid labour (10 per cent) (TNS OBOP, 2010).

In Latvia media reports of abuse of the country's nationals working in host countries may have led exploitation and forced labour practices to be regarded as 'normal' for migrants. Indeed the Ministry of Foreign Affairs suggests workers should expect problems, and have enough money for their return ticket (Latvian Ministry of Foreign Affairs, 2011).

Box 4: 'Hollywood' awareness raising in Poland

An awareness-raising campaign among potential migrants was launched in Szczecin, the capital city of a border region in north-western Poland, to coincide with the lifting of EU border controls on Polish workers. The campaign was initiated in 2008 as a joint enterprise of the regional administration, prosecutor's office, regional police and education authorities. The title of the campaign was 'Not all trains go to Hollywood' referring to a Polish film 'Train to Hollywood' about a young girl dreaming about becoming an actress. It warned about the unrealistic expectations regarding work abroad, and the ways exploiters lured their victims.

Campaigning against sexual exploitation, forced labour, forced crime, begging and stealing organs it consisted of a website, and leaflets and posters distributed in Szczecin and neighbouring towns, in particular, seaside resorts. The staff of the participating institutions met and discussed the problems of trafficking with young people, teachers, social workers and NGO workers, and developed teaching packs. These presented the basic strategies of the perpetrators, as well as a checklist for a safe trip abroad (preparing copies of documents, contact telephone numbers, verifying a job offer or credibility of a work agent, for example).

It went beyond the stereotype of trafficking young women for prostitution to show that anyone could be lured and trafficked, thus trying to reduce the popular contempt for the victims. As the mechanisms are similar in the case of trafficking non-European Economic Area (EEA) nationals to Poland, the campaign may also change the perception of non-national victims and the awareness of the assistance available to them.

Source: www.szczecin.kwp.gov.pl/hollywood/index.html

In France the term forced labour (*travail forcé*) was more often used in reports of abusive labour practices in developing countries than it was to describe exploitation in France itself. Similar tendencies were also noted in Germany, Italy and Spain (where such an analysis appeared in a trade union campaign against labour exploitation).

When it comes to exploitation in domestic work and prostitution, however, where the women and children involved are portrayed as 'victims', a higher level of awareness seemed to exist, and this was noted in both France and Germany (see, for example, Follmar-Otto and Rab, 2009).

By contrast, abused workers (and particularly men) in other industries tended to be seen as suffering 'exploitation', however severe, rather than forced labour. In Spain such abuse tended to be classified as 'labour exploitation in inhumane conditions', while in Germany terms such as 'enforced' or 'involuntary work' (*erzwungene Arbeit, Unfreie*), 'unfavourable working conditions' (*ungünstige arbeit*) or 'extreme form of labour exploitation' (*extreme Form der Arbeitsausbeutung*) were used.

However, these deficiencies are being recognised, and the 2009 French National Consultative Commission on Human Rights' (CNCDH) enquiry specifically addressed the rights of victims of trafficking or exploitation, which explicitly recognised that trafficking alone was an inadequate framework (CNCDH, 2009). In Germany, the coordinating group KOK, which represents organisations involved in combating trafficking and violence against women, published in 2012 a comprehensive, policy-oriented report which presented data from judicial, academic and practitioner sources covering labour exploitation, bonded labour servitude and slavery. This included much of the data which appears in the German national report, but also drew conclusions for Germany as to how those subjected to trafficking for labour exploitation could better be supported (KOK-Informationdienst, 2012).

Highlighting rights

Publicising rights to both workers and employers has value in arming workers, their representatives and advisers, as well as reminding employers of their obligations. The research revealed several examples of information campaigns aimed at groups that might be particularly susceptible to forced labour, in particular, migrant or undocumented workers:

- The Polish trade union confederation OPZZ, in cooperation with the European anti-trafficking NGO La Strada, published material on rights aimed at migrant workers.
- A forced labour manual for Polish labour inspectors has been published. It shows how young people are being targeted.
- The German trade union VerDi established the MigrAR project to give advice and assistance to undocumented workers, and the union IG Bau participated in a public awareness campaign as part of its support for an ILO report on trafficking in 2004.
- The Berlin Alliance Against Human Trafficking (BBGM) focuses on raising awareness among those who may come into contact with those trafficked for labour exploitation, providing training and multilingual information. The Nuovo Orme 4 (New Footsteps 4) Italian awareness-raising project in Emilia Romagna includes local authorities, NGOs and the social cooperatives that were involved in forming the anti-trafficking association Associazione Trame.
- The Migrant Rights Centre Ireland (MRCI) publishes material in the form of rights sheets for migrant workers, and collaborates with the Irish Congress of Trade Unions (ICTU) in unionising workers.
- An Irish network of domestic workers in Ireland (see Box 5) publishes a quarterly newsletter. It promotes the recently ratified ILO Domestic Workers Convention, and works to raise awareness of the problems faced by domestic workers.

Box 5: Campaigning against forced labour in private households

In 2003 MRCI noted an increase in the number of domestic workers coming to it reporting serious cases of abuse involving long working hours, violence from their employers, non-payment of wages and general poor treatment. Information collected from the workers' stories encouraged it to set up a Domestic Workers Action Group (DWAG), mainly involving Filipino women who met every Sunday.

The group now has around 200 members, mostly migrant women working in private homes as childminders, cleaners and carers. A core of 15 to 20 workers meets once every two months. They have a quarterly newsletter and participated in the formation of a domestic workers' branch of the trade union SIPTU, although that activity appears to have declined through lack of sufficient union support. They have lobbied organisations such as the ILO for the 2011 Convention concerning Decent Work for Domestic Workers, and are now calling on the Irish government to commit to ratifying it.

DWAG recently campaigned for the abolition of diplomatic immunity in cases of domestic worker employment by embassy staff. One case came to attention after a Ukrainian female domestic worker, employed in the private household of a South African embassy diplomat, shared her story at one of the regular domestic workers' meetings. It was clear that domestic workers in this situation had no transparent regime and a lack of employment contracts. The group then picketed outside the embassy and outside the private house of the embassy worker. This was action they could sustain. Several claims were lodged at the Labour Relations Commission, but all were initially dismissed following the employer's claims of diplomatic immunity. The case gained much publicity and three cases were then referred to the Anti-Human Trafficking Unit for further investigation.

The main obstacle was seen as the private sphere of the home, which was not viewed as a 'legitimate' place of work to be subject to regulation and state control. MRCI therefore began campaigning for inspections in the domestic sector to be conducted by the National Employment Rights Authority (NERA); for the domestic sector to be on its 'high risk' list; for a protocol for the protection of domestic workers employed by diplomatic staff; and for the establishment of a Joint Labour Committee to regulate and set out legal minimum rates and standards for the domestic work industry.

This campaign led to an announcement in November 2010 that NERA would target private households employing domestic workers for inspection. A pilot phase of inspections began in the Mid-West region of Ireland in early 2011 to check that individuals were getting the minimum wage and basic employment rights. NERA is able to interview the employer and employee at a location outside the home and can demand access to documentation. While consent is needed of private householders to enter their premises, this is the first time that the state has formally recognised the private household as a unit of workplace inspection.

As well as the pilot, NERA has issued a *Code of Practice* (2007). This sets out: the obligation to provide a written statement of terms and conditions of employment as required under the Terms of Employment

(Information) Acts 1994 and 2001, detailing hours, rates, duties, breaks/leave entitlements, treatment of travel time etc.; provisions as regards the safeguarding of employee privacy; that the employer will not keep any personal document belonging to an employee; the treatment of accommodation and making of any deductions; that all additional duties will be by prior agreement and out-of-pocket expenses will be reimbursed promptly; that the employer will facilitate the employee in the free exercise of personal pursuits; and that the employer will not restrict the employee's right to trade union membership.

Author: Sonia McKay

While none of the NGOs in the nine countries dealt solely or even principally with forced labour, several worked in areas where forced labour might be encountered, and had responded to it accordingly. MRCI in Ireland and Città Migrante in Italy focus on undocumented migrants, CCEM focuses on domestic workers and CODETRAS also in France on agricultural workers. These organisations play a major role in highlighting examples of forced labour and extreme exploitation, and in supporting those subjected to it in claiming or campaigning for their rights.

Government initiatives

Responding to concerns about preventing labour exploitation (primarily arising from the Palermo Protocol but also in response to the directive on trafficking), certain governments decided to research the phenomenon and to review and sometimes amend their responses:

- In 2010 the Latvian Ministry of the Interior established a working group to look specifically at labour exploitation in connection with its 2009–13 Programme for Prevention of Trafficking in Human Beings. It now includes the prosecutor-general's office, state police, State Border Guard, Foreign Ministry, Ministry of Welfare and an NGO, Patvērumš Drošā Māja (Shelter Safe House), the state Labour Inspectorate and the state Labour Agency. Its main tasks are to prepare criteria for the identification of labour exploitation and guidelines for cooperation between enforcement agencies and for the provision of support. Members believe it will increase awareness and develop indicators to spread the understanding that labour exploitation is as serious a crime as sexual exploitation. It will examine non-payment of taxes, wages paid below the official minimum wage, and non-compliance of living and working conditions with decent standards, and will develop tests with the Labour Inspectorate and State Border Guard to distinguish between labour exploitation and 'normal' labour grievances.
- The Italian Prodi government created a Commission on Forced Labour in 2007 (within the anti-trafficking Committee of the Equal Opportunities Department) and issued a circular to the police, authorising them to issue residence permits for 'social protection' to severely exploited workers. Although these measures did not survive the subsequent Berlusconi administration, in 2010 a farm labourers' protest movement in Rosarno led to a dedicated 'Vigilance plan', focusing on identifying labour exploitation in agriculture and construction in the south of Italy.
- In the Netherlands pilot information exchanges have been set up to examine minimum wage payments between The Hague municipality, the Labour Inspectorate, Tax and Customs Authority and the Social

Information and Investigation Service, with national-level intervention teams created to deal with industries thought to be at high risk of abusive labour conditions. The Netherlands Labour Ministry also introduced an exploitation information card in 2009 setting out the key indicators of abuse and workers' rights in 12 languages, for use by those affected, and organisations such as the municipalities, the police, migrant churches and NGOs.

- In Ireland an Anti-Human Trafficking Unit was established in 2008 and it has provided training to officials from a range of organisations including NERA and the Health and Safety Executive. An interdepartmental High-Level Group was set up with five interdisciplinary groups, one of which deals specifically with labour exploitation. NERA has also produced a *Code of Practice* for employers of domestic workers in private households.
- In France, the National Commission for Combating Illegal Work coordinate government action on exploitation. This encompasses work carried out by undocumented migrants, offences against labour rights and non-declared work (in which tax and social security contributions are evaded) as well as trafficking or forced labour. In 2005 the Central Office for Combating Illegal Work (OCLTI) was established to oversee enforcement, and in 2009 CNCDH produced a major report on trafficking and exploitation, many of whose 94 recommendations dealt with the detection, recompense and support of victims of forced labour.

International initiatives

While forced labour practices do not always have a transnational element, they often do. Transnationalism here may concern both the subjects and the perpetrators.

Recruitment may take place in one country for exploitation in another, or wages earned in the host country may remain unpaid for workers who return to their home country. Police in Spain considered that they needed transnational cooperation and intelligence to confront labour exploitation by transnational networks that began with debts being incurred by workers while still in China (see Box 6). When they are themselves foreign nationals, the perpetrators of forced labour may, on discovery, simply remove themselves from the jurisdiction of the authorities in the country where the offences were committed.

Box 6: Chinese forced labour in Spain

Mataró, a textile town outside Barcelona with around 120,000 inhabitants, was heavily hit by globalisation, and hosts more than 100 new, local Chinese textile workshops concentrated in one neighbourhood. Witnesses granted protection under anti-trafficking laws warned of numerous labour and migration infractions there, and to suspicions that a criminal network was operating between China and Spain.

A series of raids by Catalan police and labour inspectors found that the Chinese migrants had acquired substantial debt in the process of reaching Spain. More than 30 per cent of the exploited workers (130) declared to the police that they were paying off debts of up to €20,000. This is at least ten times higher than a flight ticket, but the organisation, a 'travel agency', also provided contact with a network of Chinese

employers in Spain, and helped 'launder' the workers' identity. The pressure to repay the debt and the fear of retaliation against the families was considered the cornerstone of the whole criminal organisation, which explains why workers would accept almost any labour conditions.

During the last five years the structure of the criminal network fundamentally changed, passing from a single organisation to three organisations, each specialising in a different phase: recruitment and travel from China, labour exploitation in Spain and the transfer of exploited migrants around Europe.

Each textile workshop was part of a network producing original clothes for more than 400 very well known brands. The brands assigned orders to an intermediary offering the best price. They were in contact with two to three legal Chinese workshops that in turn spread the workload to unregistered ones. In this way, brands and intermediaries would avoid culpability for any crime.

The powers that the municipality and labour inspectors can exercise over this process are minimal. A licence for a workshop just has to self-declare that the economic activity complies with a range of basic standards (such as accessibility, safety...), yet only 11 out of the 77 workshops raided in Mataró had obtained it, as local politicians sought to encourage inward investment. Even since the 2010 raids, new Chinese textile workshops have opened in Mataró, and it is possible that the same exploitation framework is being replicated.

The Chinese workers told the police that their monthly wage was around €500–600, excluding deductions for repaying the smugglers. The remainder was used for basic needs and for sending remittances back to China. In general, workers would have to work for more than six years to pay off their debt.

Each workshop operated under different rules. In some cases, workers were free to move, or the working area was separate from the sleeping areas, while in other workshops, living conditions were more like those of a prison camp. Irrespective of the degree of freedom of movement or the labour conditions, Chinese workers were unwilling to leave their workplaces. Reasons included their lack of knowledge of Spanish, their being undocumented and sometimes lack of money. Thus, workers were placed in a vulnerable situation, preventing any idea of leaving the job or denouncing the abuse.

After the police and labour inspectors checked the workshops, sewing machines were sealed and clothes requisitioned. Nevertheless, more than 450 workers who were found were allowed to stay living there, and were not detained. This was for two reasons. First, the operation was secretly planned. Neither the municipality nor relevant NGOs had been alerted, so no system of assistance had been deployed. Second, the inspectors' approach was that exploited workers were first of all victims and only then undocumented migrants. Consequently, no expulsion measures were applied in order not to victimise the workers twice.

During the days following the raids, workers were called to testify about their situation and were offered assistance from the Spanish Red Cross. Despite their critical situation, many refused assistance and disappeared. While the Catalan Immigration Secretariat and Red Cross had hired a hotel near to Mataró in order to offer temporary accommodation,

after just three days the hotel lay empty. It is thought that the workers had found jobs in other local textile workshops, or that another illicit organisation had moved them abroad. Finally, a few returned to China. The principal explanation lies with the pressure of the debt, although it is also possible that some were intimidated by the police presence.

Equally, because of their prolonged immersion in an exploitation-based framework, the victims might have considered their working conditions as acceptable. Some of them, after having repaid their debt, opened new textile workshops, and themselves became exploiters. The raids proved the presence of forced labour: there were strong relations with the criminal organisation to which workers had to pay a considerable debt; there was lack of freedom of movement; they were undocumented; wages were significantly below the legal minimum; they were subject to excessive working hours and infringement of basic health and safety measures; and they lacked privacy during rest periods. The need to continue paying back their debt and the lack of any identity documents seemed to be the major reasons why workers overwhelmingly refused the social support proposed by the police.

The textile workshop employers are currently being charged with several crimes, but judgment has not taken place at the time of writing. Although the Catalan police have acquired better knowledge about the transnational criminal network as a result, regions such as Catalonia or even countries cannot effectively fight extended and rooted criminal organisations alone. It is also clear that unbeatable price and delivery terms offered to legal client companies permit illegal workshops to easily fit in and grow within the Spanish production system. The limited powers of the municipality (which assigns the licence for opening any productive activity) and the almost total absence of labour inspections helps encourage a wide range of infringements.

Author: Paolo Leotti

In response, several international initiatives have been undertaken, some focusing on awareness raising and crime reporting, others involving more detailed cooperation. In 2007 the G6 Human Trafficking Initiative was launched in Brussels by Ireland, the UK, the Netherlands, Poland, Italy and Spain. Supported by Europol, Interpol and Eurojust, the campaign was directed at detecting and acting against organised 'traffickers', as well as raising public awareness of the issue. A few months later the UK Human Trafficking Centre (UKHTC) launched the Blue Blindfold international campaign. It also secured the support of Europol and Interpol, as well as of the US and UN anti-trafficking centres, for its awareness-raising activities. However, this is illustrative of the problem of regarding forced labour through the lens of trafficking. The focus of the campaign on trafficking places it specifically within the context of migration. This means that no specific provision has been made for dealing with cases of forced labour, nor do the measures encompassed within the campaign include any specific mention of work-related issues (such as unpaid wages).

In complex prosecutions, intelligence from the home country (either from workers who have returned or regarding perpetrators resident there) is needed. Coordination between Latvian and Italian authorities was essential in the modelling agency case (see Box 7) where young Latvian women were tricked into going to work in Italy, and international cooperation also featured in the asparagus case in the Netherlands (see Box 2). These are,

however, largely *ad hoc* responses, and it is unclear whether cases requiring such cooperation occur on a sufficient scale to require the establishment of permanent international structures.

However, information exchanges relating to immigration and labour inspection do occur between France, Germany and Belgium as a contribution to work against labour exploitation, and discussions are underway about extending them to include Bulgaria, the Netherlands, Poland and Portugal.

Box 7: Latvia and Italy: cross-border legal cooperation

The only case to come to a Latvian court based on charges of labour exploitation involved the company WWW Management Inc./Riga established in 2001. Initially advertisements for this modelling agency even appeared in the University of Latvia's newspaper. It recruited young girls and women aged from 13 up to 20 who were recruited to work in a modelling agency in Milan, run by a Croatian man. While the names of the modelling agencies in Riga and Milan changed several times, the people who organised the recruitment remained the same.

The Latvian female recruiter was charged with recruiting the women for sexual and labour exploitation, while knowingly making fraudulent promises about living and working conditions in Italy. She drew up contracts in English that were signed by her and the parents of the potential models, but no copies of the contracts were ever given to the parents.

The Croatian head of the model agency in Italy was charged with having total control over the private lives of the young women in Italy, retaining their passports and mobile phone SIM cards, exploiting them sexually and for labour, and controlling their movements by confining them to the workplace.

In fact, no modelling agency actually existed. The young women had to go to model castings and search for modelling work on their own. If they succeeded and got paid, the money was divided between the company's owners.

The ILO and European Commission (2009) indicators of forced labour observed were: the restriction of movement and confinement to the workplace or to a limited area; the withholding of wages or excessive wage reductions that violate previously made agreements; and the retention of passports and identity documents, so that the worker cannot leave, or prove his/her identity and status.

A pre-trial investigation against the Latvian recruiter was launched in 2007, helped by the Italian law enforcement agencies, and was received via the Eurojust network, after the director of the company WWW Management Inc. was successfully prosecuted in Italy for the sexual exploitation of minors. The criminal case in Latvia for human trafficking finally began in 2009. The Latvian recruiter was accused under Latvian Criminal Law Section 154.1(2), but was initially found not guilty in June 2011. The Latvian Prosecutor General immediately resubmitted the charge to a higher court. The Supreme court repealed the not guilty verdict and sent the case back to the regional court. The recruiter's lawyer appealed against this decision. The hearing of this appeal was postponed due to illness. No date is yet scheduled.

Author: Aija Lulle

Detection and inspection

Most countries have focussed on confronting forced labour and trafficking through the criminal law with a tendency to overlook the valuable and complementary role of labour inspectors. (ILO, 2010)

Forced labour may come to light due to workers' claims against or denunciations of their employers for abusive employment practices (such as non-payment of wages), or through the independent actions of unions and labour inspectors. It may also be detected through migrant workers approaching immigration or similar information centres, or through inspections carried out by immigration authorities, or by housing officials.

Problems arise, however, where the workers concerned are not entitled to work. This often arises when immigration enforcement officials and labour inspectors take joint actions, as in Latvia. Abused workers may also have well-founded concerns about approaching authority in general. In Germany, for example, labour inspectors are obliged to inform immigration authorities of any undocumented migrants, although they are not required to enquire about their immigration status. The likelihood of abuse being reported is thus reduced by workers avoiding identifying themselves to the authorities for fear of removal. In most of the countries examined, labour inspectors are well established, having a role that, in addition to health and safety inspections, may include checking on the application of employment regulations, payment of wages, equality and the detection of undeclared work. France, Poland and Latvia have general inspectorates, covering employment and health and safety, in Italy and Ireland the roles are separate, while in Sweden and Germany inspectorates deal principally with health and safety.

As pointed out by the ILO, such inspectors are 'well placed to provide early warnings before instances of forced labour and trafficking become entrenched practices of abuse. Inspectors also enjoy easier access to workplaces than police and prosecutors while still performing an important monitoring function for possible judicial action' (ILO, 2010).

In some countries the labour inspectors' remit is limited. For example, in Spain inspectors are not allowed to inspect private households and so cannot intervene where forced labour involves domestic workers. Similarly in Ireland, while NERA has rights of inspection of Irish workplaces, this excludes private households (although voluntary inspections of homes with domestic workers are being piloted).

For workers who are isolated and unable to speak the host country language, and prevented by their legal status or financial means from pursuing complaints in their own right, the possibility of enforcement of their rights by government agencies becomes particularly important. All states signatory to the European Convention on Human Rights are under an obligation to investigate allegations of forced labour (Article 4). The ECHR has interpreted this as not requiring an actual complaint by those affected – once the state has become aware, it must act.

In Italy, since 2002 employers tendering for contracts in both the public and private sector are now required to hold a certificate of regular payments of their social contributions. This must be shown on demand by labour inspectors.

In the Netherlands two branches of the Labour Inspectorate (Labour Market Fraud and Labour Conditions Directorate) may inspect workplaces, but over half of their inspections occur jointly with the Aliens Police, making complaints by non-compliant migrants unlikely. The Social Intelligence and Investigation Department (SIID) includes both the police and the Border Force, and therefore looks for forced labour in the context of trafficking

and immigration offences. Housing officers employed by the Netherlands municipalities may also detect forced labour amongst those living in poor housing controlled by the employer (see Box 8; although, in this case, prosecution only followed after considerable coverage and pressure from the media).

Box 8: Housing and forced labour in the Netherlands

In July 2009, acting on information from housing officers, the Aliens Police found 11 Indonesian workers housed in very poor conditions. SIID arrested the owner of the house and his wife and an Indonesian gangmaster intermediary (living in his own room with air conditioning); they later also arrested a contact person in Indonesia (responsible for recruiting, smuggling and making travel arrangements) who was discovered through the phone tapping of the wife who had been released on bail.

Evidence from the 'irregular' migrants indicated high levels of exploitation: working days of 10 to 15 hours for a small salary of €25 to €30 per day, and a high rent for a mattress on the floor in extremely dirty, unhygienic and unhealthy circumstances. They did not speak Dutch, did not know the Netherlands, did not have a residence status, had no money and no family or friends around as support.

The Aliens Police offered the workers a reflection period, as outlined in the B9 procedure. Four availed themselves of this; the others chose to return to Indonesia. All were reported to CoMensha, but because it was unable to immediately find shelter for them, the police arranged emergency accommodation in hotels and in a holiday house. Over a week later, when places became available, they moved into a CoMensha shelter, which was, coincidentally, only two streets away from the house where they had been exploited.

The four arrested were charged with trafficking in human beings since the employer had control over both their working and living conditions, thereby restricting their freedom. In May 2010 The Hague District Court found the house owner guilty and sentenced him to four years' imprisonment – a higher sentence than requested by the public prosecutor (judgments in the cases of the other three suspects have not been published).

This case indicates a good level of cooperation between the authorities, in which the police properly advised and supported the subjects of forced labour.

Authors: Mijke Houwezijl and Conny Rijken

Campaigning and resistance

Resistance to forced labour is an expression of freedom. It negates both the depersonalisation imposed by economic circumstances, and the passive identity imposed on the subjects. Resistance is very difficult, but examples exist in nearly all the countries researched, taking the forms of self-organisation, strikes, litigation and demonstrations.

Most of the national reports identified actions taken by groups of workers whose experience of abuse at work could be described as forced labour in that it demonstrated more than one of the indicators for labour exploitation. Their action then formed a catalyst for policy development or simply drew the attention of the authorities to the problem of forced labour practices:

- In France strikes involving thousands of undocumented workers took place in 2008 and 2010 organised jointly by the CGT trade union and several NGOs. They drew attention to the poor working conditions for *sans papiers* (those without documentation) in many hotels and restaurants, and led to government proposals for limited regularisation programmes. Again in 2011 Paris shop workers who were owed months of pay took strike action against their employer. CODETRAS has also used collective litigation as a form of demonstration to highlight issues, particularly relating to the use of seasonal work permits and contracts (see Box 3).
- With the support of the Netherlands food workers' trade union, Polish workers took strike action in 2005 against excessive hours, low pay, deductions and charges in lettuce harvesting, and won their case for unfair dismissal. Twenty Polish temporary agency warehouse workers who had been subject to intimidation and fines also staged a wildcat strike that led to the FNV trade union and agency agreeing to end the fines, to guarantee the right to organise and to allow residential registration should they wish to settle.
- In Sweden the Kommunal union only took up the case of the migrant berry pickers in northern Sweden (see Box 10) after they organised demonstrations themselves against unpaid wages. This generated considerable media coverage, and gained support from local communities.
- The campaigning in Ireland by DWAG, an activist network of 200 domestic workers, led to NERA initiating inspections of private households employing domestic workers. In December 2011 the Forced Labour Action Group staged a demonstration protesting at government delays in addressing the problem of forced labour, calling for it to be recognised as a crime so that victims could be protected.
- In Italy undocumented Bangladeshi migrants in Rome organised themselves to demonstrate for residence permits, while other forms of self-organisation to resist 'slave' conditions in the domestic and care sectors have been reported by female migrant workers. The Italian case study (see Box 9) is another example of grassroots mobilisation that involved exploited migrant workers as well as their supporters.

Do the trade unions and collective bargaining provide a possible solution? Unfortunately unions are rarely able to robustly monitor employment law compliance, even with relatively visible groups of workers (Cremers, 2011), although they can be significant actors in campaigning against forced labour. In different European countries unions have supported abusively exploited workers in strikes and demonstrations and in recovering unpaid wages. Both unions and NGOs that respond quickly to self-activity by exploited workers can help make a difference, as, for example, with the cases of domestic workers in Ireland, berry pickers in Sweden, *sans papiers* in service industries in France and agricultural workers in the Netherlands.

Summary

Forced labour is imperfectly understood, and not widely recognised as a phenomenon occurring in the developed world. Where it is acknowledged, it is approached as being caused by the vulnerability of 'victims' rather than by deficiencies in the regulation of labour markets and the economy.

However, accepted wisdom regarding forced labour is being challenged, with various programmes of awareness raising being noted, addressed at enforcement bodies, legislators and those who might themselves become subject to forced labour.

Governments, NGOs and other social actors (such as trade unions) are also focusing more attention on the phenomenon, with key national studies being conducted that take forced labour out of the 'trafficking' context into which it had largely been restricted.

Existing provisions for combating trafficking and labour exploitation are being tested, and have sometimes been found wanting, with some of those having faced forced labour proving reluctant to make use of existing mechanisms for responding to trafficking. Consequently, fresh initiatives have begun, for example, pilot inspections of private households with domestic staff, or the development of international cooperation between law enforcement bodies to deal with abusive employers operating across borders. The need for organisations to respond supportively and effectively to resistance organised by the workers themselves is also being recognised, and may show the best results.

5 WHAT REMEDIES ARE AVAILABLE?

Those subjected to forced labour may have been deprived of their liberty, their health, their identity documents and certainly money (whether through extortion or unpaid wages). In this section we consider what remedies, if any, are available to them for such abuse. Remedies, such as regaining lost wages, compensation for injury or punishment of perpetrators, are presented as distinct from support (the provision of various types of assistance), which is examined later in Section 6.

Enforcing employment rights

Two of the ILO and European Commission (2009) indicators of the presence of abusive labour exploitation are deception concerning remuneration and withholding of payments. Where there is a minimum wage or an applicable collective agreement, then abuse of these also infringes basic employment rights.

Rights to receive proper pay are derived both from contract and from labour law. Their enforcement may be undertaken by labour inspectors, law enforcement officers or by the individual worker through courts or employment tribunals (in person or via a representative, such as a trade union). Generally, however, stealing the time of a worker by not paying them is not seen as a criminal offence, and the administrative process of recovery will often take a longer time than is available to those who have experienced forced labour (because they are migrants who wish, or are obliged, to return home, for example).

Polish labour inspectors might award unpaid wages, but where immigration status challenged the legality of the employment relationship, this did not help workers having experienced forced labour. Similarly, while Latvian labour inspectors had a limited capacity to enforce unpaid wages,

more often their concerns appeared to be with detecting irregular workers than enforcing payments.

In France, in contrast, labour inspectors have no powers to force payment. They can only issue an instruction to an employer, where failure to comply would be taken into account in civil court proceedings. Workers can also pursue unpaid wages through tribunals (*prud'hommes*), and this can be done on their behalf by a trade union. Cases had been brought successfully by those without authorisation to work, and following Directive 2009/52/EC proposals are being considered to enable the recovery of unpaid wages and redundancy payments through penalties on employers for employing undocumented 'third-country' nationals, even after their deportation. Enforcement actions coordinated by the Central Office for Combating Illegal Work (OCLTI) have led to the police or labour inspector taking action against employers not paying proper wages, or otherwise submitting workers to conditions beneath human dignity. The 600 French labour inspectors can enforce the minimum wage and industry-wide collective agreements via the courts, or by issuing statements that may be used as evidence in tribunals.

Swedish unions will act on behalf of union members in recovering wages and, where the employer is declared bankrupt and the workers have employment contracts, the state will pay the basic wages owed. However, the union membership restriction and the contract requirement mean that many migrants lack the same employment rights and protection as Swedish workers. A possibility, however, is that compensation for 'usury' might be applicable in Swedish cases involving non-payment of wages.

In Italy a trade union or a legal representative can apply to a labour court judge to require wages to be paid. The amount is calculated with reference to the relevant collective agreement, but may rely on the worker having a contract or wage slips as evidence. Where these exist, an injunction can be issued to accelerate payment, but in forced labour cases, workers rarely have such documents. In Latvia, however, a change in the law in March 2010 concerning recovery of taxes where no documents exist gives the authorities the right to levy three months' taxes at an average rate, and this principle can be extended to employment issues such as pay.

In Germany, where there is no national minimum wage, 'illegal employment' is the responsibility of the Federal Ministry of Finance, which monitors taxes and contributions paid by employers. 'Irregular' employment comes under the remit of officials from its Department for the Investigation of Undeclared Work (Finanzkontrolle Schwarzarbeit), which can prosecute employers (who can be imprisoned and/or fined) and 'foreign employees' (who can be fined for working without a work permit and deported). The contract cleaning, construction and temporary agency work industries have sector agreements that apply legally to all workers. Since employers are obliged to pay for work done, irrespective of a worker's immigration status, this enables them to pursue claims for unpaid wages at industrial tribunals. These claims can accompany prosecutions for trafficking for labour exploitation (see Box 1), where compensation can also be awarded to the workers.

NERA in Ireland has some limited powers of enforcement of the minimum wage, although it can only act in response to specific worker complaints. Undocumented migrants can be excluded, however, from coverage on the grounds that they have no legitimate contract that can be enforced.

In the Netherlands the client firms of unregistered temporary labour agencies are liable to pay the statutory minimum wage to 'temporary' workers employed by them. Employers using undocumented labour can also be required to pay up to six months' wages at the industry rate if they

are detected, and those failing to pay the minimum wage can also be fined. New proposals to implement Directive 2009/52 will establish a chain of responsibility, allowing the illegally employed worker to claim unpaid wages from all employers in a chain of subcontractors (commonly in construction). While this provides greater protection, it does not solve the problem that the most exploited employees rarely exercise their legal rights, requiring a procedure by which the national authorities might institute such a claim on behalf of the employee.

The national reports also provided examples where other organisations had helped recover unpaid wages. In Germany, the Polish Social Council has had some success in encouraging and supporting Polish workers to take up claims for unpaid wages. In Italy, unpaid workers, together with activists from a migrant workers' association, had organised a picket of an employer (see Box 9). One picket, later charged with defamation and interruption of commercial services, said: "The right to be paid for the work done is at stake... regular and irregular workers, mostly immigrants, are the first to pay for this with denial of the fundamental labour right – the right to be paid."

Box 9: Mobilising in Italy for the regularisation of building workers

About 13 per cent of the wealthy Reggio Emilia province of the population of northern Italy is of foreign origin, with most working in small and medium industrial enterprises, in construction or as domestic workers in the city of Reggio Emilia, or as farm labourers in the country. But many also work in the substantial underground economy. In 2007, when the Provincial Labour Inspection Directorate inspected 1,228 companies, it found breaches of employment regulations in 513 companies, and 1,051 workers were found to be 'irregular' and 460 completely undocumented. Pay was no higher than €3–4 per hour, the workers worked very long hours and were intimidated by (foreign or Italian) gangmasters who used violence, blackmail and threats to denounce their unlawful status.

Over the last few years the regional anti-trafficking project, *Oltre la Strada*, has increasingly dealt with the forced labour problem. Its 'Plan for Health and Welfare 2009–2011' stated:

The numbers concerning labour exploitation are also growing, involving men and women coming from different countries and whose form varies widely: from "enslavement" in certain manufacturing sweatshops to gangmasters (*caporalato*) on building sites; from recruitment through false residence permits provided by employers to "simple" undeclared work with exhausting shifts and reduced pay. The phenomenon is emerging very slowly also because of difficulties for those involved to lodge a complaint against it (Reggio Emilia, 2009, p. 210).

The project got the local social services to support 11 workers in 2007 and 25 in 2008 under anti-trafficking regulations, as well as 57 workers in 2007 and 56 in 2008 under programmes against the exploitation of migrants. Apart from three cases, the nationality of all of their exploiters was Italian.

Città Migrante, a voluntary association of migrant and Italian workers in the province, also campaigns against forced labour and severe labour exploitation. It runs an immigration office and is the local anti-discrimination contact point. In 2008–10 it supported 70 building workers with legal assistance, public campaigning and demands for collective regularisation. This work began several years after it started receiving reports that construction workers were not being paid on time, if at all.

Initially Città Migrante supported the requests for salary payments, pressing employers directly, and issued injunctions for the claim. This revealed a much more complex and troubling reality: it was not simply about late payment of wages, but systemic exploitation in the construction sector including irregular work, document forgery, blackmail, threats and violence. The police then investigated and made several arrests. Twelve ItEdil company officials were accused of conspiracy to exploit undocumented workers and falsifying documents; two directors were accused (although they were later acquitted) of having kidnapped, beaten and covered with a flammable liquid an immigrant worker who asked to be paid for his work.

The investigations exposed two types of recruitment and exploitation of workers by some construction companies. Moldovan workers were recruited to be paid €2 per hour, with deductions being made for their transport, and they were then housed in inhumane conditions with false residence permits and employed in building sites in Italy; North African workers without residence permits were forced to sign employment contracts under false names. Both groups of workers were blackmailed with the threat of being reported as undocumented, and many were beaten and received death threats when they demanded payment of their wages.

The outcomes were important. The joint actions of Città Migrante and other organisations led to the regularisation of an entire group of workers, who were granted residence permits according to Article 18 (for severe labour exploitation). This was an exemplary and innovative result that has much wider implications.

The fact that the mobilisation was grassroots, with migrants organising themselves and demonstrating to assert their own rights, created a local dynamic to defend not only their individual rights, but also the rights of all.

The mobilisation not only protected the interests of a group of building workers, but it also helped publicly expose the existence of a system of forced labour in Reggio Emilia. By going public and supporting a picket of the offices of one of the firms by the workers, Città Migrante forced the city to face up to the issue of labour exploitation. In May 2011 this strategy finally led, through joint action with other local associations, to the municipality of Reggio Emilia formally agreeing to institute a civil action against undeclared work in the city.

Author: Fabio Perocco

The German Institute for Human Rights has initiated a joint project with the EVZ foundation,⁷ called 'Forced labour today – Empowering trafficked people', to provide test cases for claiming wages and compensation under the Victims Compensation Act.

'Excessive working days or hours' is a strong indicator of labour exploitation in the ILO and European Commission (2009) list. Each of the national reports cited cases involving excessive hours and the absence of breaks in reports of forced labour. However, none gave examples of the European Working Time Directive (2003/88) being invoked.

This is partly because of the legal contract syndrome. Thus in the Netherlands and Sweden, the contract must be in writing to be enforceable, offering the unscrupulous employer a simple means of avoiding enforcement. Changes are being proposed to this practice in the Netherlands to make enforcement less difficult for workers in vulnerable situations. But in Sweden, the Working Hours and Annual Leave Acts which enable workers to apply in court for damages (or penal sanctions) in cases of abuse only concern employees defined as having written employment contracts.

However, it is recognised that working time rights in general may not be well enforced. A 2010 report by the European Commission on implementation of the Working Time Directive pointed out that monitoring and enforcement was a problem, with strong concerns being expressed over this in 11 member states (including Germany, Italy and Poland). The report identified the sectors displaying particular problems as being hotels and catering, tourism, construction, public health, retail and security (European Commission, 2010).

Partly too, the absence of action under the Working Time Directive reflects low expectations. Thus on their recruitment in Poland, seasonal workers wanting to work in Sweden stated that they would not seek vacations, and subsequently did not expect to recover holiday pay.

Another problem faced by inspection and enforcement bodies is the system of subcontracting in use in some industries (as referred to in the Spanish case study, for example). The ILO points this out in their report on labour inspection:

... inspectors themselves report about difficulties to ensure compliance along sub-contracting chains. In economic sectors in which sub-contracting is common, such as construction or cleaning, small enterprises close down frequently only to open up elsewhere. As noted above, some European countries have enacted laws on joint liability but these need to be enforced effectively. (ILO, 2010)

The problems encountered included identifying the employer when the sole purpose of the contract may be to separate the contractor from any obligation as employer from those actually carrying out the work concerned. In addition, particularly when the subcontractor may only exist as an organisation on paper, identifying the liable party for employers' obligations was difficult where they were based in a country other than the one in which the work was carried out.

Compensation for forced labour

Although the Council of Europe Convention requires that there should be a system for compensating those subjected to trafficking, compensation for those who have experienced forced labour is quite rare, and usually subject to qualifications. In Italy, compensation could be paid for unfair dismissal, but not on the basis of criminal offences associated with forced labour. In Spain it is an option, but only for victims of violent crime and sexual slavery. In Sweden, compensation may be paid if the violation of the workers' rights

was committed by the state or municipality, but does not apply if by private entities. Although there is no formal victim restitution programme, the Crime Victim Compensation and Support Authority sometimes awarded compensation to trafficking victims. However, when a Chinese restaurant worker in Gothenborg, who had been made to work an 80-hour week for a low wage, out of which he paid high rent, approached the union (HRF), the union demanded compensation calculated on his overtime hours, sick leave benefits and vacation allowance. This amounted to 391,000 kronor, including back pay and 'compensation for his suffering', while the restaurant also paid 100,000 kronor in compensation to the union for violating collective agreements.

In France small sums (€1,000) were paid by the local authorities who had unlawfully denied seasonal workers employment and residence rights rather than by the employers who had taken advantage of their resulting vulnerability. In theory, trafficking victims are eligible to receive restitution through the Crime Victims Compensation Programme, but by 2011 only two had received compensation through the programme since its inception; it is not known if either could have been classified as subject to forced labour.

In the Netherlands, where trafficking victims can register a claim for compensation, only a minority do so. There are three ways in which a victim may obtain compensation: (i) in criminal proceedings, (ii) in civil proceedings and (iii) through the Violent Offences Compensation Fund (*Schadefonds Geweldsmisdrijven*). Because civil proceedings are lengthy and costly, the most common route for compensation is to obtain it in criminal proceedings and/or request payment from the Violent Offences Compensation Fund.

The low sums awarded may partly account for this, but also, until recently, the individual was responsible for enforcing the award. The newly established measures (*schadevergoedingsmaatregel*) make the state responsible for paying compensation if the perpetrator does not. This was not previously the case, even if the perpetrator had been imprisoned for non-payment. Compensation may also be claimed from the Criminal Injuries Compensation Fund where serious physical or psychological damage has occurred.

In Germany, it is also possible to claim under the German Crime Victims' Compensation Act (*Opferentschädigungsgesetz*), but this can be difficult, and the project set up to assist those affected to assert claims for wages and compensation against perpetrators and exercise these rights had few applicants. In Poland, those subject to trafficking (which may include those experiencing forced labour) can, in theory, file civil suits against their exploiters, and while compensatory claims may be filed by state prosecutors, their performance in this respect was not judged adequate by the UN Special Rapporteur on trafficking.

The Latvian state Labour Inspectorate, if it finds that a company is employing 'irregular' workers, can assume that they have worked for the company for three months on a minimum salary. In this case, the worker will get compensation in terms of social and income tax paid for him/her, which, in turn, allows him/her later to be entitled to social benefits, and this could apply to those subject to forced labour.

In Ireland certain cases of substantial financial compensation have been awarded for violations of their employment rights to exploited domestic workers, in one case reaching €33,000.

Taking criminal prosecutions

What is the value of criminal prosecutions over forced labour compared to civil or administrative actions? It is difficult to compare the possible benefits to those having experienced forced labour of seeing their abusers punished with those gained from the restitution of at least unpaid wages. There are also different evidential requirements between criminal and civil cases, and in balancing this there may be greater likelihood of securing temporary residence when acting as a witness in a criminal case.

Thus it is more difficult to secure convictions for imposing slavery under the Penal Code in Italy than through pursuing administrative offences related to combating irregular work, although the penalties for the former are likely to be more severe.

In Spain, too, the difficulties presented in seeking penal sanctions mean that where there is any legal action at all, the subjects of forced labour usually opt for an administrative one. While civil courts may impose more lenient sanctions, the case will be easier to prove. However, provisions for temporary stay were more likely to be provided to those taking part in criminal prosecutions than to those pursuing employment rights cases.

Yet there is also a question as to whether pursuing perpetrators for their criminal offence against the public good is necessarily supportive of the victim. Where formal support is on offer it may be taken up, but in both the Netherlands and Spain, examples have shown some workers preferring to seek further work rather than accepting support that may sustain them but cannot feed their families. For the state to only pursue civil cases, however, would be to reduce forced labour to little more than a breach of employment rights, and could leave perpetrators free to offend repeatedly. A solution could be that detailed in the German (Box 1) and French (Box 2) examples, whereby both types of case could be pursued simultaneously.

Summary

Access to economic remedies (for unpaid or underpaid wages, for example) may be restricted for those who have experienced forced labour. By their nature, they are likely to be working in undeclared jobs or even (by virtue of their immigration status) unlawful ones. In some countries, this means that the contracts are unenforceable by inspectors or through application to the courts. A further hurdle may be the processes for restitution themselves – only in some cases can an intermediary, such as a trade union, conduct a case on the worker's behalf. The time taken for procedures may be so long as to deter workers from resorting to them. Advice and support may also be in short supply.

NGOs and unions have found means to assist at least some workers in pursuing their rights. These responses have been *ad hoc* rather than systematic, although initiatives aimed at assisting migrants (particularly undocumented migrant workers) have found themselves campaigning and representing those who have been subject to forced labour. It is worth noting, however, that such services are less likely to reach EU migrants or nationals in the same position.

Labour inspectors and the police featured prominently among those identifying forced labour. However, although excessive working hours featured regularly in reports of forced labour, there was little evidence of inspection or enforcement of working time rights being used to detect or prevent it.

Having been identified, cases of forced labour may qualify for compensation, but this seemed not to be a well-used mechanism. It may depend on there having been a criminal prosecution, and as we see in the national reports, this presents challenges – of proof, for example. This suggests that the practice of pursuing several legal routes simultaneously may offer the best option to those experiencing forced labour.

6 SUPPORTING THOSE SUBJECT TO FORCED LABOUR

We now look at other social support provided to those having experienced forced labour, such as the provision of assistance with accessing public services and welfare.

The labour market contexts that might lead to a worker experiencing forced labour – principally, poverty, immigration status, no awareness or knowledge of welfare or employment rights and a lack of alternatives – can also leave them exposed to further risk even after their exploitation has been detected. Where employers have provided accommodation, loss of their job (or escape from it) can render the worker homeless, and ‘irregular’ immigration status can also leave them outside state healthcare and social security.

The need for social support is recognised for trafficking victims in the Council of Europe Convention and by EU Directive 2011/36, but in many countries the emphasis on trafficking excludes forced labour subjects who cannot fulfil the national criteria for having been ‘trafficked for labour exploitation’.

An exception is Italy. Funded centrally and regionally, and delivered through both public and third sector organisations, the programmes were originally conceived as helping those involved in prostitution and drug abuse, and then adapted to assist and help the social integration of trafficking victims. Now they also support ‘severely exploited’ workers, potentially including those who have experienced forced labour with a wide range of initiatives reflecting locally identified needs.

In the Netherlands, in contrast, CoMensha centrally coordinates all parties involved in the shelter and support of victims of trafficking (such as the police, aid organisations and lawyers) through 11 municipal networks. They may support those subject to forced labour, but only if there is some form of immigration offence. CoMensha first allocates the individual to a municipal care coordinator who finds them shelter and then arranges for psychological care, a health check-up and legal aid. But since each municipality has its

own network, the system is not yet entirely robust, with only eight key care coordinators having been appointed at the time of writing.

Housing support

Both the Palermo Protocol and Council of Europe Convention propose that accommodation should be made available to the victims of trafficking, and the EU Directive 2011/36 sets out minimum levels of support. However, not only does the sexual trafficking focus mean there is often little provision for men despite the provisions supposedly applying to victims regardless of gender, but there is also often a clash between the punitive and immigration-based aims of the anti-trafficking initiatives and the essentially economic projects of many of the workers themselves.

In the Netherlands, 50 places were made available for trafficking victims under a pilot programme in 2010, but only 10 of these were for men. In Spain, the system for achieving regularised status for undocumented workers is run by the CEPAIM Foundation, supported by funding from the EU and national and regional governments. It offers partial payment of between one and three months' rent and could benefit forced labour subjects.

The French CCEM assists by finding volunteers who can accommodate victims in the short term, and has one safe house of its own. The government funds this, supplemented by a number of other public and voluntary sources. Access to official emergency housing is severely restricted and is only rarely granted to victims of exploitative domestic work. The government's anti-trafficking protection programme (which includes those trafficked for labour exploitation), named Ac-Sé, is managed through a network of 49 shelters operated by NGOs but partly funded by government and the City of Paris. In 2011 over 60 people were provided with shelter, legal, medical and psychological services.

In Italy there is patchy local provision for temporary stay in safe houses, while workers in Latvia who experienced labour exploitation were also able to use a safe house for trafficking victims. This provides social rehabilitation for up to six months, and is state-funded, supplemented by donations.

In Poland housing provision is linked firmly to the anti-trafficking system run on behalf of the state by NGO La Strada. It is available during the 'reflection period' offered to trafficking victims. The organisation has its own shelter in Warsaw, and may access other organisations' facilities in other parts of the country.

Healthcare

Workers who have been subjected to forced labour are likely to have experienced excessive working hours, poor health and safety provision and unhealthy living conditions. The Italian national report cited Pakistani and Bangladeshi workers having been obliged to share accommodation with farm animals, and consequently suffering serious health problems (OIM Italia, 2010), and in the Netherlands Indonesian agricultural workers were found to have been subjected to 'extremely dirty, unhygienic and unhealthy' conditions.

In Italy forced labour subjects are accompanied to health services and provided with a health insurance card and, in some places, appropriate psychological support. In other countries certain organisations specifically provide healthcare. The Ban Ying organisation in Germany, which works with

female domestic workers (and especially targets those from South East Asia working in foreign diplomatic households) provides medical and psychosocial support. It was founded by the Berlin Senate Office for Women in 1988, and still obtains much of its funding from the Senate. France's CCEM also offers some health and psychological support for victims, again primarily domestic workers, who may have been deprived of food, medicine and hygiene during their servitude.

Poland offers limited support. Trafficking victims can only access healthcare through La Strada, and this support excludes those subject to forced labour alone. In some countries such as Sweden, however, undocumented migrants do not have free of charge access to any healthcare, even in the case of emergency or pregnancy.

Subsistence

Surviving after detection is particularly difficult for those having been subject to forced labour practices. The countries researched offered little to subjects of forced labour by way of subsistence, except where they were witnesses in criminal prosecutions. In Sweden, supermarkets, churches and other groups gave voluntary donations of food to the berry pickers (see Box 10). During the strikes by the *sans papiers* in hotels, restaurants and shops in France during 2008, trade unions and NGOs were also prominent in collecting funds to support the strikers, who might otherwise have gone hungry. In France the CCEM also provides some limited subsistence funds to the domestic workers it is assisting.

Under the German Asylum Seekers Assistance Law possible witnesses who have experienced forced labour can receive welfare assistance of €194 per month. In some cases, determined by local authorities, individuals may take temporary work. The Polish system of support may provide some financial assistance for board and clothing, but again, this is restricted to those cooperating with prosecutions.

In Italy, in contrast, full board may be provided on a temporary basis to individuals considered appropriate by local authorities.

Education

Education provision for victims of trafficking is also considered in the Palermo Protocol and (for children) in the Council of Europe Convention, and potentially, at least, this could be available to those subjected to forced labour. In Latvia, the IOM supported language training in Riga on an *ad hoc* basis, while in Italy, literacy, vocational training, Italian language and work orientation might all be provided via NGOs at regional level. Ac-Sé in France also offers assistance with French language classes.

Legal support

The Council of Europe Convention requires that, where a system of free legal aid exists, it should apply to those subjected to trafficking, and although this is not specifically envisaged in the Palermo Protocol, the provision of legal support is common across the nine countries. In Germany, the German Institute for Human Rights and EVZ foundation provide targeted advocacy, as does the women's support Berlin NGO, Ban Ying. In Poland the Social

Council offers support for employment tribunal cases where there has been severe labour exploitation. MRCI likewise provides assistance to those who have faced exploitation to take employment cases to tribunals. In Latvia the Human Rights Centre can provide help with legal cases (if they involve discrimination or human rights issues), but fear of retribution by their employers on the part of those experiencing the abuse hampers their work.

In France both CCEM (domestic workers) and CODETRAS (seasonal agricultural workers) target particular cases for high profile legal actions, but also provide advice or representation to exploited workers. It is not clear to what extent this patchwork of provision can be said to comply with the Council of Europe Convention. Some of the NGOs receive state (or municipal) support in order to provide free legal aid, but others do so as part of their charitable (or pro bono) activity. Trade unions can also play a part, and in Sweden (see Box 10), the Netherlands and France, they take cases on behalf of their members (rather than simply providing representation to members taking cases on their own behalf). Unions in Netherlands can also take legal action to enforce collective agreements.

Box 10: Berry pickers in Sweden: a case study in forced labour

In Sweden berries are much prized by the pharmaceutical industry. Each year since 2000 hundreds, sometimes even thousands, of foreign migrant workers have flown to Sweden to participate in the commercialised harvesting of berries, an arduous and low-paid occupation, involving long hours of painstaking work, in often dank mosquito-ridden forests. They come not only from the Baltics, Russia and Poland, but more often from Far East countries such as Thailand, Bangladesh, China and Vietnam.

The Swedish government granted a number of Swedish and Thai 'food and beverage' companies licenses to import berry pickers for the season in 2007. Between then and 2010 it is estimated that the number of Thai and other foreign pickers who arrived in Scandinavia via such companies with formal employment contracts was approximately 23,000, and a further 7,000 came as 'tourists'.

For example, rice farmers from Thailand's poorer north-eastern provinces travel to Sweden for a three-month berry-picking season, and then return to harvest their own crop in the autumn. The cost of travel, accommodation and food can amount to 100,000 baht (approximately €2,300). Many borrow from money lenders of various kinds to finance the trip. The potential rewards are enticing, despite reported abuse of their compatriots and predecessors, increased travel costs or the fact that finding wild berries has become more difficult in recent years. In the best case, migrants can return home with as much as €4–6,000 saved for three months' work. Many migrants, however, return with their promised rewards denied, and even more deeply in debt.

In 2010, migrant berry-picking workers decided to take matters into their own hands. After just a week in Sweden, in early August 2010, faced with the appalling prospect of their near-certain financial ruin, 170 Chinese berry pickers began a 15-kilometre overnight protest march from Långsjöby to Storuman (the nearest community in remote southern Lapland), carrying hand-drawn placards with 'SOS' and 'Help'

messages. Local social services personnel claimed they were unable to assist the berry pickers due to lack of language facilities.

One week later, further to the south, Vietnamese berry pickers marched with their banners through Nordmaling (a small town with a population of less than 800 on Sweden's north east coast). The previous year, they had been promised that they would be able to pick 60 to 120kg of berries a day. In reality, they were lucky if they could manage 10 to 30kg. Most had not fully understood that 'picking berries' meant searching for them in difficult terrain rather than harvesting cultivated berries (Interview, *Kommunal*, 14 April 2011). In 2010 a minimum wage had been promised guaranteeing them at least 16,372 kronor per month (€1,745), which had to be met with production quotas, and was hardly enough to cover the costs of their journey to Sweden and the travel and accommodation costs once they had arrived. Some 70 Vietnamese pickers decided on more direct action to draw attention to their low wages. They locked up their supervisors, resulting in the local police being called to establish order and to protect the supervisors, a couple of whom appeared to have been beaten up.

A key case involving Swedish trade unions occurred at the Lomsjö Bär AB company in southern Lapland. Their recruitment advertisement had promised a daily rate of about 800 SEK (€85). In Spring 2010, a recruiting agent in Thailand advertised over local radio in the province of Chaiyapum for pickers for the company. A recruitment fee was charged, with a down payment of €590, with the remainder to be advanced by the company then reclaimed from wages.

But in mid-July, the recruits were informed that Lomsjö Bär would not be able to advance the balance. Only 156 recruits were able to find the additional money, mainly by borrowing from relatives or money lenders. The agent refused to return funds to those who did not. A complaint against the agent in the local labour office is ongoing in Thailand, but the individual concerned has disappeared.

It was soon revealed that an introductory DVD workers had seen in Thailand had downplayed the hardships. Some pickers explained to a Thai-speaking trade unionist from *Kommunal* that they had the impression that access to the fruit would be much easier than it turned out to be – they would have to climb hills, not mountains, in the search for berries. Nor had they thought they should see living bears just a few hundred metres away.

The individual work contracts were already weak from a Swedish perspective. According to their terms, there was no guarantee that a berry picker could earn enough money to not go home in debt. Lomsjö Bär guaranteed (verbally) that pickers would receive a *net* income of not less than 50,000 baht, that Sunday picking would earn a cash bonus etc.

By the end of August the Lomsjö Bär pickers had been paid 6,000 kronor, after which they received nothing. When, on their 25 September pay day the pickers did not receive either their outstanding wages from August or their wages for the whole of September, they decided to march through the streets of Åsele. Their protest was widely publicised in the Swedish media. The rally was seen on television by a local unionist, and this trigger made the trade union, *Kommunal*, engage in the case. At the same time, it further transpired that the main owner of Lomsjö Bär, Ari Hallikainen, had emptied the

company bank account (reportedly of about 4 million Swedish kronor) and had left Sweden.

Kommunal's first step was to get members among the workers, in order to be able to represent them. However, they had neither the money nor the willingness to become union members. A clause in Kommunal's statutes allowed workers less than 26 years old three months' free membership, and Kommunal got three qualifying people to become members; it now had the legal right to represent them and to take action against Lomsjö Bär AB.

But to meet all the Thai workers' claims for compensation, Kommunal had to go on to a second step, which was to file a bankruptcy petition against Lomsjö Bär AB. If the company went into liquidation, workers who had claims would automatically be covered by the 'governmental salary guarantee', and the Swedish state would compensate them for loss of earnings. In December 2010, the official receiver found that most of the workers had the right to reimbursement, although only for their basic salary, and not for overtime etc. The workers then accepted the offer.

The Swedish model of industrial relations has some perhaps surprising weaknesses, especially when it comes to protecting the rights of a transnational migrant workforce in the face of exploitation, essentially amounting to a condition of forced labour. The regulatory and judicial authorities seem to have been slow to react to an ongoing pattern of deception in recruitment and the defrauding of workers' wages by illegal deductions (two key criteria). The abuse only became a public policy concern in 2010 because of a flagrant episode of wage theft and because the workers themselves undertook unprecedented public protest actions against their conditions of employment. Redress was uneven, although within limits the trade unions offered legal support. Some, but not all, local authorities where the migrants were located provided material support. In particular, the local supermarkets in affected communities offered support, as did concerned groups of citizens and the churches, through their charitable organisations. Yet the exploitative conditions suffered by these migrants in one of the best organised labour markets in the EU raises a troubling and only incompletely answered question: if Sweden cannot prevent such extreme forms of labour abuse occurring within its own highly regulated labour market, either by legal proscription or by the countervailing actions of an active civil society, what possibilities exist to prevent the drift towards forced labour elsewhere in the European space?

Authors: Charles Woolfson and Christer Thornqvist

Residence permits

Although rendered complex through its relationship with migration, considerable work has been done by campaigners to see as a whole the issues of human and labour rights and the outright criminality of trafficking for labour exploitation. It is often the immigration status of the worker that renders them particularly vulnerable to forced labour practices – they may have few other options than to stay with an abusive employer. For this reason, several national reports examined the issue of offering those

experiencing forced labour some form of regularisation of their immigration status. This would only be of value, of course, to those requiring specific permission to remain, and so offered little to national citizens or those from the EU.

The National Referral Mechanism (NRM), through which states fulfil their obligations to trafficked people (see the Palermo Protocol above), is the principal route for regulating, albeit temporarily, workers' immigration statuses, although similar provisions are set out in Directive 2004/81 on residence permits (see above).

Both measures refer to the possibility of providing those subject to trafficking with housing, counselling, information, healthcare, legal advice and possibly opportunities for education and employment. States must provide a temporary stay of any possible deportation, to permit the individual to consider whether he or she wishes to cooperate with any investigation. The precise manner in which these measures are carried out varies from one country to another, as the following examples show.

In the Netherlands, the NRM is known as the B9 procedure, and is administered by the police after reference of the individuals by other agencies. They include the issue of a temporary residence permit for a reflection period and longer if the individual is cooperating with the prosecution of an abuser. This does not entitle the individual to work (although they can also apply for a residence permit under exceptional circumstances, even if they do not want to press charges).

The Irish Immigration Residence and Protection Bill proposes a recovery and reflection period of 45 days for trafficking victims, and up to a further six months for those cooperating as witnesses. Similarly in France, those victims who testify or lodge a complaint against their exploiter or trafficker may benefit from a temporary residence permit.

In Spain, however, it is reported that many of those offered accommodation rights as potential witnesses declined it, preferring to find work elsewhere or to return home.

None of the reports mentioned provision of identity documents or bridging visas being provided specifically in cases of forced labour.

Regularising workers' status

One – and it is only one – of the factors contributing to workers' susceptibility to forced labour is thought to be 'irregular' immigration status. Because this may render the worker liable to removal or prosecution by the authorities, they become reluctant to approach enforcement bodies. Furthermore, in those cases where such status might render employment contracts unenforceable, the workers may have very few rights to enforce.

In the Italian national report it was suggested that general programmes of regularisation may be preferable to NRM-related temporary residence permits for those who experienced forced labour. This would permit them to improve their circumstances by changing employer and gaining rights without first having to prove that their abusive employment was bad enough to qualify. One campaign (see Box 9) led to residence permits being issued to 70 exploited workers, and over the last three decades more than 1.5 million previously undocumented workers have benefited from such regularisations.

In Spain qualification for a temporary residence (and work) permit has been introduced for undocumented migrants who have worked for at least six months and have committed no crimes. But the work has to be confirmed by the Labour Inspectorate – a near impossibility for those in forced labour

– and the permit issued by a magistrate, a lengthy process during which the worker remains precarious. In Barcelona only 806 workers qualified between 2006 and 2009.

The French experience of conditional regularisations for undocumented workers (*sans papiers*) in retail and restaurants was that relatively few could fulfil the criteria, so many remained undocumented. The latest programme resulted from strikes and other campaigning on the part of undocumented workers, but it requires documentation of lengthy work experience (12 months out of the last 24 for temporary workers). Only 200 regularisations actually took place in the nine months to April 2011.

No general provisions in the nine countries existed for regularising the immigration status of those who had been subject to forced labour. This could sometimes occur for groups of workers who proved themselves vulnerable. In Italy special six-month (renewable) residence permits are available in cases of violence or severe exploitation. These may be granted by the Provincial Police Headquarters (*Questura*) where there is a trafficking prosecution in which the individual concerned is the complainant, or where it is requested by local authorities or NGOs providing social and integration support, and where the individual does not wish to pursue a complaint. This originally applied solely to cases of prostitution, but now covers severe labour exploitation, and EU citizens as well as third-country nationals.

In Poland regularisation is only available to some victims of trafficking (including for labour exploitation, but not for forced labour alone) on condition that they sever all ties with the traffickers, an option that may be difficult to take up since it may leave them without accommodation or support.

As a response to vulnerability caused by ‘irregular’ immigration status, actors in the countries examined viewed regularisation positively. However, it cannot aid those from EU countries who already have (at least) the right of residence, nor citizens of the host country, whose vulnerability is not related to immigration status.

Retrieving identity documents

Workers’ identity documents are often held by the employer in cases of forced labour, in order to exercise additional control. Thus Latvian construction workers sent to Germany in 2009 had their documents taken from them, and were then farmed out to other employers for as little as €50 per week. While some were assisted to return by Latvian local authorities, no prosecutions occurred. Ukrainian farm workers in Poland also had their passports held by their employer. When the employer claimed to be ‘looking after them’, the charge of restricting their freedom was declared unproven and several were deported (Leśniewski and Krajewska, 2011).

When a worker reports labour exploitation to the Italian authorities, the police may remove their passport from an employer to use as evidence, returning it after the prosecution has ended. The Irish Employment Permits Act makes it an offence for employers to retain workers’ identity documents where the worker is subject to a work permit.

Support for retrieving documents, however, appeared from the national reports to be rare, and beyond these examples no particular provisions were reported. This may be because there is some lack of clarity as to ownership – most passports are considered to be the property of the issuing state, rather than of the bearer.

Summary

Much of the support provided betrays its origins in anti-trafficking initiatives, with a focus on a supposed clientele of women who may have been involved in prostitution or other sex work. The relationship with other elements of the NRM may render the support unattractive to those who, despite having been abused by one employer, see the necessity to find another as taking precedence over return (for migrants) or rehabilitation. Where the provision of support is less rigidly controlled (as in Italy, for example), it seems that more are able to make use of it, including those who may have been exposed to forced labour, without this being a precondition for such access.

A focus in the national reports was the provision of support relating to immigration status, reflecting the close (but by no means exclusive) relationship between migration and forced labour. However, there was no general provision for regularisation for migrants exposed to forced labour, although key actors clearly regard this as an important protective measure.

In terms of other support – healthcare, education and legal support, for example – those exposed to forced labour had no specific provision, but might be entitled to use those services provided for trafficking ‘victims’. These tend to be quite limited, but also are not frequently taken up. This may argue for service provision more closely related to what the workers themselves see as the priority, rather than that set down, for example, in the Palermo Protocols.

7 CONCLUSIONS

This report aimed to show how those who experience forced labour are, or might be, supported or protected by government (national, regional or local) or by civil society organisations. It has proved difficult to locate provisions that are clearly directed towards forced labour. In general, European governments approach forced labour solely as an element of trafficking. The twin aims of enforcing immigration controls and submitting trafficking perpetrators to criminal sanctions take precedence over protecting the employment or human rights of those subjected to forced labour. This emphasis on trafficking risks transforming the lack of workers' autonomy present in forced labour into an absence of autonomy in their choice between being returned to their home countries or remaining in work. Furthermore, it offers little to those who are not migrants, or who may be EU nationals.

The problem of forced labour

Forced labour is widespread throughout Europe, but little is done about it, and even less is done for those who experience it. Some of the arguments used to justify this are:

- the problem is too diffuse or small scale to warrant systematic responses;
- an effective response would require severely restricting employer prerogatives, too strong an intervention for labour markets and employment relations;

-
- problematising migrants and irregular immigration is a more politically popular focus of enforcement activity;
 - the NRMs for trafficking victims are said by national administrations to be adequate;
 - forced labour is thought to largely involve non-citizens, who do not share the rights and freedoms of the national citizen;
 - where workers participate in illegal employment, they may not qualify for enforceable employment rights.

These discourses reflect the way in which the law is framed. Thus, while there is a choice in conceiving illegality in terms of the perpetrator or the subject, in none of the nine countries was the term ‘illegal employer’ used, while in all, the terms ‘illegal immigrant’ or ‘undeclared worker’ dominated.

Trafficking offences then tend to focus on the punishment of the perpetrators rather than on assisting the workers subject to it. Some provisions that are then conditional on borders having been crossed and/or on cooperation on the part of the subject in prosecutions of perpetrators often exclude those most in need of support, whose requirement to continue to work can return them to equally precarious situations.

The punishment focus is a legitimate concern and imprisonment an important deterrent, but they may overshadow the interests of the individual worker as long as the definition of labour exploitation is unclear, the thresholds of proof are high and the probability of restitution low. It seems there may also be a risk of judicial maximalism as judges apply rigorous tests for ‘what constitutes exploitation’ (the Netherlands) or offences ‘against human dignity’ (France).

The trafficking-focused approach also results in an even greater lack of reliable data on forced labour than there is on trafficking. The largely anecdotal evidence we have gathered suggests that exploitation and forced labour are more likely in certain industries (such as domestic work, agriculture and construction) than others, but it is not conclusive. However, that forced labour can nevertheless be detected so widely begs another question: is extreme exploitation of workers inevitable where they are vulnerable, and if so, why is this? Our research was not framed to answer this, but it may be that enforcement of workers’ employment and human rights, while necessary, is not adequate to prevent forced labour, and we must also examine critically the assumptions underlying the operation of the European economy.

Most of the emphasis within this report is on actions that are, or should be, taken by the state in response to a phenomenon that is unlawful under international and (usually) national law. However, there is a moral case for all actors in society to respond. There are examples of trade unions and NGOs having done so in this report, but we also point to the likelihood of forced labour occurring in supply chains, where it would be susceptible to detection and elimination by diligent use of codes of practice on the part of major purchasers of goods and services, and by consumers, for that matter.

Defining the offence

Difficulties and differences in defining ‘vulnerability’ and ‘exploitation’ contribute to the problem. Within the mosaic of national legal traditions and employment relations systems across the nine European countries it appears that, while the overarching political concern is with trafficking, there are countries that see forced labour more as abusive exploitation resulting

from broken or non-existent employment contracts (Sweden, Germany, the Netherlands), and ones that emphasise vulnerability and breaches of human rights (Italy, Spain, France).

Thus although the Netherlands Supreme Court recognised 'it is impossible to answer the question whether a certain situation amounts to exploitation in general', in the particular case it decided that all three of the following elements had to be proved to secure a criminal conviction: 'the nature and duration of the employment, the restrictions to the employee resulting from such employment, and the financial gain of the employer' (SCN, 2009). In France a lack of legal clarity in defining slavery and forced labour means that potentially less serious charges of wages or living and working conditions contrary to human dignity are pursued more often.

It is not clear, however, which is the best option for the workers themselves. Criminal sanctions are deployed by the state in defence of the public good, but if this prevents or delays unduly the redress most immediately needed by those subject to forced labour, it can hardly be wondered at that they may decline to participate in such proceedings (see below).

Accidental detection?

The authorities may detect forced labour in relation to immigration offences, undeclared work and social security or tax avoidance, or it may be detected by labour inspectors or even housing officials. It is also reported by NGOs dealing with specific groups, such as seasonal agricultural workers in France and Spain, domestic violence victims in Latvia or domestic workers in Ireland.

This almost accidental detection reflects the extent of the gap between the mainstream economy with labour market regulation framed by collective bargaining, trade union representation and/or formal employment contracts, and the rest, dominated by precarious work and the absence of effective regulation. However, we also show how forced labour practices can be found in the supply chains of that mainstream economy.

The lack of purposeful detection is well illustrated by the absence of examples of excessive working hours acting as a trigger for detection. Although a strong indicator of labour exploitation and the basis of an EU health and safety directive, working time regulation is virtually unused as a means to identify or remedy forced labour practices. The Commission's own examination of the implementation of the Working Time Directive makes no reference to trafficking, forced labour or exploitation, although it acknowledges problems in enforcement across the board (European Commission, 2010).

The explanation for this neglect of a key instrument in dealing with forced labour is that excessive working time is both seen as much more controversial and as a less severe offence than dealing with trafficking (especially for sexual exploitation). Helping victims (particularly if they are seen as young, female and powerless) appears to be preferred to providing support to workers who want to defend themselves (Jaksic, 2008).

Recognising forced labour

It is also clear that many government agencies, labour inspectors, advice organisations and trade unions are often unfamiliar with the indicators of forced labour. This lack of knowledge is even more marked among the media

and public in general. Some information and training exercises as well as awareness-raising campaigns aimed at remedying this deficit were reported, yet these did not always emphasise the differences between undocumented work, trafficking and forced labour.

The workers themselves may also not see themselves as victims either of trafficking or of forced labour. They may not be aware of the offence of forced labour (or of trafficking for labour exploitation), and simply ensuring they become better informed does not necessarily translate into them wishing to proceed with a complaint. They may also fear retribution by the employer against their own family members in order to deter complaints. Much depends on the nature of state action.

Effective redress

State responses that focus on immigration offences seem to offer little to the workers concerned. Usually these workers need to be earning money, sometimes to pay debts incurred in the process of entering the country or finding the work, but in any case to survive and support dependents at home. Enforcement responses that hamper, rather than help, them to continue to earn – for example, by restricting their right to work while any prosecution against their exploiters is prepared – are likely to be avoided, or if commenced, soon abandoned by the workers. Worries about their potential removal from the host country (where they are irregular migrants) are also likely to reduce the likelihood of workers complaining about their treatment by employers in the first place. When workers do opt for return, however, it is important that systems exist permitting the pursuit of cases and compensation in their absence.

The scarcity of forced labour cases in the courts makes it difficult to assess the effectiveness of criminal law. Cases involving some of the ILO and European Commission (2009) indicators are more likely to have been pursued through civil or employment law routes, for reasons of the speed of process, the burden of proof or to secure some sort of compensation for loss. However, in many cases it seems that the very exploitation of which the worker may wish to complain may also render the worker ineligible for restitution: in some countries their initial unlawful employment status deprives them of any other employment rights.

Initiatives challenging other forms of labour market abuse, such as undeclared work or false self-employment and underpaid or unpaid wages, might prove of value to workers facing forced labour. The courts could be empowered to directly award ‘fair’ compensation for losses in wages as well as for pain and suffering. Transposition of the EU Directive (2009/52/EC), from which both the UK and Ireland have opted out, could also enable non-compliant workers to secure restitution of unpaid wages even where they are removed from the country. These measures could reduce the economic advantage to the unscrupulous employer of subjecting workers to forced labour. This report supports the recommendation made by the Organisation for Security and Co-operation in Europe (OSCE) back in 2007 that states should ‘Consider elaborating or strengthening their legislation that offers victims of trafficking for labour exploitation the possibility of obtaining compensation for damage suffered, including, where appropriate, restitution of wages owed to them.’

The practice of not taking action against those who may have been trafficked for document fraud or working without authorisation described in the Netherlands national report may be of greater value to the workers. If

accompanied by some form of regularisation or other integrative measures, it could help encourage workers to come forward.

Support

Some governments have used regularisation to attempt to reduce the volume of undeclared work and exploitation. Where it has been generalised, as in Italy, it is thought to have offered otherwise precarious workers a route into the formal labour market. Where it has been restricted to specific groups, as in France or Spain, it has been less beneficial. The national reports support the view that such measures offer a better chance for workers to move into decent work than measures associated with the NRMs.

Some social support mechanisms are provided in most countries for those affected by sexual exploitation and trafficking offences, and social actors appear to be extending these informally to include those subject to labour exploitation. This is welcome, but as the Irish ICTU/MRCI (2011) report points out, workers having endured forced labour need to have their exit from forced labour facilitated. The French CNCDH makes a similar point:

The measures adopted must therefore provide the most vulnerable individuals the opportunity to build a life apt to keep them safe from trafficking and exploitation in the future. (CNCDH, 2009)

Local voluntary efforts (including those of trade unions) can provide legal advice on employment and migration matters, but support for those experiencing abusive labour exploitation is rarely systematic.

Perhaps the key lesson is that the stronger the extent of labour market regulation and associated inspection and enforcement powers, the more likely it is that forced labour practices will be detected, and that those subjected to it will be offered potentially acceptable routes to restitution.

8 IMPLICATIONS FOR THE UK

As shown in the Introduction (Section 1), for the government, sufficient provision already exists, including provisions for victims of trafficking under the NRM, and for other workers under existing employment legislation. It is highly unlikely that any fresh protective legislation will be considered in the near future, by the current Coalition government at least.

For this report, then, the question is, how might existing provisions in law and practice be better used by regulators, workers facing forced labour practices and those engaged in supporting them? The evidence from the responses elsewhere in Europe suggests that there may be a benefit in approaching forced labour as an element (albeit an aberrant one) of the labour market, rather than as an element of trafficking with all its emphasis on immigration offences. This is not to downplay the criminal element of the offence, but to recognise that the economic aspects of work are of crucial importance to workers, and this is just as true for those exposed to forced labour as to those facing lesser forms of exploitation.

- 1** One way of combating forced labour is to reduce the economic attraction of this form of exploitation. This requires both retributive remedies against exploitative employers (enforcing statutory wages rates, and reclaiming unpaid wages, for example), and encouraging workers concerned to come forward for assistance. Workers who face problems such as withholding of identity documents, unpaid wages, excessive working hours and threats of denunciation should have access to remedies which they can pursue themselves without putting themselves at risk of prosecution for immigration offences or forcible removal. Clear guidance that certain employment rights cannot be nullified simply by the employer's unlawful actions could help in bringing more cases to tribunals.

-
- 2 Penalties against perpetrators of forced labour should not be restricted to criminal sanctions, but should include recovery of unpaid wages and compensation for damages from employers to workers. The idea of main contractor liability for industries with significant use of subcontracting chains and false self-employment (such as construction and agriculture) should certainly be examined. This was also a strong point made by La Strada and Anti-Slavery International in a report produced by the Churches Commission for Migrants in Europe (Moritz and Tsourdi, 2009). They argued that it would do justice to the victims, offer redress for damages as well as unpaid wages and reduce the economic attraction of forced labour to employers. Our research into practicalities in nine EU member states supports this – as shown in the section on supply chains, forced labour practices may not be many steps away from the mainstream economy, even in developed countries. In the absence of any sign of the UK government taking this up, however, trade unions and NGOs should consider how they could develop litigation strategies (as pursued by CODETRAS in France and MRCL in Ireland) and the organising approaches adopted on occasion by trade unions in the Netherlands and France.
 - 3 The absence of a general labour inspectorate in the UK, combined with restricted budgets for the Health and Safety Executive and National Minimum Wage Inspectorate, means that any potential role these bodies might play in detecting forced labour is restricted. Figures for 2009 showed that the UK had fewer inspectors compared to the workforce size than Germany, France, Spain, Poland, Latvia or Italy (the Netherlands, Ireland and Sweden were not included in the study) (SYNDEX, 2012). An obvious answer might be to increase the size of the Health and Safety Executive, National Minimum Wage Inspectorate and Gangmasters Licensing Authority.
 - 4 At the very least, working time enforcement could be improved. While the restrictions in the UK are less stringent than in most other EU states, there are still effective limits on working time – 48 hours per week where no individual opt-out has been signed, and requirements for daily and weekly breaks. The former is currently the responsibility of the Health and Safety Executive. Were the latter to be brought into their remit, and both actually pursued as a matter of policy, the chances of detection of forced labour practices would be enhanced.
 - 5 Temporary residence permits or bridging visas may help those victims who have irregular immigration status, but they still leave workers in a vulnerable position if they restrict the right to work, or depend on preparedness to testify against perpetrators. Residence and work permits for those thought to have been subjected to forced labour would encourage both integration and whistle-blowing on the part of the worker involved. Mass regularisation would also reduce abuse of all sorts for some groups of migrant workers, although many workers subject to forced labour in the UK are EU citizens (see, for example, Scott *et al.*, 2012). There have also been recent cases relating to vulnerable adults who are British being subjected to forced labour, in construction, for example, and regularisation would not resolve their problems.
 - 6 Humanitarian assistance should be available for those subjected to forced labour, as should education and training (perhaps including work

placements or mentoring), particularly in English and employment rights. Medical and other advisers should have no obligation to report undocumented workers, as this may reduce the likelihood of them seeking help, which could aid them to escape their exploitation.

- 7** Unlike the states studied here, there is a specific forced labour offence in the UK, meaning that the offence can be pursued outside the NRM, and without the need for any consideration of movement (be it internal or international). Benefits could be gained from ensuring that training and information regarding the offence and its interpretation are made widely available to assist inspection and enforcement agencies, NGOs and civil society organisations (including trade unions) to detect forced labour related cases. In doing so, enforcement agencies should be trained in methods that do not victimise the workers concerned, but permit them to play a role in pursuing their own cases.
- 8** The development of awareness-raising campaigns on abusive exploitation aimed at the wider public should be considered. Greater coordination between various inspection and enforcement agencies may also improve the chances of detecting forced labour. However, since the involvement of immigration authorities may increase the reluctance of those subject to forced labour to cooperate or identify themselves as being subject to forced labour, the enforcement and investigation of workers' rights should be carried out independently from those authorities charged with border controls.
- 9** If trade unions were to be granted the right to pursue cases in tribunals on behalf of members or groups of members, the difficulties of securing judgments where workers may be highly mobile or afraid to present themselves could be substantially reduced. However, even without this right to representation, good legal precedence can be established where unions and legal advisers are able to work with those groups who might be susceptible to forced labour practices.
- 10** The shortages of secure accommodation and resources for subsistence reported in most of the national reports clearly hamper attempts to investigate cases of forced labour. In a time of cuts in public spending and retrenchment for advice agencies and trade unions, finding the resources for this will be difficult. But even relatively small projects in other European countries have demonstrated that they can reach significant numbers of those experiencing forced labour. By doing so, they can both assist some into self-activity as well as providing vital illustration of a phenomenon which, left to the legislative process alone, would remain hidden.

The findings in other countries show that the confidence expressed by the UK government representatives that adequate protections already exist in the labour market is likely to be misplaced. If labour markets that are substantially more regulated than the UK's can still display alarming numbers of forced labour cases (and we are sure that all the measures under-represent this), how much more must be going on in the UK, undetected, uncompensated and unpunished?

NOTES

- 1 Sometime known as the 'Palermo Convention' (UN, 2004).
- 2 The free movement area of the European Union.
- 3 The UK renounced this convention in 1983.
- 4 UK and Ireland have opted out of this directive.
- 5 In certain industries, and in the case of UK, for all workers agreeing to sign an 'opt-out'.
- 6 Delphi methodology aims at producing a consensus amongst a wide group of experts. In the context of the ILO/EU study, this involved surveys in 2008 amongst anti-trafficking experts from the 27 EU Member States, including police, government, academics and researchers, NGOs, international organisations, labour inspectorates, trade unions and judiciaries. Through this method they ranked in importance the indicators agreed to be the most significant.
- 7 In English: 'Remembrance, responsibility and the future'. Established in 2000 to deal with compensation to former forced labourers.

REFERENCES

- Anderson, B. and Rogaly, B. (2004) *Forced Labour and Migration to the UK*. Oxford: COMPAS for the Trade Union Congress
- Arbeidsinspectie (2011) *Yearly report of the Labour Inspection 2010*, [www.arbeidsinspectie.nl/Images/AI%20Jaarverslag%202010_compleet%20\(webversie\)_DEF_tcm290-303461.pdf](http://www.arbeidsinspectie.nl/Images/AI%20Jaarverslag%202010_compleet%20(webversie)_DEF_tcm290-303461.pdf)
- Bussadori, V. et al. (2009) *Sfruttamento Lavorativo in Alcuni Territori della Regione Emilia-Romagna: Il Fenomeno, gli Interventi* [Labour Exploitation in Several Territories in the Emilia-Romagna Region: The Phenomenon and Interventions]. Materiali di documentazione, no. 36. Bologna: Regione Emilia-Romagna
- Carchedi, F. (ed.) (2010) *Schiavitù di Ritorno* [Slavery of Return]. Santarcangelo di Romagna: Maggioli Editore
- CNCDH (Commission nationale consultative des droits de l'homme) (2009) *La Traite et L'Exploitation des Êtres Humains en France* [Trafficking and Exploitation of Human Beings in France]. Paris: CNCDH
- Cremers, J. (2011) *In Search of Cheap Labour in Europe*. Brussels: Construction Labour Research/EFBWW/International Books
- ECHR (European Court of Human Rights) (2005) *Case of Siliadin v. France, Judgement*. Strasbourg: ECHR, 26 July
- European Commission (2010) *Detailed Report on the Implementation by Member States of Directive 2003/88/EC (Working Time Directive)*. Commission Staff Working Paper SEC 2010 1611 final, 21 December
- European Commission (2012) *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*. COM(2012) 286 final
- ICTU (Irish Congress of Trade Unions)/MRCI (Migrant Rights Centre Ireland) (2011) *A Framework for Tackling Forced Labour in Ireland*. Dublin: June
- Follmar-Otto, P. and Rab, H. (2009) *Human Trafficking in Germany: Strengthening Victim's Human Rights*. Berlin: German Institute for Human Rights
- Guardian (2011) *Coalition refuses to ratify UN measure protecting domestic workers*, 15 June 2011
- ILO (International Labour Organization) (2009) *Operational Indicators of Trafficking in Human Beings. Results from a Delphi Survey Implemented by the ILO and the European Commission*. September
- ILO (2010) *Labour Inspection in Europe: Undeclared Work, Migration, Trafficking*. Working Document No. 7. Labour Administration and Inspection Programme. Geneva: ILO, January
- ILO (2012) *ILO Global Estimate of Forced Labour*. Geneva: ILO
- Jaksic, M. (2008) 'Figures de la Victime de la Traite des Êtres Humains: de la Victime Idéale a la Victime Coupable'. *Cahiers internationaux de sociologie*, 1(14), pp. 127–146
- Jorens, Y., Peters, S. and Houwerzijl, M. (2012) *Study on the Protection of Workers' Rights in Subcontracting Processes in the European Union*. Ghent: Ghent University, Department of Social Law, June

-
- KOK-Informationsdienst (2012) *Arbeitsausbeutung und Menschenhandel zum Zweck der Arbeitsausbeutung – Aktuelle Entwicklungen* [Labour Exploitation and Trafficking in Human Beings for the Purpose of Labour Exploitation – Current Developments]. www.kok-buero.de/fileadmin/user_upload/medien/KOK_informiert/Infodienst_2012.pdf
- Latvian Ministry of Foreign Affairs (2011) Press briefing, 27 April. www.mfa.gov.lv/lv/Jaunumi/PazinojumiPresei/2011/aprilis/29-3/
- Leśniewski, J. and Krajewska, B. (2011) *Rola Państwowej Inspekcji Pracy w Identyfikacji Przypadków Handlu Ludźmi do Pracy Przymusowej Oraz Przypadków łamania Praw Pracowniczych* [The Role of State Work Inspection in Identifying Cases of Trafficking of Forced Labour and Cases of Violations of Labour Rights]. Presentation of Labour Inspectorate to Solidarnosc. www.solidarnosc.org.pl/uploads/original/0/2/04747_PIP.pdf
- Moritz, T. and Tsourdi, L. (eds) (2009) *Trafficking for Forced Labour in Europe: Emerging Challenges – Emerging Responses*. Brussels: Churches' Commission for Migrants in Europe (CCME)
- NERA (National Employment Rights Authority) (2007) *Code of Practice for Protecting Persons Employed in Other People's Homes*, Dublin: NERA. www.lrc.ie/documents/publications/codes/10PersonsEmployedinHomes.pdf
- OIM Italia (2010) *Praesidium V. Rapporto sulla Situazione dei Migranti Presenti nella Provincia di Caserta e nell'area di Castelvoturno* [Report on the Situation of Migrants in the Province of Caserta and the Area of Castelvoturno]. Rome: OIM Italia
- OSCE (Organisation for Security and Co-operation in Europe) (2007) *Combating Trafficking in Human Beings for Labour Exploitation*. Decision No. 8/07, 30 November
- Reggio Emilia (2009) *Piano di Zona per la salute e il benessere sociale 2009–2011. Programma attuativo 2009* [Plan for Health and Welfare 2009–2011], Bologna: Distretto di Reggio Emilia
- Scott, S., Craig, G. and Geddes, A. (2012) *Experiences of Forced Labour in the UK Food Industry*. York: Joseph Rowntree Foundation
- SCN (Supreme Court of the Netherlands) (2009) 27 October, LJN: BI7097
- Skrivankova, K. (2010) *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation*. York: Joseph Rowntree Foundation, November
- SYNDEX (2012) *A Mapping Report on Labour Inspection Services in 15 European Countries*. Brussels: SYNDEX for European Federation of Public Service Unions
- TNS OBOP (2010) *Public Awareness of Risks Involved in Human Trafficking and Taking Up Work Abroad*. Warsaw: TNS OBOP, British Embassy
- UN (United Nations) (2004) *United Nations Convention against Transnational Organized Crime and the Protocols thereto*. New York: UN
- Visser, J. (2009) *Industrial Relations in Europe 2008*. Luxembourg: European Commission

APPENDIX A

Research project partners

Country report and case studies	Organisation	Partners
France	Working Lives Research Institute (WLRI)	Nick Clark
	Civic Forum	Nicholas Bell (case study)
Germany	WLRI	Dr Janroj Keles
Ireland	WLRI	Professor Sonia McKay
Italy	University Ca' Foscari, Venice	Fabio Perocco
Latvia	University of Latvia, Riga	Aija Lulle
The Netherlands	Raboud University, Nijmegen/Tilburg University	Dr Mijke Houwerzijl Dr Connie Rijken
Poland	–	Weronika Kloc-Nowak
Spain	Gabinet d'Estudi Socials, Barcelona	Xavier Vallvé Paolo Leotti
Sweden	Goteborg and Linkoping Universities	Christer Thorqvist Professor Charles Woolfson

APPENDIX B

Methodology

Early on in the project the research team, through email collaboration and Skype teleconferencing, agreed the parameters for the national research. A template for the national reports was designed in order to ensure that the main themes were addressed (as far as possible) in each case. Each partner conducted:

- a review of academic and grey literature, evaluations, policy and legal documents from the government, trade unions, NGOs, enforcement bodies (including legal practitioners and advice organisations), covering criminal, civil and employment rights remedies, social welfare, access to decent (regularised) employment and immigration support;
- analysis of the available data on forced labour and informal labour markets, including where possible (and it would not be in all cases) details of countries of origin of the workers concerned;
- a brief analysis of the context of forced labour as perceived by government, employers and in the media;
- a case study from each country giving an example of good, innovative or illustrative practice identified during the research.

It was agreed that we should look in particular for examples of support that permitted or assisted those facing forced labour to participate in their own defence and enforcement of rights, or strategies developed by particular communities to solve the more serious employment-related problems (including forced labour) that workers from those communities might face.

A series of national reports was then prepared, one for each of the nine selected countries, based on the agreed template (see below), and including the case study. It was recognised early on that most policy relating to forced labour had been developed in the context of combating human trafficking, and this was usually seen in the context of border offences. To gain a clearer idea of how national systems operated when confronted with forced labour that did not involve trafficking, partners were also asked to consider a specific hypothetical scenario (see below). This presented a case where the issue of crossing borders was separated from forced labour practices, in order to better compare how national systems would respond to the forced labour practices outside of the trafficking context.

Initial findings and conclusions were drawn together and presented, along with summaries of the case studies, at a one-day seminar held in London in early July 2011. There were 27 participants including members of the

research team, together with experts and practitioners drawn from the nine chosen member states.

In preparing the national reports, we looked in particular for support that fell under three headings:

- employment issues
- social support
- provisions relating to immigration (or trafficking as a cross-border phenomenon).

The country studies showed that there were a variety of definitions of extreme abuse of workers, some of which encompassed forced labour, some of which did not. We were looking for practical examples of support that was (or could be) available to those subject to forced labour. It was apparent that such support was unlikely to be available *only* to such subjects – for example, the reclaiming of unpaid wages was likely to be a mechanism much used by various sections of the workforce.

In terms of statistics on the extent of forced labour, we knew that we would be hampered by the lack of nationally accepted definitions or programmes to identify forced labour. We therefore had to seek the best available proxies that might indicate the likely presence of forced labour practices.

The partners responsible for producing the national reports came from a variety of backgrounds and specialities, including law, sociology, labour markets, migration and trade unions. The diversity of the resulting reports reflects this variety and provides a wealth of detail. This is in itself, we hope, a rich resource for those wishing to understand better the occurrence and responses to forced labour. The case studies display a similar variety in approach. Both national reports and case studies went into substantial detail regarding the context and practical indicators of forced labour. They are significant documents in their own right, and are therefore published separately from this report on both the JRF and Working Lives Research Institute (WLRI) websites (see www.jrf.org.uk and www.workinglives.org).

Using factor analysis, an initial synthesis report was produced from the nine national reports. This was subsequently revised and edited in consultation with colleagues in WLRI and JRF to reflect the key issues and findings set out in the final version (see opposite).

Hypothetical scenario for national reports

Worker X is a non-EEA national who arrived legally (on a visitor's visa), but owes money to an agent back home who facilitated his visa and travel.

He works initially in a restaurant for an employer who is associated with the agent, but the restaurant goes bust and the employer leaves the country. Worker X is still in debt and worried about threats from the agent to his family back home.

He gets a job as a cleaner with another employer (not associated with the agent) who is aware that X is not entitled to work in the country. The employer employs X under identity documents/social security registration from a previous worker, but takes X's passport.

X lives in a flat owned by the employer, sharing a room with four other cleaners. The flat is also occupied by a supervisor, who monitors their activities. X works for up to 14 hours per day, and rarely gets time off. He is paid at approximately half the appropriate minimum wage, but sometimes does not get paid for several weeks at a time. He pays approximately 40 per cent of his wages in rent, and pays 30 per cent back to the agent.

Responses to forced labour in the EU: Reporting template

Country

Partner contact details

BACKGROUND *(In this section please provide a summary of the national discourse and context of forced labour, including key legislation relating to forced labour or its indicators – as distinct from trafficking, any major research or policy reports, and the way in which the issue is approached by media, government, trade unions and NGOs)*

Available data *(Extent and location – industrial and geographical – of forced labour, relationship with informal labour markets, enforcement actions taken. Include where possible details of countries of origin of the workers concerned)*

Remedies for forced labour *(Include details of any measures possible under criminal, civil and/or employment law, access to regularised work, identity and powers of enforcement bodies, how the costs of remedies are met, what risks such remedies might pose to workers and scope for action by workers experiencing forced labour)*

Support available to those having been subjected to forced labour *(Access to social welfare, e.g. housing, respite, language support, advice, access to regularised work, how the costs of support are met, what risks accessing such support might pose to workers, and scope for action by workers experiencing forced labour. Include actions by NGOs, migrant groups, unions etc.)*

Case study *(to be identified)*

Final comments *(Here we are interested in your assessment of the effectiveness of the support and enforcement mechanisms set out above, and of differences between the experiences of men and women facing forced labour)*

He is sometimes able to send money home, but as the wages become less frequently paid, he finds it hard to survive.

What rights does this worker have:

- 1 in theory and
- 2 in practice, to:
 - a) regularise his stay in the country
 - b) obtain unpaid wages/a minimum wage
 - c) get recompensed for excess working hours, and lack of paid holidays
 - d) recover his passport
 - e) if he escapes/leaves the job (or is 'rescued'),
 - vi) to get emergency accommodation,
 - vii) access to healthcare,
 - viii) access to social security,
 - ix) to become a 'legal' worker?

What penalties might be imposed on his employer, and how might the worker benefit from them?

ACKNOWLEDGEMENTS

The author would like to thank the members of the project team who worked so hard to prepare the national reports and the many experts who gave them the benefit of their knowledge, Professor Steve Jefferys at WLRI and Louise Woodruff at JRF who assisted with editing, and Klara Skrivankova who commented on the text. Furthermore, the participants at the conference in London contributed valuable insights to the final report, but the contents and opinions in this report remain the author's own.

ABOUT THE AUTHOR

Nick Clark is Senior Research Fellow at the Working Lives Research Institute (WLRI), London Metropolitan University. He has been active at many levels of the trade union movement, from shop steward to the TUC International Department, where he contributed to the development of policy and practice on migrant workers. He was a member of the Gangmasters Licensing Authority board for 4 years.

At WLRI he has conducted research into temporary agency work, contract cleaning and migrant domestic workers, and is completing a study of the paid work undertaken by university students in seven EU countries.

The Joseph Rowntree Foundation has supported this project as part of its programme of research and innovative development projects, which it hopes will be of value to policy makers, practitioners and service users. The facts presented and views expressed in this report are, however, those of the author[s] and not necessarily those of JRF.

A pdf version of this publication is available from the JRF website (www.jrf.org.uk). Further copies of this report, or any other JRF publication, can be obtained from the JRF website (www.jrf.org.uk/publications) or by emailing publications@jrf.org.uk

A CIP catalogue record for this report is available from the British Library.

All rights reserved. Reproduction of this report by photocopying or electronic means for non-commercial purposes is permitted. Otherwise, no part of this report may be reproduced, adapted, stored in a retrieval system or transmitted by any means, electronic, mechanical, photocopying, or otherwise without the prior written permission of the Joseph Rowntree Foundation.

© London Metropolitan University 2013
First published 2013 by the Joseph
Rowntree Foundation
ISBN: 978 1 85935 961 7 (pdf)
Typeset by The Policy Press

Joseph Rowntree Foundation
The Homestead
40 Water End
York YO30 6WP
www.jrf.org.uk