



A Summary of Challenges on Addressing Human Trafficking for Labour Exploitation in the Agricultural Sector in the OSCE Region

Background paper for the *Alliance against Trafficking in Persons Conference: Technical Seminar on Trafficking for Labour Exploitation Focusing on the Agricultural Sector*

Vienna, 27 and 28 April 2009

ISBN: 978-92-9234-428-3

Published by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings

Wallnerstr. 6, 1010 Vienna, Austria

Tel: + 43 1 51436 6256

Fax: + 43 1 51436 6299

email: info-cthb@osce.org

Internet: www.osce.org/cthb

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Office of the Special Representative and
Co-ordinator for Combating Trafficking in Human Beings

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Foreword and Acknowledgments

I am pleased to present the Occasional Paper, entitled “A Summary of Challenges on Addressing Human Trafficking for Labour Exploitation in the Agricultural Sector in the OSCE Region.” This is the third in a series of Occasional Papers, continuing the anti-trafficking work of my office to implement the OSCE Action Plan from 2003, paying special attention to the environment in which trafficking for labour exploitation takes place in OSCE participating States.

The first and second Occasional Papers dealt with pressing challenges in labour exploitation, ranging from the various challenges facing legal responses to trafficking for labour exploitation, to the specifics of identification, prevention and prosecution of offenders with the goal of bringing justice for victims of labour exploitation, and preventing it in the first place. These Occasional Papers were the result of two *Alliance Against Trafficking in Persons* conferences that raised the interest among the participating States regarding the need to combat trafficking for labour exploitation as reflected in the additional OSCE commitments of the 2006 Brussels and the 2007 Madrid Ministerial Decisions on trafficking for labour exploitation.

This third Occasional Paper presents an analysis of labour trafficking in one particular economic sector, agriculture, which, according to the International Labour Organization (ILO), employs over one billion people around the world. Agriculture is the second largest employment sector, especially for women and youth. This thorough analysis of the current challenges within the agricultural sector aims to assist participating States, policymakers and non-governmental organizations (NGOs) to identify the structural issues and deficits of this sector that cause or exacerbate worker’s vulnerability, in order to better address them in a systemic way.

The paper is the first of its kind to address human trafficking for labour exploitation in the agricultural sector throughout the OSCE region. It sheds light on a sector in which workers are commonly exploited, but are often out of sight. I hope that this paper will serve as a useful policy tool for decision makers and practitioners, and help us re-think and raise questions about the way that the sector currently operates. For example, how can we adapt our practices to raise awareness for better prevention and identification? Moreover, it underscores the urgency for all governments to strengthen their efforts to uphold labour rights in accordance with national legislation and international instruments.

Using specific case studies, this third Occasional Paper illustrates the structural features that make workers vulnerable to exploitation through workers' actual experiences. Sound evidence and information, analysis and political will are needed to adequately address this problem. The political framework exists, and now governments must be more active in protecting agricultural workers and their rights.

This Occasional Paper is the result of dedicated work by many people. First and foremost, the writers of the background paper, Alli Jernow and Katy Thompson, as well as the participants of our conferences, who were able to share with us from their vast experience and knowledge.

Secondly, my adviser Anelise Gomes de Araujo, who co-operated with the writers from the project's conception to its presentation as a background paper for the "Technical Seminar on Trafficking for Labour Exploitation Focusing on the Agricultural Sector", held in Vienna in April 2009. Her competence in this field contributed to a document that provides information on labour trafficking in a sector little analysed to date. She developed the background and the intellectual framework for the seminar and, and compiled its Executive Summary.

Thirdly, Ruth F. Pojman, my Deputy, who edited and proofread this Third Occasional Paper, provided photos, and relevant trafficking cases.

Fourthly, Blanca Tapia, my Public Information Officer, who managed the production process and designed the publication, and Dominique Adey Balinova, my Administrative Assistant, who assisted with proofreading and editing, and provided administrative support.

Last but not least, I thank all my staff - advisers, secretary and interns – who, with their invaluable work and support, contributed to the excellent teamwork of which this paper is a good result.



Eva Biaudet

Special Representative and Co-ordinator for Combating Trafficking in Human Beings

Vienna, July 2009



Executive Summary

ALLIANCE AGAINST TRAFFICKING IN PERSONS

“Technical Seminar on Trafficking for Labour Exploitation Focusing on the Agricultural Sector”

According to the ILO, agriculture is a key economic sector for countries around the world, employing more than 1 billion people. Moreover, agricultural work bears a strong link to poverty in most countries around the globe and remains the second greatest source of jobs, especially important for women and young people. On 27-28 April 2008 under the auspices of the *Alliance Against Trafficking in Persons* the “Technical Seminar on Trafficking for Labour Exploitation Focusing on the Agricultural Sector” was held in Vienna. This technical seminar was organized in the spirit of **Decision No. 3/06 Combating Trafficking in Human Beings**, which tasks the OSR under the auspices of the Special Representative to “assume responsibility within the OSCE for hosting and facilitating meetings for the exchange of information and experiences between national co-ordinators, representatives designated by the participating States and experts on combating THB”¹ and **Decision No 8/07 on Combating Trafficking in Human Beings for Labour Exploitation**. The seminar focused in greater depth on the experiences and lessons learned based on existing practices among the participating States on trafficking for labour exploitation in the agricultural sector, as well as providing an opportunity to participants to identify common challenges. The overall goal of this event was to gather expertise, as well as to enhance the dialogue and exchange of information among national authorities dealing with this issue, towards the ultimate aim of supporting and encouraging the participating States in the implementation of OSCE commitments, while providing a venue for exchanging information and networking.

The technical seminar gathered together over 100 experts, including government representatives (e.g. representatives from labour inspection agencies, law enforcement, social services, immigration, prosecutors and other relevant authorities), international organizations, and NGOs from OSCE participating States and Partners for Co-operation. The technical seminar provided a platform for the exchange of information on good practices regarding the understanding of the problem, victim identification protection and assistance, as well as prosecution of cases. The key thematic points stressed during the conference were:

¹ Ministerial Council Decision No. 3/06 Combating Trafficking in Human Beings.

- the importance of understanding the agricultural sector and its systemic problems, and how they affect the workers by making them more vulnerable/at risk of trafficking in human beings;
- the need to adapt current practices of identification within a multi-disciplinary approach;
- the need to reconstruct the notions of assistance, protection and compensation to trafficked persons; and
- the benefits of multi-disciplinary co-operation in prosecution, along with challenges faced by the authorities in this field.

Welcome remarks

The participating States were reminded by the Special Representative of the OSCE commitments, in particular the Ministerial Council Decision No. 14/06 which calls upon authorities to ensure that minimum labour standards are reflected in their labour laws and that these laws are to be enforced in order to reduce the potential of trafficking. In addition, there is a need to improve trafficking victims' access to assistance and justice through referral mechanisms. More action at national level is needed, along with special attention to vulnerable groups (i.e., irregular migrants, women and children). Analysing different forms of labour trafficking by economic sector can be an important contribution to countries and other stakeholders, assisting them to get a deeper understanding of this complex and largely hidden problem, since each sector of the economy has different structural features and is regulated by different laws. Lack of identification of trafficked persons in the agricultural sector may be more significant compared to other forms of trafficking. Among the most problematic areas highlighted are: dependency of workers on employers (including linking a worker to a particular employer); fewer legal channels of migration for seasonal workers in the agricultural sector; and the persistent stereotype of this being a sector dominated by males, while women and children are also involved. Many agricultural workers face physical violence, but in general they are more prone to experience more advanced forms of coercion and control, as well as precarious working conditions, which affects both their physical and psychological health.

The ILO "tripartite" constituents (e.g., governments, employers' and workers' organizations) have a critical role to play in combating these forms of modern day slavery, in close co-operation with other partners. Moreover, it was stressed that by focusing on a given sector this can help stakeholders to dig deeper into the causes and effects of trafficking, taking into consideration supply chain issues that might otherwise be overlooked, as well as the particular labour arrangements prevailing in the sector that may increase the vulnerability of the workers to severe exploitation at the hands of their employers. Case studies included in the background paper show that migrant workers are most vulnerable, that labour contractors or recruitment agents are involved, and that workers may initially be "willing entrants" to the job but then find they are unable to leave because of confiscation of passports or intimidation. Moreover, the case studies also signal that workers are subject to false promises about wages and other conditions (i.e., unacceptable standards of accommodation, long and tough working hours, and excessive wage deductions, coupled with very low wages or piece rates which can give rise to debt bondage situations). It was highlighted that physical violence and threats are used to intimidate workers, including against family members in the home country. Examples of good practice given included: staying permit, protection and assistance to victims, support to agricultural migrant workers' rights by trade unions, etc.

Session 1: Understanding the Problem

This session was dedicated to understanding structural causes of workers' vulnerability, thus what are the characteristics of the sector and workers, and how these contribute to vulnerability and exploitation. Speakers (i.e. a consultant and an NGO – Kav LaOved and the Center for Women's Initiatives "Sana Sezim") touched upon a number of issues which render workers vulnerable, such as: seasonal and/or temporary work being excluded from protection, lower wages than the average, and usually isolation due to the fact that they work

in rural areas. It was stressed that this form of work is one of the most unregulated systems exempt from labour inspections, while workers also face linguistic barriers which leads to poor levels of integration. In general, workers are hard to reach due to the high mobility of seasonal work. A number of speakers stated that low-skilled workers are willing to accept these jobs despite hardship, and there is a general lack of community support. Moreover, the workers often face debt bondage and are exposed to racism and discrimination. In general, agricultural workers lack information about their rights, other possibilities to get a job, services and support, and how to complain about an employer. Therefore, speakers concluded that these workers experience a high level of multi-dependency on their employer.

Examples of good practice involving NGOs filing complaints against employers were also mentioned during this session; yet authorities are not always very responsive. It is important to point out that loss of residence is a direct consequence of losing employment, which leads to deportation. As a result, the linking of a specific employer to the work permit renders workers more dependent on their employers, which may lead to a high risk of exploitation. Another problem faced by NGOs in attempting to assist trafficked persons is language and communication barriers, along with a shortage of human resources.

Session 2: Identification of Cases of Trafficking for Labour Exploitation in the Agricultural Sector

Session two aimed to provide information on how cases of trafficking for labour exploitation in the agricultural sector express themselves (e.g., patterns, common practice of exploitation and indicators) through the use of concrete examples/case studies within national legislation, as well as actions which lead to the identification of such cases, including oversights. One of the key aspects of this session was to clarify to the audience how trafficked persons have been identified, the importance of working within a multi-disciplinary approach as well as the challenges to carrying out this work.

The Coalition of Immokalee Workers (NGO) stated that in the course of their activities cases involving agricultural workers being held against their will were not anomalies, but they were rather a significant percentage of the overall farm workforce. Concerning identification work, it was stressed *“that slavery does not exist in a vacuum; it does not exist in isolation; but rather is at the extreme end of a continuum of labor abuses”*². In fact, poor working conditions provide a fertile soil in which slavery can take root (e.g., sub-poverty piece rate wages, no benefits, no right to overtime pay, no right to organize, etc.), affecting not only migrants, but also residents; thus stakeholders must be attentive to internal trafficking. Since agricultural work is an important economic sector, this can assist law enforcement or policymakers in the identification of victims, as well as involve the community through a process of education and awareness raising in the context of labour rights. Outreach workers are a key component in the work of prevention and identification. In addition, when speaking with workers it is necessary to discuss their overall labour rights (i.e. right to leave the worksite), since they may not identify themselves as trafficked persons. Overall, the role of social services is paramount in the process of assistance to trafficked persons.

Experiences from the Wage and Hour Division (US Department of Labor) and the Directorate of Social Inspection (Belgian’s Ministry of Social Security) showed that labour inspectors play a key role in the identification of trafficked persons, in the prevention of trafficking through the promotion of labour standards, as well as one of support in the investigation of cases leading to prosecution. Enforcement, compliance assistance, partnership and collaborative efforts were emphasized as an effective strategy to accomplish the work of the Wage and Hour Division (WHD). Moreover, conducting investigations to do with enforcement of laws and assuring an employer’s compliance through interviews and other methods (e.g., wages received, hours worked, deductions made, transportation methods to work, living and working conditions), have shown good results. In terms of the scope of investigation by the WHD, it is important to highlight that they can identify situations where workers may be intimidated, threatened, or held against their will.

2 Laura Germino, Coalition of Immokalee Workers (CIW).

Co-ordination was stressed as a key factor for any successful inspection performance, thus facilitating information exchange and co-operation between inspection services. The Directorate of Social Inspection stated that in Belgium there is the umbrella service of the Social Intelligence and Investigation Service, which co-ordinates inspection policies of the four major inspection services on the higher directory level in the country. Moreover, on the local level there are operational inspection units, composed of all relevant partners in combating illegal work and social fraud (with representatives of inspection services, police, the prosecutor). Exchanges of information and meetings take place regularly, and joint actions are also carried out by inspectors and law enforcement. It was stressed that an important co-ordinating instrument in existence for just a couple of years so far in Belgium is the database GENESIS which allows all social inspectors to see which employers are being investigated by any other inspection service, what offences have been reported in the past, and which inspector is doing the investigation. Moreover, in Belgium greater importance is attached to the contribution of social inspection in trafficking cases, their legal investigating powers being extensive, and their financial impact on offenders is of great value.

Overall, the examples above attested to the importance of a multi-disciplinary approach within a wide range of various stakeholders, including contacts with prosecutors. Regarding lessons learned, these can be best summarized by: *“it is imperative for each social inspector to be constantly aware of coming upon potential situations of labour exploitation and of meeting potential trafficking victims... Inspectors have to be very alert to any indicators of trafficking they come upon, also on the occasion of routine checks. In the short span of time of a field inspection, they have to win potential victims’ confidence in order to gather essential information. Too often, I am afraid, real trafficking victims are deported after inspection, in those cases the exploitation and trafficking offences are likely never to be found out. That is why awareness raising among inspectors is so very important.”*³ As a result, training and awareness raising of frontline workers and the community is a key aspect in the prevention and identification of trafficked persons.

Session 3: Measures of Assistance and Protection for Victims of Trafficking for Labour Exploitation in the Agricultural Sector

Session three aimed at providing information on the special needs of victims within a broad picture of protection (i.e., immediate assistance, medical and legal assistance, psychosocial counselling, etc.), so as to exemplify specific needs of trafficked persons in the agricultural sector through the use of concrete examples/case studies. Moreover, this session also showcased examples of challenges encountered by social service providers, including lawyers in their on-going work with trafficked persons.

Medecins Sans Frontieres (MSF Italy) works with migrant agricultural workers through mobile medical and social teams in central-southern Italy focusing primarily on assistance, in particular access to health care and improvement of living conditions. Intervention happens mostly where needs are more severe. In 2007, the organization conducted a questionnaire in order to identify needs and characteristics of the target group with a view to service provision. Results showed that countries of origin varied from Sub-Saharan Africa to new EU Member States (e.g. Romania and Bulgaria), while 97% of the respondents were males, mostly undocumented. Analysis also pointed to massive exploitation (e.g., compulsory payment to intermediaries) and poor living conditions (e.g., more than 60% of respondents were living in abandoned houses, with no direct access to water, power, or heating), as well as poor access to health care. The study points to the fact that most health conditions were linked to working and living conditions, such as respiratory track infection disease. As a result, MSF Italy started to work with the local authorities in order to address a number of issues, including improving access to clean water and facilitate access to health care.

IOM Moscow shared the results obtained through the Anti-Trafficking Programme in the Russian Federation, through joint efforts and pro-active participation of the Russian Government and the international community. Results from the programme provide a few examples of cases of exploitation in the agricultural sector; yet

3 Peter Van Hauwermeiren, Ministry of Social Security.

it is important to highlight the difficulties in detecting this form of crime. Based on the data collected within the framework of the counter-trafficking projects implemented by IOM in the country, out of the total number of 330 victims of trafficking assisted to date under the project, 45% were involved in forced labour, of which 28 victims were exploited in the agricultural sector, mostly migrants. Results from the assistance provided by IOM to the cases above point to the fact that trafficked persons were kept in poor living conditions and, as a result, suffered from various physical disorders (e.g., cardiovascular and respiratory diseases, eye problems, and infectious diseases such as tuberculosis, bronchitis and pneumonia, as well as urological and otolaryngological disorders). Moreover, based on one of the case studies presented, victims were forced to work long hours, in inadequate conditions such as with poor lighting and in unheated basements. As a result, according to medical conclusions, a number of trafficked persons would require long-term medical treatment for physical disorders caused by the trafficking experience, in particular: gastritis due to sustained undernourishment; osteogenic nephropathies and back problems caused by long hours of working in a stooped position; kidney problems from staying in an unheated building; pancreatitis; as well as emotional disorders. It is important to highlight that, after receiving appropriate assistance, the victims' psychological condition improved as a result of individual and group therapy.

The two presentations exemplified the strong links between poor living and working conditions to the pathologies suffered by trafficked persons. These two examples provided a useful illustration of the types of services which should be made available to this target group.

The Immigration Justice Project, Southern Poverty Law Center, elaborated on a number of general protection and specific farm labour protection mechanisms in the United States, including the trafficking victims' protection reauthorization, the migrant seasonal agricultural worker protection act, and the guestworkers regulations. A number of key factors leading to farm labour trafficking and exploitation were highlighted, such as: exclusion from certain labour laws, immigration status, isolation/inaccessibility of information and advocates, seasonality, migration, non-enforcement, multiple dependencies, discrimination in the workplace and in communities, as well as language barriers. Regarding problematic areas related to immigration status: being undocumented, no portability, and often being subjected to high recruitment fees. In addition, dependency on contractors/subcontractors is a major challenge, especially when filing a law suit on behalf of trafficked victims. On a positive note, undocumented migrants are covered by labour laws and have full access to courts, thus encouraging them to come forward with complaints. Civil law suits are pursued by the Southern Poverty Law Center on behalf of their clients (trafficked persons), and settlements have been awarded to the victims. Based on the experience acquired in providing legal aid to trafficked persons, the Center had the following recommendation: the need to provide equal access to court regardless of status, regularization/social services for trafficked victims, equal coverage under labour laws, portability, monitoring/licensing of labour contractors and recruiters, and making growers liable for violation the laws.

Session 4: Investigation and Prosecution of Cases of Trafficking for Labour Exploitation in the Agricultural Sector

The final session focused on lessons learned and challenges from investigation to prosecution of cases of trafficking in human beings in the agricultural sector based on past or on-going cases. One of the key aspects of this session was to provide the audience with concrete examples of multi-disciplinary teamwork during the process, as an example of good practice.

The Border Police Directorate (Republic of Serbia) highlighted that its country has in place a number of measures at national level for combating trafficking in human beings, among them: a national co-ordinator, a specialized team, ratification of international instruments and transposition into national criminal law, a national strategy, as well as a National Action Plan (draft). Since 2003, 166 criminal cases have been brought against 385 traffickers, while 307 victims were identified. Since 1 March 2004, a system of social protection has been integrated into the services, in a joint project with the Ministry of Labour and Social Affairs and the

OSCE Mission in Serbia. The Agency for Co-ordination of Protection of THB has as its main role to ensure the rights of victims, to identify and assist victims, and to co-ordinate activities of government and NGO agencies. In addition, the agency also submits temporary residence request applications on behalf of victims. Until now, 298 trafficked persons have been assisted. The two examples of cases presented showed the following characteristics: use of false promises during recruitment, confiscation of passport, poor living and working conditions, restriction of movement, extraneous long hours of work, “re-selling” of the victim, multiple dependency, isolation, threats of violence and fear of arrest and deportation.

The Department on Combating Crimes Related to THB (Ukraine) stated that they have in place a comprehensive mechanism to address trafficking in human beings ranging from its Criminal Code being fully compliant with the Palermo Protocol, to a specialized Department on Combating Crimes Related to THB. Since 2000, there have been 2,628 victims identified, as well as 2,331 cases of THB. On prosecution of cases, it was highlighted that (from 2001 to 2007) 461 cases were dealt with successfully by the courts. Regarding trafficking for labour exploitation, 50% of the cases found were in the agricultural sector. In 2008 the Department dealt with ten cases of trafficking in the agricultural sector, of which two were international (comprising of 50 trafficked persons) while eight were internal trafficking involving victims from Moldova, Mongolia and Uzbekistan. The main areas of exploitation are: vegetable growing, husbandry, growing hay, and other types of farm work in which the victims had to work 17-19 hours daily. The primary risk groups mentioned were: labour migrants, homeless, inhabitants of rural areas (attracted by the possibility of short-term employment). Violence and threats to life were cited among the means used by traffickers against the victims. Based on information collected from the cases, recruitment was done through newspaper advertisements and victims were transported in groups of seven to ten people. Most victims were forced to work in private farms: they were locked up at night, their passports confiscated, and their living conditions were without elementary hygienic facilities. From 2008 to 2009, 50 victims were identified. Evidence on such cases was collected mostly through advertisements in printed media, the conclusions of forensic experts' examinations of victims' information received from law enforcement authorities in countries of destination, expertise provided by victims, information from law enforcement authorities of countries of destination, flight tickets and, mostly, from victims' testimony. In 2009, criminal cases have been initiated against the traffickers. Among the challenges in documenting and investigating cases of trafficking for labour exploitation in the agricultural sector, it was mentioned, is the need to prove exploitation from the very beginning of the case, as such evidence is easier to collect for cases of internal trafficking. Moreover, the difficulty of proving an intention to exploit at the time of recruitment, lack of experience in documenting the cases in both countries of origin and destination, different legislation systems and the absence of specialized personnel on these thematics were also cited as challenges.

The Central Office for Combating Illegal Work in France focused its presentation on the example of a case study about a French enterprise identified by a number of stakeholders (including labour inspectors) as subcontracting Polish agricultural workers. The infractions committed by the French enterprise range from the dissimulation of salaries (undeclared work and payment to social services), to the employment of foreigners without appropriate working permits. The on-going complaints led the authorities to open a judiciary inquiry, so as to concentrate all related efforts and information within a single file. Background information on the case showed that the enterprise had an office in the country of origin in charge of the recruitment of agricultural workers, while in the country of destination its operations were mainly geared to work placement. Most recruitment and placement was done by “word of mouth” and work contacts on a ‘needs’ basis. Contracts between the recruitment agency and the workers were signed, and a recruitment fee was charged monthly, while workers were promised pay upon return to the country of origin. During investigations it was found that workers experienced poor living and working conditions (i.e., long hours, strenuous jobs, etc.). Wages went unpaid, and employees had no social security protection. Challenges experienced in this case point to a number of lessons learned, such as: the need to improve victim identification, the difficulties in identifying cases due to the multiplicity of employment sites, as well as problems in obtaining information from the country of origin. Experience pointed to the fact that, even if elements of THB were present, at the time of the investigation the file was not treated as a trafficking case by the authorities; yet a great deal was learned from this experience.

The Belgian Prosecutor stated that, in Belgium, only 3% of the active population is engaged in seasonal work in the agricultural sector (mostly family enterprises). In addition, employers are not always obliged to pay social security contributions for certain categories of workers; for instance, in certain agricultural activities. As concerns migrant workers, these are mostly seasonal and undocumented. Based on the case presented, the

investigation was started by law enforcement in 2008 to look into the employment of undocumented workers in a given apple-picking farm. Intervention by law enforcement in co-operation with social inspection authorities identified 11 workers without appropriate social documents. The case showed a number of characteristics: very poor living and working conditions, no social protection for the workers, use of threats linked to the workers' status, and multi-dependency of employer/subcontracting persons. Challenges related to identification of cases were highlighted. Yet, it is important to stress that Belgium has a very good team of experienced NGOs that assist and intervene in such cases. Convictions were achieved in each of the two cases presented, and among the reasoning given in one of the cases was the fact that the perpetrators exploited the vulnerable situation of the workers, paid an unreasonable salary, and provided no social coverage.

Closing remarks

In her concluding remarks, the OSCE Special Representative summarized the results of the technical seminar by pointing out the importance of evidence-based information, good analysis and, most of all, strong political will to adequately address this problem through the implementation of good practices. She acknowledged the need for a multi-disciplinary approach in which co-operation, collaboration, networking, exchange of information, and monitoring of the situation towards concrete actions is an intrinsic part of daily practice for all stakeholders (e.g., labour inspectors, NGOs, law enforcement authorities, trade unions and health workers). Furthermore, the Special Representative reminded authorities of the need to strengthen work in relation to ensuring labour rights in accordance with national legislation and international instruments. Indicators of trafficking are important as practical tools, but the knowledge of how to use these tools is a key factor in addressing this issue. Thus, training for all stakeholders is necessary.

In the spirit of the event, the Special Representative called upon the OSCE participating States and Partners for Co-operation to take into consideration the effectiveness of current practices, especially when there is clear evidence of abuse and exploitation of procedures. In sum, "We saw that the way the agriculture sector is organized demands rethinking and adaptability in our practices, in particular the need to involve key stakeholders, such as NGOs and social partners, as well as the general public, including the media, in order to raise awareness for better prevention and identification ... By sharing the experiences and lessons learned between the OSCE participating States and Partners for Co-operation we can make the work easier".⁴

Disclaimer: This summary is based on the presentations made at the Technical Seminar.
For more details, please refer to the presentations themselves: http://www.osce.org/conferences/agricultural_09.html.

4 Eva Biaudet, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings.



Office of the Special Representative and
Co-ordinator for Combating Trafficking in Human Beings



Labour Exploitation in the Agricultural Sector

Overview

1. Overview

1.1 Introduction

The 2007 **"A Platform for Action"** Report of the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR CTHB), states that participating States are to be reminded of their commitments to eradicate **all** forms of trafficking in human beings (THB). Political will and action at the national level are the prerequisites to prevent and combat the exploitation of individuals in slavery-like conditions to meet these commitments as delineated in the *Trafficking Protocol*⁵ and in the *OSCE Action Plan*⁶. First and foremost, governments bear responsibility for developing a comprehensive national anti-trafficking response, which acknowledges that a wide variety of victims are bought and sold, abused, deceived or coerced into a broad range of exploitative situations that amount to slavery (e.g. exploitation in domestic servitude, organized begging, forced marriages, prostitution, forced labour in agriculture, construction, textiles, restaurants, food processing, cleaning, in the hospitality and entertainment sectors).⁷

To elevate the visibility of trafficking for labour exploitation, based on the *OSCE Action Plan*, the OSR hosted a high-level conference in November 2005 under the auspices of the ***Alliance Against Trafficking in Persons***, focusing on three major objectives: to mobilize greater political will to eradicate trafficking for labour exploitation; to provide a forum for the exchange of concrete experiences as a tool to advance the implementation of anti-trafficking commitments; and to increase the understanding of the need to involve a range of stakeholders in the design and implementation of responses to this form of THB. In recognition of the importance of the issue, and building upon awareness developed in the first event, a second high-level conference entitled "Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Prosecution of Offenders, Justice for Victims" was organized in November 2006. This provided an opportunity to focus more in depth on two of the major challenges facing participating States: how to bring perpetrators to justice and how to ensure legal redress for the victims. Overall, these two events materialized in concrete terms two of the core mandates and tasks attributed to the Special Representative: (1) to assist participating States in the development and implementation of national anti-trafficking policy in compliance with OSCE commitments and other international obligations; and (2) to assume "responsibility within the OSCE for hosting and facilitating meetings for the exchange of information and experiences between national co-ordinators, representatives designated by the participating States and experts on combating THB"⁸. Furthermore, results from these two conferences also paved the way to raise the interest and dialogue among the participating States on the need to strengthen their efforts to combat trafficking for labour exploitation, thus contributing to additional OSCE commitments by governments through the 2006 Brussels and 2007 Madrid Ministerial Decision on trafficking for labour exploitation.

The OSR believes that to study trafficking in human beings by economic sector is an important contribution to the participating States' and other relevant stakeholders' deeper understanding of this largely hidden problem. The various sectors have different structural features that cause or exacerbate worker vulnerability; are regulated under different systems of laws; and are amenable to different approaches to identifying and assisting victims. A thorough sectoral analysis should therefore lead to more effective interventions.

This Background Paper presents an analysis of labour trafficking in one particular economic sector – agriculture. Research indicates that agricultural workers are especially vulnerable to abuse, exploitation,

5 Art 3. of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) supplementing the United Nations Convention against transnational organized crime.

6 The OSCE Action Plan to Combat Trafficking in Human Beings was adopted by Permanent Council Decision No. 557 dated 24 July 2003.

7 For more details on responses to labour trafficking, see the OSCE Occasional Paper No.1: *A Summary of Challenges Facing Legal Responses to Human Trafficking for Labour Exploitation in the OSCE Region* and Speeches from the Conference on Human Trafficking for Labour Exploitation, November 2006, available at <http://www.osce.org/cthb/documents.html>. See also *Draft OSCE SR Report of the 4th and 5th Alliance Against Trafficking in Persons Conferences on Human Trafficking for Labour Exploitation/Forced and Bonded Labour*, 2007 CIO.GAL/83/07.

8 Ministerial Council Decision No. 3/06 Combating Trafficking in Human Beings.



and trafficking. Indeed, it is one of the sectors in which trafficked workers are most commonly found.⁹ With a view to fulfilling its mandate, the OSR has commissioned this Background Paper as a policy tool for decision makers and practitioners and to support the technical seminar on trafficking for labour exploitation in the agricultural sector under the auspices of the Alliance Against Trafficking in Persons.

An exact estimate of the incidence of trafficking for exploitation in agriculture is unknown. Trafficking is by definition a criminal activity and, like most criminal activity, it is clandestine. Moreover, labour trafficking victims often go unrecognized and cases are rarely prosecuted. The ILO estimates that there are 12.3 million victims of "forced labour" worldwide, of whom 2.45 million are in forced labour as a result of trafficking.¹⁰ The vast majority are cases of labour trafficking exacted by private agents for the purpose of economic exploitation. The U.S. Department of State reported that in 2007 there were 5,682 prosecutions and 3,427 convictions for trafficking crimes globally. The percentage of prosecutions and convictions for labour trafficking, however, despite its prevalence, is less than ten per cent of the total number of either prosecutions or convictions.¹¹

This Background Paper provides an overview of the applicable international legal standards, identifies the structural features that make agricultural workers vulnerable to exploitation, and illustrates workers' experiences through the use of specific case studies. The OSR hopes that once structural issues and deficits are recognized, participating States, policymakers and non-governmental organizations can address them in a systemic way.

1.2 Trafficking for Labour Exploitation: The International Legal Framework

Trafficking for labour exploitation is a complex phenomenon requiring responses from a variety of intersecting legal fields – criminal justice, human rights, migration, and labour law. States have responsibilities to meet international standards in each of these areas. Respect for, and promotion of, human rights are a necessary part of a comprehensive anti-trafficking strategy.

International law requires states to criminalize and prosecute trafficking in human beings and forced labour. International labour standards, especially those of the ILO, guarantee a number of fundamental rights for workers generally, as well as specifically for agricultural and migrant workers. Because a trafficked person is both a crime victim and an exploited worker, responding to trafficking requires an understanding of the labour rights issues.

⁹ *A global alliance against forced labour*, ILO, 2005, at paras. 250-252; Anderson & Rogaly, *Forced Labour and Migration to the United Kingdom* Compas, 2006, at p. 26; *General Survey on Migrant Workers*, ILO, 1999, at para. 15 ("seasonal workers, primarily recruited for agricultural work in almost all regions of the world ... are often among the most vulnerable, often working in conditions vastly inferior to national workers, in many cases with little reward"); *Trafficking for Forced Labour in Europe*, Anti-Slavery International, November 2006, at p. 18 (describing agriculture as characterized by a reliance on casual and temporary labour, low wages, subcontracting, all practices that contribute to forced labour and exploitation).

¹⁰ *A global alliance against forced labour*, ILO, 2005, at paras. 37 & 50 (hereafter *Global alliance*).

¹¹ *Trafficking in Persons Report*, U.S. Department of State, 2008, at p. 37 (hereafter *TIP Report 2008*). Similarly, within the US, the proportion of labour trafficking prosecutions is relatively small. Between 2001-2005, the U.S. Department of Justice brought 23 labour trafficking cases, but 68 sex trafficking cases. Academic researchers and NGOs within the US estimate that the majority of trafficking cases occur in non-sex industries. See Grace Chang & Kathleen Kim, "Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)" in *Stanford Journal of Civil Rights & Civil Liberties* 3 (August 2007): p. 336.

This section sets forth the norms contained in the relevant trafficking, labour, and migration instruments. These norms should be used to assess current trafficking prevention, protection and prosecution strategies and to develop further recommendations.

1.2.1 Anti-Trafficking Standards

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children ("UN Trafficking Protocol") is the first international instrument to specifically include forced labour in the definition of "trafficking".¹² Article 3(a) defines "trafficking in persons" in terms of certain *acts* done by certain *means* with a *purpose* of exploitation.

Legal Elements of Trafficking in Persons

Acts: recruitment, transportation, transfer, harbouring, or receipt of persons;

Means: by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;

Purpose: for the purpose of exploitation

Definition of Exploitation

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The UN Trafficking Protocol states that its purpose is to *prevent* trafficking, *protect* victims, and to *prosecute* the traffickers – sometimes referred to as the "Three Ps" goal of the Protocol. In fact, the strongest language is found in the requirement to criminalize. Parties to the Protocol are obligated to establish as criminal offences the conduct set forth in Article 3, when committed intentionally. The Protocol is primarily a criminal justice response. It recognizes that victims have rights and that states should take steps to protect them, but imposes few binding obligations to protect victims.

The EU Council Framework Decision on Combating Trafficking in Human Beings, adopted in July 2002, differs from the Protocol's definition in only two respects. It does not include removal of organs in its definition of "exploitation" and includes pornography. The Framework Decision provides for a maximum penalty of "at least eight years" in certain aggravating circumstances. Under Article 7, Member States of the European Union (EU) must investigate or prosecute offenses independently of any report or complaint made by the victim. As a Framework Decision, it is legally binding. EU Member States were required to transpose its provisions into national law by August 2004.

The EC Council Directive on the Residence Permit Issued to Third-Country Nationals who are Victims of Trafficking in Human Beings was adopted on 29 April 2004.¹³ Its provisions are binding for EU Member States with regard to victims of trafficking, including those who are present illegally, but discretionary as regards "third-country nationals who have been the subject of an action to facilitate illegal immigration". Under the Directive, third-country nationals who may be victims of trafficking are granted a reflection period, of unspecified duration, access to certain services, temporary immigration relief, and the possibility of a residence permit. All these benefits are conditional on a willingness to co-operate with law enforcement authorities.

The Council of Europe Convention on Action against Trafficking in Human Beings ("CoE Convention") entered into force in 2008.¹⁴ It fully adopts the definition of trafficking found in the UN Trafficking Protocol. In addition, the CoE Convention goes much further in protecting victims' rights than either the UN Trafficking Protocol

12 Earlier trafficking instruments had viewed trafficking exclusively in terms of the transportation of women (usually white women) across borders for immoral purposes. See, e.g., the International Agreement of suppression of White Slave Traffic (1904); International Convention for the Suppression of White Slave Traffic (1910); and the Convention for the Suppression of Traffic in Persons and Exploitation of Prostitution of Others (1949). For the text of the UN Trafficking Protocol and ratification information, see www.unodc.org/unodc/en/treaties/CTOC/index.html.

13 2004/81/EC of 29 April 2004.

14 For the text of the CoE Convention, see <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>.

or the Framework Decision. Parties are required to adopt measures "as may be necessary to assist victims in their physical, psychological and social recovery." Art. 12(1). Parties are also required to provide for a "recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim." Art. 13(1). This period is intended to give the person time to make an informed decision on co-operating with law enforcement authorities. In addition, parties are required to issue "renewable residence permits" to victims if their continued stay is necessary "owing to their personal situation" or if their stay is necessary for the criminal investigation or proceeding. Art. 14. In terms of compensation, parties are required to provide for the right of victims to compensation from perpetrators. Art. 15.

There are also a number of soft law standards on trafficking. Although not legally binding, these standards do carry persuasive authority.

The OSCE Action Plan to Combat Trafficking in Human Beings, adopted by Permanent Council Decision No. 557 dated 24 July 2003, recommends that participating States criminalize trafficking, as defined in the UN Trafficking Protocol; establish specialized anti-trafficking units; and assist victims by providing effective protection and legal counselling, and by permitting NGOs to support victims in court hearings.

The OSCE Ministerial Council Decision No. 14/06 on Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive and Protective Approach, recommends that participating States establish National Referral Mechanisms (NRM) and appoint national co-ordinators in order to promote a comprehensive approach to all forms of THB; address the factors that make people vulnerable to THB, such as poverty and discrimination; conduct risk assessments when repatriating victims; ensure that national legislation criminalizes trafficking for labour exploitation. In addition, Ministerial Council Decision No. 14/06 calls on participating States to ensure that minimum labour standards are reflected in their labour laws and that their labour laws are enforced, to reduce the potential of THB and to provide information on THB to migrant communities and to persons working in particularly vulnerable sectors such as agriculture, in order to improve victims' access to assistance and justice and to encourage persons with information on possible trafficking THB to refer victims for assistance.

The United Nations Office of the High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking contain a number of specific principles to guide States' counter-trafficking strategies. It provides that States shall not detain, charge or prosecute trafficked persons for their involvement in unlawful activities, to the extent that such involvement is a direct consequence of their situation as trafficked persons. States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care, and that such care shall not be made conditional upon willingness to co-operate in legal proceedings.

1.2.2 Labour Rights Standards

Although there is no definition of "forced labour" in the UN Trafficking Protocol, the UNODC Legislative Guide indicates that the ILO Forced Labour Convention is one of the relevant instruments. Similarly, the Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings cites the ILO Forced Labour Convention as a reference. Thus to better understand labour trafficking it is necessary to understand the definition of forced labour and to have a brief review of the Forced Labour Convention.



The ILO adopted the Forced Labour Convention in 1930 (Convention No. 29).¹⁵ This is one of the most widely ratified of ILO Conventions, with 173 signatures as of September 2008. It defines forced labour, lists exceptions, and imposes on states the obligation to criminalize forced labour and to ensure that penalties are "really adequate and strictly enforced." Article 2(1) defines "forced or compulsory labour" as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Article 2(1): Definition of Forced Labour

- All work or service performed
- Under the menace of any penalty
- Without a voluntary offer by the worker

ILO conventions also define the term "agriculture".

Definition of Agriculture

"Agriculture covers agricultural and forestry activities carried out in agricultural undertakings including crop production, forestry activities, animal husbandry and insect raising, the primary processing of agricultural and animal products by or on behalf of the operator of the undertaking as well as the use and maintenance of machinery, equipment, appliances, tools, and agricultural installations, including any process, storage, operation or transportation in an agricultural undertaking, which are directly related to agricultural production." *Art. 1 of ILO Convention No. 184.*

Under a series of ILO conventions, agricultural workers have rights to freedom of association, workers' compensation, health insurance, minimum wages, paid annual holidays, occupational health and safety standards, and workplace inspections to ensure these worker protections.¹⁶ Although the Right of Association (Agriculture) Convention has 122 ratifications, the remainder of these conventions have some of the poorest ratification records in the ILO. The Convention on Safety and Health in Agriculture, No. 184 of 2001, has been ratified thus far by only 10 states. The Convention on Labour Inspection (Agriculture), No. 129 of 1969, has been ratified by 46 states. States have cited a variety of reasons, including the perception that Convention No. 129 is "unsuited to the national characteristics of agricultural activity," that "agricultural activity mainly takes place in the informal economy", and that States lack the resources to establish specialized labour inspection structures.¹⁷

1.2.3 Standards for Migrant Workers¹⁸

Nothing in the international definition of trafficking requires that the victim of trafficking be a foreign national or that international borders be crossed in the commission of the offense. Article 2 of the Council of Europe Convention on Action against Trafficking in Human Being states that the definition applies to all forms of

¹⁵ There are two other ILO forced labour conventions: Convention No. 105 (Abolition of Forced Labour) and Convention No. 182 (Worst Forms of Child Labour). Neither alters the definition given in Convention No. 29. In addition, forced labour is prohibited by the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, using terms almost identical to ILO Convention No. 29.

¹⁶ Conventions Nos. 11, 12, 25, 99, 101, 184, and 129.

¹⁷ *General Survey: Labour Inspection*, ILO, 2006, paras. 357-358.

¹⁸ ILO Conventions are available at www.ilo.org/ilolex/english/index.htm. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC) is available at www2.ohchr.org/English/law/cmw.htm.

trafficking in human beings, whether national or transnational in nature. The Legislative Guide to the UN Trafficking Protocol, issued by UNODC in 2004, instructs that transnationality¹⁹ should not be a required element of trafficking as incorporated into domestic law. There have been, moreover, a number of examples of domestic trafficking or trafficking of EU nationals within the EU. Victims in some recent US forced labour cases have included US citizens as well as migrants with valid work permits. Outside the OSCE region, problems of slave labour are well documented on the plantations of Brazil and the practice of chattel slavery still exists in parts of West Africa.

Nevertheless, a discussion of trafficking would be incomplete if it did not focus attention on the particular plight of migrants and especially irregular or undocumented migrants. Globalization and reduced opportunities for safe and legal migration on one hand, combined with continued demand for cheap labour on the other hand, mean that migrants frequently find themselves in exploitative work situations, under pressure to pay off debts, with few resources or avenues for help. This too often can lead to trafficking. Policymakers cannot tackle the problem of trafficking without an understanding of the particular vulnerability of migrants. For this reason, this Background Paper includes an overview of the international instruments relevant to migrant workers' rights.

There are three complementary instruments that set forth the human rights and labour rights of migrant workers, including those in irregular status: the ILO Convention No. 97 on Migration for Employment; the ILO Convention No. 143 on Migrant Workers; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC). Furthermore, most of the standards of the ILO apply to all workers regardless of their migration status.²⁰

Under these instruments, migrant workers, both regular and irregular, are guaranteed all the human rights contained in international human rights instruments: equality of treatment with nationals concerning conditions of work and terms of employment, freedom of association, social security benefits, and free emergency medical care.

The MWC also protects identity documents (Art. 21) and provides for equality of treatment in contracts (Art. 25(1)).

It ensures that irregular migrants are not deprived of any rights due to their irregular status (Art. 25(3)).

Importantly for this sector, seasonal workers are entitled to the rights "that can be granted to them by reason of their presence and work" in the state of employment and that are "compatible with their status . . . as seasonal workers" (Art. 59(1)).

Definitions of migrant worker and seasonal worker

"The term 'migrant worker' refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national."

Art. 2(1) of the MWC.

"The term 'seasonal worker' refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year."

Art. 2(2)(b) of the MWC.

19 "Transnationality is a principle of carrying out an action across national borders, so as to have effects at a more general level. It is commonly referred to with reference to the actions of the European Union, in distinction to 'international' (among national governments and controlled by them) or 'supranational' (suggesting powers delegated to a higher level of government)".

20 For example, the Committee on Freedom of Association has held that Convention No. 87 protects the rights of all workers, regardless of legal or illegal status, to join trade unions. See *Complaint against the Government of Spain presented by General Union of Workers of Spain (UGT) Report No. 327, Case No. 2121 (2002)*.

States should consider granting seasonal workers who have been employed in that State for a significant period of time the possibility of taking up other forms of work (Art. 59(2)).

Also noteworthy are recent guidelines issued in the field of migration: *The ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* and the *OSCE-IOM-ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination*.²¹

“Sweatshop conditions . . . are the major factor in contributing to the rise of actual slavery in the fields, since they provide the . . . fertile soil in which slavery can take root. Slavery does not take place in a vacuum. In short, if you eliminate the other labor violations and the drastic imbalance of power, you eliminate slavery.”

Source: *Coalition of Immokalee Workers, 2008*.

21 Both are available at www/ilo.org/public/English/protection/migrant/info/index.htm.



Office of the Special Representative and
Co-ordinator for Combating Trafficking in Human Beings



Labour Exploitation in the Agricultural Sector

Understanding the Problem:

Why does Trafficking Flourish in the Agricultural Sector?

2. Understanding the Problem: Why does Trafficking Flourish in the Agricultural Sector?

2.1 General Characteristics of Agricultural Work

Worldwide there are approximately 450 million agricultural wage workers²² including about 173 million children in agricultural work. Women account for an average of 20-30% of the waged agricultural workforce. According to European Union statistics, in 2006 there were roughly 12.5 million people "employed" in the agriculture sector, which includes forestry, hunting, and fishing.²³ In the United States there are approximately 2.5 million agricultural workers.²⁴

Among the 56 participating States of the OSCE there is a great variety: of crops produced, in the number and size of farming enterprises, in the prevalence of migrants as workers, and of general conditions of agricultural work. Nevertheless, certain commonalities can be identified. These features, in combination with the effects of globalization and increased migration, make agricultural workers especially at risk for exploitation.

Agricultural work is usually seasonal. Labour needs fluctuate according to the demands of planting or harvesting. Seasonal labour is especially prevalent in fruit, vegetables and horticulture. In practice, seasonal workers often lack workplace protections, including unemployment compensation and health insurance, as well as job security and stability.

Agricultural work is physically demanding and often dangerous. It is ranked as one of the three most hazardous industries, along with construction and mining. The ILO estimates that up to 170,000 agricultural workers are killed each year.²⁵ In some countries, occupational safety and health laws exclude the agricultural sector.

Agricultural work is low-paid. Agricultural wage-earners and their families often live below the poverty line. The ILO reports that wage levels in this sector are consistently lower than in any other, even within the European Union.²⁶ Rural poverty is especially prevalent in countries undergoing transition to market-based economies. In Moldova, for example, all agricultural wage-earners are living below the poverty threshold.²⁷ In countries of Central Eurasia, the incidence of rural poverty is higher than the national average.²⁸

22 This number does not include self-employed farmers or unpaid family members. See Peter Hurst, *Agricultural Workers and their Contribution to Sustainable Agriculture and Rural Development*, FAO-ILO-IUF, October 2005, at 2.

23 *Agriculture in the European Union: Statistics and economic information*, European Commission, 2007, Table 2.0.1.2 (Basic data – key agricultural statistics) and Table 3.5.1.2 'Persons employed in agriculture, hunting, forestry and fishing (2000-2006)'. Persons employed include all persons working for remuneration or self-employed, plus unpaid family workers. Persons employed in more than one sector are counted only in the sector in which they mainly work.

24 *Protection of Migrant Agricultural Workers in Canada, Mexico and the United States*, Commission for Labor Cooperation, 2002, at p. 27.

25 *Safety in numbers: Pointers for a global safety culture at work*, ILO, 2003, at p. 11.

26 Marilyn Pigott, *Decent Work in Agriculture: Background Paper*, ILO, 2003, at p. 43.

27 Pigott, *op cit.*, at p. 47-48.

28 Max Spoor, *Rural Poverty, Agrarian Reform and the Role of the State in Rural Growth and Poverty Reduction in Central Eurasia*, Presentation for Technical Consultation Meeting, FAO Regional Office for Central Asia, Ankara, July 2007. The study focused on Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. Rural poverty is higher than the national average in all countries except Azerbaijan.



Agricultural work is located in remote and isolated locations. Although there are exceptions, most agriculture is rural and in areas not well-served by public transportation. In addition, farms and plantations may cover vast areas. Worker housing is often located on the worksite and often provided by the employer.

Agricultural work is relatively unregulated. It may be exempt from requirements concerning overtime, rest days, and health and safety standards. Workplace inspections rarely occur or agricultural concerns may be explicitly outside any labour inspection regime. Social security benefits often do not extend to agricultural workers. An ILO study found that “fewer than 20 per cent of agricultural wage workers were effectively protected against any one of nine social security contingencies.”²⁹

As a result of all these factors, agricultural workers confront a unique set of barriers in learning about and enforcing their rights.

Physical isolation. In rural areas, workers are often unable to reach the social services, human rights organizations, civic society groups, and ethnic immigrant communities that are located in urban areas. When workers lack transportation, it can make it hard to seek other jobs. Migrant workers who are far from home lack family and community networks. They thus lack important sources of support and assistance.

Social isolation. Regardless of immigration status, if workers are migrants they may have limited language skills. They are usually dependent on fellow migrants or their employer (or labour contractor or supervisor) for interpretation and translation. There are also educational and cultural barriers to effective communication. In the United States, for example, many seasonal farm workers who speak Spanish as their mother tongue have low levels of literacy. Workers may view – accurately or inaccurately – law enforcement and other potential governmental sources of assistance as corrupt and inefficient. Sometimes employers exploit these perceptions by telling workers that they “own” the police or that they have friends in “high places”.

Low levels of unionization or participation in workers’ organizations. Despite the fact that the ILO Conventions No. 97 and No. 143 both require equality of treatment for agricultural workers in relation to trade union rights, and although Convention No. 87 applies to all workers regardless of nationality, the level of trade union representation among agricultural workers, and especially among seasonal workers and women, is extremely low. In practice, national legislation often imposes restrictions that impair migrant workers’ rights to participate in trade unions or to form their own unions. Restrictions include making citizenship a condition for taking a trade union office, stipulating that a proportion of the membership must be nationals, or linking trade union membership to a condition of residence or reciprocity or both.³⁰ In some countries certain categories of workers are prohibited from joining trade unions (e.g., in the United States of America, the agricultural sector is exempt from the National Labor Relations Act³¹, and until recently Spanish law excluded irregular migrants

29 Pigott, op. cit., at p. 52.

30 *General Survey on Migrant Workers*, ILO, 1999, at para. 437.

31 For more information on freedom of association rights in the US, see *Unfair Advantage: Workers’ Freedom of Association in the United States under International Human Rights Standards*, Human Rights Watch, August 2000, available at www.hrw.org/reports/2000/uslabour.

from the right to join unions and the right to strike³²). In other countries, trade union representatives do not have the resources to cover large rural territories. For example, IUF-Ukraine attributes the steep decline in union membership among agricultural workers in part to the lack of staff and resources required to undertake organizational work.³³ The result is that workers are not informed of their rights by trade unions and lack collective bargaining power.

Lack of information. Because of physical and social isolation, workers are not aware of workplace rights and protections. They do not know the minimum wage, whether insurance and social security contributions are being made by their employer, what requirements govern piecework pay rates, or what paycheck deductions are legal. They have never been informed about government enforcement agencies and may assume that if they file a complaint or make a report, they will lose their jobs. In the United States, 41% of irregular agricultural workers did not know if they were covered by workers' compensation for a work-related illness or injury.³⁴ Workers also lack information about how to change employers or find new jobs. Work permit holders may never have been informed about what they should do to complain about an abusive employer. Agricultural workers often do not have written work contracts, meaning they do not know their actual terms of employment. Lengthy subcontracting chains mean that workers do not know who their employer actually is.

Fear. Workers are afraid of losing their jobs and of losing accommodation that is linked to employment. They fear that if they complain about work conditions or quit working, they will never receive the money that they are owed. If they are regular migrants, they may fear losing their work permits and permission to stay in the country. If they are on seasonal work permits, they may fear not being invited to return for

the next season. If they are irregular migrants, they fear being arrested and/or deported. They may fear that an employer will use violence against them or hunt them down and return them to the workplace. They fear being unable to repay sums that they owe to labour recruiters and employment agencies. Migrant Rights Centre Ireland reports that members of the Mushroom Workers Support Group experienced being "blacklisted" by mushroom growers. Some were specifically warned not to talk to outside organizations.

"[F]iling lawsuits against abusive employers is not a realistic option in most cases. Even if guestworkers know their rights – and most do not – and even if private attorneys would take their cases – and most will not – guestworkers risk blacklisting and other forms of retaliation against themselves or their families. In one lawsuit the Southern Poverty Law Center filed, a labor recruiter threatened to burn down a worker's village in Guatemala if he did not drop his case."

Source: *Close to Slavery: Guestworker Programs in the United States*, Southern Poverty Law Center, 2007, at p. 30.

Poverty. Agricultural workers may be at or below subsistence level. Immediate survival is their central preoccupation. Taking time off from work to find help or file a complaint is simply not an option. They may believe that filing a complaint with an employment tribunal is a costly procedure. In most countries, migrant workers are not entitled to legal aid.

Racism and discrimination. Migrants often face racism and discrimination from employers, law enforcement, and society at large. In February 2000 in El Ejido, Spain, violent riots broke out against Moroccan workers and their housing was razed and burned. Even subtle forms of racism can have an impact. In the United Kingdom, media reports following the deaths of Chinese workers at Morecambe Bay blamed prejudice and racism for turning a blind eye to the working conditions that led to this tragedy.³⁵

32 *Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention*, 1948 (No. 87) Spain, Committee of Experts on the Application of Conventions and Recommendations, ILO, 2007.

33 *Decent Work in Agriculture: Defining Trade Union Position: Working Documents for ILO/IUF Regional Seminar in Eastern Europe and Central Asia*, ILO-IUF, 2003, at p. 32.

34 *Findings from the National Agricultural Workers Survey 2001-2002: A Demographic and Employment Profile of United States Farm Workers*, U.S. Department of Labor, Employment & Training Administration (hereafter "NAWS Survey").

35 *Death on the beach*, The Times, 25 March 2006; *Chinese gangsters were free to exploit cocklers despite dangers*, The Times, 25 March 2006; *Dead in the Sand: Racism, Greed and Tragedy in the UK*, 15 February 2004, available at www.dimsun.co.uk; Editorial, Liverpool Daily Post, 7 February 2004.



2.2 Recent Trends Affecting Agriculture

Globalization, migration and labour contracting and casualization are contemporary trends that impact on agricultural workers. Globalization refers to the increased cross-border flow of goods, services and capital. Industries that can re-locate to lower cost production sites do so in order to maximize profits. Industries that are unable to relocate – frequent examples are construction, home health care and domestic work, restaurants, and agriculture – seek to keep costs down in other ways, such as by hiring a cheaper and more temporary work force.

People are on the move in part because of political and economic factors associated with globalization. Driving forces – sometimes labeled “push” and “pull” factors - include relative wage and income disparities between countries, socio-economic dislocation in transition countries, upheaval caused by regime change and war, the existence of migration networks, and the lower costs of transport and communication. The ILO estimates that, excluding refugees, there are 27.5 million migrant workers in Europe.³⁶ Within the European Union, the number of migrants from developing countries now surpasses the number of migrants from other OECD countries.³⁷ In North America, which encompasses Canada, the US, and Mexico, the number of migrant agricultural workers is approximately 5 million.³⁸ It is impossible to pinpoint the exact number of irregular migrants into the OSCE, but estimates range from 10 to 15 per cent of the total number of migrants.³⁹ Europol estimates that there is an annual inflow to the EU of about half a million irregular migrants.⁴⁰

Two other phenomena in agriculture – the rise of labour contractors or intermediaries and the casualization of labour – are closely associated with globalization and increased migration. Labour contracting refers generally to the use of intermediaries to recruit and manage workers. Labour recruiters, whether public or private, move migrants across national borders for work. In some countries, recruiters also function as the day-to-day managers and supervisors of migrant workers. The practice varies significantly by country, but evidence indicates that the use of labour contractors, whether legitimate or illegitimate, is on the rise. Casualization refers to modes of employment that are temporary, flexible, and often part-time. In the agricultural sector, casualization of employment means that workers are increasingly employed on short-term, daily or seasonal contracts.

Although not inherently negative, these forces have tended to operate in ways that increase the vulnerability of the low-skilled workers that dominate the agricultural sector in the following ways.

³⁶ *Towards a fair deal for migrant workers in the global economy*, ILO, 2004, Table 1.

³⁷ *Towards a fair deal for migrant workers*, op. cit., at para. 17.

³⁸ *Protection of Migrant Agricultural Workers in Canada, Mexico and the United States*, Commission for Labor Cooperation, 2002, at p. 3.

³⁹ *Towards a fair deal for migrant workers*, op. cit., at para. 37.

⁴⁰ *Towards a fair deal for migrant workers*, op. cit., at para. 37.

Globalization

- *The number of family-owned farms is shrinking, which means that more waged workers (as opposed to self-employed farmers and their families) are entering the agricultural workforce.⁴¹ Within the European Union, consolidation has been accompanied by rapid growth in the number of farms owned by legal entities or holding groups.⁴² In Spain, for example, agriculture "was transformed from a family affair to a more factories-in-the-fields system by significant capital investment that resulted in fewer and larger farms producing for export markets."⁴³*
- *The concentration of retail power in large supermarket chains means that economic pressure on agriculture has increased.⁴⁴ In addition to consolidation of farming concerns, there is also a growing tendency for specialized production instead of traditional mixed cropping. Specialized production is more likely to have dramatic fluctuations of labour needs. In periods of peak activity, the labour force can increase by up to two-thirds.⁴⁵*
- *Because labour is viewed as an adjustable variable, decreasing labour costs is one response to the increased pressure of globalization.*

"[I]n many countries big supermarket chains control up to 80% of the market and they constantly cut prices to compete with their rivals. Producers have to respond to orders from the big distribution and supermarket chains. Their buyers can call farmers at any moment and ask for a lorry-load, or just one or two palettes, of this or that product the next day. If the farmer is unable to deliver, the supermarket will look elsewhere. The fact that a dozen or more workers are suddenly required for a few hours makes it impossible to have a fixed labour force."

"Producers are forced to rely on a large reserve army of casual workers, both immigrant and local. This system forces producers to reduce labour costs."

Source: *Migrants in irregular employment in the agricultural sector of southern European countries*, Parliamentary Assembly Report, Council of Europe, 18 July 2003 (Doc. 9883).

Migration

- *A high percentage of both regular and irregular migrants work in the agricultural sector across OSCE participating States.*
- *Migrant workers are more willing to accept temporary and seasonal jobs and jobs that lack long-term security or other benefits. As researchers in Italy observed about the agricultural sector: "The willingness of migrants to accommodate to highly varied levels of labour demand during the year has resulted in their replacement of marginal Italian workers."⁴⁶*

41 Hurst, op. cit., at p. 20.

42 *Employment in rural areas: closing the jobs gap*, European Commission Staff Working Document, 2006, at 2.2.4.

43 Philip Martin, *Temporary Worker Programs: US and Global Experiences*, 15 March 2008, at p. 11.

44 Ben Rogaly, *Intensification of Work-Place Regimes in British Agriculture: The Role of Migrant Workers*, Sussex Migration Working Paper No. 36, July 2006, at p. 2; Nicholas Bell, *The exploitation of migrants in Europe*, European Civic Forum, 2002; *Retailers price strategies are putting the agriculture and food workers under pressure*, EFFAT Express 48, December 2004.

45 *Wage Workers*, ILO, 1996, at p. 37.

46 E. Allasino et al., *Labour market discrimination against migrant workers in Italy*, International Migration Papers 67, ILO, 2004, at pp.13-14.

- *Migrants perform jobs that the locals do not want to do. "Dirty, difficult and dangerous (3-D) jobs attract few native workers even when domestic unemployment is high."⁴⁷ Research suggests that where there is a high percentage of migrants, both regular and irregular, working conditions are often poor.⁴⁸*
- *On-going demand for seasonal agriculture workers combined with limited legal migration channels leads low-skilled migrants to use clandestine means. "Once they are in host countries, they remain confined to jobs in unstructured or informal sectors, in irregular work and under exploitative conditions of employment."⁴⁹*

"Private recruiters or labor contractors remain significant in sectors in which there is a seasonal demand for workers and when workers and employers do not have a common language, as with Spanish-speaking farm workers in the US. Recruiters can also play important job-matching roles when language is not a barrier but distance is, as with the recruitment of workers inside Brazil or Thailand."

Philip Martin, *Regulating private recruiters: the core issues*, in *Merchants of Labour*, ILO, 2006, at p. 15.

Labour contracting

- *The trend away from direct employment weakens the traditional employer-employee relationship and reduces employer liability and responsibility for enforcement of workplace protections. Workers may be hired by one party, supervised by another, and paid by a third.*
- *When contractors and end users share employer-type functions, the worker may be uncertain about the identity of the actual employer and thus be unable to assert his or her employment rights.*
- *Contractors provide the work and residency permits, arrange for housing and transportation, supervise the conditions and terms of work, and issue pay checks, a worker is dependent on them for almost all the necessities of life. This situation, known as "multiple dependencies," increases vulnerability to abuse.*

United Kingdom

"The use of temporary workers is nothing new, as it is linked in large part to the nature of the biological production cycle. The novelty however lies in the technological developments that tie supermarket check-outs to the instant generation of new orders. Suppliers are obliged to meet these orders at very short notice, hence requiring workers virtually "on tap", highly flexible in terms of days and hours worked."

Bridget Anderson and Ben Rogaly, *Forced labour and Migration to the UK*, TUC, Compas, 2005, at p. 26.

47 Gijsbert Van Liemt, *Human Trafficking in Europe: An Economic Perspective*, ILO Working Paper 31, 2004, at p. 8

48 Dutch National Rapporteur, *Fifth Report on Trafficking in Human Beings*, 15 June 2007, at p. 172; Rogaly Paper, op cit. at pp. 5-6; *Human trafficking and forced labour: Case studies and response from Portugal*, ILO, 2008, at p. 50.

49 Patrick Taran & Eduardo Geronimi, *Globalization, Labour and Migration: Protection is Paramount*, ILO, 2003, at p. 7.

Labour casualization

- *Temporary, seasonal and part-time workers have fewer workplace protections, less knowledge of their rights, and are in a more economically precarious situation than permanent or long-term workers.*
- *In some countries, employers are legally exempt from providing social benefits for temporary or seasonal workers. In France, agricultural employers benefit from an "occasional workers" regime under which they are largely exempt from making social security contributions for workers who work less than 110 days a year. The exemption rates vary but are highest in the fruit and vegetable production sector, where there is a 90% exemption for employers' contributions.⁵⁰ There are similar exemptions in Belgium and Germany which reduce the employer's share of social security and other mandatory contributions.⁵¹*
- *The use of temporary worker schemes – adopted in a number of Western Europe and North American countries as a response to migration flows and labour demands – typically link a worker to a particular employer. In practice, this means that a worker is likely to accept poor or abusive working conditions, knowing that a complaint can lead not only to loss of a job but also to loss of residency. Workers may also be reluctant to assert their rights because they fear being blacklisted by growers and not invited to return in subsequent years.*

Canada

"When migrant workers raise issues of concern to their employers, they do so knowing they face the very real risk of being sent home under the [program's] repatriation provisions. Under these provisions, workers can be, and are, sent home by their employer, often with just a day or two's notice, for any reason. This ability of employers to have workers repatriated for any reason . . . provides a blanket of immunity for employers to treat workers as they choose, since any worker who tries to object can be immediately repatriated."

Report on the Status of Migrant Farm Workers in Canada, 2006-2007, UFCW, at p. 9.

2.3 Female and Child Agricultural Workers and Migrants

Women and children are two especially vulnerable groups, both as agricultural workers and as migrants. A number of international organizations, including the ILO, have documented the feminization of international labour migration as well as the rise of women as waged agricultural workers.⁵² However, despite the overwhelming body of knowledge produced by development studies that women in many parts of the world bear the brunt of agricultural labour, stereotypes of males as the main agriculture workers still persist among the general public and policymakers in most countries of destination. This perception is then reflected, for instance, in the recruitment practices and migration policies in relation to temporary seasonal labour, which either favour male migrant workers, or make the contribution of female migrant workers less visible. This practice contributes not only to the limited recruitment of women into legal migration channels, but also makes the latter less visible to important actors (e.g., social workers, trade unions, government authorities, etc.) who could assist in the prevention of abuse, identify potential victims, and provide subsequent assistance to those in need.

⁵⁰ *Seasonal workers in European agriculture*, GEOPA, June 2002, at p. 25 and Table 6.

⁵¹ *Id.*

⁵² Hurst, *op. cit.*, at p. 21; Patrick Taran & Eduardo Geronimi, *Perspectives on Labour Migration: Protection is Paramount*, ILO, 2003, at p. 10.



In Catalonia, Spain, for example, the Information Centre for Foreign Workers (CITE), an organization created by the CCOO trade union, reported that the majority of migrants from Latin America were women and that there was a sharp increase in the number of women among migrants from Morocco as well. Because women migrants typically have less access to information on migration channels and work opportunities, they tend to end up in even lower-paying and more abusive work conditions.⁵³ In France, the Association d'Assistance Scolaire Linguistique et Culturelle reports that, unlike Chinese men, Chinese women often arrive in France "with neither a job nor a middleman" and are thus considerably disadvantaged in finding decent work and more prone to abuse.⁵⁴

Women also face discrimination in obtaining higher-skilled jobs such as machinery operators and in being promoted to supervisory positions.⁵⁵ In some countries, employing more women is part of a deliberate effort on the part of employers to lower the costs of agricultural production. Studies have also shown that women migrants regularly face sexual harassment.⁵⁶ In Israel, Kav LaOved reports encountering many cases in which female Thai agricultural workers suffer exploitation and abuse. Although they hold valid work visas, they are isolated on rural farms, do not speak the language, have no means of transportation, and are unable to contact authorities for help.⁵⁷

According to the ILO, over seventy per cent of working children are in agriculture – amounting to some 132 million girls and boys under the age of 15.⁵⁸ Although not all agricultural work undertaken by children is harmful to them, the fact that the agricultural sector is historically under-regulated means that children may lack proper training for the use of equipment and machinery, may be exposed to dangerous chemicals and pesticides, and may miss an opportunity for education.⁵⁹ Despite these health hazards, agricultural workers, including children, have little access to health care. In the US, for example, 9 out of 10 children in migrant and seasonal farm worker families lack health insurance.⁶⁰ Moreover, because child labour in agriculture is often invisible because children are assisting their parents with tasks or piecework, child labour is not recognized and not taken into consideration by policymakers.

53 Taran & Geronimi, op. cit., at p. 10.

54 Marc Paul, Association d'Assistance Scolaire Linguistique et Culturelle, *Chinese forced and bonded labour in France*, Paper presented at the 3rd Alliance against Trafficking in Persons Conference, Vienna, 7-8 November 2005.

55 *Like Machines in the Fields*, Oxfam America, March 2004, at p. 20; *Workers and Unions on the Move: Organising and defending migrant workers in agricultural and allied sectors*, IUF, May 2008, at p. 6.

56 Mary Bauer, *Close to Slavery: Guestworker Programs in the United States*, Southern Poverty Law Center, 2007, at p. 35; Inter-American Commission on Human Rights Annual Report 2004, Organization of American States, at para. 103.

57 See *Thai workers suffer exploitation and violence*, Kav LaOved, 13 February 2008; *Sexual assault of migrant workers in Israel*, Kav LaOved, 9 February 2007; available at www.kavlaoved.org.il.

58 *Global child labour trends*, ILO, 2006, at p. 17.

59 Hurst, op. cit., at pp.12-13.

60 *Migrant and Seasonal Farmworkers: Health Insurance Coverage and Access to Care*, Kaiser Commission on Medicaid and the Uninsured, April 2005.

2.4 Identifying Trafficking into Agriculture

Instances involving violence, physical restraint, and armed guards do exist in the agricultural sector. More often, however, agricultural workers are subject to more subtle forms of coercion and control. Their passports and identity documents may be confiscated by their employers, their wages withheld, and they may be warned not to complain or talk to others about working conditions. They may be effectively trapped by the remoteness of the working location and they may fear being reported to immigration authorities or to law enforcement. Much of this type of conduct constitutes abuse of power or abuse of a position of vulnerability, within the meaning of the UN Trafficking Protocol.

Case example 1: Polish tomato pickers in Puglia, Italy

Deceitful recruitment, debt bondage, armed guards at camp

In July 2006, a joint Italian Carabinieri-Polish Police operation raided five labour camps near Foggia, Orta Nova, and Ceriniola, freeing 113 workers and arresting the perpetrators, including recruiters, guards, organizers and camp managers. Investigation revealed that the workers had been recruited through advertisements in Polish newspapers and websites promising good wages for picking fruits and vegetables in Italy. In reality, they worked for little or no payment and were physically abused. They were housed in shacks without water or electricity. Armed men stood watch so that no one escaped. The investigation was opened after reports that 13 Poles who came to work in Puglia had disappeared. Officials believe they have been murdered. Prosecution of 19 traffickers is continuing.⁶¹

2.4.1 Common Scenarios in Trafficking Within the Agricultural Sector

First of all, perhaps the most typical form of mistreatment is nonpayment or underpayment of wages. Employers also regularly make illegal and excessive deductions for accommodation and/or transportation. Sometimes agricultural workers must purchase all their goods – food, safety equipment, protective clothing – on credit at the “company store”, thereby increasing their indebtedness.

Workers continue to work in the hope of receiving the pay owed them or because they are told they must work until they have paid off their debts.

This constitutes debt bondage, which the ILO recognizes as a form of forced labour and which is also prohibited by the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.⁶²

Case example 2: Greek workers on daffodil farm in Cornwall, UK

Poor living and working conditions, threats

Ethnic Romany workers from northern Greece were recruited by men who offered “work in England for € 50 a day with food and lodging.” Instead the 44 men were given a tent to sleep in, while the 10 women slept on the floor of a shed. There was no heating or plumbing. The workers were not paid and were given cans of dog food to eat. When the workers complained, the bosses threatened them. Recalled one worker, “They called me in and said, ‘Do you know what it means to be involved with the mafia?’ So I said ‘no’ and they showed me guns and told me no one was leaving.” After two weeks, one of the workers managed to make a call back home. Their rescue was arranged by a Romany rights organization in Greece, working with a Greek Orthodox priest in Cornwall. The

61 Sources: Maggiore Giuseppe Battaglia, Carabinieri General Headquarters, *Trafficking in human beings for labour exploitation*, OSCE High-Level Conference on Trafficking in Human Beings for Labour Exploitation, 2006 (presentation); Email dated 15 May 2008 from Monika Sokolowska, Polish Police; Fabrizio Gatti, *I was a slave in Puglia*, L'Espresso, 4 September 2006; U.S. Department Trafficking in Persons Report 2008.

62 Article 1(a) defines “debt bondage” as “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”

group was escorted to Heathrow Airport by police. "A police spokeswoman said none of the flower pickers had made a complaint and the gangmasters were not being investigated."⁶³

Second, workers may be physically restrained or their isolation and lack of transportation may amount to conditions of restraint. Although cases of physical restraint are relatively rare in the agricultural sector, workers may be warned to avoid leaving the camp or told that, if they are seen by the police, they will be arrested and deported. Workers may feel trapped because they do not know the geographical area and are unable to obtain transportation.

Case example 3: Jamaican tree-cutters in New Hampshire, USA

False promises, confiscation of passports, poor living and working conditions.

The owners of a tree-cutting business hired workers from Jamaica. They recruited them with false promises of good wages and accommodations. When the workers arrived, they found that they were paid much less than promised and were made to live in a dilapidated trailer with no electricity or running water, for which they were charged \$50 per week in rent. Their passports were confiscated by the employers, who also warned them about a worker who had previously run away. Although the men had access to bicycles and could travel throughout the area, the employers kept tracks on their whereabouts. When one worker was injured, he was denied medical care. They were told they could not leave until they had repaid \$1,000 in transportation costs. When one of the workers complained to a neighbor, he was physically assaulted by his employer. Eventually the police intervened and the employers were convicted of forced labor (18 U.S.C. 1589) and trafficking into servitude.⁶⁴

Third, employers may use actual violence or threats of violence, either to workers themselves or to third parties, to maintain compliance. Sometimes employers issue warnings in the form of stories about workers who ran away and were then captured and punished. These stories send the message that escape is impossible. Sometimes workers do not know they are being held until they actually try to leave. The Coalition of Immokalee Workers stated that workers do not realize they are trapped until they take a walk along the edge of a field and an overseer shows up with a gun and tells them to go back.⁶⁵

Case example 4: Mexican migrants in labor camp in South Carolina, USA

Debt bondage, isolation, threats of violence, beatings

Miguel Flores, a farm labor contractor, recruited irregular migrants from Mexico to work at his labor camps in rural South Carolina. The workers were told they had to work until they had paid off their smuggling fees, which were deducted from their pay. They were also warned that anyone who tried to flee the camps would be hunted down and killed. Flores and others brandished firearms. When one worker complained about camp conditions, Flores beat him. When another worker attempted to intervene, Flores struck him in the head with a pistol, causing severe injury. Flores was eventually brought to justice. He pled guilty to conspiracy and involuntary servitude counts and was sentenced to 180 months in prison⁶⁶.

Common Practices in Agricultural Exploitation

- Deceptive recruitment
- Underpayment
- Long working hours
- Excessive and illegal deductions
- Debt bondage
- No overtime pay
- No written work contracts and no pay slips
- Failure of employer to make insurance and tax payments
- Poor accommodation that is tied to the job
- Summary dismissal and immediate eviction for complaints
- Work permits that tie a worker to a specific employer

63 Source: Daniel Howden & Jason Bennetto, *Beaten, starved and denied wages: Greeks rescue victims of Britain's latest 'slave labour' scandal*, The Independent, 13 February 2004.

64 Source: *United States v. Bradley*, 390 F.3d 145 (1st Cir. 2004), vacated on unrelated grounds.

65 Telephone Conversation with Laura Germino, Coalition of Immokalee Workers, dated 25 August 2008.

66 Source: *US v. Flores*, 199 F.3d 1328 (4th Cir. (S.C.)).



2.4.2 Applying the International Definition

According to the UN Trafficking Protocol, forced labour is one type of exploitation. It is the end of a process. The various mechanisms that produce forced labour are listed as prohibited means – 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. Art. 3. A previous OSCE Background Paper thoroughly explored the definition of trafficking in the UN Trafficking Protocol and that analysis will not be repeated here.⁶⁷ Each of the "means" listed in the Trafficking Protocol can be found in cases of agricultural trafficking. The most common and perhaps the most problematic, however, is the use of "abuse of power or of a position of vulnerability." The Protocol's Travaux Préparatoires indicate that the phrase "abuse of a position of vulnerability" refers to "any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved." The CoE Explanatory Report on the Convention on Action against Trafficking in Human Beings adds: "The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim's administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce."⁶⁸

Researchers have described how the specific vulnerabilities of workers are exploited through behaviour that falls short of explicit threats, violence or restraint.⁶⁹ For example, a recent Anti-Slavery International report uses the term "multiple dependency" to describe situations where a worker depends on the employer or intermediary for one or more essentials such as work, housing, food and transportation.⁷⁰

In a situation of multiple dependencies, the employer or recruiter has tremendous power over the worker, and that power is easy to abuse.

*Very subtle forms of coercion, especially threats and intimidation, make the exploited person feel extremely insecure. Thus, they are easily manipulated and put under constant stress. Their dependence on the exploiter, actual or perceived, makes it easier to control them.*⁷¹

Dependency exacerbates vulnerabilities. A report on forced labour and migration in the UK found that "many migrants succumb to the exploitation because they believe they have no viable alternative."⁷² This description echoes the explanation of abuse of vulnerability found in the Travaux Préparatoires of the Trafficking Protocol.

67 Katy Thompson, *A Summary of Challenges Facing Legal Responses to Human Trafficking for Labour Exploitation in the OSCE Region*, OSCE, Occasional Paper Series No. 1, November 2006.

68 Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings, para. 83.

69 See, for example, *A global alliance*, ILO, 2005, at paras. 228, 230; Elena Tyuryukanova, *Forced labour in the Russian Federation today: Irregular migration and trafficking in human beings*, ILO, 2006, at pp. 12-14.

70 *Trafficking for Forced Labour in Europe: Report on a study in the UK, Ireland, the Czech Republic and Portugal*, Anti-Slavery International, November 2006, at pp. 15-16.

71 Klara Skrivankova, *Trafficking for forced labour: UK country report*, Anti-Slavery International, 2006, at p. 17.

72 Bridget Anderson & Ben Rogaly, *Forced Labour and Migration to the UK*, COMPAS, 2006, at p. 40.

Case example 5: Estonian man on a mushroom farm in Ireland

False promises, long hours, isolation, fear of deportation

Andrei was told by an employment agency in Estonia that he could get a good job in the construction industry in Ireland earning €400 per week. He paid the employment agency €800, supposedly to obtain a work permit. Upon arrival, he found that he had no work permit and that he would be working on a mushroom farm. He worked 15 hours a day, 7 days a week. He was paid €275 per week and he had to pay rent of €25 per week. The location was isolated, there was no public transport, and Andrei did not speak English. When he asked for a rest day or complained about the working conditions, the employer told him he could leave. Andrei was afraid of deportation so he continued working⁷³.

In the same vein, Professor Kim writes,

"In actuality, many human trafficking cases appear to fall somewhere between consent and coercion ... Thus, trafficked persons are often voluntary migrants who seek economic opportunity. Subsequent to arrival, the trafficked worker, legally disenfranchised and culturally alienated, is far more vulnerable to exploitation. Workers may receive compensation. They may even be free to run errands or move throughout their neighborhood. However, they may not have the freedom to leave their work situation through a mix of the employer's threatening conduct with the workers' own economic or social circumstances."⁷⁴

The above analysis suggests a new model of coercion, called "situational coercion", to describe the circumstances of a trafficked worker that render them vulnerable to exploitation.⁷⁵

In a 2008 report summarizing qualitative studies on forced labour and trafficking from ten European countries, the ILO examines coercive labour practices in mainstream economic sectors, including agriculture.⁷⁶ The report describes a continuum of abuse and explains that 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] of an ever narrowing labyrinth where the decision making power of the worker is surrendered in the end."⁷⁷

"This may not be slavery, but I felt like a slave."

In 2007 a Lithuanian journalist named Audrius Lelkaitis posed as a migrant worker for an undercover investigation. First he paid £180 for the promise of work with a gangmaster in the UK. Once he arrived in London, he paid another £160 to a middleman. At this point, he was out of cash and had to borrow money for food. He was taken to a farm in North Yorkshire, where he slept in a room with 11 other men and women. In total, 25 people shared three toilets and two showers. He worked for more than three weeks before he received any pay. For 120 hours of work, he received just £47 in cash. The rest had been deducted for his accommodation.

I felt miserable. If it had been for real, I am sure I would not have escaped some suicidal thoughts. I felt vulnerable. I had to plead for my work and for the money I had earned. This may not be slavery, but I felt like a slave."⁷⁸

The gangmaster for whom Audrius Lelkaitis worked was FocusStaff Ltd. Following the publication of the BBC report, FocusStaff lost its gangmaster licence.

73 Source: *No way forward, no going back: Identifying the problem of trafficking for forced labour in Ireland*, Migrant Rights Centre Ireland, Dublin City University, 2006, at 5.4.

74 Kathleen Kim, in *University of Toledo Law Review*, Vol. 38, Spring 2007, at p. 967.

75 Kathleen Kim, *The Coercion of Trafficked Workers*, Loyola-LA Legal Studies Paper No. 2008-19.

76 Beate Andrees, *Forced Labour and trafficking in Europe: how people are trapped in, live through and come out*, ILO, 2008 (hereafter *Forced labour and trafficking in Europe*).

77 Ibid. at p. 22.

78 Audrius Lelkaitis, *Joining the immigrant underclass*, BBC News, 25 April 2007.

Because it can be very hard to distinguish between violations of labour rights and trafficking, it is important for the public in general and police, workplace investigators, licensing authorities, and health care providers in particular to be alert to potential signs of trafficking. They should be familiar with common fact patterns and typical indicators. In the end, however, each determination of trafficking must be made on a case by case basis. Even where a given scenario does not rise to the level of a criminal violation, it may well involve multiple violations of labour law. Violations of labour law should be taken very seriously, both because individual rights are at stake and because such violations create the conditions for trafficking to flourish.

Potential Indicators of Trafficking in Agriculture

- Threats of violence or actual physical harm
 - Restriction of movement and confinement to the workplace
 - Debt bondage
 - Threats of deportation/removal from the country
 - Deception, fraud and deceit in recruitment
 - Abuse of vulnerability – such as withholding passport and identity documents; withholding wages; very poor living and working conditions; linking accommodation to work; punishment for complaints about working conditions.
-



Office of the Special Representative and
Co-ordinator for Combating Trafficking in Human Beings



Labour Exploitation in the Agricultural Sector

Challenges and Good Practices

3. Challenges and Good Practices

Trafficking is a complex phenomenon, inextricably linked to the processes of labour flows, globalization, and migration. In the agricultural sector, specific characteristics of agricultural work and the employment of migrant workers create or exacerbate worker vulnerability to exploitation. Trafficking for forced labour thus requires a complex set of responses. Standing alone, a criminal justice response – i.e., prosecution – would be insufficient. A comprehensive approach to trafficking requires co-ordination with other fields, namely human rights, labour law and migration.

To combat trafficking in the agricultural sector, we must recognize the specific set of obstacles faced by each group of relevant actors. Section 2.1 reviewed the barriers faced by agricultural workers in learning about and enforcing their rights. This section reviews the challenges facing government agencies, non-governmental organizations and trade unions.

3.1 Challenges Facing Government Agencies

Governments have responsibilities to protect workers and enforce workplace rights. Such rights are usually spelled out in domestic law. Furthermore, governments have a series of international obligations. Under the UN Trafficking Protocol, states are obliged to prosecute traffickers and to "consider" implementing provisions for victim support and services. Under the ILO Forced Labour Convention, states are required both to criminalize forced labour and to ensure that the penalties are "really adequate" and "strictly enforced". Under the European Convention on Human Rights and Fundamental Freedoms, states have a positive obligation to prosecute instances of slavery, forced labour, and servitude. Where appropriate, under the EU Council Directive on the Residence Permit issued to Third-Country Nationals who are Victims of Trafficking and the CoE Convention on Action against Trafficking in Human Beings, states are required to adopt measures necessary "to assist victims in their physical, psychological, and social recovery", such as providing for a recovery and reflection period. Despite this multitude of obligations, states have encountered repeated difficulties in actually identifying victims of labour trafficking, providing them with needed services and assistance, and prosecuting traffickers.

Failure to identify victims. Because of a constrained view of what constitutes trafficking, government actors often fail to recognize exploited workers as trafficking victims. Legal definitions of trafficking may fail to include labour trafficking. Media images perpetuate a stereotype of trafficking victims as women and girls engaged in the sex trade. Concern over "illegal immigration" fosters a view of irregular migrants as law-breakers rather than victims. For example, prior to the passage of a new law criminalizing labour trafficking in Germany, researchers reported that victims were "not perceived as trafficking victims but only as offenders against the Foreigners

"Instead of receiving merciful treatment as defendants who also are victims, the workers have been branded as the kind of predator who steals identities to empty bank accounts. . . . By treating illegal low-wage workers as a de facto criminal class, the government is trying to inflate the menace they pose to a level that justifies its rabid efforts to capture and punish them."

Source: *The 'Jungle' Again*, in The New York Times, 1 August 2008.



Act and the work permit law.⁷⁹ Similarly, Migrant Rights Centre Ireland states that victims of labour trafficking “are likely to be classified as undocumented economic migrants, and are in danger of being criminalized.”⁸⁰ During the summer of 2008, American immigration officials arrested hundreds of irregular migrants working at a slaughterhouse in Iowa. The workers, some of whom were minors as young as 13, reported dangerous, dirty working conditions, 17-hour shifts, unpaid overtime, and physical abuse from employers.⁸¹

Emphasizing the recruitment aspect of trafficking – i.e., concern over the manner in which a worker ended up in a forced labour situation – has the effect of de-emphasizing the actual exploitation experienced by the worker. Thus the EU Expert Group on Trafficking writes:

*Interpretations of the Trafficking Protocol that concentrate on the process of bringing a person into exploitation, rather than the final forced exploitation that they face, are in their nature flawed and limited ... From a human rights perspective, there is no reason to distinguish between forced labour and services involving ‘illegal migrants’, ‘smuggled persons’ or ‘victims of trafficking’.*⁸²

What complicates matters even more is that the workers themselves may not identify themselves as trafficking victims. Rather, often they see themselves as migrants whose journeys have gone horribly wrong. For most labour trafficking victims, they voluntarily entered the migration process. Only upon arrival did they find themselves in a forced labour situation. Yet states, because of their obligations to protect human rights and to prosecute trafficking, must make every effort to identify victims, even those who would never refer to themselves as such.

Mistreatment of victims. When exploited migrant workers are not recognized as trafficking victims, they may lose their work and residency permits or be arrested for violating immigration laws or deported. This is especially true if responsibility for detection and enforcement of trafficking lies with

“The vast majority of people who are trafficked are migrant workers. They are seeking to escape poverty and discrimination, improve their lives and send money back to their families. They hear about well-paying jobs abroad through family or friends or through ‘recruitment agencies’ and other individuals who offer to find them employment and make the travel arrangements. For most trafficked people it is only once they arrive in the country of destination that their real problems begin as the work they were promised does not exist and they are forced instead to work in jobs or conditions to which they did not agree.”

Mike Kaye, *The migration-trafficking nexus: combating trafficking through the protection of migrants’ human rights*, Anti-Slavery International, 2003, at p. 3.

79 Norbert Cyrus & Dita Vogel, *Social Working of Criminal Law on Trafficking and Smuggling in Human Beings in Germany*, in *Immigration and criminal law in the European Union: The legal measures and social consequences of criminal law in member states on trafficking and smuggling in human beings*, Martinus Nijhoff, 2006, at p. 6.

80 MRCI Press Release, 6 June 2008.

81 Julia Preston, *After Iowa Raid, Immigrants Fuel Labor Inquiries*, in *The New York Times*, 27 July 2008. In September 2008, state authorities filed charges alleging that plant operators had violated child labor laws. See *Child Labor Law Charges Filed Naming Agriprocessors Officials and Plant in Postville*, Press Release of the Office of the Attorney General, 9 September 2008.

82 *Report of the Expert Group on Trafficking in Human Beings*, European Commission, December 2004, at p. 53.

immigration rather than criminal justice agencies. Kav LaOved, an NGO for disadvantaged workers in Israel, has reported on several situations of exploited migrants who, despite having documented legal status, are arrested and threatened with deportation rather than given assistance. Even where a government recognizes migrants as victims, it may be reluctant to commit to a policy of not deporting them for fear of encouraging migration.

Lack of social service providers. Because almost all trafficking victims are far from home, they are in need of a vast array of social services and support – medical care, housing, transportation, interpreters, counselling, and legal advice. In most countries, however, very few services are intended for trafficking victims. Where such services exist, they usually are tailored to victims of trafficking for sexual exploitation. In the UK, for example, there is only one government-funded shelter for trafficking victims and it is only for women who have been trafficked into sexual exploitation. Similarly, in Israel the only shelter is restricted to victims of trafficking in the sex industry. Prosecutors in Italy emphasized the general shortage of accommodation facilities for male migrants.

Inability to enforce statutory workplace protections. In many countries, labour inspection is limited or nonexistent in the agricultural sector. The ILO reports that “only a small proportion of agricultural enterprises worldwide are legally covered by inspection of their working conditions . . . In practice, this proportion is even smaller, if not entirely non-existent”.⁸³ In Almeria, Spain, for example, there are six labour inspectors for the whole province.⁸⁴ Even where there are regular worksite visits, inspectors may not speak the right language to communicate with workers or workers may be given no opportunity to speak privately with the inspector.

Few prosecutions of labour traffickers. According to the U.S. Department of State, of 3,427 convictions for trafficking globally in 2007, only 326 were for labour cases.⁸⁵ In Germany, for example, there were 454 investigations into sex trafficking in 2007.⁸⁶ That same year, there were just 92 investigations into trafficking for economic exploitation. Similar disparities exist in the Netherlands and Belgium.⁸⁷ In addition, in a number of participating States, despite transposition of international legal instruments foreseeing trafficking for labour exploitation there has not been a single successful prosecution in this area. Prosecutions are difficult because they often require witness testimony and workers may be too fearful to co-operate with law enforcement, may be unable to identify their employers or provide sufficient evidence to establish criminal violations, or may simply be unavailable to testify because they have been deported.

Lack of co-ordination to enforce workers’ rights. Different government agencies are charged with enforcing labour laws, managing migration, and investigating and prosecuting criminal cases. There may also be a separate agency responsible for rural affairs or agriculture. A lack of co-ordination among these agencies may lead to inadequate protection of workers rights. For example, a UK parliamentary committee report found that there was no co-ordinated government response to the widely-publicized abuses associated with the gangmaster system. It found an inter-departmental initiative known as Operation Gangmaster to be inadequate, under-funded, and “little more than an umbrella term for a few local enforcement operations.”⁸⁸ In the Netherlands, the National Rapporteur found that it was especially difficult to detect signs of trafficking because “every (special) investigation service has a specific function and appropriate powers. The workplace checks by the AMF [labour market fraud] teams, for instance, are aimed at checking compliance by employers with the Aliens Employment Act. Inspectors do not generally ask questions about working hours, wages or accommodation.”⁸⁹

Even within the field of labour law, enforcement responsibilities may be divided. In the UK, there are separate enforcement bodies for enforcing the agricultural minimum wage, regulating employment agencies, licensing gangmasters, and enforcing health and safety standards. According to a Citizens Advice Bureau report,

83 *General Survey on Labour Inspection* ILO, 2006, para. 29.

84 *Ten Ways to Protect Undocumented Workers*, PICUM, 2005, at p. 92.

85 TIP Report 2008.

86 *Human Trafficking: National Situation Report* (Bundeskriminalamt 2007).

87 See the annual reports of the Belgian and Dutch National Rapporteurs, compiling statistics.

88 *Gangmasters: Fourteenth Report of Session 2002-2003*, House of Commons, Environment, Food and Rural Affairs Committee, September 2003, at pp. 16-17.

89 *Trafficking in Human Beings: Fifth Report of the National Rapporteur*, at p. 174.



coverage is not comprehensive. If the complaint does not relate to wages or if the complainant is not working for either a gangmaster or an employment agency, there is no statutory enforcement body with whom to file a complaint. Instead, the worker must raise a formal grievance with his or her employer and, if that fails, file a claim with an Employment Tribunal, a procedure that critics have described as overly complex, legalistic, and adversarial and for which there is no legal aid.⁹⁰ Recently there have been efforts within the UK to consolidate and co-ordinate labour rights enforcement machinery.

3.2 Challenges Facing Non-Governmental Organizations (NGOs) and Trade Unions

NGOs and trade unions clearly have a role to play in combating THB. They can conduct advocacy campaigns, assist with legal representation before employment tribunals, raise workers' awareness of their rights, lobby and organize for better working conditions, and provide needed services such as counselling, shelter, language classes, medical care, and job training and referrals. Trade unions, moreover, can use collective bargaining to achieve better standards for entire sectors. However, trade unions and NGOs also encounter specific obstacles.

Lack of access. Just as workers may be prevented from reaching services, NGOs and trade unions have difficulty travelling to remote workplaces. The dispersed nature of agricultural work means that reaching workers is costly and time-consuming.

Language barriers. NGOs and trade unions need to be able to communicate with workers in their own languages, and to use non-written forms of communication. For example, the Citizens Advice Bureau (UK) describes a sizeable increase in inquiries from Portuguese workers, significantly impacting "an already stretched service. In particular, it is quite difficult . . . to be able to find translators who are able to offer their services free of charge or at limited cost."⁹¹

Lack of resources. Victims of trafficking typically require shelter, medical care and psychological support, legal advice, financial assistance, and job training. NGOs and unions may not be equipped to provide the comprehensive services needed by victims. There are few lawyers who are willing to take cases on a pro bono basis, so access to employment tribunals or courts is effectively denied.

Limited understanding of labour trafficking. Many trafficking NGOs focus their work exclusively on trafficking for sexual exploitation. Even those who wish to work with labour trafficking victims may find themselves hampered by the lack of a clear definition of labour trafficking or the lack of a government programme to address labour trafficking victims.

90 *Rooting out the rogues: Why vulnerable workers and good employers need a 'fair employment commission'*, Citizens Advice Bureau, December 2007, at pp. 4-5.

91 Memorandum submitted by Citizens Advice, Select Committee on Environment, Food and Rural Affairs, UK Parliament, 25 April 2003 (Citizens Advice Memorandum).



Lack of co-ordination with other partners, inside and outside government. Some NGOs have reported that they did not know how to refer exploited workers for government services or that such services did not exist. For instance, in its submission to Parliament in 2003, Citizens Advice Bureau (UK) reported that government agencies such as Job Centres and Department for Work and Pensions telephone call centres failed to provide "information or services in languages other than English", increasing the strain on NGOs.⁹²

Difficulties in organizing seasonal workers and promoting awareness of rights. By definition, this class of workers is highly mobile and temporary, requiring a large investment of time for workers who may soon leave the country. Workers may fear being fired if they participate in union activity. For example, in Canada seasonal workers must bear the costs of their flight home if the farmer terminates the contract for "non-compliance, refusal to work, or any other sufficient reason". The cost of the flight home would be catastrophic for most workers. Besides language barriers, there may also be different interests and priorities for migrant workers and national workers.

Costs of membership. For workers at or below the poverty line, union or association fees may seem prohibitive. For workers who do not come from a country with a tradition of trade unionism or workers' organizations, the benefits of membership may seem too remote.

3.3 Good Practices

Despite the challenges reviewed above, a variety of governmental and non-governmental actors have found innovative ways of helping agricultural workers, both those who have been trafficked and those who are vulnerable to trafficking. Many good practice examples are contained in Annex 3. They are summarized briefly here.

NGO Outreach. A variety of NGOs throughout the OSCE region have developed innovative ways to reach out to agricultural workers and migrants. They have formed support groups, launched public awareness campaigns, and organized strikes or work stoppages. In some cases they have represented workers before employment tribunals or negotiated directly with employers to obtain better working conditions and higher pay.

Trade Union Organizing. In order to provide advice and assistance to agricultural workers and migrant workers, trade unions have opened information centres, published bilingual or multilingual booklets, and launched websites. In some cases unions have been established specifically for migrant workers or unions have entered into bilateral reciprocity agreements.

⁹² Citizens Advice Memorandum.

Enforcing Labour Laws. Labour law enforcement has been improved with the passage of new labour laws, better co-ordination among different enforcement agencies or combining enforcement authorities into one agency, and deciding to enforce laws without regard to whether a worker is regular or irregular. In some countries, police and labour inspectors regularly undertake joint inspections of workplaces.

Litigating on behalf of agricultural workers. NGOs and trade unions in a number of OSCE participating States are using courts, employment tribunals, and international forums to advocate for workers rights. Key court victories including winning the right to unionize and striking down provisions of a law that prevented irregular migrants from joining unions. Trade unions and workers' rights organizations have also been instrumental in using employment tribunals to obtain orders of compensation and payback.

Protecting and Assisting Victims. A number of OSCE participating States have adopted legislation allowing trafficking victims to remain in the country, either on a short-term or long-term basis. The Netherlands and Belgium provide for both an initial reflection period and a longer-term residency period conditional on co-operation with law enforcement authorities. These residence permits are linked to a variety of assistance measures and support services. In Italy, trafficked persons who are not Italian nationals have a right to temporary residency under Article 18 of Legislative Decree No. 286/1998. Granting of the Article 18 permit is not tied to a willingness to file a formal complaint against the trafficker. Rather, it is conditional on an obligation to participate in a social assistance and reintegration programme. In the United States of America, individuals who are recognized by the government as a victim of a severe form of THB are granted deferral of removal (known as "continued presence", which is a temporary staying permit). If they co-operate with reasonable requests for assistance from law enforcement, they are granted a three-year renewable visa termed a T visa. At the end of that period, they may apply for permanent resident status.

Prosecuting Traffickers. A number of countries, including Belgium, the Netherlands, Ireland, and the United States, have enacted legislation criminalizing forced labour and/or labour trafficking. Other countries, such as Italy, have relied on older provisions prohibiting slavery. There have been some recent successes involving agricultural trafficking cases. Please see below two examples of successful cases.

Romanian Fruit Pickers in Belgium

A farmer recruited two Romanian brothers to work as fruit pickers in 2000.⁹³ They were housed in a caravan on the farm. For several years, they worked 10 to 14 hours per day, except Sunday, and were only paid on an irregular basis. For the final three years, they were hardly paid at all, receiving only 50 euros each week. They repeatedly asked the farmer for their wages, and he responded that he would pay them later. One day, after the workers had asked one more time for their money and were asleep in their caravan, the farmer set the caravan on fire. He was arrested and convicted of human trafficking in aggravating circumstances, as well as arson. The Gent trial court observed that the accused had abused the vulnerable situation of the workers because they were present illegally in Belgium, that he had put them to work illegally, and that he had housed them in a manner contrary to human dignity. The court also stressed that the fact that the workers had offered themselves for the work did not excuse their abuse. Aggravated circumstances were established by the fact that the victims did not have any real choice other than to submit to the abuse. They continued to work because the accused had promised to pay them the wages that they were owed by him, and which they would not have obtained if they had left his employment. The farmer was sentenced to one year in prison and ordered to pay 30,000 euros in damages.

During the investigation and prosecution of the case, the workers were housed in the Payoke shelter. They received short-term residency as victims of trafficking and later they were given permanent residency in Belgium. The Centre Pour L'egalite des Chances et La Lutte contre Le Racisme was a civil party in the case.

93 *La Traite et le Trafic des Etres Humains: Rapport 2007, Centre Pour L'egalite des Chances et la Lutte Contre le Racisme, at pp. 110-111.*

Mexican Migrant Workers in the United States

In the summer of 2001, a licensed farm labor contractor sent her son on a trip to the US-Mexico border to recruit irregular migrants as workers.⁹⁴ At a motel in Arizona, the son purchased a group of 11 Mexican men and boys, some as young as 15, from a coyote. He transported them in a small van, driving night and day across 12 states, to his mother's work camp in a rural part of New York State. The workers were housed in a single room, in an old house with no functioning toilet or shower. They were told that they owed the boss money for the trip from Arizona, as well as for rent, food, and daily transport to the fields. They were repeatedly threatened and warned not to leave the farm or to talk to anyone. They were not paid and they were barely fed. Eventually a group managed to escape at night, running through the fields and woods to a nearby town. There they found help from a rural workers' NGO, who referred them to law enforcement agents. The farm labor contractor and other members of her family were charged with labor trafficking as well as document fraud and violations of statutes protecting migrant farm workers. The Mexican workers were given temporary stay status and were represented by a lawyer from the NGO Workers' Rights Law Center of New York. The farm labor contractor pled guilty and was sentenced to 5 years in prison and ordered to pay compensation to the workers for their unpaid wages. In addition, the Workers' Rights Law Center and Farm Worker Legal Services have filed a civil lawsuit on behalf of the workers. Since the conclusion of the case, the workers have all received T visas and some of them have brought their family members to live in the United States.

94 *Six Indicted in Conspiracy for Trafficking and Holding Migrant Workers in Conditions of Forced Labor in Western New York*, U.S. Department of Justice Press Release, 19 June 2002; Case Updates, Anti-Trafficking News Bulletin, U.S. Department of Justice, August 2005.



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Labour Exploitation in the Agricultural Sector

Conclusion

4. Conclusion

General characteristics of agriculture and recent trends of globalization and migration have combined to make agricultural workers especially vulnerable to exploitation and trafficking. A trafficked agricultural worker is both a crime victim and a worker. In many cases, he or she is also an irregular migrant. Combating trafficking in the agricultural sector will require not just identifying and prosecuting criminal cases, but also enforcing workers' rights generally, regardless of migration or employment status. The tools exist – in the form of both international legal standards and examples of effective practice – to launch a comprehensive campaign against trafficking for labour exploitation in the agricultural sector. Participating States should, however, be willing to devote resources and attention to the machinery of labour rights enforcement (inspectors, tribunals, administrative channels) as well as to educating employers, workers, and labour recruiters about these rights. Emphasizing labour rights should help participating States address structural causes, reduce worker vulnerability, and prevent situations from developing into trafficking cases.

Based on the issues highlighted in this paper and the work done by the OSR on this theme, one can restate the recommendation that *"national policies and programmes should take into account all the different manifestations of trafficking and participating States are recommended to develop responses which cater for the differences in the nature of vulnerabilities of different groups to trafficking; the use of different types of coercive and prohibited means to achieve control over victims; the wide range of exploitative circumstances to which people are subjected and the varying needs victims have due to variations in age, gender, or type of exploitation etc. Dealing effectively and comprehensively with this degree of complexity is a challenge so governments' responses to trafficking in human beings should build on interdisciplinary knowledge and expertise"*.⁹⁵

95 OSR 2007 Report *A Platform for Action*.



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Annexes and List of Acronyms

ANNEX 1:

Case Studies of Agricultural Trafficking

Uzbek workers held in captivity in the Russian Federation

Passports confiscated, not paid, confined to workplace, sexually abused

In June 2008, Russian police freed 49 irregular migrants from Uzbekistan. They said they had been recruited several months earlier and brought to Russia to work sorting onions in a village outside Moscow. Their passports were confiscated, they were never paid, and they were fined for breaking workplace rules. Some of the women reported being sexually abused and none of them were allowed to leave the area. One of the workers escaped and notified police, who quickly launched a raid.

Source: Vera Volodina, Russia: Uzbek Slave Labourers Freed Outside of Moscow, RFE/RL website, 12 June 2008.

Uzbek brothers in vineyard in Kazakhstan

Unpaid labour, confiscation of identity documents, no written contract

"Arkin" came to Kazakhstan from Uzbekistan with his brother in search of work. They found jobs working in a vineyard for a farmer on the basis of an oral contract. When the job finished after six months the farmer refused to pay the brothers the money they were owed or return the documents he had taken from them. After mediation, the documents were eventually returned and the salaries were paid. The farmer was also fined for violating the laws of Kazakhstan.

Source: Khadicha Aбыsheva, PA President of Kazakhstan Centre for Women's Initiative Sana Sezim.

Polish workers in chicken processing plant in Devon, UK

False promises, poor living conditions, illegal deductions from pay

A group of Polish workers were recruited to work in the UK with promises of being paid the minimum wage, £4.25 per hour, good accommodation at a cost of £25 per week, and lots of overtime. Instead, ten of them were housed in a small house with no furniture, where they slept on the floor. Their pay slips showed deductions of £40 per week for rent. They were recruited by one company, housed by another one, and their pay slips were generated by still a third company. They had no idea who their boss was or who to complain to.

"Despite their right to work in the UK, they have remained trapped because they are dependent on their gangmasters not just for access to work but also for accommodation and transport to their jobs which are often in remote places at unsocial hours."

Source: Felicity Lawrence, Polish workers lost in a strange land find work in UK does not pay, The Guardian, 11 January 2005.

Lithuanian man in dairy near Beja, Portugal

Debt bondage

A Lithuanian working on a dairy in the parish of Cabeça Gorda was paid in food by his employer. The employer artificially inflated the price of the food, so that no matter how much the Lithuanian worked, he was always in debt. Occasionally he would be given small amounts of money to buy cigarettes or alcohol, on which he had become dependent. When the case reached a labour tribunal, it ruled that he should receive £2,500 from his employer. An out of court settlement was reached.

Source: Sonia Pereira & Joao Vasconcelos, *Human Trafficking and Forced Labour: Case Studies and Responses from Portugal*, ILO, 2008, at pp. 52-53.

Romanian workers in slaughterhouse in Germany

Deceitful recruitment, poor living and working conditions, confiscation of passport, physical violence

Romanian workers were legally recruited to work in a slaughterhouse and were promised a monthly wage of 1,200 euros for a one-year period. Instead they were paid 900 euros per month, working 10-14 hours per day with almost no breaks. The employer took illegal deductions from their pay for accommodation and the use of tools. One butcher had his passport confiscated. When the workers went on strike, the labour contractor threatened to evict them and send them back to Romania. When the workers refused, a manager assaulted some of the workers, breaking one man's leg. The Romanian workers sought assistance from a trade union, which reported the case to a local law enforcement agency.

Source: *Trafficking for Labour and Sexual Exploitation in Germany*, ILO, 2005, at p. 29-30.

Homeless U.S. nationals recruited to work in migrant labor camps in Florida

Debt bondage, paying wages in drugs and alcohol

Ronald Evans and his wife and son operated labor camps for seasonal agricultural workers. They recruited homeless men, usually alcoholics and drug addicts, from the streets and homeless shelters of cities across the Southeast. They charged the men \$50 per week for room and board and put them to work in the fields. At the end of each day, the Evans family gave the workers the opportunity to purchase beer, cigarettes, and crack cocaine from the "company store" they operated at the camp. These purchases were then deducted from the weekly pay. The workers became permanently indebted to the Evans family. Ronald Evans was convicted at trial on charges of running a criminal enterprise that distributed crack cocaine. He was sentenced to 30 years' imprisonment. His wife and son pled guilty and received lesser sentences.

Source: *Florida labor camp owner sentenced on federal charges*, Office of the United States Attorney for the Middle District of Florida Press Release, 26 January 2007.

Migrant worker on Macuba Ranch, Brazil

Debt bondage, remote location, armed supervisor

"Jose Silva" worked with 46 other men to clear a tract of jungle in the remote and densely forested Amazon region. He had been promised \$3 to \$4 per day, but money was deducted for his transportation to the ranch, his daily meal, and even his hammock and working tools. The workers let the

field boss keep track of their debts, which he converted into the days of labor that they owed him. The field boss supervised them with a loaded .38 revolver. Silva worked seven days a week and was fed one meal a day. When he finally fled, after two years, he owed more than 260 days of work. He walked four days to the nearest town, where he found help from a church.

Source: Hall, Kevin G., *Slavery Exists Out of Sight in Brazil*, in *Knight Ridder Newspapers*, 24 September 2004.

Lithuanian woman on a mushroom farm in Ireland

Poor working and living conditions, no work contract, no overtime pay, unpaid labour at other farms

"Anna" and eight other women worked picking mushrooms on a farm. She had no written work contract, she had no idea that there was a minimum wage, she did not know if her employer was making tax and social security contributions, and she was never paid for her overtime work or periods when her employer "lent" her to other farms. She and the other workers lived in a mobile home on the farm, which was also used as the canteen, toilet, smoking area, and changing room for all the workers. They were each charged €45 per week for accommodation. The mobile home had no heating and sometimes it had no electricity or hot water. The door was broken and could not be locked. Anna was on call for work at any time of day or night. Her employer told her that if she wanted to complain, she could leave. "As far as I was concerned we were slaves at his farm with no feelings allowed."

Source: *Harvesting Justice: Mushroom Workers Call for Change*, Migrant Rights Centre Ireland, November 2006, at p. 20.

Uzbek workers exploited in Kazakhstan

Poor working and living conditions, isolation and threats prevent any escape, no payment during the entire period

"Davron" came to Kazakhstan from Uzbekistan in May 2007. He was brought by "Salim" who promised him 300-400,000 Soms a month for picking cotton along with 100 other men. "Salim" took the men to the Makhtaaralshi region where they were put to work. The living conditions and the food were awful but the workers were kept from leaving by blackmail and threats. The pay was taken by "Salim" and during the entire period "Davron" received nothing. Eventually "Davron" turned to the Organised Crime Unit of the Department of the Interior of Southern Kazakhstan and they rescued him. As a result, "Davron" was given psychological counseling, his documents were returned to him and he went home safely. The employer escaped any responsibility.

Source: Khadicha Abysheva PA President of Kazakhstan Centre for Women's Initiative Sana Sezim.

ANNEX 2:

Examples of Seasonal Agricultural Worker Programmes

Austria – Harvest Helper Programme

Established in May 2000, the programme admits up to 7,000 seasonal workers for up to six weeks of work. In 2004, 5,300 seasonal workers and another 1,400 harvest helpers were employed in the agricultural and forestry sector.

Canada – Seasonal Agricultural Worker Program

Begun over 40 years ago, SAWP operates on the basis of agreements between Canada and Mexico and some Caribbean countries. In 2006, 7,806 Mexican and 7,770 Caribbean workers came to work in Canada. Farmers must certify a labour need and efforts to hire Canadian agricultural workers. Foreign workers are provided free accommodations and farmers must ensure that they are covered by workers' compensation and health insurance.

France – Bilateral Agreements for Seasonal Work Contracts

France has signed bilateral agreements for seasonal workers with Poland, Tunisia and Morocco. Under the work contracts, workers are admitted for a maximum of 6 or, in the case of certain agricultural activities, 8 months. Terms of employment, minimum pay and housing must meet French standards. Complaints may be filed with the local labour department. Moroccan and Tunisian nationals must sign a document agreeing to return to their countries when their work contracts expire and agreeing to appear at a French Consular Services in Casablanca or Tunis to record their return. In 2005, there were 16,000 seasonal workers, half of whom were from Poland. The National Agency for Welcoming Foreigners and for Migration (ANAEM) is responsible for paying the travel expenses and organizing the arrival of seasonal workers who come from these countries.

Germany – Seasonal Foreign Workers Programme

Under bilateral agreements signed with Poland, Romania, Hungary, Slovakia, Czech Republic, Croatia, Slovenia, and Bulgaria, workers are admitted for up to 3 months to work in agriculture and other labour-shortage sectors. The majority of them are Polish agricultural workers. In 2006, there were 270,000 Polish workers on farms in Germany.

Spain – Circular Migration Projects

Spain has signed agreements for temporary worker programmes with a variety of countries, including Colombia, Morocco, Ecuador, and Romania. Circular migration refers to a system whereby persons residing in third countries come to the EU temporarily on the condition that, at the end of the period, they must re-establish residence in their country of origin. In order to return legally to Spain the following year, the guest worker must report to a Spanish consulate in his or her country of origin. Cartaya, a city in the strawberry-growing province of Huelva, has developed a circular migration programme with Morocco, helped by €1.2 million from the EU. Some 5,500 Moroccan women worked as strawberry pickers during the 2007 season. In January 2007 IOM began implementing a circular migration project for agricultural workers between Catalonia (Spain) and Colombia, using the agricultural employers' organization Pagesos Solidaris.

United Kingdom – Seasonal Agricultural Workers Scheme (SAWS)

SAWS began in the 1940s to allow farmers and growers in the UK to recruit foreign workers for short-term agricultural work. The quota for 2008 is 16,250 workers and it is reserved exclusively for citizens of Bulgaria and Romania. Participants are allowed to work in the UK for up to 6 months. The programme is administered by one of 9 operators who are responsible for recruiting workers and monitoring working and living conditions. Workers are guaranteed the agricultural minimum wage and are provided housing, although deductions may be made for rent. Workers are not provided medical insurance but are given emergency medical care.

United States – H-2A Visa

Agricultural employers must certify a need for labor that cannot be filled by a U.S. citizen. H-2A workers are legally entitled to receive at least ¾ of the total hours promised in the contract; receive free housing in good condition; receive either free meals or cooking facilities; receive workers' compensation for job-related injuries; be reimbursed the cost of travel from the worker's home to the job; be protected by the same health and safety regulations as other workers; be eligible for federally funded legal services for matters related to their employment; and, if the worker stays for the duration of the contract, the employer must pay transportation home. In 2007, 76,818 H-2A workers were admitted to the country.

ANNEX 3:

Examples of Good Practice

NGO Outreach

- In 2006 Migrant Rights Centre Ireland (MRCI) began a support group for mushroom workers and launched a public awareness campaign about the exploitative working conditions for migrant workers in the mushroom industry. MRCI published "Harvesting Justice – Mushroom Workers Call for Change" and supported the establishment of an Agricultural Workers Association. In 2007, the Agricultural Workers Association recovered over €250,000 in judgments and settlements for approximately 100 workers on 20 different farms across Ireland. See www.mrci.ie.
- Platform for International Co-operation on Undocumented Migrants (PICUM) promotes the rights of undocumented workers in Europe. Key PICUM publications are "Ten Ways to Protect Undocumented Migrant Workers", "Access to Health Care for Undocumented Migrants", and "Undocumented Migrant Workers Have Rights! An Overview of the International Human Rights Framework." See www.picum.org.
- CODETRAS, an alliance of trade unions and NGOs in Bouches-du-Rhone, France, has reached out to seasonal agricultural workers and represented them in actions for workers' compensation and residence permits. It has also launched information and public awareness campaigns about the rights of seasonal workers. See www.codetras.org.
- The Coalition of Immokalee Workers is a community-based worker organization in Southwest Florida. Through work stoppages and strikes, CIW has won improvements in wages and working conditions for agricultural workers. For example, in 1998 it won industry-wide raises of 13-25% for tomato pickers. In 2001, CIW organized a boycott of several fast-food chains and their parent companies that eventually led to agreements for better pay and working conditions for farm workers. See www.ciw-online.org.
- ORCA in Belgium publishes a guide to rights for undocumented workers in Arabic, Turkish, Romania, Bulgarian, Polish, and Portuguese. See www.orcasite.be.

Trade Union Organizing

- In Spain, the Trade Union Confederation of Workers' Commissions (CCOO) set up Information Centres for Immigrant Workers (CITE). The first CITEs were set up in 1986 in Catalonia (Spain) and there are now more than 200 such centres operating across the country. They provide legal advice, vocational and language training, and act as liaisons with sectoral trade unions. Migrants do not have to be union members or in regular status to use CITE.
- Sindicato de Obreros del Campo (SOC) has opened offices in the greenhouse zone in Almeria, Spain. SOC provides information and assistance to the migrant workers. "The migrants do not perceive the SOC as a support or humanitarian association, but as their own organization."⁹⁶
- In May 2008, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) published a manual for trade unionists entitled, "Workers and Unions on the Move: Organising and defending migrant workers in agriculture and allied sectors". The manual is a comprehensive guide to what trade unions can do to stop the abuse and exploitation of migrant workers. See www.ituc-csi.org/IMG/pdf/IUF_migration.pdf.

96 *Project of SOC Almeria, European Civic Forum, May 2005.*

- In September 2004, the German union IG BAU announced the formation of a European Migrant Workers Union to provide migrant workers with legal assistance and advice. Since its inception, the European Migrant Workers Union has mediated between workers and employers to recover unpaid wages, and sued employers in labour court. See www.emwu.org.
- The German trade union IG BAU and the Polish trade union ZZPR jointly publish a bilingual booklet for Polish seasonal workers in German agriculture. The booklet contains information on the legal obligations of employers, the rights of workers, and how trade unions can help resolve conflicts.
- In France, the Confédération Française Démocratique du Travail (CFDT) ran a mobile advice service during the summer of 2008. The CFDT "bus des saisonniers" made 33 stops along a route through the farming regions of France, starting in Paris and ending in Briançon. The purpose was to meet seasonal farm workers in their places of work. The union activists informed workers of their rights and distributed the *Guide des saisonniers*. They also distributed to vacationers a bracelet inscribed with the phrase, "Je suis solidaire avec les saisonniers." See www.cfdt.fr.
- In the UK, the Trades Union Congress has taken a series of steps aimed at improving the lives of migrant workers. The TUC lobbied for the passage of the new gangmaster legislation. In 2007, it launched a Polish language website, run in partnership with citizens Advice Bureau and Solidarnosc. See www.pracawbrytani.org. The TUC has also published a leaflet on health and safety information for workers that is available in 20 languages.
- In June 2008 UFCW Canada successfully organized migrant seasonal farm workers at Mayfair Farms in Manitoba when they voted to ratify a three-year union contract. This was the first-ever contract covering migrant agricultural workers in Canada.⁹⁷
- UFCW Canada operates eight Migrant Agricultural Worker Support Centres across the country. In 2008 it began distributing a pocket reference card as well as an informational brochure – "¿Dónde puede encontrar ayuda?" – detailing the services available. The Mexican government agreed to include these in orientation kits prepared for all seasonal workers. UFCW Canada also publishes an annual report entitled "The Status of Migrant Farm Workers in Canada", available in English and Spanish. In 2006, UFCW Canada successfully waged a campaign to extend health and safety coverage to Ontario farm workers who had previously been excluded from the province's Occupational Health and Safety Act. See www.ufcw.ca.
- In Sweden, the Municipal Workers' Union (Kommunal) produced a brochure for temporary agricultural workers arriving in Sweden. It is available in six languages. Kommunal's collective bargaining agreements automatically include all migrant workers.
- Although farm workers in the US are excluded from the collective bargaining and freedom of association rights of the National Labour Relations Act, the AFL-CIO established a Farm Labour Organizing Committee (FLOC) which has successfully organized Mexican farm workers and won important concessions from growers. For example, FLOC and the North Carolina Growers Association signed labour contracts covering 7,000 guest workers and 800 growers. The contracts provided for faster grievance procedures, the elimination of recruitment fees, and more assistance in filing worker compensation claims.
- The United Federation of Danish Workers (3F) is helping seasonal workers from Eastern European countries. 3F joined forces with the Union of Agri-Industrial Workers of Ukraine (AWUU) to publish an informational brochure aimed at Ukrainian agricultural workers who have come to Denmark. Members of AWUU who go to work in Denmark automatically become members of 3F for the duration of their placement.

⁹⁷ Ratification of UFCW Canada first-contract at Manitoba farm historic breakthrough for migrant workers, available at www.ufcw.ca.

Enforcing Labour Laws

- In the UK, the Gangmasters Licensing Authority (GLA) is responsible for enforcing the licensing system for gangmasters. More than 50 gangmasters have had their licenses revoked since the GLA was established.
- Also in the UK, in response to repeated calls for better harmonization of labour enforcement, a new Fair Employment Enforcement Board was created in August 2008. The purpose of the Board, which is to be chaired by the Employment Relations Minister, is to co-ordinate work done by five separate enforcement bodies.
- In the US, the Department of Labor enforces two laws containing core protections for workers – the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act – without regard to whether a worker is in regular or irregular status. See DOL Fact Sheet # 48: Application of U.S. Labor Laws to Immigrant Workers: Effect of Hoffman Plastics decision on laws enforced by the Wage and Hour Division (November 2007), available at www.dol.gov/esa/whd/regs/compliance/whdfs48.pdf.
- In Ireland, a statutory employment rights compliance office, the national Employment Rights Authority (NERA), was established in February 2007. NERA unites the labour inspectorate, the employment rights information unit, and the prosecution and enforcements unit. The Employment Law Compliance Bill, which was published on 18 March 2008, stiffens penalties for violations of labour laws, strengthens NERA's enforcement powers, and increases the number of labour inspectors. See www.employmentrights.ie.
- Beyond the OSCE region, in Brazil, the Mobile Inspection Group was established in 1995 to investigate slavery and forced labour on remote plantations. Each team is made up of Ministry of Labour inspectors and Federal Police agents. They have the authority to free workers and order the payment of wages and fines. They can also refer cases to labour court for violations of labour laws. Between 1995 and mid-July 2005, some 25,000 workers freed by mobile inspection teams, mostly in regions of the eastern Amazon. Their success depends on federal centralization of inspections and secrecy. The work is risky. In January 2004, three inspectors and their driver were ambushed and killed.

Litigating on Behalf of Agricultural Workers

- In the United States of America, the partially government-funded legal aid organization, Legal Services Corporation, is explicitly permitted to provide pro bono representation to migrant agricultural workers. This may explain why an unusually high number of civil trafficking lawsuits are filed by farm workers, as opposed to workers in other economic sectors. "[D]ue in part to this history of funding, there now exist well-established service and outreach programs for migrant farm workers around the country and a strong network of attorneys working on behalf of these farm workers. This network of lawyers and advocates performs extensive outreach, seeking out farm workers in order to identify labor trafficking victims and assisting them in obtaining benefits and filing lawsuits."⁹⁸
- Kav LaOved and the Hotline for Migrant Workers brought litigation challenging the "Binding Arrangement" – the work permit system that ties workers to particular employers. Kav LaOved successfully won an order from High Court of Justice ruling that the Binding Arrangement infringed basic rights.
- In Denmark, the United Federation of Danish Workers (3F) actively advocates on behalf of migrants, in some cases winning large settlements for underpaid workers. In one case, seven Poles working for a cucumber grower on the island of Fonen were not being paid overtime, even though they were working 52 hours per week. As a result of 3F's intervention, the grower paid the Polish workers Kr. 432,000 in overtime and public holiday allowances.

98 Jennifer S. Nam, *The Case of the Missing Case: Examining the Civil Right of Action for Human Trafficking Victims* in *Columbia Law Review*, Vol. 107, November 2007, at p. 1680.

- UFCW Canada has been engaged in ongoing litigation concerning the freedom of association and collective bargaining rights of agricultural workers. When the authorities in the Province of Ontario banned agricultural workers from joining unions, UFCW Canada took the provincial government to court. In the case of *Dunmore v. Ontario (Attorney General)*, 20 December 2001, the Supreme Court held the denial of the right to unionize was a violation of the right of association protected by the Canadian Charter of Rights and Freedoms. The Ontario government responded by passing legislation that gave agricultural workers the right to join unions but no collective bargaining rights. The constitutional challenge to that law is now pending before the Supreme Court.
 - The Migrant Farmworker Justice Project (US) represents farm workers in Florida. In a series of lawsuits, the MFJP has won victories for underpaid and mistreated workers. In one case alleging massive violations of labour laws, the defendant farmers argued that they were not responsible because they were not the actual employers. Rather, the "employer" was the farm labour contractor. The appellate court held that the farmers and the farm labour contractor were "joint employers" and thus both liable. Because federal law prohibits federally funded Legal Services lawyers from handling class actions lawsuits, the Migrant Farmworker Justice Project is separately funded by the Florida Bar Association.
 - CODETRAS (Collectif de defense des travailleurs saisonniers) assists seasonal farm workers in Bouches-du-Rhone through advocacy, public awareness campaigns, and litigation. In the case of a farm worker from Morocco who had worked on a seasonal basis for 23 years in France and yet been denied a residence permit, CODETRAS appealed to the Administrative Tribunal of Marseille and won.
 - In the United States of America, trafficking victims can file a civil cause of action against traffickers under the Trafficking Victims Protection Reauthorization Act (TVPPRA) and obtain compensation. With the help of legal aid organizations, agricultural workers in Colorado, North Carolina, and Connecticut have filed lawsuits under the TVPPRA.
 - The Southern Poverty Law Center's Immigrant Justice Project launched a program titled Esperanza aimed at ending gender discrimination and sexual harassment of migrant women. Five Haitian women working at a tomato packinghouse in Florida won a sexual harassment lawsuit against their employer. The women, represented by Esperanza and the U.S. Equal Employment Opportunity Commission, received US\$215,000 to settle claims of repeated sexual touching, comments, and requests for sex in the workplace. See www.splcenter.org/legal/ijp.jsp.
 - The General Union of Workers of Spain (UGT) filed a complaint with the Committee on Freedom of Association – a supervisory body of the ILO – against the Government of Spain alleging that Basic Act No. 8/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration violated the freedom of association rights of irregular foreign workers. The Committee held that the legislation was not in conformity with Article 2 of the Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No. 87). The Convention "recognizes the right of workers, without distinction whatsoever, to establish and join organizations of their own choosing". The Constitutional Court of Spain recently declared portions of the Act unconstitutional.⁹⁹
 - Represented by International Rights Advocates, an American NGO, workers on a rubber tree plantation in Liberia sued Bridgestone Corporation in 2005, alleging forced labour and other human rights violations. The plaintiffs argued that the daily quota rate forced families to make their children work just to earn subsistence wages. In June 2007, the court denied Bridgestone's motion to dismiss and allowed the case to go to trial on the forced labour claims of the child plaintiffs. See <http://www.iradvocates.org/bfcase.html>.

Prosecuting Traffickers

- In 2005, Belgium enacted a broad anti-trafficking provision. Article 433 of the Penal Code defines trafficking to include employing or enabling the person to be employed "in circumstances that are contrary to human dignity." Consent is irrelevant. Abusing a worker's vulnerability constitutes an aggravating circumstance but is not an element of the underlying offense. Belgian prosecutors explained: "The concept of trafficking in the area of labour exploitation is thus very extensive and is defined by its aim, i.e. exploitation through employment under conditions contrary to human dignity".¹⁰⁰ Investigations are conducted by specialized units of police and/or labour inspection services. For example, in the case of *Public Ministry v. Yonel and Boussam*, the court found that the defendants had employed a worker in circumstances contrary to human dignity when they failed to pay him and gave him only scraps of leftover food. Because the worker was not a legal resident and had a wife and three children, he had no other real and acceptable choice than to submit to this abuse." The lead defendant was sentenced to 14 months in prison and paid a 5,000 euro fine.¹⁰¹
- In Belgium, every judicial district has a labour auditor, which is an independent public prosecutor's office specializing in labour law including labour trafficking. Cases are generally detected by specialized labour inspectors during routine checks or following complaints from individuals or trade unions. The inspectors send trafficking cases directly to the labour prosecutor, who also works closely with the police. For example, in the criminal court of Liege, 16 labour trafficking convictions have been handed down since 2000, all referred by the labour prosecutor.
- In Italy, a specialized labour police unit was formed by the Carabinieri Labour Protection Command. Its members are trained to qualify as labour inspectors as well as officers of the judiciary police. In 2005, the Command conducted more than 24,500 inspections. 188 people were arrested for crimes linked to labour exploitation of irregular migrants.
- In the Netherlands, The Social Intelligence and Investigation Service (SIOD), established in 2002, has 300 criminal investigators that focus on misuse of social legislation, employment of irregular migrants, and benefit and contribution fraud.
- In Italy, the government has charged 19 defendants in a case resulting from its 2006 raids on tomato farms in Puglia. The prosecution is pending.
- In Ireland, the definition of trafficking in the Criminal Law (Human Trafficking) Act 2008 includes "labour exploitation", which is defined to include forced labour, enslavement and servitude.

100 Presentation by Freddy Gazan & Frederic Kurz at the 3rd Alliance Against Trafficking in Persons Conference, OSCE, November 2005.

101 *Public Ministry v. Yonel and Boussam*, No. 69.98.954/06, Penal Court of Verviers, 15 January 2007.

List of Acronyms

AFL-CIO	<i>American Federation of Labor and Congress of Industrial Organizations</i>
ANAEM	<i>National Agency for Welcoming Foreigners and for Migration</i>
AWUU	<i>Agri-Industrial Workers of Ukraine</i>
BBC	<i>British Broadcasting Corporation</i>
CCOO	<i>Confederación Sindical de Comisiones de Obreras (Trade Union Confederation of Workers' Commissions, Spain)</i>
CEACR	<i>Committee of Experts on the Application of Convention and Recommendations</i>
CFDT	<i>Confédération Française Démocratique du Travail</i>
CGT	<i>Confederación General de Trabajo (General Confederation of Labour)</i>
CITE	<i>Information Centres for Immigrant Workers</i>
CODETRAS	<i>Collectif de defense des travailleurs saisonniers</i>
CoE	<i>Council of Europe</i>
EC	<i>European Commission</i>
ECtHR	<i>European Court of Human Rights</i>
EU	<i>European Union</i>
EMWU	<i>European Migrant Workers Union</i>
FLOC	<i>Farm Labor Organizing Committee, AFL-CIO</i>
GLA	<i>Gangmasters Licensing Authority</i>
IG BAU	<i>IG Bauen-Agrar-Umwelt</i>
ILO	<i>International Labour Organization</i>
ITUC	<i>International Trade Union Confederation</i>
IUF	<i>International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations</i>
MRCI	<i>Migrant Rights Centre Ireland</i>
MWC	<i>International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families</i>
NERA	<i>National Employment Rights Authority</i>
OECD	<i>Organisation for Economic Co-operation and Development</i>
ORCA	<i>Organisation for Undocumented Workers, Belgium</i>
OSCE	<i>Organization for Security and Co-operation in Europe</i>
PICUM	<i>Platform for International Co-operation on Undocumented Migrants</i>
SOC	<i>Sindicato de Obreros del Campo, Andalucia</i>
TUC	<i>Trades Union Congress, United Kingdom</i>
UFCW	<i>United Food and Commercial Workers International Union</i>
UGT	<i>Union General de Trabajadores (General Union of Workers, Spain)</i>
UN	<i>United Nations</i>
UN ODC	<i>United Nations Office on Drugs and Crime</i>
UN OHCHR	<i>United Nations Office of the High Commissioner for Human Rights</i>
ZZPR	<i>Zwizek Zawodowy Pracowników Rolnictwa w Rzeczypospolitej Polskiej (Polish trade union representing employees in agriculture)</i>
3F	<i>United Federation of Danish Workers</i>



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Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings

Wallnerstr. 6, 1010 Vienna, Austria

Tel: +43 1 51436 6921

Fax: +43 1 51436 6299

email: info-cthb@osce.org

www.osce.org/cthb