

## Forced labour, migration and trafficking

*Trafficking can be a human rights abuse, a security concern, and a societal failure. When the trafficking is for labour exploitation, it also represents a severe violation of labour rights, a labour market failure, and a failure of employment systems and services and of migration management. The ILO and its social partners need to be key players in anti-trafficking strategies.*

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In December 2000 the United Nations adopted, together with the UN Convention against Transnational Organized Crime, its so-called “Palermo Protocols” on smuggling and on trafficking in persons. The second of these instruments, to give its full title, is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Since then, there has been an extraordinary growth of conferences, declarations and other initiatives on human trafficking, in all parts of the world. It is recognized as a rampant social evil and, in the words of the ILO report *Stopping forced labour*, as the “underside of globalization”.<sup>1</sup> Organized crime is known to be heavily involved in human trafficking, perhaps mainly but by no means only for the purposes of sexual exploitation. EUROPOL’s deputy director recently observed that organized criminal networks are increasingly becoming involved with the facilitation of illegal immigration, as it is a highly profitable business, earning up to 12 billion euros worldwide every year, with currently little risk of detection or conviction.<sup>2</sup>

Small wonder that human trafficking and smuggling are seen as major security concerns for a continent like Europe, and treated together with arms and drug

smuggling as major issues of cross-border crime. At the same time human rights advocates are insisting that greater attention be given to the needs of trafficked persons as victims, requiring compensation and rehabilitation, rather than immediate deportation to their countries of origin. Trafficked persons cannot be dealt with in the same manner as the agents of trafficking, when they are themselves the victims of coercive treatment and human rights abuse.

### Migration and trafficking: the issues

The labour aspects of human trafficking pose a particular challenge for Europe. There are justified concerns to curb irregular migration, an issue that has risen to the top of the political agenda in recent months. On the other hand, if migratory flows are to become more orderly, it is imperative that demand as well as supply-side issues are comprehensively understood. Consensus is also needed among social actors, as to minimum conditions of employment and social guarantees. The European Union (EU) itself has referred to a “worrying trend in industrial countries to use cheap and undeclared labour forces, as well as exploiting women

and children in prostitution and pornography". If demand for certain kinds of labour in diverse sectors of the economy is not matched by available labour supply, either nationally or regionally in Europe or through orderly migration, then there is a real risk that the bottlenecks may create the preconditions for a further rise in trafficking within Europe itself. The incidence of forced labour and slavery-like conditions, whether in the sex sector or in other sectors of the informal and shadow economy, needs to be tackled comprehensively by all European governments and other social actors at their roots.

### Trafficking for labour exploitation: A new concern

In most countries media attention is still on "sex slavery", the appalling conditions to which trafficked young women and even children can be exposed in the brothels, massage parlours and other sex outlets in the world's major cities. The victims can be physically abused and threatened, deprived of physical freedom, and tricked out of their wages through a web of coercion and deception. These are flagrant cases of human rights abuse, which must be stopped and the trafficking agents duly punished. Integrated programmes of awareness-raising, prevention, victim protection and law enforcement are required to eradicate comprehensively this modern slavery. Many public policy measures are now addressing these concerns in both origin and destination countries, some with a particular focus on children. Many international agencies are now addressing these problems, including the anti-trafficking projects of the ILO's International Programme on the Elimination of Child Labour (IPEC).

Recently however, there has been more awareness of the gravity of trafficking for labour exploitation, meaning the forced labour and coercive conditions to which trafficked persons can be exposed in destination countries (definitions will be covered in the following section). In its July

2002 Framework Decision on Trafficking, the EU's Council of Ministers refers to the distinct concerns of trafficking for sexual and labour exploitation respectively. The EU's Justice and Home Affairs Department observes in a September 2002 publication that, while recent attention was drawn to women and children, "Developments have, however, highlighted the need also to address the issue of trafficking in human beings for the purpose of labour exploitation".<sup>3</sup> Similar concerns are reflected in the 2002 *Trafficking in Persons Report* of the US Government, which reviews the gravity of the problems across the globe. In its words, "Women, children and men are trafficked into the international sex trade for the purposes of prostitution, sex tourism and other commercial sexual services and into forced labour situations in sweatshops, constructions and agricultural settings." US officials acknowledge that they gave less attention to the forced labour concerns in their initial reports, but now see them as a global problem warranting more rigorous investigation.

### Trafficking in persons: How is it defined?

The Palermo Protocols to the UN Convention against Transnational Organized Crime distinguish between the concepts of trafficking and smuggling. *Trafficking in persons* shall mean "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receipt of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation". *Exploitation* shall include "at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

The legal definition thus places emphasis on force, coercion and deception as

distinguishing features. This is what in international law sets trafficking apart from smuggling where (although money may change hands), the relationship between the smuggled person and the smuggling agent is seen as a voluntary one, arguably mutually beneficial. As many commentators have since suggested, the distinctions may be difficult to apply in practical situations on the ground. Deception and coercion can occur at any stage of the irregular migration cycle, though most likely at the end point. In the case of women trafficked for sexual exploitation, the ambiguities may be less. Debates may continue, as to the extent to which young women enter into the sex trade on a voluntary basis. But the existence of coercion and violence, physical restriction and debt-bondage, particularly in places of transit and destination, has in many cases been widely documented. Modern “sex slavery” is an unfortunate reality, and Western societies and governments are being shamed into addressing the problems.

In the case of trafficked children, the situation is unambiguous. Article 3 of the Palermo Protocol on Trafficking makes it quite explicit that the issue of consent is irrelevant. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons”, whether or not force, coercion and deception are involved.

In the case of labour exploitation of migrant workers, the issues are more complex. Available evidence shows that many irregular migrant workers, imported into a destination country through networks of clandestine intermediaries, are subjected to forced labour conditions. This can be sweatshop labour, through physical restrictions on freedom of movement. There have been well-documented cases of systematic contraband and sale of agricultural migrant workers, such as the trafficking of Haitians for sale in the Dominican Republic sugar industry. In most cases, however, the coercion is likely to be less overt and more subtle, involving induced indebtedness, confiscation of papers, late payment

of wages, and the ever-present threat of denunciation to the authorities followed by deportation.

There can be no justification for such conditions of work. Any form of labour exploitation involving forced labour and debt bondage is morally unacceptable, and a clear infringement of national and international labour standards. However, for the reasons given above, there is a serious risk that such conditions will survive and increase, unless there is firmer political will by both governments and civil society groups in the main destination countries to come to grips with these problems. The current restrictive state policies on migration, at variance with market realities, are partly to blame for the rising numbers of persons willing to take the risk of being trafficked. The wage differentials can be so great that the probable returns to the risks involved can become an attractive proposition.

#### **Trafficking for labour exploitation: What do we know?**

At the moment there is little systematic evidence, and even less in the way of detailed case studies. The information is coming in dribs and drabs, from a number of countries of Central, Eastern and Western Europe, from Israel and other parts of the Middle East, from Russia, Turkey, Asian countries and even the United States. Yet what is known is highly disturbing. It suggests that an informal and abusive labour market is operating in Western Europe and other industrial countries, with rather limited political will at present to control or eradicate it. The abuses can occur in the context of chronic domestic labour shortages for certain seasonal tasks, for example in the United Kingdom’s agricultural and horticultural industries where the National Union of Farmers estimates an annual labour shortage of up to 50,000 people. Concerning the extent of trafficking for labour exploitation, either in Europe or elsewhere, there are very little hard data available. In part it may be because – unlike trafficking for the purposes of sexual

exploitation – this has not caught the spotlight. There are very few NGOs involved, labour unions have not given priority to the issue, and there appears to be very little political will to probe into the recruitment and employment conditions of irregular migrant workers. Furthermore, there are no reliable data on child trafficking.

Moreover, there seems to be considerable uncertainty as to whether trafficking (for purposes of either sexual or labour exploitation) affects significant numbers of men, as well as women and children. Some recent reports have given much attention to the trafficking of male victims, even observing that adult males are the *primary* victims of trafficking in certain regions.

Basically, despite the best efforts of the drafters of the Palermo Trafficking and Smuggling Protocols to draw clear distinctions between the categories of trafficked persons and smuggled migrants, in many practical cases these distinctions are far from apparent. In principle, we have seen, what sets trafficking apart from smuggling is the element of force, coercion and deception at some stage of the process, rather than the voluntary nature of the transaction for smuggled males. In practice, however, the distinctions can become blurred on the ground. The point is strongly emphasized in a recent report by UNICEF, the Office of the UN High Commissioner on Human Rights (UNHCR) and the Organisation for Security and Cooperation in Europe/Office for the Democratic Institutions and Human Rights (OSCE/ODIHR) on trafficking in south-eastern Europe.<sup>4</sup> Even without considering the situation of males, this points to considerable movement and overlap between the two categories in the case of women and children. Data collection across countries may not rely on a uniform concept or definition of trafficking. It may embrace such issues as the number or situation of illegal female migrants, the number of girls deported to their country of origin, the number of women and girls assisted in returning to their country of origin, and the number of smuggled women trying to cross a border without valid documents.

Recent ILO research has addressed the gender dimensions of trafficking from the Republic of Moldova.<sup>5</sup> A survey of 136 female trafficked victims returning to an International Organization of Migration (IOM) shelter in Chisinau revealed a picture somewhat similar to that in other countries of south-eastern Europe. The female victims were mainly uneducated women in their early to late twenties, the vast majority of whom had migrated in search of work, though claiming not to have anticipated sex-related activities. They had expected to find work in domestic service, child or adult care, or as waitresses. Yet this study also reviewed the experiences of men. Interviewees told of young rural and urban men being transported to employers in countries including Germany, Greece and Italy, particularly in construction work. They were obliged to repay their travel debts, and upon completion of their assigned work were threatened with deportation and dismissed without payment. Cases were identified where these migrant workers had been sold to employers. In such cases men had been deliberately placed in forced labour situations, and were coerced into buying freedom from their employer. When they were known to have fled such situations, many were pursued for debt repayment.

But coming to grips with the broader dimensions of trafficking for labour exploitation will now require a particularly strong effort. Despite the consensus that this is a real and perhaps growing problem, often linked to the curbs against migration, there is no real understanding as to what are the elements of a *trafficked situation* in sectors such as agriculture, construction and services. The latest report on trafficking by the US Department of State certainly refers to a large number of such cases in different countries and regions, but without entering into great detail. In Belgium, for example, Chinese victims are often young men destined for manual labour in restaurants and sweatshops. Canada is seen as a destination and transit point to the United States for women, children and men trafficked for purposes of sexual exploitation,

labour and the drug trade. The victims originate primarily in China, South-East Asia, Eastern Europe and Russia. France is seen as a destination country mainly for trafficked women, though there are also reports of Chinese and Colombian men trafficked into bonded or forced labour. Hungary is listed mainly as a transit country for trafficking victims, and to a lesser extent as a source and destination country. Men trafficked through Hungary for forced labour in European countries come from Afghanistan, Bangladesh, Iraq and Pakistan.

In the United Kingdom attention has been focused on the so-called “gangmaster” system for recruiting seasonal labour in agriculture. Gangmasters place advertisements for the migrant workers, mainly of East European origin, in the local press of their home towns. Workers from the Baltic States, who do not require visas, enter the country quite easily. From other countries such as Belarus, Russia and Ukraine, high prices are paid by the aspirant workers for visas and travel documents, the trafficking syndicates assisting with these services and also providing loans at high interest rates. Arriving in the UK by a complex route, sometimes through Russia and Greece, the workers are met by an agent who demands a further high fee for putting them in contact with a gangmaster.

The gangmasters appear to be a growing phenomenon in labour recruitment. Many of the agencies are not registered. And their deceptive practices, such as frequent changes of their names and addresses, have placed severe obstacles in the way of adequate supervision by the authorities. Trade union researchers have documented a number of abuses in methods of pay and working conditions. Payslips do not give the real names of the workers, or details of hours worked and deductions. Gangmasters can deduct rent, transport costs, interest on loans and other items. Workers can also be fined, if they are seen as not working hard enough. An intergovernmental working party, “Operation Gangmaster”, was set up several years ago to address the problems. But the Rural, Agricultural and Allied Work-

ers Union, which has done much to document the abuses, insists that progress has been piecemeal. It is now actively campaigning for a register of all such recruitment agencies. Early in 2002 the issue was taken up by the Ethical Trading Initiative, which brought together the main actors in seminars on seasonal and foreign labour in the UK food industry. A working party has now been set up, to explore with the Government the licensing and registration of suppliers of contact labour, and to realize the provision of a system of identifying good practice.

### **ILO activities: Role of the special action programme to combat forced labour**

Until quite recently, the ILO had conducted limited research or operational activities on any aspect of forced labour, including trafficking. The problems were dealt with mainly under the supervisory bodies for the application of ILO standards, in particular the two forced labour Conventions, No. 29 of 1930 and No. 105 of 1957. The Committee of Experts had addressed some comments to individual member States. And at its 71st Session in 2000 it formulated a general observation on *trafficking in persons* under the Forced Labour Convention, 1930 (No. 29). This pointed to the growing awareness of present-day trafficking in all countries, both developing and industrialized, but regretted that the magnitude of the problems had found little reflection in government reports “in particular as regards industrialized market economy countries, which are choice destinations of the trafficking in persons”. Of other ILO branches, only IPEC, the International Programme on the Elimination of Child Labour, had developed specific programmes and projects against trafficking, with a natural emphasis on child trafficking, though to some extent also covering young people in awareness-raising and prevention programmes.

The adoption in 1998 of the Declaration on Fundamental Principles and Rights at

Work and its Follow-up – and the subsequent Governing Body decision in November 2001 to create under the Declaration a Special Programme of Action to Combat Forced Labour (SAP-FL) – has held out important prospects for an intensification of ILO activities in this area.

Under the Declaration, every member State accepts as a condition of its ILO membership to safeguard and promote four sets of basic principles and labour rights, including the abolition of all forms of forced and compulsory labour. And under the follow-up procedures, there is a Global Report every year on each of these four principles in turn. In 2001, the ILO Director-General issued his first Global Report on forced labour. This alerted ILO constituents to the gravity of contemporary forms of forced labour including trafficking.

The new programme became operational in February this year. It has a mandate to give more comprehensiveness, visibility and coherence to the ILO's activities to combat forced labour including trafficking, working in close collaboration with other regional or global bodies active in this field. It aims essentially to address the problems through technical cooperation, and is the first time in the ILO's long history that a programme has been created to combat forced labour through promotional means.

During its first months, the SAP-FL has given much attention to human trafficking, with an initial focus on Europe. A challenge has been to devise and put in place a coherent strategy, which draws on all the ILO's particular expertise. The strategy identifies the ways in which, beyond its evident forced labour and child labour dimensions, trafficking can also be addressed from the perspective of labour market failure, and future programmes can focus on the strengthening of different labour market institutions as well as on preventive measures at the place of origin. The strategy has identified Europe as an initial priority for programme activities for several reasons. First, because there are signs of growing interest from the European Union and European governments in

addressing trafficking for both labour and sexual exploitation; and because the debates on trafficking in human beings have recently taken on a higher profile, fuelled by the growth of irregular and clandestine migration in the aftermath of the break-up of the Soviet Union and the Balkans conflict. Second, because the ILO's experience with labour market analysis can be of particular use at the present time, when the imbalances between growing demand for cheap labour and the migration bottlenecks are potentially creating the preconditions for trafficked forced labour. Third because, with its unique tripartite structure, the ILO is well equipped to build social consensus around some of the difficult policy issues linked to labour trafficking. Examples are how to monitor the activities of contracting intermediaries in both origin and destination countries, with the involvement of the ILO's social partners; or how to find the appropriate balance between the promotion of private employment agencies in the interests of greater labour market efficiency, and adequate supervision of such agencies to ensure that they do not collude with criminal and trafficking activities.

Following intensive discussions with other agencies including the European Union and the Stability Pact for South-Eastern Europe, SAP-FL has now embarked on more specific operational programmes. It recently launched a programme to address supply factors in several countries of south-eastern Europe, and also Ukraine. As of June 2002, a research and advocacy initiative was commenced in close collaboration with the IPEC initiative in the same region, covering Albania, Republic of Moldova, Romania and Ukraine. The research aims to provide a better understanding of the nature and dynamics of trafficking at various stages of the cycle, including the forced labour outcomes of the irregular cross-border movement of workers. The research is also examining the labour market conditions that precipitate the demand for irregular workers, the means by which trafficked persons are recruited through irregular labour institutions, and

the manner in which state authorities and civil society organizations intermediate in this process.

All of this has prepared the ground for a more comprehensive programme, covering origin as well as destination countries in central and south-eastern Europe. A comprehensive project has now been prepared, aiming to contribute to the eradication of trafficking and forced labour, from major countries of origin in the Balkans and eastern Europe. Root causes of trafficking will be addressed through a range of prevention measures, including demonstration projects aimed at providing alternative forms of livelihood for people at risk of trafficking in their places of origin. The programme will also pay attention to migration management and job placement systems in countries of origin and transit, seeking to implement more professional placement systems, and also increasing the capacity of labour inspectorates to supervise their operations, monitor irregular practices and, together with ILO constituents and other partners, seek sanctions against those responsible for criminal practices.

Importantly, the SAP-FL programme is also giving attention to research and awareness-raising in destination countries of Europe, again with a particular emphasis on trafficking for labour exploitation and forced labour outcomes. Countless policy declarations on trafficking have recently drawn attention to the need for this, addressing demand as well as supply factors, and calling for integrated programmes of awareness-raising, prevention, protection and law enforcement across the trafficking cycle in origin, transit and destination countries. This calls in the first instance for a rigorous research programme, tracing the patterns of recruitment and contracting and the intermediaries involved, payment and deduction systems, and the reasons why recourse may be had to forced labour and coercive recruitment practices in different economic sectors.

This aspect of the programme is only just getting under way at the time of writing. A start has been made with a pilot study in France. Contact has been made

with national trade unions and Global Union Federations (GUFs, formerly known as international trade secretariats) to seek their involvement in research and awareness-raising. A consultative meeting has been planned for early 2003 to compare experiences and research methodologies. Similar activities will be planned at a later stage with concerned employers' organizations in Europe and elsewhere.

Fortunately, with the growing awareness of trafficking for forced labour, these concerns are being shared by other international agencies which expect the ILO to take some lead in this area. Demand aspects of trafficking, and also its economic dimensions, are being given priority by the OSCE under its new Dutch presidency. The OSCE's ODIHR has been working closely with the programme, preparing a major meeting on trafficking in human beings, migration and the unprotected labour market in Europe.

### Challenges ahead

Building consensus on these issues may be a difficult process. Throughout the world, there is limited public sympathy towards vulnerable migrant workers. Trade unions themselves have rarely been important actors, reaching out to informal sector and migrant workers, and seeking new forms of organization. But no worker and no ILO constituent can afford to ignore the emergence of new forms of forced labour and coercion, which threaten to grow under present economic and social conditions. If the channels for legal migration are further closed, at the same time as labour demand grows and some employers seek to obtain cheap labour by any available means, then the prospects are grim. It is imperative to manage labour migration in such a way that contracting systems are more closely regulated and supervised, and coercive recruitment and employment methods are definitively eradicated. The problems should not be exaggerated, but their existence cannot be ignored or swept under the carpet. Just over ten years ago the ILO em-

barked on its global campaign against child labour which caught the world's attention and has already done much to eliminate the worst forms of child labour. It is time for a similar approach on contemporary forms of forced labour and trafficking, with workers' organizations in all countries giving the problems the attention they deserve.

## Notes

<sup>1</sup> ILO: *Stopping forced labour*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva, 2001.

<sup>2</sup> W. Bruggeman: *Illegal immigration and trafficking in human beings seen as a security problem for Europe*, Statement to EU/IOM STOP Conference on Trafficking, Brussels, 18-20 September 2002.

<sup>3</sup> European Commission: *Trafficking in human beings: The European response*, Background document prepared for the EU/IOM STOP Conference on Trafficking, Brussels, Directorate-General, Justice and Home Affairs, September 2002.

<sup>4</sup> UNICEF, UNOHCHR, OSCE/ODIHR: *Trafficking in human beings in southeastern Europe*, June 2002.

<sup>5</sup> Shivaun Scanlan: *Report on trafficking from Moldova: Irregular labour markets and restrictive migration policies in Western Europe*, Geneva, ILO, forthcoming 2002.