

Combating Trafficking in Human Beings for Labour Exploitation



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Introduction

In this book, the results of the project ‘Combating THB for Labour Exploitation’ funded by the European Commission and commissioned to Tilburg University are presented.¹ The research started in April 2010, and was concluded with a closing seminar on 8 April 2011. Researchers with different legal backgrounds from five countries; Austria, the Netherlands, Romania, Serbia and Spain², participated in the project.

When combating trafficking in human beings (THB) in general, a comprehensive approach based on human rights to combat it is advocated at an EU level. The prosecution of traffickers and the protection of victims of THB are two of the main features of this approach. The overall aim of the project was to bring together the prosecution of traffickers and the protection of victims of THB as two aspects of the human rights based approach to THB for labour exploitation in an integrated and interrelated way, and to strengthen the operational response to this form of THB. Based on this aim the following research question was drawn:

What obstacles and best practices can be identified (in police and judicial cooperation) in the participating States when identifying victims and when investigating and prosecuting (cross-border) THB for labour exploitation?

Based on the Palermo Protocol³, the extension of the definition of THB to labour exploitation requires additional skills, knowledge and awareness for effective investigation and prosecution, and for the identification and assistance of victims of this form of THB. Actors (such as labour inspectorates, social investigation services and municipalities) other than the police and the prosecution services have also become involved in these activities. It is unclear which role these actors can have in identifying victims and in investigating and prosecuting (cross-border) THB for labour exploitation and which

¹ Full title of the project: ‘Improving the investigation and prosecution of THB for labour exploitation. Identifying problems and best practices’ number Project JLS/2009/ISEC/AG/176.

² See Appendix 1 for a list of the participants in the project.

³ Protocol to the United Nations Convention against Transnational Organised Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 15 November 2000 A/RES/55/25.

improvements are needed. They are often unfamiliar with, for instance, the specific needs of victims, how trafficking networks operate, and how to cooperate with colleagues abroad. These problems obviously hamper the combating of THB for labour exploitation. In addition, difficulties in defining THB for labour exploitation still exist. Labour exploitation, as such, is not a term used in the Palermo Protocol or the EU Directive on Preventing and Combating THB and Protecting Victims. When considering the explanation of exploitation given in the Palermo Protocol, one can make the distinction between THB for the purpose of sexual exploitation, labour exploitation (including forced and compulsory labour and services, slavery and slavery-like practices) and the removal of organs. It is in this way that the term labour exploitation in this research must be understood, although this does not solve the problems encountered in defining the crime.

In this book, these problems, as well as the challenges of dealing with these problems, are identified. To this end, research took place in the five participating countries and the EU legal framework was analysed. The results thereof formed the basis of further reflections and recommendations. The country reports are based on information derived from three main sources; 1) an analysis of the legal framework, relevant policy and case law, 2) semi-structured interviews with at least ten experts involved in the investigation and prosecution of (cross-border) THB for labour exploitation, and the protection and assistance of victims of THB for labour exploitation, and 3) the study of two (transnational) cases of THB for labour exploitation. Terms of reference for the country reports, questionnaires for the semi-structured interviews and the case studies were drafted beforehand in order to be able to conduct the analysis of the reports. Based on the terms of reference, the reports are divided into five parts: the legal framework, cooperation in the investigation and prosecution (national and international), victim protection and assistance, case studies, and recommendations. These reports, and the analysis thereof, were discussed during a meeting with invited experts in February 2011, when distinguished specialists made valuable contributions to various aspects of the reports, which were gratefully used to further improve them.

The book contains the results of the country studies in separate chapters, a chapter on the EU legal framework and a chapter on the results of the analysis of the country studies. Furthermore, four chapters are included in which experts in the field of THB for labour exploitation reflect on some of the findings of the project.

Planitzer and Sax, start with an analysis of the situation in Austria and point out that there is still a lack of attention to THB for labour exploitation, which is reflected in the low number of prosecutions and convictions. They furthermore focus on the difficult overlap in the crime of THB for labour exploitation and the exploitation of foreigners, which is defined as a separate crime in Austria. In the next chapter, the situation in the Netherlands is reflected upon by Heemskerk and Rijken. The Netherlands is the only country in this research that has a Social Security Intelligence and Investigation Service specialised in, among other things, labour law issues. Although this service is not used to its full potential, cases of THB for labour exploitation do require specific expertise and therefore it is good to have such a specialised service. In the Netherlands, there is also a great struggle in relation to the definition of THB for labour exploitation. After five years of irresolution by the judiciary to qualify situations as being THB for labour exploitation, a development has now taken place in the opposite direction. In his analysis of the Romanian situation, Zaharia draws our attention to a specific aspect of Romanian law that qualifies the violation of labour laws as a form of THB for labour exploitation when it was preceded by acts and means. Furthermore, he explains the paradoxical situation in Romania in which some situations where exploitation did not take place are punished more severely than situations where exploitation did indeed take place. Copic and Nikolić-Ristanović, in their contribution on Serbia, make us aware that the problems in Serbia are different because Serbia is primarily a country of transit and origin. When law enforcement officers take action in cases of THB for labour exploitation, the cases are often difficult to qualify as such because the exploitation has not actually taken place and the intent of the suspect to exploit the person is difficult to prove. In addition, the researchers give valuable insight into the needs and problems that are specific to victims of THB for labour exploitation. The way that support and assistance is organised in Serbia, with a central role for the Agency for the Coordination of Protection of Victims of Trafficking in Human Beings, a State service from the Ministry of Labour and Social Policy, is different from the other States and makes victim support and assistance less dependent on law enforcement, although Copic and Nikolić-Ristanović have some critical observations as to its functioning. Arrieta Idiakez, Manrique López and Manrique Rojo explain the newly adopted legislation in Spain. It is interesting to note that apart from a provision for THB for labour exploitation, they also have a separate section in the criminal code dealing with Criminal Labour Law. The authors analyse the link between these two areas of crime in Spanish law. In their research, they show that Spain has recently taken some

important steps to combat THB for labour exploitation in which cooperation between various actors is specifically addressed. Furthermore, they point out the specific position of Spain as an EU Member State that receives a high number of Third Country Nationals and how this relates to the problems of THB for labour exploitation. In order to be able to place the country studies in the EU environment, Middelburg and Rijken give an analysis of the EU legal framework as far as is relevant for the contribution to a human rights based approach. In the chapter on pitfalls and challenges to combat THB for labour exploitation, Rijken points out the main problems and good practices that can be derived from the country studies. She places these in a broader perspective, including the current debates on the relevant matters. She finally draws conclusions and makes recommendations that might support the EU to further operationalise a comprehensive approach based on human rights for THB for labour exploitation.

Further in the book, distinguished experts in the field reflect on some of the outcomes of the project. Van der Leun, in her contribution, centralises the relation between migration and THB on the punitive and protective perspectives of THB for labour exploitation, and concludes that organisations seem to be divided between those looking at labour issues and migration control on the one hand, and those aiming at combating THB on the other. She furthermore pleads for an increase in the possibilities for people to work legally in the EU. Van Dijk and Vonk give their reflections on a broad spectrum of issues, including areas that are normally not linked with THB for labour exploitation. By doing so, they implicitly show that THB for labour exploitation affects many more aspects of our daily life than law enforcement, victim protection and labour law. They finally focus on the role Europol can play in combating THB for labour exploitation. Beirnaert focuses on international discussions in relation to labour exploitation and shows the important role that the ILO had and still has in this field. He highlights the role that trade unions play or must play in the agency of workers, which is considered key in effectively combating THB for labour exploitation. The last chapter, by van Krimpen, gives a detailed insight into the whimsical developments in Dutch case law in relation to defining THB for labour exploitation. She makes some critical remarks about the latest developments in which convictions for THB took place in relation to the purchase of telephone contracts, which were considered as a service in relation to THB.

Considering this short overview of the content of the book, it is clear that concerted action to combat THB for labour exploitation must be taken in various areas, rather than being limited to merely legal or repressive measures. With this book, we hope to contribute some guidance for such action not only on an EU level but on a national level as well.

I would like to express my gratitude to the European Commission as well as the institutions the researchers work at, for (co-)funding this project. I am furthermore thankful to our experts in the project (Bärbel Uhl and Floris van Dijk) for the valuable discussions and contributions throughout the project. Last but not least I want to thank the researchers for their dedication to the project and the inspiring cooperation. I hope that the outcome of the project will stimulate all of us to bring the comprehensive approach based on human rights a step closer.

Conny Rijken
Tilburg, March 2011

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ADAPRE	Association for the Development of Alternative Practices of Reintegration and Education
AECID	Spanish International Co-operation for Development Agency
AEL	Alien Employment Law
AI	AI <i>Arbeidsinspectie</i>
AMF	Directie Arbeidsmarktfraude van de Arbeidsinspectie <i>(Directorate Market Fraud of the Labour Inspectorate)</i>
APA	Aliens' Police Act
Arbo	Directie Arbeidsomstandigheden <i>(Directorate Labour Conditions of the Labour Inspectorate)</i>
art	Article
AWR	Algemene Wet Rijksbelastingen <i>(General Act on Royal Taxes)</i>
B9 procedure	Chapter B9 of the Immigration Circular part B
BDTRATA	Data-Management System regarding Trafficking in Human Beings.
BNRM	Bureau Nationaal Rapporteur Mensenhandel <i>(Bureau National Rapporteur Trafficking in Human Beings)</i>
CC	Criminal Code
CCP	Code on Criminal Procedure
CCLA	Corporate Criminal Liability Act
cf.	compare
CIE	Criminele Inlichtingen Eenheid <i>(Criminal Intelligence Unit)</i>
CJIB	Centraal Justitieel Incassobureau <i>(Central Fines Collection Agency)</i>
CoMensha	Coördinatiecentrum Mensenhandel <i>(Coordination Center THB)</i>
COMMCA	Council of Ministers of Women's Affairs of Central America.
COS	Comprehensive Operational Strategic Planning for the Police
CPS:	Country Strategy Papers.
CV:	Curriculum Vitae.
DIOCT	Department for Investigating Organised Crime and Terrorism

ABBREVIATIONS

DNR	Dienst Nationale Recherche van de Korps Landelijke Politie Diensten <i>(National Investigation Team of the National Police Services Brigade)</i>
DPC	Wetboek van Strafrecht <i>(Dutch Penal Code)</i>
DPPC	Wetboek van Strafvordering <i>(Dutch Penal Procedure Code)</i>
DSO	Dienst Stedelijke Ontwikkeling <i>(Service Urban Development)</i>
eds	editors
eg	for example
EJN	European Judicial Network
EMM	Expertise Centrum Mensenhandel Mensensmokkel <i>(Expertise Center Human Trafficking Human Smuggling)</i>
ESBC:	Eastern Sea Borders Centre.
EU	European Union
EUBAM	European Union Border Assistance Mission
EU-JZG	Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union
EU-PolKG	EU-Polizeikooperationsgesetz
FATF	Financial Action Task Force
FIOD	Fiscale Inlichtingen- en Opsporingsdienst <i>(Fiscal Intelligence and Investigation Department)</i>
FMEIA	Federal Ministry for European and International Affairs
Functional Office	Functioneel Parket van het OM <i>(Functional Office of the national prosecution service)</i>
G.D.	Government Decision
G.E.O.	Government Emergency Ordinance
G.O.	Government Ordinance
JIT	Joint Investigation Team
IBF	Interventionsstelle für Betroffene des Frauenhandels
ID	Identity
ILO	International Labour Organisation
IND	Immigratie en Naturalisatiedienst <i>(Immigration and Naturalization Service)</i>
KLPD	Korps Landelijke Politiediensten <i>(National Police Services Brigade)</i>
SIVE	Integrated Border Patrol System
SIS	Schengen Information System

SPA	Security Police Act
SRA	Settlement and Residence Act
SVB	Sociale Verzekeringsbank (<i>Social Security Bank</i>)
SZW	Ministerie van Sociale Zaken en Werkgelegenheid (<i>Ministry Social Affairs and Employment</i>)
THB	Trafficking in Human Beings
TRLET	Royal Decree 1/1995 of 24 March, which approves the consolidated text of the Law of the Statute of Workers.
TRLISOS	Royal Legislative Decree 5/2000, of 4 th August, which approves the ‘Consolidated Law on Offenses and Penalties in the Social Order’.
UNODC	United Nations Office on Drugs and Crime
UN	United Nations
UNGA	United Nations General Assembly
UWV	Uitvoeringsinstituut Werknemers Verzekeringen (<i>Employee Insurance Agency</i>)
VCA	Victims of Crime Act
VIS	Visa Information System
WAV	Wet Arbeid Vreemdelingen (<i>Aliens Employment Act</i>)
WML	Wet Minimum Loon en Minimum Vakantietoeslag (<i>Act Minimum Wage and Minimum Holiday Allowance</i>)
WSBC	Western Sea Borders Centre

Chapter 10

A Trade Union Perspective on Combating Trafficking and Forced Labour in Europe

Jeroen Beirnaert¹

While slavery has been outlawed for over 200 years, in 2005, the International Labour Office did ground-breaking research showing that 12.3 million workers are still in forced labour today.² The fact that forced labour is present in most if not all countries has been corroborated by growing evidence ever since. Human trafficking for forced labour is a contemporary incarnation of the transatlantic slave trade. This paper will illustrate how the emergence of trafficking and forced labour is an unfortunate sign of our times, how government interventions to date have been ineffective and even detrimental to the rights of victims and how labour market measures are key to turning the tide.

Labour exploitation

Whereas ‘trafficking for labour exploitation’ is a commonly used term, the specialised UN agency for labour standards has in its entire history never defined ‘labour exploitation’. Arguably all of its 189 Conventions and the almost 100 years of their legal interpretation, have in fact been a continuous effort to define what constitutes labour exploitation, an interpretation that indeed needs constant revising and updating to respond to changing realities. In practice, it is difficult to draw a clear line separating exploitation as a violation of labour rights from forced labour or human trafficking specifically. In some European countries, a narrow definition is used while in others the concept of trafficking for labour exploitation is broader. The problem hampers identification in practice and creates legal insecurity for workers.

To overcome these problems, the ILO produced a set of indicators to identify forced labour in practice as an end result of a trafficking process. Later, in cooperation with the European Commission, they were further refined in a European context often referred to as the Delphi methodology.³ A combination of indicators constitutes a probability of a case of forced labour.

¹ Jeroen Beirnaert, Project Coordinator at the International Trade Union Confederation; the text contains elements of a speech given at a conference on the occasion of the fourth EU Anti-Trafficking Day entitled Towards a multidisciplinary approach to prevention of trafficking in human beings, prosecution of traffickers and protection of victims?, Brussels, 18-19 October 2010.

² ILO, *Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: A Global Alliance against Forced Labour* (Geneva 2005).

³ ILO Special Action Programme to Combat Forced Labour, *Indicators of trafficking of adults for labour exploitation* (28 October, 2009) <http://www.ilo.org/global/topics/forced-labour/WCMS_105884/lang--en/index.htm> accessed 28 February 2011.

Indicators include debt bondage, retention of identity documents, withholding and non-payment of wages, deception or false promises, financial penalties, denunciation to the authorities and threats of deportation, and restrictions on freedom of movement.

The indicators illustrate the thinking behind argumentation to see trafficking and forced labour along a continuum of labour exploitation that ranges from decent work to forced labour⁴, and to see protection from any form of exploitation along the continuum as a way to interrupt the process leading to forced labour, preventing future abuse.⁵ Trafficking for forced labour cannot be seen nor addressed as an isolated problem, as it is an accumulation of serious human rights violations.⁶ In terms of Core Labour Standards⁷ only, workers in forced labour suffer from discrimination, their residence status is likely to affect their human right to freedom of association and collective bargaining and in some cases they might even be under age. Other rights violations are likely to include non- or late payment of wages, salaries below the minimum wage, violations of health and safety prescriptions, social security entitlements, etc. All these elements are different facets of trafficking for labour exploitation. Forced labour is also a process more than a static relationship. Workers do not become forced labourers overnight, but are gradually, increasingly coerced. 'The vulnerability of migrants often increases over time as they are under pressure to repay their debts, or as they have been subjected to immigration controls and extortion from criminal networks. Moreover, employers often 'test' the resistance of workers before they squeeze them into more exploitative situations. One could think of this process as an ever narrowing labyrinth where the decision-making power of the worker is surrendered in the end.'⁸ Many migrants are deceived by false promises of employment abroad by middlemen, agents, or informal or criminal networks. To pay the recruitment fee, they are forced to take on loans from family, friends, or their recruiter and future employer. Upon arrival, after deduction of inflated costs of food, accommodation and other essentials, the salary left over

⁴ K. Skrivankova, *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation* (Joseph Rowntree Foundation Programme Paper, York 2010).

⁵ OSCE/ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (Warsaw 2008); J. Lam and K. Skrivankova, 'Opportunities and Obstacles: Ensuring Access to Compensation for Trafficked Persons in the UK' (London 2008) Anti-Slavery International.

⁶ K. Skrivankova, *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation* (Joseph Rowntree Foundation Programme Paper, York 2010).

⁷ ILO Core Labour Standards: 1949 Right to Organise and Collective Bargaining Convention No. 98, 1930 Forced Labour Convention No. 29, 1957 Abolition of Forced Labour Convention No. 105, 1951 Equal Remuneration Convention No. 100, 1958 Discrimination (Employment and Occupation) Convention No. 111, 1973 Minimum Age Convention No. 138, 1999 Prohibition and Immediate Elimination of the Worst Forms of Child Labour Convention No. 182.

⁸ B. Andrees, *Forced Labour and Trafficking in Europe: How People are Trapped in, Live through and Come out* (Working paper ILO, Geneva, 2008) p. 22.

is not nearly enough to save money to repay the loan, let alone to send remittances home as many had been planning to do from the outset. These abusive practices keep migrants bonded to their employer and force them to keep working for the same, under unilaterally enforced conditions. Workers ending up in forced labour are not necessarily undocumented or irregular workers. Many enter the country legally with a work permit or were country nationals from the outset.

The fact that workers are trafficked into forced labour in our mainstream economic sectors bring us inevitably to the debate on the under-regulated global labour market and the current state of protection of workers' rights. In past decades we have witnessed a transition from social dialogue and industrial relations to increasingly individual, informal and precarious work and labour relations. Deregulation of labour markets and the reduction of social protection as a strategy to increase competitiveness in the global economy has deformed the employment relationship. This trend of casualisation, informalisation and individualisation of labour and employment relationships has created the setting which now appears to be a breeding ground for all kinds of abuse, including the extreme of forced labour and trafficking. With many trade unions still developing strategies to appropriately address this reality, it leaves many workers without proper protection.

In 2006, the British TUC's independent Policy Studies Institute produced a report on the effect of 30 years of deregulation of the UK labour market. It indicates the emergence of extreme vulnerability amongst numerous groups, including nationals and migrant workers, subject to labour exploitation, abuse and criminality.⁹ 'If taken seriously, steps will need to be taken to address the systemic features that have led to such vulnerability. Respect of labour standards is central to an effective response and a failure to respect standards for all workers would lead to continued unfair competition between employers.'¹⁰

Forced labour

Freedom from forced labour is a human right and a 'fundamental right at work'. The 1930 ILO Convention No 29 banning forced labour now enjoys almost universal ratification with a few marked exceptions such as China, the US and Canada.¹¹ Workers in forced labour are not free to leave their job under the menace of a penalty, in other words, they are coerced. The most

⁹ M. Hudson, *The Hidden One-in-Five – Winning a Fair Deal for Britain's Vulnerable Workers* (TUC Publications, London 2006).

¹⁰ OSCE/ODIHR, *Report on Civil Society Meeting* (Warsaw 24 April 2007) 'The NRM approach to trafficking and its application to trafficking for labour exploitation', p. 11.

¹¹ ILO Lex, Database of International labour Standards <<http://www.ilo.org/ilolex/english/newratframeE.htm>> accessed 8 March 2011.

widespread but probably least known form of coercion is the practice of debt bondage where workers are indebted to their employer, or their (transnational) recruiter as explained above. Other coercive mechanisms are restrictions on the freedom of movement due to physical confinement, abuse of precarious residence status and threats of deportation, which is very often perceived as a limitation on the freedom of movement. These more subtle forms of forced labour are being suffered by many more than one may expect in industrialised countries. Indeed, some so-called human rights champions are now confronted with the fact that their societies are not immune to slavery and slavery-like practices.¹²

A quick tour around the world allows highlighting some of the diverse forced labour issues today. The Federation of Trade Unions – Burma¹³ reports consistent and widespread use of forced labour of civilians in public works by the military regime. Thousands face hard labour, with no remuneration and with total disregard of their human dignity. The workers need to bring their own materials and food and are subject to beatings, sexual assault and murder. Often, the summoned men are the only family breadwinner. Their absence deprives entire families of any source of income during weeks. In Uzbekistan, as a remnant of the centralised market economy under Soviet times, the Government systematically mobilises both school-aged children and adults to work in the annual cotton harvest by putting up quota for each region. In addition to the forcible nature of the work, the conditions are exploitative, harmful and sometimes life threatening. In North Korea and China prisoners are forced to work. Indigenous peoples on remote farms in the Paraguayan Chaco or in the Amazon forest in Brazil are working in debt bondage because the Government lacks the institutional capacity or the local presence to protect them. Abductions or forced subscription into armies take place in Uganda, Sudan, Chad, etc. The list of contemporary forced labour is far too long.¹⁴ Traditional slavery even still persists in some countries in Western Africa. On 27 October 2008, the Community Court of Justice of the Economic

¹² ‘Time and realities may have changed but the core essence of slavery persists in modern economies.’ *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences* (Gulnara Shahinian 2009) United Nations Human Rights Council, 12th Session and 2010, Human Rights Council, 15th Session; P. Belser and M. de Cock, *ILO Minimum Estimate of Forced Labour in the World* (ILO, Geneva 2005); ILO, *Eradication of forced labour* (General Survey concerning the Forced Labour Convention 1930), *Report III* (Part 1B) (96th International Labour Conference 2007).

¹³ The Federation of Trade Unions-Burma (FTUB) was formed in 1991 by exiled workers and students who had participated in the 8 August 1988 people’s uprising. Their offices are based in Thailand. In Burma, they work in clandestine and dangerous circumstances. <www.ftub.org> accessed 8 March 2011.

¹⁴ ILO, *Report III (1A) - Report of the Committee of Experts on the Application of Conventions and Recommendations* <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_151556.pdf> accessed 8 March 2011; also see earlier reports of the ILO CEACR.

Community of West African States (ECOWAS) found Niger in breach of its own laws and international obligations to protect its citizens from slavery.¹⁵ This may cause one to think that forced labour is always exacted by the State or agencies of a State and confined to developing countries, but while numbers of workers in traditional slavery and forced labour exacted by States have significantly diminished as a consequence of centuries of abolitionist movement and antislavery legislation, new practices of forced labour have arisen, and more subtle and difficult to discover forms of coercion have appeared. Of the 12.3 million in forced labour, 9.8 million are found in the private industry.¹⁶ 'Research confirms the ingenuity of unscrupulous employers in coming up with a variety of ways that they can effectively control and manipulate a person in order to take advantage of their unpaid services, in ways that are powerfully coercive, yet difficult to prove.'¹⁷

Forced labour vs. human trafficking

Forced labour is not identical to human trafficking, but in both cases, trade unions relate to labour standards. Trafficking in human beings is a violation of labour rights with as a key component coercion, also the key component to identify forced labour. The employment relationship is more relevant than the nature or even the legitimacy of the activity undertaken under coercion per se, be it harvesting, domestic work, prostitution or begging, done by either a child or an adult. Seeing human trafficking for labour exploitation as a subset of forced labour allows concentrating on the real problem, the exploitation of workers, and avoids conflation with smuggling or illegal migration.¹⁸ However, not all workers in forced labour have been trafficked, and not all trafficking victims are in forced labour in a strict sense. Only where internal or cross-border movement of workers into forced labour and recruitment by an

¹⁵ *Dame Hadijatou Mani Koraou v la République du Niger* [2008] Community Court of Justice Economic Community of Western African States (ECOWAS) <<http://www.unhcr.org/refworld/docid/491168d42.html>> accessed 2 March 2010; Jeroen Beirnaert, 'West-African court slavery judgement' (2009) *International union rights*, Vol. 16 Issue 2.

¹⁶ P. Belser, M. de Cock, F. Mehran, *Minimum Estimate of Forced Labour in the World* (ILO, Geneva 2005).

¹⁷ F. David, 'Labour Trafficking' (2010) *Research and Policy Series nr 108*, Australian Institute of Criminology, Canberra, p. 13.

¹⁸ TUC EUIRD, *Tackling trafficking through workers' rights: TUC response to the January 2006 Home Office consultation* (London, 2006) <<http://www.tuc.org.uk/international/tuc-11911-f0.pdf>> accessed 1 March 2011.

intermediary are combined, forced labour and human trafficking overlap.¹⁹ In industrialised countries including Europe, however, the ILO estimated that out of 360,000 forced labour victims, three out of four were trafficked.²⁰

On the ground, the ITUC has over the past years seen an alarming increase in reports of trafficking from European national affiliates. The Dutch trade union FNV Bondgenoten reported trafficking and economic exploitation of forty persons working in appalling conditions on an asparagus farm in Someren and said that this case of exploitation was by no means an exception and that Polish workers in the Netherlands are exploited and treated as slaves.²¹ It also published an article on Polish women strawberry pickers sanctioned €250 when using the toilet or having visitors in the weekend outside fixed 'consultation hours'.²² The French CGT was deplored the situation of Romanian and Polish women workers hired to harvest asparagus and strawberries in the Alsace region. Women, citizens of the EU, were paid about 18 Euros per month and housed in buildings that reportedly looked like caves. They reported 'inhumane' and 'slave like' working conditions.²³ Reports come from Swedish and Finnish unions of extreme exploitation of migrants in agriculture and construction.²⁴ Major abuse of Asian workers in forestry and

¹⁹ B. Andrees and P. Belser (ed), *Forced labour: coercion and exploitation in the private economy* (ILO, Geneva 2009) p. 180.

²⁰ P. Belser, M. de Cock, F. Mehran, *Minimum Estimate of Forced Labour in the World* (ILO, Geneva 2005).

²¹ E. van der Goot, 'Aanhouding voor uitbuiting Roemeense werknemers' (21 January 2010)

<http://www.fnvbondgenoten.nl/nieuws/acties_en_campagnes/gewoon_goed_werk/nieuws/34070_aanhouding_voor_uitbuiting/> accessed 8 March 2011.

²² W. Balthussen, "'Wilde" staking aardbeienpluksters Oirschot: Vijf dagen staken voor vier dubbeltjes per uur en respect' in *De Zaaier* (12 October 2009) <<http://www.srada.nl/nl/Media/10-2009.pdf>> accessed 28 February 2011.

²³ Le Point.fr, 'Récolte de fraises et d'asperges : un cas "d'esclavagisme" en Alsace' (29 May 2009)<<http://www.lepoint.fr/actualites-societe/2009-05-29/recolte-de-fraises-et-d-asperges-un-cas-d-esclavagisme-en-alsace/920/0/347739>> accessed 28 February 2011.

²⁴ P. Bardh, 'Bäruppköp are shirking from their responsibilities', *Aftonbladet* (26 August 2010),

<<http://www.lo.se/home/lo/home.nsf/unidView/1F8FF420303D9C54C125778B0031197C>> accessed 8 March 2011; YLE News, 'Thai Berry Pickers Face Bleak Working Conditions in Finland' (19 September 2010) <<http://www.cawinfo.org/2010/09/thai-berry-pickers-face-bleak-working-conditions-in-finland/>> accessed 8 March 2011; Helsingin Sanomat Finland, 'Trafficking in human beings often hidden away' <http://www.flarenetwork.org/learn/europe/article/finland_trafficking_in_humans_ofen_hidden_away.htm> accessed 8 March 2011.

construction have been reported in eastern Europe²⁵, while Belgians colleagues have reported forced labour of domestic workers and in meat processing, etc.²⁶

Increasingly, patterns of exploitation in Europe amount to what activists call modern-day slavery, but also to what the ILO's independent Committee of Experts²⁷ has legally qualified as forced labour in the sense of ILO Convention 29, ratified by all EU Member States. The Convention was originally developed to eradicate atrocities of governments in overseas colonies as from the 1930s. If today, in 2011, independent legal experts indicate that emerging forms of labour exploitation technically amount to the same level, it shows the seriousness of the situation and the urgency of the need to better protect workers in our economies against modern slavery.²⁸

Criminal and social justice

Early policy interventions to combat trafficking did not take labour-market dynamics, mechanism or institutions into account to address what was then seen as a pure organised crime with no links to the mainstream economy.²⁹ Despite the evident increase in cases of labour trafficking, indicating the adverse effects and the ineffectiveness of policy interventions, many European countries still primarily see human trafficking in a criminal justice framework. Criminal justice brings with it an approach of saving victims from perpetrators without acknowledging these workers as active agents on the labour market. To be effective, measures should focus on empowering workers and making them less vulnerable by better social inclusion and by offering effective

²⁵ M. Křížková and M. Čaněk Czech state forestry and exploitation of migrant workers (22 February 2011) <<http://migrationonline.cz/e-library/?x=2278267>> accessed 4 March 2011; BWI Connect 'Migrant Workers Exploited in the Czech Republic' (28 February 2011) <<http://connect.bwint.org/?p=147>> accessed 8 March 2011.

²⁶ ACV Voeding en Diensten, 'Wij willen de vleessector niet overleveren aan koppelbazen! Het loopt fout in het vlees', ACV Nieuwsflash (January 2010) <http://acv-voeding-diensten.acv-online.be/Images/2010%20-%20januari%20vlees_def_nl_web_tcm47-212999.pdf> accessed 1 March 2011; P. Stalpaert and A. Kiekens, 'Bindende arbeidsregels voor huispersoneel', (December 2010) <http://www.acw.be/index.php?option=com_content&view=article&id=3224:bindende-arbeidsregels-voor-huispersoneel&catid=126&Itemid=503> accessed 8 March 2011.

²⁷ ILO Committee of Experts on the Application of Conventions and Recommendations.

²⁸ ILO, *Eradication of forced labour* (General Survey concerning the Forced Labour Convention 1930); *Report III* (Part 1B) (96th International Labour Conference 2007).

²⁹ B. Andrees and P. Belser (ed), *Forced Labour: Coercion and Exploitation in the Private Economy* (ILO, Geneva 2009) p. 107.

mechanisms for support and redress before people end up in forced labour.³⁰ The scourge is rooted in a socio-economic context and needs an urgent and long overdue integrated approach involving all relevant stakeholders to tackle it. The preventive potential of strengthening labour regulation to prevent exploitation seems to still be structurally ignored.

Governments have instead opted to strongly link combating trafficking with migration regulation. While the ILO estimated in 2008 that out of 191 million migrants worldwide, 95 million left their origin country directly in search of better work³¹, again labour market mechanisms and institutions have been largely left out. As a result, rigid and restrictive migration policies not adequately addressing real labour shortages on national labour markets have caused much migration to be illegal, abusive and exploitative.³² Especially where migrant workers' residence status is tied to employment, it has generated a tool for exploitation and trafficking. Concerns have been expressed by the American Federation of Labour and the Canadian Labour Congress regarding their respective governments' temporary workers' scheme.³³ The European Trade Union Confederation (ETUC) has consistently indicated the shortcomings of EU migration policy. For example, the ETUC stated that 'the European institutions sent yet another signal that the EU prioritises repressive migration policy over clear policies against labour exploitation' when introducing the Employers' Sanction Directive.³⁴ In April 2007, the ETUC stated that: 'Protecting the rights of irregular migrant workers and opening up legal channels for economic migration are important ways to prevent trafficking in human beings. It will reduce the recourse of potential migrants to unofficial intermediaries, and will thereby reduce the risk that they fall victim

³⁰ F. David, *Labour Trafficking* (Research and Policy Series nr 108, Australian Institute of Criminology, Canberra 2010) p. 13; B. Andrees, 'Strengthening Labour market Governance' in B. Andrees and P. Belser (ed), *Forced Labour: Coercion and Exploitation in the Private Economy* (ILO, Geneva 2009) p. 123.

³¹ ILO Estimate source ILO Migrants, 2005.

³² I. Awad, *The global economic crisis and migrant workers: Impact and Response* (International Migration Programme, ILO, Geneva 2009).

³³ American Federation of Labour – Congress of Industrial Organizations (AFL-CIO), New Orleans Workers' Center for Racial Justice (NOWCRJ), Centro de los Derechos del Migrante (CDM) and the Solidarity Center, 'Joint Response to the US Department of State, Office to Monitor and Combat Trafficking in Persons' (G/TIP) Request for Information for the 2010 Trafficking in Persons Report (Public Notice 6921), Washington D.C., 2010 <<http://www.ituc-csi.org/afl-cio-submits-comments-to-the.html>> accessed 14 March 2011; Canadian Labour Congress, 'Temporary Foreign Workers and ILO Convention 105 on Forced Labour' (10 August 2010), <<http://www.canadianlabour.ca/news-room/publications/temporary-foreign-workers-and-ilo-convention-105-forced-labour>> accessed 8 March 2011.

³⁴ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals; ETUC, Sanctions against employers of irregular migrants: ETUC deplores a toothless and counterproductive instrument <<http://www.etuc.org/a/5801>> accessed 28 February 2011.

to criminal organisations that enjoy enormous profit by trafficking human beings for labour or sexual exploitation.’³⁵ Where large numbers of undocumented migrants were working in a vacuum, trade unions have supported regularisation campaigns, e.g. in Spain and Belgium. The Irish Congress of Trade Unions (ICTU) actively campaigned for the rights of migrants who have become undocumented for reasons beyond their control to have an opportunity to get back into the system. ‘Failure to provide a solution for undocumented migrant workers benefits no one but abusive and exploitative employers’.³⁶ Such major amnesty campaigns are not needed when better migration regulation is put in place.³⁷ This shows the urgent need to structurally involve social partners and labour institutions more in the development of migration policies.

In many countries, policies to combat human trafficking still target the illegal movement of workers at the expense of leaving the exploitation suffered ignored, thus not effectively protecting people from forced labour and trafficking. Workers are being identified as perpetrators of administrative migration regulations rather than workers who have had their human rights violated. Migrant workers are being stigmatised and migration criminalised whereas exploitation should be criminalised and exploiters punished. In addition, protection of victims of trafficking is mostly conditional, and there is the structural problem with identification of workers trafficked for labour exploitation. As a result, after coming into contact with authorities, exploited migrants are likely to be deported without compensation for any abuse suffered. To better address cases of extreme abuse, unions in the UK and Ireland have joined campaigns to make forced labour a penal offence in its own right, regardless of the migration or transportation element of the Palermo protocol definition of human trafficking.³⁸ This allows using existing

³⁵ ETUC, PICUM, Solidar, *Joint comments of ETUC, PICUM and Solidar on expected commission proposals to fight ‘illegal’ employment and exploitative working conditions* (26 April 2007) <<http://www.etuc.org/a/4325>> accessed 14 March 2011.

³⁶ ‘MRCI and ICTU Welcome Long-Awaited Scheme for Undocumented Migrant Workers’ (13 September 2009) <<http://www.atlanticphilanthropies.org/news/mrci-and-ictu-welcome-long-awaited-scheme-undocumented-migrant-workers>> accessed 28 February 2011.

³⁷ For more information on the role of trade unions with regard to migrant workers, see: ILO ACTRAV, Bureau for Workers’ Activities, *In search of Decent Work – Migrant workers’ rights: A manual for trade unionists*, ILO, Geneva, 2008 <http://www.ilo.org/global/publications/books/WCMS_120113/lang--en/index.htm> accessed 8 March 2011.

³⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000; MRCI, *Forced Labour: the case for criminalisation* (Policy Paper

protection mechanisms for victims of trafficking to protect workers in forced labour and is a first and very welcome improvement of the existing anti-trafficking legislation in these countries.

As part of the criminal justice approach to combating trafficking, now often security or intelligence bodies such as police are entrusted with the competence to control workplaces to identify trafficked workers. As these institutions do not have a mandate to protect workers, many support organisations deplore the adverse effect: ‘... Police raids to tackle labour exploitation have so far been counterproductive in terms of protection of the exploited.’³⁹

To combat modern-day slavery, we need to fight against inequality and for decent work, strengthen labour market regulations and institutions and implement a rights-based migration policy. Any other measures are doomed to be ineffective.⁴⁰ The OSCE (a security body) Special Representative for Combating Trafficking said earlier this year: ‘To prevent and fight against trafficking in human beings means to promote decent work, to build societies free from the cancer of organised crime and corruption, based on the principles of non-discrimination and the rule of law, and inspired by the ideal of social justice, in which human rights and fundamental freedoms can really flourish.’⁴¹

A global trade in cheap and docile labour

Globalisation has accentuated the unevenness of development between countries, increased the visibility of wealth in developed countries and facilitated transportation. Poverty, underdevelopment and the lack of decent work forces people to migrate at any cost oblivious of risks involved. This generates a ready supply of migrant workers.⁴² At the same time there is a growing demand for cheap labour to fill up the ‘3D’ jobs.⁴³ Local workers are unwilling to take up these posts for the conditions offered, and migration regulation usually does not allow large numbers of low skilled workers to enter

2010) <<http://www.mrci.ie/media/File/MRCI%20PP%20Forced%20Labour.%20The%20Case%20for%20Criminalization.pdf>> accessed 8 March 2011.

³⁹ OSCE/ODIHR, *Report on Civil Society Meeting* (Warsaw 2007) ‘The NRM approach to trafficking and its application to trafficking for labour exploitation’, p. 15.

⁴⁰ B. Andrees, ‘Strengthening Labour market Governance’ in Beate Andrees and Patrick Belser (ed), *Forced labour: coercion and exploitation in the private economy* (ILO, Geneva 2009) p. 127.

⁴¹ OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro, press statement on the occasion of International Day for Social Justice (20 February 2011) <<http://www.osce.org/cthb/75678>> accessed 28 February 2011.

⁴² N. Misra, *The Push and Pull of Globalisation: How the Global Economy Makes Migrant Workers Vulnerable to Exploitation* (Policy Brief, Solidarity Centre, Washington 2007).

⁴³ Referring to Dirty, Dangerous and Difficult.

the country legally. This combination is being exploited by unscrupulous middlemen, agents, smugglers and traffickers. Exploiting and trafficking workers is a high-profit and low-risk criminal activity. Migrant workers' possibilities to denounce their situation are limited due to language ability, limited knowledge of rights or capacity to access rights, tenuous migration situations, family obligation, etc.⁴⁴ Unscrupulous employers can make huge profits by under- or non-payment of wages, taxes and social security contributions.⁴⁵ The United Nations Office on Drugs and Crime states that human trafficking is the third biggest crime business after the drugs and arms trade.⁴⁶ In its Global Report on Forced Labour of 2009, the ILO came up with a yearly 'cost of coercion', i.e., the illicit profits produced in one year by trafficked persons, of 32 billion USD.⁴⁷

This trend has not missed its effect on the recruitment industry. Since the 80s, public employment agencies have lost their monopoly throughout Europe. Established private employment agencies have since mainly been focusing on national workers only, leaving a business opportunity to cater for the huge demand for cheaper migrant labour. The lucrative market brought a proliferation of all kinds of recruiters and middlemen while national regulation for this booming industry in many European countries is still not adapted to this new reality. Thus, much of the recruitment is uncontrolled.⁴⁸

Demand is creating the market for this criminal business. As consumers we are all indirectly responsible for what we buy, and there is definitely an urgent need for consumer awareness towards unrealistically priced goods suggesting exploitation in the supply chain. Employers, however, are directly responsible for their workers. To address the demand for cheap labour by businesses, there is a logical need to discourage exploitation by making it less profitable and

⁴⁴ F. David, *Labour Trafficking* (Research and Policy Series nr 108, Australian Institute of Criminology, Canberra 2010) p. 13.

⁴⁵ B. Andrees, 'Strengthening Labour market Governance' in Beate Andrees and Patrick Belser (ed), *Forced labour: coercion and exploitation in the private economy* (ILO, Geneva 2009) p. 106.

⁴⁶ P. Arlacchi, *Under-Secretary-General Director-General to the International Seminar on Trafficking in Human Beings* (Brasilia 28-29 November 2000) <http://www.unodc.org/unodc/en/about-unodc/speeches/speech_2000-11-28_1.html> accessed 8 March 2011.

⁴⁷ Including under market rate wages, overcharging of accommodation, food and other items, underpayment of overtime, as well as costs related to the recruitment process, including fees to agents, inflated travel costs and other charges, ILO, *The Cost of Coercion* (Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva 2009) <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_106230.pdf> accessed 28 February 2011.

⁴⁸ B. Andrees, *Forced Labour and Trafficking in Europe: How People are Trapped in, Live through and Come out* (Working paper, ILO, Geneva 2008).

increasing the risks involved. Empowering workers will force employers to increase wages and working standards and make the exploitation less profitable, while strengthening labour market regulations, monitoring and sanctions will increase the risks.⁴⁹ Crime prevention is, amongst other things, premised on understanding the opportunities for offending, the likely risk of offending and factors that impact on vulnerability.⁵⁰

An interesting novel trade union strategy to discourage demand in combination with monitoring standards and raising consumer awareness has been developed by the Committee on Workers' Capital (CWC). This international labour union network for responsible investment of workers' capital works to educate union pension trustees on responsible investment issues. The CWC recently launched a thematic campaign to develop strategies to divert investment of workers' capital in business using forced labour in the supply chain.⁵¹

Reducing profits, raising the risks and reducing vulnerability

The best defence against traffickers is to make the business less profitable, raise the risks and empower workers to denounce and act against exploitation.⁵²

To raise the risks, governments need to improve labour market regulation, monitoring and institutions. Labour inspectorates need to be strengthened and equipped with the necessary tools to be more effective and need guaranteed access to workplaces. In the exceptional case of employment in private homes of domestic workers, security personnel, gardeners etc., a specific solution needs to be developed to reconcile the human rights of the workers with the right to privacy of the people living on the premises and the inviolability of private homes. In some countries labour inspectorates have direct access to private homes, in others special divisions have been established within the labour inspectorate with particular competence.⁵³ Trade unions can also play an important role in making labour inspection more effective and inform the labour inspectorate to investigate workplaces where they suspect severe exploitation.

⁴⁹ B. Andrees, *Forced Labour and Trafficking in Europe: How People are Trapped in, Live through and Come out* (Working paper, ILO, Geneva 2008) p. 33.

⁵⁰ F. David, *Labour Trafficking* (Research and Policy Series nr 108, Australian Institute of Criminology, Canberra 2010).

⁵¹ A joint initiative of the ITUC, the Global Union Federations (GUFs) and the Trade Union Advisory Committee to the OECD (TUAC); CWC, *Investing in Decent Work: The Case for Investor Action on Forced Labour* (Briefing Paper) and CWC, *Case studies of investor action on forced labour* (Briefing Paper Nr 2, Vancouver, Canada 2010).

⁵² B. Andrees, *Forced Labour and Trafficking in Europe: How People are Trapped in, Live through and Come out* (Working paper, ILO, Geneva 2008) p. 33.

⁵³ For an overview of government, employer and trade union positions on this particular issue, see: International Labour Conference, 100th Session, 2011, ILO Report IV(2A), Decent work for domestic workers; Fourth item on the agenda ILC.100/IV/2A

Profit is being made by deception of workers and through charging excessive recruitment fees to workers. Therefore, regulation of the recruitment sector is essential. The ILO adopted in 1997 the Private Employment Agencies Convention No. 181 and its accompanying Recommendation No. 188 containing a set of rules to be respected in the sector: agencies should not charge fees to workers, but to employers; inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment; consult with unions and adopt appropriate measures to avoid exploitation; and there should be sanctions, supervision of labour inspection and investigation of cases of violations.⁵⁴

The role of trade unions

Strong, independent, democratic and effective trade unions guarantee the eradication of exploitation at work. The persistence of forced labour in today's world of work therefore shows that the trade union movement needs increased support and less legal obstacles to organise vulnerable workers, but also that it faces a number of challenges which go to the heart of the movement. As trade union density is decreasing across Europe, trade unions need to strengthen their democratic base to make their voices heard by governments and employers and prioritise organising to render their organisations more inclusive and representative. Democratic representativeness is the unique strength of the trade union movement and the reason why trade unions are essential in guaranteeing sustainable peace on the work floor and outside. Trade unions need to face up to this major challenge and adopt novel structures and organising strategies to protect vulnerable workers. European trade unions' reluctance to organise can be linked to their trade union tradition and the socio-economic context in which trade unions have developed. Compared to trade unions in the U.S. or from an Anglo-Saxon culture, organising workers is not always the first priority of European trade unions.⁵⁵ American trade unions have traditionally been forced to organise to strengthen their ranks, as labour market regulations and industrial relation systems have traditionally been less trade union-friendly on the other side of the Atlantic. European trade unions have enjoyed a strong social dialogue and an acknowledged role in society which has had a direct influence on their membership. However, the social dialogue in European countries has also

⁵⁴ M.N.J. van der Linden, *Trafficking for Forced Labour, How to Monitor the Recruitment of Migrant Workers* (ILO, Geneva 2006) p. 30.

⁵⁵ PICUM, *Ten ways to Protect Undocumented Migrant Workers* (Brussels 2005) <http://picum.org/picum.org/uploads/file_/PICUM_Ten_Ways_to_Protect_Undocumented_Migrant_Workers.pdf> accessed 14 March 2011.

been gradually degrading and is consistently under attack. In that sense, organising should again become a priority for European trade unions as well.

The challenge for trade unions to regain the lost terrain and represent ‘all’ workers is easy to spell out. In practice, however, it has proved to be hard to overcome. To protect people from the most extreme forms of exploitation in particular, the focus needs to be on workers in low-paid employment at risk of discrimination, poverty and social exclusion. The most vulnerable workers are not found in workplaces with trade union presence, but isolated in private homes or remote rural areas. Traditional trade union structures face several obstacles to reach these workers. In addition to legal obstacles to the right to organise, migrant workers have a multitude of linguistic, cultural and political backgrounds demanding tailored organising approaches which can put limited

resources under pressure. Language barriers are often a first important hurdle to overcome. As organisers are mostly local workers with a strong connection to their union, they are often limited to come in contact with migrant workers, and no union will have the resources to accompany all its organisers with a full-time interpreter. Numerous pilot projects have been looking into developing novel approaches to better reach out and integrate the most vulnerable workers, some of which have been successful. For example, when a particularly important migrant workers community is identified, unions can hire organisers from within this group to meet and discuss with them outside working hours. Another possible approach are partnerships between unions in origin and destination countries with, e.g., an exchange of staff. In countries of origin, a foreign officer can offer an inside perspective on the labour market of destination, rights, training possibilities, realities and risks. In the country of destination, an officer with the same language and culture as the immigrants can inform workers of the role of a trade union and how it can empower them and increase their bargaining power.⁵⁶

Outreach and organising offer great potential for cooperation between unions and other organisations working for the rights and interests of a specific group. Over the past two years, the ITUC has been working with Anti-Slavery International and its European constituency of specialised anti-trafficking (traditionally women’s rights organisations) and migrants’ rights NGOs and the Churches Commission for Migrants in Europe with its network of faith-based service organisations for victims of trafficking and migrants in general. The information coming from trade unions and the specific protection that trade unions offer for people at the workplace is an added value to the work of these NGOs and their members while their community meetings offer an excellent opportunity for trade unions to explain

⁵⁶ For more examples of trade union outreach to migrant workers, see: ILO ACTRAV, Bureau for Workers’ Activities, *In search of Decent Work – Migrant workers’ rights: A manual for trade unionists*, ILO, Geneva, 2008 <http://www.ilo.org/global/publications/books/WCMS_120113/lang-en/index.htm> accessed 8 March 2011.

their role and the benefits attached to joining a union.⁵⁷ Sometimes, trade unions carry a bad legacy from trade unions in their origin country generating distrust from migrant workers towards unions in their country of destination. Community groups or faith-based organisations may be able to generate the necessary trust needed to overcome reluctance to approach unions.

An excellent example of cooperation is provided by the Migrants Rights Centre Ireland (MRCI) and the Irish trade unions. MRCI has a drop-in centre for migrants who need support. Many of the issues raised by people who enter their office had to do with workplace rights and exploitation. Hence, the MRCI decided to support migrant workers in different groups according to the economic sector of activity, de facto organising domestic, restaurant and mushroom workers. To address their labour issues, the MRCI and the groups approached the Irish trade union SIPTU.⁵⁸ Some of the migrant workers support groups are now affiliated to the trade union.

Apart from certain communities, trade unions can obviously also target specific sectors or regions. The Italian Federation of Agriculture and Food Workers (FLAI) organised a major campaign on migrant farm workers' conditions in Puglia. Union activists went around in rural areas to talk to more than 5,000 labourers harvesting tomatoes and inform them about labour rights. Instead of 46 euro for a 6.5 hour working day, people received a 3-euro wage per 300 kilo basket forcing them to work 14 hours a day for a pittance.⁵⁹

Trade union bilateral partnerships on migrant workers can include portable membership. It is based on the principle that any worker, member of the trade union in the country of origin, would automatically be entitled to services of the trade union in the destination country. This has become a reality on an international level in several sectors for unions affiliated to, e.g., IUF, BWI or UNI.⁶⁰ This is a major step in the right direction. However, it is clear that there are significant limitations, as migrant workers do not always end up working in the same sector. There are numerous bilateral agreements on portable membership, however, between national trade union centres offering wider coverage.

The fact that domestic work is often not covered by labour legislation makes that domestic workers are mostly still informal workers in an unregulated sector. The majority of domestic workers are migrants and

⁵⁷ ITUC and ASI, *Never Work Alone, Trade Unions and NGOs Joining Forced to Combat Forced Labour and Trafficking* (ITUC and Anti-Slavery International, Brussels 2011).

⁵⁸ Services, Industrial, Professional and Technical Union

⁵⁹ 'Oro rosso, campagna nazionale di CGIL e FLAI. A Stornara dibattito sui 'immigrati e media' con i giornalisti de L'Espresso e de l'Unità' (09 August 2009) <<http://www.cgilfoggia.it/news/default.asp?id=2225>> accessed 8 March 2011.

⁶⁰ Trade unions in food and agriculture, construction and forestry and services respectively.

women, leaving them open to double or even triple discrimination. For various obvious reasons domestic workers, the majority of whom are women, are particularly vulnerable to forced labour. Working and sometimes also residing in private homes isolates them, and it is therefore relatively easy for their employer to intentionally confine them to their workplace. Here also, targeted responses are needed from trade unions to organise these workers.⁶¹ Since 2005, trade unions, self-organised domestic workers organisations, as well as NGOs providing services and assistance to domestic workers formed a global network.⁶² The main message of this consortium is the urgent need to recognise domestic work as work to be better regulated as a form of employment. Since then, the Global Unions⁶³ used their position on the ILO Governing Body to include a discussion on standard setting on Decent Work for Domestic Workers on the agenda of the International Labour Conference in 2010. There is an important role to be played for trade unions to ensure that the instrument adopted at the ILC session in 2011 becomes a strong and effective tool to ensure better protection of domestic workers.⁶⁴ Better regulation of the sector will improve representation in and protection from trade unions.

States' obligations in human rights protection

Governments have the obligation to respect, protect and fulfil human rights of people within their jurisdiction.⁶⁵ Governments are thus responsible for developing adequate regulation, implementing action plans and effective monitoring to eradicate forced labour and trafficking. Again, the obligation to protect people from contemporary slavery is embedded in a wider range of States' human rights obligations.⁶⁶ In the discussion on how labour rights relate to human rights, it is acknowledged that labour rights are human rights and that it is impossible to protect civil and political rights without upholding labour rights and vice versa.⁶⁷ 'Like civil and political rights, economic, social

⁶¹ ITUC, *Decent work, decent life for domestic workers* (Action Guide, Brussels 2010).

⁶² ETUC, *Out of the Shadows: organising and protecting migrant workers in Europe: the role of trade unions* (2005) <www.etuc.org/a/2809 accessed 14 March 2011>; IUF and IRENE *Respect and Rights, Protection for domestic/household workers!* (Geneva 2008).

⁶³ International Trade Union Confederation, Global Union Federations, Trade Union Advisory Committee to the OECD.

⁶⁴ International Labour Conference, 100th Session, 2011, ILO Report IV(2A), Decent work for domestic workers, fourth item on the agenda ILC.100/IV/2A.

⁶⁵ A. Eide, *The Right to Adequate Food as a Human Right* (Report prepared, UN Doc E/CN.4/Sub.2/1987/23) p. 19. This typology of states' obligations has been accepted beyond the right to food. See e.g. Olivier De Schutter, *International Human Rights Law, Cases, Materials, Commentary* (Cambridge 2010).

⁶⁶ Office of the High Commissioner for Human Rights, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies* (2005) paras 47–8.

⁶⁷ Vienna Declaration and programme of Action adopted at the World Conference on Human Rights, Vienna, 1993, I, 5, 'All human rights are universal, indivisible and

and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfil. Failure to perform one of these three obligations constitutes a violation of such rights. The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. The obligation to protect requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of rights at work or the right to just and favourable conditions of work. The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights.⁶⁸

To be more effective in rights protection, governments can involve other stakeholders such as social partners in policy and strategy development and implementation. Trade unions are organisations of workers defending the rights and interests of workers and an important instrument to combat any kind of labour exploitation. Trade unions face the intrinsic duty to fight abuse anywhere, as it undermines decent work everywhere.

Social dialogue and collective bargaining

Social dialogue is the right of workers to present their views, defend their interests and engage in discussions to negotiate work-related matters with employers and authorities. Collective bargaining is the right of employees to talk as a group with their employer to try to agree on matters such as pay and working conditions. Social partners can make use of sector-specific labour market mechanisms and approaches and their direct contact with workers and their families to address specific problems which make migrant workers vulnerable to human trafficking.

Working with trade unions and employers' organisations in traditional social dialogue requires formal representation. This again shows the importance of regulating informal work and, e.g., a proper domestic workers' convention of the ILO.⁶⁹ The new convention should amongst other things

interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis'.

⁶⁸ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), adopted by a group of academic experts meeting in Maastricht 22-26 January 1997, para 6.

⁶⁹ See: ILO, Report IV (2A) - Decent work for domestic workers Report IV(1) was sent out to ILO constituents for their feedback in August 2010. Report IV(2A) contains the essential points of the replies received from governments and from employers' and workers' organization, as well as the Office commentary. On this basis, the Office prepared Report IV(2B) which contains a revised proposed Convention and

facilitate the establishment of social dialogue between workers and employers to agree on terms and conditions themselves. Self-organisation still is the most effective way to rule out abuse or exploitation in any economic sector or area of activity.

In the recruitment industry, the International Confederation of Private Employment Agencies CIETT, which covers the main recruitment businesses such as Manpower, Adecco, Kelly Services and Randstad, and UNI Global Union, the global trade union umbrella for trade unions in the services sector, have concluded a memorandum of understanding to create partnership and a global social dialogue to achieve fair conditions for the temporary agency work industry. Both parties committed to the promotion and respect of the principles outlined in ILO Convention 181 and the accompanying Recommendation. This is a strong message that workers and business have a shared interest in increased regularisation and monitoring of the recruitment industry.⁷⁰ In 2010 Global Unions expressed their concern about the increased use of temporary work agencies replacing permanent, open-ended and direct employment as a mechanism used by businesses to avoid their social responsibility as an employer, bypass labour legislation and weaken collective bargaining.⁷¹

In the UK, the Ethical Trading Initiative (ETI) is a multi-stakeholder initiative where business and unions are represented. Following the tragic death of 21 Chinese cockle pickers in Morecambe Bay⁷², the ETI organised discussions which ultimately led to the adoption of the Gangmasters Licensing Act⁷³ in 2005 and the establishment of the Gangmasters Licensing Authority (GLA) developing and promoting standards for best practice in the supply and use of temporary labour and licensing and monitoring labour providers in agricultural, horticultural and shellfish industries.⁷⁴ The GLA was welcomed by suppliers themselves stating that increased monitoring helped them maintain

Recommendation, and which will serve as a basis for the discussion at the 100th Session of the International Labour Conference., <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_151864.pdf> accessed 8 March 2011.

⁷⁰ Memorandum of Understanding between CIETT Corporate Members & UNI Global Union on Temporary agency Work, 24 October 2008, San Diego <[http://www.uniglobalunion.org/apps/iportal.nsf/3100172b0315a124c125717d005dd9bb/513a7b55742a39eec125755100579d2a/\\$FILE/MoU-UNI-CiettCMC-En.pdf](http://www.uniglobalunion.org/apps/iportal.nsf/3100172b0315a124c125717d005dd9bb/513a7b55742a39eec125755100579d2a/$FILE/MoU-UNI-CiettCMC-En.pdf)> accessed 1 March 2011.

⁷¹ Global Unions, 'Global Unions adopt principles on temporary agency work and call for good, secure jobs for all' <<http://www.global-unions.org/global-unions-adopt-principles-on.html>> accessed 14 March 2011.

⁷² BBC News, 'Tide kills 18 cockle pickers' (6 February 2004) <http://news.bbc.co.uk/2/hi/uk_news/england/lancashire/3464203.stm> accessed 08 March 2011.

⁷³ The Gangmasters (Licensing) Act 2004 (Commencement No. 2) Order 2005.

⁷⁴ The GLA Board consists of representative members of the associated industries as well as Trades Union Congress (TUC) and Unite the Union. Website GLA <<http://www.gla.gov.uk/>> accessed 8 March 2011.

business and avoid unfair competition by unscrupulous agents.⁷⁵ Trade unions in the UK are therefore campaigning for a broader competence of the GLA to cover more sectors.

Awareness raising

Trade unions not only have a role to play in informing vulnerable workers of their rights; a lot of work remains to be done in informing their membership about the reality of trafficking in Europe and involving their membership in the fight against it. Trade unions in transport and logistics have done a lot of work in their sector. Awareness raising campaigns for workers on busses, trains, ferries and airports have sensitised and trained workers to be better equipped to identify possible cases of trafficking and providing contact numbers for follow-up, etc. The International Transport Workers' Federation organised such a campaign in 2006 on the occasion of the football World Cup in Germany. The workers showed prevention and awareness raising videos, put up posters and distributed leaflets to a targeted audience of travellers.⁷⁶ Unions in hotels and the tourism industry have undertaken similar campaigns. However, they are mostly oriented towards awareness-raising about sexual exploitation and child abuse, and are not thus far targeted towards the protection of other hotel staff such as maids or the workers in the restaurant. Such industry campaigns have a lot of potential to address and prevent forced labour in targeted sectors.

Racism and xenophobia allow labour exploitation to flourish among excluded migrants. Trade union activities should at all times include activities to combat racism, xenophobia and other types of discrimination, and promote social inclusion. Trade unions need to educate their activists of the fact that any unequal treatment suffered by either a local or a migrant worker undermines the labour standards on their national labour market in general, including their own. Demagogic politics often abuse migrant workers as scapegoats to blame for the loss of jobs, but migrant workers are attractive

⁷⁵ A. Geddes, S. Scott and K. Bang Nielsen, *Gangmasters Licensing Authority, Evaluation Study, Baseline Report* (Public Services Academy, University of Sheffield 2007); Gangmasters Licensing Authority, *The journey to licensing, The experience of implementing a voluntary code of practice in the UK agricultural industry (2004-2006)* (Temporary Labour Working Group, London 2006).

⁷⁶ ETF/ITF, 2006 World Cup: 'No to Forced Prostitution and Human Trafficking' (01 July 2006) <<http://www.itfglobal.org/campaigns/traffickingstate.cfm>> accessed 1 March 2011.

alternatives for national workers to employers, only because of their vulnerability to exploitation.⁷⁷

Monitoring

Governments should monitor labour standards through effective inspection services, but in countries with well-developed labour inspection systems, employers tend to transfer the risk to subcontractors making the employment relationship less transparent. This can be done by subcontracting to bogus or 'letterbox' companies that claim to be based abroad, bogus self-employment of workers, etc.⁷⁸ The Belgian union ACV-CSC Food and Services has urged their government to take action proposing a system of joint liability, licensing and registration of subcontractors, more effective control and strengthening of labour inspection, effective prosecution, and more consultation with social partners in an effort to particularly address the extreme exploitation in the meat processing industry.⁷⁹ A similar campaign is run by the European Federation of Building and Woodworkers.⁸⁰

The most effective way to monitor labour standards is by workers themselves. Monitoring labour standards in workplaces is a traditional role of trade unions, but also for trade unions, it has been and remains a challenge to ensure compliance of business throughout international supply chains. In an effort to better monitor compliance in global supply chains of multinational enterprises, international industry federations have developed the equivalent of a collective bargaining agreement on a multi-national level called an 'International Framework Agreement' to be concluded between a multinational company and one or several international industry federations.⁸¹

To quote just one example, the International Textile, Garment and Leather Workers' Federation (ITGLWF) has signed an international framework agreement with Inditex, the world's second largest retailer grouping brands such as Zara, Pull & Bear, Massimo Dutti and Bershka. The agreement covers the entire supply chain and places the rights of workers to unionise and bargain collectively with their employer at the heart of efforts to secure sustainable

⁷⁷ M. Merlino and J. Parkin, *Irregular Migration in Europe EU policies and the Fundamental Rights Gap* (Centre for European Policy Studies, Brussels 2011) p. 15.

⁷⁸ B. Andrees, 'Strengthening Labour market Governance' in Beate Andrees and Patrick Belser (ed), *Forced labour: coercion and exploitation in the private economy* (ILO, Geneva 2009) p. 89.

⁷⁹ ACV Voeding en Diensten, 'Wij willen de vleessector niet overleveren aan koppelbazen! Het loopt fout in het vlees', ACV Nieuwsflash (January 2010) <http://acv-voeding-diensten.acv-online.be/Images/2010%20-%20januari%20vlees_def_nl_web_tcm47-212999.pdf> accessed 1 March 2011.

⁸⁰ EFBWW press release 'Illicit Work in construction – Asbestos in our daily life: Europe must act' (March 2010) <<http://www.gmb.org.uk/PDF/EFBWW%20Press%20release%20March%202010.pdf>> accessed 14 March 2011.

⁸¹ For a list of all International Framework Agreements', see the Global Unions website <<http://www.global-unions.org/framework-agreements.html>> accessed 8 March 2011.

compliance to key labour standards by suppliers to Inditex. Inditex's Code of Conduct for External Manufacturers and Suppliers underpins the agreement, which outlaws forced labour (and, e.g., specifically bans the retention of residence documents) and harsh and inhumane treatment throughout the Inditex supply chain. No subcontracting is allowed without prior written consent of Inditex, and suppliers are responsible for subcontractor compliance. Monitoring is being done jointly by Inditex and ITGLWF, and irregular policing through snap shot audits is replaced by constant internal factory monitoring by those who know the enterprise best: management and workers.⁸²

Redress

Means to redress trafficking and forced labour in the framework of criminal justice show serious limitations and do not adequately guarantee the right to compensation. For vulnerable workers it is often difficult to seek redress through civil or criminal procedures. Many end up unprotected and deported if their abuse is not legally identified as forced labour or human trafficking. Labour courts, mediation and collective action may offer pragmatic avenues for legal redress and compensation along the continuum of exploitation.⁸³ Migrants are entitled to all labour rights attached to their employment regardless of status including payment of minimum wage, non-discrimination, payment of damages for workplace accidents or health problems caused by the employment, etc.⁸⁴ Labour courts may be more accessible with lower fees, and the mechanisms for compensation for damages following breaches of labour law may be much faster and chances of effective compensation being paid to the worker are generally significantly higher. Standardised scales may be in place to quantify damages to be paid for certain breaches of labour law.

Cases of issues and violations of rights at the workplace are preferable settled through negotiation or mediation. Trade unions offer an interlocutor that can bring issues to the attention of the employer with the objective to come to an agreement without putting the individuals at risk. Especially when workers have a precarious or irregular residence status, they still enjoy the human right to organise, join a union and bargain collectively to claim their

⁸² International Framework Agreement between Industria de Diseño Textil, S.A. (Inditex S.A.) and the International Textile, Garment and Leather Workers' Federation (ITGLWF) on Standards throughout the Inditex Supply Chain <<http://www.itglwf.org/lang/en/global-framework-agreements.html>> accessed 8 March 2011.

⁸³ B. Andrees, 'Strengthening Labour market Governance' in B. Andrees and P. Belser (ed), *Forced labour: coercion and exploitation in the private economy* (ILO, Geneva 2009) p. 123.

⁸⁴ ILO Convention No. 97 on Migrant Workers.

human rights at work. Effective compensation is a right for trafficked workers and the emerging good practice of trade unions to obtain effective compensation for trafficked workers through labour courts or other means illustrates their important role.

Trade unions with community-based organisations can guide and help organise industrial or collective action, a very effective tool to pressure employers to settle cases and prevent future abuse. ‘Compensation awards arrived at by way of voluntary or mediated agreement or which are instituted through a third party (e.g., a trade union in collective action or a labour inspectorate) may have a greater chance of being pursued successfully and paid as well as having a less traumatising effect on the trafficked person.’⁸⁵ The MRCI –SIPTU collaborative project to improve and strengthen the organisation of mushroom workers in Ireland, brought mushroom workers together, built and developed leadership and empowered workers to take collective action to ensure that their rights at the workplace are respected. It resulted in the transfer of hundreds of thousands of euros in unpaid wages to the mainly migrant women mushroom workers and a ‘Registered Employment Agreement’⁸⁶ setting out terms and conditions, rates of pay, holiday entitlements and sick pay for the industry. In the first case mentioned of the 40 asparagus pickers in Someren in the Netherlands, the Dutch trade union FNV negotiated € 115,000 in back wages for the workers involved.⁸⁷

Trade unions can also offer legal assistance and can usually represent workers in front of labour courts, even when the worker was or is an irregular migrant who no longer resides in the country. Migr.Ar is a support centre run by the German trade union Ver.di offering services for undocumented workers. Migrant workers in need of assistance or support are being referred within a network of specialised support organisations. In case of employment-related questions or of violations of labour rights, undocumented workers are referred to the legal service of the German national trade union DGB for advice, mediation or legal representation in front of a labour court.⁸⁸

Despite the clear added value that the involvement of trade unions would bring to the effective protection of workers against forced labour, they are still consistently ignored in anti-trafficking strategies. Where they exist, trade unions should, e.g., be integrated in National Referral Mechanisms (NRMs).⁸⁹ NRMs were conceived by the OSCE in 2004, but already in 2007 they stated: ‘The NRM was not developed with the kinds of assistance provision needed

⁸⁵ OSCE/ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (Warsaw 2008).

⁸⁶ Irish Collective Agreement which has been registered with the Labour Court.

⁸⁷ W. Balthussen, “‘Wilde” staking aardbeienpluksters Oirschot: Vijf dagen staken voor vier dubbeljjes per uur en respect’ in De Zaaier (12 October 2009) <<http://www.srada.nl/nl/Media/10-2009.pdf>> accessed 28 February 2011.

⁸⁸ Website Migr.Ar.<<http://besondere-dienste.hamburg.verdi.de/themen/migrar>> accessed 28 February 2011.

⁸⁹ OSCE/ODIHR, *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A practical Handbook* (Warsaw 2004).

in the context of labour exploitation and in this regard the NRM requires updating.⁹⁰

Conclusion

It is about time that European governments start realising that human trafficking and modern forms of forced labour are not marginal phenomena but a significant problem in our society, rooted in the contemporary socio-economic context of globalisation, deregulation and migration. Moreover, major industries such as construction, agriculture and textile in our national economies depend on cheap migrant labour, but governments refuse to take the responsibility for the protection of their human rights. Any strategies to combat trafficking and forced labour should be embedded in comprehensive governmental policies with a focus on rights-based migration regulations, poverty reduction and development in countries of origin, regulation of private employment agencies, guarantees for freedom of association and collective bargaining for all, end responsibility of employers and anti-discrimination campaigns. European countries need stronger labour regulation, more effective labour inspection and monitoring and strengthened labour institutions. The policy approach to combating trafficking needs to shift from a reactionary and curative to a more proactive and anticipative one putting more emphasis on prevention. Workers need to be empowered and given support and assistance before they reach the point of ending in forced labour.

The key word for a comprehensive approach is multi-stakeholder cooperation respecting the respective roles, mandates and possibilities of each. There needs to be close cooperation between government with all relevant ministries, labour inspectorate, police, social partners and civil society at large. Trade unions themselves have a large responsibility to organise more workers, especially the most vulnerable such as migrants and domestic workers. Workers' solidarity in times of globalisation is a must and should be truly international and inclusive. Business has the responsibility to operate within the legal framework set up by government or through social dialogue, and there is no better means to monitor compliance than through engaging with organised workers themselves in workplaces throughout supply chains.

This paper shows that there is a huge and massively underused potential in combating trafficking through labour market measures. In the introduction, the ECOWAS Court ruling was mentioned convicting Niger of not doing enough to protect its citizens from slavery. Indeed, States have the human-rights obligation to protect workers under their jurisdiction and should take all

⁹⁰ OSCE/ODIHR, *Report on Civil Society Meeting* (Warsaw 24 April 2007), 'The NRM approach to trafficking and its application to trafficking for labour exploitation', p. 16.

reasonable measures to prevent the violation of rights of individuals. The alarming rise of forced labour practices in Europe in the mainstream economy shows that measures taken by European governments to date have not been effective. Since almost a decade, activists have been calling for better labour-market based measures as an essential part of the fight against trafficking and modern-day slavery. If European governments continue to refuse to structurally improve the protection of especially migrant workers, they continue to violate their human-rights obligations for not doing what could reasonably be expected, with workers suffering from the absence of State protection against human trafficking, forced labour and contemporary slavery as a result.