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Special issue:

Forced labour and child exploitation: Challenges, Perspective, and Social Context

Guest Editors:

Zbigniew Lasocik (University of Warsaw, Poland),
John Winterdyk (Mount Royal University, Canada),
Marcel Van der Watt (University of the Free State, South Africa)

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ARCHIWUM KRYMINOLOGII

Archives of Criminology

Zbigniew Lasocik ■

Is research on forced labour at an ‘early stage’? Introduction to the special issue

Czy badania nad pracą przymusową są rzeczywiście na „wczesnym etapie”? Wprowadzenie do numeru tematycznego

Abstract: Writing about the progress in the fight against forced labor, the UN Special Rapporteur on Trafficking in Human Beings Maria Grazia Giammarinaro in 2020 said that were still at an “early stage”. It may be surprising if we take into account that International Convention on this issue was adopted over 80 years ago. Forced labor has two basic components: the labor exploitation and migration – both of them socially distressing. But from the point of view of the public life, the most painful is the juxtaposition of two figures: 40,000,000, i.e. estimation of the global number of victims of various forms of enslavement, and 100,000 – this is more or less the number of victims identified yearly by law enforcement agencies around the world. Even so, many countries still do not have any policies to combat forced labor but the interest of politicians is weakened by the needs of economic development. Finally, this non optimistic picture is combined with relatively low level of awareness of many social groups and the prevailing false belief that the real problem is the sexual exploitation of women and children. These were the reasons why we considered the publication of a Special Issue of the Archives of Criminology as necessary. The articles in this volume offer a number of interesting reflections and bring many innovative ideas.

Keywords: forced labour, number of victims, exploitation, public awareness, innovative ideas

Abstrakt: Pisząc o postępach w walce z pracą przymusową Specjalny Sprawozdawca ONZ ds. handlu ludźmi Maria Grazia Giammarinaro w roku 2020 użyła określenia, że ciągle jeszcze jesteśmy na wczesnym etapie. To może dziwić, skoro konwencja dotycząca tej kwestii liczy sobie ponad 80 lat. Praca przymusowa to w istocie dwa zjawiska: eksploatacja cudzego trudu i migracja – obydwa społecznie dolegliwe. Ale z punktu widzenia praktyki życia publicznego najbardziej frustrujące jest jednak zestawienie dwóch liczb: 40.000.000, czyli globalna liczba ofiar różnych form zniewolenia i 100.000, mniej więcej tyle ofiar identyfikują rocznie organy ścigania na całym świecie. Mimo to,

wiele krajów nadal nie ma żadnej polityki zwalczania pracy przymusowej, a zainteresowanie polityków jest osłabiane potrzebami rozwoju lokalnej gospodarki. Na ten mało optymistyczny obraz nakłada się relatywnie niski poziom świadomości wielu grup społecznych i dominujące przekonanie, że prawdziwym problemem jest eksploatacja seksualna kobiet i dzieci. Oto powody dla, których wydanie specjalnego tomu Archiwum Kryminologii uznaliśmy za zadanie aktualne i potrzebne. Zamieszczone tu artykuły zawierają szereg interesujących refleksji i przynoszą wiele nowatorskich pomysłów.

Słowa kluczowe: praca przymusowa, liczba ofiar, eksploatacja, świadomość społeczna, innowacyjne pomysły

In July 2020, the UN Special Rapporteur on trafficking in persons presented a report to the Human Rights Council summarising her term. During her presentation, Maria Grazia Giammarinaro said that ‘results have been achieved, especially in the field of sexual exploitation, and especially in countries in which good cooperation with civil society organisations has been established. However, the fight against trafficking for labour exploitation is still in an early stage’ (Fight 2020). In the same statement, the UN expert said that ‘exploitation is becoming a systemic component of economies worldwide’ (Fight 2020). Both of these concise statements are very serious, and taken together they must be treated as an important challenge for anyone who is not indifferent to the shape of our civilisation.

The term ‘early stage’ may be surprising if we take into account that the definition of forced labour was formulated as early as 1930 (FLC 1930). After that there were several important ILO conventions regarding this problem (International n.d.); decades later forced labour was featured in several key international documents. These include the Palermo Protocol (Trafficking Protocol), which was adopted in 2000 and specified the role of forced labour in the definition of human trafficking (Protocol to Prevent 2000). One year later, the European Commission noticed the increasing problem of forced labour, referring to the phenomenon of slavery (labour exploitation in conditions akin to slavery; Trafficking in Women 2001), and finally, in 2002, the International Labour Organization published a report in which it stated that in a way, focussing on sexual exploitation diminishes the significance of the problem of forced labour and its social consequences (Forced Labour 2002). A few more years then passed, whilst the problem of forced labour appeared more frequently in public debate in Europe and around the world, for example, in the 2014 Protocol to the ILO Convention (Protocol 2014). So, why it is an ‘early stage’?

When inviting potential authors to participate in the Special Issue of the *Archives of Criminology*, we wrote

forced labour is recognised as one of the most difficult social and political challenges of the contemporary world. It can take the form of labour imposed by state Authorities, and exploitation occurring in the private

sector. The ILO estimates that almost 90 per cent of forced labour today occurs in the latter situation. [...] Nearly half of the victims of forced labour (around 10 million) migrated before their exploitation, both internally and across borders.

These are only some examples of statements on forced labour that go unquestioned because they have been backed up by numerous studies and analyses (Ending 2018; Globallslaveryindex.org 2018). However, our knowledge on forced labour still has serious gaps (Winterdyk, Jones 2019: 5), and we do not know the actual scale of this phenomenon (Lasocik 2012). This is why we are willing to use estimates prepared by international institutions and NGOs (Global Estimates 2017; Globallslaveryindex.org 2018). We have only begun doing this recently, because there were no data on the topic even in the early 2000s (Profits 2014: 5).¹

In criminology, the practice of estimating the scope of unknown criminal behaviour has been around for a long time. To this end, the 'dark figure' of crime is used; this is the estimated number of committed crimes that are never reported to law enforcement authorities. In the case of modern slavery, things are completely different, because it is not the number of crimes that are estimated, but the number of victims of slavery and exploitation. This is mainly because in modern slavery, the main category is not the crime, but its victim – including classification as a victim of a human rights violation. On the other hand, a characteristic of forced labour is the fact that the number of victims is often significant, and so the recording of a single act has little cognitive value. Estimating the number of victims, on the other hand, is quite useful (Błachut, Gaberle, Krajewski 1999: 227).

In recent years, attempts have been made to establish the actual number of victims at the global,² regional (Trafficking in humans 2014; Data collection 2018), and national levels (Handel ludźmi 2018). In the light of the data published in the latest reports of the US Department of State, this number does not exceed 100,000 people annually around the world; in Europe, it has remained steady at approximately 10,000. If we compare these values with the estimates, which show that there are approximately 40 million victims of slavery around the world, it is clear how ineffective the systems for victim identification are. This comparison also allows us to notice a known, but interesting regularity. The estimates show a clear prevalence of the number of victims of forced labour over the number of victims of sexual exploitation (Globallslaveryindex.org 2018), while this proportion is reversed in the data on the actual number of victims (Trafficking in human 2014: 29; TIP Report 2019: 38). Some data regarding Poland also confirm this rule (Handel

¹ It could also be noted that the Department of State's annual Trafficking in Persons Report (TIP Report) did not provide any dedicated data until 2007, see: <https://www.state.gov/trafficking-in-persons-report> [18.07.2020].

² The main source of data is mentioned the Trafficking in Persons Report [TIP Report] published by the US Department of State; it collates data on the number of victims identified around the world.

ludźmi 2018: 33). In other words, based on the estimates, we would determine that the predominant phenomenon is forced labour, whilst based on the process data we would say that it is sexual exploitation. Despite it being an important issue, it is usually just noted without any deeper commentary, even though, for example, the latest UN Global Report is devoted to the problem of data (Global Report 2018).

This observation gives rise to two crucial questions. Firstly, which of these pictures tells us more about the reality? Is it the one based on estimates, or the one built on actual data? The answer is important, because if our estimates are incorrect, it will lead us to incorrectly state that there are more victims of forced labour. However, if we identify more cases of sexual exploitation because it is, quite simply, easier to do, we will also distort reality.

Secondly, which of these pictures of reality should set the most-urgent tasks of state authorities, law enforcement agencies, and civil society? Should forced labour be the focus because there is likely more of it, or should we give priority to sexual exploitation because it is clearly dominant in the actual data?

Adequate answers to the important questions presented above should be preceded by a thorough reflection on the subject, numerous empirical studies, meetings of experts, and publications which offer an opportunity to exchange information and opinions. This was the purpose behind this Special Issue. Our intention was to publish specially prepared papers which, going beyond the typical thoughts about international standards and definitions, could make us well-acquainted with the issue of forced labour as a social problem, affecting specific people in specific places. In our belief, such knowledge – relying on facts and empirical evidence – is essential for the quality of a scientific debate as it sets it in the reality, which has been, for a number of years, overlooked.

However, this knowledge, as mentioned before, may also have a clearly practical value, for example, when the formation of state policy with respect to forced labour is concerned. This is a serious problem, due to the fact that many countries simply do not have such policy, and if they do, it is merely ostensible or illegible.³ It often happens that there is a policy for eliminating human trafficking which refers to forced labour only in a certain scope. However, in many cases the assumptions of such policy rely on knowledge about sexual exploitation or the experiences of law enforcement agencies in combating the phenomenon (Brysk 2011). It is difficult to consider such a state of affairs to be proper. I have noted with great satisfaction that this theme transpires in several papers published in this volume.

Another aspect of the practical dimension of answering these questions is the actual engagement of public institutions (police or social) in identifying forced labour cases, efficiently eliminating this phenomenon, and effectively preventing it. As mentioned above, modern countries have not recorded any spectacular successes in any of these areas, because the estimated number of forced labour

³ Numerous arguments confirming it are presented in my study published in this volume: Z. Lasocik. Forced labour - well-hidden mechanisms of dependence and enslavement.

victims still remains high. The authors of the texts included in this publication discuss the difficulties encountered at all stages of fighting against forced labour. However, they unanimously agree that an efficient fight starts by identifying forced labour victims – and this still remains a significant problem. Another difficulty, as Ricard-Guay and Hanley claimed, is that 'labour trafficking is still often off the radar of law enforcement' (2019: 292).⁴ Obviously, one can stop with this negative, yet just statement, but we do not wish to do so; instead we have to ask about the cause of this state of affairs. Namely, why is this the case? One of the causes enumerated by the authors is the limited awareness and knowledge about forced labour among the police (Ricard-Guay, Hanley 2019). Once again, it is difficult not to agree with such a claim, but this state of affairs also requires clarification, i.e. why is the knowledge of various institutions lacking and why is their engagement in the prosecution of forced labour perpetrators very limited? Given the fact that in our conviction these are important questions, we appealed to the potential authors to include these issues within the range of their interests and analyses. Our appeal was well-received, and the readers can easily verify it by reading the Special Issue.

The volume comprises eleven articles selected in a process that is typical for a scientific journal. We noted with great satisfaction that many abstracts of excellent papers were delivered to us; nevertheless, the limited capacity of the Special Issue forced us to make a selection. We are deeply convinced that we conducted it in the best way possible, being guided by the premises of the publication as formulated in the Call for Papers, as well as the need to enrich our knowledge about forced labour. This need, measured by the number of questions that we had to answer, is huge, as mentioned above. The list of dilemmas that have to be settled is extensive, whereas looking at the estimated scale of the phenomenon of forced labour, one can justifiably surmise that the problem is serious. Furthermore, we have to deal with the backlog that results from the fact that forced labour, well-hidden behind the façade of gainful employment and the building of collective affluence (The role n.d.), has efficiently evaded the sight of politicians, societies, and researchers. Observing this fact, Cockbain and Bowers concluded concisely that 'most of the attention to date has been on sex trafficking of women and girls leaving ... other trafficking types comparatively overlooked' (Cockbain, Bowers 2019). When choosing the papers, we also took into account the complementarity of their content. In our belief, all papers refer to the key problems of forced labour and the problems tackled herein show the extensiveness of the phenomenon, along with the significance of every new element of common knowledge. The creativity and innovation of the authors also testifies, in my opinion, to the intensity with which the key to the proper description and understanding of the essence of forced labour is being searched for. Likewise, it is also necessary to mention that the selected papers describe the situation in dozens of countries, a fact which,

⁴ It is quite telling that the subchapter which features the quoted discussion was titled 'Labour trafficking: Still under-detected? Or rather called by another name?' I will return to the last question in detail in my paper presented in this publication.

in some respect, offers a sample of various cultures and political systems. Even though this was not the criterion, the geography within the studies and the entire volume is greatly interesting.

Taking all of the above into account, we would like to express the conviction that even the most demanding reader will find the discussions herein valuable and that they provide an intellectual opening of the next stage of the debate about this issue. In order to facilitate the task, let us present a brief review of the contents of individual papers.

Let's start with the article written by Katharine Bryant and Bernadette Joudo from Australia, which takes up the subject of girls at risk of forced labour. Two important aspects of the article should be highlighted. First of all, the practical one is the fact that the text contains a valuable analysis of the preventive programmes focussed on forced labour and addressed to young girls (adolescents). Secondly, the methodological aspect is that the paper was based on the analysis of one of the largest databases at the disposal of an NGO called Walk Free Foundation. The authors conclude that evaluations of interventions tackling modern slavery and the exploitation of adolescent girls have largely focussed on programmes to prevent child marriage and to support those in commercial sexual exploitation. Only a few evaluations of programmes that tackle forced labour have been conducted, and even fewer have focussed on the garment industry – despite that fact that women and girls represent majority of the victims.

The second article is a classic legal and comparative analysis pertaining to the United Kingdom and Belgium. Amy Weatherburn outlines similarities, differences, and challenges to ensuring a clear understanding of the meaning of labour exploitation in the context of human trafficking. She makes it clear: it is a term (not legal) that is often attributed to forms of exploitation that involve the exploitation of the work or services of an individual. The in-depth analysis of court files presented by the author leads to the creation of a catalogue of features which facilitate a proper understanding of exploitation, in the common, legal, and court meanings of the word. Precision in the understanding of exploitation can also lead to more efficient prevention. Here, I stress the term *meanings*, which is used in the article and which will appear later in a slightly different context.

In another paper, Julia Muraszkiewicz tells the story of several hundred Poles who were used for forced labour in Great Britain. Given the scale of the crime and the number of victims, the case was considered the gravest in the history of the country. The author brings to light specific features of the case: the existence of a well-organised crime group – comprised primarily of Poles, the ethnic uniformity of the perpetrators and victims as one of the features of forced labour, and the fact that the work performed by Poles was legal, though everything surrounding it was not. The complexity of this case, and many others, is illustrated by two phenomena: the criminals who exploited victims consisted of eight individuals who were a family network made up of parents, siblings, cousins, and friends, and the victims were found thanks to public media, being recruited through legitimate

recruitment agencies and forced to work by the traffickers. The case was disclosed thanks to the effective operation of law enforcement authorities.

A text written by Rita Haverkamp referring to Germany shows how the social infrastructure adjusts to the market's needs. When migrants from Bulgaria (of Turkish origin) started to arrive in Munich, a day labourer market came into being at the main train station. This is a meeting place for those who offer the work of their hands and those who need such hands to perform some work. The situation of day labourers is very complicated. On the one hand, they experience considerable hostility even from the Turkish community in the train station district, but on the other hand, they receive support at the advice café of the Information Centre for Migration and Work. The author asks a very important question: Is the existence of such a market a criminal or societal problem, and what should be done about it? The text also features the category of the grey zone, to which other authors also refer.

The next article, by Szandra Windt, is about Hungary. Forced labour in this country, as anywhere else, affects the spheres of the economy which are weakly regulated: seasonal work in agriculture, cleaning, or construction. The topic itself, however, is ignored: there are very few research studies and most of them deal with child labour and/or migrants' illegal work. The author's analysis shows that Hungary is a country to which all regularities established in other countries apply: there are very few criminal cases, cases of sexual exploitation prevail, most cases were initiated by the victims, the perpetrators are typically adult men, the occurrence of debt is quite common, there is very little information about the victims, the perpetrator and the victim often knew each other, and poverty is geographically distributed and thus more vulnerable to exploitation. This paper also features the grey zone phenomenon presented in other papers, yet we also find the thesis that forced labour is more difficult to detect than sexual exploitation – this theme will return.

The starting point for the next paper, penned by Masja van Meeteren, is the thesis that there are still very few studies tackling the issue of forced labour. Therefore, some general statements about human trafficking were made on the basis of sexual exploitation.⁵ However, in the Netherlands the number of confirmed cases of forced labour is high enough to allow for comprehensive studies on this subject. The great value of this article is that it is based on very interesting empirical research, namely an explorative analysis of over 80 investigative case files. Many of the author's claims and arguments are valuable for the process of creating empirically verified knowledge about forced labour. Let me mention just one: the involvement of organised crime groups in labour trafficking is limited.

The paper devoted to the USA and Thailand features one of the most important issues of migrant employees, namely the issue of the real 'freedom' of an individual who signs an unjust employment contract. The authors, Sudarat Musikawong

⁵ This issue is also featured in other articles.

and Panida Rzonza, ask the important question of whether in the case of debt bondage there is any freedom at all. By merging an academic perspective with that of a practicing attorney, the authors present a proposal for redefining labour trafficking categorising common harms, yet measurable through a scale of intensity. They also argue that anti-trafficking legislation in the US and Thailand is expansive in definition, but its application is too restrictive to ensure justice for the victims. Finally, they claim that rigorously enforced provisions prevent effective prosecution of the perpetrators of forced labour. The paper also features the issue of political pressure exerted by the US government on the governments of other countries via its TIP Report (State.gov n.d.).

The author of the next paper, Nicoletta Policek, tackles the issue of child labour in Italy, which appears to be an everyday reality. The ILO estimates that the number of working children in this country is around 300,000. The main reason why young migrants are forced to work there is extreme poverty, but some of them work off their parents' debt to come to Italy. Child labour is also an adaptive tool of inclusion, but it often means abandoning education and a straight path to a life of crime. The author analyses this phenomenon through the prism of contemporary slavery and proves that 'seemingly innocent' child labour can easily become oppressive. The article shows that even the most subtle forms of abuse of children's vulnerability should be treated as exploitation.

A recapitulation of sorts of this difficult issue is provided by the paper by Vernon Murray, Julia Solin, and Holly Shea. The authors propose an interesting model of typology for forced labour victims. This theme, which is extremely important in the debate about forced labour, appears here in reference to three large countries: the United States, Russia, and Indonesia. The criteria for drawing up victim types are related to the mode in which they 'enter' into a dependence relation and why they remain in the situation (voluntarily or not). The authors explain the usefulness of a labour trafficking typology with prescribed marketing and the '3 Ps' of strategic intervention. According to the researchers, an appropriate determination of victim profiles in individual countries can designate the type of intervention that will guarantee the most effective prevention.

Drawing on the practical experience of a novel not-for-profit programme created in Colombia (i.e. *Passos Libre*), Sebastián Arévalo Sánchez, Juan Pablo García Sepúlveda, and John Winterdyk present a descriptive overview of how to use an innovative learning approach to educate and seek 'solutions' to effectively combat human trafficking and forced labour. The authors also describe how the design thinking model can support and complement the ongoing educational efforts on addressing the risks of combatting human trafficking. The article shows the merits of using a new learning method and instruments to address the complexities of combatting forced labour and human trafficking and creating richer learning environments beyond current awareness-raising activities. The authors argue that this socially important goal can be accomplished by teaching innovative and creative design thinking focussed on other people's

needs. On the other hand, they promote innovation camps as a comprehensive and multidisciplinary process by which economic, social, technological, cultural, and environmental challenges can be addressed. Although it is a descriptive case study of but one innovative approach to combatting human trafficking (and forced labour), the article serves as an example of how we can, and perhaps need to, explore new strategies for combatting the enigma of human trafficking.

Finally, a few words about the paper that closes this volume – this is my attempt to look at the issue of forced labour from a completely different perspective than the one that dominates the scientific discourse. The existing approach includes several commonly accepted elements, such as political responsibility for the social order, the criminal justice response, or the quality of social assistance. Referring to humanistic sociology, I try to designate a new area to which the discussion about the understanding of forced labour could be transferred – this is an area of awareness, human mentality, and commonly agreed meanings. Looking at the more or less successful attempts to describe forced labour, I also propose a new, interactionist model for analysing this phenomenon, where the key roles are played by the social visibility of the phenomenon of forced labour and cultural taboo.

I am hoping that even such a brief presentation of the content of this Special Issue will convince the readers that the texts contained within it are a mosaic of important and interesting problems and offer a wealth of arguments and innovative analytical approaches. I have no doubt that this is a fascinating read and that it will also provide an incentive for further thoughts and further research. If this happens, we can say that the goal of publishing this volume has been accomplished.

At the end, I must make one comment concerning the terminology used to describe the focus of this Special Issue – that is, the term forced labour. As can be noted when reviewing the literature, and as expressed in various articles in this Special Issue, there are several terms that define a situation in which one person, to some extent, forces another person to work. Sometimes this situation is simply referred to as forced labour, while at other times it is referred to as trafficking for the purpose of forced labour, or simply as labour trafficking. Given that there is no consistency in the use of the term in the extant literature, we have not made any attempt to standardise the language so as to reflect the contextual intent of the contributors. A term that is not found in any of the articles, but which has been used to describe people who are forced to work against their will (e.g. slavery, prison work, debt slavery, etc.) is *unfree labour*.

*

And one more remark must appear here, because the time when this publication was created was exceptional. Our work began in the spring of 2020, when the whole world was ‘plunging into the gloom’ of the COVID pandemic. The authors were submitting articles in the autumn, when the scale of the pandemic was beyond our imagination. The disease did not spare the authors of the papers published here. Some of them created their pieces during a serious illness, some sent new versions of their articles from their hospital bed; sometimes family members helped. I pay tribute to all of them with words of appreciation because they were heroic. Finally, the Special Issue was published at the end of the pandemic, Spring 2021. However, I hope that its promotion and true scientific life will begin when the pandemic ‘dust settles’.

Taking this opportunity, I would like to thank all the people who have contributed to this publication. First and foremost, I would like to thank the authors who devoted their valuable time and presented us with their outstanding work. I would also like to thank the co-editors of this volume, Professor John Winterdyk and Dr Marcel van der Watt. Without their immense engagement and precious assistance, this success would not have been possible. Last but not least, I would like to thank the team of the *Archives of Criminology*, namely Professor Witold Klaus and Dr Justyna Włodarczyk-Madejska, for the idea of this Special Issue, for coming up with the funds for its publication, and for entrusting me with the role of guest editor.

References

- Błachut J., Gaberle A. and Krajewski K. (1999). *Kryminologia* [Criminology]. Gdańsk: Arche.
- Brysk A. (2011). ‘Sex as slavery? Understanding private wrongs’. *Human Rights Review* 12(3), pp. 259–270. Available online: <https://doi.org/10.1007/s12142-010-0182-7>.
- Cockbain E. and Bowers K. (2019). ‘Human trafficking for sex, labour and domestic servitude: How do key trafficking types compare and what are their predictors’. *Crime, Law and Social Change* 72, pp. 9–34. Available online: <https://doi.org/10.1007/s10611-019-09836-7>.
- Forced Labour, Child Labour and Human Trafficking in Europe: An ILO Perspective. Technical paper for the EU/IOM STOP “European Conference on Preventing and Combating Trafficking in Human Beings”, 18-20 September 2002 (2002).* Brussels/Geneva.

- Lasocik Z. (2012). 'O handlu ludźmi w Polsce, czyli o ewolucji zjawiska i budowie system jego eliminowania' [On human trafficking in Poland, meaning the evolution of the phenomenon and building a system to combat it]. *Archiwum Kryminologii* 34, pp. 481–529.
- Ricard-Guay A. and Hanley J. (2019). 'The challenge of addressing both forced labour and sexual exploitation.' In J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 287–302.
- Winterdyk J. and Jones J. (eds.) (2019). *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan.

Internet sources

- Data collection on trafficking in human beings in the EU, Final Report – 2018* (2018). Luxembourg: Publications Office of the European Union. Available online: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_data-collection-study.pdf [20.07.2020].
- Ending forced labour by 2030: A review of policies and programmes* (2018). Geneva: International Labour Office. Available online: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_653986.pdf [20.07.2020].
- Fight against trafficking needs radical shift to genuinely human rights-based approach: UN expert* (2020), Reliefweb.int. Available online: <https://reliefweb.int/report/world/fight-against-trafficking-needs-radical-shift-genuinely-human-rights-based-approach-un> [19.07.2020].
- Forced Labour Convention* [FLC] (1930), Ilo.org. Available online: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 [16.07.2020].
- Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (2017). Geneva: ILO Available online: https://www.alliance87.org/wp-content/uploads/2018/07/global_estimates_of_modern_slavery-forced_labour_and_forced_marriage.pdf [14.07.2020].
- Global Report on Trafficking in Persons* (2018). New York: UNODC. Available online: https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf [19.07.2020].
- Globalslaveryindex.org (2018). *Globalslaveryindex.org*. Available online: <https://www.globalslaveryindex.org/> [20.09.2020].
- Handel ludźmi w Polsce. Raport 2017* [Human trafficking in Poland. 2017 Report] (2018). Available online: <http://www.handelludzmi.eu/hl/baza-wiedzy/raporty-analzy-strateg/raporty-i-analzy-dotyc/6936,Handel-ludzmi-w-Polsce-Raport-2017.html> [20.07.2020].
- International Labour Standards on Forced labour* (n.d.), Ilo.org. Available online: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm> [20.07.2020].

- Profits and Poverty: The Economics of Forced Labour* (2014). Brussels: ILO. Available online: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf [18.07.2020].
- Protocol of 2014 to the Forced Labour Convention, 1930* (2014), Ilo.org. Available online: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029 [19.07.2020].
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* [Protocol to Prevent] (2000). Available online: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> [16.07.2020].
- State.gov (n.d.). *Trafficking in Persons Report*. Available online: <https://www.state.gov/trafficking-in-persons-report/> [18.07.2020].
- The role of work for individuals and society* (n.d.), Ilo.org. Available online: <https://www.ilo.org/global/topics/future-of-work/publications/issue-briefs/lang--en/index.htm> [29.03.2021].
- Trafficking in human beings* (2014). Luxembourg: Publications Office of the European Union. Available online: <https://ec.europa.eu/eurostat/documents/3888793/5858781/KS-TC-14-008-EN.PDF/3c9da893-54a6-41c7-b3b8-8aba03ef2595> [20.07.2020].
- Trafficking in Persons Report* [TIP Report] (2019). U.S. Department of State Publication Office of the Under Secretary for Civilian Security Democracy, and Human Rights. Available online: <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> [16.07.2020].
- Trafficking in Women. The misery behind the fantasy: from poverty to sex slavery. A Comprehensive European Strategy* (2001). The European Commission, Justice and Home Affairs. Available online: https://ec.europa.eu/commission/presscorner/detail/en/MEMO_01_64 [24.02.2021].

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Are we ‘leaving no-one behind’? How gaps in modern slavery programmes allow forced labour among adolescent girls in the garment and textile industries

Czy nikogo „nie zostawiliśmy z tyłu”? Jak luki w programach przeciwdziałania niewolnictwu umożliwiają pracę przymusową nastoletnich dziewcząt w przemyśle odzieżowym i tekstylnym

Abstract: This article will examine the efficacy of current programme services for adolescent girls at risk of forced labour through an analysis of Walk Free’s Promising Practices Database. The Database is a collection of evaluations of anti-slavery and counter-trafficking programmes since 2000, categorised by type of intervention, location of programme, and target population, among other terms. This article identifies what lessons can be learnt, if any, to both prevent and tackle the forced labour of adolescent girls, with a particular focus on the garment and textile industries. We examine a subset of the Promising Practices Database of 81 evaluations, where at least one component in programme design was targeted at adolescent girls. We find that, in line with other critiques of human trafficking research, most evaluations are disproportionately focussed on programmes tackling sex trafficking to the exclusion of other forms of forced labour. Based on two existing evaluations, and related programmes in the garment sector, we determine the importance of community-led, inclusive, rights-based awareness-raising and the need to tailor interventions specifically to the needs and life-stage of the target group.

Keywords: adolescent girls, modern slavery, Walk Free’s promising practices, best practice, garments, labour exploitation, forced labour

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Abstrakt: W niniejszym artykule przeanalizowana zostanie skuteczność obecnych programów dla dziewcząt zagrożonych pracą przymusową poprzez analizę bazy danych Walk Free's Promising Practices Database. Baza danych jest zbiorem ewaluacji programów przeciwdziałania niewolnictwu i handlowi ludźmi od 2000 roku, podzielonych m.in. na kategorie według rodzaju interwencji, lokalizacji programu i populacji docelowej. W niniejszym artykule określono, jakie wnioski można wyciągnąć, jeśli w ogóle, w celu zapobiegania i zwalczania pracy przymusowej młodocianych dziewcząt, ze szczególnym uwzględnieniem przemysłu odzieżowego i tekstylnego. Analizujemy podzbiór bazy danych Promising Practices Database, obejmującej 81 ewaluacji, w których przynajmniej jeden komponent programu był skierowany do nastolatków. Stwierdzamy, że zgodnie z innymi krytykami badań nad handlem ludźmi, większość ewaluacji jest nieproporcjonalnie skupiona na programach zajmujących się handlem seksualnym, z wyłączeniem innych form pracy przymusowej. Na podstawie dwóch istniejących ewaluacji i powiązanego z nimi programowania w sektorze odzieżowym, stwierdzamy, jak ważne jest podnoszenie świadomości w oparciu o prawa i potrzeby społeczności lokalnej oraz dostosowanie interwencji do potrzeb i etapu życia grupy docelowej.

Słowa kluczowe: nastoletnie dziewczęta, współczesne niewolnictwo, Walk Free's obiecujące praktyki, najlepsze praktyki, odzież, wyzysk w pracy

Introduction

Women and girls are disproportionately at risk of modern slavery: 71 per cent of all people living in situations of modern slavery in 2016 were female, equating to almost 29 million individuals (ILO, Walk Free 2017). According to best estimates, women and girls are most often exploited in commercial sexual exploitation and forced marriage, and most interventions are targeted accordingly. However, women and girls are also disproportionately affected by forced labour in the private economy (ILO, Walk Free 2017), with the garment and textile industry being particularly high-risk (Walk Free 2018). While much has been written about 'hotspots' of exploitation in the garment and textile sectors in South and South East Asia (see ILO 1996; Bhaskaran et al. 2010; Overeem, Theuws 2014; Crane et al. 2019; Kara 2019), there are few robust evaluations that identify what works to prevent and eradicate the forced labour of adolescent girls in these industries.

It is well established that effective and targeted programme design must be age-appropriate to better suit the needs of beneficiaries and take a 'life course approach' to identify critical risks and gaps across childhood to prioritise key interventions (World Bank 2005; UNICEF 2018). Yet, within Walk Free's Promising Practices Database (PPD) – a repository of 262 evaluations of anti-slavery and counter-trafficking programmes since 2000 – there is a dearth of evaluated, targeted interventions specifically designed for the needs of adolescents ($n=10$), as compared to younger children ($n=20$) and adults ($n=51$). Less than 3 per cent of the total number of evaluations housed in the PPD are of programmes targeted solely at adolescent girls ($n=6$). Instead, adolescents are more likely to be beneficiaries of broader programmes targeting multiple age groups ($n=71$). This highlights a

significant gap in the evidence of what works, as the risks that girls face from birth are magnified during adolescence (Walk Free 2020a). Adolescent girls sit at the crux of intersecting forms of discrimination that increase their risk to modern slavery, including gender and age (Ricker, Ashmore 2020). They often experience modern slavery in the form of commercial sexual exploitation and child marriage (Walk Free 2020a) as a result of social and cultural norms related to the onset of puberty (UNICEF 2014).

The emphasis on child marriage and commercial sexual exploitation is replicated in intervention and evaluation efforts: out of a total of 81 evaluated interventions in the PPD which included at least one component in the programme design that targeted adolescent girls, the vast majority (n=44) were focussed on child marriage and sex trafficking, while just under one quarter of the programmes (n=20) were designed to combat forced labour, child labour, or the worst forms of child labour. This is consistent with previous critiques levelled at the human trafficking research landscape for its disproportionate focus on sex trafficking to the exclusion of labour trafficking (see, for example, Weitzer 2014; Sweileh 2018). Notably, five of the six evaluations of programmes designed solely for adolescent girls in the PPD aimed at reducing child marriage; only one targeted debt bondage (Joseph et al. 2019). While those aged between 15 and 17 years are far less likely than their younger sisters, or male peers, to be in hazardous work (Guarcello, Lyon, Valdiva 2016), they are significantly over-represented in heavily feminised and informal industries, such as domestic work (O'Neil, Fluery, Foresti 2016) and the garment and textile industry (see Clean Clothes Campaign 2005; ILO 2015; Svarer, Meiers, Rothmeier 2017). However, there are very few robust evaluations of programmes designed to protect adolescent girls from experiencing forced labour in these industries. This could point to a gap in programmes for adolescent female victims of forced labour. To assist in meeting the United Nations' Sustainable Development Goals (SDGs) by 2030 and to fulfil the stated aim of 'leaving no-one behind' (UNCDP 2018), effective interventions are required to assist adolescent girls who are forced to work.

This study analyses the current state of anti-slavery and counter-trafficking interventions which seek to enhance protections for adolescent girls. It identifies gaps and lessons learnt in these contexts and good practices in programmes designed to combat forced labour among other beneficiaries, ultimately in order to provide recommendations to enhance protection and prevention services for adolescent girls exploited in forced labour. While men and boys are also victims of forced labour, this paper responds to a gap in the literature of evaluated programmes for adolescent girls, who are far more likely to receive assistance after experiencing commercial sexual exploitation or a forced marriage. For this reason, in addition to recognising the feminised nature of informal work in the fashion industry, this paper focusses on findings and lessons learnt in the garment and textile industries.

Terminology

Modern slavery

For the purposes of this paper, modern slavery is used as an umbrella term that covers various specific legal concepts, including human trafficking, commercial sexual exploitation, forced labour, debt bondage, forced marriage, and slavery and slavery-like practices. Essentially, it refers to situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power (ILO, Walk Free 2017). Early marriage can fall within the concept of forced marriage and may involve informal or formal unions where either or both parties are under the age of eighteen (Girls Not Brides n.d.).

Vulnerability

As stated by Jacqueline Joudo Larsen and Davina P. Durgana (2017: 22), vulnerability to modern slavery is impacted by ‘a complex interaction of factors related to the presence or absence of protection; respect for rights; physical safety and security; access to the necessities of life such as food, water, and health care; and patterns of migration, displacement, and conflict.’ This paper adopts the understanding of vulnerability used in the Global Slavery Index (GSI) published by Walk Free (2018), which conceptualises vulnerability in terms of human security theory (Joudo Larsen, Durgana 2017). This is a developing subfield without a clear definitional consensus, although it is generally accepted to include a focus on ‘the safety and well-being of individuals, regardless of their citizenship status or relationship to a nation-state’ (Joudo Larsen, Durgana 2017: 22).

Adolescent

While there is no universally accepted definition, the UN and its agencies define adolescents as those between 10 and 19 years of age (WHO n.d.), and youths as 15–24 years (UNGA 1981). For the purposes of this article, adolescent refers to those aged 10 to 19 years.

Why focus on adolescent girls?

Adolescence is a turbulent period of human development, where rapid physiological changes precede psychological maturity (WHO n.d.). These changes coincide with fluctuating external influences, including changing social norms and roles, responsibilities, relationships, and expectations (UNICEF 2020b; WHO n.d.). This period of development is also impacted by globalisation, urbanisation, and social media and other digital technology that can increase the complex networks which adolescents navigate (UNICEF 2011, 2020b; WHO n.d.). Adolescent girls

are a particularly vulnerable group and as a result require special attention (UNGA 1981), even though they are less likely to engage in risk-taking behaviour when compared to their male peers (Reniers et al. 2016).

This is true in respect of vulnerability to modern slavery. Adolescent girls sit at the crux of two different but intersecting forms of discrimination that increase risk to modern slavery: the foremost being gender, and the other being age (Ricker, Ashmore 2020). Physical changes related to the onset of puberty and social norms that reinforce traditional gender roles and view menarche as the beginning of womanhood (UNICEF 2014) increase their vulnerability to forced sexual exploitation and forced marriage. Gender and age discrimination also intersect with discrimination based on race, geographic remoteness, indigenouness, and caste (LeBaron et al. 2018). Combined, these forms of discrimination increase vulnerability to forced labour by limiting adolescent girls' access to their documents – including birth certificates – reducing their access to education and increasing the likelihood of irregular migration status and poverty. This pushes adolescent girls into informal and unregulated sectors with higher risk of exploitation (LeBaron et al. 2018).

Prevalence of modern slavery among adolescent girls

Adolescent girls most commonly experience commercial sexual exploitation and child marriage (Walk Free 2020a). According to the Global Estimates of Modern Slavery, in 2016, an estimated 3.8 million adults were victims of forced sexual exploitation and 1 million children were victims of commercial sexual exploitation. Ninety-nine per cent of these were women and girls (ILO, Walk Free 2017). A similar pattern emerges for those living in forced marriage. Eighty-four per cent of the 15.4 million people living in a forced marriage in 2016 were female, while more than one third (37 per cent) were under 18 years old at the time of marriage. Among this latter group, 44 per cent were forced to marry before the age of 15 (ILO, Walk Free 2017). These figures are likely to be conservative, with other estimates suggesting a higher incidence of early and child marriage. For example, UNICEF (2020a) estimated that 12 million girls under 18 are married each year. It is likely that the true rate of child marriage has risen as a result of the COVID-19 pandemic (UNFPA 2020). The coronavirus is also exacerbating the commercial sexual exploitation of children, online sexual exploitation in particular (Giammarinaro 2020).

Women and girls are not just overrepresented in commercial sexual exploitation and forced marriage. When examining the breakdown of forced labour, more women than men are exploited in the private economy (57.6 as opposed to 42.4 per cent) (ILO, Walk Free 2017). The sectors where women outnumbered men were accommodation and food service industries and domestic work. Women also made up 18 per cent of those exploited in manufacturing (ILO, Walk Free 2017). These forms of exploitation can intersect. Adolescent girls who were married

early and left education or other formal employment training are also at risk of exploitative child labour in informal work in sectors, including agriculture, small-scale manufacturing, and domestic work (ILO 2009).

Garment and textile industries and adolescent girls

The garment and textile industries, fuelled by the global demand for fast fashion, are key sectors to target interventions for the prevention and combating of modern slavery. Among products at risk of being produced by forced labour and imported into G20 countries, apparel accounts for approximately 36 per cent of all high-risk imports: a value of US \$127.7 billion annually (Walk Free 2018). The production and manufacturing stages of the global garment and textile industries are largely based in South, South East, and East Asia, with hubs in China, Bangladesh, Vietnam, Cambodia, India, Pakistan, Taiwan, and Korea. These hubs emerged after mass employment losses in Europe and coincided with a shift towards less regulation (ILO 1996). In recent years, Ethiopia and Kenya have emerged as new markets in the industry, as stronger laws and better labour conditions in Asia push manufacturers to identify newer and cheaper markets – minimum wages in Ethiopia, for example, are lower than their South Asian counterparts (Barrett, Baumann-Pauly 2019).

There are no agreed global estimates of the number of adolescent girls employed in the garment and textile industries,¹ nor how many of these individuals are at risk of forced labour; however, there is strong evidence that women and girls are exploited throughout the supply chain. This occurs from picking cotton in Uzbekistan and Turkmenistan to the production of ready-to-wear goods in Bangladesh (Theuws, Overeem 2014). In Bangladesh, adolescent girls work excessively long hours in unsafe conditions and suffer physical and verbal abuse from male managers (Brignall, Butler 2014). Anecdotal evidence suggests that adolescent girls are exploited in both formal and informal sectors. In formal garment factories, children are responsible for a variety of tasks ranging in intricacy from dyeing, sewing buttons, cutting and trimming threads, to folding, moving, and packing garments (Overeem, Theuws 2014). In countries such as India, women and girls from oppressed ethnic communities, working in informal and small-scale factories based within private homes, often work on complicated tasks including embroidering and embellishments (Bhaskaran et al. 2010; Kara 2019). They face significantly worse conditions than in formal factories, as there is little, if any, regulation or enforcement of government labour standards (Kara 2019).

These individuals are also often migrant workers who have limited social networks and few social and legal protections, which places them at greater risk of

¹ Accurate estimates are difficult to obtain, with some estimating that the apparel sector is among the largest employers of women workers, with estimates ranging from 75 to 80 per cent (see Clean Clothes Campaign 2005; ILO 2015; Svarer, Meiers, Rothmeier 2017). Others argue that adolescent boys are more vulnerable to exploitation in India (see Kara 2019).

exploitation. They are vulnerable to debt bondage, where they are forced to work for little or no pay to repay the costs of their migration, including recruitment fees (Chuang 2017; David, Bryant, Joudo Larsen 2019). Female garment workers also face social stigmatisation, are incorrectly assumed to be sexually active, and suffer from numerous stress-related physical symptoms (Amin et al. 1998). Beyond instances of forced labour, child labour, and the worst forms of child labour, women and girls experience poor and discriminatory working conditions. These include poor health and safety practices, the restriction of movement, gender discrimination, verbal abuse, unfair pay, limited collective association, few formal contracts, and issues around freedom of speech (Crane et al. 2019). Perversely, in some contexts, working in the garment industry can assist adolescent girls from poor families in preparations for marriage, in part by providing an opportunity to accumulate a dowry (Solidaridad-South & South East Asia 2012). In parts of India, recruiters offer adolescent girls employment opportunities in spinning mills, where they are paid a lump sum at the end of their contract (Theuws, Overeem 2014). This '*Sumangali* scheme' contractually traps young girls, forcing them to work for years in often dangerous conditions, or else risk losing their earnings (Mayilvaganan 2020). Girls in the Tamil Nadu spinning industry are also essentially trapped in the mills, facing restrictions on movement and outside communication in addition to being forced to work 60 hours a week (Theuws, Overeem 2014).

Globalisation, fast fashion, and intermittent demand creates low profit margins and encourages the exploitation of garment workers (David, Bryant, Joudo Larsen 2019). Factory owners are incentivised to force workers to work long or consecutive shifts for less than minimum wages in order to fulfil extremely high quotas; suppliers, in turn, may seek out workforces – such as children, refugees, and irregular migrants – whose desperation, vulnerability, and restricted mobility leave them with little choice but to accept illegal working conditions (LeBaron et al. 2018). The global free market's drive to squeeze profit margins and meet consumer demand are often resilient in the face of exogenous shocks, and even thrive in the wake of disasters such as war, tsunamis, and public health crises (Klein 2007). The COVID-19 pandemic and the resultant impact on the garment industry in South East Asia particularly highlights garment workers' extreme vulnerability to exploitative labour practices, including forced labour (Walk Free 2020b). As the COVID-19 pandemic forced store closures across the US and Europe, the resulting drop in demand led many global apparel brands to cancel their orders for goods already manufactured (Business & Human Rights Resources Centre 2020). In Cambodia, for example, approximately 30,000 workers had their jobs suspended as more than 70 factories responded to these cancelled orders (Walk Free 2020b). Many workers have faced reduced working hours, unpaid leave, pay cuts, weakened worker bargaining power, and limited access to social security, all of which have disproportionately affected women (Clean Clothes Campaign 2021) and increased their risk of exploitation and trafficking.

Methodology

The Promising Practices Database

This paper draws on evaluations identified through the PPD, a systematic review of evaluations of anti-modern-slavery programmes and related social issues from 2000 to 2019 (Bryant, Joudo 2018). Since the ratification of the UN Trafficking Protocol in 2000, there have been many interventions and organisations involved in the fight against modern slavery (Bryant, Landman 2019). These activities were further reinforced by the SDGs, including Targets 8.7, 16.2, 5.3, and 10.7 (UNGA 2015), which include the eradication of modern slavery and its related forms by 2030. Between 2000 and 2013, more than US \$4 billion in Overseas Development Assistance was spent on achieving SDG Target 8.7 alone, with spending for programmes to tackle human trafficking increasing year by year (Gleason, Cockayne 2018). Despite this commitment, little is known about what works to combat modern slavery. The PPD was created to help answer this question.

The database was developed in 2015 and now contains 262 evaluations identified through searches of academic databases, Google Scholar, and international organisation websites, including the International Organization for Migration (IOM), the ILO evaluation office, the United Nations High Commissioner for Refugees, the Freedom Fund, and 3iE International Initiative for Impact Evaluation.² An evaluation is defined broadly to capture donor reports and end-of-project evaluations, using the following definition: ‘evaluation measures progress towards outputs, or change in outcomes, or an assessment of an impact, of a development programme, policy, or intervention.’

Only evaluations that cover modern slavery or a related social issue are included in the PPD. At present, only evaluations published in English are included. Literature reviews, lists of good practices, mid-term evaluations, formative (or pre-assessment) evaluations, summaries where the longer-form document was unavailable, annual reports, systematic reviews of evaluations, or those evaluations without an explicit methodology³ are also excluded.

Evaluations in the PPD are classified according to term lists organised under the following categories:

- *Type of modern slavery*
- *Sector*
- *Target population*
- *Country/region*

² Accessing institutional websites is essential to ensure the breadth of systematic reviews in international development when relevant research is often found outside of formal peer-reviewed channels (Mallet et al. 2012).

³ An explicit methodology was defined as the inclusion of a methodology section or a description of the actions taken by the authors to conduct the evaluation.

- *Type of programme and activities*
- *Independent vs internal evaluation*
- *Evaluation methodology*
- *Did the programme meet its objectives?*
- *A free text write-up of the programme's objectives and evaluation findings*

The development of lists of terms was an iterative process that drew upon the content of the evaluations and predetermined terms that could be used to search the final database. For example, the development of a list of terms for type of programme drew upon the anti-human trafficking framework, which predominantly follows a criminal justice approach as defined by the '3 Ps' of protection, prevention, and prosecution. As not every intervention could be categorised as a criminal justice approach, this was supplemented by identifying the activities described by the evaluations and then grouping these activities into types of programmes based on their commonalities. After testing a sample of the evaluations using these lists, three members of the research team independently categorised all remaining evaluations.⁴

Analysis for the purposes of this article

Evaluations included in the scope of this paper were those categorised under the 'target population' list of terms as 'youth' in the PPD. Evaluations were only categorised under a specific term when the individual term was explicitly mentioned within the evaluation. Evaluations were included in the paper if they explicitly mentioned that the programme was targeted to youths, or used relevant synonyms such as adolescents, those aged 10–19, or teenagers in the descriptions of the target beneficiaries.

Evaluation entries identified in this process were then exported to Excel, to allow filtering across key terms to identify common trends. These terms included the type of modern slavery, target sectors, target population, country, type of programme, activity, evaluation strength, and whether the programme had met its objectives. We also conducted a thematic analysis of the original evaluation documents to identify good practices.

This process resulted in a sample of 81 evaluations, all of which included some intervention or component targeting adolescent girls.

Limitations of this study

Despite best efforts to include all relevant evaluations, the PPD faces the common practical challenges of any systematic review (Mallet et al. 2012). Searching institutional websites, for example, leads to bias in the review process and means

⁴ Full methodology and lists of terms are available to download from www.walkfree.org. See Bryant, Landman (2019) for a detailed description of the development of the PPD.

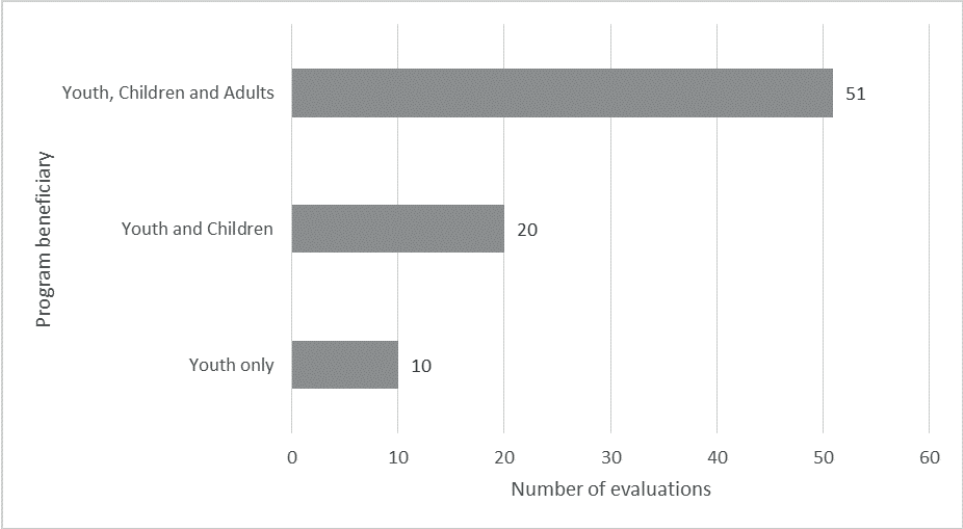
that some evaluations may have been missed, for example, those which are housed on individual NGO websites, or are not publicly available, or were not shared by partner organisations. The findings below are also dependent on the quality of the identified evaluations in the PPD. Their variable quality was apparent early in the process of developing the PPD: programme descriptions were often unclear and did not list specific objectives. As a result, it was not possible to identify whether these objectives had been met. Meta-analysis was not possible because of the limited quality of the data, an overreliance on qualitative methodologies, and the evaluations largely focussing on the measuring process rather than the outcomes. Further updates to the PPD should also include evaluations published in languages other than English.

The use of the Maryland Scientific Methods Scale in assessing the strength of the methodology is also not without challenges. While the meta-evaluation literature has not reached a definitive consensus on the best means of comparing the quality of methodology in outcome evaluations, the Maryland Scale is the leading approach (Farrington et al. 2002) and can be used to signal to the wider field whether a specific intervention is working or how much confidence can be placed in the findings (Puttick 2018). It is a simple 5-point scale developed in the field of criminology to assist in the assessment of the scientific validity of criminological interventions. The minimum level of methodology for results to be considered reliable is level 3 – evaluation designed with pre- and post-test measures with a comparable control. The highest level of validity is attained by testing the intervention with a randomised control trial (RCT) (level 5). The use of this scale is not without controversy, in particular because of the debate on the ethics and reasonableness of RCTs in development work (Burrell 2012; Harkins 2017) and their prohibitive costs. Further, interventions in the anti-modern-slavery sector are diverse and cannot always be assessed using a criminological approach. A modified scale was used to reflect this diversity, borrowing from the Maryland Scale, but adding important factors, including participative elements and qualitative methods. There is scope for further work on a modified scale to apply to evaluations in anti-modern-slavery work (Bryant, Landman 2019).

Findings

Of the 81 programmes that included some intervention or component targeting adolescent girls, few were designed solely for adolescent girls. Adolescent girls were more likely to be part of broader programmes targeting children or families (see Figure 1). Ten evaluations were of programmes targeting ‘youths’ of any gender: six evaluations of programmes targeting females and four for both females and males.

Figure 1: Number of evaluations where adolescent girls were included in the target population, by beneficiary group



Most programme evaluations where any programme component targeted adolescent girls were located in India (n=16), followed by the US (n=12), Bangladesh (n=10), Nepal (n=5), and Pakistan (n=4).

Figure 2: Geographic spread of programme evaluations with any component targeting adolescent girls

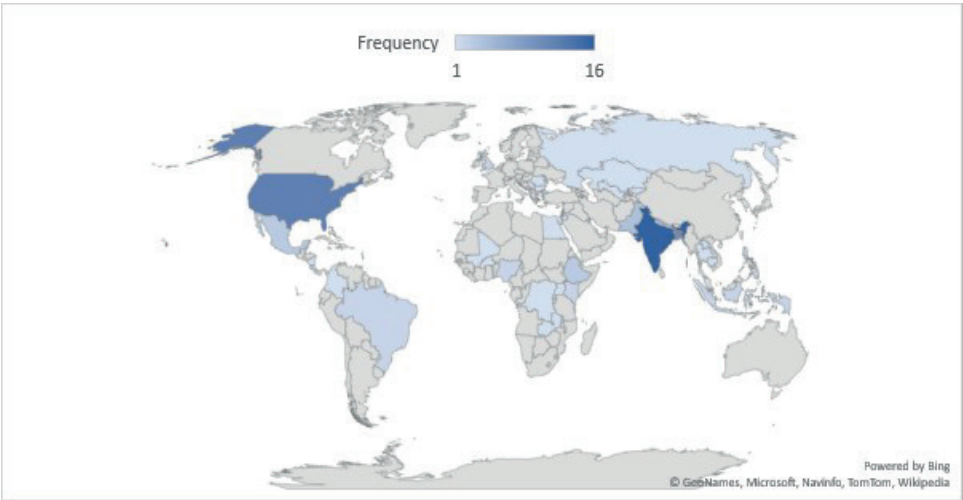
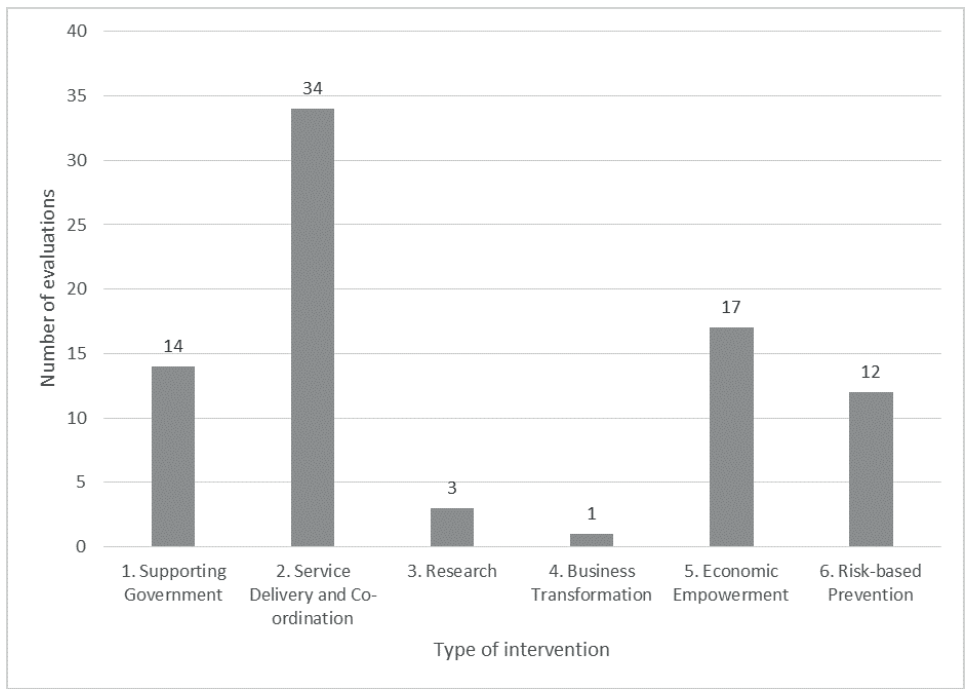
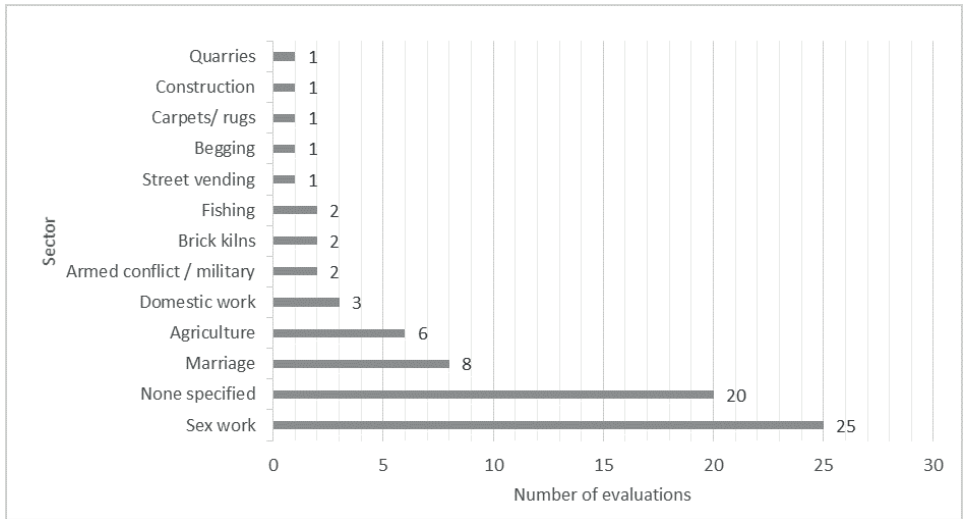


Figure 3: Type of intervention described by programme evaluations with any component targeting adolescent girls



Evaluations of programmes with any intervention or activity targeting adolescent girls largely provided support services to identified victims (Figure 3). These included emergency support, such as physical and mental health services, and the provision of shelters, case management services, and support groups, as well as long-term assistance such as vocational training and education. The provision of emergency support was more common than longer-term support. Economic empowerment programmes largely focussed on cash transfers (both conditional and non-conditional), while those interventions supporting governments contained technical support and advocacy activities. Some prevention activities were included, but these were limited to raising awareness and providing formal education services.

Figure 4: Sectors described by programme evaluations with any components targeting adolescent girls



Where the interventions specified a target sector, the majority of the evaluations described programmes targeting exploitation in the sex industry, followed by forced and early marriage, agriculture, and domestic work (Figure 4). It should be noted that the number of sectors ($n=97$) exceeds the total number of evaluations with any adolescent girl component ($n=81$) because some programmes targeted multiple sectors. When looking at the evaluations of programmes which only focussed on adolescent girls ($n=6$), the majority were designed to reduce early marriage ($n=4$), whilst one targeted debt bondage within the garment and textile industries ($n=1$) and one did not specify a sector ($n=1$).

Similar to previous findings from the PPD (Bryant, Joudo 2018; Bryant, Landman 2019), the strength of the evaluations of programmes with any adolescent component is low, with the majority of evaluations limited to post review, without a baseline comparison. The methodologies most commonly used were interviews, focus group discussions, and a qualitative review of project documents. However, almost 14 per cent of these evaluations were RCTs ($n=11$), which are widely considered the gold standard for studying causal relationships (Akobeng 2005; Hariton, Locascio 2018).

Figure 5: Strength of evaluations of programmes with any adolescent girl component

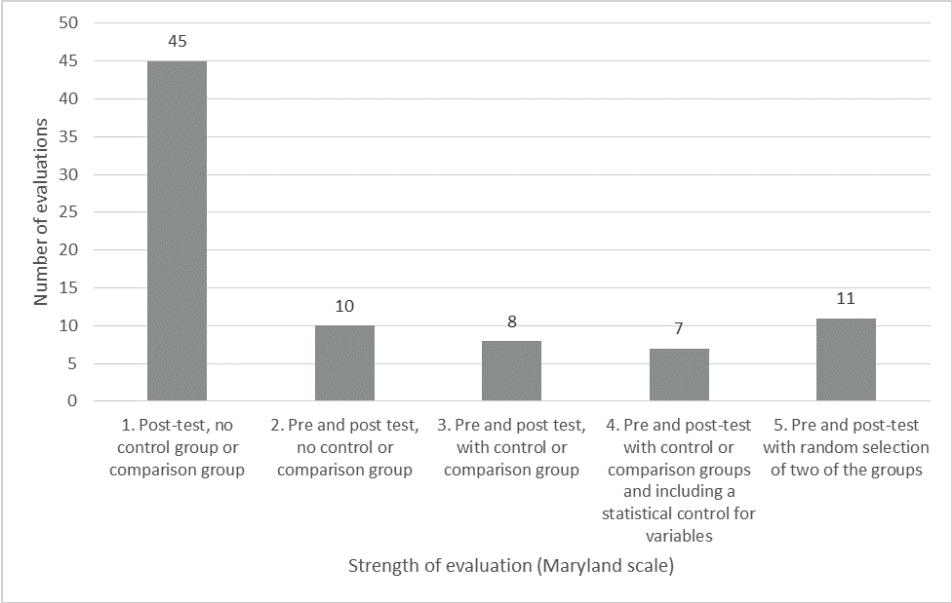
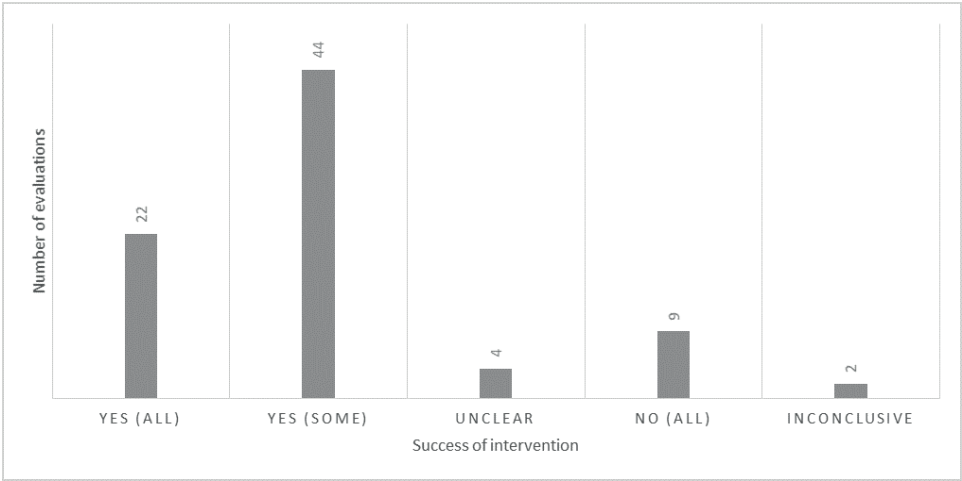


Figure 6: Success of programmes with any adolescent girl component



Overall, programmes with any component targeting adolescent girls reported some successes, with the majority (81 per cent) concluding that at least some objectives had been achieved.

Discussion

In many ways, the findings of the review of programme evaluations targeting adolescent girls in the PPD is consistent with the current literature of where and how modern slavery affects this population. The majority of these evaluations are of programmes that took place in locations with a high prevalence of modern slavery, such as India and Bangladesh. The exception is the US; while modern slavery arguably occurs everywhere, the US has a lower prevalence (as a proportion of the population) than the other countries included in this paper (Global Slavery Index 2018). Likewise, the majority of programmes target forced marriage and commercial sexual exploitation, which according to the Global Estimates of Modern Slavery are the forms of exploitation that disproportionately affect women and girls. However, this focus on 'feminised' forms of exploitation – and the lack of programmes to address forced labour among women and girls – reflects the broader commentary on the state of human trafficking research (as discussed above; Weitzer 2014; Sweileh 2018).

In terms of types of intervention, most programmes provide support services, but this is skewed to certain sectors and geographic locations. For example, almost 59 per cent of the 34 programme evaluations of victim support services (n=20) targeted the sex industry. Of this subgroup, 50 per cent were implemented in the US (n=10). The number of economic empowerment programmes (n=17) reveals the use of conditional and non-conditional cash transfer programmes to lower out-of-school rates and/or child marriage by incentivising parents to send their children to school (see, for example, Buchmann et al. 2017; Peruffo, Ferreira 2017; Dake et al. 2018; Field et al. 2018).

The strength of the evaluations assessed also aligns with previous work on promising practices in the anti-modern-slavery field; the quality of evaluations needs to improve before a clear understanding of what works can become a reality (Hames, Dewar, Napier-Moor 2010; Van der Laan et al. 2011; Davy 2015, 2016; Bryant, Joudo 2018; Bryant, Landman 2019). For example, when looking at programme evaluations with any adolescent girl component, less than one third were robust, with level 3 or higher on the Maryland scale (n=26). Few evaluations attempted to measure the impact of the programme on modern slavery itself, focussing instead on process evaluations. The high number of RCTs (n=11) is surprising in this regard. These were most often evaluations of programmes targeting forced and early marriage (n=8), the use of child soldiers (n=1), the use of child labour (n=1), migration (n=1), and female genital mutilation (n=1). The number of RCTs, and the fact that these have increased since 2015, is promising. It allows us to highlight lessons that can improve future programmes to prevent the forced marriage of adolescent girls. For example, an RCT to assess the development of skills-building programmes to reduce child marriage in Bangladesh found that it was possible to reduce the prevalence of child marriage by working with

communities to build life skills, formal education, and vocational training among girls (Amin, Saha, Ahmed 2018). This finding could conceivably apply in other countries with high rates of child marriage.

Although women and girls are overrepresented among the victims of forced labour, just under 30 per cent of the 81 evaluations included a programme component to assist adolescent girls in some form of forced labour, namely in sectors such as agriculture, domestic work, construction, street vending, fishing, carpet weaving, quarries, and textiles/garments. Further, among the six evaluated programmes designed solely for adolescent girls, only one focussed on forced labour (Joseph et al. 2019).

The dearth of evaluations of programmes that tackle forced labour among adolescent girls is concerning. It arguably highlights an underlying issue: we expect women and adolescent girls to be exploited in the sex industry or in a forced marriage, and therefore target our programmes accordingly, to the exclusion of other sectors and vulnerable groups. Much has been written of the conflation of prostitution with forced sexual exploitation and trafficking (Weitzer 2007; Zhang 2009; George, Vindhya, Ray 2010) and this is evident in the evaluations of programmes targeting women and girls, with a bias towards these forms of exploitation. Critical feminist discourse supports this point, where female labour is seen as both reproductive and productive, but ultimately subordinated to the patriarchy and capitalism (Paltasingh, Lingham 2014; Cruz 2018). In practice, funders of anti-modern slavery programmes want to see visible results and invest in programs that address forms of modern slavery that are more visible and emotive, such as child and forced marriage, and commercial sexual exploitation. This theory is supported by the analysis presented here. We anticipated that the results of the systematic review would highlight certain sectors over others, but not to the extent that transpired (Figure 4).

Given the high risk of exploitation faced by adolescent girls working in the garment industry (Bhaskaran et al. 2010; Theuws, Overeem 2014; LeBaron et al. 2018; Crane et al. 2019; Kara 2019), it is encouraging that the only evaluation of a programme targeting forced labour of adolescent girls also focussed on the garment industry (Joseph et al. 2019). A further relevant evaluation was released in 2020 (Burns et al. 2020) and while it falls outside the Database's reporting period, its findings have been included here.

What works to support adolescent girls exploited in the garment and textile industries?

Both evaluations of programmes supporting adolescent girls in the garment and textile industries were conducted by the Freedom Fund, an anti-modern-slavery NGO, who use a hotspot model. Their Southern India hotspot aims to 'reduce bonded labour and exploitation in textiles, especially affecting young girls, young women, and migrant workers in spinning mills' (Freedom Fund n.d.). The 2019 evaluation used a pre- and post-assessment to measure the impact of a film-based curriculum. This was a group-based intervention which brought together girls and young women to discuss problems and develop common solutions to the issues they face at home and in the workplace, specifically in spinning mills. It found that the curriculum had a high retention of participants and a positive attitudinal change regarding gender-equitable employment and safer working conditions among the young women who participated (Joseph et al. 2019). The 2020 evaluation highlighted the importance of a community-based approach to reducing the prevalence of bonded labour. Activities included raising awareness of worker rights, poverty alleviation, education promotion, and collective action, as well as engaging with government, business, and other powerholders to address reform of the textile industry (Burns et al. 2020). The evaluation found that raising awareness of debt bondage and trafficking led to normative changes and that women demonstrated greater engagement and agency. However, qualitative evidence suggested that as the community became more protective of workers' rights and entitlements, there was an increase in the number of migrant workers in the textile industry who became vulnerable to exploitation, as they often did not speak the local language and were not specifically targeted by the programme (Burns et al. 2020).

These evaluations point to important lessons for the prevention and reduction of exploitation of adolescent girls in the textiles industry. They highlight the importance of tailoring awareness raising to the target population and the impact of these interventions on women in particular. However, consideration must be given to the potential consequences for migrants, who may be less aware of their labour rights. Further, to improve the sustainability of interventions, the evaluations note that training to enhance leadership, resilience, and conflict resolution skills should be incorporated into the programme design.

Other promising practices?

Without further robust evaluation of forced labour programmes for adolescent girls, it is not possible to identify what works to prevent this form of exploitation in the global economy, particularly in the garment and textile industries. What else can we draw upon to identify what works in these industries? Regarding adolescent girls who migrate for work, an RCT addressing the impact of a rural information campaign on safe migration conducted in Nigeria provides some useful insight

that can be applied to anti-slavery efforts. It found that students exposed to an information campaign showed a greater understanding of the dangers of irregular migration and that this could reduce the risk of becoming a victim of human trafficking by more than 50 per cent (Obi, Bartolini, D'Haese 2019). However, it also found that success was based on whether the information campaign was disseminated through appropriate channels, with the right messaging, and tailored to a specific group (Obi, Bartolini, D'Haese 2019).

Some evaluations targeting adolescent boys and grey literature on forced labour provide additional insight into what could work to reduce the risks for adolescent girls. Developing respect for labour rights, including freedom of association and collective bargaining, may help to empower female workers and protect them from exploitation. Arguably, doing this in isolation without tackling the fundamental unequal power structures at play, including gender discrimination, capitalism, and globalisation, will render these interventions impotent. This is evident from the collapse of Rana Plaza in 2013, which killed 1,134 Bangladeshi garment workers, a majority of whom were women and girls (ILO n.d.). In the immediate aftermath, the number of unions grew from fewer than 100 in 2013 to 500 by 2018 (Russel 2018), many with women in senior positions. However, a 2019 survey of 1,500 workers found that while there had been improvements in workplace safety, other problems remained widespread and intractable, notably mistreatment at work (reported by 75 per cent of respondents); half of the respondents noted that relations with managers were still described in terms of 'command and control' (Ashwin, Kabeer, Schüßler 2020).

A collaborative approach and integrated strategy aimed at removing youth from hazardous jobs could be fruitful. This needs to be coupled with policy measures addressing the role of gender in determining whether children are sent to work (ILO 2017). There is significant overlap in the forms of exploitation targeted by programme designers for adolescent girls, which could be used to add more breadth to programme design to reach more sectors and expand the evidence base. Indeed, tackling child marriage through community empowerment models and access to education could have flow-on effects on vulnerability to forced labour. Regardless of the sector, women and girls are overwhelmingly at risk of sexual assault, so any forced labour intervention would still need to consider prevention activities and assistance for victims of sexual exploitation.

Recommendations

Drawing on findings from relevant evaluations in the PPD, we make the following recommendations:

Key recommendations for programme design

- *Rights-based awareness-raising should be inclusive and community-led* – training members of communities to deliver awareness-raising campaigns allows message delivery to be tailored to specific local contexts (see Joseph 2019; Obi, Bartolini, D’Haese 2019; Burns 2020). In at least one evaluation (Joseph 2019), this process led to a positive change in attitudes towards gender and social norms among the participants. These processes must also be inclusive of marginalised groups, such as migrant populations, to prevent exposing them to greater vulnerability (Burns 2020).
- *Tailor interventions specifically to the needs and stage of change of target group* – ensure that programmes are appropriate for adolescent girls, rather than erroneously treating this group as children (Chaudhuri, Majmuder 2014; ILO 2018). This also means interventions must be tailored according to assessments of the participants’ stage of change (Wilson, Nochajski 2018; Rothman et al. 2019). Measuring change should also consider the length of the project; for example, Rothman et al. (2019) aimed to measure levels of hopelessness, but found that the measure of hope used by the study either did not adequately identify change or that changes in levels of hopelessness would take longer to observe than the planned assessments at six and twelve months.

Key recommendations for evaluation design

- *Ensure programme objectives are clear and measurable* – many programme evaluators could not report across all objectives or outcomes due to issues with programme logic, where outcomes were often not mapped to indicators or activities. As a result, it was difficult to understand how objectives had been achieved: they were either too ambitious or not clearly linked by a theory of change. In the latter case, it was unclear how the activities implemented would achieve the outcomes or outputs identified. There is a clear need for more explicit and robust descriptions of programme logic in initial programme design.
- *Measurement and evaluation must be embedded within project development* – without this, the project development cycle is hindered, as programme design does not build on prior findings, while relevant data is not collected during implementation to ensure accurate measures of effectiveness or impact. In turn, this limits the quality of evaluations and the lessons that can be gleaned from them.

Conclusion

To date, evaluations of interventions tackling modern slavery and the exploitation of adolescent girls have largely focussed on programmes that prevent child marriage and support those in commercial sexual exploitation. Few evaluations have been conducted of programmes that tackle forced labour, and even fewer have focussed on the garment industry – despite the fact that women and girls account for 58 per cent of victims of forced labour. This reflects broader issues in the emphasis on sex trafficking in human trafficking research, to the exclusion of other forms of exploitation, and is a particular issue for women and girls. Labour exploitation in the garment and textiles industries is worthy of further scrutiny, as garments are the second-highest risk import in the G20, yet very little is known about what works to prevent the exploitation of adolescent girls in this sector. This represents a real gap in the literature and demonstrates the need for more robust evaluations of interventions to prevent forced labour. It could also indicate a gap in programmes available for adolescent girls in forced labour.

Some initial promising practices and recommendations are presented above, and more can be found in community empowerment and labour rights programmes. The effective prevention of forced labour requires a multi-faceted response that accounts for the myriad disadvantages and discrimination faced by adolescent girls. Such responses must also consider the need to prevent other forms of exploitation, such as commercial sexual exploitation and forced marriage. Further, labour rights in the industry have worsened in the wake of the COVID-19 pandemic, exposing vulnerable workers, including many adolescent girls, to greater risk of modern slavery. Interventions with robust evaluations are urgently required to understand what works at reducing vulnerability to modern slavery in this growing but relatively ignored sector. Until a collaborative and integrated approach is taken to disrupt the status quo of inequality and poor working conditions which are endemic in the sector, and until the approach is robustly evaluated, we will continue to fail on the promise of the SDGs to ensure that no-one, including no adolescent girl, is left behind.

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References

- Akobeng A.K. (2005). 'Understanding randomised controlled trials'. *Community Child Health, Public Health, and Epidemiology* 90(8), pp. 840–844. Available online: <https://adc.bmj.com/content/archdischild/90/8/840.full.pdf> [19.01.2021].
- Amin S., Diamond I., Naved R. and Newby M. (1998). 'Transition to adulthood of female garment-factory workers in Bangladesh'. *Studies in Family Planning* 29(2), pp. 185–200.
- Amin S., Saha J. and Ahmed J. (2018). 'Skills-building programs to reduce child marriage in Bangladesh: A randomized controlled trial'. *Journal of Adolescent Health* 63(3), pp. 293–300.
- Ashwin S., Kabeer N. and Schüßler E. (2020). 'Contested understandings in the global garment industry after Rana Plaza'. *Development and Change* 51(5), pp. 1296–1305.
- Banati P. and Lansford E. (eds.) (2018). *Handbook of Adolescent Development Research and Its Impact on Global Policy*. Oxford: Oxford University Press.
- Bhaskaran R., Nathan D., Phillips N. and Upendranadh C. (2010). 'Home-based child labour in Delhi's garment sector: Contemporary forms of unfree labor in global production'. *The Indian Journal of Labour Economics* 53, pp. 607–624.
- Burrell J. (2012). 'On the overuse of randomised control trials in the aid sector'. *Global Policy Journal*. Available online: <http://www.globalpolicyjournal.com/blog/30/10/2012/overuse-randomized-controlled-trials-aid-sector> [30.09.2020].
- Bryant K. and Landman T. (2019). 'Combatting human trafficking since Palermo: What do we know about what works?'. *Journal of Human Trafficking* 6(2), pp. 119–140.
- Chuang J. (2017). 'Contemporary debt bondage, 'self-exploitation,' and the limits of the trafficking definition'. In P. Kotiswaran (ed.) *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery*. Cambridge: Cambridge University Press, pp. 12–133.
- Clarke R. and Homel R. (1997). 'A revised classification of situational crime prevention techniques'. In S.P. Lab (ed.) *Crime Prevention at a Crossroads (ACJS/Anderson Monograph Series)*. Cincinnati: Routledge, pp. 17–27.
- Cruz K. (2018). 'Beyond liberalism: Marxist feminism, migrant sex work, and labour unfreedom'. *Feminist Legal Studies* 26, pp. 65–92.

- Dake F., Natali L., Angeles G., Hoop J. de, Handa S. and Peterman A. (2018). 'Cash transfers, early marriage, and fertility in Malawi and Zambia'. *Studies in Family Planning* 49(4), pp. 295–317.
- Davy D. (2015). 'Understanding the support needs of human-trafficking victims: A review of three human-trafficking program evaluations'. *Journal of Human Trafficking* 1(4), pp. 318–337.
- Davy D. (2016). 'Anti-human trafficking interventions: How do we know if they are working?'. *American Journal of Evaluation* 37(4), pp. 486–504.
- Eckblom P. and Tilley N. (2000). 'Going equipped: Criminology, situational crime prevention and the resourceful offender'. *British Journal of Criminology* 40(3), pp. 376–398.
- Farrington D., Gottfredson D., Sherman L. and Welsh B. (2002). 'Maryland scientific methods scale'. In L. Sherman, D.P. Farrington, B.C. Welsh and D.L. MacKenzie (eds.) *Evidence-based crime prevention*. New York: Routledge, pp. 13–21.
- George A., Vindhya U. and Ray S. (2010). Sex trafficking and sex work: Definitions, debates and dynamics — a review of literature. *Economic and Political Weekly* 45(17), pp. 64–73. Available online: <http://www.jstor.org/stable/25664387>.
- Harkins B. (2017). 'Constraints to a robust evidence base for anti-trafficking interventions'. *Anti-Trafficking Review* 8, pp. 113–130. Available online: <https://doi.org/10.14197/atr.20121787>.
- Hariton E. and Locascio J.J. (2018). 'Randomised controlled trials – the gold standard for effectiveness research'. *BJOG: An International Journal of Obstetrics and Gynaecology* 125(13), pp. 1716. Available online: <https://doi.org/10.1111/1471-0528.15199>.
- Joudo Larsen J. and Durgana D. (2017). 'Measuring vulnerability and estimating prevalence of Modern Slavery'. *CHANCE* 30(3), pp. 21–29. Available online: <https://doi.org/10.1080/09332480.2017.1383109>.
- Klein N. (2007). *The Shock Doctrine: The Rise in Global Capitalism*. Canada: Knopf Canada.
- Lampe K.V. (2011). 'The application of the framework of Situational Crime Prevention to 'organized crime''. *Criminology and Criminal Justice* 11, pp. 145–163.
- Mallet R., Hagen-Zanker J., Slater R. and Duvendack M. (2012) 'The benefits and challenges of using systematic reviews in international development research'. *Journal of Development Effectiveness* 4(3), pp. 445–455. Available online: <https://doi.org/10.1080/19439342.2012.711342>.
- Paltasingh T. and Lingam L. (2014) 'Production' and 'reproduction' in feminism: Ideas, perspectives and concepts'. *IIM Kozhikode Society & Management Review* 3(1), pp. 45–53. Available online: <https://doi.org/10.1177/2277975214523665>.
- Peruffo M. and Ferreira P.C. (2017). 'The long term effects of conditional cash transfers on child labour and school enrolment'. *Economic Inquiry* 55(4), pp. 2008–2030. Available online: <https://doi.org/10.1111/ecin.12457>.
- Reniers R.L.E.P., Murphy L., Lin A., Bartolomé S.P. and Wood S.J. (2016). 'Risk

- perception and risk-taking behaviour during adolescence: The influence of personality and gender'. *PLoS One* 11(4). Available online: <https://doi.org/10.1371/journal.pone.0153842>.
- Ricker C. and Ashmore R. (2020). 'The importance of power and agency in a universal health coverage agenda for adolescent girls'. *Sexual and Reproductive Health Matters* 28(2). Available online: <https://doi.org/10.1080/26410397.2020.1787312>.
- Rothman E.F., Preis S.R., Bright K., Paruk J., Bair-Merritt M. and Farrell A. (2019). 'A longitudinal evaluation of a survivor-mentor program for child survivors of sex trafficking in the United States'. *Child Abuse & Neglect* 100. Available online: <https://doi.org/10.1016/j.chiabu.2019.104083>.
- Van der Laan P., Smit M., Busschers I. and Aarten P. (2011). 'Cross-border trafficking in human beings: Prevention and intervention strategies for reducing sexual exploitation'. *Campbell Systematic Reviews* 7(1), pp. 1–50.
- Weitzer R. (2007). 'The social construction of sex trafficking: Ideology and institutionalization of a moral crusade'. *Politics and Society* 35(3), pp. 447–475.
- Weitzer R. (2014). 'New directions in research on human trafficking'. *The Annals of the American Academy* 653, pp. 6–24. Available online: <https://doi.org/10.1177/0002716214521562>.
- Wilson B. and Nochajski T.H. (2018). 'On the continuum of exit: Understanding the stages of change among women in commercial sexual exploitation'. *Gender Issues* 35(2), pp. 98–112.
- Zhang S.X. (2009). 'Beyond the 'Natasha' story – a review and critique of current research on sex trafficking'. *Global Crime* 10(3), pp. 178–195.

Internet sources

- Girls not Brides (n.d.). *About Child Marriage*. Available online: <https://www.girlsnotbrides.org/about-child-marriage/#:~:text=Child%20marriage%20is%20any%20formal,Nearly%201%20every%203%20seconds> [23.01.2021].
- Barrett P. and Baumann-Pauly D. (2019). *Made in Ethiopia: Challenges in the Garment Industry's New Frontier*. NYU Stern Center for Business and Human Rights. Available online: <https://bhr.stern.nyu.edu/blogs/https://issuu.com/nyusterncenterforbusinessandhumanri/docs/nyuethiopiafinalonlinee31640827/69644612> [30.09.2020].
- Brignall M. and Butler S. (2014). *Bangladesh garment factories still exploiting child labour for UK products*, Theguardian.com. Available online: <https://www.theguardian.com/world/2014/feb/06/bangladesh-garment-factories-child-labour-uk> [28.07.2020].
- Bryant K. and Joudo B. (2018). *What works? A review of interventions to combat modern day slavery*. The Minderoo Foundation. Available online: <https://cdn.minderoo.org/content/uploads/2019/02/05180522/Promising-Practices-180213-p.pdf> [27.07.2020].
- Burns D., Oosterhoff P., Joseph S., Narayanan P. and Bharadwaj S. (2020). *Evaluation*

- report on the results of the interventions to reduce the prevalence of bonded labour in Tamil Nadu*. Available online: <https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/15153> [30.09.2020].
- Business & Human Rights Centre (2020). *Major apparel brands delay & cancel orders in response to pandemic, risking livelihoods of millions of garment workers in their supply chains*, Business-humanrights.org. Available online: <https://www.business-humanrights.org/en/latest-news/major-apparel-brands-delay-cancel-orders-in-response-to-pandemic-risking-livelihoods-of-millions-of-garment-workers-in-their-supply-chains/>. [28.07.2020].
- Chaudhuri P. and Majmuder I. (2014). *Kolkata Sanved Impact Report*. Kolkata Sanved Partner Organisation. Available online: <http://kolkatasanved.org/wp-content/uploads/2018/06/2014-Kolkata-Sanved-Combined-Impact-Report-1.pdf> [17.02.2021].
- Clean Clothes Campaign (2005). *Made by Women: Gender, the Global Garment Industry and the Movement for Women Workers' Rights*. Available online: <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1164&context=globaldocs> [30.09.2020].
- Clean Clothes Campaign (2021). *'Live-blog: How the Coronavirus affects garment workers in supply chains'*. Available online: <https://cleanclothes.org/news/2021/live-blog-on-how-the-coronavirus-influences-workers-in-supply-chains> [28.01.2021].
- Crane A., Soundararajan V., Bloomfield M., Spence L. and LeBaron G. (2019). *Decent Work and Economic Growth in the South Indian Garment Industry*. University of Bath, Royal Holloway University of London, and The University of Sheffield. Available online: <http://speri.dept.shef.ac.uk/wp-content/uploads/2019/09/decent-work-and-economic-growth-in-the-south-india-garment-industry.pdf> [30.09.2020].
- David F., Bryant K. and Joudo Larsen J. (2019). *Migrants and Their Vulnerability to Modern Slavery*. Geveva: IOM. Available online: https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf [30.09.2020].
- Field E., Glennerster R., Nazneen S., Pimkina S., Sen I. and Buchmann N. (2018). *Age of marriage, women's education, and mother and child outcomes in Bangladesh. Impact Evaluation Report 68*. New Delhi: International Initiative for Impact Evaluation. Available online: <https://www.3ieimpact.org/sites/default/files/2018-08/IE%2068-Bangladesh-marriage.pdf> [17.01.2021].
- Freedom Fund (2019). *Unlocking what works: How community-based interventions are ending bonded labour in India*. Available online: <https://freedomfund.org/wp-content/uploads/Freedom-Fund-Evidence-in-Practice-Paper-Unlocking-what-works.pdf> [30.09.2020].
- Freedom Fund (n.d.). *Southern India*. Available online: <https://freedomfund.org/programs/hotspot-projects/southern-india-hotspot/> [30.09.2020].
- Giammarinaro M.G. (2020). *COVID-19 Position paper: The impact and consequences of the COVID-19 pandemic on trafficked and exploited persons*. Available online:

- <https://www.ohchr.org/Documents/Issues/Trafficking/COVID-19-Impact-trafficking.pdf> [30.09.2020].
- Gleason K. and Cockayne J. (2018). *Official Development Assistance and SDG Target 8.7: Measuring aid to address forced labour, modern slavery, human trafficking and child labour*. United Nations University. Available online: http://collections.unu.edu/eserv/UNU:6612/Development_Assistance_and_SDG_Target_8.7_FINAL_WEB_7_.pdf [30.09.2020].
- Guarcello L., Lyon S. and Valdivia C. (2016). *Adolescents in Hazardous Work: Child labour among children aged 15-17 years, Understanding Children's Work Programme*. Available online: http://www.ucw-project.org/attachment/23052017377Hazardous_work_adolescents_in_CL_july2016.pdf [30.09.2020].
- Hames C., Dewar F. and Napier-Moor R. (2010). *Feeling Good about Feeling Bad... A Global Review of Evaluation in Anti-Trafficking Initiatives*. Global Alliance Against Trafficking in Women. Available online: http://www.gaatw.org/publications/GAATW_Global_Review.FeelingGood.AboutFeelingBad.pdf [30.09.2020].
- ILO (1996). *Globalization Changes the Face of Textile, Clothing and Footwear Industries*. International Labour Organization. Available online: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_008075/lang--en/index.htm#n1 [22.01.2021].
- ILO (2009). *Give Girls a Chance: Tackling child labour, a key to the future*. Available online: https://www.ilo.org/ippec/Informationresources/WCMS_107913/lang--en/index.htm [27.07.2020].
- ILO (2015). *New Garment Industry Data shows Gender Equality Progress and Challenges*. Available online: https://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_349653/lang--en/index.htm [30.09.2020].
- ILO (2017). *Global Estimates of Child Labour*. Available online: https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575499.pdf [24.07.2020].
- ILO (2018). *Independent Evaluation of the ILO's Programme of Work in Lebanon and Jordan in Terms of Decent Work and the Response to the Syrian Refugee Crisis, 2014–18*. Available online: https://www.ilo.org/wcmsp5/groups/public/--ed_mas/---eval/documents/publication/wcms_646718.pdf [22.01.2021].
- ILO (n.d.). *The Rana Plaza Accident and its aftermath*. Available online: https://www.ilo.org/global/topics/geip/WCMS_614394/lang--en/index.htm#:~:text=The%20Rana%20Plaza%20disaster%2C%20Savar,and%20injured%20more%20than%20%2C500. [30.09.2020].
- ILO and Walk Free (2017). *Global estimates of modern slavery: forced labour and forced marriage*. Available online: https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf [30.09.2020].

- Inter-Agency Coordination Group Against Trafficking in Persons [ICAT] (2016). *Issue Paper: Pivoting towards the evidence: Building effective counter-trafficking responses using accumulated knowledge and a shared approach to monitoring, evaluation and learning*. Available online: http://icat.network/sites/default/files/publications/documents/16-10259_Ebook.pdf [30.09.2020].
- Joseph S., Narayanan P., Bharadwaj S. and Vincent K. (2019). *Evaluation of the 'Call Me Priya' film-based curriculum in Tamil Nadu*, Freedomfund.org. Available online: <https://freedomfund.org/our-reports/evaluation-of-a-film-based-intervention-to-empower-girls-and-young-women-in-tamil-nadu/> [30.09.2020].
- Kara S. (2019). *Tainted Garments*, Blum Center for Developing Economies. University of California. Available online: <https://blumcenter.berkeley.edu/wp-content/uploads/2019/01/Tainted-Garments-1.pdf> [30.09.2020].
- LeBaron G., Howard N., Thibos C. and Kyritsis P. (2018). *Confronting root causes: forced labour in global supply chains. Beyond Trafficking and Slavery and the Sheffield Political Economy Research Institute*. Available online: <https://core.ac.uk/download/pdf/145637779.pdf> [30.09.2020].
- Mayilvaganan V. (2020). *In TN mills, pills to 'ease' periods play havoc with women's health*, Times of India. Available online: <https://timesofindia.indiatimes.com/india/in-tn-mills-pills-to-ease-periods-play-havoc-with-womens-health/articleshow/70000002.cms> [07.07.2020].
- O'Neil T., Fluery A. and Foresti M. (2016). *Women on the move: Migration, gender equality and the 2030 Agenda for Sustainable Development*. Overseas Development Institute, pp. 4–6. Available online: <https://www.odi.org/sites/odi.org.uk/files/resource-documents/10731.pdf>. [27.01.2021].
- Obi C., Bartolini F. and D'Haese M. (2019). *Evaluating the impact of information campaign in deterring irregular migration intention among youths. a randomised control experiment in Edo State, Nigeria*, Sixth International Conference of African Association of Agricultural Economists. Available online: https://www.researchgate.net/publication/338396839_Evaluating_the_impact_of_information_campaign_in_deterring_irregular_migration_intention_among_youths_a_randomised_control_experiment_in_Edo_State_Nigeria [30.09.2020].
- Overeem P. and Theuws M. (2014). *Fact Sheet: Child labour in the textile & garment industry*. Centre for Research on Multinational Corporations. Available online: <https://www.somo.nl/wp-content/uploads/2014/03/Fact-Sheet-child-labour-Focus-on-the-role-of-buying-companies.pdf> [27.09.2020].
- Puttick R. (2018). *Mapping the Standards of Evidence used in UK social policy. Alliance for useful evidence*. Available online: https://media.nesta.org.uk/documents/Mapping_Standards_of_Evidence_A4UE_final.pdf
- Russel S. (2018). *Five years on from the Rana Plaza tragedy. Has anything changed?*, Tuc.org.uk. Available online: <https://www.tuc.org.uk/blogs/five-years-rana-plaza-tragedy-has-anything-changed> [18.07.2020].

- Solidaridad-South & South East Asia (2012). *Understanding the Characteristics of the Sumangali Scheme in Tamil Nadu Textile & Garment Industry and Supply Chain Linkages*. Fair Labor Association. Available online: <https://hdl.handle.net/1813/101890> [26.09.2020].
- Svarer C., Meiers R. and Rothmeier B. (2017). *Empowering Female Workers in the Apparel Industry*. BSR. Available online: https://www.bsr.org/reports/BSR_Empowering_Female_Workers_in_the_Apparel_Industry.pdf [30.09.2020].
- Sweileh W.M. (2018). *Research trends on human trafficking: A bibliometric analysis using Scopus database*, Globalizationandhealth.biomedcentral.com. Available online: <https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-018-0427-9> [11.01.2021].
- Theuws M. and Overeem P. (2014). *Flawed Fabrics: The abuse of girls and women workers in the South Indian textile industry*. Amsterdam: SOMO, ICN. Available online: <http://www.indianet.nl/pdf/FlawedFabrics.pdf> [28.07.2020].
- UNICEF (2011). *State of the World's Children: Adolescence*. Available online: https://www.unicef.org/publications/files/SOWC_2011_Main_Report_EN_02242011.pdf [29.09.2020].
- UNICEF (2014). *A Statistical Snapshot of Violence Against Adolescent Girls*. Available online: https://www.unicef.org/publications/files/A_Statistical_Snapshot_of_Violence_Against_Adolescent_Girls.pdf [14.07.2020].
- UNICEF (2018). *UNICEF Programme Guidance for the Second Decade: Programming With and for Adolescents*. Available online: <https://www.unicef.org/media/57336/file> [30.09.2020].
- UNICEF (2019). *Adolescents Overview*. Available online: <https://data.unicef.org/topic/adolescents/overview/> [30.09.2020].
- UNICEF (2020a). *Child Marriage Around the World*. Available online: <https://www.unicef.org/stories/child-marriage-around-world> [30.09.2020].
- UNICEF (2020b). *A New Era for Girls: Taking Stock of 25 Years of Progress*. New York: United Nations Children's Fund, UN Women and Plan International. Available online: <https://www.unicef.org/sites/default/files/2020-04/A-new-era-for-girls-2020.pdf> [30.06.2020].
- United Nations Committee for Development Policy [UNCDP] (2018). *Leaving no one behind*. Available online: https://sustainabledevelopment.un.org/content/documents/2754713_July_PM_2_Leaving_no_one_behind_Summary_from_UN_Committee_for_Development_Policy.pdf [30.09.2020].
- United Nations General Assembly [UNGA] (1981). *International Youth Year: Participation, Development, Peace – Report of the Secretary-General*. Available online: <https://undocs.org/en/A/36/215> [30.09.2020].
- United Nations General Assembly [UNGA] (2015). *Transforming our world: The 2030 Agenda for Sustainable Development*, A/RES/70/1. Available online: <http://www.refworld.org/docid/57b6e3e44.html> [30.09.2020].
- United Nations Population Fund [UNFPA] (2020). *Equality For Girls In Crisis Adapting Child Marriage And Adolescent Girls' Programming During Covid-19*

- Pandemic*. Available online: https://www.unfpa.org/sites/default/files/resource-pdf/Equality_for_Girls_in_Crisis.pdf [26.09.2020].
- Walk Free (2018). *Global Slavery Index*. Minderoo. Available online: <https://www.globalslaveryindex.org/> [30.09.2020].
- Walk Free (2020a). *Stacked Odds*. Minderoo. Available online: https://cdn.walkfree.org/content/uploads/2020/10/10021607/Stacked-Odds_201008_FNL1_LR.pdf [11.10.2020].
- Walk Free (2020b). *Protecting People in a Pandemic*. Minderoo. Available online: <https://cdn.minderoo.org/content/uploads/2020/04/30211819/Walk-Free-Foundation-COVID-19-Report.pdf> [30.09.2020].
- World Bank (2005). *Children and Youth: A Framework for Action*. Available online: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/776031468044961060/children-and-youth-a-framework-for-action> [30.09.2020].
- World Health Organization [WHO] (n.d.). *Adolescent health*. Available online: https://www.who.int/health-topics/adolescent-health#tab=tab_1 [30.09.2020].



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What is labour exploitation? The Belgian and British experience

Co to jest praca przymusowa? Doświadczenia belgijskie i brytyjskie

Abstract: The legal understanding of labour exploitation is a grey area. This paper first outlines some of the obstacles in international and regional law and jurisprudence, as to the understanding of exploitation in the context of human trafficking, slavery, servitude, and forced labour. Secondly, taking into account recent legal reforms in both Belgium and England and Wales, this paper outlines some of the key features that have emerged from the judicial handling of labour exploitation in criminal cases. Drawing on the findings from empirical analysis of criminal cases between 2010–2017 as part of doctoral research, this paper first of all outlines the similarities, differences, and challenges to ensuring a clear understanding of the meaning of labour exploitation in the context of human trafficking. The findings will provide insight into how to strengthen a harmonised and robust response to human trafficking.

Keywords: human trafficking, labour exploitation, forced labour, exploitation, definitions

Abstrakt: Prawne rozumienie pojęcia wykorzystania do pracy nie jest do końca jasne. W niniejszym artykule po pierwsze zostały przedstawione niektóre przeszkody, wynikające z prawa czy orzecznictwa na poziomie międzynarodowym oraz regionalnym, które utrudniają zrozumienie takich zagadnień jak wykorzystanie w kontekście handlu ludźmi, niewolnictwa, poddaństwa czy pracy przymusowej. Po drugie zaś, zostały omówione kluczowe wnioski, jakie wynikają z badania akt spraw karnych dotyczących wykorzystania pracowników do pracy, które przedstawiono przy uwzględnieniu ostatnich reform prawa mających miejsce w Belgii oraz Anglii i Walii. Badania empiryczne objęły lata 2010–2017 i zostały przeprowadzone w ramach badań doktorskich. W artykule pokazano przede wszystkim podobieństwa, różnice i wyzwania odnośnie do opracowania jasnej i zrozumiałej definicji pojęcia

wykorzystania do pracy w kontekście handlu ludźmi. Wyniki tych analiz pozwolą zrozumieć, w jaki sposób należy wzmocnić zharmonizowaną i zdecydowaną reakcję na zjawisko handlu ludźmi.

Słowa kluczowe: handel ludźmi, wykorzystanie do pracy, praca przymusowa, wykorzystanie, definicje

Introduction

The legal understanding of labour exploitation is a grey area. Indeed, one of the most prominent issues is that labour exploitation is not actually a legal term. Instead, it is often attributed to forms of exploitation that involve the exploitation of the work or services of an individual (COE 2018; COE 2019).¹ However, confusion arises where 'labour exploitation' is co-opted in international, regional, and national fora to denote a type of human trafficking – that is to say, one that is distinct from human trafficking for the purposes of sexual exploitation or organ removal. From a purely legal perspective, the term has to be further dissected and understood in accordance with those forms of exploitation that have been legally defined and/or proscribed in international and regional law, namely slavery, servitude, practices similar to slavery, and forced or compulsory labour that encompass the 'upper limits' of exploitation (Section 2). There is still confusion, however, over the exact scope of exploitation in the definition of human trafficking. The element of (labour) exploitation is not defined, but rather given a categorical and non-exhaustive approach (Section 1).

The brief presentation of the impact this non-definition of exploitation has in law (Section 3) bridges the gap between the international and regional law developments and the approach taken in national legal orders, illustrated by a comparative analysis of Belgium and England and Wales. The criminalisation of exploitation in both formal and substantive national criminal law is examined from a legal positivist approach. After a brief explanation of the methods and justification of the selection of case study countries (Section 4), this article outlines the legislative evolution in both Belgium and England and Wales (Section 5). Findings from empirical analysis of criminal cases between 2010–2017 highlights the similarities, differences, and challenges in the judicial handling of cases dealing with labour exploitation (Section 6).

The added value of this analysis of the domestic criminal law of two national legal orders is grounded in the international and regional legal obligations of states to criminalise and prosecute human trafficking, slavery, servitude, and forced labour. Research has highlighted the fragmented and inconsistent approach

¹ For instance, human trafficking for labour exploitation is used to denote human trafficking for the purpose of forced or compulsory labour, servitude, practices similar to slavery, and slavery, among others. This categorisation is used, for example, by the Council of Europe.

to prohibiting and criminalising slavery, servitude, forced labour, and human trafficking in national legislation (Allain 2014; Stoyanova 2014; Schwarz, Allain 2020). Moreover, where these offences are criminalised, prosecution rates are not yet optimal (EC 2016; GRETA 2017; Weatherburn 2019). The piecemeal approach to prohibiting these forms of exploitation in domestic law further demonstrates that ‘lawmakers, judges, legal professionals, and policy makers have a difficulty in applying and understanding the multiplicity of forms of labour exploitation and legal provisions relevant to it’ (FRA 2015). This article provides insight into how labour exploitation is applied and seeks to minimise the effects of fragmented national criminal law. This is important to ensure adherence to the principle of legality, wherein ‘behaviour which amounts to a criminal offence must be clearly defined in order to provide legal certainty’ (UNODC 2010). Above all, the article will provide insight into how to provide a robust law and policy response, not only to human trafficking but also to other forms of exploitation that are prohibited under international law. Whilst the focus is predominantly on the criminalisation of human trafficking, the ambiguity of labour exploitation and where its threshold should be delineated is also of relevance to those who seek to clarify the exact point at which working conditions are no longer decent.

1. Definition of the problem: Non-definition of (labour) exploitation in (human trafficking) law

Labour exploitation – or indeed, the concept of exploitation – is not defined in law. Instead, national legal orders predominantly tackle labour exploitation through the criminalisation of human trafficking (Schwarz, Allain 2020). Human trafficking is defined in international law under Article 3(a) of the Protocol to prevent, suppress, and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime from 2000 (the Palermo Protocol).

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 abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

The internationally agreed definition of human trafficking consists of three constituent elements, namely the action, the means, and the purpose of exploitation. Whilst the definition requires the presence of all three elements for a situation to be recognised as one of human trafficking, it is the third element – the purpose of

exploitation – that is fundamental to the trafficking experience (EWCA 2011: Para. 24). However, this element remains ambiguous, as it did not receive much attention during the drafting of the Palermo Protocol. One reason for this oversight is that human trafficking only requires an intention to exploit another person, meaning that *actual* exploitation does not have to occur (Kotiswaran 2015; Wijers 2015). Notwithstanding, the element of exploitation is the main focus of the current paper, wherein the definition of human trafficking does not expand upon the meaning of the concept. Instead, the definition lists forms 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’ (Article 3(a) Palermo Protocol 2000).

Furthermore, the use of the wording ‘at a minimum’ means that the list is open-ended and can be extended at the discretion of State Parties when criminalising human trafficking in their own national criminal law. In practice, this means that an activity might be illicit in one country but not in another, leading to inconsistencies and varying interpretations in national legal orders (Allain 2009). The non-exhaustive nature of this approach also resonates in regional anti-trafficking law. For instance, the EU Anti-Trafficking Directive 2011/36/EU added ‘new’ forms of exploitation that do not appear in the Palermo Protocol definition, namely forced criminality and forced begging (Article 2(3)).

The purpose of exploitation in human trafficking has been delineated between three main forms: for sexual exploitation, for the purposes of labour exploitation, and for the purpose of the removal of organs. Unfortunately, a lack of international and regional jurisprudence means that there has been no further occasion to clarify the scope of human trafficking for the purposes of labour exploitation. Indeed, we only have a handful human trafficking cases from the European Court of Human Rights (ECtHR) as a point of reference, since there has been no other engagement from other senior courts, and although the implementation of these judgments on human trafficking are restricted to Council of Europe (COE) State Parties, they are regarded as providing unique guidance to states beyond the COE (Milano 2017). Of course, an initial obstacle for the ECtHR was the absence of human trafficking as one of the practices prohibited in Article 4 (namely slavery, servitude, and forced or compulsory labour). Nonetheless, the Court overcame this barrier by ruling, in *Rantsev v Cyprus & Russia* (2010), that human trafficking fell within the material scope of Article 4.² The body of case law is also limited in that the main focus of the Court has been on developing positive obligations (Stoyanova 2012; 2014;

² There have been other cases adjudicated under Article 4, but the Court examined compliance with positive obligations in lieu of a further elaboration of the material scope of the prohibited practices. See, for example, *L.E. v Greece* (2016) and *J. & Others v Austria* (2017). The same assimilation was adopted in *M. & Others v Bulgaria* (2012) and *S.M. v Croatia* (2018), where the Court reiterated that there is no need to examine the scope of Article 4 & human trafficking.

2017) rather than interpreting the material scope of the provisions.³ With regard to the latter, it appears that the ECtHR is unlikely to adopt such a role; however, brief snippets of the Court's understanding of one of these prohibited practices are beginning to emerge: the Court clarified, in *Chowdury & Others v Greece* (2017), that restriction of movement is not *sine qua non* for identifying forced labour and the Grand Chamber in *S.M. v. Croatia* (2020) affirmed that forced labour also includes forced prostitution (ECHR Para. 330). Regardless, it is unfortunate that the Court itself perpetuates confusion by conflating terms, for example, the interchanging of 'exploitation' and 'trafficking' in *Chowdury* and an understanding of slavery as the 'exercise of powers attaching to the right of ownership' in *Siliadin v France* (2005) and affirmed in subsequent case law (cf. *infra* Section 2.1). Overall, scholars have expressed disappointment in the Court's approach and reasoning (Piotrowicz 2012; van der Wilt 2014; Milano 2017).

This paper will place an emphasis on determining the legal understanding of exploitation in the context of labour and will use the following forms of exploitation, listed in the Palermo Protocol, as a starting point: forced or compulsory labour or services (hereinafter, forced labour), slavery or practices similar to slavery, and servitude. These forms of exploitation are defined in international law and jurisprudence, though – as discussed above and below – there is still a lack of clarity as to how these forms are understood.

It is important to provide clarity of the meaning and scope of these forms of exploitation and of exploitation as a concept in its own right for two reasons. Firstly, as mentioned above, the forms of labour exploitation listed in the Palermo Protocol definition are non-exhaustive and as a result it is possible for someone to be exploited during their trafficking experience, but the exploitation to not be severe enough to meet the threshold of forced labour et al. The second reason is relevant to the understanding of the concept beyond the human trafficking paradigm; not all labour exploitation amounts to human trafficking as reiterated by the EU Commission in 2018 when reporting on the implementation of Directive 2011/36/EU: 'The Commission notes however that not all exploitative situations in the EU labour market are a result of trafficking in human beings' (EC 2018). Thus, it is possible for someone to be a victim of labour exploitation, but not human trafficking. Although it is not the focus of this article, we must heed the applicability of the concept of exploitation beyond human trafficking. However, for the concept to be well understood, a necessary first step is to clarify its scope and meaning in the context of human trafficking law.

³ Indeed, Stoyanova has called for this as an alternative approach, whereby an emphasis is placed on clarifying the material scope of the actual prohibited practices in Article 4 (Stoyanova 2014; 2017).

2. Labour exploitation in international and regional law

States have a legal obligation to prohibit and criminalise the following forms of labour exploitation: slavery, servitude, practices similar to slavery, and forced labour. As mentioned above, these are the forms of labour exploitation that are listed in the human trafficking definition. In this section, the current understanding of the material scope of these prohibited practices will be outlined with reference to both law and jurisprudence.

2.1. Slavery

Slavery is defined in Article 1 of the 1926 League of Nations Convention to Suppress the Slave Trade and Slavery as ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.’ The definition of slavery is now considered to be one of customary international law. The Convention did not go as far as securing the prohibition of slavery (*de facto*), but its scope was limited ‘to bring[ing] about, progressively and as soon as possible, the complete abolition of slavery in all its forms’ (Article 2(b)). Subsequent international and regional treaties recognised *de facto* slavery as requiring an obligation not only of abolition but also of prohibition, that is, absolute and non-derogable in nature.⁴ Slavery is also referred to in international criminal law in the 1998 Rome Statute of the International Criminal Court with the offences of enslavement as a crime against humanity (Article 7(1)(c)) and sexual slavery as a crime against humanity (Article 7(1)(g)) and a war crime (Article 8(2)(b)(xxii)).

Notwithstanding the recognition of states’ obligation to prohibit slavery, none of the subsequent treaties elaborated on the meaning of the 1926 definition, which as a result remains the point of departure (Rijken 2013). Therefore, the definition of slavery and the meaning of ‘exercise of powers attaching to the right of ownership’ has required further scrutiny through judicial interpretation.

⁴ Article 4, Universal Declaration on Human Rights (1948): ‘No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.’ Article 4(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950): ‘No one shall be held in slavery or servitude.’ Article 8(1) of the International Covenant on Civil and Political Rights (1966): ‘No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.’ Article 5 of the African Charter on Human and Peoples’ Rights (1981): ‘Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman, or degrading punishment and treatment shall be prohibited.’ Article 6(1) of the American Convention on Human Rights (1969): ‘No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.’ Article 5(1) of the Charter of Fundamental Rights of the European Union (2000): ‘No one shall be held in slavery or servitude.’

Slavery jurisprudence is, however, limited. Some key cases have emerged from the ECtHR and other regional courts, such as the Economic Community of West African States (ECOWAS), the Court of Justice and Inter-American Court of Human Rights (IACtHR), and the International Criminal Tribunal for former Yugoslavia (ICTY). What follows is a chronological presentation of the evolution of the understanding of the meaning of slavery both in relation to *de jure* and *de facto* slavery as ‘the exercise of powers attaching to the rights of ownership’ and the emergence of a contemporary interpretation of the ‘powers of ownership’ that is premised upon control.

The first case is an appeal from the ICTY *Prosecutor v Dragoljub Kunarac, Radomir Kovac & Zoran Vukovic* (2002). Here, the international tribunal accepted that the traditional concept of slavery has advanced to encompass various contemporary forms and the right of ownership is impossible due to the abolition of *de jure* slavery. However, the court did adhere to the language of ‘powers of ownership’ and interpreted this to mean the ‘destruction of the juridical personality’ of the individual in recognition of the prohibition of *de facto* slavery. However, subsequent cases took a step back towards the classic meaning of *de jure* slavery. In *Siladin v France* (2005), the ECtHR referred to a genuine right of legal ownership that reduces the individual’s status to that of an ‘object’ – a position that was reinforced by the Strasbourg Court in its subsequent judgment in *Rantsev v Cyprus & Russia* (2010) and reiterated by the ECOWAS Court of Justice in *Hadijatou Mani v Niger* (2008). The understanding of both *de jure* and *de facto* slavery in the 1926 Convention was again entrenched by the IACtHR in *Hacienda Brasil Verde v Brazil* (2016), which recognised that the exercise of powers of ownership distinguishes slavery from other forms of exploitation, but that it is necessary to render slavery ‘virtually meaningless’.⁵

Significantly, a contemporary interpretation of the powers of ownership as control has emerged from the aforementioned slavery jurisprudence. First, in *Kunarac* (2002), the ICTY provided a number of indicators for powers of ownership, which were applied by the ECOWAS in 2008, including⁶ control of movement, control of physical environment, psychological control, and control of sexuality. The role of control as a key feature was also touched upon in the Third-Party Intervention of the Aire Centre in *C.N. & V. v France* (2012), where it was described as being a ‘crucial common element’.

More recently, the IACtHR case of *Hacienda Brasil Verde v Brazil* (2016) assimilated the exercise of powers of ownership to ‘control as possession’, by referencing the academic engagement with the property paradigm of slavery in the Bellagio Harvard Guidelines (2012), which state that possession is the *sine qua non* of slavery, and by outlining that control over a person in such a way as to deprive

⁵ Reiterating the judgement of the Australian High Court in *R v Tang* (2008).

⁶ Other indicators include measures to prevent/deter escape, force, threat, or threat of coercion, duration, assertion of exclusivity, subjection of cruel treatment and abuse, and forced labour.

them of individual liberty. This does not require physical restraint, but can amount to dependency that results from other means, such as the withholding of identity documents or wages.

2.2. Servitude and practices similar to slavery

Servitude is not defined in law (Allain 2009), but is categorised as ‘practices similar to slavery’ under Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery from 1956. The Convention proscribes four practices that are similar to slavery, namely debt bondage, serfdom, forced marriage, and child exploitation. The genesis of the Supplementary Convention emerged from the assessment of the 1926 Convention’s failure to sufficiently capture all forms of exploitation, including those that do not meet the threshold of exercise of powers attaching to the right of ownership. Nonetheless, Article 1 of the 1956 Supplementary Convention does affirm that the definition of slavery in the 1926 Slavery Convention is accurate and adequate. To date, the only case that refers to the material scope of the four practices that are defined as practices similar to slavery is the IACtHR case *Hacienda Brasil Verde v Brazil* (2016), where the court again referred to the exercise of control that amounted to a significant deprivation of the individual’s autonomy.

As mentioned above, servitude does not have a legal definition, but has been included in subsequent international and regional treaties (often alongside slavery) (Rijken 2013). In order to determine whether a situation of exploitation meets the threshold of servitude, a three-stage test is to be applied. This test emerged from ECtHR jurisprudence, first in *Van Droogenbroeck v Belgium* (1980) and followed by *Siliadin v France* (2005: Paras. 123–124). The test entails i) an obligation to provide one’s services that is imposed by the use of coercion, ii) an obligation on the ‘serf’ to live on the other’s property, and iii) the impossibility of changing his status (i.e. a feeling that the condition is permanent and unlikely to change). From this jurisprudence, a hierarchy of exploitation emerges, one which has been reasserted by the ECtHR, who stated in *C.N. & V. v France* (2012) that servitude is an aggravated form of forced labour.

2.3. Forced or compulsory labour

Forced or compulsory labour was first mentioned – but crucially, not defined – in Article 5 of the 1926 Slavery Convention.⁷ It was not until the ILO Forced Labour Convention in 1930 where forced or compulsory labour was defined in

⁷ Article 5 in fact sought the prevention of forced or compulsory labour from ‘developing into conditions analogous to slavery’. Thus, suggesting that a ‘hierarchy of exploitation’ exists but treading lightly in view of the political stance at the time, e.g. colonisation and the need for state-enforced labour for economic growth.

Article 2(1) 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' (emphasis added).

Critically, the nature of the prohibition of forced or compulsory labour has evolved as a result of political and economic changes that emerged from both decolonisation and globalisation (Anderson, O'Connell Davidson 2003). Initially, forced labour was permitted under certain exceptions, namely compulsory military service, civic obligations of citizens of a fully self-governing country, work or service as a consequence of a conviction in court of law, work or service in case of emergency, war, or natural disaster, and minor community services. These exceptions took into account the role of the state in perpetuating forced or compulsory labour as a state practice. A shift began to emerge, as can be evidenced by the restrictions on the exceptions in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in recognition of political changes (Maul 2011). More recently, the ILO Protocol of 2014 and Recommendation No. 203 to the Forced Labour Convention of 1930 reaffirm the definition of forced labour, but also recognise the change in nature and form of forced labour since that time (ILO 2012). This shift in the political understanding of forced labour is also pertinent in the European regional response, where the European Convention on Human Rights (ECHR) in 1950 adopted a restricted approach that recognises how certain exceptions to the prohibition can be contrasted with the EU Charter of Fundamental Rights and Freedoms (2000), which appears to call for an absolute prohibition, but in fact should be understood in light of the 'negative' definitions contained in Article 4(3) of the ECHR.

Further development on the material scope of forced labour has been left to the courts. The provision of work or service must amount to a disproportionate and excessive burden (ECHR 1983). In order to determine the extent to which the situation is disproportionate, it is necessary to assess to what extent the individual's agency has been restricted before and during the exploitation so that there is a lack of alternative or no real choice. The situation must be determined on a case-by-case basis (Prosecutor v Krnojelac 2002). Ultimately, the situation is characterised by a relationship of extreme dependence (IACHR 2016; ECHR 2017). The most recent application of the test of proportionality was in *Chowdury & Others v Greece* (2017), wherein the court took account of the undocumented status of the migrant workers and their risk of detention as well as whether they and their lack of financial means as a result of them not being paid their wages should be brought to the attention of the authorities. Whilst the court produced an objective assessment, they did recognise the need to take into consideration the individual's personal conviction.

3. The impact of exploitation not being defined in law

As described above, the understanding of exploitation in human trafficking law is categorical and not definitional (Allain 2014). As a result, the Palermo Protocol amounts to a compromise ensuring both implementation and political cooperation and should be understood as outlining the minimum standards for Member States to implement in their domestic legal orders (Parkes 2015). However, the non-definition of exploitation in law means that there is still no clear understanding of where to draw the line between exploitation and bad employment practices, especially considering that exploitation is ambiguous and fluid in nature (UNODC 2015).

Three consequences emerge from the non-definition of exploitation that are relevant to the subsequent exploration of the handling of labour exploitation in domestic jurisdictions. Firstly, there is confusion and conflation between the forms of exploitation, as noted above, in judges' use of the terms trafficking and exploitation interchangeably; such labelling can significantly impact victims' rights to remedy (Chuang 2015). The second consequence is the fragmented and inconsistent domestic implementation that results from a lack of clarification.⁸ Whilst there is flexibility, it is crucial that such fragmentation does not lead to an anti-trafficking framework that fails to adhere to even the minimum international standards, which could lead to an erosion of the severity of the crime (Rijken 2013; FRA 2015).⁹

The third and final issue is that the lack of clarity can lead to legal uncertainty and 'expansionist creep' (Chaung 2014). The latter can be avoided by a 'broad and consistent interpretation of criminal offences, regardless of the label attached to the prohibited practices (Stoyanova 2014).¹⁰ However, any possibility of reaching a consensus on the interpretation of these crimes has been impeded by a lack of engagement with substantive clarification in law by both regional courts and states, which has led to a 'copy/paste' approach at the domestic level (UNODC

⁸ For an analysis of GRETA country reports, including Croatia, Denmark, and Slovakia, see Stoyanova (2014). For an analysis of domestic interpretation, see Allain (2014); For a discussion on the domestic implementation of the Palermo Protocol with an analysis of jurisprudence from the ECtHR, see Eriksson (2013). For a discussion of individual domestic approaches, see Kelly (2007); Anderson, O'Connell Davidson (2003); and Coghlan, Wylie (2011).

⁹ Suggestions for preventing the erosion of the crime include the application of existing international labour standards (see Allain [2013]); the introduction of exploitation as a free-standing concept (see the Modern Slavery Bill amendments e.g. Amendment 25 in Committee Stage or HL, Marshalled list of amendments to be moved in committee 28.11.2014); or the development of clear guidelines on the current understanding and identification for law enforcement actors (see Paavilainen [2015]).

¹⁰ For more on how a lack of clarity can impact law enforcement and the protection and satisfaction of individuals and how what is needed is consensus on the definition for consistent interpretation rather a broad catch-all, see Nicholson (2010).

2009; Stoyanova 2014). A lack of legal certainty on how the issue is adjudicated in court can lead to a lack of clarity on the whole procedure for all actors (Pope 2010). As Fiona David suggests, 'definitions – and differences between terminology – are the foundations of a justice system that serves all' (David 2015); as such, we now turn our attention to how two national legal orders criminalise and handle labour exploitation in their adjudication of criminal cases.

4. Methodology

The qualitative comparative analysis of two national legal orders adopts a legal positivist approach by examining the legislative evolution of the criminalisation of exploitation and criminal case law. The aim is to examine the domestic implementation of the international prohibition of labour exploitation in both formal and substantive law.

The selection of Belgium and England and Wales as comparison groups reflects two legal orders that have both undergone significant legal reform in the two decades since the ratification of the Palermo Protocol, but which have nevertheless adopted different approaches to criminalising the full spectrum of forms of exploitation that are recognised in international and regional law. In Belgium, there are no stand-alone offences of slavery, servitude, or forced or compulsory labour. Therefore, labour exploitation is solely criminalised in the Criminal Code as human trafficking for the provision of work or services in conditions contrary to human dignity. Notwithstanding, as we will see in the next section, prosecution of the offence of human trafficking for economic exploitation is, in the majority of cases, accompanied by social criminal offences – e.g. non-payment of wages or social security contributions – which is reflective of an anti-trafficking policy that is grounded in social law (Vermeulen 2006: 32). In England and Wales, the current criminal legal framework prohibits slavery, servitude, forced or compulsory labour, and human trafficking for labour exploitation. Notwithstanding the lack of criminalisation of stand-alone offences in Belgium, the understanding of labour exploitation in human trafficking is broader, whereas in England and Wales, the offence must involve an action of arranging or facilitating travel, limiting the scope of its application.

In addition to the different approaches to criminalising labour exploitation and the understanding of the material scope of labour exploitation, the case study countries consist of a civil-law system in Belgium, whereby in complex criminal cases an examining judge [*juge d'instruction*] may direct the investigation and deal with pre-trial matters, and England and Wales, whose common-law system has a judge-led pre-trial hearing whilst the trial itself involves a jury with the role of

the judge being to provide legal directions. Thus, there is a distinction in the role of the judge in the substantive criminalisation of labour exploitation.

The sample included cases where a judgment was handed down between January 2010 and December 2017. The choice of this timeframe is representative, in both jurisdictions, of relevant reforms to the law that deals with labour exploitation in the domestic legal framework, as outlined above. A total of 72 cases were analysed: 25 in England and Wales and 47 in Belgium. It is important to note that there are different levels of access to the data sources. In Belgium, the judgments are available on the website of the national rapporteur of human trafficking. In England and Wales, however, the judgments are not made publicly available. Therefore, once Research Access was approved by the Ministry of Justice, the fieldwork was carried out between April 2018 and October 2018, on the premises of 17 Crown Courts.

5. Criminalisation of exploitation in national law

As we have seen thus far, despite some jurisprudence, the legal understanding of the different forms of exploitation lacks clarification, resulting in a number of obstacles. However, as explained above, the non-exhaustive approach to listing exploitation means that states are afforded discretion as to how they criminalise exploitation in their national legal orders. As we stated in the introduction, the failure of states to abide by their international legal obligations to prohibit slavery, forced labour, and servitude leaves it ever more pertinent to ensure that the exact scope of the concept is understood, allowing for legal certainty. As can be seen below, the impact of the non-definition of exploitation in the international and regional legal framework does have a knock-on effect when it comes to how exploitation is reflected in national legal orders.

In Belgium, the Law of 10 August 2005¹¹ introduced the offence of human trafficking into Article 433 *quinquies* of the Criminal Code, marking a shift away from conflating human trafficking with human smuggling predominantly addressed by immigration law. Previously, Article 77 *bis* of the Law of 15 December 1980 on foreigners had combined the offences of human trafficking, human smuggling, and slum landlords into one provision (Beernaert, Le Coq 2006; Huberts 2006;

¹¹ 'Loi du 10 août 2005 modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains et contre les pratiques des marchands de sommeil' [Law of 5 August 2005 amending various provisions with a view to strengthening action to combat people-smuggling and trafficking in human beings and the practices of slum landlords].

Minet 2006;). In 2013, the Law of 29 April 2013¹² amended Article 433 *quinquies* and extended the scope and meaning of the offence of human trafficking, with a view to ensuring compliance with and transposition of the EU Directive 2011/36/EU:

§1 The offence of human trafficking constitutes the recruitment, transport, transfer, housing, harbouring, taking control or transferring of the control over a person for the purposes of:

- 1° the exploitation of prostitution or other forms of sexual exploitation;
- 2° the exploitation of begging;
- 3° carrying out work or providing services in conditions contrary to human dignity;
- 4° the removal of organs in violation of the law of 13 June 1986 on the removal and transplantation of organs, or human tissue in violation of the law of 19 December 2008 on the acquisition and use of human tissue for the purposes of medical applications in humans or scientific research
- 5° or having this person commit a crime or a misdemeanour against his or her will.

Except in the case referred to in 5, the consent of the person referred to in paragraph 1 to the planned or actual exploitation is irrelevant (Article 443 *quinquies* Criminal Code (as amended)).

The offence of trafficking in persons has also evolved in England and Wales. It was first introduced in 2002 as an immigration offence of Trafficking for Prostitution (s145 Nationality, Immigration and Asylum Act 2002). The exclusion of labour exploitation in the statute was justified because existing measures were deemed sufficient to cover any possible exploitation of work or services (House of Commons Library, 2003). Then in 2004, the immigration offence of Traffic for Exploitation was introduced and encompassed the forms of exploitation listed in Article 4 of the ECHR (forced labour, slavery, and servitude), organ removal, or a service provided as a result of force or threat (s4 Asylum and Immigration [Treatment of Claimants, etc.] Act 2004). Whilst the inclusion of the forms of exploitation from the ECHR was a welcome shift, it still meant that labour exploitation that occurred outside of human trafficking and in a non-immigration context was not prohibited by law (Balch 2012). In 2015, all legislation relating to human trafficking was consolidated into one criminal law provision:

- (1) A person commits an offence if the person arranges or facilitates the travel of another person ('V') with a view to V being exploited.
- (2) It is irrelevant whether V consents to the travel (whether V is an adult or a child).

¹² *Loi du 29 avril 2013 visant à modifier l'article 433quinquies du Code pénal en vue de clarifier et d'étendre la définition de la traite des êtres humain* [Law of 29 April 2013 amending the Article 433 *quinquies* of the Criminal Code with a view to clarifying and extending the definition of trafficking in human beings].

- (3) A person may in particular arrange or facilitate V's travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.
- (4) A person arranges or facilitates V's travel with a view to V being exploited only if—
 - (a) the person intends to exploit V (in any part of the world) during or after the travel, or
 - (b) the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel (Section 2, Modern Slavery Act 2015).

In both countries, the composition of the human trafficking offences diverges from the international and regional definitions by only including two out of the three constituent elements, the action and the purpose. In Belgium the means are aggravating factors (Article 433 *septies*), whereas in England and Wales the means are not listed as a constituent element, but are partially integrated into the exploitation element. A further key distinction in England and Wales is that the action element is limited to arranging or facilitating the travel of a person with a view to being exploited, thus requiring the movement of a person, inconsistent with the international and regional legal understanding.

The statutory presentation of the exploitation element of the offence adopts an exhaustive approach, that nevertheless appears to provide for flexibility when it comes to its interpretation. Unlike the international and regional definition, the exploitation element in Belgium and England and Wales is categorical and exhaustive and does not include the phrase 'at a minimum'. Both countries recognise human trafficking for the purpose of sexual exploitation, labour exploitation, and the removal of organs; however, the offences also proscribe additional forms of exploitation, such as forced begging and forced criminality in Belgium and securing services by force, threats, or deception in England and Wales.

When it comes to labour exploitation, the same categorical, exhaustive approach is adopted but does hint at some flexibility. This is especially true of the Belgian offence of human trafficking for economic exploitation, wherein a person provides work or services in conditions contrary to human dignity (Article 433 *quinquies* § 1(3)). There is no specific reference to the forms of labour exploitation discussed above, as it was deemed that the reference to 'human dignity' was sufficiently broad to cover all forms of labour exploitation required by European and international law (Kurz 2008; Cleese 2013). Furthermore, the intentionally broad framing of the scope of the offence sought to encompass not only slavery, servitude, and forced labour, but also situations where workers are paid an extremely low salary or are required to work or live in unhealthy dangerous conditions (GRETA 2017). The term 'human dignity' is not defined but seeks to determine a minimum level of severity (CPP 2007). Guidance on the understanding of putting a person to work in conditions contrary to human dignity has been given with a focus on 'the enslavement or the degradation of a human being by the violation of their

physical and mental faculties in such a manner as to be manifestly incompatible with human dignity' (CPP 2007; GRETA 2017).

In England and Wales, human trafficking for the purpose of labour exploitation includes slavery, servitude, and forced or compulsory labour (s3(1) Modern Slavery Act 2015) that are to be interpreted in accordance with Article 4 of the ECHR (s1(2) Modern Slavery Act 2015). However, to fully grasp the (potential) scope of labour exploitation, it is necessary to examine the provision of the Act that criminalises slavery, servitude, and forced labour as 'stand-alone' offences (s1 Modern Slavery Act 2015), i.e. situations of exploitation that do not amount to human trafficking. It is to this provision that we will now turn.

(1) A person commits an offence if—

(a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention.

(3) In determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard may be had to all the circumstances.

(4) For example, regard may be had—

(a) to any of the person's personal circumstances (such as the person being a child, the person's family relationships, and any mental or physical illness) which may make the person more vulnerable than other persons; (b) to any work or services provided by the person, including work or services provided in circumstances which constitute exploitation within section 3(3) to (6).

(5) The consent of a person (whether an adult or a child) to any of the acts alleged to constitute holding the person in slavery or servitude, or requiring the person to perform forced or compulsory labour, does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour (Section 1, Modern Slavery Act 2015).

Section 1 of the Modern Slavery Act 2015 – replacing Section 71 of the Coroners and Justice Act 2009 – criminalises holding another person in slavery or servitude or requiring another person to perform forced or compulsory labour. This provision specifically states that 'regard should be had to all the circumstances when determining whether a person is being exploited' (s1(3) Modern Slavery

Act 2015). Crucially, this includes ‘any work or services provided by the person, including work or services provided in circumstances which constitute exploitation within section 3(3) to (6)’ (s1(4)(b) Modern Slavery Act 2015). Thus, by reading the provisions of the Modern Slavery Act together (namely s1(1), s1(4)(b), and s3) human trafficking for the purpose of labour exploitation is (potentially) extremely broad, including sexual exploitation (s3(3)), removal of organs or tissue (s3(4)), securing services etc. by force, threats, or deception (s3(5)), and securing services etc. from children and vulnerable persons (s3(6)).

We can see that, in both countries, the domestic legal framework is characterised by a shift away from immigration to criminal law and with a more expansive understanding of labour exploitation to include abusive working conditions. However, the two jurisdictions do illustrate the fragmented approach that arises when prohibiting human trafficking and stand-alone offences in domestic criminal law. In addition, the scope of exploitation is broadly understood – despite a categorical and exhaustive approach – and requires further clarification to avoid confusion. The following analysis of criminal cases in Belgium and England and Wales seeks to contribute to such clarification.

6. Judicial handling of labour exploitation

What follows is a brief presentation of the similarities, differences, and challenges of the judicial handling of a ‘novel’ area of law (EWCA 2011: Para. 47; EWCA 2013) in a domestic context that will contribute to future engagement with the concept of labour exploitation and strengthen anti-trafficking responses.

In both jurisdictions, the domestic judges recognise that the legislature’s objective, when criminalising these offences, is to ensure compliance with regional obligations. However, the sources of law differ. In Belgium, the judiciary refer to the transposition of the EU Directive 2011/36/EU (GRETA 2013; Huberts, Minet 2014), whereas in England and Wales, the courts refer to compliance with obligations stemming from Article 4 of the ECHR (Weatherburn 2019). As a result, the way in which exploitation is interpreted differs. Courts in England and Wales use the jurisprudence of the ECtHR, in particular *Siliadin v France* (2005), as the main source of interpretation. The Court of Appeal in *R v SK* (EWCA 2011: Paras. 22 and 39) used the *Siliadin* judgment to interpret slavery, servitude, and forced labour. By contrast, the Belgian judges, in interpreting the meaning of ‘conditions contrary to human dignity’, use sources that have been developed as part of the domestic legislative process, namely the preparatory works [*travaux préparatoires*], as we will see below.

Despite the different sources that assist judges in their handling of labour exploitation, similarities emerge. For instance, the threshold of exploitation is to

reach a ‘minimum level of severity’ that requires more than breaches of labour law or the non-payment of wages to amount to criminal behaviour (EWCA 2011; Liège Court 2013; 2016). In Belgium, the prohibition of human trafficking seeks to tackle situations that are more serious than labour market abuses, such as those that arise on the informal labour market [*travail en noir*] (CRB 2005). Whilst it goes without saying that since we are focussing on the application of criminal offences, the analysis did reveal that abuses which are more likely to be attributed to labour law violations are taken into account. For instance, the non-payment or withholding of wages is of great value in determining the existence of factors, as it may point to coercion, an inability to change the workers’ circumstances, and the involuntary nature of the work.¹³ Thus, the non-payment or withholding of wages is an indicator of exploitation. The case file analysis reveals that a variety of indicators are instrumentalised by the courts in order to determine whether or not a particular situation reaches the threshold of exploitation. In Belgium, indicators listed in the preparatory works and other legislative guidance documents are used to determine whether conditions related to remuneration and working conditions are contrary to human dignity (CRB 2005). Additional guidance has been provided by the College of Public Prosecutors in the form of indicators of exploitation, namely displacement, identity and travel documents, the working conditions of trafficking victims, the income of trafficking victims, accommodation, violation of the physical integrity of victims, victims’ freedom to move, and links with the country of origin of the presumed victims of trafficking (CPP 2004; 2007). The analysis revealed that the judicial application of these indicators requires more than one indicator to be present for a situation to amount to exploitation.¹⁴ Overall, the most significant factor that emerges from the judicial use of indicators is that the focus is very much on the totality of the situation, not just the working conditions.

Judges will also pay attention to the worker/victim’s living conditions, access to health care, and access to subsistence.

Whilst the totality of the situation of the individual is taken into account, the criminal case file analysis reveals that there are nevertheless some differences in the type of factual circumstances that trigger an investigation and subsequent prosecution for labour exploitation. In England and Wales, cases predominantly

¹³ *R v S.K.* (unreported, 16 March 2011) Southwark Crown Court; *R v W.C., J.J.C., J.C., M.C., J.C.* (unreported, 12 July 2012) Luton Crown Court, *R v J.C., J.C., M.C., W.C., B.C.* (unreported, 19 December 2012) Bristol Crown Court, *R v D.D., T.D., D.D.* (unreported, 24 October 2014) Cardiff Crown Court, *R v W.C., P.C., P.J.C., L.C.* (unreported, 24 May 2016) Cardiff Crown Court, *R v H.C., M.J., C.J.* (unreported, 31 August 2016) Oxford Crown Court; Liège Court of First Instance, 14 January 2013 (14^{ème} ch.); Mons Court of Appeal, 10 February 2016 (4^{ème} ch.); Liège Court of First Instance, 8 February 2016 (18^{ème} ch.). See also FRA research findings with workers, where issues with pay were identified as one of the main labour law violations in cases of severe labour exploitation, in FRA (2019).

¹⁴ For full description of the multiple indicators used by the judiciary, see Weatherburn (2019).

emerge following interventions in the domestic or private domain, whereas in Belgium, the majority of cases are identified following labour inspections of commercial or business premises. In both countries, the nature of the businesses involved contrast between those that operate in the formal labour market and those that operate in the shadow economy. For the latter, these are small businesses that are mainly run by individuals or small family units.¹⁵ In both jurisdictions, the overlap of the public and private domain leads to complex factual circumstances that are reflected in the composition of the indictment and the offences which are included, in addition to the offences discussed above. In Belgium, the offences that are added to the indictment are predominantly related to violations of labour market standards and amount to violations of social criminal law provisions (such as illegal employment of undocumented workers, non-payment of wages, non-payment of social security contributions, etc.)¹⁶ and fraud. In England and Wales, whilst there are some fraud offences, the indictments often include offences against the person and sexual offences.¹⁷ The latter reflects the ill and degrading treatment that many of the victims encountered, such as having their heads shaved (*R v W.C., J.C., J.C.* [unreported 7 January 2013, 30 May 2013] Southampton Crown Court), forced drug use (*R v G.P., V.J., A.P.* [unreported, 11 December 2015] Nottingham Crown Court), and other forms of humiliation exacted through verbal and psychological abuse and physical and sexual assault (*R v D.D., T.D., D.D.* [unreported, 24 October 2014] Cardiff Crown Court). The factual circumstances that lead to the composition of the indictment as a whole are also taken into account when determining the existence of exploitation and, as mentioned above, the need to consider more than just the working conditions is recognised.

The need to assess the totality of the situation in the judicial handling of labour exploitation in criminal cases raises a challenge that is not yet fully resolved and may not be without further clarification by senior courts such as the ECtHR or the IACtHR. The *Siliadin* judgment articulated the prohibited practices in Article 4 as a hierarchy of exploitation when determining the nature (or existence) of exploitation: slavery is the full control of status/condition, servitude is control of living and working conditions, and forced labour is control of working conditions. The same approach was followed by the Court of Appeal of England and Wales in 2011:

¹⁵ For a full description of the types of exploitation, the perpetrators and their networks, the economic sectors, and the way in which cases were identified, see Weatherburn (2019).

¹⁶ The Belgian Social Criminal Code harmonised all legislation into one coherent framework in June 2010, which comprises administrative and criminal sanctions for violations of employment, social security, and industrial relations laws in Belgium. The code introduces four levels of sanctions, ranging from minor violations that are not criminalised but sanctioned by administrative fines to major violations that are sanctioned by imprisonment.

¹⁷ For a full overview of offences in criminal case analysis, see Weatherburn (2019).

Hierarchy of denial of personal autonomy ... in descending order of gravity, therefore, 'slavery' stands at the top of the hierarchy, 'servitude' in the middle, and 'forced or compulsory labour' at the bottom (EWCA 2011: Para. 24).

The adherence to a hierarchy of exploitation, however, does not preclude the possibility of the different forms of exploitation being mutually exclusive. It is possible to encounter a 'duality of circumstances' (Allain 2013) whereby the factual circumstances can amount to two forms of exploitation. This was applied in England and Wales, where the indictment reflected parallel offences (requiring a person to perform forced labour and holding another person in slavery), and not just alternative offences (requiring a person to perform forced labour or holding another person in slavery).

Finally, the hierarchy of exploitation is not only of relevance to determining the nature (existence) of exploitation, but is also applicable when it comes to determining the degree (severity) of exploitation. This became apparent when analysing the judicial approach to sentencing. Importantly, the courts recognised that the sentence can be higher for a 'lesser' form of exploitation.

Where the circumstances were broadly similar, slavery was the gravest offence, followed by servitude, followed by forced or compulsory labour, but it was wrong to suggest that a sentence for forced labour would always be lower than for the other offences [emphasis added] (EWCA 2013: Para. 23).

Both jurisdictions illustrate this – to a certain extent – in their approach to sentencing. In Belgium the sentence cannot be dissected according to the other offences that may be on the indictment and for which the defendant is found to be guilty. As such, it is not known to what extent the degree of exploitation is taken into account in the sentencing, unless explicitly stated in the sentencing remarks as aggravating factors. Similarly, in England and Wales, whilst a defendant will be handed a sentence for each offence for which they are guilty, the overall sentence is then calculated depending on whether or not each custodial sentence is concurrent or consecutive.

Concluding remarks

This article has demonstrated that there is a lack of a 'critical mass' of case law at the international and regional levels (Esser, Dettmeijer-Vermeulen 2016; Gallagher 2016); therefore, further insight into the scope and meaning of exploitation can only emerge from national jurisprudence. To contribute to this, the article has

presented insight into how the judiciary of two European national legal orders handle cases of labour exploitation.

Despite concerns raised in the literature of the fragmentation of the formal prohibition of exploitation in national criminal legal orders, the substantive handling of labour exploitation by the judiciary is nevertheless similar. In both Belgium and England and Wales, significant emphasis is placed on the totality of the situation (not just the working conditions) and the need for the factual circumstances to pass a threshold of severity in order to amount to a criminal offence. However, we have also seen how labour law violations such as delete hyphen towards end of sentence as non-payment of wages, and the Belgian social criminal law model, which combines human trafficking with other social criminal offences – are of evidential importance. The use of indicators, including non-payment of wages and other factors, also has a dual role in both determining the nature (existence) of exploitation and assessing the degree (severity) of the exploitative circumstances. Notwithstanding the formal understanding of labour exploitation in Belgium as ‘conditions contrary to human dignity’ and the affirmation of a ‘hierarchy of exploitation’ in England and Wales, there is no attempt made to further define exploitation.

Calls for definitional clarity have been made both within the EU (2018) and the Council of Europe (2019). In the meantime, domestic criminal law in other European Member States is evolving, with the introduction in 2020 in the Swedish Criminal Code of the offence of Human Exploitation (Section 1b) and ongoing consultation in the Netherlands about the introduction of an offence of severe labour exploitation (Ministry of Justice and Security 2020). In the absence of clarity of the material scope of exploitation by regional courts, the insight from domestic jurisprudence will contribute to the developments flowing from such reforms. It will also facilitate the role of not only judges but also prosecutors, labour inspectors, and law enforcement actors in national legal orders when confronted with factual circumstances that may or may not amount to labour exploitation.

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References

- Allain J. (2009). 'On the curious disappearance of human servitude from general international law'. *Journal of the History of International Law* 11, pp. 303–332.
- Allain J. (2013). *Slavery in international law of human exploitation and trafficking*. Leiden: Martinus Nijhoff.
- Allain J. (2014). 'No effective trafficking definition exists: Domestic implementation of the Palermo Protocol'. *Albany Government Law Review* 14, pp. 1–22.
- Anderson B. and O'Connell Davidson J. (2003). *Is trafficking in human beings demand driven? A multi-country pilot study*. Geneva: International Organisation for Migration.
- Beernaert M.-A. and Le Coq P. (2006). 'La loi du 10 août 2005 modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains et contre les pratiques des marchands de sommeil' [The law of 10 August 2005 modifying various provisions in order to reinforce the fight against trafficking and smuggling of human beings and against the practices of slum landlords]. *Revue de Droit Pénal et de Criminologie* 86(4), pp. 335–406.
- Chuang J. (2014). 'Exploitation creep and the unmaking of human trafficking law'. *American Journal of International Law* 108(4), pp. 609–649.
- Chuang J. (2015). 'The challenges and perils of reframing trafficking as 'modern-day slavery''. *Anti-Trafficking Review* 5, pp. 146–149.
- Clesse C.-E. (2013). 'La notion de dignité Humaine et son application pratique en matière de traite économique des êtres humains' [The Concept of Human Dignity and its Practical Application to Economic Trafficking in Human Beings]. *Revue de Droit Pénal et de Criminologie* 12, pp. 854–877.
- Coghlan D. and Wylie G. (2011). 'Defining trafficking/denying justice? Forced labour in Ireland and the consequences of trafficking discourse'. *Journal of Ethnic and Migration Studies* 37(9), pp. 1513–1526.
- David F. (2015). 'When it comes to modern slavery, do definitions matter?'. *Anti-Trafficking Review* 5, pp. 150–152.
- Eriksson M. (2013). 'The prevention of human trafficking – regulating domestic criminal legislation through the European Convention on Human Rights'. *Nordic Journal of International Law* 82, pp. 339–368.
- Esser L.B. and Dettmeijer-Vermeulen C.E. (2016). 'The prominent role of national judges in interpreting the international definition of human trafficking'. *Anti-trafficking Review* 6, pp. 91–105.
- Gallagher A. (2016). 'Editorial: The problems and prospects of trafficking prosecutions: Ending impunity and securing justice'. *Anti-trafficking Review* 6, pp. 1–5.
- Huberts C. (2006). 'Les innovations de la loi du 10 août 2005 modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains et contre les pratiques des marchands de sommeil' [The innovations of the law of 10 August 2005 modifying various provisions in order to reinforce

- the fight against trafficking and smuggling of human beings and against the practices of slum landlords]. *Journal du Droit des Jeunes* 251, pp. 6–22.
- Huberts C. and Minet J.-F. (2014). 'La loi du 29 avril 2013 visant à modifier l'article 433quinquies du Code pénal en vue de clarifier et d'étendre la définition de la traite des êtres humains: Analyse et mise en perspective' [The law of 29 April 2013 to amend Article 433quinquies of the Criminal Code to clarify and extend the definition of trafficking in human beings: Analysis and perspective]. *Revue de Droit Pénal et de Criminologie* 34, pp. 6–48.
- Kelly L. (2007). 'A conducive context: Trafficking of persons in Central Asia'. In M. Lee (ed.) *Human Trafficking*. Devon: Willan Publishing, pp. 73–91.
- Kotiswaran P. (2015). 'Protocol at the Crossroads: Rethinking anti-trafficking law from an Indian labour law perspective'. *Antitrafficking Review* 4, pp. 33–55.
- Kurz F. (2008). 'Lutte contre le travail forcé, l'exploitation économique et la traite des êtres humains: Des concepts légaux à l'application judiciaire' [Combating forced labour, economic exploitation and trafficking in human beings: From legal concepts to judicial enforcement]. *Chroniques de Droit Social* N° ind. - 08/09/2008, pp. 317–330.
- Maul D. (2011). 'ILO and globalisation of human rights'. In S.L. Hoffmann (ed.) *Human Rights in the 20th Century*. Cambridge: Cambridge University Press, pp. 301–320.
- Milano V. (2017). 'The European Court of Human Rights' case law on human trafficking in light of L.E. v Greece: A disturbing setback?'. *Human Rights Law Review* 17, pp. 701–727.
- Minet J.F. (2006). 'Chronique de Législation Pénale (année 2005)' [Chronicle of Criminal Legislation (year 2005)]. *Revue de Droit Pénal et de Criminologie* 3, pp. 240–280.
- Nicholson A. (2010). 'Reflections on Siliadin v France: Slavery and legal definition'. *International Journal of Human Rights* 14(5), pp. 705–720.
- Paavilainen M. (2015). 'Towards a cohesive and contextualised response: When is it necessary to distinguish between forced labour, trafficking in persons and slavery?'. *Anti-Trafficking Review* 5, pp. 158–161.
- Parkes C. (2015). 'The trafficking protocol has advanced the global movement against human exploitation: The case of the United Kingdom'. *Anti-Trafficking Review* 4, pp. 150–155.
- Piotrowicz R. (2012). 'States' obligations under human rights law towards victims of trafficking in human beings: Positive developments in positive obligations'. *International Journal of Refugee Law* 24(2), pp. 181–201.
- Pope J. (2010). 'A free labor approach to human trafficking'. *University of Pennsylvania Law Review* 158, pp. 1849–1875.
- Rijken C. (2013). 'Trafficking in human beings for labour exploitation: Cooperation in an integrated approach'. *European Journal of Crime, Criminal Law and Criminal Justice* 21(1), pp. 9–35.

- Stoyanova V. (2012). 'Dancing on the borders of article 4: Human trafficking and the European Court of Human Rights in the Rantsev case'. *Netherlands Quarterly of Human Rights* 30(2), p. 163–194.
- Stoyanova V. (2014). 'Article 4 of the ECHR and the obligation of criminalizing slavery, servitude, forced labour and human trafficking'. *Cambridge Journal of International and Comparative Law* 3(2), pp. 407–433.
- Stoyanova V. (2017). *Human trafficking and slavery reconsidered conceptual limits and states' positive obligations in European Law*. Cambridge: Cambridge University Press.
- Weatherburn A. (2019). *Clarifying the scope of labour exploitation in human trafficking law: Towards a legal conceptualisation of exploitation*. Tilburg: Tilburg University.
- Weatherburn A. (2020). 'Improving prosecutions of human trafficking for labour exploitation: Lessons learned from two European jurisdictions'. *Journal of Human Trafficking, Enslavement and Conflict-Related Sexual Violence* 1, pp. 49–65.
- Wijers M. (2015). 'Purity, victimhood and agency: Fifteen years of the UN Trafficking Protocol'. *Anti-Trafficking Review* 4, pp. 56–79.
- Wilt H. van der (2014). 'Trafficking in human beings, enslavement, crimes against humanity: Unravelling the concepts'. *Chinese Journal of International law* 13, pp. 297–334.

Internet sources

- Balch A. (2012). *Regulation and enforcement to tackle forced labour in the UK: A systematic response?*. York: Joseph Rowntree Foundation. Available online: <https://www.jrf.org.uk/report/regulation-and-enforcement-tackle-forced-labour-uk-systematic-response> [4.02.2021].
- Bellagio – Harvard Guidelines on the Legal Parameters of Slavery (2012). Available online: https://www.monash.edu/__data/assets/pdf_file/0004/2263693/Bellagio-Harvard-Guidelines-English.pdf [5.02.2021].
- Chambre des Représentants de Belgique (Belgian House of Representatives) [CRB] (2005). *Projet de loi modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains*. DOC 51 1560/001 [Bill amending various provisions with a view to strengthening the fight against trafficking and smuggling of human beings]. Available online: <https://www.dekamer.be/FLWB/pdf/51/1560/51K1560001.pdf> [5.02.2021].
- Collège des Procureurs Généraux (College of Public Prosecutors) [CPP] (2004). 'Annexe 1. Indicateurs qui permettent de supposer des faits de TEH' [Annexe 1. Indicators that allow us to assume facts from THB]. In *Circulaire n° COL 10/2004 du Collège des Procureurs généraux près les Cours d'appel (COL 12/99)* [Circular n° COL 10/2004 of the Council of Public Prosecutors to the Courts of Appeal]. Available online: https://www.om-mp.be/sites/default/files/u1/col_10-2004_consolid.pdf, pp. 35–38.

- Council of Europe [COE] (2018). *7th General Report on GRETA'S Activities*. Available online: <https://rm.coe.int/greta-2018-1-7gr-en/16807af20e> [5.02.2021].
- Council of Europe [COE] (2019). *Ready for future challenges - Reinforcing the Council of Europe. Report by the Secretary General for the Ministerial Session in Helsinki, 16-17 May 2019*. Available online: <https://rm.coe.int/168093af03> [5.02.2021].
- European Commission [EC] (2018). *Second report on the progress made in the fight against trafficking in human beings as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*. Brussels, 3.12.2018 COM(2018) 777 final. Available online: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_com-2018-777-report_en.pdf [5.02.2021].
- European Parliament (2018). *Contemporary forms of slavery*. Available online: [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603470/EXPO_STU\(2018\)603470_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603470/EXPO_STU(2018)603470_EN.pdf).
- European Union Agency for Fundamental Rights [FRA] (2015). *Severe labour exploitation: Workers moving within or into the European Union States' obligations and victims' rights*. Luxembourg: FRA. Available online: https://fra.europa.eu/sites/default/files/fra-2015-severe-labour-exploitation_en.pdf.
- European Union Agency for Fundamental Rights [FRA] (2019). *Protecting migrant workers from exploitation in the EU: Workers' perspectives*. Luxembourg: FRA. Available online: <https://www.servicestelle-gegen-zwangsarbeit.de/wp-content/uploads/2019/07/2019-FRA-Protecting-migrant-workers-from-exploitation-in-the-EU-Workers-1.pdf>.
- GRETA (2013). *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium. First evaluation round*. Available online: <https://rm.coe.int/1680630d0f> [5.02.2021].
- GRETA (2017). *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium. Second evaluation round*. Available online: <https://rm.coe.int/greta-2017-26-frg-bel-en/1680782ae0> [5.02.2021].
- ILO. *Global Estimate of Forced Labour 2012: Results and Methodology* (2012). Geneva: United Nations. Available online: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf [11.02.2021].
- Ministry of Justice and Security (Ministerie van Justitie en Veiligheid) (2020). *Moties en toezeggingen op het gebied van mensenhandel. Brief aan de Aan de Voorzitter van de Tweede Kamer der Staten-Generaal [Motions and commitments on human trafficking. Letter to the President of the Lower House of the States General]*, 1 July 2020. Available online: <https://www.tweedekamer.nl/kamerstukken/detail?id=2020Z12976&did=2020D27680> [11.02.2021].

- Scharwz K. and Allain J. (2020). *Antislavery in domestic legislation: An empirical analysis of national prohibition globally*. University of Nottingham Rights Lab. Available online: <https://antislaverylaw.ac.uk/wp-content/uploads/2020/02/Antislavery-in-Domestic-Legislation-report-110220.pdf> [11.02.2021].
- Thorp A. and Young R. (2003). *Asylum and Immigration: The 2003 Bill*. London: House of Commons Library. Available online: <http://researchbriefings.files.parliament.uk/documents/RP03-88/RP03-88.pdf> [11.02.2021].
- UNODC (2009). *Global report on trafficking in persons 2009*. Geneva: United Nations. Available online: https://www.unodc.org/documents/human-trafficking/Global_Report_on_TIP.pdf [11.02.2021].
- UNODC (2010). *Model Law against Trafficking in Persons*. Available online: https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf [11.02.2021].
- UNODC (2015). *Issue Paper: The Concept of "Exploitation" in the Trafficking in Persons Protocol*. Vienna: United Nations. Available online: https://www.unodc.org/documents/congress/background-information/Human_Trafficking/UNODC_2015_Issue_Paper_Exploitation.pdf [11.02.2021].
- Vermeulen G. (2006). *La politique belge en matière des traite des êtres humains: Etat des lieux, Évaluation et options futures* [Belgian policy in the mater of human trafficking. Inventory, Evaluation and Future Options]. Bruxelles: Fondation Roi Baudouin. Available online: https://www.kbs-frb.be/fr/~/_media/Files/Bib/Publications/Older/PUB-1638-Traite-Etres-humains.pdf [4.02.2021].

Others document

- Collège des Procureurs Généraux (College of Public Prosecutors) [CPP] (2007). *Annexe 2 Circulaire n° COL 1/2007 du Collège des Procureurs généraux près les Cours d'appel, Traite des êtres humains - Directive ministérielle relative à la politique de recherches et poursuites en matière de traite des êtres humains* [Annex 2 Circular No COL 1/2007 of the Board of Public Prosecutors at the Courts of Appeal, Trafficking in Human Beings - Ministerial Guideline on the Policy of Investigation and Prosecution of Trafficking in Human Beings].
- European Commission [EC] (2016). *Report on the Progress Made in the Fight against Trafficking in Human Beings as required under Article 20 of Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims*. Brussels, 19.6.2016 COM(2016) 267 final.

Court decisions

- Australian High Court, 28.08.2008. Case of the Queen v. Tang [2008] HCA 39, M5/2008.
- Economic Community of West African States Community Court of Justice [ECOWAS CC], 27.10.2008. Case of Hadijatou Mani v. Republic of Niger

- (2008), ECW/CCJ/JUD/06/08, (27 October 2008). Available online: https://www.refworld.org/cases,ECOWAS_CCJ,496b41fa2.html [11.02.2021].
- England and Wales Court of Appeal (Criminal Division) Decisions [EWCA], 7.07.2011. Case of Regina v S.K, application no. 201102228 C2, [2011] EWCA Crim 1691. Available online: <http://www.bailii.org/ew/cases/EWCA/Crim/2011/1691.html> [5.02.2021].
- England and Wales Court of Appeal (Criminal Division) Decisions [EWCA], 26.03.2013. Case of Regina v. Connors, application no. (1) 2013/00300, (2)2013/3300301, (3)2013/00298, (4)2013/00297, [2013] EWCA Crim 324. Available online: https://sherloc.unodc.org/cld/uploads/res/case-law-doc/traffickingpersonscrimetype/gbr/r_v__connors_html/R._v._Connors_2013_EWCA_Crim_324.pdf [5.02.2021].
- England and Wales Crown Court, 12.07.2012. Case of R v. WC, JJC, JC, MC, JC. Luton Crown Court.
- England and Wales Crown Court, 16.03.2011. Case of R v. SK. Southwark Crown Court.
- England and Wales Crown Court, 19.12.2012. Case of R v. JC, JC, MC, WC, BC. Bristol Crown Court.
- England and Wales Crown Court, 24.05.2016. Case of R v. WC, PC, PJC, LC. Cardiff Crown Court.
- England and Wales Crown Court, 24.10.2014. Case of R v. DD, TD, DD. Cardiff Crown Court.
- England and Wales Crown Court, 31.08.2016. Case of R v. HC, MJ, CJ. Oxford Crown Court.
- European Commission of Human Rights, 9.07.1980. Case of Van Droogenbroeck v. Belgium, Report of the Commission 9 July 1980, application no. 7906/77. Available online: <http://hudoc.echr.coe.int/app/conversion/pdf?library=ECHR&id=001-73697&filename=CEDH.pdf> [11.02.2021].
- European Court of Human Rights [ECHR], 23.11.1983. Case of Van Der Mussele v. Belgium, 23 November 1983, application no. 8919/80. Available online: <http://hudoc.echr.coe.int/eng?i=001-57591> [11.02.2021].
- European Court of Human Rights [ECHR], 25.06.2020. Case of S.M. v. Croatia, Grand Chamber, application no. 60561/14. Available online: <http://hudoc.echr.coe.int/eng?i=001-203503> [11.02.2021].
- European Court of Human Rights [ECHR], 26.07.2005. Case of Siliadin v. France, 26 July 2005, application no. 73316/01. Available online: <http://hudoc.echr.coe.int/eng?i=001-69891> [11.02.2021].
- European Court of Human Rights [ECHR], 7.01.2010. Case of Rantsev v. Cyprus and Russia, 7 January 2010, application no. 25965/04. Available online: <http://hudoc.echr.coe.int/eng?i=001-96549> [11.02.2021].
- European Court of Human Rights [ECHR], 31.07.2012. Case of M & Others v Italy & Bulgaria, 31 July 2012, application no. 40020/03. Available online: <http://hudoc.echr.coe.int/fre?i=001-112576> [11.02.2021].

- European Court of Human Rights [ECHR], 11.10.2012. Case of C.N. and V. v. France, 11 October 2012, application no. 67724/09. Available online: <http://hudoc.echr.coe.int/fre?i=001-114032> [11.02.2021].
- European Court of Human Rights [ECHR], 21.01.2016. Case of L.E. v. Greece, 21 January 2016, application no. 71545/12. available online: <http://hudoc.echr.coe.int/eng?i=001-160218> [11.02.2021].
- European Court of Human Rights [ECHR], 30.03.2017. Case of Chowdury and others v. Greece, 30 March 2017, Application no. 21884/15. Available online: <http://hudoc.echr.coe.int/eng?i=001-172701> [11.02.2021].
- European Court of Human Rights [ECHR], 17.01.2017. Case of J & Others v. Austria, 17 January 2017, application no. 58216/12. Available online: <http://hudoc.echr.coe.int/eng?i=001-170388> [11.02.2021].
- European Court of Human Rights [ECHR], 19.07.2018. Case of S.M. v. Croatia 19 July 2018, application no. 60561/14. Available online: <http://hudoc.echr.coe.int/eng?i=001-203503> [11.02.2021].
- Inter-American Court of Human Rights [IACHR], 20.10.2016. Case of Hacienda Brasil Verde Workers v. Brazil. Available online: https://www.corteidh.or.cr/docs/casos/articulos/resumen_318_esp.pdf [11.02.2021].
- International Criminal Tribunal for the former Yugoslavia [ICTY], 12.06.2002. Case of Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, application no. IT-96-23, IT-96-23/1-A. Available online: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3debaafe4> [11.02.2021].
- Liège Court of First Instance, Belgium, 14.01.2013. 14 ème ch.
- Liège Court of First Instance, Belgium, 8.02.2016. 18 ème ch.
- Mons Court of Appeal, Belgium, 10.02.2016. 4 ème ch.



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The tale of 400 victims: A lesson for intervention

Historia 400 ofiar: wnioski dla właściwej interwencji

Abstract: This article describes a world order where forced labour is in plain sight and starts on the streets. Homeless people and individuals who have recently left correctional institutions are approached on the streets of towns and cities and are subsequently swiftly transported to places of destination. There, again in plain sight, they are taken to legal, regulated recruitment agencies and are found jobs. In many instances, they are employed in factories, recycling plants, and warehouses. Although these jobs are legitimate, what happens behind the scenes is not. The individuals have no access to their wages; they suffer psychological and physical abuse and are subjected to coercive control; they are threatened and their documents are taken away from them. These clear components of forced labour are perfectly illustrated in the increasingly observable plight of vulnerable Polish citizens recruited and transported to the UK. Following their story, this exposé investigates and explores three key points where intervention is needed: two are related to the recruitment of exposed subgroups – the homeless and those with a criminal past – and a third, where forced labour is facilitated through the use of legitimate recruitment agencies. To aid the discussion of these points, the article relies on a recent case, where a group of over 400 victims (aged between 17 and 60) were exploited by two Polish crime families.

Keywords: human trafficking, forced labour, homeless, criminal past, recruitment agency, Operation Fort

Abstrakt: Artykuł opisuje realia pracy przymusowej, która odbywa się na naszych oczach, a często zaczyna się na ulicach. Osoby bezdomne, a także osoby, które niedawno opuściły zakłady karne, są werbowane na ulicach miast i miasteczek, a następnie szybko przewożone do miejsc docelowych, gdzie są wykorzystywane. Za pośrednictwem legalnie działających agencji rekrutacyjnych, znajdują pracę. W wielu przypadkach jest to praca w fabrykach, zakładach zajmujących się recyklingiem lub w magazynach. Choć sama praca jest legalna, to co się dzieje za jej kulisami, już nie. Ludzie nie otrzymują wynagrodzenia, są wykorzystywani fizycznie i psychicznie, podlegają przymusowym

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kontrolom, są zastraszani i pozbawiani własnych dokumentów. Te elementy pracy przymusowej są dobrze widoczne wśród jednej z grup narażonych na stanie się ofiarami takiego procederu – Polaków rekrutowanych i przewożonych do Wielkiej Brytanii. Na podstawie ich historii, w niniejszym artykule zostały wskazane trzy kluczowe obszary, w jakich potrzebna jest interwencja. Dwa z nich dotyczą rekrutacji osób z grup wrażliwych na pokrzywdzenie – osób bezdomnych oraz osób mających za sobą przeszłość kryminalną. Trzecim obszarem jest ułatwienie świadczenia pracy tym osobom poprzez zaangażowanie legalnych agencji rekrutacyjnych. By ułatwić dyskusję nad tym tematem, w artykule została przedstawiona historia, która wydarzyła się niedawno, a w której 400 osób w wieku od 17 do 60 lat zostało zrekrutowanych i wykorzystanych do pracy przymusowej w Wielkiej Brytanii przez dwie polskie rodziny zaangażowane w przestępczość zorganizowaną.

Słowa kluczowe: handel ludźmi, praca przymusowa, bezdomność, przeszłość kryminalna, agencje rekrutacyjne, Operation Fort

1. Introduction

This article describes a world order where forced labour is in plain sight and starts on the streets. Homeless people and individuals who have recently left correctional institutions are approached on the streets of towns and cities and are subsequently swiftly transported to places of destination. There, again in plain sight, they are taken to legal, regulated recruitment agencies and are found jobs. In many instances, they are employed in factories, recycling plants, and warehouses. Although these jobs are legitimate, what happens behind the scenes is not. The individuals have no access to their wages; they suffer psychological and physical abuse and experience coercive control; they are threatened and their documents are taken away from them. These clear components of forced labour are perfectly illustrated in the increasingly observable plight of vulnerable Polish citizens recruited and transported to the UK. Following their story, this exposé investigates and explores three key areas where intervention is needed. Two are related to the recruitment of exposed subgroups – the homeless and those with a criminal past – and a third, where forced labour is facilitated through the use of legitimate recruitment agencies. To aid the discussion of these points, the article relies on a recent case, where a group of over 400 victims (aged between 17 and 60) were exploited by two Polish crime families. Victims of forced labour were placed in cramped, rat-infested accommodation across the Midlands region of the UK. However, in 2019, after the UK's largest-ever human trafficking network was exposed through Operation Fort, the victims saw a degree of justice. Eight offenders were convicted of slavery, trafficking, and money laundering. This article will focus on the narrative of these victims, which encapsulates some of the key points for intervention that policy-makers, law enforcement, civil society, academics, and other stakeholders ought to focus on.

Where relevant, the author includes her own experience of working with victims, including those who were part of Operation Fort. In the years 2015–2019 the author worked at a safe house for male victims of human trafficking in the North of England, where she provided emotional and logistical support to the victims and had an opportunity to engage in discussions with them. In other words, the author draws on field experience. No personal data is revealed in this article – merely the author's own observations and validation of findings from other reports. Indeed, the author's experience of working with victims and the sheer number of those who started their journey as homeless and/or with a criminal past inspired this article and the appeal for intervention. Otherwise, the vast majority of the article follows a traditional legal method of analysing and commenting on the subject at hand in order to try to solve the problem of where policy and law enforcement involvement is needed. This method is supported by referring to academic and government publications, scholarly comments, and case law as well as the outcomes of studies in other disciplines.

The article is structured as follows: first, it frames the concepts of human trafficking for the purposes of exploitation of forced labour or services, and the independent crime of forced labour. In section three the article links these crimes to the situation in England, in order to prepare the reader for section four, which in turn uses a situational approach to describe Operation Fort. Section four answers key questions in relation to the police operation of who, what, where, when, and how. Section five uses the findings from Operation Fort to highlight key points of future intervention in order to better prevent human trafficking and forced labour. Building on the article, the author argues in the conclusion that policy-makers who aim to address this crime must transcend the foci on criminalisation and the rigid stories that have long characterised our understanding of forced labour.

A note on terminology – as per the language used in the UK, readers will see the term 'modern slavery'. It is acknowledged, however, that this term is seen by many as problematic, including the author herself (Muraszkiewicz 2015). There is a heated debate among both academics and practitioners on whether human trafficking and slavery are synonyms, human trafficking is just one form of slavery, or human trafficking and slavery are conceptually distinct. While it is unnecessary to get embroiled in this debate, it is important to state that because the article relies on a UK case and its legislation, modern slavery is used as a broad concept that seeks to capture the offences of slavery, forced or compulsory labour, servitude, and human trafficking.

2. What crime is being committed?

This article predominantly focusses on two crimes: (i) human trafficking for the purposes of exploitation of forced labour or services and (ii) the separate crime of forced labour. Despite the clear definition of what constitutes forced labour (see below), pinpointing the exact time/space when the crime occurs is challenging. This results from two factors. Firstly, there is the political issue. Various political stances view forced labour as encompassing different things, best exemplified by the debates around sex work, with conservative groups arguing that all sex work is forced labour (O'Connell Davidson 2015). Secondly, experiences of forced labour – and importantly, the perception of these experiences – vary from individual to individual and even within one individual's story. There is a continuum of exploitation, and sometimes it is hard to determine exactly when that border between lawful and unlawful has been crossed (Skrivankov 2010). An individual may work in an environment where the conditions are adequate and in compliance with labour laws, whilst on the other end of the spectrum, an individual may face the worst forms of treatment of workers, namely forced labour. Somewhere between the two there are breaches such as not paying wages or not providing safety equipment, and further down the spectrum we can add to these abuses the seizing of documents and captivity (Skrivankov 2010). As is often argued, 'forced labour is difficult to recognise. To the casual observer, situations of forced labour may appear unremarkable. Even seasoned labour enforcement officials are not always confident when they come across forced labour' (Shepherd, Wilkinson 2020: 8). In addition to this challenge, as Davies (2019: 2) described, there is a plethora of 'everyday labour exploitation that tends to become embedded and normalised as part of legitimate business and supply chain practices'. In an attempt to minimise their costs, companies engage in a race to the bottom with their suppliers, not checking what happens to the workers and remaining wilfully blind to weak regulations.

Industry practices which hover between lawful, but distressing and simply unlawful are common in low-wage occupations and among certain industries, such as food packaging, warehouse work, agriculture, and recycling – which as the following section will demonstrate, the victims identified by Operation Fort worked in. It is also worth recalling the high levels of forced labour in criminal exploitation, such as the cultivation of drugs (Gentleman 2017). Whilst this makes for a dire picture now, there is hope in the recognition that the birth and survival of forced labour practices is a human (business) invention (Rioux, LeBaron, Verovšek 2020), and thus malleable to reform. The status quo can be adjusted by sociopolitical control and regulation. In other words, we can tame the beast we have created through a series of interventions, some of which are discussed in this article.

However, before we engage in a broader discussion, we must turn our attention to defining the terms used in the article. The International Labour Organization

(ILO) defined forced labour (or compulsory work) in the 1930 Forced Labour Convention 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.’ The definition was confirmed in *Van der Mussele v. Belgium* (para. 35) and in *C.N. and V. v. France* (para. 73), among other cases. The *Van der Mussele* case is of note for the definition of forced labour. In this case, the European Court of Human Rights (para. 33) ruled that the word ‘labour’ should not be interpreted in the narrow sense of manual work, but should be understood as ‘all work or service’. In November 2016 the ILO’s Protocol of 2014 to the Forced Labour Convention of 1930 entered into force, expounding the definition of forced labour so that the definition of ‘work or service’ included all types of work, service, and employment, occurring in any activity, industry, or sector, including the informal economy. This development ought to be applauded for breaking a stereotype and recognising that forced labour can permeate even ‘respectable’ professions.

Two elements are central to the definition: (i) the threat of any penalty and (ii) the lack of voluntary agreement. The ILO (2001) explained that “exacted under the menace of any penalty” must be understood in a broad sense including penal sanctions and the loss of rights and privileges’. Such an interpretation of ‘menace of any penalty’ leads to the conclusion that one would not offer themselves voluntarily. In other words, the two elements, in effect, become one. This is further recognised by a UNODC Issue Paper (2015: 31) on the concept of ‘exploitation’, which states that ‘work extracted through “menace of any penalty” is not voluntary’. As will be shown below, the victims that were identified during Operation Fort perfectly fit this definition and were therefore clearly subjected to forced labour.

Whilst forced labour can occur as an individual crime, it is also one of the forms of exploitation detailed in the definition of human trafficking. Indeed, in many countries there is no distinct crime of forced labour and it is often prosecuted as part of the broader crime of human trafficking. In Poland for example, forced labour is a notion included in the definition of human trafficking within the Criminal Code. The Code does not delineate forced labour, and neither the Code nor any other legal act functionalise the notion in such a way as to envisage penalties for those who engage in forced labour. This could explain, as was argued by Wieczorek (2018), why so few cases of forced labour are prosecuted in Poland. Moreover, Wieczorek (2018: 85) commented that the majority of cases of forced labour regard Poles being forced into labour abroad, and only a small number of cases concern forced labour in Poland; in these latter cases the victims are predominantly foreign. Of course, forced labour can be penalised under an array of labour infringements, such as those stemming from the Labour Code or the 2012 Act on the effects of delegating work to foreigners staying contrary to regulations on the territory of the Republic of Poland.

Noting that forced labour is often prosecuted as part of human trafficking, it is necessary to recall the definition of human trafficking as laid out in the 2011 EU Human Trafficking Directive. The EU definition of human trafficking is very

similar to the one in the UN's 2000 Palermo Protocol (supplementary to the UNTOC) on trafficking, with the key difference being that the Directive includes a further 'action': exchange or transfer of control. In addition, the Directive includes a new 'purpose': begging and exploitation of criminal activities. The Recital to the EU document also includes illegal adoption or forced marriage as examples of exploitation. Article 2 condemns

the recruitment, transportation, transfer, harbouring, or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation

and includes the following definitions:

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.
3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

The definition of human trafficking can be broken down into two sections: an *actus reus* and a *mens rea*. The *actus reus* is the 'action' and the 'means' element. The purpose element makes up the *mens rea*. Within the definition, the means element is an important factor to unpack so that the reader can fully appreciate why the individuals involved in Operation Fort truly were victims of trafficking. Notably, the definition's breadth wipes away any myths that victims are recruited and forced at gunpoint to carry out work. Indeed, many victims of human trafficking for the purposes of forced labour or services are victimised by perpetrators who abused their position of vulnerability. As seen from the definition, a position of vulnerability refers to a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved. The EU Directive does not shed further light on what this means, but some clarification can be found in the Explanatory Report (2005: 83) to the 2005 European Council Convention on Action against Trafficking, which states that

by abuse of a position of vulnerability is meant abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. 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.

Unsurprisingly the ILO (2011: 6) has also sought to shed light on the meaning of the abuse of a position of vulnerability, stating that abuse of vulnerability, including

threats of denunciation to the authorities, is a means of coercion where an employer deliberately and knowingly exploits the vulnerability of a worker to force him or her to work. The threat of denunciation is used especially in the case of irregular migrant workers. Other instances of abuse of vulnerability include taking advantage of the limited understanding of a worker with an intellectual disability and threatening women workers with dismissal or with being forced into prostitution if they refuse to comply with the employer's demands. As noted above, the obligation to stay in a job due to the absence of alternative employment opportunities, taken alone, does not equate to a forced labour situation; however, if it can be proven that the employer is deliberately exploiting this fact (and the extreme vulnerability which arises from it), to impose more extreme working conditions than would otherwise be possible, then this would amount to forced labour.

This explanation renders the definition of the position of vulnerability sufficiently broad to reflect the experiences of increasing trends in recruitment and also the manner in which persons are then exploited and controlled. Indeed, the extensiveness of the position of vulnerability accurately highlights the fact that in situations of recruitment and exploitation power dynamics are a central feature, with a wide spectrum of inequalities between the victim and the criminal. For a person in a position of vulnerability, such as economic vulnerability, being offered work could be a lifeline. Vulnerability is therefore connected to some form of dependency, so often visible in narratives of human trafficking, particularly where recruitment begins with perpetrators targeting individuals who are homeless or have no prospect of a job due to stigma from their criminal past (more below).

For the purposes of this article, it is also important to discuss what recruitment entails. Recruitment is the action of enlisting new people to be exploited. According to the CoE/UN (2009: 78) study, recruitment 'is to be understood in a broad sense, meaning any activity leading from the commitment or engagement of another individual to his or her exploitation.' As was highlighted by the EU-funded project Trafficking as a Criminal Enterprise (TRACE),

the trafficker needs to 'find' the persons s/he wants to exploit. Usually this involves gaining the trust of the victim and drawing an attractive picture

of the type of work on offer, the working conditions, and the salary, which will later turn out to be (partly) false (Spapens et al. 2014).

Perpetrators tend to find a recruitment method that works for them and then continuously pursue it, for example, using the same website for posting job advertisements, always engaging with potential victims outside a shelter, or recruiting through acquaintances. In other words, the *modus operandi* tends to be consistent, both amongst one particular criminal group and across an array of them. Another key thing to note, which will be seen when describing Operation Fort, is that force in the European context is an uncommon method of recruitment for trafficking in general. In contrast in conflict kidnapping is a common form of “recruitment”, used for example by groups such as Boko Haram.

3. Forced labour in England and Wales

Before describing Operation Fort, it is useful to shed some light on the situation of forced labour in England and Wales (Northern Ireland and Scotland have their own criminal law systems). England and Wales woke up to the existence of forced labour in 2004, in the wake of the Morecambe Bay cockle picking disaster, which saw at least 23 Chinese undocumented immigrant labourers and victims of trafficking drowned by an incoming tide after picking cockles off the Lancashire coast. The tragedy led to the establishment of the Gangmasters Licensing Authority (GLA), now the Gangmasters and Labour Abuse Authority (GLAA), which characterises itself as ‘the foremost investigative agency for labour exploitation in the UK’. They describe their role as ‘work[ing] in partnership with police and other law enforcement agencies to protect vulnerable and exploited workers’. Despite their efforts, and perhaps unsurprisingly, human trafficking for the purposes of exploitation of forced labour or services and the stand-alone crime of forced labour continue to be prevalent. Shepherd and Wilkinson (2020: 2) capture the zeitgeist well: ‘forced labour persists, apparently unchecked. For perpetrators the potential gains are enormous, the risk of punishment minimal. For victims, however, the support is limited and fragmented.’ This lack of support exists against a background of perilous employment conditions in factories, warehouses, food processing plants, and farms and within the gig economy. The work is often characterised as dirty, difficult, and dangerous (the 3Ds).

Though we must approach statistics on human trafficking with caution – as they do not paint a true picture of the scale of the crime – it is interesting to note that the UK National Referral Mechanism’s numbers for the first quarter of 2020 show that labour exploitation was the most common abuse type for adult potential victims, whilst criminal exploitation was most commonly reported for child potential victims. Researchers have supplemented these figures and pointed out

that in ‘the United Kingdom ... around 80% of labour trafficking victims identified between 2009 and 2014 came from within the EU, in particular from Slovakia, Poland, Lithuania, Romania, Czech Republic, and Hungary’ (Volodko, Cockbain, Kleinberg 2020: 8). Numbers such as these make it impossible to continue and conflate human trafficking with sex trafficking alone, and as such policy and legislation in this space are improving, a hallmark of which is the government’s attempt to address the role that complex supply chains can play in concealing this form of exploitation; this is enshrined in Section 54 of the 2015 Modern Slavery Act (more on the Act below). Section 54 places an obligation on entities in the UK that have an annual turnover of more than £36 million to annually report on the measures, if any, that they are taking to ensure that their supply chains do not contain instances of modern slavery.

The Act, which was hailed by the Home Office as ‘historic’ (Historical Law 2015), criminalises the offences of human trafficking, slavery, servitude, and forced or compulsory labour. Moreover, amongst other things, it raises the maximum sentence for said offences to life imprisonment; creates a provision for slavery and trafficking prevention orders; forms a new statutory defence for victims who have been compelled to commit crimes; contains protections for victims who act as witnesses; details provisions for independent child trafficking advocates; and establishes the office of an Independent Anti-Slavery Commissioner, to name just a few examples.

A true test of the success of a piece of legislation is the impact it has in practice. Notwithstanding what one may make of the term ‘modern slavery’ used in the Act and how it is related to the offences contained within, a testament to it is the fact that forced labour is increasingly becoming the focus of law enforcement work, who are increasingly taking on a victim-centred approach. This is illustrated by the #wouldyou campaign run by Manchester Police, born out of the understanding that forced labour is difficult to recognise. As part of this campaign, the law enforcement authority posts pictures of places such as car washes and nail salons, which are known by practitioners and academics to be businesses with high levels of exploitation, and in a bid to raise awareness asks the public to consider whether they would recognise modern slavery in those places. In Manchester there has also been an emphasis on training, which has led to a 300% increase in identified forced labour cases (GRETA 2016). Despite this increase, identification remains problematic: many businesses that engage in exploitation go unnoticed and many businesses are unaware that their supply chains include modern slavery.

Brexit adds an additional layer of complication, particularly as since December 2020 there has been a points-based immigration system for all people. The Independent Anti-Slavery Commissioner’s report (Crates 2020: 27) expressed concern that the conditions within the UK, namely the high thresholds to obtain a working visa and the possible capping of numbers on seasonal workers, may be manipulated by criminals to exploit victims: ‘If there are significant labour shortages, unscrupulous employers and organised criminals may exploit the vulnerable by

trafficking them to the UK to work.’ Brexit and its impact on migration highlight the fact that to understand forced labour we should not consider it an individualised phenomenon which occurs in a specific context, but we must instead situate it in wider relations of labour, politics, social contexts, and global supply chains. Case studies like Operation Fort, described below, offer just one window of opportunity to better understand the crime and the spaces in which we may be able to intervene and prevent it.

4. Operation Fort

Operation Fort lasted five years and was the largest police action in England and Wales to focus on human trafficking, or ‘modern slavery’ in the local parlance. The operation saw five men and three women sentenced in 2019 in Birmingham Crown Court for a range of criminal offences, including forced labour. The network that carried out this exploitation was described by the judge (Judge Mary Stacey 2019) during sentencing as

the most ambitious, extensive, and prolific network of interlinked overarching conspiracies to traffic large numbers of vulnerable men (and a few women) into the UK for the purposes of two forms of exploitation: both labour exploitation and using them to open multiple bank accounts, ostensibly in their name but over which they had no control.

On the streets of Poland and at the front gates of prisons, vulnerable men and women were recruited, with the promise of decent wages and a better future in the UK. It is alleged by the police that a group of over 400 victims (aged between 17 and 60) were exploited by two Polish crime families. Of those 400 victims, 92 were identified by law enforcement, 89 of whom were men. The Independent Anti-Slavery Commissioner’s report (Crates 2020: 13) on this operation stated that most of the victims

had vulnerabilities, such as being homeless, destitute or had formerly served prison sentences. Some were addicted to drugs or alcohol. Because of their backgrounds, many were already fearful or distrustful of the police. They spoke little or no English and did not understand their rights.

During her work at a safe house, the author worked with many of the victims during their time in the reflection period and was able to ascertain the accuracy of the report through her interaction with them.

The victims did not fit the ‘ideal victim’ image, which is a term coined by Christie (1986) to reflect the expectations that society has as to what a victim ought to look like. A perception that is deeply rooted in social stereotypes and

falsehoods assumes that ideal victims of trafficking would be ‘those who have been victims of extreme exploitation, are “innocent” of their own exploitation, and agree to participate in criminal proceedings’ (Ollus, Alvesalo-Kuusi, Jokinen 2016: 59). Middle-aged male workers who ‘keenly’ migrated to England, who suspected that the job offer seemed dubious and then ended up being exploited, do not easily fit within the archetypal perception of victims. If we followed Christie, we would assume that their criminal past and addictions ought to have acted as a barrier to them receiving victim status. And yet they entered the National Referral Mechanism. Their identification is a testament to how far law enforcement’s understanding of forced labour has progressed. Although a caveat ought to be made, these persons existed and were exploited in plain sight for many months without their co-workers, managers, and – importantly for this article – recruitment agencies noticing.

The criminals who exploited them consisted of eight individuals who were a family network made up of parents, siblings, cousins, and friends. One of the eight escaped the UK but was arrested in Poland and stood trial there, which culminated in a five-year sentence. In the UK the sentences ranged from 11 years to three years.

The gang’s strategy consisted of approaching people who had been exposed to social injustices and offering them work and a chance of a new life. The victims were told they would earn between £250–400 a week, in addition to being provided with food and accommodation. Time was used as a pressure tactic, with victims being told they had between a few hours to one day to decide whether they wanted to take the offer. On arrival, the victims were placed in cramped, rodent-infested lodging across the Midlands region of the UK (West Bromwich, Walsall, Sandwell, and Smethwick). Some homes had no toilets, heating, furniture, or hot water, resulting in the victims washing themselves in canals. Complaints were met with threats or physical abuse, in one case a broken arm. ‘Two victims who complained about their treatment were taken out of their house and told to dig their own graves in the woods’ (Crates 2020: 140). ‘House spies’ – previously trafficked victims – kept an eye on the workers. There were no locked doors and no imprisonment, but the victims were psychologically abused by being isolated, pushed into addiction, moved between residences and jobs, told myths about their residence status in the UK, and forced into working consecutive shifts.

The victims were placed in jobs through legitimate recruitment agencies, but were forced to work by their traffickers. They worked on farms, in poultry factories, and in recycling centres; they constructed fencing and sorted parcels. The wages that the victims were allowed to keep – if at all – amounted to a maximum of 50 pence an hour. In order to survive, the victims relied on soup kitchens and food banks. The traffickers confiscated the victims’ identity cards and then registered the victims for national insurance numbers, which allowed them to open bank accounts in the victims’ names with fake addresses. Traffickers also claimed benefits without the victims’ knowledge. The criminal group made great profits and flaunted their wealth by driving luxurious cars. The offences uncovered

by Operation Fort surfaced after victims came looking for food at a soup kitchen at a local church. There they met a Polish charity outreach worker who referred them to anti-trafficking NGO.

Operation Fort draws attention to the plight of those particular 400 victims, but their tale is a common one that extends far and wide. The story teaches stakeholders key lessons: forced labour and human trafficking for exploitation of forced labour or services are rooted in social vulnerabilities such as homelessness and past criminal behaviour and victims work in plain sight.

5. Points of intervention

Whilst the state plays a role in ‘rescuing’ victims of forced labour, providing them with support, and bringing the perpetrators to justice, regrettably it is also a neglectful actor, failing to address points of potential intervention in order to prevent the crime from happening in the first place. One can go as far as to argue that it is culpable of fostering a climate where forced labour can flourish, by ‘facilitating exploitation through restrictive immigration policies and minimal regulation of labour markets’ (Davies 2019: 3). To Davies’ observation the author also adds that the state can expedite forced labour by overlooking and not intervening in key points that trigger the exploitation journey. It is the latter that is the focus on this section. The positioning of the argument is based on the premise that the state has an obligation, under numerous anti-human-trafficking laws, to prevent human trafficking. This in turn ought to entail protecting the vulnerable through creating and supporting policies/institutions that reduce opportunities for exploiters to abuse – in other words, closing the gaps of vulnerability that traffickers manipulate. This article does not naïvely put forward the notion that vulnerability is a straightforward matter that can be addressed through unilateral or bilateral intervention programmes, for example, poster campaigns providing information on the mere existence of the risk of exploitation. Indeed, the opposite is true: vulnerability is a phenomenon that is rooted in intersubjective relationships and includes matters that belong not just to the individuals – e.g., one’s own psychology – but also those of the community (more on vulnerability below). However, in an attempt to ‘start somewhere’ this article encourages policy-makers to look at the economic and social drivers, including poverty and the lure of employment, as keys to how individuals get trapped in forced labour, and thus as tangible spaces where intervention ought to take place.

So, what are the points of state involvement? They are spaces and situations where the authority of the state and society does not protect the vulnerable, either through a lack of capacity due to funding or through intentional neglect. They are domains where people are isolated and go unnoticed.

5.1. Homelessness

The victims in Operation Fort, like so many others, began their journey to exploitation as homeless persons. Thus, they are first and foremost victims of the state's inability – partly but not solely due to poor funding – to support citizens through systems for income safeguarding, provision of accommodation and employment, and care of mental illness and other types of disabilities. The homeless are propelled to victimhood by poor economic conditions, a lack of prospects, and social instability. For those who are living on the streets or in shelters, a job offer – even under uncertain and risky conditions – coupled with an offer of accommodation may be too good to turn down. The author was told first-hand by victims that even though the offers seemed uncertain at times, the choice between destitution and a risky job offer seemed obvious. In the case of the people from Operation Fort, they accepted the offer and thus essentially mortgaged their labour power against a loan from the exploiter, who offered a better, potentially even more exciting future. The terms of that mortgage, however, were riddled with traps and abuse.

Of course, not every homeless person will end up a victim, but if their path crosses that of an offender who spots their vulnerability, the risk of exploitation significantly increases. 'Vulnerability' is indeed one of the key underlying factors behind trafficking and exploitation, and as shown above it is a key element of the definition of human trafficking. Vulnerability can derive from social, economic, or cultural factors, such as poverty or gender inequality. Vulnerabilities are those life events, experiences, and environmental or individual characteristics that corrode individuals' opportunities whilst creating openings for others to exploit them, thus creating an imbalance of power (Goodin 1985: 195). Here we can also draw on Sample's (2003) work, who stated that vulnerability emanate from extreme dependency as a result of an inequality in bargaining power, which is clearly visible in many cases of forced labour – particularly those that start off in the context of homelessness. As the author wrote in a recent report, 'in homelessness we find a phenomenon with several overlapping dimensions of marginalization, the consequences of which are varied but undoubtedly include a heightened risk of human trafficking and exploitation' (Muraszkiewicz 2020: 31). For those who are sleeping rough, finding a place to sleep while fighting weather conditions and relying on food banks, shelters and donations from strangers render an individual extremely vulnerable. Other forms of homelessness which are much more hidden, such as couch surfing, sleeping in cars, and riding night busses, are also incredibly destabilising. Thus, a homeless person's ability to turn away an offer of employment, a chance for a new life, is limited. This was the case for many victims uncovered through Operation Fort, and their tales show that economic and material motivations do remain a driver in explaining the vulnerability to forced labour.

Regrettably, information in the public domain does not tell us how many of the 400 victims were homeless (nor how many had a criminal record – which is important to the discussion below which addresses victims' criminal past), but the

observations on the prevalence of homelessness as a launch pad for trafficking are corroborated by the conclusions of other studies. Indeed, it is worth noting that targeting homeless persons is a systemic practice and in the UK there have been numerous cases of local homeless persons, especially men, recruited into exploitation. As reported by the Joseph Rowntree Foundation (Skrivankova 2014: 7):

The 'Connors' case involved several members of the Connors family who induced vulnerable British men to work for them. The victims were vulnerable by circumstances and lifestyle (for example, homelessness or alcohol addiction) and some had learning difficulties. They were made to do manual labour, block-paving, and demeaning tasks while being threatened and physically abused, having their documents withheld from them and receiving derisory pay.

Likewise, in the UK-based police Operations Netwing, Tundra, and Helm – which uncovered cases of forced labour – 19 of the victims

were unemployed and either living on the streets or in homeless shelters/hostels. Many were long-term homeless and very few were in regular contact with their families. None were registered as missing persons. Almost all the victims were heavily alcohol-dependent at the time of recruitment and three were drug-dependent (Cockbain, Brayley-Morris 2018: 134).

Despite developing evidence that homeless persons are targeted for forced labour, there has not been enough inquiry on how human trafficking and homelessness overlap and impact one another. This was alluded to in a recent publication by the author:

This of course is part of a bigger problem, those aiming to prevent human trafficking, protect its victims, and prosecute criminals are too narrowly focused. Fighting the crime should not be defined by solely criminal law or migration policies; it should be understood in tandem with socioeconomics, social inequality, politics, and power disparities to name just some of the examples. We thus need to embrace a more macro view, which requires one to question how and why oppressions are able to occur, including how homelessness fits into this. The story of homelessness of so many of the Polish victims draws our attention, not just to their regretful fate, but also demands of a reflection of the political, social, and economic conditions that enable the possibility of exploitation of this group in the first place. Part of the answer lies in the lack of safety nets (Muraszkiewicz 2020: 32).

It is logical to find that where the state refuses to provide for its most vulnerable populations, they will seek support from other areas, including criminal actors. Their exploitation thus stems from the state's failure to provide for its community, making the presence of exploitation a partly political choice. An obvious point of

intervention is to address the ‘invisible shackles’ of homelessness through social welfare. Taking Poland’s approach to welfare as a case study, as it was the home country of the victims in Operation Fort, we clearly see where people’s lack of resilience to trafficking stems from. Compared against other EU countries, Poland spends considerably more of its budget on pensions and disability expenses; it has an average expenditure on education. However, it has a lamentably low spending on health care, support, and social security for vulnerable persons and housing benefits – the very spending that creates a safety net for people susceptible to homelessness. Furthermore, looking at unemployment, in 2015 Poland spent 0.6% of its GDP on this category; moreover, with regard to social assistance for excluded persons and housing benefits, it spent 0.4% of its GDP. This is 1.0 and 1.1 percentage points lower, respectively, than the average in the EU-15 countries. Low expenditure on social assistance for excluded people leads to the occurrence of a socially marginalised group. Such people find that there is not enough help for them. Homeless persons are unable to find help or a resolution to their vulnerabilities within the existing system. This is layered with a belief that in countries such as the UK or Germany one will be able to find employment or at least some level of social security, even without knowing the language. The existing system does not provide adequate opportunities to lift people out of their disadvantaged state. The conclusion to this article thus emphasises the need to increase access to resources that provide resilience against the harmful effects on well-being from economic hardship.

5.2. Criminal justice system

Homelessness is not the only social exposure that leads people to accept dubious offers. Another commonality, also present in the victims from Operation Fort, is a criminal record. To put it more colloquially, they have the status of an ex-offender. Persons with a criminal history have traditionally been reviled by society and subjected to discrimination, prejudice, and marginalisation (Geiger 2006). They have a socio-legal status that plays a direct role in being susceptible to exploitation, for they face an enduring risk of poverty and rejection. Like the status of slavery in ancient Greece and Rome, a criminal record often means effective exclusion from social and political life. Their past is an omnipresent mark on their CV, of which they are acutely aware. In countries of origin such as Poland, where there is a dearth in policy on rehabilitating those coming out of prison, ex-offenders find themselves susceptible to traffickers on account of their fractured safety net, their vulnerabilities, and poor prospects for employment. Unlike a labourer without a criminal past, an ex-convict is unable to easily offer her/his labour power to the market and benefit from the fruits of the regular economy, thus making the likelihood of unfree labour high. At the same time the state’s poor policy on integration, so prominent in times of austerity, strengthen the traffickers’ position. Thus, in

developing responses to exploitation, stakeholders need to look at the complex issue underlying recruitment, such as marginalisation by way of a criminal past.

The experience of a prison sentence itself can disempower people, making them easier for criminals to control. When leaving correctional facilities, individuals may have new or worsened mental health issues and substance abuse problems; they may have experienced violence, sexual harassment, and degradation (Travis, Solomon, Waul 2001). In addition, they are often poorly equipped to re-integrate back into society, often left with no secure long-term accommodation. In other words, they find themselves in circumstances that are ripe for traffickers to exploit. Their criminal past means, as with homelessness, that these individuals offer exploiters a high reward strategy. As victims of more than one injustice, they are unlikely to try and escape. Cockbain and Brayley-Morris (2018: 144) wrote that

such victims' expectations, incentives to escape, and likelihood of being reported missing could reasonably be expected to be lower than the average person's. This aspect of the offenders' behaviour fits with the rational choice perspective on crime, ... according to which offending is generally the result of a rational decision-making process.

5.3. Recruitment agencies

Skrivankova (2017: 115) noted that 'many of the most vulnerable workers are not exploited at the workplace, but rather around the workplace.' This was the case for many of the victims uncovered by Operation Fort, who were working in legitimate businesses and in jobs found through regular recruitment agencies. 'Analysis of Operation Fort suggests that the traffickers supplied victims to at least eight established labour agencies over several years, in many cases using normal recruitment channels' (Crates 2020: 16). Their exploitation took place on the peripheries of work. The nature of their exploitation, namely the fact that it was not their employer who oppressed them, does highlight the need for broad definitions of human trafficking and forced labour. Such an attitude to trafficking and forced labour acknowledges the power wielded by the perpetrators and the abuse faced by victim and how it relates to human exploitation for profit. With regard to the definition of forced labour and human trafficking, we should pay attention not only to who benefits from the direct fruits of the victim's labour – for example, a factory owner who now has 1,000 pairs of jeans to sell – but exploitation should be construed as the full range of benefits, including capturing the wages that the victim has earned.

Turning back to recruitment agencies, their use is widespread across Europe, particularly in sectors prone to exploitation and trafficking, namely hospitality, agriculture, construction, and jobs in warehouses and factories (Andrees, Nasri, Swiniarski 2015: 75). These sectors are highly competitive, with high turnover

of low-skilled staff who are dependent on temporary labour. As noted by the UNODC (2015: 5),

recruiters and recruitment agencies are especially sought in sectors where there is a seasonal demand for workers, in situations where workers and employers do not speak a common language, or where aspiring workers need to travel long distances (including across borders) to reach the job site. Companies also turn to recruitment and job placement agencies to manage the inherent challenges related to recruitment and hiring, while jobseekers look to recruiters to help them navigate the complex waters of migration for employment.

Because of social, legal, and organisational failures, recruitment agencies play a striking role in recruiting and employing potential victims. Traffickers bring the victims to the agencies, register them, and provide bank accounts over which they, the traffickers, have control. To elaborate, the victim is first made to open a bank account, into which the wages that they earn are then deposited, but they have no control over it, since all the documentation, cards, and passwords are held by the trafficker. In her work with victims of labour exploitation, the author heard from the victims that they did not even know which bank they had accounts in. Once registered with an agency, the victims are placed in jobs, where they may be employed on a flexible basis, including zero-hour contracts. The agency does not directly exploit persons in many instances, but its administrative failures and bureaucratic oversights, rather than deliberate fraud, play a part. Central to this, as mentioned, is the fact that the wages go to the traffickers. Skrivankova (2017: 110) found that labour agencies are under pressure to provide cheap and quick labour, which means that 'they often adopt practices in the grey area between legality and illegality ... they are one step removed from the workplace, and so it is harder to trace responsibility.'

Noting this modus operandi, it is paramount that agencies are sensitive to their role in the supply chain of victims of forced labour and exercise a high degree of scrutiny. The same is true for the state. Operation Fort revealed a crucial point of intervention for disrupting the survival of forced labour, namely the need for further diligence from recruitment agencies. As always in measures to tackle human trafficking, everything starts with training. All staff involved in recruiting labour for sectors prone to exploitation ought to undergo training on spotting signs of potential abusive behaviours. Further, as part of increased diligence, recruitment agencies should undertake numerous checks. These may include checking whether wages for different workers are being paid into the same bank account or whether numerous workers are providing the same address or phone number and next of kin. Perhaps their responsibility ought to stretch as far as checking worker welfare through follow-up interviews, visits to workplaces, and/or home visits. On this latter recommendation, while acknowledging its potential for impact and achievements, it would be unwise to overlook the challenges, obstacles, and

resistance to such an onus. The private sector has a tendency to shy away from such schemes and obligations, since they demand much and offer little in return. Thus, unless these duties are enshrined in law – e.g. labour law – they are unlikely to be adopted. Efforts to help mitigate the risks should thus include legislation and policies that clarify the role of labour recruiters and extend their role to monitoring in order to spot fraudulent or abusive behaviour. Labour Inspectors also ought to monitor recruitment agencies that provide labour in sectors prone to exploitation, blacklisting those known to have neglected their duties. Such a law would add more work but is worth considering, for if recruitment agencies are one of the actors at the centre of forced labour, this article submits that their involvement will allow for a more systemic approach to addressing the true context of exploitation.

Although this was not the case in Operation Fort, it is also a common story that agencies can be responsible for elements of exploitation, and Skrivankova (2017: 115) noted that the most common forms of exploitation that a person experiences from agencies include a lack of freedom of choice over accommodation, which is tied to the job; unlawful wage deductions; the agency not paying tax, despite assuring workers they have done so; and an obligation to purchase overpriced services, such as transport or clothing.

6. Conclusion

This paper represents the beginning of the development of some ideas, not the polished end-product. Nonetheless, it notes that the journey of an individual worker is pierced with a chain of activities that eventually lead to their exploitation and thus the eradication of their dignity. Starting off, offenders increasingly using recruitment tactics that prey on a person's vulnerability in connection with their homelessness and/or their criminal past. This is followed by a relationship with the trafficker/exploiter that is characterised by an imbalance of power. Here the trafficker/exploiter abuses and controls the victim, and this goes unnoticed by poor checks in recruitment agencies that make this control easier. In scrutinising these aspects, we are able to better understand the factors that contribute to exploitation and to consequently identify points of intervention. Activities to raise awareness amongst the homeless population and those leaving correctional facilities are some of the obvious solutions. Training staff who work in prisons and homeless shelters is another. A further recommendation emanating from this paper is to include progressive legal/policy changes that acknowledge the role recruitment agencies play in the victims' stories.

However, ultimately, the state needs to invest in its people and in society to wash away their vulnerabilities. It is nothing new to claim that access to income is

essential for ensuring that basic needs are met: shelter, clothing, and food. Access to income support can provide individuals with more resilience, which in turn should increase their ability to turn away offers made by traffickers. Of course, the utopian state of a society without vulnerabilities is unlikely, but welfare programmes ought to be designed to empower individuals so as to ensure their physical and psychological toughness. An increase of programmes that ensure the agency and bargaining powers of individuals so that they do not accept dubious offers ought to be a priority.

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References

- Andrees B., Nasri A. and Swiniarski P. (2015). *Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities*. Geneva: International Labour Organization.
- Christie N. (1986). 'The ideal victim'. In E. Fattah (ed.) *From Crime Policy to Victim Policy*. New York: St. Martin's Press.
- Cockbain E. and Brayley-Morris H. (2018). 'Human trafficking and labour exploitation in the casual construction industry: An analysis of three major investigations in the UK Involving Irish Traveller offending groups'. *Policing: A Journal of Policy and Practice*, 12(2), pp. 129–149.
- Davies J. (2019). 'From severe to routine labour exploitation: The case of migrant workers in the UK food industry'. *Criminology & Criminal Justice* 19(3), pp. 294–310.
- Geiger B. (2006). 'The case for treating ex-offenders as a suspect class'. *California Law Review* 94(4), pp. 1191–1242.
- Goodin R. (1985). *Protecting the vulnerable: A reanalysis of our social responsibilities*. Chicago: Chicago Press.

- O'Connell Davidson J. (2015). *Modern slavery: The margins of freedom*. Basingstoke: Palgrave Macmillan.
- Ollus N., Alvesalo-Kuusi A. and Jokinen A. (2016). *From forced flexibility to forced labour: The exploitation of migrant workers in Finland*. Helsinki: European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI).
- Rioux S., LeBaron G. and Verovšek P.J. (2020). 'Capitalism and unfree labor: A review of Marxist perspectives on modern slavery'. *Review of International Political Economy* 27(3), pp. 709–731.
- Sample R. (2003). *Exploitation: What it is and why it's wrong*. New York: Rowman and Littlefield Publishers.
- Shepherd R. and Wilkinson M. (2020). 'Operating in the dark: The identification of forced labour in the UK'. *Critical Social Policy*. Available online: <https://doi.org/10.1177/0261018320921540>.
- Skrivankova K. (2017). 'Defining exploitation in the context of trafficking—what is a crime and what is not'. In R. Piotrowicz (ed.) *Routledge Handbook of Human Trafficking*. New York: Routledge, pp. 109–119.
- Volodko A., Cockbain E. and Kleinberg B. (2020). 'Spotting the signs' of trafficking recruitment online: exploring the characteristics of advertisements targeted at migrant job-seekers'. *Trends in Organized Crime* 23(1), pp. 7–35.
- Wieczorek Ł. (2018). 'Kryminologiczne aspekty pracy przymusowej w Polsce' [The criminological aspects of forced labour in Poland]. *Archiwum Kryminologii* 39, pp. 71–115.

Internet sources

- Crates E. (2020). *Operation Fort. What businesses should learn from the UK's largest anti-slavery prosecution*. Independent Anti-Slavery Commissioner. Available online: <https://www.antislaverycommissioner.co.uk/media/1421/iasc-operation-fort-review-june-2020.pdf> [19.12.2020].
- Explanatory Report on the Convention on Action against Trafficking in Human Beings* (2005). Council of Europe. Available online: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3840> [19.12.2020].
- Forced Labour Convention, C29* (1930), ILO. Available online: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 [20.12.2020].
- Gentleman A. (2017). *Trafficked and enslaved: The teenagers tending UK Cannabis farms*, Theguardian.com. Available online: <https://www.theguardian.com/society/2017/mar/25/trafficked-enslaved-teenagers-tending-uk-cannabis-farms-vietnamese> [20.12.2020].
- Gla.gov.uk (n.d.). *Gla.gov.uk*. Available online: <https://www.gla.gov.uk/> [12.12.2020].
- GRETA (2016). *Report Concerning the Implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings by the United*

- Kingdom. Council of Europe. Available online: <https://rm.coe.int/16806abcdc> [19.12.2020].
- Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (2011). Geneva: ILO. Available online: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf [20.12.2020].
- Historical Law to End Modern Slavery* (2015). Home Office. Available online: <https://www.gov.uk/government/news/historic-law-to-end-modern-slavery-passed> [04.02.2021].
- Muraszkiewicz J. (2015). *Modern slavery – but let us remember the trafficked*, Blogs. lse.ac.uk. Available online: <http://blogs.lse.ac.uk/humanrights/2016/01/18/modern-slavery-but-let-us-remember-the-trafficked/> [19.12.2020].
- Muraszkiewicz J. (2020). *New discussions on the complicated relationship between Poland and forced labour*. Stockholm: Council of Baltic Sea States. Available online: https://cbss.org/wp-content/uploads/2020/09/CAPE_Poland.pdf [19.12.2020].
- National Referral Mechanism Statistics UK, Quarter 1 2020 – January to March* (2020). Home Office. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/889969/national-referral-mechanism-statistics-uk-quarter-1-2020-january-to-march.pdf [20.12.2020].
- Skrivankova K. (2010). *Between decent work and forced labour: Examining the continuum of exploitation*. York: Joseph Rowntree Foundation. Available online: <https://www.gla.gov.uk/media/1585/jrf-between-decent-work-and-forced-labour.pdf> [19.12.2020].
- Skrivankova K. (2014). *Forced Labour in The United Kingdom*. York: Joseph Rowntree Foundation. Available online: <https://www.gla.gov.uk/media/1584/jrf-forced-labour-in-the-uk.pdf> [19.12.2020].
- Spapens T., Tamas A., Lulle A., Durieux H., Polatside V., Dragota C., Constantinou A. and Muraszkievicz J. (2014). *TRACE, D1.3: A report concerning the macro and micro analyses of human trafficking*, Researchgate.net. Available online: https://www.researchgate.net/publication/270160347_TRACE_A_report_concerning_the_macro_and_micro_analyses_of_human_trafficking [18.12.2020].
- Stopping Forced Labour, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (2001). Geneva: ILO. Available online: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_publ_9221119483_en.pdf [19.12.2020].
- The Role of Recruitment Fees and Abusive and Fraudulent Recruitment Practices of Recruitment Agencies in Trafficking in Persons* (2015). Vienna: United Nations Office on Drugs and Crime. Available online: http://www.stopslaverynetwork.org/wp-content/uploads/2017/07/017.-Recruitment_Fees_Report-Final-22_June_2015_AG_Final.pdf [18.12.2020].

- Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs* (2009). Council of Europe and United Nations. Available online: <https://rm.coe.int/16805ad1bb> [19.12.2020].
- Travis J., Solomon A.L. and Waul M. (2001). *From prison to home: The dimensions and consequences of prisoner reentry*. Washington DC: Urban Institute Justice Policy Centre. Available online: https://www.researchgate.net/publication/281453304_From_Prison_to_Home_The_Dimensions_and_Consequences_of_Prisoner_Reentry [19.12.2020].
- UNODC (2015). *Issue Paper: The concept of 'exploitation' in the trafficking in persons protocol*. Vienna: United Nations Office on Drugs and Crime. Available online: https://www.unodc.org/documents/human-trafficking/2015/UNODC_IP_Exploitation_2015.pdf [20.12.2020].

Court decisions

- European Court of Human Rights, 11.10.2012. *Case of C.N. and V. v. France, application no. 67724/09*. Available online: <http://hudoc.echr.coe.int/fre?i=001-114032> [19.12.2020].
- European Court of Human Rights, 23.11.1983. *Case of Van Der Mussele v. Belgium, application no. 8919/80*. Available online: <http://hudoc.echr.coe.int/fre?i=001-57591> [19.12.2020].



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Day labourers in Munich's train station district - from exploitation to human trafficking and forced labour?

Pracownicy jednodniowi w okolicach dworca kolejowego w Monachium - pomiędzy wykorzystaniem a handlem ludźmi i pracą przymusową?

Abstract: In the beginning of the 21st century, a day labourer market was established in the southern main station district of Munich. In August 2013, the market aroused negative public attention due to a petition from local businesspeople. Since then, the day labourers have been subject to surveillance and banishment. In 2019, a significant amendment to the Illegal Employment Act made day labourer markets illegal. It is known that day labourers offer their own labour to employers, who frequently deprive them of the agreed wage. This practice poses the question of whether these exploitative working conditions amount to human trafficking, forced labour, or labour exploitation. This question is explored in a case study analysis based on talks with day labourers and interviews with different actors in Munich's train station district.

Keywords: day labourers, day labourer market, exploitation of labour, forced labour, human trafficking, illegalisation

Abstrakt: Na początku XXI wieku na centralnym dworcu południowej części Monachium zaczął działać „rynek” dla pracowników jednodniowych (day labourers). Opinia publiczna szerzej o nim usłyszała w sierpniu 2013 roku w związku z krytyczną petycją lokalnych przedsiębiorców. Od tego czasu jednodniowi pracownicy – pochodzący głównie z Bułgarii – poddawani są kontrolom, podejmowane są również próby ich przeniesienia. W 2019 roku doszło do istotnej nowelizacji niemieckiej ustawy o nielegalnym zatrudnieniu, która skupiała się na kwestiach nielegalnego charakteru pracy

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pracowników jednodniowych i zezwalała na wydanie wobec nich czasowych nakazów opuszczenia miejsca, ale także karanie ich grzywną za popełnienie wykroczenia administracyjnego. Warto postawić pytanie, czy ta nowelizacja miała sens w kontekście zamiaru ustawodawcy, którym było zapobieganie wyzyskowi i promowanie legalnych umów o pracę? Inną ważną kwestią jest to, czy kwestię pracy osób w szarej strefie można zredukować do uznania jej jedynie za „problem społeczny”? Pracownicy jednodniowi oferują własną pracę pracodawcom, którzy nierzadko pozbawiają ich uzgodnionego wynagrodzenia. Praktyka ta jest powszechna i skłania do postawienia pytania, czy takie wyzyskujące warunki pracy można traktować jako handel ludźmi i pracę przymusową? W niniejszym artykule pytania te zostały poddane analizie w oparciu o rozmowy z pracownikami jednodniowymi i wywiady przeprowadzone z różnymi osobami w jednej z monachijskich dzielnic.

Słowa kluczowe: pracownicy jednodniowi, rynek pracowników jednodniowych, wykorzystanie pracownicze, praca przymusowa, handel ludźmi, delegalizacja

1. Introduction

Even before the free movement in the European Union was extended to EU citizens from Bulgaria and Romania in 2014, a day labourer market—comprising people mainly from Bulgaria – was already established in the southern main station district of Munich. At first unnoticed, this market attracted negative attention in the local media for the first time in August 2013. Since then, the city of Munich, the police, and the customs authorities have been concerned with the day labourer market, which is located at a narrow and busy intersection near shops and restaurants. The market is a nuisance to the local traders, and a constant source of complaints coming from them. The day labourers feel stigmatised by the local traders and criminalised by the police. In August 2019, the crowding-out pressure for day labourers increased due to a change in the law on illegal employment (see Act to Combat Undeclared Work and Unlawful Employment). Subsequently, Section 5a of the Act forbids ‘a person to offer his or her labour as a day labourer in a public space within a group setting in a way that is likely to facilitate undeclared work or illegal employment to demand an illegal offer of labour by soliciting or accepting such an offer’ (own translation). Pursuant to Section 5a of the Act, violations may result in orders of temporary expulsion and bans on entering.

The day labourers accept jobs with changing employers to ensure the livelihood of their families living in Bulgaria. In Munich, they offer their labour for around nine euros an hour, (Landeshauptstadt 2019: 19) and perform mostly simple jobs in the construction, cleaning, and catering trades in the city and surrounding areas. The term “day labourer” is associated with the idea of short-term, illegal employment. In reality, many day labourers not only work for several hours per day, but also take up longer-term and legal employment (Riedner 2019: 64). Often, they do not want to settle in Germany, and see themselves as seasonal workers.

In addition to raids by customs and police checks, various social assistance services can be found nearby. As early as 2010, a nongovernmental organisation was formed, and since then has supported day labourers in conflicts with authorities, the police, and employers (Initiative 2016). In 2015, the municipality set up an advice café near the labour market especially for the day labourers. The advice café serves as a central contact point for EU nationals in precarious employment, and the social workers offer counselling, information, and qualification services. Support is particularly needed when employers withhold all or part of the wage and ignore their social security obligations.¹ Without health insurance, the people concerned are dependent on the medical services of social institutions. At this point, different practices appear in a labour market that is characterised by both the autonomy to accept jobs and multiple exploitation. This makes it difficult to determine whether these practices of exploitation match the characteristics of the offences of human trafficking with the purpose of forced labour (Section 232 Criminal Code), of forced labour (Section 232b Criminal Code), or of exploitation of labour (Section 233 Criminal Code). Before this question is examined in detail, an overview of the relevant offences in Germany and the available police criminal statistics are given.

2. Legal framework in Germany

In its current version, human trafficking has been in force since October 2016 in Section 232 of the Criminal Code (see Act to Improve Action Against Human Trafficking and to Amend the Federal Central Criminal Register Act and Book VIII of the Social Code), and replaced the previously applicable offences of 'trafficking in human beings for the purpose of labour exploitation' (old version: Section 233 Criminal Code), and 'promoting trafficking in human beings' (old version: Section 233a Criminal Code). The amendment served to implement the EU Directive (2011/36/EU) on preventing and combating trafficking in human beings and protecting the victims (and replacing Council Framework Decision 2002/629/HJA), for which the implementation deadline had already expired in April 2013. The essential regulatory content of the former 'trafficking in human beings for the purpose of labour exploitation' is now covered by the newly created offence of 'forced labour' in Section 232b of the Criminal Code and 'exploitation of labour' in Section 233 of the Criminal Code (Vogeler 2018: 69–70). The difference between the latter offences is that forced labour criminalises the act of causing

¹ Since the Coronavirus pandemic, the day labourers remaining in Munich have become even more dependent on social assistance due to the lack of available work. For this reason, the municipality expanded the free overnight shelter on the outskirts of the city to round-the-clock service.

a person to perform forced labour, while exploitation of labour criminalises the act of exploiting someone's labour itself (Bundestagsdrucksache 2016: 39). Exploitation of labour has a lower level of punishment than forced labour. This is due to the lesser unlawful content: whereas forced labour is based on an unfair influence over the victim's will to engage in or continue such employment, exploitation of labour consists in the mere exploitation of such a situation (Bundestagsdrucksache 2016: 39). The legal interest of these offences is the personal freedom to dispose of the labour force (Eisele 2019a: par. 9; Eisele 2019b: par. 1).

In line with the EU Directive, the German offence of human trafficking comprises the acts of recruiting, transporting, transferring, harbouring, or receiving another person. These acts are carried out by certain means for the purpose of exploitation, 'by taking advantage of that person's personal or financial predicament or helplessness on account of being in a foreign country' (German Criminal Code).² This therefore encompasses the means 'abuse of power or exploitation of the need for protection' mentioned by the EU Directive (Bundestagsdrucksache 2016: 24).³ Human trafficking using any other means mentioned by the EU Directive has an increased level of unlawful content, and these means include force, threat of serious harm, deception, abduction, gaining physical control, or encouraging a third party to gain physical control (Section 232 (2) Criminal Code). If the victim is under 21 years of age, such an act constitutes human trafficking, regardless of the means used (Section 232 (1) Criminal Code). Thus, the German legislature opted for a higher level of protection than that provided for in the EU Directive and other international regulations. The forms of exploitation (Section 232 (1) (1–3) Criminal Code) are also aligned with the EU Directive. In particular, Section 232 (1) (1) (b)) of the Criminal Code is of interest because of the purpose of the exploitation through employment.

According to the legal definition (Section 232 (1) Sentence 2 Criminal Code), exploitation through employment (Sentence 1 (1) (b)) pertains to 'if the employment, in serving the ruthless pursuit of profit, takes place under working conditions which are strikingly different to those of others performing the same or a similar activity (exploitative employment)' (German Criminal Code).⁴ The required disproportion is striking if the working conditions are obviously completely inappropriate when viewed as a whole. Not all working conditions must be worse: it is sufficient if this applies to an essential working condition (Renzikowski 2017a: par. 64). The wage is the most important indicator of a striking disproportion, and this is in comparison with the statutory minimum wage (Renzikowski 2017a: par. 65). Following the

² The translation was provided by Prof. Dr Michael Bohlander and is completely revised and regularly updated by Ute Reusch.

³ This seems questionable with regard to the 'abuse of power' (Bürger 2017: 176); apart from this, 'a position of vulnerability' pursuant to the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children [the Palermo Protocol] is criticised (e.g. Bergelson 2019: 199–215).

⁴ Translation provided by Prof. Dr Michael Bohlander.

Federal Court of Justice's landmark decision on usury in 1997, the two-thirds limit was established, according to which a striking disproportion existed if the wage fell below the standard wage by one third (FCJ 1997; FLC 2009). However, the legislature tightened the limit to half in the recent reform on human trafficking without further reason; since this limit has not been reflected in the law, one may be curious whether the jurisdiction will follow it (Renzikowski 2017a: par. 66). In case an employer does not register foreign labourers for social security, the striking disproportion results from the need to prove their claim against the social security authorities. In particular, their illegal employment would be revealed: this could have a negative impact on their residence status and be sanctioned as an administrative offence (Renzikowski 2017a: par. 67). Accordingly, it is not necessary for the contract of employment to be valid. Consequently, it covers those cases in which the contract is invalid, so that it includes the illegal employment of temporary labourers (Eisele 2019: par. 36). Therefore, day labourers in the Munich station district who do not have a lawful contract can still be subject to exploitation in the sense of human trafficking, forced labour, or labour exploitation.

Problems arise with regard to other provisions. An adjustment is required with regards to usury, (Section 291 Criminal Code) especially in relation to labour exploitation, the provisions of the Law on Temporary Work, and the Act to Combat Undeclared Work and Unlawful Employment (Petzsche 2017: 245). In particular, the relationship between usury and the employment of foreign nationals without residence permits who are victims of human trafficking or forced labour (Section 10a Act to Combat Undeclared Work and Unlawful Employment) remains unclear: this offence has a much lower punishment than human trafficking and forced labour do (Petzsche 2017: 245). In contrast to this, the day labourers in the Munich station district are EU citizens and are usually allowed to stay in the city. Before the Munich day labourer market is discussed, police registered data on human trafficking, forced labour, and labour exploitation will be addressed.

3. Police registered data concerning labour exploitation and beyond in Germany

In Germany, the Federal Situation Report on Human Trafficking annually provides information on the situation and development of the phenomenon, based on reports from the state criminal investigation offices on recently concluded police investigations (Bundeskriminalamt: 2019). In 2018, a total of 21 investigations into labour exploitation were concluded; the numbers had almost doubled since the previous year, with 11 investigations taking place in 2017 (Bundeskriminalamt 2019: 19). As 2017 and 2018 were the first years following the amendment to human trafficking in the Criminal Code, police investigations were conducted

pursuant to the old or the new offences, depending on the date of their initiation (Bundeskriminalamt 2019: 20). In both years, the majority of police investigations fell under the new legislation, with 10 new legislation, and 3 old legislation investigations in 2017, and 19 new legislation and 4 old legislation investigations in 2018 (Bundeskriminalamt 2019: 20-21). Monitoring over a five-year period reveals small ups and downs in the number of cases concluded, rising from 11 in 2014 to 19 in 2015, and dropping down to 12 in 2016. As such, we cannot yet deduce any trends in further development under the new legislation.

While 180 victims were identified in only 11 investigations in 2017, this number dropped to 63 victims identified over 21 investigations in 2018 (Bundeskriminalamt 2019: 21). Over a five-year period, the average number of victims identified per year was 74, and in this sense, 2017 produced a remarkably high number due to conducting two broad investigations. Most of the victims identified came from Ukraine (27 victims), with the next most from Vietnam (9 victims) and Hungary (8 victims); no victim was a German national. In contrast to sexual exploitation, the vast majority of identified victims were male (54 victims, 85.7%). Similarly, suspects were largely male, with the police identifying 22 men out of 27 suspects in 2017 and 22 men out of 30 suspects in 2018 (Bundeskriminalamt 2019: 22). In 2018, German nationals had the greatest share of suspects identified (7), followed by 4 Vietnamese suspects, and 3 Russian and Romanian suspects. They often seemed to be employers and/or exploiters, and some were recruiters or people providing accommodation. The police mainly found labour exploitation in the construction sector and the catering industry (Bundeskriminalamt 2019: 21). Work for parcel services and in slaughterhouses is also known for exploitative labour conditions (Servicestelle 2020), but the Federal Situation Report provides no data on police investigations in these areas. During the Covid-19 pandemic, health authorities detected the virus frequently among workers in slaughterhouses; the virus brought their precarious working and living conditions into public awareness (Reimer 2020).

Although the police registered data on human trafficking is reliable, the small amount of data presented is disappointing. Therefore, the so-called 'dark figure' of unreported or hidden cases is probably very high and the significance of police statistics on the phenomenon rather low (Albrecht 2019: 37-39). The situation is even more difficult in the area of labour exploitation: the individuals concerned are often unaware of their victimhood, and third parties misjudge their appalling working conditions (Haverkamp 2018: 785; Bundeskriminalamt 2019: 19). Due to victims' lack of awareness and unwillingness to report, detection primarily depends on the frequency of police checks. Aside from the police, customs authorities are responsible for inspections concerning undeclared work and unlawful employment (Section 2 Act to Combat Undeclared Work and Unlawful Employment). In summer 2019, an amendment forbidding day labourer markets came into force in Germany (Section 5a Act to Combat Undeclared Work and Unlawful Employment). The customs authorities are not only responsible for inspections,

but also for issuing a temporary sending-off or a prohibition of access against day labourers who infringe the prohibition of day labourer markets.

4. Illegalisation of day labourer markets

The aforementioned reform of the Act to Combat Undeclared Work and Unlawful Employment worsened day labourers' potential to offer work. According to the newly inserted Section 5a, a person may not offer his or her labour as a day labourer in a public space from within a group in a way that is likely to facilitate undeclared work or illegal employment; soliciting or accepting such an offer also constitutes an impermissible offer of labour. The explanatory memorandum to the Act contains the definition that a day labourer 'is someone who is not in a permanent employment relationship, but who offers his labour, as a rule with changing employers, at short notice for a temporary period for payment and is not continuously⁵ employed (Section 27 (3) (1) Social Code Third Book)' (own translation; Deutscher Bundestag 2019: 49). This definition does not go far enough, because in practice the employment relationships are more diverse and also include longer-term contracts. The ban on offering and demanding labour was also based on the risk of exploitation for job seekers, especially for job seekers without a residence permit (Deutscher Bundestag 2019: 49). Day labourer markets are recognised as places which enable undeclared work and unlawful employment (Deutscher Bundestag 2019: 49). Violations against the ban constitute administrative offences for day labourers and employers. Day labourers may be fined up to 5,000 EUR for offering such labour (Section 8 (2) (6) in conjunction with Section 8 (6) Act to Combat Undeclared Work and Unlawful Employment) and employers up to 30,000 EUR for demanding such an offer (Section 8 (2) (7) in conjunction with Section 8 (6) Act to Combat Undeclared Work and Unlawful Employment).

During the legislative process, the new provision was met with considerable concerns. Critics argued that the intended closure of day labourer markets does not help those affected by it: due to their desperate living conditions in their home countries, many day labourers have no choice but to look for work in public to ensure a living for their families (Fudge 2018; DAV 2019: 5; KOK 2019: 6). If they are not offered other job opportunities or support, a displacement of the problem is to be expected (KOK 2019: 6). Apart from this, proper employment relationships are also negotiated on the day labourer markets. Otherwise, it cannot be excluded that several persons may be forced to offer their services there and thus become victims of human trafficking with special rights (KOK 2019: 6). Furthermore,

⁵ 'Employment is not continuous when it is limited to less than one week by its very nature or limited in advance by an employment contract' (Section 27 (3) (1) Sentence 2 Social Code Third Book).

there were concerns that the administrative offence of demanding may impede investigations into human trafficking, as investigators may be already satisfied detecting the administrative offence (KOK 2019: 7).

The prohibition, which has been in force since summer 2019, also relates to Munich's day labourer market. But already in 2016, the reform of human trafficking had already led to changes in police practice. Since the end of 2017, the police have been increasing overt and covert checks on day labourers, both at the day labourer market and at their sleeping places, and have not found evidence of human trafficking—no recruitment, control, or force against the day labourers has been found (Landeshauptstadt 2019: 18–19). Although the presence of persons or larger groups is generally allowed in public spaces, the police monitor the day labourer market by increased police presence on patrols, as well as by keeping in regular contact with nearby businesses and institutions (Landeshauptstadt 2019: 19). The customs authorities gained more powers from the amendment to the Act to Combat Undeclared Work and Unlawful Employment in 2019. Since then, they may temporarily expel a person who violates the prohibition of unlawful offer from a place, or temporarily forbid him or her to enter a place (Section 5a (2) Act to Combat Undeclared Work and Unlawful Employment). As a result, the customs authority has carried out more controls on the day labourer market (Landeshauptstadt 2019: 20). However, the police do not consider controls at the day labourer market to be meaningful and prefer checks at the workplace, where the employer is responsible (Landeshauptstadt 2019: 19). The customs authorities recognise the need for social support for day labourers, and are calling for an interagency solution (Landeshauptstadt 2019: 20–21). More recently, the municipality has tried to improve the living situation of day labourers and other homeless people: since April 2019, there has been a year-round overnight shelter, a new clearing house for people without health insurance, financing both the Migration and Work Information Centre, and socio-pedagogical support for German courses (Landeshauptstadt 2019: 23–24).

5. The situation of day labourers in Munich's train station district

Following the legal and factual framework, the empirical findings on day labourers in Munich's train station district are now at issue. Previous research on day labourers in Munich referred to a self-organised labour market that supports both the initiation of exploitation and the resistance against it (Riedner 2019: 64–65). The question of whether there is human trafficking, forced labour, or labour exploitation has not yet been explored. This also applies to the joint research

project 'Safety in Train Station Districts (SiBa)',⁶ in which this question was only pursued later during the interviews. Within the project, a survey of the safety situation and safety perceptions from different perspectives was conducted using various research methods (statistical data, citywide population survey, interviews, walks, and observations).

The following information is based on three talks (whilst walking) with nine day labourers, interviews with three social workers and two businessmen, and four ad hoc interviews with staff from shops and hotels. Nearly all the people concerned have a migrant background; the interviews were held in Turkish and/or German.⁷ Semi-structured interviews included narrative elements and selected topics derived from the findings of a previous citywide population survey (Przyborski, Wohlrab-Sahr 2014: 126–132). In addition, ethnographic interviews were conducted with day labourers, tradespeople, customers, and residents (Strübing 2013: 100–102). The qualitative content analysis of Mayring (2016) was chosen because the previous empirical and theoretical knowledge allowed the development of a category system. The categories provided information about how the interviewees perceived the public space in the station district and its safety, who included or excluded whom, and how they legitimised social and spatial inclusion and exclusion.

In the case study, the day labourers in Munich came from the same area in Bulgaria, and usually know each other well. They belonged to a Turkish-speaking minority, which is despised in their homeland and exposed to various forms of discrimination. Their families still lived there, and most of them did not want to migrate to Germany. Several day labourers had experience with work in other major German cities, or even in other European countries. They preferred to stay in Munich because there are far better chances of getting temporary jobs, although the living conditions are worse: many day labourers lived on the streets, depended on the social aid of welfare as the city is expensive, and had poor health. Due to the discrimination in their home country, they had no connection to Bulgarians, or even former day labourers living in Munich. Past day labourers who had detached from the day labourer market sought to distance themselves from their former peers.

The day labourers had experienced considerable hostility from the Turkish community in the train station district. The Turkish tradespeople excluded them, and resented the fact that external observers perceived the day labourers as Turkish due to them speaking the same language. The Turkish community regarded them as criminals or social deviants. Women especially felt unsafe to go past groups of 10 to 15 men occupying the entire pavement. As a whole, most of the inhabitants

⁶ Funded by the Federal Ministry of Education and Research from August 2017 until December 2020; more information available at: <https://uni-tuebingen.de/en/faculties/law/lehrstuehle-und-personen/lehrstuehle/lehrstuehle-strafrecht/stiftungsprofessur/haverkamp-rita/research-projects/siba/> [17.11.2020].

⁷ Thanks to my assistants Kaan Atanisev and Ina Hennen for carrying out the interviews; the interviews were transcribed and analysed with MAXQDA.

and the tradespeople (publicly) ranted about them and maligned them. Occasionally, it was emphasised that there had been no incidents with the day labourers, like violence or other crime. Residents and employees near the day labourer market felt disturbed by the noise and the smell of cigarettes, alcohol, and garbage through their open windows. Further conflicts would arise from day labourers sitting on stairs, and in the entrance areas of the surrounding houses. The day labourers themselves did not feel accepted as equal citizens, but rather like unwelcome guests. They were not invited to events in the neighbourhood and were chased away from shops, even if they had previously bought something to eat there. Since the day labourer market still existed, several businesspeople were considering leaving the intersection or the train station district. From their perspective, the municipality tolerated the day labourer market, reinforcing the feeling among them and their customers that the day labourers can just do as they please.

Otherwise, shop keepers and hotel owners profit from day labourers, because shop keepers need customers and hotel owners want cheap cleaning staff. Several tradespeople understood the day labourer market as a crime scene for evasion of social security contributions and called for special powers for the police and municipal security services. This blame was primarily directed at employers and disregarded the fact that day labourers are often victims of their employers. All of the day labourers reported being deprived of their wages at least once. Turkish and Croatian employers in particular were noted for not paying them correctly. The day labourers did not understand why they are exploited and badly treated by 'their own people'. With German employers, there would be far fewer problems. Residents repeatedly noticed disputes between the day labourers and their employers about the correct payment of wages. Despite this, many day labourers appeared to be illiterate, and therefore did not know for certain what they signed in the cases of a written contract, and whether the verbal agreements and the actual working hours did not match. In court, they then have difficulty proving this. However, various employers would like to hire the day labourers as legal workers, but often fail because of language barriers and missing documents from the day labourers.

The day labourers receive support at the advice café of the Information Centre for Migration and Work. During the daytime, they are able to rest and even sleep there in the case of shift work, meet each other, and get advice on different matters, in particular on the employers who have cheated and exploited them. The advice café provides information about work opportunities and helps them to find proper employment in cooperation with the Federal Employment Agency; this was accomplished in 18 cases in 2017. Some day labourers need more support because they find themselves in further trouble when the police or the municipal security service pick them up drunk near the main train station, in spite of the ban on alcohol in the surrounding area. The police then send them off, but several day labourers do not understand the order for lack of German and for illiteracy in the case of a written order in Turkish; these infringements are then subject to an administrative fine. Therefore, some of these individuals might find themselves in

a vicious circle of poverty and debt. Local tradespeople established somebody from a private security service to be a 'guide'; this was first financed by the municipality and later by themselves. This guide is a Bulgarian who also speaks Turkish, the language of the day labourers. According to the local tradespeople, his task is to de-escalate the situation at the day labourer market and to mediate between the day labourers and the tradespeople. The interviewed business people valued both the advisory café and the guide as useful measures.

6. Discussion

One interviewee from a social institution said

I have observed so often that beggar gangs ... are always at the same place ... at a certain time, ... someone goes by and collects the money from them and gives them something to eat. I have observed this so often. These are ... gangs and there is somebody ... [keeping] the people under pressure.

From observing this every day, the interviewee's suspicion has been strengthened that the begging in the train station district is organised and that the beggars are victims of those who profit from it. Consequently, there are hints that beggars might be victims of human trafficking, forced labour, or exploitation of labour (Section 232 (1) (1) (c)), Section 232b (1) (3), Section 233 (1) (2) Criminal Code), though the police have no further evidence for this assumption. Such concerns for the day labourers were not expressed in the interviews. However, the term 'exploitation' was often used, though it remains unclear what the interviewees exactly meant by this.

Before going into more detail about exploitation, we will first explore the background behind day labourers leaving their homeland. The mostly male day labourers receive poor education and vocational training in Bulgaria. Given the unfortunate economic situation, and being in a minority on the receiving end of multiple levels of discrimination, they have no prospects for employment, so they seek success abroad. They live with their families in precarious conditions and wish to provide a decent living for them. The fact that Munich is a location with good job opportunities has spread by word of mouth. Most of the day labourers seem to know each other because they lived in the same region of Bulgaria, and many of them have closer ties as friends or relatives. These relationships also facilitate the decision to seek temporary or longer-lasting work in Munich, as they are still connected with peers who share the same background at home and the same experiences in Munich. Although the living conditions force them to leave their country, their decision appears to be based on free will. They are aware that life is very hard in Munich, but at least they are able to make a living for their families. Several of them have tried their luck in other German cities, or even in

other European countries, but prefer to stay in Munich due to better employment prospects. At this point, no signs of human trafficking concerning recruitment in Bulgaria can be traced, and the same applies to their journey to Munich and to other German and European cities. They are solely responsible for their transport or transfer, travelling either together in groups or alone. They have connections at these different places, but they decide themselves where to go and where to stay for job seeking. Once again, human trafficking by transportation or transfer, harbouring, or receiving another person does not seem to be an issue here.

A lot of day labourers have no fixed abode and no health insurance during their stay in Germany. To save money, they spend their nights in parks or in a huge emergency shelter located in Munich's suburbs. They are not entitled to benefits under the relevant German benefit system, unless they have been in the country for five years and are capable to earn a living (Section 7 (1) Second Book of the Social Code). The five-year period begins with registration as a resident in the population register. Lacking a registration, most of them therefore do not acquire the right to receive benefits after five years. When day labourers seek a job or have a rest, they meet on the streets in the train station district or in various welfare institutions. At most of the welfare institutions, they receive social assistance in numerous matters.

Support is provided, especially for problems with employers who pay too little or even withhold wages.⁸ Conflicts of this kind occur frequently between employers and day labourers; sometimes these disputes go to the labour court, where day labourers are reliant on social and legal support. The mere absence of a residential address prevents day labourers from asserting their rights (Borgards 2006: 158–159). According to research on the mobilisation of rights, the affected persons who exercise their rights greatly depend on mediating bodies; in particular, legal agents are able to provide them access to legal institutions and to represent their interests (Wrase 2013: 9). This function is fulfilled by a nongovernmental organisation that supports day labourers in conflicts with employers and in the labour court (Initiative 2016). In the labour court, it is difficult to prove the withholding of wages because not only it is one statement against another statement, but the employer also has a better starting position in terms of credibility and assertiveness (Riedner 2015: 4–5). It is easier for the employers to claim the opposite if the agreements were only made orally or if the signed employment contract does not correspond to the hours worked. Hence, a great disparity between *de jure* and *de facto* existing rights can be observed (Lockwood 1996: 537; Cyrus, Kip 2014: 35).

However, it is not uncommon to find longer-term and relatively secure employment relationships. Yet some day labourers are missing the necessary documents for a secure job because they simply do not have them or the documents have been lost or stolen. As unskilled workers, day labourers are mainly active in low-wage

⁸ Section 266a of the Criminal Code criminalises withholding wages and salaries. Due to the focus on human trafficking, forced labour, and labour exploitation, the offence is not discussed in detail here.

sectors such as construction, cleaning, and catering. The terms of employment in these areas are diverse, ranging from extremely low wages and a lack of labour rights to secure employment with fair salaries.

Nevertheless, the low-wage sector, especially when combined with the day labourer market, is vulnerable to exploitative conditions. The hiring of temporary workers ensures high profits for employers because manpower is extremely flexible and only creates costs when needed (Riedner 2019: 65). Even if these employment relationships entail considerable disadvantages (e.g., homelessness and no health insurance) for the day labourers, they are able to quit bad jobs immediately and to find a new occupation just as quickly (Riedner 2019: 65). However, all of the day labourers who were questioned had already experienced exploitation several times, particularly with regard to their wages. The question arises whether this exploitation amounts to an 'exploitative employment' (Section 232 (1) Sentence 2 German Criminal Code).

The required striking imbalance is given if this is easily obvious to a person familiar with the relevant factors; this means that the working conditions must be completely unreasonable compared to other employees (Eisele 2019a: par. 40). In case of an imbalance, it does not matter whether the wage seems to be appropriate from the victim's point of view (Eisele 2019a: par. 39). Most of the sectors where day labourers are usually employed are subject to a minimum wage (Section 1 Act Regulating a General Minimum Wage), that is the reference point to determine the striking imbalance. While the case law demands an undercutting of at least one third of the minimum wage or the usually paid collective wage (Eisele 2019: par. 40), the legislature has considered an undercutting of half of the minimum wage in recent legislative materials (Deutscher Bundestag 2018: 28), which means a worsening for day labourers (Petzsche 2017: 242). Several day labourers told the police that they earn around nine euros gross per hour (Landeshauptstadt 2019: 19), which was in line with the minimum wage in 2019 (€9.19 gross per hour pursuant to Directive to Adjust the Level of the Minimum Wage⁹). The day labourers' statements from the interviews are vague, so that a striking imbalance is undoubtedly affirmative if the wage is withheld completely. In other cases, concerning unpaid overtime or underpaid wages, more precise information is required to determine a striking imbalance. Likewise, the required employer's ruthless pursuit of profit might be certain only in the cases of withholding wages. In the context of human trafficking and forced labour, the police neither found any recruiting and control, nor coercion against the day labourers (Landeshauptstadt 2019: 19).

Following on from this, if there is an exploitative employment, the question is posed as to whether it constitutes forced labour (Section 232b Criminal Code) or exploitation of labour (Section 233 Criminal Code). While forced labour criminalises the initiator, exploitation of labour follows forced labour and penalises

⁹ Since 1 January 2020, €9.35 Euro gross per hour pursuant to the Second Directive to Adjust the Level of the Minimum Wage.

the profiteer of the work performed. The act of forced labour is such that the offender causes the victim to engage in exploitative employment. Therefore, the initiative of the victim is not enough; rather, the perpetrator must be the driving force for creating the exploitative employment (Renzikowski 2017b: par. 20). In this regard, there are doubts about the day labourer market: according to descriptions, the employers often have a choice between several job-seekers who advertise their qualities and express a desire to work for them. Negotiations on wages and working hours also take place on an individual level. However, day labourers tend to accept worse working conditions and lower wages if they have been waiting for a job for a long time. Yet, the act of causing does not seem to be dominant due to the day labourers themselves offering their labour.

A more worthwhile investigation is that of the exploitation of labour. According to this offence, an employer is punishable if he or she accepts the offer of a person who is in a personal or financial predicament, and/or who is helpless on account of being in a foreign country, to employ him or her under exploitative conditions (Renzikowski 2017c: par. 16). There is a personal or financial predicament if the person concerned is in a serious but not necessarily life-threatening need or distress of a personal or economic nature (Deutscher Bundestag 2018: 24). Therefore, the victim might be limited in his or her options to decide and act (Eisele 2019a: par. 14). A predicament can be assumed in cases of distressing poverty and poor social conditions in the home country of the person affected, and also in cases of personal circumstances, such as needing to earn a living for their family (Eisele 2019a: para. 15). In their home country of Bulgaria, the day labourers are unemployed and have no occupational prospects; they live with their families in oppressive poverty and bad social conditions. Their only way to assure a decent life for their family is to go abroad and earn a living with jobs that do not require training. In addition to there being a clear case for predicament-level helplessness, simply being in a foreign country can also be considered in cases where the victim is not able to escape exploitative employment because of the particular difficulties of being in a foreign country, given the specific situation, and his or her personal abilities (Deutscher Bundestag 2018: 25). Cases of such helplessness are language or communication difficulties, no knowledge of the living conditions or possibilities for legal protection, as well as financial problems caused by being a foreigner (Eisele 2019a: par. 18). The day labourers are often illiterate, have no mastery of the German language, and are not able to assert their rights before the court. Nevertheless, the question arises whether the day labourers are helpless, considering the support amongst each other and their ability to quit a bad job and quickly find a new one. It can be argued that the day labourer market not only enables exploitation, but also allows the day labourers to oppose it (Riedner 2019: 65).

It follows from the above that it is difficult to determine whether there are crimes related to human trafficking committed against day labourers. In some cases, hints are found that some employers might be punishable for the exploitation of labour when they withhold wages, or pay insufficient wages due to the day

labourer's financial and personal predicament and/or helplessness on account of being in a foreign country. Considering that the analysis is based on a case study, more information is needed.

7. Conclusion

Very little knowledge exists about human trafficking with the purpose of labour exploitation and/or forced labour in Germany. The Federal Situation Report has an anecdotal character, noting that the dark figure is huge, but well-founded methodological estimations are lacking. Apart from that, human trafficking is an intricate offence due to its preparatory nature that is both difficult to identify and to prove. The phenomenon

is a triangle with a complex interplay between its constituent points: first an alleged reality, second a concept ('human trafficking'), and third several legal regulations ... [However,] a clearly defined phenomenon does not seem to be in the background. Whereas the legislation in relation to some other kinds of crimes identifies and labels the wrong clearly, in the case of trafficking, the criminalisation is more of a *constitutive act constructing* [emphasis in the text] – through the choice of elements – a wrong" (Haverkamp et al. 2019: 2, 5).

Most empirical studies focus on (the purpose of) sexual exploitation (KOK 2011: 47), and only a few empirical studies give explorative insights into the subject (Cyrus et al. 2010; KOK 2011; FES 2015; Mitwalli 2016; GIHR 2018: 5). Counselling centres with a focus on labour exploitation have been very well-frequented for years (GIHR 2018: 5). Workers from Eastern Europe complain about wages being far below the minimum wage and degrading accommodations (GIHR 2018: 5). Due to the increased numbers of Covid-19 infections, the working and living conditions of harvesters and workers in slaughterhouses entered the public spotlight in the spring and summer of 2020. In the course of this exposure, politicians committed themselves to better protecting foreign workers in the low-wage sector (Plaß 2020). So far, however, it is not clear which improvements in the working and living conditions of the people concerned will result. Labour exploitation is multifaceted and happens in many different places. One place of labour exploitation concerns the day labourer markets, and for this study the one in Munich particularly.

According to the case study, the Bulgarian day labourers are a Turkish-speaking ethnic minority in the main station district of Munich, and they are confronted in their home country by massive discrimination. They are less educated than the average Bulgarian population, and illiteracy is not infrequent amongst them. At home, they have no opportunities in the job market, and they live with their

families in poor living conditions. To go abroad is the only way for them to make a living for their families in Bulgaria. Largely men of working age, joined by a few women, seek jobs in other countries and stay where they find plenty of work. The day labourer market in Munich mainly consists of people who come from the same Bulgarian town and know each other quite well. They are familiar with one another and support each other as much as possible in Munich. Due to the scarce and expensive situation on the rental market, they try to save money in Munich and live on the streets, relying on welfare offers. Despite their precarious living conditions at home, they are not recruited or transported by human traffickers from Bulgaria to Munich or other areas. They decide themselves to leave the country and know roughly what they are getting into, and so there are no signs of human trafficking.

The employment and working conditions are heterogeneous in this case study: few of them succeed in obtaining a steady and well-paid occupation, most of them have different jobs of varying durations. Usually, they carry out simple work in the construction, cleaning, and catering industries, which belong to the low-wage sector. Their hourly wage often approaches the minimum wage. Nevertheless, there is continuous dispute between day labourers and employers about wages after the work is performed. All day labourers have had negative experiences with employers who either did not pay at all or paid less than agreed. In these cases, they do not get what they are entitled to. Only a few, mostly supported by German social workers or volunteers, try to enforce their claims in court, which is difficult in view of the verbal contract between the employee and the employer and the structural imbalance between them (GIHR 2018: 5). In cases of no or too little payment, it is suspected that the employer may have committed exploitation of labour if he or she took advantage of the day labourer's personal or financial predicament or helplessness on account of being in a foreign country. However, many questions remain open so that there can be no satisfactory answer as to whether exploitation of labour took place. In this regard, on the one hand there is a need for further research, and on the other hand for more targeted law enforcement. In this context, the illegalisation of the day labourer market seems—as often criticised—counterproductive, since the employers remain in the shadows and only have to fear a few controls in the workplace.

Labour exploitation is a high priority for the Group of Experts on Action against Trafficking in Human Beings (GRETA). Although in their second evaluation round concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany (GRETA 2019: 61) GRETA recognised progress with regard to identifying human trafficking for the purpose of labour exploitation, they still considered immediate action. When it comes to preventing labour exploitation, there should be training for all actors of law enforcement, efforts to raise awareness among both the public and the foreign workers, and cooperation with trade unions, civil society, and the private sector, amongst other improvements (GRETA 2019: 62). Additionally, GRETA

recommends increased efforts to promote and fund further research (GRETA 2019: 64). The case study of day labourers confirms these conclusions and also reveals the need for more awareness concerning labour exploitation among the day labourers themselves as well as all other actors in the main station district of Munich.

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References

- Albrecht H.-J. (2019). 'Measuring human trafficking'. In R. Haverkamp, E. Herlin-Karnell and C. Lernestedt (eds.) *What is Wrong with Human Trafficking?*. Oxford: Hart, pp. 37–51.
- Bergelson V. (2019). 'Vulnerability, exploitation and choice'. In R. Haverkamp, E. Herlin-Karnell and C. Lernestedt (eds.) *What is Wrong with Human Trafficking?*. Oxford: Hart, pp. 193–216.
- Borgards V. (2006). 'Menschen in der Illegalität und die Praxis der Rechtsausübung' [People in illegality and the practice of the exercise of rights]. In J. Alt and M. Bommers (eds.) *Illegalität. Grenzen und Möglichkeiten der Migrationspolitik* [Illegality. Limits and possibilities of migration policy]. Wiesbaden: VS Verlag für Sozialwissenschaften, pp. 157–164.
- Bürger S. (2017). 'Die Neuregelung des Menschenhandels. Umsetzung unionsrechtlicher Vorgaben und Schaffung eines stimmigen Gesamtkonzepts' [The new regulation of human trafficking. Implementation of EU legal requirements and development of a coherent overall approach]. *Zeitschrift für Internationale Strafrechtsdogmatik* 12(3), pp. 169–181.
- Cyrus N. and Kip M. (2014). 'Arbeitsrechte mobilisieren ohne Aufenthaltsstatus. Von faktischer Rechtlosigkeit zur Veränderung geltenden Rechts?' [Mobilizing labour rights without residence status. From de facto lawlessness to a change in the current law?]. *Industrielle Beziehungen* 22(1), pp. 33–50.

- Eisele J. (2019a). '§ 232 Menschenhandel' [§ 232 Human trafficking]. In A. Schönke and H. Schröder (eds.) *Strafgesetzbuch Kommentar*. 30th edn [Criminal Code commentary]. München: C.H. Beck, par. 1–79.
- Eisele J. (2019b). '§ 233 Ausbeutung der Arbeitskraft' [§ 233 Exploitation of labour]. In A. Schönke and H. Schröder (eds.) *Strafgesetzbuch Kommentar*. 30th edn [Criminal Code commentary]. München: C.H. Beck, par. 1–17.
- Fudge J. (2018). 'Modern slavery, unfree labour and the labour market: The social dynamics of legal characterization.' *Social & Legal Studies* 27(4), pp. 414–434.
- Haverkamp R., Herlin-Karnell E. and Lernestedt C. (2019). 'Introduction.' In R. Haverkamp, E. Herlin-Karnell and C. Lernestedt (eds.) *What is Wrong with Human Trafficking?*. Oxford: Hart, pp. 1–12.
- Haverkamp R. (2018). 'Evidenzbasierte Kriminalprävention im Bereich Menschenhandel' [Evidence-based crime prevention in the area of human trafficking]. In M. Walsh, B. Pniewski, M. Kober and A. Armbrorst (eds.) *Evidenzorientierte Kriminalprävention in Deutschland* [Evidence-based crime prevention in Germany]. Wiesbaden: Springer VS, pp. 777–801.
- Initiative Zivilcourage München (2016). 'Towards a workers' center. (Selbst) Organisationsversuche von EU-migrantischen Arbeiter*innen in München' [Towards a workers' center. (Self-)organisation attempts by EU-migrant workers in Munich]. *sub\urban* 4(2-3), pp. 113–119.
- Lockwood D. (1996). 'Civic integration and class formation.' *The British Journal of Sociology* 47(3), pp. 531–550.
- Mayring P. (2016). *Einführung in die qualitative Sozialforschung: Eine Anleitung zu qualitativem Denken* [Introduction to qualitative social research: A guide to qualitative thinking]. Weinheim-Basel: Beltz.
- Petzsche A. (2017). 'Die Neuregelung des Menschenhandels im Strafgesetzbuch – zwischen europarechtlichen Pflichten und politischen Kompromissen' [The new regulation of human trafficking in the Criminal Code – between obligations under European Law and political compromises]. *Kritische Justiz* 50(2), pp. 236–248.
- Przyborski A. and Wohlrab-Sahr M. (2014). *Qualitative Sozialforschung. Ein Arbeitsbuch* [Qualitative social research. A workbook]. München: Oldenbourg.
- Renzikowski J. (2017a). 'StGB § 232 Menschenhandel' [StGB § 232 Human trafficking]. In G. Sander (ed.) *Münchener Kommentar zum Strafgesetzbuch*. 3rd edn [Munich commentary on the Criminal Code]. München: C.H. Beck, par. 1–125.
- Renzikowski J. (2017b). 'StGB § 232b Zwangsarbeit' [StGB § 232b Forced labour]. In G. Sander (ed.) *Münchener Kommentar zum Strafgesetzbuch*. 3rd edn [Munich commentary on the Criminal Code]. München: C.H. Beck, par. 1–55.
- Renzikowski J. (2017c). 'StGB § 233 Ausbeutung der Arbeitskraft' [StGB § 233 Exploitation of labour]. In G. Sander (ed.) *Münchener Kommentar zum Strafgesetzbuch*. 3rd edn [Munich commentary on the Criminal Code]. München: C.H. Beck, par. 1–47.

- Riedner L. (2015). 'Justice for Janitors? Marktbürgerschaft, Freizügigkeit und EU-Migrantinnen im Arbeitskampf' [Justice for Janitors? Market citizenship, freedom of movement and EU-migrant women in the labour dispute]. *Movements Journal für kritische Migrations- und Grenzregimeforschung* 1(2), pp. 1–25.
- Riedner L. (2018). *Arbeit! Wohnen! Urbane Auseinandersetzung um EU-Migration. Eine Untersuchung zwischen Wissenschaft und Aktivismus* [Work! Living! Urban debate on EU migration. An examination between science and activism]. Münster: edition assemblage.
- Riedner L. (2019). 'Kontrolle am 'Tagelöhnermarkt'. Rassismus und die Versicherheitlichung des Sozialen' [Controls at the 'day labourer market'. Racism and the securitisation of the social]. *Bürgerrechte & Polizei/CILIP* 6(118–119), pp. 63–70.
- Strübing J. (2013). *Qualitative Sozialforschung* [Qualitative social research]. München: Oldenbourg.
- Vogeler L. (2018). 'Deutschland' [Germany]. In R. Haverkamp and L. Vogeler (eds.) *Der rechtliche Umgang mit Menschenhandel zum Zweck sexueller Ausbeutung in Europa* [The legal treatment of human trafficking for the purpose of sexual exploitation in Europe]. Berlin: LIT Verlag, pp. 65–101.

Internet sources

- Bundesministerium der Justiz und Verbraucherschutz [Federal Ministry of Justice and Consumer Protection] (2019). *German Criminal Code (Strafgesetzbuch – StGB)*. Available online: https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html [23.09.2019].
- Bundeskriminalamt (2019). *Human Trafficking and Exploitation. National Situation Report 2018*. Available online: https://www.bka.de/EN/CurrentInformation/AnnualReports/TraffickingInHumanBeings/traffickinginhumanbeings_node.html [17.11.2020].
- Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e. V. (KOK e.V.) (2011). *Entwicklung tragfähiger Unterstützungsstrukturen für die Betroffenen von Menschenhandel zur Arbeitsausbeutung* [Development of sustainable support structures for those affected by human trafficking for the purpose of labour exploitation]. Available online: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/entwicklung_tragfaehiger_unterstuetzungsstrukturen_fuer_die_betroffenen_von_menschenhandel_zur_arbeitsausbeutung_de_1.pdf [17.11.2020].
- Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e. V. (KOK e.V.) (2019). *Aktualisierte Stellungnahme des Bundesweiten Koordinierungskreis gegen Menschenhandel – KOK e.V. zu dem Entwurf eines Gesetzes gegen illegale Beschäftigung und Sozialleistungsbetrug (BT-Drs. 19/8691 vom 25.03.2019)* [Updated statement of the German NGO

- Network against trafficking in human beings - KOK e.V. on the draft law against illegal employment and social benefit fraud (BT-Drs. 19/8691 of 25.03.2019)]. Available online: https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/stellungnahmen/Aktualisierte_StN_KOK_GE_FKS_01.04.2019.pdf [17.11.2020].
- Cyrus N., Vogel D. and Boer K. de (2010). *Menschenhandel zum Zweck der Arbeitsausbeutung. Eine explorative Untersuchung zu Erscheinungsformen, Ursachen und Umfang in ausgewählten Branchen in Berlin und Brandenburg – im Auftrag des Berliner Bündnisses gegen Menschenhandel zum Zweck der Arbeitsausbeutung* [Human trafficking for the purpose of labour exploitation. An explorative study on the manifestations, causes and extent in selected sectors in Berlin and Brandenburg - on behalf of the Berlin alliance against human trafficking for the purpose of labour exploitation]. Available online: https://www.vielfalt-mediathek.de/data/bbgm_menschenhandel-arbeitsausbeutung_vielfalt_mediathek.pdf [17.11.2020].
- Deutscher Anwaltverein (DAV) (2019). *Stellungnahme des Deutschen Anwaltvereins durch den Ausschuss Sozialrecht zum Referentenentwurf des Bundesministeriums der Finanzen Entwurf eines Gesetzes zur Bekämpfung von Missständen am Arbeitsmarkt, illegaler Beschäftigung sowie von Kindergeld- und Sozialleistungsmissbrauch* [Statement of the German Bar Association by the Social Law Committee on the Draft Bill of the Federal Ministry of Finance Draft of a Law to Combat Abuses in the Labour Market, Illegal Employment, Child Benefit and Social Benefit Abuse]. Available online: https://anwaltverein.de/de/newsroom/sn-1-19-bekaempfung-von-missstaenden-am-arbeitsmarkt?file=files/anwaltverein.de/downloads/newsroom/stellungnahmen/2019/dav-sn_1-2019_gesetz-zur-bekaempfung-von-missstaenden-am-arbeitsmarkt-illegaler-beschaeftigung-sowie-von-kindergeld-und-sozialleistungsmissbrauch.pdf [17.11.2020].
- Deutscher Bundestag Bundestagsdrucksache (2019). *BT-Drs. 19/8691. Gesetzentwurf der Bundesregierung. Entwurf eines Gesetzes gegen illegale Beschäftigung und Sozialleistungsmissbrauch* [Draft law of the Federal Government. Draft law against illegal employment and abuse of social benefit]. Available online: <https://dip21.bundestag.de/dip21/btd/19/086/1908691.pdf> [17.11.2020].
- Deutscher Bundestag Bundestagsdrucksache (2018). *BT-Drs. 18/9095. Beschlussempfehlung und Bericht des Ausschusses für Recht und Verbraucherschutz (6. Ausschuss) zu dem Gesetzentwurf der Bundesregierung – Drucksache 18/4613 – Entwurf eines Gesetzes zur Umsetzung der Richtlinie 2011/36/EU des Europäischen Parlaments und des Rates vom 5. April 2011 zur Verhütung und Bekämpfung des Menschenhandels und zum Schutz seiner Opfer sowie zur Ersetzung des Rahmenbeschlusses 2002/629/JI des Rates* [BT-Drs. 18/9095, Recommended Resolution and Report of the Committee on Legal Affairs and Consumer Protection (6th Committee) on the Draft Law of the Federal Government - Printed Paper 18/4613 - Draft Act Implementing Directive

- 2011/36/EU of the European Parliament and the Council of 5 April 2011 on Preventing and Combating Human Trafficking, and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA]. Available online: <https://dip21.bundestag.de/dip21/btd/18/090/1809095.pdf> [17.11.2020].
- Friedrich-Ebert- Stiftung (FES) (2015). *Menschenhandel zum Zweck der Arbeitsausbeutung – Eine Auswertung staatsanwaltschaftlicher Ermittlungsakten und gerichtlicher Entscheidungen* [Human trafficking for the purpose of labour exploitation - an analysis of prosecutorial investigation files and court decisions]. Available online: <https://library.fes.de/pdf-files/dialog/13576.pdf> [17.11.2020].
- German Institute for Human Rights [GIHR] (2018). *Development of the human rights situation in Germany July 2017 – June 2018*. Available online: https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Menschenrechtsbericht_2018/Human_Rights_Report_2018_Short_version.pdf [17.11.2020].
- GRETA (2019). *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany*. Available online: <https://rm.coe.int/greta-2019-07-fgr-deu-en/1680950011> [17.11.2020].
- Landeshauptstadt München (2019). 'Arbeiterstrich kann verboten werden? Antwort Kreisverwaltungsreferent Dr. Thomas Böhle' [Worker's streetwalking can be forbidden? Answer of the District Administration Consultant Dr. Thomas Böhle]. *Rathaus Umschau* 11, pp. 18–25. Available online: <https://ru.muenchen.de/pdf/2019/ru-2019-11-12.pdf> [17.11.2020].
- Mitwalli J. (2016). *Menschenhandel zum Zweck der Arbeitsausbeutung und schwere Arbeitsausbeutung von Frauen – ein nicht gesehenes Phänomen?* [Human trafficking for the purpose of labour exploitation and severe labour exploitation of women - an unseen phenomenon?], Kok-gegen-menschenhandel. Available online: https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen_KOK/KOK_MH-A_Frauen.pdf [17.11.2020].
- Platz C. (2020). *Das Gesetz, das 'aufräumen' soll* [The law that shall 'clean up'], Tagesschau. Available online: <https://www.tagesschau.de/inland/werkvertraege-heil-101.html> [17.11.2020].
- Reimer J. (2020). *Deutschlandfunk* [German radio], Deutschlandfunk. Available online: https://www.deutschlandfunk.de/covid-19-ausbrueche-warum-die-arbeitsbedingungen-in.2897.de.html?dram:article_id=476511 [17.11.2020].
- Servicestelle gegen Arbeitsausbeutung, Zwangsarbeit und Menschenhandel [Service center against labour exploitation, forced labour and human trafficking] (2020). *Zwangs-arbeit und Arbeitsausbeutung verhindern* [Preventing forced labour and labour exploitation]. Available online: https://www.servicestelle-gegen-zwangsarbeit.de/wp-content/uploads/2020/07/2020_

Servicestelle-gegen-Zwangsarbeit-_Analyse-Fleisch-und-Paketbranche.pdf [17.11.2020].

Stiftungsprofessur für Kriminalprävention und Risikomanagement (2020). [SiBa - Safety in Main Station Districts (Sicherheit im Bahnhofsviertel)]. Available online: <https://uni-tuebingen.de/en/faculties/law/lehrstuehle-und-personen/lehrstuehle/lehrstuehle-strafrecht/stiftungsprofessur/haverkamp-rita/research-projects/siba/> [17.11.2020].

Wrase M. (2013). *Wie wirkt Recht? Überlegungen zur Rechtswirkungsforschung unter den Bedingungen konsolidierter und begrenzter Staatlichkeit* [How does law work? Considerations on legal effects research under the conditions of consolidated and limited statehood], Sfb-governance. Available online: https://www.sfb-governance.de/publikationen/sfb-700-working_papers/wp57/SFB-Governance-Working-Paper-57.pdf [17.11.2020].

Legal acts

Act to Combat Undeclared Work and Unlawful Employment, 23. July 2004 (Federal Law Gazette I p. 1842), last amended 12 June 2020 (Federal Law Gazette I p. 1248). English version including the amendment(s) of 18 July 2017 (Federal Law Gazette I, p. 2739). Available online: https://www.gesetze-im-internet.de/englisch_schwarzarbg/index.html [17.11.2020].

Act to Improve Action Against Human Trafficking and to Amend the Federal Central Criminal Register Act and Book VIII of the Social Code, adopted and last amended 11 October 2016. (Federal Law Gazette I, p. 2226). Available online: https://www.gesetze-im-internet.de/englisch_stgb/ [17.11.2020].

Federal Court of Justice BGH 22.04.1997 - 1 StR 701/95 [FCJ] (1997).

Federal Labour Court BAG 22.04.2009 - 5 AZR 436/08 [FLC] (2009).

German Criminal Code, 13. November 1988 (Federal Law Gazette I p. 3322), last amended 10. July 2020 (Federal Law Gazette I, p. 1648). English version including the amendment(s) of 19 June 2019 (Federal Law Gazette I, p. 844) Available online: http://www.gesetze-im-internet.de/englisch_stgb/ [17.11.2020].



Szandra Windt ■

The unspoken phenomenon: Forced labour in Hungary

Przemilczane zjawisko: praca przymusowa na Węgrzech

Abstract: According to official crime statistics, a total of 36 registered forced labour crimes were committed in Hungary between 2013 and 2019. Forced labour (Section 193 of the Criminal Code) was a separate statutory offence in Hungary between 1 July 2013 and 30 June 2020. In 2019, nearly 40 forced labour cases were analysed, the sociological and criminological characteristics of which are summarised and shown in this article following a statistical review. Based on the cases we examined, it can be said that the typical victim has alcohol problems, is homeless and unemployed, elderly, and in extremely poor health, and has below-average intelligence. In terms of their gender, there was a significant number of men. The victims of forced labour and the crimes committed against them are even more hidden, even more difficult to detect and to prove than acts of sexual exploitation. These people are a 'hidden population', and statuses such as 'tenant' or 'distant relative' obviously do not reveal the true situation to police officers arriving on the scene. It is possible that this situation has been widespread for years and was never brought to the authorities' attention.

Keywords: forced labour, exploitation, criminal statistics, victims

Abstrakt: Jak podają oficjalne statystyki dotyczące przestępczości, w latach 2013-2016 na Węgrzech zarejestrowano 36 przestępstw związanych z pracą przymusową. W okresie od 1 lipca 2013 r. do 30 czerwca 2020 r. czyn ten był odrębnym przestępstwem uregulowanym w art. 193 węgierskiego kodeksu karnego. W niniejszym artykule zostały przedstawione wyniki przeprowadzonych analiz – statystycznej, jak i socjologiczno-kryminologicznej dotyczącej charakterystyki 40 przypadków ofiar pracy przymusowej. Na ich podstawie można stwierdzić, że ofiary tego rodzaju przestępstwa to osoby mające problem z alkoholem, bezdomne, bezrobotne, których stan zdrowia można określić jako zły, a poziom intelektualny jako niski. Zwykle to osoby w podeszłym wieku. Wśród ofiar przeważają mężczyźni. Ofiary pracy przymusowej trudno jest zidentyfikować, a popełnione przeciwko nim

przestępstwa trudno wykryć. Jest to jeszcze trudniejsze niż w przypadku przestępstwa wykorzystania seksualnego. Ofiary pracy przymusowej stanowią bowiem „ukrytą” grupę. O ich faktycznej sytuacji trudno dowiedzieć się choćby funkcjonariuszom policji w trakcie interwencji na miejscu zdarzenia, a to z uwagi na fakt, że ofiary przedstawia się jako dalekich krewnych lub osoby podnajmujące mieszkanie. Niewykluczone, że sytuacje takie trwają wiele lat, a informacje o nich nie docierają do władz.

Słowa kluczowe: praca przymusowa, wykorzystanie, statystyki przestępczości, ofiary

Introduction

Forced labour is not a new phenomenon in Hungary, although we have very little knowledge of it. We collect the data and we have regulations that follow international expectations; a dismissive narrative, however, is typical from the authorities: ‘this isn’t our problem’, ‘it only exists abroad’, ‘Hungary is just a transit and source country’.

First of all, we have to emphasise that to overlook forced labour is not a ‘Hungaricum’; we can read the same in the literature from Ireland to Canada and beyond (Doyle et al. 2019; de Vries 2019; Ricard-Guay, Hanley 2020; etc.).

Critical studies on trafficking have also highlighted that the common conflation of human trafficking with ‘sex trafficking’ has led to other types of human trafficking being overlooked, particularly trafficking for forced labour. This has been true in terms of research and both public and political attention to the problem. However, consequently, this conflation of trafficking with sex trafficking has also translated into less-developed responses in the field of trafficking for forced labour (Ricard-Guay, Hanley 2020: 290).

Regarding labour trafficking, the lack of information and research has resulted in low visibility and little consideration and, in turn, an under-identification of cases by law enforcement (Ricard-Guay, Hanley 2020: 290).

The National Institute of Criminology (OKRI), founded in 1960, is the academic research and training centre of Hungary’s Prosecution Service. This means that the researchers of OKRI have the opportunity to analyse documents from prosecution proceedings. At OKRI, Petronella Deres and I conducted a study entitled ‘Characteristics of human trafficking cases: A criminal, criminological, and sociological evaluation of exploitation’ in 2019.

The phenomenon of forced labour had not been examined by document analysis and on a sample of this size before 2019. These results could help to paint a more nuanced picture of forced labour in Hungary and they point out that more such research is needed, particularly in order to monitor new legislation.

In this study a presentation of the Hungarian legal environment follows an international overview of the subject. The aim of this paper is to present the Hungarian situation and the results of empirical research on forced labour, official statistical data along with the findings of the document analysis.

1. International outlook

According to the International Labour Organisation (ILO), in 2016 40.3 million people fell victim to modern slavery worldwide: 24.9 million for forced labour and 15.4 million for forced marriages (Global Estimates of Modern Slavery: Forced Labour and Forced Marriage 2017: 9–10). That is, 5.4 out of every 1,000 people are victims of modern slavery in the world. One in four victims is a child (Global Estimates of Modern Slavery: Forced Labour and Forced Marriage 2017: 5).

In the European context, the most common form of exploitation is ‘sexual’, making up over half (56%) of the registered victims of trafficking in human beings in the EU28 for 2015–2016. One quarter (26%) of registered victims were trafficked for labour exploitation, while 18% were victims of ‘other’ exploitation (Data collection 2018: 55). This distribution shows a shift from previous data: according to the data from 2010–2012 for the EU28, the majority (69%) of the victims of human trafficking were for sexual exploitation, with a further 19% for labour exploitation and 12% for other forms of exploitation (Data collection 2018: 55). This means that labour exploitation has increased over the past ten years.

Trafficking for the purpose of labour exploitation was reported as the second-most common form of exploitation in the EU27 in 2017–2018, with 15% of the registered victims in the EU27 being trafficked for forced labour, followed by ‘other’ forms of exploitation (15%) (Data collection 2020: 16).

Member States were requested to provide data on all forms of exploitation, including those categorised as ‘other’ forms of exploitation: criminal activities, forced begging/use for begging, domestic servitude, benefit fraud, and removal of organs. The findings of the data collection indicate that, in the EU28 in 2017–2018, trafficking for criminal activities accounted for 11% of the forms of exploitation that came to the attention of the registering organisations, followed by domestic servitude (5%) and forced begging/use for begging (1%) (Data collection 2020: 16).

In the EU28, the main forms of exploitation of victims of trafficking with EU citizenship in 2017–2018 were sexual (53%), followed by forced labour (18%) and other (25%) (Data collection 2020: 28).

Definitions

Different terms exist in connection with labour exploitation—forced labour, trafficking for labour exploitation, and modern slavery; they are sometimes used as equivalents, but that is misleading. The most difficult to define is labour exploitation (Ollus 2015; Lodder 2020: 1364), and the boundary between forced labour and labour trafficking is unclear (Rijken 2011; Plant 2015: 154); this is also perhaps

one of the reasons for the phenomenon being less a focus of attention from a legal perspective.

The ILO states that

clear and precise definitions are fundamental to the measurement of social problems, their trends, and potential change. By carefully defining a problem, it is possible to quantify its extent, understand whether it decreases or increases over time, and assess whether policies have an impact. Some problems are easier to measure than others, and the consensus is that measuring forced labour, trafficking, and slavery—including sexual exploitation—poses many challenges. The hidden nature of the problem, political sensitivities, and ethical considerations make it very difficult to implement verifiable surveys (Profits and poverty 2014: 3).

The definition of forced or compulsory labour from the ILO ‘is all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily’ (ILO Forced Labour Convention No. 29 1930).

ILO has launched a new programme called Ending Forced Labour by 2030, which was published in December 2018. This focuses on the 2014 Forced Labour Protocol and Recommendations No. 203, which are the latest updated documents of the ILO’s 1930 Forced Labour Convention. In this publication, the ILO sought to present the phenomenon globally in four areas: prevention, protection, redress, and enforcement. The new Protocol establishes the obligations to prevent forced labour, protect victims, and provide them with access to remedies; it emphasises the link between forced labour and trafficking in persons. In line with Convention No. 29, the Protocol also reaffirms the importance of prosecuting the perpetrators of forced labour and ending their impunity (ILO standards 2016: 3).

Recommendation No. 203, which supplements both the Protocol and Convention No. 29, provides non-binding practical guidance concerning measures to strengthen national law and policy on forced labour in the areas of prevention, protection of victims, and ensuring their access to justice and remedies, enforcement, and international cooperation (ILO standards 2016: 4).

The Forced Labour Protocol (Article 1(3)) explicitly reaffirms the definition of forced labour in Convention No. 29 and confirms that it encompasses situations of trafficking in persons for the purposes of forced or compulsory labour (ILO standards 2016: 5).

The European definition of trafficking is provided in European Union Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, with a transposition date of 6 April 2013. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery,

or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs (following the definition in the Palermo Protocol).

Other international legal concepts such as slavery, situations comparable to slavery, forced labour, and servitude address situations that can be qualified as labour exploitation, but since 2000 these concepts have not garnered the same international attention for explaining the phenomenon of labour as the Palermo Protocol (Ollus 2015; Lodder 2020: 1362). Domestic servitude is considered a form of exploitation for forced labour. Forced begging or use for begging means the exploitation of begging, including the use of a trafficked dependent person for begging.

The victims of forced labour are not the same as those in the trafficking in human beings, in which ‘archetypical victims [are] mainly imagined to be young women and girls, vulnerable and naïve and readily falling prey to trafficking’ (Haverkamp 2019; Ricard-Guay, Hanley 2020: 289). The United Nations Office on Drugs and Crime (UNODC) delineates the differences between victims of trafficking in persons and populations affected by forced labour and/or slavery: trafficking victims may be exploited for purposes other than forced labour or slavery, enumerated in Article 3(a) of the UN Trafficking in Persons Protocol.

While forced labour requires coercion or threat of punishment, in the context of trafficking in persons, victims can be trafficked by other means, including abuse of power or a position of vulnerability. For minors, the consent is always irrelevant in the determination of a trafficking case. The term modern slavery has recently been used in the context of different practices or crimes such as trafficking in persons, forced labour, and slavery, but also child labour, forced marriages, and others. The common denominator of these crimes is that they are all forms of exploitation in which one person is under the control of another (UNODC 2016: 15–16).

In cases of human trafficking, extreme violence is the typical *modus operandi*. According to Ricard-Guay et al.,

such sensational representations of trafficking in human beings leave more complex issues of human rights violations and labour exploitation in the shadows. Trafficking in human beings does not always involve psychical violence, physical confinement, and situations of being ‘enslaved’. Some forms of exploitation that do not fall within trafficking or forced labour definitions may be perceived as being residual and even tend to be normalised, thus creating a ‘hierarchy of suffering’ (Ricard-Guay, Hanley 2020: 290).

Exploitation for labour purposes may occur in the domestic sector or family-owned businesses, for example, far from organised crime networks—this was true in the cases we studied as well (Ricard-Guay, Hanley 2020: 290–291). Such people, who are forced to work day and night without any payment, are mostly a ‘hidden

population'; they do not have families or a workplace and they are alone, which means they feel they do not deserve any help or better circumstances.

The economic situation, its changes, and the unemployment rate are all linked to forced labour as a social phenomenon. Economic growth in Eastern Europe remains robust in international terms, although the pace of expansion is expected to decelerate over the next couple of years. Output growth in 2018 is estimated at 2.7 per cent, which should gradually decline to 2.3 per cent in 2020. In particular, the sub-regional unemployment rate is forecast to remain just below 5 per cent in 2019 and to decline to 4.8 per cent in 2020. This reduction is broadbased across countries in the sub-region, with the unemployment rate expected to decline in Bulgaria, Hungary, Poland, Slovakia, and—to a lesser extent—Romania and the Russian Federation (World Employment 2019: 52).

In Eastern Europe, both extreme and moderate working poverty have been virtually eradicated. Nevertheless, measures of relative working poverty—i.e. the proportion of people earning below 60 per cent of the median income—reveal that this is still a problem, especially for those with temporary contracts and the self-employed. For instance, the share of temporary workers at risk of working poverty is above 20 per cent in Bulgaria, Cyprus, and Hungary; it remains just below 10 per cent in Poland and Slovakia. It is among the self-employed, though, that the incidence of working poverty is highest, with rates exceeding 50 per cent in Bulgaria and Hungary (World Employment 2019: 54).

2. Human trafficking and or forced labour in Hungary

Hungary is a small country in the heart of Europe. The total population is nearly ten million and according to the estimates in the Global Slavery Index 2018, 36,000 people live in a situation of slavery in Hungary (Global Slavery Index 2018). According to some in-depth interviews with experts,

Hungary is primarily a source or transit country rather than a target country of labour migration. Furthermore, latency is also assumed to be a crucial problem in this area. Hence, most of the experts referred to cases of Hungarian citizens exploited either in Western European countries or in Hungary (Bodrogi, Simonovits 2014: 4).

The Labour Code (Major laws 2020) regulates the age limit of all persons entering an employment relationship as employees: they must be at least sixteen years of age. In addition, during the school vacation period, an employment relationship may be entered into by a person of at least fifteen years of age pursuing full-time studies in elementary, vocational, or secondary school (Bodrogi, Simonovits 2014: 8).

Trafficking in human beings and forced labour is in the Special Part Chapter XVIII of the Criminal Code (Offences Against Personal Freedom). Under Section 192 of the new Criminal Code (enacted 1 July 2013), the legal definition of 'trafficking in human beings' retained the previous provisions from the old Criminal Code (sale and purchase), and at the same time complemented them with rules that included trafficking with the purpose of exploitation as a new element:

(2) A person who, for the purpose of exploitation, sells, buys, exchanges, transfers, takes over, recruits, transports, accommodates, hides or, for another person, acquires another person, shall be punished by imprisonment for one to five years.

In cases when the offence in question is perpetrated by a criminal organisation, the maximum punishment can be increased to ten years' imprisonment.

It needs to be stressed that the issue of labour exploitation is only mentioned as part of the implementation of the relevant directives into the national legal system, and the issue is given no special attention in terms of governmental plans or actions (Bodrogi, Simonovits 2014: 12).

This statement was true before 2020. Between 1 July 2013 and 30 June 2020, the offence of forced labour was provided for by Section 193 in the Criminal Code:

(1) Any person who forces another person by taking advantage of his vulnerable situation, or by force or by threat of force, to perform work against his will, is guilty of a felony punishable by imprisonment of one to five years. (2) The penalty shall be imprisonment of two to eight years if the crime of forced labour is committed: a) by tormenting the victim; b) by causing a significant injury of interests; or c) against a person under the age of eighteen years (Windt, Deres 2020: 150).

The main element of exploitation is the attempt to benefit from abusing the position of a victim brought into or kept in a vulnerable position. In this respect, the benefit does not exclusively refer to financial benefit; it denotes any type of benefit, advantage, or advantageous position that is gained by abusing the position of the victim (Bodrogi, Simonovits 2014: 8).

Child labour is addressed in Section 209 of the Criminal Code. It states that any person who a) violates the statutory provisions on employing persons under the age of eighteen years or b) employs a third-country national who has not attained the age of eighteen years and does not hold a permission to carry out gainful activities is guilty of a felony punishable by imprisonment for up to three years. In our research of forced labour cases, we did not encounter any child victims.

Major steps were taken in the fight against human trafficking and forced labour in 2020. After the four years of the last Strategy, Hungary's National Strategy against Trafficking in Human Beings (2020–2023), and the action plan on measures to

be implemented in 2020–2021, was adopted in February 2020 by Government Decision No. 1046/2020 (II. 18). In this strategy there are some important steps to support the victims of human trafficking.

In the beginning of 2020, three major amendments were also made to Act C of 2012 on the Criminal Code. The legal definitions of trafficking in human beings (Section 192) and forced labour (Section 193) were merged—this constituted a reasonable simplification of their regulation, since they are conceptually parts of the phenomenon. (This is a significant change, but in the end of 2020 we do not yet have information on the application of this section.) At the same time, the maximum penalties have increased since 1st July 2020: the offence described in the standard case is punishable by imprisonment of up to 5 years instead of 3 years. Knowingly utilising the services or other activities of victims of human trafficking and forced labour will become punishable as well (New anti-trafficking 2020).

Although labour trafficking and exploitation are crime problems (de Vries 2019: 209), the difference between the legal (regulation) and the social phenomena should be highlighted (Scarpa 2020). Forced labour or labour exploitation as a social phenomenon is not new: stronger, more powerful individuals tend to take advantage of their superior position over weaker individuals and put to them work and exploit them. It is new that this is increasingly less tolerated by international organisations, states, and—fortunately—local communities. However, it depends on the community or society as to how sensitive it is and how much it turns a blind eye. This social phenomenon exists, and criminal law tries to control it, but it has no effect on the underlying causes; it only gives a symptomatic response, which in many cases turns out to be insignificant.

The number of crimes is influenced by three things: macroeconomic factors (as mentioned above), demographic changes/characteristics, and technological innovations (Kerecsi, Pap 2017: 545). In connection with labour exploitation, the economic and demographic factors are very important: poverty, unemployment rates, and the situation of minors.

According to research by the Central Statistical Office of Hungary (KSH), the unfortunate fact is that ‘we spend only 19% and 12% of the EU average on alleviating unemployment and social exclusion, respectively’ (Magyarország 2019: 178). These are extremely low figures which could be linked to trafficking in human beings and forced labour.

The Central Statistical Office has also been conducting research into poverty since 2010, based on a common EU indicator system. Through this, we can also form a picture of the number of people living in relative income poverty and material deprivation, as well as working poverty, and the proportion of them within the population. It is alarming that working poverty has increased dynamically in Hungary despite the significant increase in the minimum income and the average wage levels and overall improving poverty indices (Albert 2019: 4). Persons at risk of poverty or social exclusion are those who are affected by relative income poverty, severe financial deprivation, and/or unemployment. Between 2010 and

2016, the proportion of people at risk of poverty or social exclusion decreased in most European Union member states. One of the largest decreases occurred in Hungary (Magyarország 2019: 166–167).

Based on the information obtained from our document analysis, we outline below the cases of forced labour that have become ‘visible’, highlighting and quoting several cases to show what Hungarian forced labour looks like from the prosecution proceedings.

3. Forced labour

Forced labour according to the crime statistics

The presentation of statistics is important, though, as Albrecht warns: ‘Official crime and court statistics generate valid information about how criminal offence statutes are implemented, but they do not provide for valid cross-sectional or longitudinal information about the phenomenon itself’ (Albrecht 2019: 41).

In Hungary, the total number of reported crimes decreased in 2019 to less than half that of 2013 (from 380,000 to 166,000; Table 1) (Kerecsi 2020). In this context, the number of cases of trafficking in human beings and forced labour is not significant at all; there are very few of them. Compared to human trafficking, forced labour is even less visible, with an extremely high latency: in only one year between 2013 and 2019 were there more than 10 registered cases of forced labour. However, according to some opinions, the number of ‘domestic servants’/‘house slaves’ in Hungary is significantly higher than this.

Table 1. The number of trafficking crimes between 2013 and 2019

Act C of 2012 on the Criminal Code	2013	2014	2015	2016	2017	2018	2019
Section 192. Traffickg in Humans Beings		8	6		10	4	34
Section 193. Forced Labour		3	15	3	9	2	4
All registered crims	377 829	329 575	280 113	290 599	226 452	199 830	165 648

Source: Unified Investigation Authority and Prosecution Criminal Statistics (ENYÜBS)

Some data are collected in ENYÜBS in connection with the circumstances of Criminal Code Section 193 (which was merged with Section 192 effective 1 July 2020). According to these data, all recorded forced labour crimes were committed to the detriment of a Hungarian victim in Hungary. Substance use (alcohol and/or drugs) was not statistically significant regarding either the perpetrator or the victim according to the official data. On the contrary, in our documents we found that many victims had alcohol problems.

Criminal proceedings were initiated after the victim was reported according to the official crime statistics. The crime of forced labour was typically committed

at the perpetrator's place of residence, which is one of the difficulties in detecting and preventing this phenomenon; it also suggests a similarity to domestic violence (Viuhko 2018; Segrave, Hedwards, Tyas 2020). Violence, exploitation of vulnerability, and intimidation were the most common methods in these cases.

In forced labour cases, based on the relationship between the perpetrator and the victim, it can be said that they were acquaintances; the official data reports that neighbours and/or someone to whom they owed money are the perpetrators of these acts. Forced labour is typically carried out by adult Hungarian men, who rather act with impunity according to the official crime statistics.

Methodology

In the study entitled 'Characteristics of human trafficking cases: A criminal, criminological, and sociological evaluation of exploitation', we used several methods: in addition to processing the international and domestic literature, during the document analysis we studied the documents of prosecution proceedings initiated between 2013 and 2018. The facts of human trafficking and forced labour were indicated (Sections 192 and 193 of the Hungarian Criminal Code). Relevant information about the victim, the perpetrator, the criminal activities, the methods, the process of the proceedings, and the legal penalty were recorded on a questionnaire containing 40 questions (Windt 2020). The documents were sent by the Prosecutor Offices from the whole country. A total of 127 documents were received, including 37 forced labour cases.

It is important to learn more about forced labour through document analysis because it points behind the statistical data, as these documents contain more detailed information about the background than the official crime statistics do. No such comprehensive, nationwide document analysis had been done on forced labour in Hungary before. Nevertheless, the limitations of this method should also be mentioned. This study only surveyed those cases in which law enforcement was carried out and a report was made. The steps of the criminal process, the activities of the authorities, and the role of the victims could be analysed in these documents and a faint picture of the social phenomenon appeared (Bowen 2009; Cockbain, Boxers, Vernon 2020). This method and the results of our work could serve as a starting point for further research, and should be complemented by research using completely different methods.

As in other countries, forced labour is not a well-known, well-researched topic in Hungary. Even if there is research, it is performed on an extremely small sample; only aspects of forced labour can be investigated (Bodrogi, Simonovits 2014; Vidra et al. 2015). In the documents we examined, it also happened that some criminal proceedings did not take place in Hungary—the witnesses were only sought and

questioned on the basis of questions from the authorities of the acting country. This also provided important information on the subject.

4. Characteristics of forced labour criminal records

4.1. Victims

‘I was constantly under his supervision.
He said that because I owe him,
I can’t take another job, just what he says,
I do it; I’m a fool; I don’t think.’
(transcript from a victim’s testimony, Case 1)

In the examined documents there were 59 victims. While official statistics suggest that alcohol abuse is not typical of victims in forced labour cases, during the analysis of documents the opposite clearly appeared in the victims’ statements (Windt 2020).

Based on the cases we examined and present herein, it can be said that the victims tend to have alcohol problems, be homeless, unemployed, elderly, in extremely poor health, and of below-average intelligence. In terms of their gender, there was a significant number of men among the victims of forced labour.

The victims of forced labour and the crimes committed against them are even more hidden, even more difficult to detect and prove than cases of sexual exploitation. Stating that they are ‘subtenants’ or ‘distant relatives’ obviously does not reveal the real situation to attending police officers. In this way, it is possible that the situation has persisted for years. For this reason, it can be formulated as a proposal that, when responding to calls due to forced labour, attending police officers should act according to the protocol developed for scenes of domestic violence, as the same intimidation and power-play takes place in the background. The connections with this phenomenon are also neglected, and more research is needed on this topic (Viuhko 2018, 2019).

Information on the victims is very limited in the criminal processes of forced labour cases. Usually, the crime of forced labour was committed to the detriment of a male Hungarian victim. Very little information was available on the victim’s education level, marital status, or income. Most victims exercised their procedural rights by filing a complaint. The victim initiated the proceedings in most cases, it was less often the person who detected the crime or the police. The principle of non-criminalising the victims predominated in the examined cases.

4.2. General characteristics of the perpetrators

In these 37 documents there were 58 perpetrators. In the examined cases both women and men were the perpetrators. Typically, they had been punished before and took advantage of the victim's fallen state, regularly using violence many times for years. Verbal abuse and threats (and in some cases physical abuse) were very common.

Those allegedly carrying out forced labour typically performed the act on their own; if they had a partner it was a relation (most often their spouse). Suspects tended to be male, an average of 37 years old at the time of the crime, and typically had a primary-school education. In the documents we examined of the perpetrators' own confessions, they worked, but there were some who did not comment on employment. We received (questionable) data on the income of 8 suspects (in their own words). Almost no-one had any meaningful information about debt in the analysed documents. The typical suspect in forced labour cases was a Hungarian citizen who is married and make money mainly from casual work. Nine had previously been punished, most commonly for theft. There was very little information on the use of drugs and alcohol (Windt 2020).

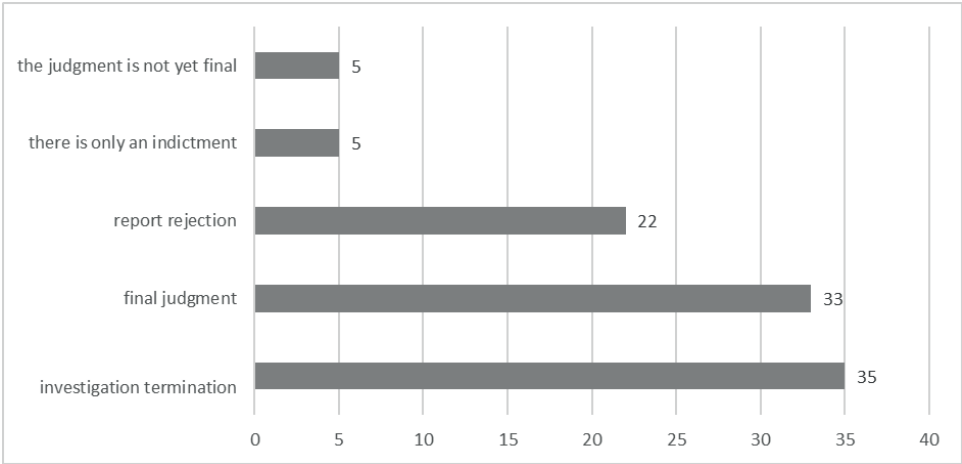
4.3. Procedural consideration

The length of the proceedings is very important in cases of human trafficking and forced labour. The condition of the victims, both physically and mentally, is very poor (because of the violence and harassment against them), and the lengthy procedure also means further shocks (confrontations, testimonies, etc.).

It is clear from the practice of domestic law enforcement of human trafficking that sexual exploitation is more typical than the labour forms of exploitation. It is for this reason that we also included the analysis of forced labour cases, which clearly showed us the characteristics of labour exploitation as well, in the examined documents.

We examined 37 criminal records involving forced labour which were reported between 2013 and 2018. Twelve of these cases were closed by a final judgment, whilst 21 were closed by an investigation (13) or a rejection of a report (8). In two cases there was only an indictment; in two cases the verdict was not final. These criminal activities were committed between 2013 and 2016 (Windt 2020).

Figure 1. Characteristics of forced labour cases (in percent; N=37)



In a large number of the proceedings, there were denials of complaints and the investigations were terminated;¹ only 10 cases were closed with a conviction. Unfortunately, these cases are difficult to uncover, but the large number in one county suggests that the phenomenon is extremely prevalent in that area. (The Hungarian Act on Criminal Procedure was valid at the time of these cases [Act XIX of 1998]). The new Hungarian Act on Criminal Procedure entered into force on 1 July 2018 (Act XC of 2017) and changed the rule on termination (Polt 2018: 783–791).

Regarding the length of the proceedings, it can be said that from the beginning and the completion of the investigation, a period of 6 months to 2 years elapsed and a further 2–4 years is typical from the prosecution to the final conclusion of forced labour cases, which means that these victims needed more time to cope with what happened with them.

Regarding the penalties in these cases, the courts sentenced the accused to imprisonment for a period of 1 to 4 years, in almost all cases with a ban on public affairs, together with an ancillary penalty. In three cases, the accused was acquitted. The court has imposed confiscation of property on only two defendants (Windt 2020).

¹ In the analysed documents the law enforcement agencies acted in accordance with Act XIX of 1998 on Criminal Procedure; the termination of an investigation is regulated in Section 190 (Király 2008: 372–375).

4.4. Criminological view on the types of cases

The crime of forced labour can be categorised based on the method, place, and nature of the crime. In many cases, the presence of usury also arose (although the crime of usury was not investigated by the authorities): the perpetrators work the victim in exchange for a loan; they force the victim to work.

In almost all the crimes examined in our research, the victim and the perpetrator lived under the same roof. The similarities and differences between domestic violence and the perpetration of forced labour crimes is not the subject of this study, but we should refer to it. Although the victim and the perpetrator usually do not have a familial relationship, the crime is also simply contained within four walls due to housing. There is also a situation of power in relation to trafficking, forced labour, and domestic violence or child abuse cases: the perpetrators use a very similar set of tools (Viuhko 2018, 2019; Segrave, Hedwards, Tyas 2020: 439). They believe they are free to do anything with the vulnerable victim. In human trafficking and forced labour cases, this vulnerable situation is extremely difficult for law enforcement authorities (prosecutors and police) to interpret because of its highly subjective nature.

According to the statistics of EU28 countries, the Commission wrote that in the cases of forced labour (and in human trafficking), oral recruitment methods are the most common ones (Data Collection 2018: 80). In our cases, oral recruitment was the only method of promising accommodation and a better life and of showing the victim a way out of their distress. Some perpetrators recruited their victims from homeless shelters and hospitals with a promising offer of accommodation, food, and easy work.

Forced labour can be divided into two large types based on *location* in our cases. Firstly, the less characteristic type is forced labour in a closed institution. These were the classic scam cases that typically took place in prisons. The beginning of the criminal process was a message from the directors of these institutes to other inmates that they have been prosecuted and convicted, i.e. threatening to abuse the victim, repeatedly forcing them to clean the perpetrators' prison cell and wash his clothes, and such activities are not acceptable.

The perpetrators constantly harassed their roommates, arbitrarily interfered in their daily lives by not letting them sleep at night, instructing them to do various tasks—washing their clothes with victims—taking their personal belongings without their permission, and using their clothes. The second type occurs when the perpetrator and the victim are living in the same house.

a) Doing work around the house

One typical case of forced labour is when the perpetrator employs the victim to do work around their house. Such cases were easy to identify when the victim was moved by the perpetrator or when the perpetrator moved in with the victim (van Meeteren 2020: 1607–1609).

The perpetrator moves in with the victim

The perpetrator moves into the victim's property as a tenant, initially as a helper, where they slowly take control of the victim; these were less long-term offences. Because the property was owned by the victim, they preferred to seek help despite their fear.

The 25-year-old injured man filed a complaint with the police after two months: the foster carer had bought a property where he had lived alone for three years. He found it difficult to support himself, so the suspect moved in with his wife and six children. From there, he was pushed out of the house, beaten, and abused (Case 14).

The victim received the two defendants at his residential property for his care, leaving the property in his name and his belongings to the defendants in exchange for care after his death. But the defendants did not give the victim food, nor did they administer insulin. The victim complained to the police because his health had deteriorated greatly; the second victim moved in with her aunt and was instructed to commit various crimes (e.g. cutting down fruit trees, stealing a stove and a refrigerator, and committing burglary) (Case 13).

The perpetrator moves the victim to their residence

This type of forced labour case is the most difficult to cover and obtain enough evidence of a crime. In such cases, most reports are rejected, or the investigations were closed because there was insufficient evidence of a crime, and it is difficult to prove that the offender has motivations other than an intention to help. In addition to being afraid, there is almost never possible to bathe, meals are barely provided or not at all, and the victim is not paid for their work.

The victim's bank card, money, and documents are missing, and the abuse and fear are ongoing. The victim has been relocated by the perpetrators so they can supervise him much better; he lost their help and is forced to do different jobs (Case 5).

It can be said that the farm workers were not in a vulnerable position because they made their own decision (in some cases at their own request) to work on the farm, for which they received other benefits, or to do the work as a favour (Case 7).

A 70-year-old resident has been working in a sheep shed on the outskirts of a small town for several years without being paid wages, and his identification documents have been taken away (Case 8).

The victim became homeless and unemployed; the defendant's father suggested that he move in with the defendant in September 2006, receiving HUF 500–1000 from his own pension. The victim had to go to the rubbish dump every day. If the job was not done or was not done well, he shouted at him, hit him, threatened him, and placed him in a social care home after the police action (Case 11).

The reason for these reports being rejected in many cases was that 'the victim could leave at any time, was not restricted in his liberty'; however, these victims obviously did not know where to go without money or identity cards, and they were afraid to ask for help.

Other types of exploitation were found in these cases, forced criminal activities and forced begging were very rare in our sample.

b) The victim was used for other crimes

In some cases, the perpetrator forced the vulnerable victims to commit crimes: such as bank card fraud, making phone subscriptions (misuse of a cash substitute payment instrument, etc.), burglary, etc.

Three victims lived in poor financial conditions, they need help due to their mental state, the female victim was persuaded to take out a telephone subscription; it was used by the accused, who did not pay the bills. They were constantly abused, they did all the work, they did not get paid (Case 18).

The investigation was terminated in another case because the victims were not forced, they were free to leave their accommodation according to the justification:

A woman recruited candidates for a job in England at a homeless shelter in the capital. The factory work paid £2,000 for two months. At first, they did not work; they also forced to make bank cards, the credit lines of which were taken up by the perpetrators. The English police, through the Salvation Army, organised the repatriation of the victim (Case 19).

An account package and card contract were signed at OTP Bank with the victim, from whom the card was immediately taken; the perpetrators withdrew money from ATMs (Case 20).

In these cases, the victims were not punished, as it was clear that they were forced to perform these activities.

c) Forced begging

Forced begging was not common in our sample: these victims were all adults, in these proceedings there were no children (Vidra et al. 2015). The perpetrators recruited their victims from homeless shelters and hospitals; the vulnerable persons,

often limb-deficient and in poor health, were forced to beg and spend 10–12 hours a day on the streets regardless of the weather.

The case was initiated on the basis of the male victim's report: from the beginning of 2014 to May 2015, his guardian and his family abused him several times, took his pension, threatened to kill him and forced him to beg. The victim is under guardianship, has limited capacity to act, cannot make independent decisions, is demented, is an alcoholic (Case 16).

In this case the victim had no family or opportunities to live a better, normal life. He accepted the promise of accommodation and food, and it was enough at first sight. It was a case of forced labour (although the perpetrators recruited, transferred, accommodated the victims), and at the end of a long process the Curia stated in its order that after two years it needed to start a new criminal trial because this case was contrary to Section 192 of the Criminal Code, being a clear case of human trafficking (this delimitation problem was eliminated by merging the facts of the case after 1 July 2020).

d) Forced labour or trafficking for labour exploitation

As mentioned above, in our research we examined documents connected with Section 192, which is the section on human trafficking in the Hungarian Criminal Code. These documents mainly contained sexual exploitation cases, but there were two cases of labour exploitation. These cases highlight the differences in definition of the coincidence which are mentioned. In our research period (between 2013 and 2018), forced labour and exploitation for labour purposes were different sections (this has changed since 1 July 2020).

One case pointed to Dutch practice: the criminal proceedings took place in the Netherlands (therefore, we have no information on its conclusion). This document contained only the search for and questioning of witnesses.

The Kingdom of the Netherlands is being investigated for human trafficking and other crimes; a witness had to be heard in one of the counties. The male victim could earn 35 euros a day at a car wash in Eindhoven; the working hours lasted from 9 am to 8 pm, 250 euros were deducted from his salary for accommodation; he was abused and threatened. A Hungarian woman organised the victims, but the perpetrators were not Hungarians. The suspects exploited their workers, employing only foreigners who, due to a lack of knowledge of the Dutch language, did not know what rights they had (Case 21) (van Meeteren 2020: 1605–1618).

An actual 'purchase' of a victim was in another case of trafficking for labour exploitation: a Hungarian perpetrator 'bought' a Hungarian victim for 20,000 forints to work with horses. 'One of the defendants would know a suitable man for the job in exchange for consideration, but the person concerned could not know about it'. The perpetrators were found guilty by the court and fined (Case 22).

Final Remarks

Exploiting vulnerable people and benefiting from weakness under the guise of helping them is nothing new. This phenomenon has existed for centuries, and social indifference towards the issue is very common; however, the criminalisation of this behaviour has a short history. Attitudes towards these activities have started to change with criminalisation, although breaking down the wall of indifference is a long process. Overall, the results of our research have slightly modified the picture of the characteristics of forced labour in Hungary with regard to its cross-border nature, the identity (and relationship) of the victims and perpetrators, victim support and assistance, and its classification as a criminal organisation.

Forced labour and/or labour trafficking is an ignored topic in Hungary. There are very few studies; most of them deal with child labour and/or illegal work by migrants. In our research we found that this phenomenon exists among Hungarians: the perpetrators and victims are living here in Hungary. We have seen very few cross-border cases, most of which took place in the difficult economic situation of counties which are facing serious financial difficulties. The US TIP Report 2020 claimed that there is exploitation of Hungarian men in

labour trafficking in agriculture, construction, and factories domestically and abroad, particularly in Belgium, the UK, and the Netherlands. NGOs reported that domestic labour trafficking is an increasing concern, particularly in rural areas, among Ukrainians and other third-country nationals who came to Hungary at the encouragement of the Hungarian government to assist with the country's labour shortage (TIP Report 2020: 248).

In our sample, the criminal proceedings between 2013 and 2018 contained very little information to that effect.

Although these crimes were typically committed between 2011 and 2013 in our sample, we can say that the problem of (labour) exploitation of vulnerable persons within the country still exists, as the TIP Report 2020 also states that the 'authorities noted a rise in forced labour in domestic service among homeless individuals, citing 150 cases in a village of 16,000 inhabitants' (TIP Report 2020: 248).

Many investigations were closed and reports were dismissed in our sample. For the victims, the feeling of shame is much stronger. Victim protection and victim assistance have barely played a role in these cases, although these victims would need both.

Forced labour, like human trafficking, is a social phenomenon—not just a labour or legal issue. That is why it is important to learn more about the characteristics of forced labour in Hungary. This would help to develop better, more effective programmes and better assistance to victims, as well as more criminal proceedings, which would send the message to perpetrators that such activities are not acceptable. As part of this effort, the attitudes of law enforcement authorities must also change,

which has started with awareness-raising training for police officers, prosecutors, and judges (Awareness-raising 2019).

In 2020, the Palermo Protocol celebrated its 20th anniversary. Although the world has changed during this period, the purpose is still very important: to prevent trafficking, to protect the victims, and to prosecute the traffickers. Despite the past 20 years, we have no relevant information about trafficking for labour exploitation in Hungary: further research (mainly qualitative studies) in the form of victim and field surveys is needed to uncover and profile this 'hidden population'. These results would help the police, prosecutors, and judges recognise the phenomenon and apply the relevant legislation. This requires time and a lot of training for the law enforcement authorities to change their attitudes. However, to combat, control, and stop forced labour, it is time to speak about the phenomenon.

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References

- Albrecht H.-J. (2019). 'Measuring human trafficking'. In R. Haverkamp, E. Herlin-Karnell and C. Lernestedt (eds.) *What is Wrong with Human Trafficking?*. Oxford: HART, pp. 37–51.
- Bowen G. (2009). 'Document analysis as a qualitative research method'. *Qualitative Research Journal* 9(2), pp. 27–40.
- Cockbain E., Boxers K. and Vernon L. (2020). 'Using law enforcement data in trafficking research'. In J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 1709–1732.
- Doyle D.M., Murphy C., Murphy M., Coppari P.R. and Wechsler R.J. (2019). 'I felt like she owns me: Exploitation and uncertainty in the lives of labour trafficking victims in Ireland'. *The British Journal of Criminology* 59(1), pp. 231–251.

- Goździak E.M. and Vogel K.M. (2020). 'Palermo at 20: A retrospective and prospective'. *Journal of Human Trafficking* 6(2), pp. 109–118.
- Haverkamp R. (2019). 'Victims of human trafficking, consideration from a crime prevention perspective'. In R. Haverkamp, E. Herlin-Karnell and C. Lernestedt (eds.) *What is wrong with Human Trafficking?*. Oxford: HART, pp. 53–76.
- Kerezi K. (2020). 'Trend lesz-e (a jövőben is) a bűnözés csökkenése? [Will the trend of crime decline continue in the future too?]. *Magyar Tudomány* 5, pp. 577–590.
- Kerezi K. and Pap A.L. (2017). 'A bűnözés és a bűnözéskontroll jövője' [The future of crime and crime control]. In G. Finszter and I. Sabjanics (eds.) *Biztonsági kihívások a 21. Században [Security challenges in the 21st century]*. Budapest: Dialóg, pp. 543–583.
- Király T. (2008). *Büntetőeljárás jog [Code of Criminal Procedure]*. Budapest: Osiris.
- Lodder G.G. (2020). 'Protection of migrants against labor exploitation in the regulation of migration in the EU'. In J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 1361–1375.
- Meeteren M. van and Hiah J. (2020). 'Self-Identification of victimization of labour trafficking'. In J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 1605–1618.
- Ollus N. (2015). 'Regulating forced labour and combating human trafficking: The relevance of historical definitions in a contemporary perspective'. *Crime Law Social Change* 63, pp. 221–246. Available online: <https://ht-radar.abolishhumantrafficking.com/wp-content/uploads/2020/07/Ollus-2015-Forced-labor-historical-defini.pdf> [16.11.2020].
- Plant R. (2015). 'Forced labour, slavery and human trafficking: When do definitions matter?'. *Anti-Trafficking Review* 5, pp. 153–157. Available online: www.antitraffickingreview.org.
- Polt P. (2018). *Kommentár a büntetőeljárás törvényhez [Commentary on the Code of Criminal Procedure]*. Budapest: Walters Kluwer Hungary.
- Ricard-Guay A. and Hanley J. (2020). 'The challenge of addressing both forced labour and sexual exploitation'. In J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 287–302.
- Scarpa S. (2020). 'The nebulous definition of slavery: Legal versus sociological definitions of slavery'. In J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 131–144.
- Segrave M., Hedwards B. and Tyas D. (2020). 'Family violence and exploitation: Examining the contours of violence and exploitation'. In J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 437–450.
- Viuhko M. (2018). 'Hardened professional criminals, or just friends and relatives?

- The diversity of offenders in human trafficking'. *International Journal of Comparative and Applied Criminal Justice* 42(2-3), pp. 177–193.
- Viuhko M. (2019). 'Just trust me and you'll make a fortune. Relationships between offenders and victims of human trafficking'. *Nordic Journal of Criminology* 20(2), pp. 196–212.
- Vries I. de (2019). 'Connected to crime. An exploration of the nesting of labour trafficking and exploitation in legitimate markets'. *The British Journal of Criminology* 59(1), pp. 209–230.
- Windt S. (2020). 'Az emberkereskedelem és a kényszermunka jellemzői egy empirikus vizsgálat alapján' [Characteristics of human trafficking and forced labour based on an empirical study]. *Kriminológiai Tanulmányok* 57, pp. 192–215.
- Zemplényi A. (2013). *A Munka Méltósága Projekt* [Dignity of work project]. Budapest: Commissioner for Fundamental Rights.

Internet sources

- Albert F. (2019). *ESPN Thematic Report on In-work poverty Hungary*, Ec.Europa.eu. Available online: https://ec.europa.eu/social/main.jsp?pager.offset=15&advSearchKey=hungary&mode=advancedSubmit&catId=22&doc_submit=&policyArea=0&policyAreaSub=0&country=0&year=0 [16.11.2020].
- Andrees B. (2008). *Forced labour and trafficking in Europe: How people are trapped in, live through and come out*, ILO. Available online: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_090548.pdf [27.04.2020].
- Awareness-raising training on the fight against human trafficking* (2019), Thb.kormany.hu. Available online: <https://thb.kormany.hu/awareness-raising-training-on-the-fight-against-human-trafficking> [16.07.2020].
- Bodrogi B. and Simonovits B. (2014). *Severe Forms of Labour Exploitation, Supporting Victims of Severe Forms of Labour Exploitation in Having Access to Justice in EU Member States, Hungary*, Fra.europa.eu. Available online: https://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_hu.pdf [11.05.2020].
- Data collection on trafficking in human beings in the EU* (2018), European Commission. Available online: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_data-collection-study.pdf [30.07.2020].
- Data collection on trafficking in human beings in the EU* (2020), European Commission. Available online: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_data_collection_on_trafficking_in_human_beings_in_the_eu.pdf [05.11.2020].
- ECtHR - Chowdury and Others v Greece, Application No. 21884/15, 30 March 2017* (2017), Asylumlawdatabase.eu. Available online: <https://www.asylumlawdatabase.eu/en/content/ecthr-chowdury-and-others-v-greece->

- application-no-2188415-30-march-2017 [16.11.2020].
- Ending forced labour by 2030: A review of policies and programmes*. International Labour Office (2018). Geneva: ILO. Available online: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_653986.pdf [16.07.2020].
- Forced labour, modern slavery and human trafficking* (n.d.), ILO. Available online: <https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> [15.06.2020].
- Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (2017). Geneva: ILO. Available online: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf [27.04.2020].
- Global Estimates of Modern Slavery and Child Labour* (2017), ILO. Available online: https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@ipec/documents/publication/wcms_597874.pdf [27.04.2020].
- Global Slavery Index (2018), globalslaveryindex.org. Available online: <https://www.globalslaveryindex.org/2018/data/country-data/hungary/> [03.06.2020].
- ILO Standards on Forced Labour the New Protocol and Recommendation at a Glance* (2016). Geneva: ILO. Available online: https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_508317.pdf [27.04.2020].
- Magyarország, 2018 [Hungary, 2018] (2019)*. Budapest: Központi Statisztikai Hivatal. Available online: <http://www.ksh.hu/docs/hun/xftp/idoszaki/mo/mo2018.pdf> [18.05.2020].
- Major Laws and Regulations in connection with labour in Hungary* (n.d.), Ommf.gov.hu. Available online: http://ommf.gov.hu/index.php?akt_menu=551 [15.06.2020].
- Methodology of the Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (2017). Geneva: ILO. Available online: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_586127.pdf [11.05.2020].
- New anti-trafficking legislation to protect minors* (2020), thb.kormany.hu. Available online: <https://thb.kormany.hu/new-anti-trafficking-legislation-to-protect-minors> [30.04.2020].
- Palermo Protocol: Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (2000), Ohchr.org Available online: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> [06.08.2020].
- Profits and poverty: The economics of forced labour* (2014). Geneva: ILO. Available online: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf [14.05.2020].
- Rijken C. (ed.) (2011). *Combating Trafficking in Human Beings for Labour*

- Exploitation*, Ec.europa.eu. Available online: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/isec_2009_176_report_en_1.pdf [07.08.2020].
- Trafficking in Person Report* [TIP Report] (2020), State.gov. Available online: <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf> [16.07.2020].
- UNODC Global Report on Trafficking in Persons* (2016). Available online: https://www.unodc.org/documents/dataand-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf [30.07.2020].
- Vidra Z., Baracsi K., Katona N. and Sebhelyi V. (2015). *Child Trafficking in Hungary: Sexual Exploitation, Forced Begging and Pick pocketing Ceu Cps: Budapest*, Real.mtak.hu. Available online: <http://real.mtak.hu/27558/1/cps-book-child-trafficking-in-hungary-2015.pdf> [17.06.2020].
- What is forced labour, modern slavery and human trafficking* (n.d.), ILO. Available online: <https://www.ilo.org/global/topics/forced-labour/definition/lang-en/index.htm> [27.04.2020].
- Windt S. and Deres P. (2020). 'The characteristics of trafficking in human beings in Hungary and Romania'. *Archives of Criminology* 42, pp. 139–161. Available online: <http://czasopisma.inp.pan.pl/index.php/ak/article/view/1930> [06.08.2020].
- World Employment and Social Outlook: Trends 2019* (2019). Geneva: ILO. Available online: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_670542.pdf [11.05.2020].

*Masja van Meeteren, Nikki Heideman* ■

Taking stock of labour trafficking in the Netherlands

Bilans zjawiska handlu ludźmi do pracy przymusowej w Holandii

Abstract: In the Netherlands, labour trafficking was criminalised as human trafficking in 2005.¹ Since then, criminal investigations into labour trafficking have slowly taken off. Building on a content analysis of files and reports from the labour inspectorate, this paper contributes to the currently limited body of knowledge on the nature of labour trafficking. It does so by focussing on scholarly debates about the nature of the crime and its relation to labour migration. Based on the analysis, it is argued that the bulk of labour trafficking should be understood as a by-product of labour migration, and that labour trafficking often arises from the economic opportunistic motives of businesses and only occasionally occurs in criminal environments. In addition, the paper adds to our understanding of the prosecution of human trafficking by analysing why so many labour trafficking cases in the Netherlands have not resulted in a conviction. Building on a qualitative analysis of case law, it is shown that a major problem in getting suspects convicted is that the human rights threshold against which cases of labour trafficking are tested is often not surpassed, as the abuses in the labour market are often deemed not excessive enough to qualify as human trafficking.

Keywords: labour trafficking, precarious work, human trafficking, labour migration, labour exploitation, forced labour

Abstrakt: W Holandii praca przymusowa jest jedną z form przestępstwa handlu ludźmi od 2005 roku. Od tego momentu stopniowo zaczęto prowadzić postępowania karne w sprawach o pracę przymusową. Niniejszy artykuł, oparty o badanie aktowe i analizę raportów inspekcji pracy, stanowi uzupełnienie całej czasosłownie niewielkiej wiedzy na temat zjawiska pracy przymusowej.

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Koncentruje się na naukowych rozważaniach o przestępstwie i jego związku z migracją zarobkową. Przeprowadzona analiza pozwala stwierdzić, że praca przymusowa jest zwykle postrzegana jako zjawisko związane z handlem ludźmi (stanowiąc niejako jego „produkt uboczny”), podczas gdy tak naprawdę sporadycznie pojawia się ona w środowiskach przestępczych. Częściej bowiem wynika z wyrachowanego działania samych przedsiębiorstw opartego na przesłankach czysto ekonomicznych. Niniejszy artykuł daje także szerszy obraz ścigania przestępstwa handlu ludźmi pozwalając jednocześnie zrozumieć, dlaczego wiele spraw o handel ludźmi do pracy przymusowej w Holandii nie zakończyło się skazaniem. W oparciu o analizę jakościową wydanych orzeczeń wykazano, że głównym problemem przy skazaniu podejrzanych o pracę przymusową jest to, że stopień naruszenia praw człowieka (wykorzystania) w takich sprawach nie jest na tyle wysoki, a nadużycia na rynku pracy nie na tyle poważne, by można je było zakwalifikować jako przestępstwo handlu ludźmi.

Słowa kluczowe: handel ludźmi do pracy przymusowej, praca dorywcza, handel ludźmi, migracja zarobkowa, wykorzystanie do pracy, praca przymusowa

Introduction

Although sex trafficking still receives more attention, since the Palermo Protocol labour trafficking has been recognised as a significant social problem. Labour trafficking now features prominently on national and international policy agendas, and resources are increasingly devoted to combating it (Goodey 2008: 434). This increasing attention is undoubtedly warranted, as some scholars assert that labour trafficking may be more prominent than sex trafficking (Kaye, Winterdyk, Quarterman 2014; Weitzer 2014: 13). In fact, according to Cockbain and Bowers (2019: 12) the most common exploitation type in the UK in 2017 was labour (46%), ahead of both sex (34%) and domestic servitude (9%).

Despite the increased policy attention, there is still relatively little empirical research on labour trafficking (Cockbain et al. 2018). As a result, our understanding of human trafficking mostly stems from studies on sex trafficking (Kaye, Winterdyk, Quarterman 2014). This is questionable, as recent research from the UK shows that it is problematic to conflate the different types of human trafficking (Cockbain, Bowers 2019). They showed that, on average, victims of labour trafficking are significantly older than victims of sex trafficking. And whereas women constitute the majority of sex trafficking and domestic servitude victims, more than three quarters of the victims of labour trafficking in the UK are men. Victims of labour trafficking in the UK also mostly came from the European Economic Area, whereas victims of sex trafficking have more diverse geographic origins. This suggests that it may be problematic to generalise the research findings of studies on sex trafficking to the field of labour trafficking. Empirical studies that single out and focus on labour trafficking are thus much needed to increase our understanding of this type of trafficking.

Twenty years after the insertion of labour trafficking in the Palermo Protocol, and fifteen years after its criminalisation in the Netherlands, the time has come to take stock of labour trafficking. Based on data from the Netherlands, what can we say about the nature of labour trafficking and its prosecution? The aims of this paper are twofold: 1) contributing to the currently limited body of knowledge on the nature of labour trafficking and 2) generating knowledge about successful prosecution that can assist in combating labour trafficking in future. This paper builds on a content analysis of three different sources: investigative case files from the labour inspectorate and the Public Prosecutor's Office, reports of the labour inspectorate, and Dutch case law. The next section discusses previous research on the nature of labour trafficking and its prosecution. It is followed by a section that lays out the legal framework on labour trafficking in the Netherlands. After a discussion of the data and methods used, the results are presented in two separate sections. The first section is about the nature of labour trafficking and the second is about its prosecution.

Research on labour trafficking and its prosecution

As mentioned, the developing scholarly field on labour trafficking is still in its early stages. Nevertheless, from the few studies that have been done, three scholarly debates can be distilled that feed into the analyses presented in this paper.

The nature of the crime

The first discussion among scholars is about the nature of the crime and the people involved in committing it. The Palermo Protocol was part of the International Convention Against Organized Transnational Crime. As a result, in policy circles, human trafficking has been framed from the outset as a form of organised crime. Today, human trafficking is still commonly framed as an organised crime problem (Viuhko 2018). While this thought has long been commonplace, the idea that this image is not supported by empirical evidence currently seems to be gaining support. Keo et al. (2014: 204), for example, stated that 'the literature is replete with [...] unsupported claims about its control by organised crime syndicates.' And Viuhko (2018: 189) argued that 'often, the perpetrators are friends, relatives, or partners of trafficked persons and they do not necessarily belong to criminal organisations.' Offenders are not professional criminals but opportunistic actors who take advantage of the situation (Keo et al. 2014; Viuhko 2018). Increasingly, scholars are emphasising that organised crime involvement in human trafficking is certainly not the only scenario and that this is perhaps even more so for labour trafficking (Van Meeteren, Van der Leun 2021).

In a literature review on the empirical research literature on the involvement of organised crime in labour trafficking, Van Meeteren and Van der Leun (2021) concluded that there are many cases where individuals, households, or small businesses that have no connection to organised crime groups are responsible for exploitation. In addition, they observed that – compared to other forms commonly labelled as organised crime, such as drug trafficking – labour trafficking does not appear to require so much organisation that, by definition, several people should be involved. They argue that it can be relevant to distinguish between labour trafficking that arises from economic opportunism and labour trafficking that occurs in criminal environments.

More scholars point to the link between labour trafficking and legitimate markets (de Vries 2019). Davies and Ollus (2019), for example, argued that labour trafficking is closely related to developments in the economy, labour markets, and society at large and that exploitation is facilitated through otherwise legitimate business practices. They argue that labour trafficking should rather be conceived of as a form of corporate crime. Through the lens of corporate crime, they show how common market factors and business processes drive labour trafficking and are closely associated with inadequate regulatory oversight. They conclude that a corporate crime approach to labour trafficking can play a significant role in understanding whether and how market processes are criminogenic.

Labour trafficking as a by-product of labour migration

The second scholarly debate revolves around the connection with migration. Tallmadge and Gitter (2018) found that human trafficking is more prevalent in countries where immigrants make up a larger share of the country's population. Although vulnerability to labour trafficking is not restricted to migrants, and not all migrants are vulnerable to labour trafficking, it has been argued that some categories of migrants are particularly vulnerable to labour trafficking, such as irregular migrants (Dwyer et al. 2011). Indeed, many studies have reported how irregular migrants are trapped in labour trafficking situations because they fear that their employer will report their illegal stay to the police if they protest against the exploitative conditions. However, scholars increasingly note that 'many of the workers who would fit the designation of persons trafficked for labour exploitation migrated freely and legally' (Strauss, McGrath 2017: 204). There is an increasing body of knowledge on the exploitative effects of temporary labour programmes that restrict labour market entry and social rights for migrants. Van Meeteren and Wiering (2019) have shown how a temporary labour migration programme in the Netherlands has contributed to several labour trafficking cases in the catering industry.

Therefore, more and more scholars advocate that labour trafficking should be seen as a by-product of labour migration since it goes hand in hand with migration and labour policies that curtail migrant workers' rights and bargaining power

(Bélanger 2014; Doyle et al. 2019). Strauss and McGrath (2017: 205) likewise emphasised that ‘state immigration policies systematically institutionalise unfree labour relations.’ Tyldum (2013: 107) argued that human trafficking can be understood as a ‘systematic exploitation of vulnerabilities inherent in migration.’

We can often see a clear connection to migration in the means of coercion that are used in labour trafficking cases. Gadd and Broad (2018: 13) asserted that physical force is rare and that it is far more usual that poorly paid workers become stuck in a situation to which there is no alternative. They move through a continuum of exploitation ‘that is facilitated by under-regulation of the labour market and immigration law.’ Although physical violence is also reported in exceptional cases (Doyle et al. 2019), most scholars observe that a commonly used threat against victims of labour trafficking is that of being reported to the immigration authorities (Doyle et al. 2019; Van Meeteren, Wiering 2019).

Prosecuting labour trafficking

The prosecution of labour trafficking definitely deserves more scholarly attention. Various scholars have noted that the prosecution of human trafficking, in general, is not very successful and that too few cases result in convictions (Farrell et al. 2016; Matos, Gonçalves, Maia 2018). There have been some examinations of human trafficking prosecutions in the USA (Farrell et al. 2016), but very few in Europe (Matos, Gonçalves, Maia 2018). Notable exceptions are from Portugal (Matos, Gonçalves, Maia 2018) and the Netherlands (Verhoeven, van Gestel 2011; Verhoeven et al. 2015). However, these studies focus on sex trafficking and on the investigation phase, as do the studies from the USA. The prosecution of labour trafficking has received even less attention, and the research which did address the issue focussed on the barriers in the investigation phase faced by law enforcement.

Farrell et al. (2020), for example, argued that far fewer cases of labour trafficking are identified and investigated by law enforcement than sex trafficking cases. They conducted research on police responses to labour trafficking and identified major challenges that impact labour trafficking responses, among which is a lack of institutional readiness to address labour trafficking. Moreover, the routines of police work guide officers away from labour trafficking cases. Police do not typically enter the workplace, let alone if abusive practices are occurring in the remote countryside. This means that major obstacles to prosecuting labour trafficking cases lie in the investigative, identification phase in the USA. And this is partly because the police lack the expertise to investigate such cases.

In the Netherlands, the Labour Inspectorate (iSZW) is responsible for all violations in the work domain. The inspectorate has an administrative branch that deals with violations of labour laws (for which fines can be imposed) and an investigative branch that deals with crime in the domain of work, including labour trafficking. Thus, labour trafficking is not investigated by the police, but by the investigative branch of Labour Inspectorate (iSZW-Recherche). Therefore, many

of the USA's barriers in identifying victims of labour trafficking do not apply to the Dutch situation. However, the Netherlands' problem seems to be that most of the cases brought before the court do not result in a conviction. Research by the Dutch National Rapporteur showed that in the period 2015–2019, 72% of domestic sex trafficking cases and 68% of transnational sex trafficking cases resulted in a conviction. Moreover, it demonstrated that in the same period, only 46% of labour trafficking cases resulted in a conviction (Dutch National Rapporteur 2021).

In this paper, we answer two research questions. In answering the first question, *what is the nature of registered labour trafficking in the Netherlands?*, we particularly zoom in on the debates highlighted in this section, on the dichotomy between organised crime and corporate crime and on the role of migration. The second question is *how can we explain the relatively low success rate of prosecutions of labour trafficking in the Netherlands?*

The legal framework on labour trafficking in the Netherlands

In the Netherlands, the primary source of criminal law is the Dutch Criminal Code. In 2005, labour trafficking was criminalised as human trafficking in Article 273f of the Dutch Criminal Code. This means that since 2005, both sex trafficking and labour trafficking have been criminalised by the same provision. This article is an almost exact translation of the Palermo Protocol. The definition of the act of human trafficking, as laid down in Article 3(a) of the Palermo Protocol, leaves room for interpretation of its components, which is mostly left to case law. Therefore, Dutch courts have played a prominent role in further defining guidelines for interpretation (Esser, Dettmeijer-Vermeulen 2016), and the decisions of the Supreme Court have been enormously influential (Esser 2019).

To qualify as human trafficking, there is no need for any border to have been crossed. In line with the Palermo Protocol, the Dutch legislature has chosen to criminalise as human trafficking both the acts that lead up to a possible situation of exploitation and the actual exploitation itself. In other words, both an offender who 'traffics' a victim into a situation of exploitation and an offender who does the actual exploitation (e.g. an employer) can be considered human traffickers under Dutch law. Also in line with the Palermo Protocol, exploitation includes, 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.

Whereas sex trafficking and labour trafficking constitute a similar offence from a legal perspective, for many purposes it is relevant to distinguish between the two. We follow the Dutch National Rapporteur, who labels human trafficking that takes place in the sex industry as sex trafficking, and human trafficking that

takes place in the domain of work and income – but that does not concern the sex industry – as labour trafficking. Therefore, unlike in the UK, domestic servitude is also considered a form of labour trafficking. There have been a few cases where people were coerced into taking out telephone subscriptions for which they received a free new phone that they had to hand over to the offender. As there is no employment relationship between the victim and the offender in such cases, we do not consider these to be cases of labour trafficking. In addition, there have been cases where people were coerced to commit criminal acts, such as theft. As there is no employment relationship in such cases either, we do not consider such cases to be labour trafficking.

The offence stipulated in Article 273f Paragraph 1 subsection 1 contains three elements which the prosecution needs to demonstrate the presence of: (1) acts (e.g. transporting accommodating or sheltering a person), (2) means (e.g. coercion or deception), and (3) a specific intent (the criminal intent) – the purpose of exploitation. In a series of judgments, the Supreme Court has provided guidelines for how these individual components should be interpreted. This case law has mainly centred around two different topics: the means element and the criminal intent element – ‘the purpose of exploitation’ (Esser, Dettmeijer-Vermeulen 2016).

Firstly, the interpretation of the element of the means has received a lot of attention in Dutch case law. The (coercive) means are listed in Article 273f Paragraph 1 subsection 1 of the Dutch Criminal Code. They comprise coercion, violence or other acts, the threat of violence or other acts, extortion, fraud, deception, the abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. This last part implies that the means must be used for the purpose of exploitation. In other words, the use of coercive means should lead to someone ending up in an exploitative situation (‘a situation that created the opportunity for exploitation’) or that someone is prevented from withdrawing from an exploitative situation (Domestic Court The Hague 2018).¹

According to Esser & Dettmeijer-Vermeulen (2016), in interpreting the means element, Dutch case law concentrated particularly on ‘abuse of a position of vulnerability’. In a judgment from 2009, popularly referred to as the ‘Chinese catering judgment’, the Supreme Court elaborated on the criteria that have to be met in order to prove ‘abuse of a position of vulnerability’ (Supreme Court 2009). This specific case concerned irregular Chinese migrants who had decided to come to the Netherlands to earn money. They applied for work at a restaurant themselves. None of these migrants had any debt or other obligations to the restaurant owner. They were also free to leave any time they wanted to. A number of these irregular

¹ ECLI:NL:RBDHA:2018:3905. The European Case Law Identifier (ECLI) is a European standard for the unique numbering of judicial decisions. In every country where the ECLI is used, it is always structured in the same way: ECLI:country code:court code:year:number. See <https://www.rechtspraak.nl/Uitspraken/paginas/ecli.aspx> for a brief explanation of these five elements.

Chinese migrants had already worked at other locations in the Netherlands (Esser, Dettmeijer-Vermeulen 2016). In this case, in line with the domestic court, the appellate court ruled that the abuse resulting from factual circumstances or the abuse of a position of vulnerability requires a certain initiative and active action by the offender involving deliberate exploitation of the weaker or vulnerable position of victims. The appellate court therefore held that in this case there was no exploitation (Appellate Court 's-Hertogenbosch 2008).

However, according to the Supreme Court, the condition of 'deliberate action' was too strict a requirement, so they determined that a lower threshold was required. The Supreme Court held that for proof of acting through 'abuse' it is sufficient that the suspect must have been aware of the relevant factual circumstances creating a vulnerable position (Supreme Court 2009). In other words, it does not have to be established that the suspect also purposefully intended to abuse the position of those individuals involved. The employment and abuse that may ensue does not have to be initiated by the employer. The result of the Supreme Court's decision is that a relatively broad interpretation of this 'abuse of a position of vulnerability' has been established in the Netherlands. In practice, this implies, for example, that if an employer is aware of an employees' illegal residence status, this is enough to establish the means (Esser, Dettmeijer-vermeulen 2016).

Secondly, in the above-mentioned judgment of 2009 – the Chinese catering judgment – the Supreme Court also ruled on how the 'purpose of exploitation' can be established. The Supreme Court explicitly concluded that the standards (of employment) applicable in the Netherlands are decisive in assessing exploitation, regardless of the experiences of those involved. Whether the circumstances can be defined as exploitation depends on (A) the nature and duration of the employment, (B) the actual limitations for the victim(s), and (C) the economic advantage for the employer (Supreme Court 2009). These factors are not cumulative, so not all of these factors need to apply. Ultimately, the various factors have to be weighed against each other (Esser, Dettmeijer-Vermeulen 2016). Moreover, the victim does not need to be actually exploited to fulfil the description of the offence; the intent is sufficient (Supreme Court 2009).

In addition, when interpreting exploitation within the meaning of Article 273f of the Dutch Criminal Code, the importance of protecting fundamental human rights is paramount. The definition of what constitutes 'exploitation' in Paragraph 2 is based on Article 3(a) of the Palermo Protocol and on Article 1, Paragraph 1, subsection c of the EU Framework Decision. In turn, these provisions derive concepts from Article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This article requires States Parties to provide effective protection against slavery, servitude, and forced labour. In addition, the documents state that the protection of human rights is central to tackling human trafficking. This means that labour trafficking should be considered a violation of fundamental rights such as human dignity, physical integrity, or personal freedom. Therefore, not every abuse can be regarded as exploitation. There

must be an excess, constituting a serious violation of fundamental rights. However, this may also be the case with an accumulation of less serious infringements (Appellate Court Leeuwarden 2009). The fact that this provision is not intended for all abuses of a labour or service relationship is also clear from the placement of the article in the Dutch Criminal Code, namely in Title XVII –Crimes against personal freedom, before the article on slave trade (Article 274 Penal Code) as well as the punishment, consisting of a prison sentence of no more than twelve years (Domestic Court The Hague 2008).

Finally, there does not seem to be much confusion and uncertainty about the first element: the actions. Paragraph 1, subsection 1 of Article 273f of the Dutch Criminal Code lists the following actions: recruiting, transporting, transferring, housing, and recording. These actions are punishable if they are carried out through the use of a coercive means and for the purpose of exploitation. The actions each have a neutral and factual meaning and can be understood through everyday language. They should, therefore, be interpreted broadly (Domestic Court The Hague 2018).

Methods

This paper is based on an analysis of three different sources: investigative case files from the labour inspectorate and the Public Prosecutor's Office, reports from the labour inspectorate, and case law.

The first part of the analysis is exploratory. The nature of registered labour trafficking in the Netherlands is scrutinised, building on an exploratory analysis of investigative case files and reports on labour trafficking. Investigative case files from 2011 to 2016 on labour trafficking from the Dutch Labour Inspectorate and the Public Prosecutor's Office were analysed. For the years 2007 to 2010 and 2016, the analysis builds on reports and analyses conducted by the labour inspectorate in the National Threat Assessment context. From the overall study period, 83 criminal investigations were analysed. As noted, the analysis is exploratory, meaning that the case files and reports were scanned for descriptive information about the sector in which the exploitation took place, the number of victims and suspects, and the background characteristics of the victims and suspects.

To answer the second research question, case law was analysed to understand the relatively high number of acquittals. Case law was retrieved from a publicly available database at www.rechtspraak.nl/. This database contains all case law in the realm of criminal law in the Netherlands. In principle, every criminal law verdict is anonymised and published there. Only in very exceptional cases is

a verdict not published there.² Labour trafficking is not a keyword in the database that easily extracts verdicts on labour trafficking. Therefore, the database was searched using the keyword '273f', referring to the Dutch Criminal Code article on human trafficking. This yielded an enormous amount of hits, as the results included case law on sex trafficking. The verdicts were scanned to see if they could qualify as labour trafficking. When they did, they were inserted in our Atlas.ti database. The definition of labour trafficking we used was that it incorporates human trafficking in work and employment, apart from the prostitution sector. We also excluded forms of labour that took place on the criminal market, such as work in the manufacturing or processing of drugs. In the Netherlands, this form of human trafficking is considered criminal exploitation. As the last case law study performed by the Dutch National Rapporteur analysed case law from 2009 to 2012, we chose 2013–2019 as the timeframe.

The documents were subsequently read and coded by the second author, using an elaborate code book that was developed in the context of a different study. The acquittals were identified and taken together in a document group for further analysis. All verdicts contain a section in which the decision is explained. In cases of acquittals, it is elaborated upon why the judges decided to acquit the defendant. Our analysis entailed an analysis of how these reasons provided in the verdicts were related to the legal framework, specifically to the acts, the means, and the purpose of exploitation. These three codes were applied to the material, and where relevant, further sub-coding was used.

Exploring registered labour trafficking in the Netherlands

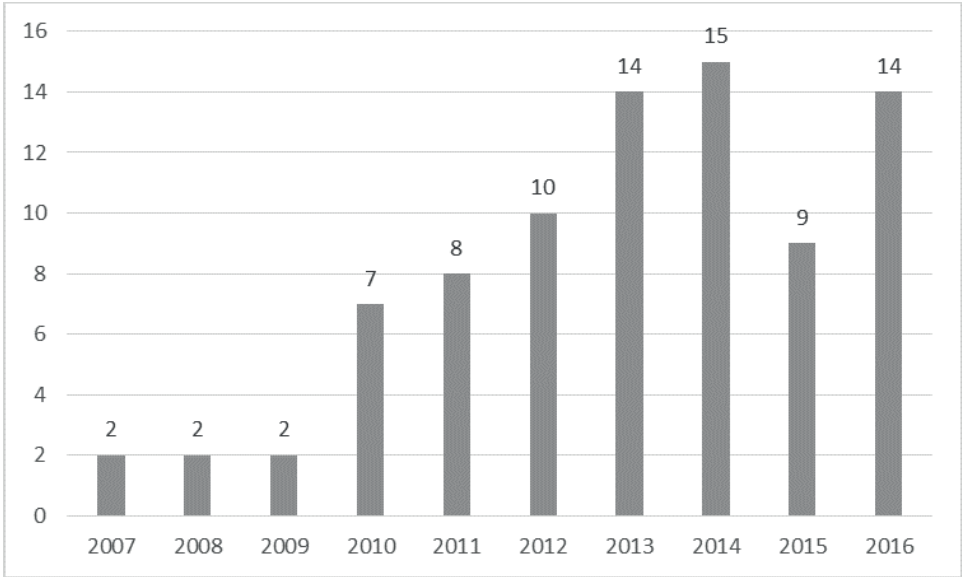
In this section, we explore the case files on labour trafficking. As said, the first cases of labour trafficking began to be investigated in 2007. Before that, there were a few cases of labour trafficking, but they were not systematically recorded by the labour inspectorate at that time. The Dutch Rapporteur indicates four criminal investigations into labour trafficking that appeared before the court from before that period (6th Report). One case concerned Bulgarians who cut marihuana. Another one concerned the exploitation of Polish domestic cleaners. The Chinese restaurant workers' case resulted in the Supreme Court ruling discussed above. The lower courts acquitted all three cases. Only a fourth one, concerning the domestic work of illegally residing Indian immigrants, one of whom started work as a minor, led to a conviction. We were unable to establish whether there were any investigations

² We know that the database on human trafficking at www.rechtspraak.nl is complete. The Dutch National Rapporteur has access to other sources to retrieve case law and used this website in their reports on case law in the Netherlands.

during that time that did not go to trial. Therefore, these four cases are not included in our exploratory analysis presented below.

In the years shortly after it was criminalised, the number of investigations remained relatively low. We have seen a steady rise in more recent years, and the number seems to have stabilised at around 10–15 per year since 2012 (see Figure 1).

Figure 1. Number of labour trafficking investigations per year



Source: iSZW case files and reports

The businesses

The sectors where exploitation occurs resemble what we know from the literature on labour trafficking (Table 1). The literature suggests that labour trafficking takes place in sectors where there is a high demand for low-skilled cheap labour (van Dijk, Ungureanu 2010). The catering industry stands out, and what is particularly striking is the high number of Chinese restaurants within this category. Van Meeteren and Wiering (2019) elaborated on the exploitation in Chinese restaurants in the Netherlands, linking it to vulnerabilities created by a special temporary migration scheme for Asian restaurants.

Table 1. Labour trafficking investigations per sector

Sector	Number of investigations	Per cent of total
Catering	18	22%
Retail	13	16%
Agriculture/horticulture	12	14%
Domestic work	7	8%
Transportation	7	8%
Employment agencies	6	7%
Factory work	6	7%
Cleaning	3	4%
Construction	3	4%
Other	8	10%
Total	83	100%

Source: iSZW case files and reports

The retail sector usually involves small businesses. Small textile and laundry businesses particularly stand out in this category. These are largely businesses operated by people with a Moroccan, Turkish, or Pakistani background who employ immigrants from Morocco or South Asia. In most cases, it concerns immigrants without a legal residence status. Agriculture very often concerns horticultural work in greenhouses. In the Netherlands, this industry is notorious for relying on immigrant labour, especially from Eastern Europe (Strockmeijer, de Beer, Dagevos 2017). The case files largely concern businesses owned by the native Dutch who employ immigrants from Eastern Europe working and residing in the Netherlands legally.

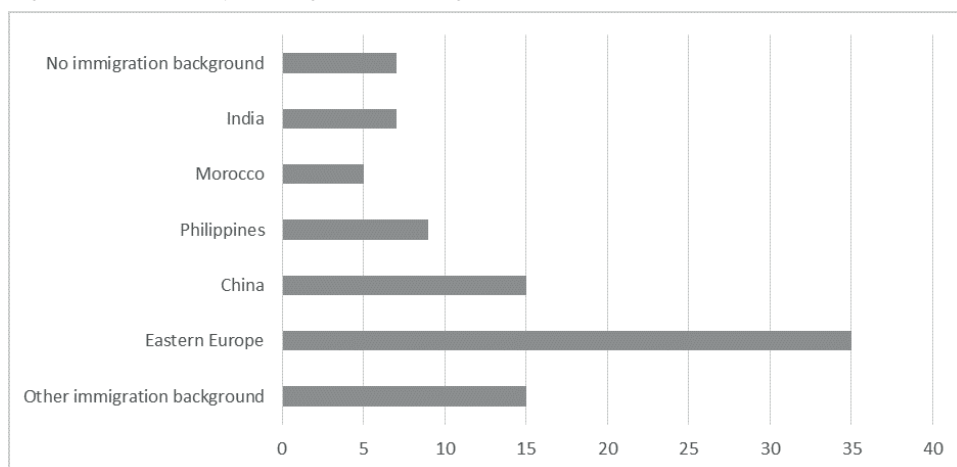
The number of victims per investigation seems to be rather limited in most cases. Only in 21% per cent of the cases was there a large number of victims. More than half of the cases concerned just one or two victims. This is probably the result of the type of businesses that were under investigation. These are often small businesses with only a handful of employees. This is especially true for the catering, retail, and domestic work sectors. The number of victims was larger in industries such as construction or agriculture. For example, in two cases involving strawberry production, there were 42 and 21 victims. A case that involved mushroom cultivation had 38 victims. Other cases with such high numbers of victims involved Filipino workers in the inland shipping industry. Moreover, employment agencies tend to be associated with larger numbers of victims as well.

The nesting of these firms in legitimate business markets is obvious. The exploitation largely takes place to save on labour costs and to make the business more competitive. The employers usually have not been involved in crime before; only in a few cases did the employers have previous criminal records. The employers mostly commit these crimes individually or in pairs, and not in groups, let alone as organised crime groups. In a few cases, three or more people were involved, but the bulk of the businesses were small and hence owned by a single employer or, for example, by a partnership between husband and wife. Only one case was connected to drug trafficking. In other cases, the suspects were also suspected of other crimes. These were usually crimes closely linked to the core crime of labour trafficking, such as the illegal employment of immigrants, document fraud, or human smuggling.³ Therefore, it seems that labour trafficking does not appear to be committed by organised crime groups, but rather by employers in otherwise legitimate businesses.

Victim and offender background and immigration

If we look at the victims, we see a clear mix of both male and female victims, with slightly more male victims. However, although there were not that many women in the early years, the share of female victims seems to be rising, and there are also more cases in recent years with both sexes present. Looking at the immigration background of the victims mentioned in the file (Figure 2), we see that victims with an immigration background are severely overrepresented compared to victims without an immigration background (who have a background in the Netherlands). Eastern Europe also comes up often as a geographical origin. Whereas the Dutch victims usually had problems with drug addictions or cognitive disabilities that made them vulnerable to exploitation, the victims with immigrant backgrounds all suffered from migration vulnerabilities. They do not speak the Dutch language or know the rights they have in the Netherlands. Their social networks are usually small and confined mainly to the work environment. In almost all cases, these immigrants invested heavily in their migration but found themselves deceived and exploited.

³ In the Netherlands, helping someone reside illegally also qualifies as human smuggling. Employing someone is considered helping. This is why many suspects are also charged with this crime.

Figure 2. Victims by immigration background

Source: iSZW case files and reports

Among the suspects, the percentage of people without an immigration background is somewhat lower than for the victims, but the bulk of suspects also have an immigration background (Table 2). The country of origin is not necessarily the same for both the victim and the suspect, but it is similar in geographical, sociocultural, or linguistic ties; for example, we find Pakistani employers exploiting Indian employees. As stated above, many of the Dutch suspects own a business in agriculture or horticulture and employ workers from Eastern Europe. Dutch people were also mostly responsible for the situation with the Filipino workers in inland shipping. Apart from one man exploited by his Turkish boss, all the Dutch victims were exploited by a Dutch employer. This means that most of the labour trafficking in the Netherlands is intra-ethnic. It is perpetrated by people who, because of sociocultural or linguistic similarities, know precisely the vulnerabilities of these immigrants and how to best lure and keep them in an exploitative situation. Furthermore, because the perpetrators usually have Dutch nationality or permanent residence and because they know their way around Dutch society, as demonstrated by their longer stays and ability to start their own businesses, they have a considerable power advantage over the immigrants.

Table 2. Immigration backgrounds of suspects in the files

Immigration background	Backgrounds mentioned	Per cent of the total
Eastern Europe	16	17%
China	15	16%
Morocco	8	8%
Turkey	6	6%
South Asia	6	6%
Western Europe	4	4%
Philippines	3	3%
Other immigrant background	9	9%
No immigrant background (Dutch)	29	30%
Total	96	100%

Source: iSZW case files and reports

In line with this idea, it is evident from the files that the coercion used in labour trafficking cases is subtle. It generally involves the abuse of these power dynamics. Although physical violence was also reported in a few cases, this is exceptional and seems to be associated more with Dutch victims than victims with an immigrant background.

Furthermore, a trend can be observed in the case files that has to do with immigration and immigration policies. In the older cases, the victims mostly did not have a legal residence status. However, in more recent cases, the bulk of the victims reside in the Netherlands legally. Either temporary employment schemes are abused, or it involves immigrants from Eastern Europe who have the right to stay and work in the Netherlands legally thanks to the free movement of workers in the European Union. This is likely because hefty fines have been imposed on employing illegal workers. Employers have now found ways to recruit cheap labour through legal means. This way, they appear to be doing everything correct vis-a-vis the Dutch government. However, in practice, the working conditions and the pay workers receive are much worse than stated in the official contracts on which their visas were granted. Therefore, it indeed seems to be the case that labour trafficking goes hand in hand with migration and labour policies that curtail migrant workers' rights and bargaining power (Bélanger 2014; Doyle et al. 2019). Furthermore, workers who do not need a work permit are usually promised something different

from what they find on arrival. For these workers, their situation can indeed be understood as systematic exploitation of the vulnerabilities inherent in migration.

Understanding unsuccessful prosecutions

From 2013 to 2019, 77 verdicts appeared on labour trafficking. Those verdicts referred to 41 cases. The larger number of verdicts is explained by the fact that several suspects were involved in some cases. Of the 77 judgments, 28 resulted in acquittal. This means that approximately 64% of the labour trafficking verdicts analysed herein resulted in a conviction for human trafficking. As indicated above, the conviction rates for sex trafficking in the Netherlands tend to be much higher. How, then, can we understand the relatively higher numbers of acquittals in labour trafficking? To answer this question, we have analysed the 28 verdicts in which the suspect was acquitted. Our analysis first looked at the motivation that judges gave for the acquittal and related this to the legal framework. In other words, we analysed whether judges refer to the 1) acts, 2) the means, or 3) the purpose of exploitation as motivation for acquittal. Table 3 presents the results of this analysis. Because multiple reasons for acquittal are stated in some verdicts, the total number reported below exceeds the total number of acquittals (28).

Table 3. Reasons for acquittal mentioned in the case law

Reason for acquittal	Number of times mentioned
Acts	5
Means	9
Purpose	28

1) The acts

In some cases, the acts as described in subsections 1 and 4 of Article 273f of the Dutch Penal Code could not be established. However, this was always accompanied by an inability to prove the purpose of exploitation. In addition, in two cases the causal relationship between the acts and the purpose of exploitation could not be established. For example, in a 2017 judgment, there was insufficient evidence to establish a causal relationship between the act of recruiting and the purpose of exploitation (Domestic Court Rotterdam 2017).

On their own, the acts described in subsections 1 and 4 of Article 273f of the Dutch Penal Code did not constitute grounds for acquittal in any of the 28 acquittals. The acts, therefore, cannot be considered a major obstacle in reaching a guilty judgment.

2) *The means*

On its own, the inability to prove the means was never a reason for acquittal. As was the case regarding the act, the inability to prove the means was always in combination with the inability to prove the purpose of exploitation. Usually, the court acquitted because the causality between the means and the purpose could not be established. In other words, the judges did find evidence for means being used, but none that the means were intentionally used for the purpose of exploitation.

An example of this was found in 2014, where the suspect was charged with labour trafficking. The suspect and the victim, both male, lived together. The suspect made the victim do all the household chores and treated him like a household slave. He used a lot of physical violence – to the extent that he beat the victim to death. The suspect was therefore not only facing charges of human trafficking, but also assault and homicide. The suspect was convicted of assault and homicide but acquitted for labour trafficking. The judges argued that

it can be concluded that the suspect used physical violence against [the victim]. However, based on the information in the file, it cannot be established that [the victim] was forced to work because of this physical violence. To the contrary, there seems to have been a reverse causal connection, where violence was used as a punishment for not doing certain chores correctly (Domestic Court Noord-Holland 2014).

It can be concluded that the absence or inability to prove coercive measures in itself rarely leads to an acquittal. Only in combination with the lack of sufficient legal and convincing evidence for the intent of exploitation or exploitation itself can the absence of proven coercion lead to an acquittal. Even if the coercive measures could have been proven in these cases, a conviction could not have occurred. This is probably because, as indicated above, abusing a vulnerable position is one of the means that can relatively easily be established: all it takes is the suspect's awareness of the vulnerable position of the victim. As a result, the standards in themselves do not constitute an explanation for the relatively high number of acquittals.

3) *The purpose of exploitation*

Table 3 indicates that the judges' primary reason to acquit a suspect stems from the lack of sufficient evidence of the purpose of exploitation. This was decisive in 25 of the 28 acquittals analysed herein. According to our analysis, this category can be divided into two situations. In the first situation, there is insufficient evidence available to confirm the facts as outlined in the charges, and therefore the purpose of exploitation cannot be proven. There is simply not enough proof. Cases in which there is only the testimony of a victim but no other evidence or testimonies do not lead to convictions. In other cases, there was enough proof that

there was exploitation and that another suspect was responsible for it, but there was not enough evidence to demonstrate that the suspect being charged had the purpose to exploit. In other words, the role of the suspect in the exploitation was not large or intentional enough to be able to speak to the purpose of exploitation, and hence of labour trafficking.

Other examples of the first situation can be found in cases where the exploitation had not taken place yet. This was found in a case concerning a Spanish mother who was suspected of trafficking her underage children to the Netherlands to work in the meat industry. When the children registered in the local municipality, the authorities noticed that their identity papers were forged to indicate that they were adults. As the children had not yet done any work and there was no information about the meat processing plant where they were meant to work, the employment agency that would have been the intermediary, the wages they would have received, the number of hours that they were meant to work, or the kind of work they would have done, the purpose of exploitation could not be established (Domestic Court Overijssel 2019).

In the second scenario, the judge rules that the charged facts *can* be legally and convincingly proven, but this does not automatically mean that the court can reach a proven guilty judgement. In these situations, the judge reviews whether the threshold for speaking of exploitation as human trafficking is met. As mentioned in the legal framework of human trafficking in the Netherlands, meaning is given to (A) the nature and duration of the employment, (B) the actual limitations for the victim(s), and (C) the economic benefit that is gained by the employer. There must also be a serious violation of physical and/or mental integrity and/or personal freedom. There must be an excess, which can also be an accumulation of less serious infringements.

One case from 2016 is a good illustration of not meeting the threshold for the nature and duration of the work. The workers were kept in a coercive and dependent situation because the employer did not provide them with enough work to make an independent living:

The court concludes from [the Filipino workers'] statements that they were not dissatisfied with the working conditions and wanted to work more than they did. Therefore, the core of the accusation is not that [the accused] let the Filipinos work, but that he provided them with too little work, with all its consequences. [...] This has led to very adverse consequences with regard to the Filipinos, for which the defendant may be held liable under civil law. In the opinion of the court, however, it cannot be judged that there was a situation of (labour) exploitation, as referred to in Article 273f of the Dutch Penal Code (Domestic Court Den Haag 2016).

Because of their vulnerable situation as illegal migrants, the victims felt they had no choice but to stay in this situation. Nonetheless, because the nature and duration of the work was not excessive, the court ruled that this could not be termed exploitation.

Another case provides an excellent example of where the threshold for neither the nature and duration of the work nor the employer's benefit were met. This case concerned three victims (two men and one woman) who worked for a male suspect in an extremely hot kitchen where roti, baras, and banana chips were made. The court considered that the defendant had violated many rules in various areas, including regulations on hygiene, working conditions, minimum wage, contributions, and illegal employment of foreign nationals. Although hefty fines can be imposed for these violations, this does not automatically mean that the suspect meets the threshold of labour trafficking. Instead,

[the court] finds that the circumstances under which [the illegal workers] worked were difficult, especially in Delft, but that the duration as it could be determined was not overly long (on average 9 hours including breaks [for meals]). [...] And although the defendant has enjoyed an undeniable economic benefit by illegally paying the declarants below the minimum wage, the hourly wage received by the declarants (around €6.25) is not so low in relation to the minimum net wage that this puts in place decisive weight (Domestic Court The Hague 2018).

As quoted below, the court also referred to the restrictions on freedom of movement. In this case, a man from Great Britain was acquitted of human trafficking. This is explained in the following way:

the victim declared that he was able to leave but that he did not because the suspect owed him money. Furthermore, he declared that he eventually left because he was fed up. The court distils from this that the victim was not limited in his freedom to act (Domestic Court Midden-Nederland 2015; emphasis added).

This is something that appears more often in verdicts. Restrictions on the freedom of movement are taken quite literally. If the victims are in chains or locked up, this is a clear sign of restriction of their freedom of movement. Judges find it more difficult to interpret situations where victims feel they have no other choice but to remain as a restriction on their activity.

In the previous cases, one or two out of the three elements (A, B, and C) did not meet the qualifying threshold as excessive enough. There are also cases where the acquittal is not explicitly related to elements A, B, or C, but that the whole situation was deemed not excessive enough. An example of this was found in a case from 2017. It concerned a Moroccan man who had paid smugglers to take him across the Mediterranean in a rubber boat to search for a better life as an illegal immigrant in the Netherlands. After a period of homelessness, he found work on a farm with the suspect. The suspect knew of his precarious situation and let him stay on the farm to do cleaning chores. The work he did on the farm was dangerous, and he did not have proper training or protection. This ultimately resulted in a serious

accident with steam. He went into a coma and when he awoke in the hospital, half of his body was covered with severe burns. The court ruled that

although it can be said that there was a socially undesirable work situation, the circumstances mentioned above did not yet constitute an infringement of the physical and mental integrity and personal freedom of [the victim] in the present case. [...] The file reveals a picture of a suspect who has crossed the boundaries of being a good employer. Although this is morally wrong, it cannot automatically be regarded as exploitation in the aforementioned sense. That this work situation ultimately resulted in an accident with severe consequences for [the victim] does not change the above (Domestic Court Overijssel 2017; emphasis added).

This means that although a work situation can be considered harmful, morally wrong, and socially undesirable, the threshold for making this labour trafficking is tested against the bar of human rights infringements. The court of The Hague explains how it interprets the threshold for exploitation amounting to human trafficking:

it is tested whether there are degrading conditions in which human rights are fundamentally violated. Because of this indicator, not every abuse in a labour or service relationship falls within the scope of human trafficking. Forced labour or services and slavery or practices comparable to slavery fall under human trafficking when someone works under significantly worse conditions or at a considerably lower wage than that of empowered employees, while there is no freedom of choice to stop. That the article is not intended for all abuse of a labour or service relationship is also clear from the placement of the article in the Criminal Code, namely in Title XVII – Crimes against personal freedom, before the article on slave trade (Article 274 Penal Code) and also from the punishment consisting of a prison sentence of no more than twelve years or a fine of the fifth category (Domestic Court The Hague 2018).

It appears that this subjective threshold is often not met in cases of labour trafficking. When it comes to sex trafficking, physical integrity violations are much more easily assumed because victims' bodies are involved in the work. In labour trafficking cases, it has become a threshold that is not easily established, as the guidelines for interpretation are much more diffuse.

All in all, it has become clear that problems with establishing the acts and the means are not reasons that help us understand the relatively high number of acquittals. They only play a decisive role in establishing the purpose of exploitation when the causality between the acts or the means and the purpose of exploitation cannot be proven. The primary explanation lies with problems in establishing the

purpose of the exploitation. The Supreme Court has provided clear guidelines, stating that the nature and duration of the work, the limitations for the victim, and the benefit for the employer must be weighed. However, the underlying yardstick against which these elements are measured constitutes a relatively high threshold for human rights violations and infringements of the personal integrity and personal freedom of the victim. Proving that the personal integrity or a victim's freedom is violated is difficult, whilst in sex trafficking cases it is more readily assumed.

Conclusions

Twenty years after labour trafficking's insertion in the Palermo Protocol, and 15 years after its criminalisation in the Netherlands, the time has come to take stock of labour trafficking in the Netherlands. Through the explorative analysis of over 80 investigative case files and reports in the Netherlands, we have been able to contribute to the limited, yet developing body of knowledge on the nature of labour trafficking. Focussing on two debates in the scholarly literature, we found that the involvement of organised crime groups in labour trafficking is limited. Our results are in line with those of van Meeteren and Van der Leun (2020), who argued for a distinction between the labour exploitation arising from economic opportunistic motives on the part of businesses and the labour exploitation that occurs in criminal environments. It seems that the bulk of labour trafficking in the Netherlands is nested in legitimate markets and committed by legitimate businesses and their owners for economic opportunistic motives. A corporate crime approach to labour trafficking, as advocated by Davies and Ollus (2019) may indeed help us understand if and how market processes create opportunities for labour trafficking.

The other scholarly debate that fed into the analysis was on the relationship with immigration. Our analysis showed that immigrants make up the vast majority of labour trafficking victims, but also a large share of the perpetrators. We argue that labour trafficking should largely be understood from the power differentials that result from labour migration and immigration policies. Our results provide support for scholars who argue that labour trafficking should largely be understood as a product of labour migration. We agree with van Meeteren and Bannink (2019), who made a plea for adopting a (transnational) social field approach to the study of labour trafficking that would enable us to better understand how vulnerability is created in a globalised world. A transnational social field approach would provide us with the opportunity to see how criminal employers operate in markets that are 'inherently tied to social inequalities associated with the negative impact of globalisation' (Marmo, Chazal 2016: 94).

In a recent systematic review, Bryant and Landman (2020: 17) concluded that 'nearly 20 years on from the ratification of the UN Trafficking Protocol, we do not

have concrete answers to the question what works to combat human trafficking.' When it comes to labour trafficking, there is an even greater lack of convictions and of knowledge on what explains why prosecutions are relatively unsuccessful. In this paper, we analysed unsuccessful prosecutions of labour trafficking. In doing so, we were able to generate knowledge on unsuccessful prosecutions that can assist in the future combat of labour trafficking. It turned out that proving the acts or the means was not found to be problematic. The primary reason to acquit suspects had to do with the purpose of exploitation. In some of these cases, there was insufficient evidence available to confirm the facts as outlined in the charges, a common problem that occurs in all kinds of criminal cases. However, we also found cases in which the charged facts could be legally and convincingly proven, but that the threshold for equating exploitation with human trafficking was not met. We showed that even though case law provides clear guidelines, the subjective threshold with regard to human rights violations is not as easily surmounted in labour trafficking as it is in sex trafficking. Whereas physical integrity violations can be assumed for sex trafficking, as it involves the body, it is much more difficult to determine when violations in other sectors of the labour market are 'bad enough' to be able to speak of human rights infringements.

NGOs and other organisations have done a tremendous job in calling attention to the crime of human trafficking. In doing so, they have usually pointed out the worst cases and argued that human trafficking should get the attention it deserves because it is a human rights violation. The crime has indeed internationally become recognised as a human rights violation and it is now high on all manner of policy agendas. However, the paradoxical outcome for the prosecution of labour trafficking is that it also entails a threshold against which abuses in the labour market are tested and often found not excessive enough. Coghlan and Wylie (2011: 1513) argued that anti-trafficking measures have the undesirable consequence of drawing a line between the 'deserving' and the 'undeserving' exploited. The result is that justice is denied to many migrant workers.

It is not our intention to argue that the threshold for labour trafficking should be lower. However, we do observe that it is too high to be met for many of the cases analysed herein, which do not originate from organised crime networks and where the means of coercion are related to power differentials stemming from the vulnerabilities inherent in immigration. For these cases – and they are plentiful – a human trafficking approach is probably not suitable. The problem is that there are not very many alternatives. In the Netherlands, and in many other countries, there appears to be a lack of sufficient legislation that specifically targets these cases of severe labour market abuses which are not severe enough to qualify as a violation of human rights. It certainly seems that states need to work on closing the gap between labour market violations punishable under administrative law and the crimes qualifying as labour trafficking.

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References

- Bélanger D. (2014). 'Labor migration and trafficking among Vietnamese migrants in Asia'. *The ANNALS of the American Academy of Political and Social Science* 653(1), pp. 87–106. Available online: <https://doi.org/10.1177/0002716213517066>.
- Bryant K. and Landman T. (2020). 'Combatting human trafficking since Palermo: What do we know about what works?'. *Journal of Human Trafficking* 6(2), pp. 119–140. Available online: <https://doi.org/10.1080/23322705.2020.1690097>.
- Cockbain E. and Bowers K. (2019). 'Human trafficking for sex, labour and domestic servitude: How do key trafficking types compare and what are their predictors?'. *Crime, Law and Social Change* 72(1), pp. 9–34. Available online: <https://doi.org/10.1007/s10611-019-09836-7>.
- Cockbain E., Bowers K. and Dimitrova G. (2018). 'Human trafficking for labour exploitation: The results of a two-phase systematic review mapping the European evidence base and synthesising key scientific research evidence'. *Journal of Experimental Criminology* 14(3), pp. 319–360. Available online: <https://doi.org/10.1007/s11292-017-9321-3>.
- Coghlan D. and Wylie G. (2011). 'Defining trafficking/denying justice? Forced labour in Ireland and the consequences of trafficking discourse'. *Journal of Ethnic and Migration Studies* 37(9), pp. 1513–1526. Available online: <https://doi.org/10.1080/1369183X.2011.623625>.
- Davies J. and Ollus N. (2019). 'Labour exploitation as corporate crime and harm: Outsourcing responsibility in food production and cleaning services supply chains'. *Crime, Law and Social Change* 72(1), pp. 87–106. Available online: <https://doi.org/10.1007/s10611-019-09841-w>.
- Dijk F.H. van and Unguraenu R.N. (2010). *Labour exploitation in Europe*. The Hague: SIOD.
- Doyle D.M., Murphy C., Murphy M., Coppari P.R. and Wechsler R.J. (2019). 'I felt like she owns me': Exploitation and uncertainty in the lives of labour trafficking

- victims in Ireland'. *The British Journal of Criminology* 59(1), pp. 231–251. Available online: <https://doi.org/10.1093/bjc/azy025>.
- Dwyer P., Lewis H., Scullion L. and Waite L. (2011). *Forced Labour and UK Immigration Policy: Status Matters?*. York: Joseph Rowntree Foundation.
- Esser L.B. (2019). *De Strafbbaarstelling van mensenhandel ontrafeld. Een analyse en heroriëntatie in het licht van rechtsbelangen* [Disentangling the criminalisation of human trafficking. An analysis and reorientation in light of legal interests]. Boom: Den Haag.
- Esser L.B. and Dettmeijer-Vermeulen C.E. (2016). 'The prominent role of national judges in interpreting the international definition of human trafficking'. *Anti-Trafficking Review* 6, pp. 91–105.
- Farrell A., Bright K. and Vries I. de (2020). 'Policing labor trafficking in the United States'. *Trends in Organized Crime* 23(1), pp. 36–56. Available online: <https://doi.org/10.1007/s12117-019-09367-6>.
- Farrell A., DeLateur M.J., Owens C. and Fahy S. (2016). 'The prosecution of state-level human trafficking cases in the United States'. *Anti-Trafficking Review* 6, pp. 48–70. Available online: <https://doi.org/10.14197/atr.20121664>.
- Gadd D. and Broad R. (2018). 'Troubling recognitions in British responses to modern slavery'. *The British Journal of Criminology* 58(6), pp. 440–446. Available online: <https://doi.org/10.1093/bjc/azx082>.
- Goodey J. (2008) 'Human trafficking: Sketchy data and policy responses'. *Criminology and Criminal Justice* 8(4), pp. 421–442.
- Kangaspunta K. (2015). 'Was trafficking in persons really criminalised?'. *Anti-Trafficking Review* 4. Available online: <https://doi.org/10.14197/100>.
- Kaye J., Winterdyk J. and Quarterman L. (2014). 'Beyond criminal justice. A case study of responding to human trafficking in Canada'. *Canadian Journal of Criminology and Criminal Justice* 1, pp. 23–48.
- Keo C., Bouhours S., Broadhurst R. and Bouhours B. (2014). 'Human trafficking and moral panic in Cambodia'. *The ANNALS of the American Academy of Political and Social Science* 653(1), pp. 202–224.
- Marmo M. and Chazal N. (2016). *Transnational Crime & Criminal Justice*. London: Sage.
- Matos M., Gonçalves M. and Maia Â. (2018). 'Human trafficking and criminal proceedings in Portugal: Discourses of professionals in the justice system'. *Trends in Organized Crime* 21, pp. 370–400. Available online: <https://doi.org/10.1007/s12117-017-9317-4>.
- Meeteren M. van and Bannink S. (2019). 'A transnational field approach to the study of labor trafficking'. In J.A. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave MacMillan, pp. 1751–1763.
- Meeteren M. van and Leun J. van der (2021). 'How organized is labour trafficking? On the involvement of organized criminal groups in labour exploitation'. In A.M. Rodrigues and M. João Guia (eds.) *New Forms of Human Trafficking*.

- Springer, forthcoming.
- Meeteren M. van and Wiering E. (2019). 'Labour trafficking in Chinese restaurants in the Netherlands and the role of Dutch immigration policies. A qualitative analysis of investigative case files'. *Crime, Law and Social Change* 72(1), pp. 107–124. Available online: <https://doi.org/10.1007/s10611-019-09853-6>.
- Roosblad J., Ganzinga M., Plooi P. and Scholten T. (2017). *Nationaal Dreigingsbeeld 2017. Mensenhandel - Arbeidsuitbuiting, criminele uitbuiting en gedwongen dienstverlening* [National Threat Assessment 2017. Human Trafficking – Labour exploitation, criminal exploitation and forced services]. Den Haag: iSZW.
- Skrivankova K. (2010). *Between Decent Work and Forced Labor: Examining the Continuum of Exploitation*. York: Joseph Rowntree Foundation.
- Strauss K. and McGrath S. (2017). 'Temporary migration, precarious employment and unfree labour relations: Exploring the 'continuum of exploitation' in Canada's temporary foreign worker program'. *Geoforum* 78, pp. 199–208.
- Strockmeijer A., Beer P. de and Dagevos J.M. (2017). 'Mobiliteit binnen de perken. Zeer geringe positie-verbetering van werknemers uit Midden- en Oost-Europa bij een langer werkverleden' [Mobility with limits. The very limited improvement of the position of labour migrants from Central and Eastern Europe with a longer work history]. *Tijdschrift voor Arbeidsvraagstukken* 33, pp. 384–400. Available online: <http://hdl.handle.net/1765/123351>.
- Tallmadge R. and Gitter R.J. (2018). 'The determinants of human trafficking in the European Union'. *Journal of Human Trafficking* 4(2), pp. 155–168. Available online: <https://doi.org/10.1080/23322705.2017.1336368>.
- Tyldum G. (2013). 'Dependence and human trafficking in the context of transnational marriage'. *International Migration* 51(4), pp. 103–115.
- Verhoeven M., Gestel B. van, Jong D. de and Kleemans E. (2015). 'Relationships Between Suspects and Victims of Sex Trafficking. Exploitation of Prostitutes and Domestic Violence Parallels in Dutch Trafficking Cases'. *European Journal on Criminal Policy and Research* 21(1), pp. 49–64. Available online: <https://doi.org/10.1007/s10610-013-9226-2>.
- Verhoeven M.A., Gestel B. van and Jong D. de (2011). *Mensenhandel in de Amsterdamse raamprostitutie. Een onderzoek naar aard en opsporing van mensenhandel* [Human trafficking in the Amsterdam red light district. A study on the nature and criminal investigation of human trafficking]. Den Haag: Boom Juridische Uitgevers.
- Vuuhko M. (2018). 'Hardened professional criminals, or just friends and relatives? The diversity of offenders in human trafficking'. *International Journal of Comparative and Applied Criminal Justice* 42(2–3), pp. 177–193. Available online: <https://doi.org/10.1080/01924036.2017.1391106>.
- Vries I. de (2019). 'Connected to crime: An exploration of the nesting of labour trafficking and exploitation in legitimate markets'. *The British Journal of Criminology* 59(1), p. 209–230. Available online: <https://doi.org/10.1093/bjc/azy019>.

Weitzer R. (2014). 'New directions in research on human trafficking'. *The Annals of the American Academy of Political and Social Science* 653(1), pp. 6–24. Available online: <https://doi.org/10.1177/0002716214521562>.

Internet sources

Dutch National Rapporteur (2021). Dadermonitor Mensenhandel 2015-2019, Nationaalrapporteur.nl. Available online: <https://www.nationaalrapporteur.nl/publicaties/rapporten/2021/01/21/dadermonitor-mensenhandel-2015-2019> [23.03.2021].

Court decisions

Appeal Court 's-Hertogenbosch, 30.01.2008. ECLI:NL:GHSHE:2008:BC2999 and ECLI:NL:GHSHE:2008:BC3000.

Appeal Court Leeuwarden, 6.10.2009. ECLI:NL:GHLEE:2009:BJ9385.

Domestic Court Den Haag, 8.03.2016. ECLI:NL:RBDHA:2016:2367.

Domestic Court Midden-Nederland, 14.07.2015. ECLI:NL:RBMNE:2015:5690.

Domestic Court Noord-Holland, 5.06.2014. ECLI:NL:RBNHO:2014:5212.

Domestic Court Overijssel, 16.10.2017. ECLI:NL:RBOVE:2017:3888.

Domestic Court Overijssel, 20.05.2019. ECLI:NL:RBOVE:2019:1658.

Domestic Court Rotterdam, 28.07.2017. ECLI:NL:RBROT:2017:6451.

Domestic Court The Hague, 19.10.2008. ECLI:NL:RBDHA:2018:12549.

Domestic Court The Hague, 23.03.2018. ECLI:NL:RBDHA:2018:3905.

Supreme Court, 27.10.2009. ECLI:NL:HR:2009:BI7097 and ECLI:NL:HR:2009:BI7099.



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Debt bondage in human trafficking: US agriculture and Thailand fisheries primed for labour exploitation

Niewola za długi: rolnictwo Stanów Zjednoczonych i rybołówstwo Tajlandii gotowe na pracę przymusową

Abstract: There is a need for a transnational framework that would redefine labour trafficking in terms of debt bondage and challenge the privileges of legal contracts at the expense of migrant workers' human and labour rights. We argue that anti-trafficking legislation in the US and Thailand is expansive in definition, but its application is too restrictive to deliver justice to the victims. The debt-labour industry easily becomes a form of transnational labour trafficking. We examine Thailand as an origin and destination country for labour trafficking through two cases involving the US and Thailand though a Marxist and liberal analysis that considers critical race theory. The limitations in which these cases could not achieve full justice represent the challenges for transnational labour rights for noncitizen migrant workers. We examine the Global Horizons agricultural labour case, 2002–2012, and Thailand's fishing sector, which led to its Tier 3 ranking in the 2014 Trafficking in Persons Report. This report was used in international campaigns to pressurise corporate industries and retailers to change their code of conduct, necessitating considerations of the effectiveness of supply chain responsibility.

Keywords: trafficking, debt-bondage, corporate social responsibility, Global Horizons, Thailand, fishing, agriculture

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Abstrakt: Zarówno amerykańskie, jak i tajskie przypadki łamania praw pracowniczych i praw człowieka wykorzystywanych do pracy przymusowej opierają się na systemie związania długiem (debt bondage). Można wręcz powiedzieć, że oparty na umowach oraz czasowych wizach migracyjnych do pracy amerykański system imigracyjny jest częścią procedury handlu ludźmi do pracy przymusowej. Stąd istnieje potrzeba stworzenia ponadnarodowych ram, które zdefiniowałyby na nowo handel ludźmi do pracy przymusowej, uznając za jego element również związanie długiem (czy też inaczej niewolę za długi). Podważyłoby to legalność zawieranych obecnie umów naruszających prawa człowieka i prawa pracownicze osób migrujących. Przepisy dotyczące zwalczania handlu ludźmi w USA i Tajlandii są obszerne, ale ich stosowanie jest zbyt restrykcyjne i nie pozwala zagwarantować pokrzywdzonym poczucia sprawiedliwości. Związanie długiem dość łatwo jest wykorzystywane w międzynarodowym handlu ludźmi do pracy przymusowej. Autorzy artykułu badaniu poddali Tajlandię jako kraj pochodzenia i kraj docelowy handlu ludźmi. Przy wykorzystaniu analizy marksistowskiej i liberalnej, a zatem uwzględniając krytyczną teorię rasy, zbadali dwie sprawy dotyczące Stanów Zjednoczonych i Tajlandii. Zidentyfikowane w nich ograniczenia utrudniające wymierzenie sprawiedliwości stanowią wyzwanie dla transgranicznych praw pracowniczych pracowników migrujących. Są to sprawy dotyczące wykorzystania do pracy w rolnictwie przez Global Horizons w latach 2002–2012 oraz w tajlandzkim sektorze rybołówstwa, który w raporcie *Trafficking in Persons* z 2014 roku został sklasyfikowany w trzecim, najniższym poziomie ochrony (Tier 3). Raport ten został wykorzystany w międzynarodowych kampaniach mających na celu wywarcie presji na globalne korporacje i sprzedawców detalicznych, aby zmienili sposób postępowania i zastanowili się nad skutecznością oraz swoją odpowiedzialnością w ramach łańcucha dostaw.

Słowa kluczowe: handel ludźmi, niewola za długi, społeczna odpowiedzialność biznesu, Global Horizons, Tajlandia, rybołówstwo, rolnictwo

Introduction

According to the International Labour Organization (ILO 2017b), of the 40.3 million victims of human trafficking, 24.9 million people were in forced labour situations. Approximately half of those in forced labour were also in debt bondage, a proportion that increases to 70% for adult victims forced to work in agriculture, domestic work, or manufacturing. Labour and human rights violations in overseas labour trafficking cases are marked by the ease in which debt bondage relies on a system of contracts that use laws to legitimise its practices. We must change our analytical starting point toward a transnational justice framework, examining multiple countries' connectedness.

Debt migration bound by contracts is not free nor fair labour. Most labour debt contracts often charge exorbitant recruitment fees which far exceed the cost of migration and ordinary, legal recruitment services in the worker's country of origin for the purpose of profit. The assumption that economic migrants made the choice to migrate and willingly incur debt and enter deceptive work contracts ignores the macroeconomic structures that privileges the legitimacy of labour contractors over the migrant workers' human and labour rights. Moreover, the

assumption that consent is equated with free labour is based on the free market. Caraway stated that

the value of these conceptual critiques [against the free market] is their insistence on transparency in language and labour practices and their ability to expose the political implications of doing business as usual in the lean, mean, and mobile, global marketplace (Caraway 2006: 310).

These labour contracts fulfil the demand for the global impoverished to find work abroad. They are predicated on buying jobs, paying high recruitment fees, and causing debt migration, which are situations in which workers and their households incur significant debt in order to find work abroad. Migrant workers searching for economic opportunities are then indebted to banks, brokers, or their employers. When the debt is connected to their brokers or employers – and workers are unable to quit their jobs or work for no pay or below average pay, yet must continue to work in order to service their debt – debt migration becomes debt bondage, a form of forced labour.

Furthermore, debt migration is a form of discriminatory, predatory inclusion of often racialised foreigners through systemic vulnerabilities of debt, dispossession, and the disciplining the potential of labour organising into a category of legally contracted ‘unfree labour’ that operates in a grey zone of regulated labour migration, recruitment fraud, and debt bondage (LeBaron 2014). A review of the state of knowledge about cases of trafficking in the United States reveals that most known labour trafficking is predominantly based on reporting systems which have reported cases on adult male victims from Mexico, India, and Thailand in commercial agriculture and the restaurant, tourism, and hospitality industry (Asanok v. Million Express Manpower 2007; Panigabutra-Roberts 2012: 143–144). From 2013 to 2016, 125 arrests of labour trafficking perpetrators the top three categories of victims in the United States confirms this fact with the addition of the group home care industry (Bracy, Lul, Roe-Sepowitz 2019). Scholars have become more critical in how international labour migration is predicated on a neoliberal political economy based on the exploitation of foreigners that actively cultivates precariousness in workers’ livelihoods, trading human and labour rights in exchange for remittances and corporate supply chain profiteering (Banki 2016; Schierup, Jorgensen 2016; Peksen, Blaton, Blaton 2017).

We argue that anti-trafficking legislation is expansive in definition, but its application is too restrictive an avenue for delivering justice to the victims and its liberal premises often leave the structures of discrimination and labour justice under-examined. The trafficking standards required by criminal law are often so high that many cases are not prosecuted at all. We focus on the social experiences of debt bondage, changes in the legal definitions of trafficking to include debt bondage and attempts at prosecuting corporations as a judicial anti-trafficking measure that should facilitate corporate social responsibility (CSR). We examine three different cases involving the US and Thailand that represent challenges for

transnational justice: 1) Global Horizons, 2002–2012; 2) Thailand's 2014 Tier 3 ranking in the Trafficking in Persons (TIP) Report due to the fishing and seafood industries; and 3) the use of international pressure to push industries toward responsible supply chain production and CSR.

We examine and challenge the theoretical assumptions of labour trafficking and its remedies of CSR by combining Marxist and liberal frameworks in anti-trafficking with critical race theory. Under the conditions of neoliberal global capitalism, migration is a political force that reorders society itself, a new structural racism that denies the democratic rights afforded by virtue of citizenship by targeting migrants, immigrants, and 'internally racialised others' (Bhambra, Medien, Tilley 2020; Jonsson 2020). The fundamental premise of modern neoliberal labour migration is that workers have a choice in signing contracts for work, debt accumulation, and international migration and that they accept their legal status as foreign noncitizen others working in another country, in which they will not be afforded the same rights as its citizens (Jonsson 2020). Simmons and Lloyd (2010) argued that states selectively implement competing dominant frameworks of anti-trafficking (as either victim protection, human rights, or transnational crime) only when aligned with the countries that they have the greatest economic and political incentives to do so, which is the case for Thailand after its designation of Tier 3 in the United States Trafficking in Persons Report (2014) and the subsequent impact on seafood exports. CSR remedies use a liberal framework that does not challenge the capitalist legal structure, enabling debt bondage.

1. Legislation defining debt bondage and labour trafficking

Anti-trafficking legislation's interpretive applications for victims rely on the interlocking liberal assumptions of the lack of choice, the threat to the victim or family members, and the narrow definition of a trafficking victim. However, the signing of a work contract can also be understood in Marxist terms as a legal fiction that assumes formal freedom informed equality between parties, but is in fact substantive inequality (Fudge 2018). Does the signing of contracts actually represent a choice? In contrast to Marxist frameworks, a liberal framing of anti-trafficking in modern-day slavery additionally assumes a state of being in which victimhood is defined by the criterion that victims are dominated by their traffickers (be they brokers, employers, etc.), but the economic and legal structures are left unquestioned (Bales 2008; Fudge 2018).

What follows are the international and national legal definitions that demonstrate how debt bondage and human trafficking are determined by concepts of choice/consent and assumed victim categories.

The Palermo Protocol defines trafficking in persons as:

The recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation' (U.N. Protocol to Prevent 2000: *supra* note 43, Art. 3a).

Article 3 states that 'the consent of a victim of trafficking in persons to the intended exploitation [...] shall be irrelevant'. Although circumstances where consent is achieved under duress are present in trafficking, legalised labour trafficking hinges on the consent provided via signed labour contracts.

Additionally, the Palermo Protocol's gendered language limits trafficking discourse around victimisation primarily to female victims and countries of origin, transit, and destination (Azis, Wahyudi 2020). The Protocol's Statement of Purpose specifically states that its primary purpose is 'to prevent and combat trafficking in persons, paying particular attention to women and children.' Exploitation is defined to 'include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery' (U.N. Protocol to Prevent 2000: Article 2, Article 9). By placing women and children and prostitution at the forefront of the minimum standards for anti-trafficking, adult male victims of labour trafficking become secondary, deprioritised victims.

Questions remain, however, as to how to determine when debt labour also amounts to trafficking. In 2000, the United States passed the Trafficking Victims Protection Act of 2000 (TVPA). The Act itself is reauthorised every four years to refine definitions, set priorities, and ensure budget appropriations are in place to support the multitude of programmes and services that are fiscally supported by the Act. The Act initially set forth several key definitions of trafficking. The TVPA identifies labour trafficking in persons as

the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery [...] (United States of America 2000, Article 22 Section 7102: 8).

The TVPA further identifies that

Bonded Labour occurs when a debtor pledges personal services as security for debt and the reasonable value of those services is not applied toward repayment of the debt, or the length and nature of those services are not limited and defined (22 United States Code Statute § 7102: 4).

The TVPA defined forced labour to include psychological coercion through fraud, threats of deportation and criminal or civil repercussions, and limiting worker mobility through the taking of passports, which adversely affects commercial trade

and global labour markets.¹ Though the definition of trafficking was expansive and included both physical and psychological coercion, it did not acknowledge that initial consent of workers to enter into exploitative work conditions and debt bondage can be considered trafficking. Before debt bondage became acknowledged, the legal framework was coercion and fraud. In contrast to sex trafficking, the underlying premise assumes that trafficking cannot occur if there is evidence of consent.

Though the ILO (2009) developed an extensive list of indicators inclusive of issues of debt, many nations were slow to adopt debt bondage as an aspect of labour trafficking. In 2017, Thailand's 2008 anti-trafficking law was amended to include debt bondage as an additional means of defining forced labour in the Anti-Trafficking in Persons Act; No. 3; 2017 (Royal Government of Thailand, 2017; Liberty Asia 2017). However, it still fails to provide protection to victims of forced labour who have not been trafficked. Foreign workers in Thailand's fishing sector routinely incur debts due from fees for the cost of transportation, food, documentation, administration, and recruitment. In contradiction to anti-trafficking law, the Thai legislation to employ foreign workers that is discussed below makes it legal for employers or brokers to make 10% monthly salary deductions to pay for the costs of migration and recruitment fees, which include various costs of migration (Royal Ordinance 2017: section 49). Brokers and employers, however, often deduct more than the legal amount. The formal choices made by workers suggest consent, even when they are met with unacceptably exploitative circumstances abroad. Debt is also why victims are reluctant to leave their employers even when they are unpaid and abused in the workplace. This reluctance is often mistaken for consent and is key to understanding the psychological and economic coercion at hand.

Given the gaps in the research and against the assumptions of the dominant liberal market that labour migration under debt is voluntary, we examine the dual industry of debt migration and labour subcontracting (the hallmark of labour trafficking), by examining anti-trafficking legal practices with regard to situations of debt bondage and supply chain responsibility in the United States and Thailand.

2. Methodology

We ask three questions about debt bondage in labour trafficking: 1) How have definitions of labour trafficking been applied in debt bondage cases? 2) To what degree

¹ TVPA (2000), 22 U.S.C. § 7101., Sec. 102 (3, 4). Trafficking in labor includes peonage, slavery, and involuntary labor, servitude, or forced labor. TVPA (2000), 22 U.S.C. § 7102., Sec. 103 (8B) TVPA (2000), 22 U.S.C. § 7109., Sec. 112, Stat. 1589 (2, 3). TVPA (2000), 22 U.S.C. § 7101., Sec. 102 (12). TVPA (2000), 22 U.S.C. § 7109., Sec. 112, Stat. 1592.

is labour justice delivered through prosecution? and 3) How can we understand the limitations of corporate liability remedies for supply chain CSR?

This paper examines two case studies in labour trafficking involving Thailand as the origin or destination country for labour trafficking. The first case uses both primary research and secondary reports, Global Horizons Agricultural Thai workers in the United States, is an analysis of documents, an ethnography with 45 in-depth, semi-structured interviews with 1) former workers conducted in Thailand, Utah, and Hawaii, 2) NGOs and legal aid organisations in Utah and Los Angeles, and 3) law enforcement and social workers working on the case in Thailand conducted from 2013 to 2015 by the first author. The second author utilises practical experience and knowledge gained working as an attorney at the Thai Community Development Center in Los Angeles from 2007 to 2012. The reference materials include the organisational files and individual case files of approximately 300 workers, containing case work notes, interviews, and civil and immigration documents (Institutional Review Board). By examining key reports, court cases, and media coverage, the second case study focusses on how corporate liability was relatively unsuccessful after Thailand became a Tier-3 country in the US TIP Report in 2014 due to forced labour and severe abuses in the longshore fishing industry.

3. The challenges of justice for victims in anti-trafficking prosecution: The case of Global Horizons Manpower

Debt migration is an industry where labour recruiters, including their transnational agents, obtain cheap labour and profit by charging exorbitant fees from workers who have no bargaining power in the fee structure. In 2003, hundreds of Thai migrant workers began migrating to the US via H2A (temporary agricultural guest worker) visas to perform agricultural work for the labour recruitment company Global Horizons. The workers recruited from rural villages in Thailand were guaranteed jobs in exchange for illegally high recruitment fees. Workers with dependent families were targeted because they had access to land that they could use as collateral to obtain bank and black-market loans to pay the recruitment fees and a strong desire for higher earnings due to their household needs (Thai Community 2003–2012).

When the Thai workers arrived in the US, many found that there was little pay or no work. All workers' passports were confiscated to prevent escape. With the stress of paying off their debts, the workers escaped, seeking help when there was not enough work or pay or when they were abandoned on remote farms. The nature of the work and living conditions varied by location. Some workers were under 24-hour armed guard and without running water or food; in other cases,

when there was no work they were simply abandoned on isolated rural farms. Some escaped to find undocumented work in desperation to pay off their debts at home (TCDC 2003–2012; Bowe 2010). According to several intake interviews with the Thai Community Development Centre (TCDC), if the workers had known the true working hours and pay, they never would have consented to working in the US. Once overseas, the workers were bound by debt. However, the rigid nature of the liberal anti-trafficking framework makes the burden of proof for the variation of each individual case very difficult to prosecute (United States v. Orion, 2010; Zimmerman 2012).

Most often, fraud and deception combined with debt leads to debt-bondage forms of labour trafficking, but signed contracts suggest consent of free labour. Additionally, proving the monetary connections between Thailand-based brokers and Global Horizons was difficult. Lastly, another obstacle to prosecution was that most workers were in fear of Global Horizons; they did not report problems to the US or Thai authorities because termination of their employment would have led to deportation with no guarantee of the debts being resolved (TCDC 2005–2011; Martin, Ruhs 2011: 177–178).

The workers escaped from various farms throughout the US and sought assistance at the Thai CDC, a Los Angeles-based NGO that provided victim-centred social services, including legal assistance for T Visas. Receiving a T Visa indicates that the US Citizenship and Immigration Services recognises the worker as a victim of trafficking, though successful prosecution is not guaranteed. Even though the case was reported in 2003, it was not seriously investigated until 2009, signalling an increased interest in prosecuting forced labour trafficking in the US. In the six years that had passed, Global Horizons deported workers, hid financial assets, and closed their United States operation. Workers fearing Global Horizons became informants for the company, thereby hindering the investigation and limiting the success of prosecution (TCDC 2005–2011).

In 2010, the United States Department of Justice issued an indictment against Global Horizons for trafficking 400 Thai migrant workers, in what is described as the largest human-trafficking case ever brought forward by the US government (Chatterjee 2010; Kerr 2010; Niese 2010). In 2011, a federal grand jury indicted the eight defendants on forced labour and other charges in connection with an intentional scheme to charge high recruitment fees to indebted Thai villagers, and to use the fear of debt and the loss of home and land to coerce labour. In 2012, in light of the dismissal of a related case, *United States v. Sou* (2011), despite the six defendants pleading guilty, prosecutors filed for dismissal due to a lack of evidence (Zimmerman 2012), concluding that trafficking and debt bondage could not be proven beyond a reasonable doubt (Moosy 2012).

Whilst sex trafficking cases are easier to indict, labour cases are more difficult. In 2012, the United States 'initiated a total of 128 federal human trafficking prosecutions Of these, 162 defendants engaged predominately in sex trafficking and [only] 38 engaged predominately in labour trafficking' (United States Department

of State 2013: 382). Cases like Global Horizons are important because they demonstrate the limits of governments' capacity to prosecute and define the extent to which transnational debt constitutes a 'threat' to person and safety.

According to LeBaron (2014: 773),

The July 2012 US District Court judgement on the global case underlined employers' use of debt as a coercive form of labour discipline in the US market. [...] the judgement stated that after the workers complained to Global and Valley Fruit that their pay was insufficient to pay off their substantial debt, Valley Fruit reduced their hours of work and Global threatened to deport them and transfer them to a different farm.

When the workers complained about their work and living conditions, 'they received lesser hours at work and continued to suffer from Global's harassment.' Further, the Thai workers were forced to 'engage in orchard tasks that were more difficult than those assigned to the workers of Mexican descent' as well as working longer hours' (Equal Employment 2011: 2).

Central to the case were the issues of deception, the broker company's knowledge and use of debt, and the workers' under-payment. The recruiter promised in addition to the high wage a guaranteed full-time work contract for a period of three years, when in fact they often deported workers after their three-month work period of part-time work, especially if they did not pay a renewal fee to Global Horizons.² Recruiters further deceived workers by promising a wage of approximately 9–10 USD per hour, with the loan taken out for the recruitment fee supposedly being paid back over the course of one year, when in fact the workers often earned less. The Thai workers had each paid a recruitment fee of 10,000–29,688 USD to the Thailand-based recruiter by acquiring loans inside and outside of traditional banks, sometimes with interest rates in the triple digits (TCDC 2005–2011; Davidson 2010).

The legal limit for recruiting fees in Thailand was 65,000 THB (approximately 1,548 USD in 2005); the employment contracts excluded any mention of the actual fees charged. In particular, the recruiting fee was paid to local regional recruiters either in cash and/or promissory monetary loan contracts with banks through another layer of third-party agents of the recruiter, who acted as loan sharks. Family members were often guarantors of the bank loans, with property as collateral. Furthermore, contract fees and other costs for migrant work were passed through illegal deductions to the H2A Global Horizons worker, rather than the employer. The calculations revealed that the wages received never took them out of debt, even after they had fulfilled their period of contracted work. If their farm employers had paid the minimum amount necessary, with consideration of the

² An excellent source for profiles on Thai labor recruiting companies is *Understanding Recruitment Industry in Thailand* (Nitthatt Theeravit et al. 2010).

contract fee, the real wage would have been well over 400 USD/hour for at least 12 months (Schmitt 2007: 180–181).

The confluence of capitalist structures for banking, international labour sub-contracting, and restrictive immigration mechanisms contributed to the debt bondage industry. Debt bondage forms of labour trafficking prey on vulnerable, desperate workers who are unaware of the exact terms of their visas and contracts. The Thai workers who were recruited were particularly vulnerable due to the illegal recruitment fees, large bank debts, short work periods, poor literacy and English language skills, and the risk of deportation due to expiring work visas. The workers were routinely deported for this reason (TCDC 2007–2010). Motivated by profit, Global Horizons would allow their work visas to expire and deliver the workers for deportation, only to recruit again them and charge new contract fees months later.

Whilst the criminal case is predicated on the liberal framework of demonstrating absolute terms of being dominated and the lack of choice, some of the tenets of the civil labour violation case were rooted in a more Marxist framing of justice for the workers. Multiple civil cases were also pursued. The US Department of Labor won 347,000 USD in unpaid wages on behalf of 88 Thai workers (Equal Employment 2011). The US Equal Employment Opportunity Commission (EEOC) utilised civil laws on employment discrimination to combat human trafficking and deliver justice with multi-million-dollar settlements between various farm growers in Hawaii and Washington for hundreds of workers. Despite the criminal case's dismissal, the civil case brought by the EEOC was able to recompense the Global Horizon workers via various monetary settlements from the farms directly (US EEOC 2016). Labour discrimination laws thus became a tool to deliver compensation as a form of justice. Foreign worker quotas created incentives and expectations for employers to seek out and receive higher quotas.

For example, recruiter global Horizons was found by the US Department of Labor to have rejected qualified US workers to fill apple picking jobs because Global preferred Thai guest workers. Mordechai Orian, the president of Global Horizons, testified during a July 2007 trial that Thais were preferred because 'they work really hard' and were less likely to abscond or leave their employers than local workers, who leave to earn higher wages elsewhere (Martin, Ruhs 2011: 177–178).

The EEOC cases in both Hawaii and Washington ended in settlements, providing a type of justice for workers outside the criminal setting. However, not all workers were included as EEOC claimants due to the dates and locations of the work they performed. The Hawaii settlements included a 2.4 million USD payout for over 500 workers, whilst the Washington settlement amounted to 325,000 USD for 105 claimants (US EEOC 2014, 2016, 2020).

Aside from the juridical aspects, the Global Horizon case was instructive in understanding the implementation of the TVPA. In the United States, recent TVPA legislation demonstrates that 'adjusting' one's legal status from trafficked

victim to legal permanent resident appears on the surface to protect victims of trafficking. The conditions for qualification, however, function to control commerce and immigration. There were over 1,000 Thai workers subcontracted by Global Horizons and over 600 workers were involved in the anti-trafficking prosecution; approximately half received T Visas (TCDC 2005–2012). From 2008–2018, 477 Thai citizens received T Visas (United States Citizenship 2020).

Furthermore, the TVPA continues to emphasise policing over protection (Sharma 2005). In addition to the requirement to report and cooperate with law enforcement toward prosecutions, the permanent resident regulations require a demonstration of ‘good moral character’, and when failing to do so, the migrant – categorised as a victim under the TVPA – would potentially be deported. US legal scholars suggest that the enforcement of the TVPA has focussed on law enforcement and the procurement of witnesses for prosecution at the detriment of providing services and protection for the victims of trafficking (Sadrudin, Walter, Hidalgo 2005; Chacón 2006). NGO groups in the United States have also called upon law enforcement to re-examine their anti-trafficking policing practices, as they have resulted in the wrongful arrest and conviction of victims (Alliance to End Slavery and Trafficking 2020).

4. Debt bondage in Thailand’s fishing sector

In contrast to the US, Thai labour recruitment debt contracts paid through deductions is legal. Even though Thailand’s anti-trafficking law was amended in 2017 to include debt bondage as an additional means in which people can be placed into forced labour, it still fails to provide protection to victims of forced labour who have not been trafficked (Human Rights Watch 2018). Several characteristics that may create challenges to enforcement for anti-trafficking state government in the fishing sector in many countries include 1) pervasive Illegal Unreported and Unregistered (IUU) fishing practices leading to difficulties in international and domestic waters enforcement, 2) unregulated multiple labour broker and cross-border smuggling practices, 3) loopholes and contradictions between international seafaring labour contract law, national laws, and local provincial port practices for immigration and labour standards protection, and 4) the lack of traceability for catches in an industry featuring subcontractors and middlemen (ILO 2013; Greenpeace 2016; Marschke, Vandergeest 2016).³ Thailand’s challenges for enforcement stem from

³ Illegal longshore fishing vessels will register multiple national flags to ‘fly a flag of convenience’, making use of international treaties that may prohibit some countries from boarding and inspecting other countries’ vessels. In other cases, if there are any contracts at all, these longshore contracts might be signed in other countries using lower minimum standard laws. Additionally, as in the agricultural sector, labor standards for the fishing sector is often exempt from regular national labour standards and protections for wages and hours

the fact that although national laws exist, provincial ports often practice local registrations outside the national system (i.e. creating village-level documents, fees, and foreign worker registries for undocumented individuals, local police immunity fees using sticker/card systems). This paper focusses on the fourth challenge with regard to CSR.

In the fishing industry cases, traffickers usually exploit foreign male workers aged under 15 to over 50 through debt-based coercion, deceptive recruitment practices, and other means (ILO 2013; Jampawan 2018). Vessel owners, brokers, and senior vessel crew traffickers engage in forced labour on Thai and foreign-owned fishing boats. Some workers are paid little or irregularly, incur debts from brokers and employers, work as much as 18 to 20 hours per day for seven days a week, and do not have adequate food, water, or medical supplies. Some boat captains threaten, beat, and drug fishermen to work longer (United States Department of State 2020). In Thailand, the typical flow of labour migration in the sector is as follows: 1) a local broker offers a job in construction or manufacturing for a recruitment fee of 3,000–8,000 THB (100–268 USD);⁴ 2) lacking the financial means, the workers therefore agree to wage deductions without documentation (employers often work with the broker to make debt bondage arrangements); 3) broker #1 takes workers to the Thai border to meet broker #2; 4) broker #2 houses (with guards), transports, and sells workers to an employer, who is a boat owner or captain (here they realise they are to be sent into fishing); 5) the work crew is taken by tour boats for approximately 8 days to deep-sea vessels; and 6) the workers discover they are to work for at least one or two years with no days off. The workers had no idea that they would work in the fishing sector; the data show that the majority of Myanmar and Cambodian workers in Thailand's fishing sector (average 90%) were working on boats for the first time and that approximately 93.8% never signed a contract (ILO 2013: 30, 45–51). Furthermore, 55.3% of workers were undocumented (ILO 2013: 36).

The Thai Royal Ordinance (2017: section 42) proposes zero recruitment fees for migrant workers in Thailand, which typically means that employers going through official channels will pay the costs of migration and/or recruitment to the broker company. However, in practice, those costs are often either paid in the home country or later paid by the workers through deductions. Both in Thailand and neighbouring countries, definitions of the recruitment fee are unclear; the costs of migration and the work permit fees are often included in the fees. Industries marked by high numbers of undocumented workers, like in the seafaring sector, are even more vulnerable to debt bondage. Many of the victims in the Thai fishing

due to the claim that this is temporary, seasonal work that relies on environmental factors in harvesting/catching and cannot follow regular working hours (ILO 2013; Greenpeace 2016).

⁴ The authors estimate that in 2016, the average daily minimum wage in Myanmar was approximately 2.70 USD and the average monthly salary with no days off was 81 USD. Therefore, the recruitment fee of 268 USD is almost 3.5 months' minimum-wage pay. Available online: <https://tradingeconomics.com/myanmar/minimum-wages>.

cases arrived indebted to their employers or brokers from Myanmar and Cambodia, looking for economic opportunities which they could not find in their home country. Thailand's relatively robust economy and bilateral Memorandum of Understanding (MOU) foreign employment programmes allow migrants to be indebted upon arrival to pay for broker and migration fees associated with securing their employment. Employers are allowed to deduct 10% of monthly salaries for these costs (Royal Ordinance 2017). Most MOUs have broad agreements about sending/receiving quotas and procedures for regularising migration, but they rarely specify labour protections, which most states regulate by using country-specific labour laws.

Additionally, the Labour Protection Act of Thailand excludes sectors which most migrant workers dominate, such as fishing, agriculture, and domestic work. Most labour-originating countries do not support work on Thailand's fishing boats. In 2011, the Cambodian Prime Minister made a public statement discouraging registered Cambodian recruitment companies from the industry, but workers still found a way to work in that sector (ILO 2011a). Hugué (2014) documented 25 formal and informal procedures that took approximately 89 days to send a worker from Myanmar to work in Thailand through the MOU procedures. Sectors like fishing need workers on a much quicker timeframe, which builds incentives towards hiring undocumented workers (Chantavanich et al. 2020). Working 18–20 hours with little time for sleeping or eating, foreign fishermen live in cramped quarters, face shortages of fresh water, and must work even when fatigued or ill. Workers may face physical abuse, denial of medical care, and – in the worst cases – maiming or death (ILO 2011a).

5. Thailand's fishing industry: Difficulties in supply chain liability

According to an ILO (2013) fishing sector study in Thailand,

approximately one third of the migrant fishers surveyed were recruited into the industry by brokers who charged for their transfer and placement with employers [...] many of those who reported to have paid their broker up front had in fact secured a loan either from their employer, broker, or family.

Employers often seize the indebted migrant workers' identity documents or restrict their movement to prevent them from fleeing before their debts are repaid in full (Human Rights Watch 2018). Regardless, workers must fulfil the terms of their agreement by paying off debt to the broker or employer, thereby binding them despite the lack of any legally binding documents and regardless of the exploitative circumstances that befall them in the course of the work.

Thailand's fishing sector involves a global supply chain of labour from more impoverished countries in Southeast Asia and food production that is then imported to the US and European markets. The US positioned itself as a global watchdog for anti-human trafficking by committing foreign aid and publishing the annual TIP Report, used internationally in trade sanctions.⁵ Both the TIP Report and US anti-trafficking budgets are framed according to the liberalist assumptions present in the TVPA, which uses the strategies of prevention, protection, and prosecution – a criminal justice framework, not worker justice. Crime prevention, though usually interpreted as anti-trafficking education and public relations campaigns – is also about corporate responsibility through control of production in the global supply chain. The US government encourages private corporations to develop CSR policies with some guidance (United States Department of State 2016: 10; *Responsiblesourcingtool.org* n.d.). However, court cases involving the fishing sector in Thailand reveal how the shortcomings of CSR have so far been ineffective in granting prosecutions, let alone worker justice.

Thailand's Tier 3 ranking in the 2014–2015 TIP Reports was due to court cases in the fishing and seafood industries. The TIP Report combined with the use of international pressure appeared to have changed some industry practices in Thailand as producers, but not necessary from buyers abroad. Even as Thailand's corporations manage their image through fair labour initiatives, i.e. cooperation with NGOs like the Labour Promotion Network (Thai Union n.d.), the financial auditing that is required by international buyer government laws are limited to products produced within its supply chain, not bought from outside the production line (The Nation 2019; CP Foods 2019).

The US and the EU remain the largest buyers of Thailand's seafood products and demand high labour and environmental standards. However, there still is a gap between good intentions in legislation and actual industry practices, which cannot be fully monitored. Additionally, when punitive measures are legislated, they cannot fully be enforced. For example, the California Supply Chain Transparency Act (2010) created a framework in which corporations valued at over 100 million USD must report slavery-tainted products, but do not necessarily have to prohibit their suppliers from engaging in forced labour, labour trafficking, or debt bondage (State of California 2010). California retailers buy large quantities of seafood from Thailand. However, the cases that were filed were not successful because the plaintiffs could not prove connections between the products and slave labour used

⁵ In 2008, the US government provided nearly 100 million USD to fund anti-trafficking programs worldwide. Approximately 76 million USD of these funds went to 140 international anti-trafficking projects benefiting over seventy countries, and approximately 23 million USD funded eighty-two domestic anti-trafficking projects. For fiscal year 2009, G/TIP [the US government's fund for Trafficking in Persons] will provide 22 million USD more in grant monies, which is 5 million USD more than the previous year. Despite funding increases, G/TIP's funding requests will continue to far exceed available resources for the foreseeable future (Godsey 2011–2012: 49–50).

to make those products. Aside from supply chain accountability, there are loopholes in the laws and regulations on labour standards when migrant workers never technically set foot on land (Mendoza, Mason 2016). Even in Hawaii, fishermen working for American-owned vessels under forced labour conditions caught fish labelled 'local' and/or 'product of the USA' (ibid.). In Thailand, third-party code of conduct certifications (especially without social and labour standards) are yet to have an effect (Vandergeest, Marschke 2020).

California's Supply Chain Transparency Act (California Legislature 2010) and the UK's Modern Slavery Act (2015) indicate an awareness that debt bondage is human trafficking (Raigrodski 2016). CSR legislation assumes that once corporations are liable for exploiting labour abroad, they will be more selective of whom they do business with, therefore allowing the free market to regulate itself for better fair-trade products. However, the decisions in cases against Costco and Nestle indicate that civil cases brought against these major corporations make little impact on the seafood industry (*Sud v. Costco* 2017; *Barber v. Nestle* 2018). In *Sud v. Costco* (2017), consumer plaintiffs alleged that shrimp and seafood sold at Costco were sourced from Thai fishing boats that used slave labour. Similarly, *Barber v. Nestle* (2018) alleged that a Nestle brand of cat food, Fancy Feast, used the remains of the catch from similar Thai fishing boats that used forced labour. The high visibility of this type of forced labour was pervasive in the media for the last decade, and it was well known that fishing boats were able to maintain hundreds of workers in slave-like conditions at sea by having them remain in international waters on other boats while the boats with the catch went to dock (Mendoza 2015). Ultimately, the Nestle case was also unsuccessful as the court found that Nestle's disclosures were protected under California's safe harbour doctrine and that Nestle did not have a duty to disclose every instance of trafficking on its product if it had previously been disclosed (Kelly 2016).

There are several limitations to the use of CSR in anti-trafficking, including difficulties in product and money tracing and governments' capacity to prosecute when faced with a lack of transparency. The Costco case was dismissed with prejudice in 2017 because the plaintiff could not prove that the purchased prawns came from Thailand; thus, there was no obligation to label the supply chain (Malo 2017). The fact that high-profile cases like those against Costco and Nestle are unsuccessful and that participation in such cases is also dangerous produces a chilling effect in which many workers may never come forward due to fear and a lack of transnational justice in the US and Thailand. According to the TIP report on Thailand, there were 67 prosecutions in 2012, 27 prosecutions in 2013, and 483 prosecutions in 2014. However, the government practices impunity; it did not hold corporations, ship owners, captains, or complicit government officials criminally accountable for labour trafficking in the commercial fishing industry (*Barber v. Nestle* 2018). The Thai bureaucratic state courts use an authority of law that imposes limitations on indigent victim legal advocacy. According to legal scholar Frank Munger, 'patron-client relationships and other customary relationships

make establishing the authority of law more complex' (2015: 71). While the TIP Reports emphasise prevention, protection, and prosecution as the *de facto* rubric for anti-trafficking in global governance, the fact of the matter is that it is states which ultimately play the integral role in anti-trafficking prosecutions and civil cases for labour justice and ensuring human rights.

Conclusion

To pursue justice for victims through anti-trafficking legislation, prosecution, and corporate social responsibility mechanisms, we must question some of the theoretical assumptions in labour trafficking by combining Marxist analysis with liberal frameworks alongside a critical racial awareness. Investigation of debt-bondage forms of forced labour helps in understanding how cases of migrant workers in the agricultural and seafaring sectors are structurally exploited and reveals their particular vulnerability as racialised foreigners, unable to speak the language of their employers and host country. Most importantly, we must rethink notions of consent in the context of poverty and dispossession. This study reveals the micro-details of how anti-trafficking definitions were expanded to later include debt bondage, but still too restrictive to ensure worker justice. Furthermore, anti-trafficking laws were contradictory to labour immigration regulations that were unclear and ultimately enabled forms of debt bondage. The following recommendations are based on our fieldwork and secondary sources. They allow for improved victim identification in debt bondage in line with the paradigm of prevention (CSR, education awareness, lowering migration costs), prosecution, and protection in combatting human trafficking.

1. Adopt human and labour rights as the foundation for measuring the success of anti-trafficking by signing the ILO Work in Fishing Convention of 2007, No. 188, the Migrant Workers Convention of 1975, No. 143, the Forced Labour Convention of 1930, No. 29, and its 2014 Protocol for implementation and enforcement in order to address the gaps between international labour migration and immigration laws and labour rights (ILO 2011b, 2013).⁶
2. Lower the cost of migration by excluding migration and processing fees (ILO 2020).
3. Produce and distribute updated educational materials for combatting debt bondage and distribute at e/migration villages, banks, and consular offices during visa interviews (ILO 2014; Agencies of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons 2019).
4. Work with NGOs to train law enforcement, social services, and immigration

⁶ Whilst Thailand has signed and ratified the Forced Labour Convention and Protocol, the United States has not signed any of the remaining ILO conventions.

police on ILO operational indicators of trafficking in human beings for increased debt-bondage victim identification (ILO 2009).

5. Ensure victim-centred and trauma-informed social services and immigration status relief upon identification (Trauma-Informed n.d.; Victim-Centered n.d.).
6. Increase government's role in protecting overseas migrant workers to decrease black market and private ventures in the debt-labour system by creating a system of checks and balances between Departments of Employment's visas/permit offices, Ministries of Labour's labour inspections and protections unit, immigration police and border patrol units, anti-trafficking police and immigration units, and anti-corruption units.
7. Increase governmental investment and forensic accounting in criminal and civil cases for victim restitution.
8. Ensure personal legal representation for victims to secure labour rights and pursue legal remedies against traffickers.
9. Combat root causes by recognising the complex social and economic forces that propel people into exploitative circumstances, particularly highlighted by the ILO and the Special Rapporteur's report; call attention to the compelling profitability of trafficking (Inglis 2001: 101–103).
10. Increase government surveillance of recruitment and employment of workers to prevent economic coercion, including interviewing workers without their employers, brokers, or law enforcement personnel being present (ILO 2013).

Going forward, debt bondage research should question the framework of restrictive rights afforded to foreign migrant workers and victims of labour trafficking on the basis of presumed choice, free labour, and morality used to judge which victims deserve the protection of the law and states. There are many experiences that make certain populations particularly vulnerable to debt bondage (ILO 2009). Whilst existing legislation addresses who may be a victim of trafficking, blatant exploitation is easy in a system in which debt bondage can rely on a legal framework that supports work contracts and neglects to enforce an equitable system for those contracts. Workers are forced to 'choose' a debt bondage situation due to their placement in a world where free markets are often mistaken for freedom itself.

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References

- Azis A. and Wahyudi R. (2020). 'Imperfect victims and an imperfect protocol: Reflecting on the trafficking experiences of Indonesian Migrant Fishermen'. *Journal of Human Trafficking* 6(2), pp. 156–167.
- Bales K. (2008). *Ending Slavery: How We Free Today's Slaves*. Berkeley, CA: University of California Press.
- Bhambra G.K., Medien K. and Tilley L. (2020). 'Theory for a global age: From nativism to neoliberalism and beyond'. *Current Sociology Monograph* 68(2), pp. 137–148.
- Banki S. (2016). 'Precarity of place: A complement to the growing precariat literature'. In M.T. Johnson (ed.) *Precariat: Labour, Work and Politics*. Routledge, pp. 66–79.
- Belser P. (2005). *Forced Labor and Human Trafficking: Estimating the Profits. Declaration of Fundamental Principles and Rights at Work*. Geneva: International Labour Organization.
- Bracy K., Lul B. and Roe-Sepowitz D. (2019). 'A four-year analysis of labor trafficking cases in the United States: Exploring characteristics and labor trafficking patterns'. *Journal of Human Trafficking* 7(1), pp. 35–52.
- California Legislature (2010). *The California Transparency in Supply Chains Act. SB657*. Sacramento, California: California Department of Justice.
- Caraway N. (2006). 'Human rights and existing contradictions in Asia-Pacific human trafficking politics and discourse'. *Tulane Journal of International and Comparative Law* 14(1), pp. 295–316.
- Chacón J.M. (2006). 'Misery and myopia: Understanding the failures of U.S. efforts to stop human trafficking'. *Fordham Law Review* 74, pp. 2977–3040.
- Chacón J.M. (2017). 'Human trafficking, immigration regulation, and sub-federal criminalization'. *New Criminal Law Review* 20(1), pp. 96–129.
- Chantavanich S. and Germershausen A. (2000). 'Introduction: Research on

- Thai migrant workers in East and Southeast Asia'. In S. Chantavanich, A. Germershausen and A. Beesey (eds.) *Thai Migrant Workers in East and Southeast Asia 1996-1997*. Bangkok: Asia Research Center for Migration, Chulalongkorn University, pp. 2-9.
- Chantavanich S. and Makcharoen P. (2008). 'Thailand'. *Asian and Pacific Migration Journal* 17, pp. 391-411.
- Chantavanich S., Laodumrongchai S., Vangsiriphisal P., Kamonpetch A., Makcharoen P. and Kaochan P. (2010). *Research Report on Understanding Recruitment Industry in Thailand*. Bangkok: Chulalongkorn University.
- Chantavanich S., Yothinneeranath P., Kuikaew P., Makcharoen P. and Neelapaichit K. (2020). *Report. Policy Management & Knowledge Transfer to Solve the Problems of illegal, unreported and unregulated IUU Fishing*. Chulalongkorn University Conference.
- Chomchai P. (2000). 'Migration of Thai workers in the 1990s: Towards a synthesis of economic theories and trends in migration research'. In S. Chantavanich, A. Germershausen and A. Beesey (ed.) *Thai Migrant Workers in East and Southeast Asia 1996-1997*. Bangkok: Asia Research Center for Migration, Chulalongkorn University, pp. 28-57.
- Department of Employment (2003). *Yearbook of Employment Statistics*. Bangkok: Ministry of Labor of Thailand.
- Department of Employment (2013). *Yearbook of Employment Statistics*. Bangkok: Ministry of Labor of Thailand.
- Fudge J. (2018). 'Modern slavery, unfree labour and the labour market: The social dynamics of legal characterization'. *Social & Legal Studies* 27(4), pp. 414-434.
- Godsey N. (2011-2012). 'The next step: Why non-governmental organizations must take a growing role in the new global anti-trafficking framework'. *Regent Journal of International Law* 8, pp. 27-55.
- Greenpeace (2016). *Made in Taiwan: Government Failure and Illegal, Abusive and Criminal Fisheries*. Taiwan: Greenpeace East Asia Taipei.
- Hall M.L. (2001-2002). 'Defending the Rights of H-2A Farmworkers'. *North Carolina Journal of International Law and Commercial Regulations* 27, pp. 521-538.
- Huguet J. (2014). *An assessment of the MOU process for recruiting migrant workers for employment in Thailand*. Ministry of Labour, ILO, IOM Meeting. Bangkok: ILO.
- Human Rights Watch (2018). *Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry*. Washington D.C.: Human Rights Watch.
- Inglis S.C. (2001). 'Expanding international and national protections against trafficking for forced labor using a human rights framework'. *Buffalo Human Rights Law Review* 7, pp. 55-104.
- Jagars N. and Conny R. (2014). 'Prevention of human trafficking for labor exploitation: The role of corporations'. *Northwestern Journal of International Human Rights* 12(1), pp. 47-73.
- Jampawan W. (2018). 'Prevention of trafficking in persons for forced sea fishery

- work in Thailand'. *Asian Review* 31(1), pp. 66–81.
- Jonsson S. (2020). 'A society which is not: Political emergence and migrant agency'. *Current Sociology Monograph* 68(2), pp. 204–222.
- Kotecha A. (ed.) (2017). *Legal Gap Analysis of Thailand's Anti-Trafficking Legislation*. Washington DC: Liberty Asia Publications.
- LeBaron G. (2014). 'Reconceptualizing debt bondage: Debt as a class-based form of labor discipline'. *Critical Sociology* 40(5), pp. 763–780.
- Munger F. (2015). 'Trafficking in law: Cause lawyer, bureaucratic state and rights of human trafficking victims in Thailand'. *Asian Studies Review* 39, pp. 69–87.
- Musingchai C. (2008). *Thailand's Experiences on Compilation of Compensation to Employee and Workers' Remittance Statistics*. Bank of Thailand: World Bank Reports.
- Royal Ordinance Concerning the Management of Employment of Migrant Workers (2017). National Assembly of Thailand.
- Niese M. (2010). 'FBI: 6 accused in forced labor of 400 Thai workers'. *Washington Post* September 3.
- Otsuka K. and Yamano T. (2006). 'Introduction to the special issue on the role of nonfarm income in poverty reduction: Evidence from Asia and East Africa'. *Agricultural Economics* 35(3), pp. 393–397.
- Otsuka K. and Yamano T. (2008). *The Role of Rural Labor Markets in Poverty Reduction: Evidence from Asia and East Africa*. Washington: World Bank.
- Panigabutra-Roberts A. (2012). 'Human trafficking in the United States, part I. State of the knowledge'. *Behavioral and Social Sciences Librarian* 31(3–4), pp. 138–151.
- Marschke M. and Vandergeest P. (2016). 'Slavery scandals: Unpacking labour challenges and policy responses within the off-shore fisheries sector'. *Marine Policy* 68, pp. 39–46.
- Martin P. and Ruhs M. (2011). 'Labor shortages and the US immigration reform: Promises and perils of an independent commission'. *International Migration Review* 45(1), pp. 174–187.
- Peksen D., Blanton S.L. and Blanton R.G. (2017). 'Neoliberal politics and human trafficking for labor: Free markets, unfree workers?' *Political Research Quarterly* 70(3), pp. 673–686.
- Raigrodski D. (2016). 'Creative capitalism and human trafficking: A business approach to eliminate forced labor and human trafficking from global supply chains'. *William & Mary Business Law Review* 8(1), pp. 71–134.
- Sadrudin H., Walter N. and Hidalgo J. (2005). 'Human trafficking in the United States, expanding victim protection beyond prosecution witnesses'. *Stanford Law & Policy Review* 16, pp. 379–416.
- Schierup C. and Jorgensen M.B. (2016). 'An introduction to the special issue. Politics of precarity: Migrant conditions, struggles and experiences'. *Critical Sociology* 42, pp. 947–958.
- Schmitt A. (2007). 'Ending the silence: Thai H-2A workers, recruitment fees,

- and the fair labor standards act'. *Pacific Rim Law and Policy Journal* 16(1), pp. 167–196.
- Sharma N. (2005). 'Anti-trafficking rhetoric and the making of a global apartheid'. *NWSA Journal: Special Issue States of Insecurity and the Gendered Politics of Fear* 17(3), pp. 88–111.
- United States of America (2000). 'Victims of Trafficking and Violence Protection act of 2000'. In Congress US (ed.) *Public Law 106-386, [H.R. 3244]*. Washington D.C.: United States Government.
- Vandergeest P. and Marschke M. (2020). 'Modern slavery and freedom: Exploring contradictions through labour scandals in the Thai fisheries'. *Antipode* 52(1), pp. 1–25.
- World Bank (International Bank for Reconstruction and Development) (2011). *Migration and Remittances Factbook 2011*. Washington DC: World Bank.
- Zimmerman M. (2012). 'Global Horizons CEO speaks out about human trafficking allegations and the justice department's decision to drop the charges'. *Hawaii Reporter*.

Internet Sources

- Agencies of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons* (2019). United States Office to Monitor and Combat Trafficking in Persons. Available online: <https://www.state.gov/agencies-of-the-presidents-interagency-task-force-to-monitor-and-combat-trafficking-in-persons/> [10.02.2021].
- Alliance to End Slavery and Trafficking (2020). *ATEST Calls on the Department of Justice and the Department of Homeland Security to Re-examine their Anti-Trafficking Policing Policies*, endslaveryandtrafficking.org. Available online: <https://endslaveryandtrafficking.org/atest-calls-on-the-department-of-justice-and-the-department-of-homeland-security-to-re-examine-their-anti-trafficking-policing-policies/> [14.09.2020].
- Bowe J. (2010). *Bound for America*, Motherjones.com. Available online: <https://www.motherjones.com/politics/2010/04/immigration-law-indentured-servitude/> [28.01.2021].
- Chatterjee P. (2010). *Global horizons indicted for human trafficking*, Corpwatch.org. Available online: <https://corpwatch.org/article/global-horizons-indicted-human-trafficking-0> [19.02.2021].
- CP Foods commits on non-violation of human rights in all forms* (2019), Bangkokpost.com. Available online: <https://www.bangkokpost.com/thailand/pr/1794064/cp-foods-commits-on-non-violation-of-human-rights-in-all-forms> [19.02.2021].
- Davidson L. (2010). *A story of modern slavery in Utah*, Deseretnews.com. Available online: <https://www.deseret.com/2010/8/15/20134636/a-story-of-modern-slavery-in-utah#circle-four-farms-near-milford-utah> [28.01.2021].
- ILO (2009). *Operational Indicators of Trafficking in Human Beings*. Geneva: United Nations. Available online: https://www.ilo.org/wcmsp5/groups/public/@ed_

- norm/@declaration/documents/publication/wcms_105023.pdf [17.02.2021].
- ILO (2011a). *Building a sustainable future with decent work in Asia and the Pacific*. Available online: http://www.ilo.int/global/meetings-and-events/regional-meetings/asia/aprm-15/reports/WCMS_151860/lang--en/index.htm [19.02.2021].
- ILO (2011b). *Report of the Committee of Experts on the Application of Conventions and Recommendations, 101st Session*. Geneva: United Nations. Available online: <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm> [19.02.2021].
- ILO (2013). *Employment practices and working conditions in Thailand's fishing sector. GMS Triangle Project*. Geneva: ILO. Available online: <https://www.voced.edu.au/content/ngv%3A58195> [19.02.2021].
- ILO (2014). *Protocol for the implementation and enforcement of the Forced Labor Convention*. Available online: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029 [19.02.2021].
- ILO (2017a). *Food and agriculture global value chains: Drivers and constraints for occupational safety and health improvement*. Geneva: ILO. Available online: https://www.ilo.org/safework/projects/WCMS_588089/lang--en/index.htm [19.02.2021].
- ILO (2017b). *Global estimates of modern slavery: Forced labour and forced marriage*. Geneva. Available online: https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf [17.02.2021].
- ILO (2020). *Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People's Democratic Republic, and Myanmar pay to work in Thailand*. Geneva: ILO. Available online: https://www.ilo.org/asia/publications/WCMS_740400/lang--en/index.htm [19.02.2021].
- Itoga S. (1996). *Labor issues and APEC liberalization: Case of Thailand and Malaysia*. Institute of Developing Economies - Japan External Trade Organization. Available online: http://www.ide.go.jp/library/English/Publish/Download/Apec/pdf/1996_08.pdf [19.02.2021].
- Kelly A. (2016). *Nestlé admits slavery in Thailand while fighting child labour lawsuit in Ivory Coast*, Theguardian.com. Available online: <https://www.theguardian.com/sustainable-business/2016/feb/01/nestle-slavery-thailand-fighting-child-labour-lawsuit-ivory-coast> [19.02.2021].
- Kerr K. (2010). *Defendant surrenders in human trafficking case: U.S. prosecutors want him held without bail as 'flight risk'*, Ktv.com. Available online: www.kitv.com/r/24866750/detail.html [1.11.2011].
- Malo S. (2017). *Retail giant Costco wins dismissal of prawn lawsuit over Thai forced labor*, Reuters.com. Available online: <https://www.reuters.com/article/us-usa-lawsuit-costco-idUSKBN1592JC> [8.02.2021].
- Mendoza M. (2015). *Nestle confirms labor abuse among its Thai seafood suppliers*.

- Associated Press Explores: Seafood from slaves*, Ap.org. Available online: <https://www.ap.org/explore/seafood-from-slaves/nestle-confirms-labor-abuse-among-its-thai-seafood-suppliers.html> [22.09.2020].
- Mendoza M. and Mason M. (2016). *Hawaiian seafood caught by foreign crews confined on boats*, Apnews.com. Available online: <https://apnews.com/article/39ae05f117c64a929f0f8fab091c4ee1> [11.02.2021].
- Responsiblesourcingtool.org (n.d.). *Responsiblesourcingtool.org*. Available online: <https://www.responsiblesourcingtool.org/> [28.01.2021].
- Simmons B. and Lloyd P. (2010). *Subjective frames and rational choice: Transnational crime and the case of human trafficking*. Available online: https://www.researchgate.net/publication/228151405_Subjective_Frames_and_Rational_Choice_Transnational_Crime_and_the_Case_of_Human_Trafficking [19.02.2021].
- State of California Department of Justice (2010). *The California Transparency in Supply Chains Act*. Available online: <https://oag.ca.gov/SB657> [28.01.2021].
- Thai Union and LPN organise training session for employees on education rights to encourage migrant children to enroll in school* (n.d.), Thaiunion.com. Available online: <https://www.thaiunion.com/en/newsroom/press-release/101/thai-union-and-lpn-organise-training-session-for-employees-on-education-rights-to-encourage-migrant-children-to-enroll-in-school> [17.02.2021].
- The Nation Corporate Reporter (2019). *CP Foods vows to protect human rights of workers as US mounts pressure on Thailand*. The Nation Bangkok: The Nation Thailand. Available online: <https://www.nationthailand.com/business/30378376> [19.02.2021].
- Trauma-Informed Victim Interviewing* (n.d.), Ovcttac.gov. Available online: <https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/53-victim-interview-preparation/trauma-informed-victim-interviewing/> [17.02.2021].
- U.S. Equal Employment Opportunity Commission [US EEOC] (2014). *Judge Approves \$2.4 Million EEOC Settlement with Four Hawaii Farms for over 500 Thai Farmworkers*. Available online: <https://www.eeoc.gov/newsroom/judge-approves-24-million-eeoc-settlement-four-hawaii-farms-over-500-thai-farmworkers> [28.01.2020].
- U.S. Equal Employment Opportunity Commission [US EEOC] (2016). *Federal Judge Awards EEOC \$7,658,500 in Case Against Farm Labor Contractor Global Horizons*. Available online: <https://www.eeoc.gov/newsroom/federal-judge-awards-eeoc-7658500-case-against-farm-labor-contractor-global-horizons> [15.09.2020].
- U.S. Equal Employment Opportunity Commission [US EEOC] (2020). *EEOC Settles National Origin and Race Discrimination Case on Behalf of Thai Farm Workers*. Available online: <https://www.eeoc.gov/newsroom/eeoc-settles-national-origin-and-race-discrimination-case-behalf-thai-farm-workers> [28.01.2020].
- United Nations (2000). *U.N. Protocol to Prevent, Suppress and Punish Trafficking*

- in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* [Palermo Protocol]. Available online: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> [19.02.2021].
- United States Citizenship and Immigration Services [USCIS] (2020). *Immigration and Citizenship Data*. Available online: <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> [15.09.2020].
- United States Department of State (2013). *United States Trafficking in Persons Report*. Washington DC: State Department. Available online: <https://2009-2017.state.gov/j/tip/rls/tiprpt/2013//index.htm> [19.02.2021].
- United States Department of State (2014). *United States Trafficking in Persons Report*. Washington DC: State Department. Available online: <https://2009-2017.state.gov/j/tip/rls/tiprpt/2014/> [22.09.2020].
- United States Department of State (2016). *Responsible Business Conduct: First National Action Plan for the United States of America*. State Department. Washington DC: United States. Available online: <https://www.state.gov/u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/u-s-national-action-plan-on-responsible-business-conduct/> [19.02.2021].
- United States Department of State (2020). *Nonimmigrant Visa Statistics*. United States Government. Available online: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> [22.09.2020].
- United States Department of State (2020). *United States Trafficking in Persons Report*. Washington DC: State Department. Available online: <https://www.state.gov/reports/2020-trafficking-in-persons-report/> [19.02.2021].
- Victim-Centered Approach* (n.d.), Ovcttac.gov. Available online: <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/> [17.02.2021].

Court Cases

- Asanok v. Million Express Manpower (2007). United States District Court for the Eastern District of North Carolina Western Division. USA.
- Barber v. Nestle USA, INC (2018). Case Opinion from the US Court of Appeals for the Ninth Circuit. USA.
- Equal Employment Opportunity Commission v. Global Horizons, Inc. (2011). No. Civil Action No: CV-11-3045-EFS. US District Court.
- Lampang Province v. Pochanee Sinchai-Loicheun (2008). Lampang Provincial Court, Thailand.
- Sud v. Costco Wholesale Corporation (2017). US District Court, Northern District of California, San Francisco. USA.
- United States v. Orion (2010). Case opinion from the U.S. Court of Appeals for the Fourth Circuit. USA.
- United States v. Sou (2011). US 9th Circuit Court, Hawaii. USA.

Others

Institutional Review Board No. 11-13-045. USA: Siena College.

Moosy R.J.J. (2012). *Letter to Thai Community Development Center: US v. Orion et. al. (Case Number: D.HI, 10-576)*. Washington D.C.: US Department of Justice, Civil Rights Division, 2.

Royal Government of Thailand (2017). *The Anti-Trafficking in Persons Act; Article No. 3*.

Seedangjan P. (2007). 'Goodbye H2A'. In P. Seedangjan (ed.) *Exit USA*. USA: IPTV: Thai Satellite and Internet Protocol Television.

Thai Community Development Center [TCDC] (2003-2012). *Global Horizons Case Files*.

Thai Community Development Center [TCDC] (2005-2011). *Global Horizons Case Files*.

Thai Community Development Center [TCDC] (2005-2012). *Global Horizons Case Files*.

Thai Community Development Center [TCDC] (2007-2010). *Global Horizons Case Files*.

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Foreign minors and forced labour in contemporary Italy

Małoletni cudzoziemcy i praca przymusowa we współczesnych Włoszech

Abstract: The labour of foreign minors living in Italy fits into a double scenario: on the one hand, it evokes aspects or lifestyles typical of their original culture and therefore represents an experience of continuity with it; on the other hand, it is placed in the context of the host country, where young migrants are often employed in low-skilled jobs or are forced to enter the job market as a means to support themselves and their family. This is an entirely transversal problem in the country, concerning both the more industrialised areas of the North and the more agricultural areas of the South. The sectors where the labour of minors is more widespread are commerce, catering, agriculture, and services. Case studies relating to the experiences of young Chinese migrants and children of Moroccan descent living in Italy are presented in this article. The concluding section suggests that there is no single causal factor responsible for child labour. Indeed, subsistence poverty, inequalities in accessing the labour market and parental choices or constraints may influence the decision to coerce a minor to work.

Keywords: child labour, Italy, trafficking, vulnerability of minors, case study methodology

Abstrakt: Praca małoletnich cudzoziemców mieszkających we Włoszech może mieć dwa scenariusze. Pierwszy z nich odnosi się do stylu życia typowego dla kultury, z której się wywodzą migranci (i stanowi jej powielenie oraz przedłużenie), gdzie praca dzieci jest czymś powszechnym. Drugi zaś związany jest z sytuacją na rynku pracy we Włoszech, czyli w kraju przyjmującym, w którym młodzi migranci często są zatrudniani na stanowiskach wymagających niskich kwalifikacji lub są zmuszani do podjęcia pracy w celu utrzymania siebie i swojej rodziny. Problem ten widoczny jest w całym kraju – dotyczy zarówno bardziej uprzemysłowionych obszarów na północy, jak i bardziej rolniczych na południu. Sektory, w których praca dzieci jest najbardziej rozpowszechniona, to handel,

gastronomia, rolnictwo i usługi. W artykule przedstawiono studium przypadków opierające się na doświadczeniach młodych migrantów z Chin oraz dzieci pochodzenia marokańskiego, mieszkających we Włoszech. W zakończeniu artykułu podkreślono, że nie ma jednej przyczyny odpowiadającej za pracę dzieci. Czynniki takie jak: głębokie ubóstwo, nierówności w dostępie do rynku pracy, a także wybory rodziców i przymus z ich strony, mogą wpływać na podjęcie decyzji o zmuszeniu dziecka do podjęcia pracy.

Słowa kluczowe: praca dzieci, Włochy, handel ludźmi, bezbronność dzieci, metodologia studium przypadku

1. Introduction

Young minors working on construction sites, in markets, in bars and restaurants, in kiosks and in car washes or agriculture: this is the current landscape of child labour in Italy. According to Law no. 39 of 8 March 1975, a minor is a person under the age of 18. Although banned in Italy since 1967 (Buffa, Caracuta, Anelli 2005), child labour is currently on the rise. The numbers only reveal the tip of the iceberg, as the Italian Labour Inspectorate highlighted, claiming that from 2013 until the first half of 2018 there were 1,437 cases of confirmed criminal violations of the current child labour legislation, which forbids children under the age of 16 from being employed (INAIL 2020). According to the most recent data extrapolated by the International Labour Organization (ILO; 2018), the number of children forced to work in Italy exceeds 300,000. Amongst them, there is an increasingly alarming level of early school-leavers, a generation too often becoming a potential reservoir for criminal activities. Again, the data are staggering, as indicated by the Department of Penal Affairs (2019), showing that 66% of the minors currently serving a criminal conviction carried out work before the age of 16.

This is an army of invisible labour experiencing victimisation and exploitation, sucked in by the black market's eddy for starvation wages, with no contracts or protections. This is often the case for migrant and stateless children who live in a limbo of hybrid legal protection (Policek 2016). Although this contribution highlights the experience of labour amongst young migrants residing in Italy, it is worth pointing out here that Roma minors are not included in the category 'foreign minors', since they present unique elements that would require separate analysis, in addition to the fact that they often have Italian citizenship (Policek 2016). The labour of foreign minors living in Italy fits into a double scenario: on the one hand, it evokes aspects or lifestyles typical of their original culture and therefore represents an experience of continuity with it; on the other hand, it is placed in the context of the host country, where young migrants are often employed in low-skilled jobs or are forced to enter the job market as a means to support themselves and their family (Fors 2012). For this article, young foreigners are defined as those who are not native to Italy and those born in Italy but with a family background of

migration to Italy. The terms minors and children can be used indiscriminately to represent those under the age of 18. The data reported herein refer to those who are residents of Italy. Their ages range between 15 and 18 years.

The focus of this paper is on the experiences of minors, who must constantly negotiate new the implications of childhood and struggle with power relations and dynamics. They face a combination of fundamental rights violations, including labour rights violations, which is based on the abuse of their particular position of vulnerability. Their vulnerability 'forces' them to make an 'impossible' choice leaving them with no viable alternative but to submit to the exploitation. From this perspective, the experiences of exploitation of these minors can be regarded as cases of forced labour on the basis of the indicators provided by the ILO, and as cases of trafficking according to Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, which adopted the definition of trafficking from the United Nations (UN) Trafficking Protocol. The latter is a broad definition which, far from being limited to sexual exploitation, entails a wide range of forms of abuse. Although they are strongly related, trafficking and forced labour are not identical phenomena. Indeed, not all forced labour involves trafficking and not all trafficking for labour exploitation amounts to forced labour (Bovarnick 2010). However, delineating a clear distinction between forced labour and trafficking is highly problematic because they often overlap. Italian legislation does not regard forced labour as a specific offence. Nevertheless, the ILO indicators can be useful for interpreting the level of exploitation involved: abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime. The indicators are derived from theoretical and practical experience of the ILO's Special Action Programme to Combat Forced Labour (SAP-FL). They are based on the definition of forced labour specified in the ILO Forced Labour Convention of 1930 (No. 29): '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'.

Trafficking, instead, is defined as an offence under Article 601 of the Italian Penal Code (recently amended in order to adopt the definition of human trafficking contained in Directive 2011/36/EU). At the same time, the Italian legal framework on trafficking, especially through Article 18 of the 'Consolidated Act of Migration' (Legislative Decree no. 286/1998), is particularly innovative regarding the assistance and the protection of victims. There are limits and potentialities of Italian anti-trafficking legislation, and in order to effectively counter these phenomena, labour rights measures and anti-trafficking interventions must be combined in a comprehensive approach, as promoted by Directive 2011/36/EU, which is aimed not only at assisting victims, but also at tackling the structural factors that lead to abuse. This comprehensive approach relies on the assumption that trafficking is a complex phenomenon in which several different issues are at play (including migration policies, labour measures and practice, gender discrimination, and

violence). Therefore, far from being limited only to using instruments of criminal law or to assisting victims, anti-trafficking measures also require the development and implementation of concerted measures to address the root causes of migrant workers' vulnerability.

The paper begins with a brief discussion on the legal framework which defines and regulates child labour in Italy (Miscione 2002). Case studies relating to young Chinese migrants and children of Moroccan descent living in Italy are then presented. The concluding section suggests that there is no single causal factor responsible for child labour. Indeed, subsistence poverty, inequalities in accessing the labour market and parental choices or constraints may all influence the decision to coerce a minor to work (Melossi, Giovannetti 2002). Consequently, no single policy instrument on its own can be expected to eradicate child labour (Invernizzi, Milne 2002) and the vulnerabilities associated with it.

2. Invisible children and child labour

The current existing academic literature (Ali 2019) has failed to establish a systematic association between child labour and household poverty, yet this is often the primary assumption used to explain child labour's root causes (Fors 2012). Although a link between child labour and poverty is plausible and often implicit, such a link has not been systematically identified by empirical analysis. Specifically, most general studies (from Nesi, Noglier, and Pertile [2008] to Nogler and Pertile [2016]) tend to merge and generalise data from agricultural and manufacturing sectors of the economy, neglecting to highlight how other social dimensions such as age, geographic location, class, ethnicity, gender, and other social constraints intersect to cause disadvantage (Policek, Ravagnani, Romano 2019). Contemporary studies on child labour still rely heavily on Basu and Van's (1998) contribution, which proposed multiple equilibrium-based explanations of child labour, identifying a low-income household as the main cause of child labour. Despite several other explanations – such as the negative externality argument of Baland and Robinson (2000), parental selfishness and external bargaining in Gupta (2000), and credit constraints in both Ranjan (2001) and Jafarey and Lahiri (2002) – the model put forward by Basu and Van (1998) has remained the main influence behind any empirical investigations on the matter.

Their model builds on two assumptions, the luxury axiom and the substitution axiom. The luxury axiom states that a household is willing to send its children into the labour market only if the adult wage falls to the point where the household subsistence requirements cannot be met without the children's income. Instead, the substitution axiom states that adult labour and child labour are seen as substitutes, meaning that child labour can take the place of adult labour if financial constraints

require it. As a result, there are two conceivable equilibriums: one where wages are high and only adults work, and one where wages are low and the children must work. However, if good equilibrium does not exist, then the households will be worse off if child labour is banned. This model rests critically on the assumption that children participate in wage labour in competitive markets, given that the results are based on market equilibriums. To counteract this argument, Bhalotra (2007) subsequently developed a model to test whether household poverty compels families to send their children to work. The idea here leans on previous empirical results showing a negative relationship between household income and child labour, which does not test the hypothesis that poverty compels child labour, but rather tests the less contentious hypothesis that child leisure is a normal psychological need (Ali 2009).

If the poverty hypothesis were correct, then children would only work if total household income was less than sufficient to meet the subsistence consumption level. In this case, children would work toward a target income, i.e. an income that would cover the shortfall between subsistence consumption and non-child household income (Saha 2019). Subsistence poverty alone does not necessarily imply that a child will be forced to work. If there are perfectly functioning credit markets, it should be theoretically possible for parents to borrow against their child's future earnings. A common assumption is that one parent makes decisions regarding household resource allocation (Caocci, Finelli 1999). Therefore, parental preferences play an essential role in the decision to send children to work. It is often assumed that parents act altruistically towards their children; however, if parents are non-altruistic or exhibit low levels of altruism, then child labour will be more prevalent (D'Ovidio 2014). However, as Thomas (2019) demonstrated, even altruistic parents may send their children to work if they face credit constraints. Ghosh (2020), taking a cue from Thomas (2019), showed that when both parents and children are altruistic, a graph of the relationship between parental income and child labour may exhibit an inverted-U shape; because of low parental income levels parents may be dependent on transfers from their adult children.

Contemporary empirical observations (Saha 2019) revealed that some households will settle for low-wage labour and will not supplement their income through child labour and instead they will keep their children in school full-time (Thomas 2019). In some instances, studies have demonstrated that even at high wages, the household will employ their children (Thévenon, Edmonds 2019). This theoretical underpinning on child labour has impacted policies, specifically those which ban child labour (Saha 2019). Indeed, a ban on child labour alone is not likely to be valuable because even a wholly enforced ban may result in consequences if adult earnings do not rise enough to meet subsistence needs after the ban is in place (Zutshi, Creed, Sohal 2009). Furthermore, as Mangiavacchi et al. (2020) observed, during the COVID-19 lockdown declared in Italy in spring 2020, a reallocation of the market and household work took place, which impacted children and young people. Often, children had to be involved in intra-household responsibilities

during the lockdown because the division of household tasks shifted. Sometimes, older children provided childcare to their younger siblings or – mostly due to the labour market restrictions imposed during the lockdown – they undertook tasks while engaging in paid and unpaid work to support their families.

3. The protection of child labour in Italy

According to the International Labour Organization (2018), the number of children forced to work in Italy exceeds 300,000. Many children – the legal definition of which is set in Law no. 39 from 8 March 1975, whereby a minor is a person under 18 years of age – work in dangerous activities and in risky conditions such as construction, mines, quarries, or underwater fishing. Others are sold to pay their parents' debts or are subject to international organ trafficking or sexual exploitation. Others still may be forced to work in cramped conditions and are not given adequate rest periods. Children can lend their labour working in workshops, yards, supermarkets, fields, quarries, factories, or mines, or they can work in isolation, involved in activities such as selling and delivering flowers or working as shepherds or shoe shines, or in activities that border on illegality, such as beggars, thieves, and prostitutes. A common perception is that child labour takes place in an industrial setting, such as a factory or mine. However, the reality is that in Italy 69 per cent of working children are active in the agricultural sector, 22 per cent are active in the services sector, and only 9 per cent of working children are active in the manufacturing sector (ILO 2018). Their parents instead employ the majority of working children in the family business, despite a clear legislative framework in place to ban underage child labour (Miscione 2002).

The first attempt to regulate child labour in Italy dates back to 1866 (Law no. 3657, 11 February), when the age limit of nine years was introduced for children engaged in paid work (Morello 2019). The age limit was raised to 10 for children working in quarries and mines and to 15 years for those involved in more dangerous jobs. For all minors between the ages of nine and 14, permission to work was dependent on eligibility certificates (Spadaro 2019). The ripple effects of the industrial revolution in Italy (Federico, Tena-Junguito 2014) brought the realisation that advances in technology also require a more specialised workforce (Fang, Ceccarelli 2014). Consequently, the need for child labour was temporarily reduced. However, the employment of minors was still widespread in the textile and chemical industries and in the agricultural and mining sectors (DiScala 2018). In 1870, an attempt was made to pass new legislation sanctioning child labour exploitation, leading it back to the crime of 'trafficking in children'. Although this effort failed miserably because of disagreements over the definition of trafficking, in 1876 a proposal was made to raise the minimum age for employing children

(Spadaro 2019). As a result, Law no. 242 of 19 June 1902 raised the age limit to 12 years (13 for children employed in quarries and mines), and confirmed the maximum of eight working hours for children up to 12 years old and 11 hours for those aged 12 to 15. Finally, the law banned night-time work for children under 16 years of age (Moro 2014).

To counteract the widespread phenomenon of child labour, in 1904 compulsory schooling expanded from nine to 12 years. However, the law was disregarded by both entrepreneurs and families too interested in the additional source of income guaranteed by the employment of children. Therefore, in 1907 numerous exceptions were introduced to the prohibition on the use of minors. In the wake of this, the ban on night-time work was also cancelled in 1914. Following Convention no. 33 of 1932 of the ILO, Law no. 653 of 1934 raised the age limit to 15 years (Nesi et al. 2008). The intentions were excellent, but the law still contained copious exceptions. For example, it did not apply to domestic work in employment with relatives or when children were working from home or employed in agricultural settings. Also, the School Inspectorate, with a simple declaration of unfitness to attend school, could exempt working minors from compulsory education and therefore ease their entry into the labour market. In 1948 with the birth of the Italian Republic, the Constituent Assembly stated in Article 37 of the Constitution that the law should protect the work of minors with special rules and should guarantee them the right to equal pay for equal work while establishing a minimum age limit for waged work (Spesso 1953). However, it was only in 1967 that Law no. 977 (Protection of the work of children and adolescents) set the minimum age for employment at 15 years (Moro 2014).

Law 977/67, followed by Legislative Decree 345/99, established the minimum age for access to employment that coincided with the school-leaving age. More specifically, Law 977/67 tolerated the lowest limit of 14 years for agricultural and family work. Article 5 of Legislative Decree no. 345/99 sets the minimum age at 15 years, with exceptions provided for activities of an artistic, sporting, or cultural nature, in which case parental authorisation is required. Therefore, young people aged 15 can decide to complete the compulsory course of study in the vocational training system or an apprenticeship, which is the only work contract stipulated full-time by those under 18 and without a professional qualification. It follows that 15-year-olds with a secondary-school diploma can sign an employment contract. Article 2 of Legislative Decree no. 262/2000 establishes pre-employment and periodic medical examinations for minors under an employer's responsibility; if the minor is unfit for work, this triggers immediate suspension from work. Regarding working hours, children cannot exceed seven hours per day or 35 hours per week, whereas adolescents can work eight hours per day and 40 hours per week (Nunin 2000).

Child labour is also regulated by the Italian Penal Code, in Article 603, which states that 'unless the fact constitutes a more serious offence, anyone who (1) recruits labour to assign it to work for third parties in conditions of exploitation,

taking advantage of the state of need of workers (so-called “illegal intermediation”); (2) uses, hires, or employs labour, including through the intermediation activity referred to in (1), they are subjecting workers to conditions of exploitation and taking advantage of their state of need.’ If the facts are committed through violence or threats, the penalty of imprisonment varies from five to eight years and a fine of 1,000 to 2,000 EUR for each worker recruited is imposed. Article 603 also explains what is meant by ‘exploitation’ regarding working conditions, surveillance methods, degrading housing situations, repeated violation of the legislation relating to working hours, periods of rest, weekly rest, and compulsory and annual leave. The last part of the regulation provides for a series of specific aggravating circumstances that lead to an increase in the sentence from one third to one half. The crime of exploitation of child labour exists exclusively as a specific aggravating circumstance of the crime of exploitation of labour and, as such, is much more severely punished. For the most serious forms of exploitation of child labour, the crime of ‘enslavement’ is dealt with in Art. 600 (Moro 2014). With regard to children’s rights, the Italian government also ratified the Convention of the Rights of the Child on 5 September 1991 as well as the optional protocols to the Convention in May 2002. Italy is also a party to other instruments related to human rights, particularly to the International Covenant on Civil and political rights and the Convention against torture and other cruel, inhumane, and degrading treatment or punishment. At a regional level, Italy has ratified the European Convention for the protection of human rights and fundamental freedoms and the European Convention for the prevention of torture and inhumane or degrading treatment or punishment.

Despite such regulations, the problem of child labour is often underestimated and underreported (van Daalen, Hanson 2019). The Central Supervisory Directorate of the National Labour Inspectorate revealed that from 2013 through 2019, there were over 1,700 cases of ascertained criminal violations of child labour legislation. Such violations pertain to children younger than 16 who were working without the requisite school education. This is only a tiny fraction since, in the vast majority of cases, the exploitation of minors remains underground, entirely unreceptive to complaints and controls (INAIL 2020).

4. Child labour in Italy

Italy has its own specific characteristics in terms of employment and migration (Policek, Ravagnani, Romano 2019). Migrants are usually employed in highly segregated and low-paid jobs: typically manual work for men (ISTAT 2019) and care work for women, with the care of the elderly witnessing a shift from a ‘family’ model to a (female) ‘migrant in the family’ model (Allievi 2010). Young migrants

often follow a migratory trajectory similar to their adult compatriots who habitually travel with them or have preceded them (Atrigna 2011). Frequently, young migrants travel alone as unaccompanied minors (Policek 2016). They leave their countries of origin as adults, since Albanians, Pakistanis, or Moroccans aged 15 or even younger are deemed in their country of origin to be legally responsible as adults when it comes to being financially independent. Upon arrival in Italy they are again considered minors because this is how the law defines them (Atrigna 2011). This is not simply a legal shift, but one that relates to the processes of the construction of a child's sense of identity and belonging, sanctioning the inclusion in or exclusion from peer groups (Policek, Ravagnani, Romano 2019). Data presented by Policek et al. (2019), summarising the experience of victimisation amongst a group of young migrants to Italy, offer the opportunity to contend that belonging to a group does not necessarily affect the level of victimisation, although having one or two foreign parents can often be translated into a highly significant experience of victimisation. Therefore, to counteract victimisation, young foreigners utilise financial independence through employment as a tool to assert themselves within and outside of the group of reference. It is worth highlighting here that foreign child labour in Italy no longer comes only from low-income families, but also involves minors from families in more advantageous economic conditions, who identify in the child's work a multiplier of the family's standard of living (Baraghini 2017). Indeed, child labour for Chinese, Filipino, or Peruvian minors residing in Italy, for example, is a priority as a means to contributing to the success of the family's migration (Calcaterra 2016). Nonetheless, it should not be discarded that there are also situations of constraint, linked to clandestine arrival routes to Italy or associated with illegal circuits or networks. Such networks often ensure that minors are employed with no pay but as a repayment option for debts contracted by them and/or other family members so that migration to the host country can be guaranteed. Population migrations often involve large numbers of unaccompanied minors. Unaccompanied children are at significant risk for forced labour and sex trafficking, given their young age, lack of adult supervision, lack of knowledge of the host language and culture, and precarious legal status. These children are particularly vulnerable if they lack the necessary authorisation or documents required under immigration regulations and have been smuggled across an international border. Traffickers may subsequently lure them into situations of severe exploitation and maintain control over them through violence, threats, or economic or psychological manipulation. Unaccompanied children are likely to be reluctant to report abuses to authorities because of fear of arrest and/or deportation. Finally, gender-based violence and discrimination, a cultural assumption that boys cannot be victims, cultural beliefs that children must support the family in crisis, the sexualisation and objectification of girls, and the weak recognition of children's rights are societal factors that contribute to vulnerability. Benevene, Lagioia, and Callea (2010a) pointed out that there seems to be no unanimous agreement on what can be considered exploitation, what can be defined as work

with a positive value, and what cannot even be defined as work unless the employment of a foreign minor is considered embedded in a culture-specific context. Consequently, it is pivotal to trace the activity that is work back to the migration project and family ties, acknowledging that in some rare instances exploitation is not conscious. This is the case for most foreign minors employed in their family business. The number of hours, the existence of remuneration or recognition, the protection and the link with the other spheres of the minor's life (i.e. recreational, school, familial, relational) are variables which should be kept under observation (Buffa, Caracuta, Anelli 2005). Furthermore, this is not to say that there are other forms of child exploitation which should not be addressed, such as child prostitution or trafficking (Abebe, Bessell 2011). It is also not clear what can be included in a single 'work' category, when the activities differ and the classifications created at the theoretical level vary. For this reason, it may be useful to adopt a broad and flexible definition of work, in order to leave room for the multiple activities that foreign minors carry out and the meanings that these can assume. Such flexibility will allow us to differentiate between employment which violates the fundamental rights of the person and activities which are more compatible with other life experiences (Abebe, Bessell 2011). Notwithstanding the subtle differentiations, it should be reiterated that minors are all in a vulnerable position.

5. Methodology

Typically, case studies draw on multiple sources of evidence (Feagin, Orum, Sjöberg 1991). The two case studies presented herein include archival and statistical records, interviews, direct observation, and participant observation. They are based on 100 interviews with each group, that is, Chinese minors and Moroccan minors living in Italy, aged 16–18 years. As required by the ethics clearance obtained for this research project,¹ the participants and their parents/legal guardians were briefed about the study's justification, aims, and objectives and ethics.

Atlas.ti software was used in assisting with the handling of data, which were analysed inductively using a grounded theory approach. This was characterised by a process of coding and sub-coding, with the final interpretative phase characterised by the emergence of a story with the aim of developing an evolving theory (Cresswell 1998). A scope of enquiry was used to develop the interviews. Using semi-structured interviews kept the interviews flexible and allowed for the areas of interest to be probed. The interviews focussed on an exploration of the experience of child labour. The data gathered guided the case studies presented herein. Three areas of enquiry supported the interviews: 1) the minors' understanding/interpretation of what

¹ The study received ethical clearance from the Centre for Conflict and Migration Research Ethics Committee (CCM/24/08/HREC2019).

constitutes labour; 2) a description of the activities which constitute labour; and 3) legal child labour versus illegal labour.

Each participant was interviewed in Italian because all participants were fluent in Italian. All minors who decided to participate in the study were allowed to ask as many questions as they felt necessary at any stage of the study. Particular attention was given to the interview format to minimise stereotypical child–adult communication patterns that reduce data credibility. The researcher adopted different strategies to minimise the minor’s inclination to give responses perceived to be socially desirable rather than socially unacceptable. In some instances, the participants were offered two alternatives, either of which could be considered acceptable in the context of the interview. Thus, the researcher could avoid placing the minors in a position where the participants had to deny perceived undesirable behaviour. During interviews, the researcher found it best to start with questions calling for more concrete responses and then shift to more abstract questions to accommodate the sample’s range of cognitive abilities. Although the participants were given as much time as they needed, the researcher was always alert for nonverbal cues indicative of fatigue and decreased attention, ending the interview as quickly as possible if necessary. The unfamiliarity of the interview situation was always considered and therefore opening questions set the interview tone and allowed the participants to find out what was expected of them. To allow time to build rapport and trust, the funnel sequence – starting with more general questions and proceeding to more specific ones – was deemed very useful because it allowed the participants to state their frame of reference and respond in meaningful categories.

The participants signed a consent form before commencing the interview, and they were offered the opportunity to receive a copy of any academic publications relating to the study. The participants were able to withdraw from the study at any stage of the interview.

Measures were put in place to ensure that the research was culturally safe for the participants through a network of trusted stakeholders. Emotional support was also in place for the study’s duration so that the participants could deal with any issues affecting them. Trauma child counselling was also made available to participants, who were also referred to many other available avenues of support, at both the local at national levels. The safety of the researcher was also paramount, and measures were in place to assure the researcher’s physical and emotional safety; the researcher followed rigorous lone worker’s policies and procedures as agreed at the time ethical clearance was granted. All interviews took place in daylight, either at community centres or the minor’s place of residence such as refugees centres, but never their homes. The participants were given a great deal of control over the specific location of the interview to enhance data collection. It was felt that less formal, more familiar settings may help the minor view the researcher as an interested adult rather than an authority figure.

5.1. The challenges of researching the experiences of young minors

One of the greatest challenges has been establishing trust with the participants: some migrant minors were in the process of legalising their status and, therefore, they were not willing to talk. As a result, the nature of the study sample is one of opportunity, and therefore it cannot be considered representative of the entire population of Chinese and Moroccan minors living in Italy. Given the topic in question, a few minors who initially agreed to be interviewed about their experience of working in Italy later refused to talk. The minors who agreed to talk always talked to the researcher in the presence of an adult – a legal guardian, parent, family member, or in some instances a social worker.

One recurring area of concern regarding conversations with minors was the researcher's awareness that memories of events that are experienced repeatedly lose their unique character and become part of a generic event memory system. The challenge was embedded in the concern that participants could or would use a sort of predetermined script. That is, scripts devised by the participants could contain what is supposed to happen in certain situations, not necessarily what did happen.

As already stated, all participants received a complete, clear, and developmentally appropriate explanation, and they all signed an assent form once parental/legal guardian permission had been secured. Interacting with minors, even those aged between 16 and 18, requires careful consideration of any issue relating to confidentiality. Young people are especially concerned with confidentiality, as they are often experimenting with new ideas and ways of presenting themselves. Additionally, because of the research topic, it was felt that some respondents may be reticent on sensitive topics. Assurances that responses will not be shared with others outside the interview settings, namely law enforcement agencies, helped to increase the credibility of the data collected. Privacy during the actual interview also enhanced the data credibility. An assent or consent form guaranteeing confidentiality and describing how it will be maintained was therefore very useful for the initial explanations and reinforcement; additional verbal assurance throughout the interview process was often needed when participants seemed reluctant to respond to questions.

5.2. Data and empathy

Whilst interacting with young minors, at every stage of this study the researcher was concerned whether empathy and compassion (Goetz, Simon-Thomas 2017) towards young people and their experiences of forced labour could somehow pollute the data. Compassion arises when witnessing another's suffering (Gilbert 2017) and it is embedded in the acknowledgment that not all pain can be fixed or solved, yet it is essential to make any research endeavour as mindful as possible of participants' lived experiences. The almost paradoxical aspect of this methodological

questioning led me to realise that whether I wanted it or not, my emotions were phenomenologically present. My emotions alerted me toward specific research foci and interpretations, and I turned to my emotions as the key driver for this study. I saw vulnerabilities in the lived experiences that minors shared with me, as I felt a profound sense of injustice – or rather non-social justice as I would define it – at the knowledge that young people were forced to work. It did not matter to me whether minors were working because of financial constraints or perceived and internalised cultural constituents, for example. For me, it was often trying to listen to stories that I would rather not hear. At first, the challenge was to remain disconnected from the participants' narratives and experiences. I tried not to submerge myself too deeply for the sake of data 'purity', holding to the beliefs about scientific objectivity. More meaningfully, I feared the perceived unsafe role of empathy. After all, this research was about child labour and not about the social scientist. My methodological and ethical struggles toward balancing empathy and detachment demonstrates how qualitative research resists the recognition of the active role of investigators and methodologies in the construction of subject matter and data. I have chosen to make the constructive presence of the researcher visible as an active constructor of reality because I believe that such a personal involvement enriches the rapport with participants and contributes to data constructions and interpretations. In addition, reflections on the researcher's subjectivity and emotional reactions can be used to interpret the research rapport and the possibilities (or limitations) of data analysis as a relational endeavour. For instance, my own awareness of the emotions that the investigation triggered in me sustained and influenced the ability to listen to the participants' stories and to stay engaged in inquiries on what I perceived as sensitive or difficult topics, namely foreign minors' vulnerabilities in the workplace, especially when working was not perceived as a choice but an obligation.

6. Foreign child labour in Italy

Cultural elements and the influence of multiple factors, such as the means of arrival and the conditions of inclusion in the host country, along with the family's expectations and needs and available opportunities, all play a central role in the construction of a young minor's identity and sense of belonging (Policek, Ravagnani, Romano 2019). It follows that, conditional to the context, the same labour activity can assume different meanings. From this assumption, the boundary between lawful and illegal activities often remains blurred (Calcaterra 2016). In order to interpret the meanings of the work experiences of foreign minors, both the cultural elements and the standard of living of the minors and their families in Italy must be kept in mind (Van de Glind 2010). First of all, it is necessary to consider how childhood is viewed in different cultures (Thomas 2019). The concept of the child

as a member of the community, called to take an active role in managing family life and able to assume certain responsibilities (according to the child's age), leads to a different configuration of intergenerational relationships. The experience of a foreign minor who helps their family at home or in the workplace then becomes a contribution that the child makes, according to a cultural model in which all the members of the family are involved, at different levels, in supporting the family economy.

Foreign minors often carry out highly visible activities, such as street vending in cities or cleaning car windows at traffic lights, bringing such activities closer to the daily reality of every citizen. These activities are almost normalised and coexist with less visible activities, such as domestic activities or tasks undertaken in families' workshops. There are no accurate data on forced labour of foreign children in Italy, according to a recent ISTAT survey (2019). However, the most recent studies available indicate the presence of foreign minors in activities supporting the family (Scannavini, Teselli 2014) in regular jobs (Benevene, Lagioia, Callea 2010b), in activities carried out for third parties (Silvano 2017), or in illicit work or illegal activities, where exposure to conditions of exploitation is more widespread (Melossi, Giovannetti 2002). Because these are often jobs carried out in the informal or 'underground' economy, it is particularly difficult to accurately ascertain the scale of the phenomenon. It remains difficult to compare data. Certainly, a common occurrence, with the exception of cases of extreme exploitation, is the coexistence of work and school attendance (Napolitano et al. 2001) and it could be argued that there does not appear to be a causal link between child labour and school dropout, since the majority of foreign minors who work also attend school.

The ISTAT survey (2019) recognised that the tools it utilised underrepresent the foreign population under scrutiny. For this reason, rather than trying to obtain an actual quantification, the purpose of the enquiry is to construct a picture of the 'risk' of child labour, particularly with reference to forced child labour. Some studies (Abebe, Bessell 2011) on Moroccan minors who work in Italy show that, as soon as they arrive in Italy, minors interpret their work as an opportunity to earn and be able to help the family, according to a notion that it is normal to include this experience in life. It is from the clash with a completely different context, in which work is the prerogative of adults, that minors begin to problematise their lived experience. In Italy, the employment of Chinese minors and Moroccan minors is what has, in recent years, attracted the most attention, both for their characterisation and diffusion (Chinese) and for their visibility and perceived problematic nature (Moroccans). Other communities are also involved in child labour activities: for example, Filipinos and Peruvians in the North of Italy, Albanians – especially amongst unaccompanied minors, who are most at risk of being victims of forced labour (Bovarnick 2010) – and Cape Verdeans and Sri Lankans in the South (Abebe, Bessell 2011).

6.1. Helping the family

The most common activities among foreign minors aged 7–14 years can be summarised as helping parents in their work, helping with housework and small errands, caring for younger siblings, and mediating/interpreting for parents who are not able to speak and understand the Italian language (ISTAT 2019). The influence of educational models originating from the parents' culture is substantial and is also maintained in Italy: minors are not exempt from this form of widespread participation in family responsibilities and, even if they are not remunerated, they carry out an activity that has economic value (to keep down costs of family businesses or to support the parents in the labour market), with an involvement that increases with advancing age – the opposite trend to that of their Italian peers (Melossi, Giovannetti 2002). In addition to contributing to family life, these work experiences allow minors to gradually learn the skills necessary to assume future roles in the host country. These activities are not always considered 'work' and thus are not always included in analyses of the work carried out by foreign minors; they are defined as 'jobs' or simple forms of participating in family life. Household chores carried out by girls, for example, often remain invisible and, if disproportionate to the child's age, cannot be harmoniously integrated into the child's educational path (Castles, Davidson 2000). Although these experiences are not visibly and legally classified as forced labour, by playing on children's vulnerabilities and lack of agency they can be considered labour that children are forced to undertake.

6.2. Working for third parties

Commonly, work outside the family prevails for adolescent migrants (15–18 years) who are employed on a regular basis – very often for little pay. Patchy data provided by local job centres reveal that in Italy, minors who work for third parties have apprenticeship contracts or zero-hour contracts (ISTAT 2019). The quantification of the phenomenon is rather difficult, as it is often the case for minors absorbed in the informal economy. The ISTAT survey (2019) identified forms of parallel economies in which there is a concentration of the work of foreign minors, such as Moroccans in the commercial services sector and Chinese people in the textiles and leather industries. Usually, these activities do not interfere with school attendance.

In both family work and work for third parties, there may be situations of exploitation when legal frameworks and health and safety regulations are not acknowledged or implemented. There are also activities that fall within the sphere of illegality and which, generally, are defined as exploiting child labour, sometimes bordering on delinquent activities or crimes (UNICEF 2019). Here the divide between regulated labour as supported by the legal framework and forced labour become blurred.

6.3. Illicit and illegal activities

What illegal and illicit activities have in common (those which break labour laws, violate human rights, and are punishable by law as offences) is the exploitation to which the minor is exposed. This is within the realm of forced labour. In Italy, some minors work alongside adults selling handkerchiefs, sponges, or small objects. They may have been recruited for these networks by compatriots, in which they find support, but the sales activity can also mask begging – which involves forms of humiliation from which the minor cannot escape. There are minors who work on the street to repay a debt contracted when travelling to Italy or who move from begging activities to criminal behaviour (drug dealing theft), which provides easier earnings. Migrant minors often do not find access to support channels other than those of illegal activities. ISTAT (2019) stated that the participation of minors in illegal activities can be considered a residual phenomenon, as the same minors are often also involved in legal activities. However, attention should be paid to the involvement of minors in drug dealing, prostitution, and theft. It is especially these types of activities for which it seems appropriate not to focus excessively on aspects of cultural differences, but to keep in mind the conditions of social hardship and marginalisation in which these minors often find themselves (Thomas 2019). It is worth highlighting here that the philosophy accompanying the investigation behind this article does not recognise the voluntary choice of prostitution by minors under the age of 18, as in Law no. 269/98 ('Rules against the exploitation of prostitution, pornography, tourism damage to minors, as new forms of slavery'). More specifically, the exploiters or protectors – or any other person in various capacities – who induces individuals under the age of 18 to engage in prostitution are committing a serious crime (as stated in Art. 9, 'Anyone who trades in minors under the age of 18 in order to induce them to prostitution is punished with imprisonment from six to twenty years'). The seriousness of such crimes is evident regardless of the voluntary or involuntary (expressed or unexpressed) participation of the victims or their presumed psychophysical maturity (Art. 1 and 2). These are quite particular crimes that in the most extreme manifestations can be configured as new forms of slavery. The relationships that exist between the actors involved are characterised by violence and abuse of the vulnerable position minors find themselves in. What puts them in this condition is the lack of freedom, ability to negotiate, and to sever the unbalanced relationship. This impossibility is determined by the particular relationship that arises between the parties: one party has coercive power (physical and psychological), whilst the other is vulnerable and weak, and therefore unable to offer resistance either as an individual or family or group.

The two different case studies presented below demonstrate how the link between legal and illegal activities is often blurred. However, none of the participants in this study shared any experience of being coerced into prostitution or being victims of violence and abuse. There is also no evidence from the conversations

with minors reported here that they were trafficked to Italy. Such evidence was supported by access to social workers' reports and other gatekeepers' written reports prior to meeting with participants. It was pivotal for the researcher to assure and explore all ethical considerations in relation to children's victimisation in accordance with the WHO's definition of victimisation (Bovarnick 2010). The WHO defines child victimisation as all forms of physical and emotional ill treatment, sexual abuse, neglect, or negligent treatment or commercial or other exploitation that results in actual or potential harm to the child's health, survival, development, or dignity in the context of a relationship of responsibility, trust, or power. Workplace victimisation can take many forms when children are forced to work, such as physical, psychological, emotional, financial deprivation, damage to health, educational deprivation, etc.; they are also exposed to situations that make them vulnerable to trafficking, abuse, violence, and exploitation.

6.4. Chinese minors working in Italy

For Chinese communities settled in Italy (Castles, Davidson 2000), the employment of minors is part of a family project based on economic integration in the host country (Baraghini 2017). Integration is often pursued through the creation of small and medium-sized enterprises (Silvano 2017). The household unit often coincides with the place where the family's work is carried out and this in turn facilitates the involvement of a minor: these are small tasks, not identifiable as forms of child exploitation (Glick, White 2003). The case study presented here reveals that more than 90% of Chinese children (N=100) aged 16–18 and residing in Northern and Central Italy help their parents in the leather goods sector. In this case, we find continuity with lifestyles of the country of origin, which are maintained even in a different context: work involves all members of the family and children also play an active role. They help in leather goods workshops as well as restaurants, grocery stores, and clothing stores, often receiving a symbolic financial reward. The hourly load and the tasks performed are related to the age of the children, and there does not seem to be any difference according to gender: most minors work from a minimum of five hours a day to a maximum of eight and the work activity covers the entire period of the day that minors would spend outside of school. In all instances, the work is carried out in the afternoon, in the evening, and at weekends and does not hinder school attendance; therefore, there is no correlation between child labour and school-leaving (Nobili, Sebastiani 2001). One of the typical elements of the work of Chinese minors is precocity: they start working during primary school (6–8 years old) (Napolitano et al. 2001). A few young people work even more than eight hours (2%), while there are also those who work less than five hours (19%). It should be emphasised that the minors interviewed declared in 92% of cases that their parents work more than 15 hours a day and their siblings worked more than 9 hours (32%). In 37% of cases siblings worked between 7–8 hours and in 31% of cases siblings worked less than 7 hours.

The experience of Chinese children is not unique (Benevene, Lagioia, Callea 2010b). It is worth highlighting a condition of exploitation due to the reduction in the exercise of other rights (leisure, play, or building friendships). In particular, this is not a question of free choice, but rather a condition of 'self-exploitation' that involves all members of the family with the aim of maintaining the family micro-enterprise or the work done for third parties (Gosh 2020).

6.5. Moroccan minors working in Italy

Moroccan minors generally are inserted in the itinerant sales channels by compatriots, but there are also more serious cases of infiltration in criminal circuits linked to the sale that risk being read as jobs, when in reality they are crimes (Finkelhor 2008). Traveling minors work mainly in the afternoons after school, in the evenings, and on holidays or on Saturdays and Sundays. In the majority of cases, minors work flexible hours and collaborate in supporting the family, also carving out time for leisure and school. However, there are also minors who work in the afternoons and evenings and who must personally cover all the costs of their room and board, maintaining a discontinuous school attendance, and others who work on holidays and away from home to avoid being recognised.

Vagrancy is one of the main activities carried out by Moroccan minors. For some it is a job undertaken to support the family. For others, it is an activity justified by traditional practice and almost an expectation from the country of origin, whereas others see it as evident exploitation. The ISTAT survey (2019) emphasised how the situations of greatest risk are probably when the forms of small itinerant trade (selling handkerchiefs, washing car windows at traffic lights, or illegal custody of cars in car parks) slip into forms of masked begging, which in turn can turn into forced labour when minors are made to do it.

It is not always the parents who decide to have their children (usually boys) emigrate to work; sometimes it is the same young people who wish to come to Italy with high expectations of employment, only to be disappointed once in Italy. This is because minors often do not have the perception of being exploited. The most serious forms of exploitation are found in dealing drugs and other illegal activities which, though they can arguably be defined as work, represent the only possibility for income. Minors involved in these activities are usually not sent by their families to live with a relative, but they set off on an adventure: once they arrive in Italy they are directed by peers or compatriots toward illegal activities, transgressing traditional values and entering the sphere of the *haram* (illicit), with frequent breakdowns in familial relationships (Policek, Ravagnani, Romano 2019). With respect to labour trafficking, potential indicators may include a recent history of immigration, unfamiliarity with the city or town where they live, or apparent control and intimidation by an accompanying adult. Often, the parents of the minor may be victims of labour or sex trafficking, with or without victimisation of the minor.

Because of the sensitivity of the research area, empirical studies are relatively limited and there is a narrow evidence base. In the vast majority of instances, researchers focussed on women and girls who experienced sex trafficking, revealing a paucity of research on male victims and victims of labour trafficking. In many studies on human trafficking, researchers have included aggregate results for adults and children, boys and girls, or individuals from multiple countries of origin. Some researchers also combine victims of different forms of trafficking. Without disaggregated data, it is hard to identify findings that may be specific to minors or to subpopulations of child victims. Nonetheless, much can be learnt from related areas of study, such as work with the homeless or runaway youths, some of whom engage in survival sex and are therefore victims of human trafficking. Studies of adult populations are also helpful inasmuch as adult women involved in sex work were often recruited at very young age and continue to experience some of the same hardships as sex-trafficked youth. The lack of research on male victims of trafficking may indirectly support the cultural belief that boys cannot be victimised and may exacerbate the problem of under-recognition. The paucity of research translates into limited empirical knowledge of the factors that increase boys' vulnerability to trafficking, of the unique experiences that occur during the period of exploitation, of the gender-specific adversities faced by male children, and of their unique needs for recovery and reintegration. A lack of knowledge and awareness likely contributes to the deficiency of services for male trafficking survivors and a tendency to treat them as offenders rather than as children in need of help and protection. With reference to forced labour involving minors, existing studies tend to suffer from the limitations mentioned above, especially with regard to researchers combining minors and adults in the sample population and inadequately distinguishing between victims of labour trafficking and of sex trafficking. Research is also difficult to conduct because of the complexity involved in identifying and distinguishing between child employment, child labour, hazardous child labour, forced child labour, and trafficking. Because labour trafficking has not received the public attention accorded to sex trafficking, there is little awareness of the possibility that minors or their parents may be victims of labour trafficking.

Another limitation in the research is related to potential generalisability. Researchers suggest that the victims identified represent only a small fraction of the total number of persons subjected to human trafficking. It is possible that these victims are fundamentally different in important respects from the whole population of trafficked persons, which would significantly limit the generalisability of study results. This possibility may be more relevant for studies conducted on trafficking survivors who are actively seeking services than for studies involving street outreach and interviews of homeless people or runaway youths engaging in survival sex. Research on trafficking victims, especially child victims, is particularly difficult because it involves a vulnerable study population. Service providers offering care to survivors are often appropriately cautious about the possibility

of exposing survivors to stressful situations and may be reluctant to approach their clients about participating in a study, which may limit access to survivors and discourage attempts to conduct research. Finally, adults and adolescents who do participate may experience recall bias, especially if recounting events that occurred years earlier. Alternatively, they may provide inaccurate information in an effort to protect others or themselves from stigma, shame, reprisals, or other consequences. Studies on minors involved in drug use often reveal that they experience victimisation and trauma caused by forced labour and sex trafficking.

Although it does not only concern Moroccan minors (Lagomarsino 2002), the sale of drugs has progressively been organised in a stratified way, coordinated by older adolescents, attracting children with the promise of easy money. The presence of debts contracted by the family and as yet unpaid, or the subtle persuasion exercised by the strong influence of the community and the familial bond, can represent a further constraint that conditions the experiences of minors.

Another situation of exploitation concerns young Moroccan girls, aged 10–13, who are sent to Italy by their compatriots with the promise of receiving a school education and being regularised in exchange for help with domestic activities (ISTAT 2019). These conditions are often misleading, and girls remain confined to the role of domestic workers with no access to education. In this case, there is a link with the traditional practices embedded in the culture of origin (i.e. the traditional practice, still in force in rural contexts, of educating girls in the future role of wives by sending them to work with wealthy families in urban areas), which are nonetheless disrupted, fuelling illegal practices. Especially for the illegal activities considered, the influence of the paths and methods of inclusion in Italy cannot be overlooked (Hopkins 2010). It is important to highlight that for Moroccan minors, there are heterogeneous working conditions: in situations of family unity in Italy, children predominantly offer help to their families in household management; in cases where minors join their fathers to work, there is an acceptance (at least initially) of being involved in external activities, such as begging and having to demonstrate autonomy and independence. In the case of irregular or unaccompanied minors, involvement in illegal activities is more widespread, so the risk of exploitation is greater.

7. Eradicating child labour and forced labour of children

The two case studies presented herein draw attention to the complexities embedded in the experience of child labour. Although there are clear similarities between the two groups, such as strong family ties, there are also instantly recognisable differences, specifically with reference to work undertaken outside the family, an experience shared by most of the Moroccan minors but not by the Chinese minors.

Widespread bans, boycotts, and trade policies cannot certainly reduce child labour and, in some instances, may even exacerbate the problem (Huijsmans, Baker 2012). This is not to say that child labour should not be outlawed. Certain forms of child labour can never be acceptable, such as illegal activities and hazardous labour. However, merely banning such activities will not be sufficient to ensure the children's welfare if the household is unable to meet its subsistence needs without the income generated by the children (Petti 2004).

The elimination of child labour requires policy instruments that target its causes. Households facing subsistence poverty will require higher incomes in order to be able to withdraw their children from underage labour. Higher incomes will allow families to send them to school. Income redistribution is one potential means of achieving such an objective, but it will only be effective if the mean income level in the household is sufficiently high. Often, this is not the case; therefore, direct financial aid may be necessary in the short term. Financial constraints caused by the current COVID-19 pandemic have exacerbated the need for financial support. Conditional cash transfers are one such policy instrument. In return, households can be expected to fulfil a programme requirement, such as sending their children to school. Without access to credit, some families may have to send their children to work rather than to school. Even if children are not sent to work, they may be kept out of school if credit is not available to cover the direct costs of schooling. A lack of credit may also prevent some families from buying income-generating assets or pursuing certain income-generating activities. In some cases, informal lenders may be the only option available to a household – an option that tends to carry high costs in the form of interest, in turn subjecting families to further debt. If a family does take a loan from an informal lender at a high interest rate, there is a risk that the child may be bonded into labour in order to repay the debt. As a result, informal credit markets may increase the incidence of child labour in families who are in desperate need of a loan; therefore, policies that aim to provide credit to the poor at reasonable interest rates may help to reduce child labour. This is a recurrent experience amongst migrant families in Italy (Nobili, Sebastiani 2001) and elsewhere (Saha 2019).

Policies addressing child labour should also consider the connection between fertility and child labour. While high fertility and child labour may be a rational response by the household given the behaviour of other families in the community, the group behaviour in this equilibrium may be considered irrational. Paone and Teselli (2000) show that the costs of raising children are quite high; therefore, whilst child labour can offset some of the costs of raising a child, it is unlikely that it could compensate the total cost, let alone be profitable. As a result, policies aimed at lowering aggregate fertility may help to reduce the incidence of child labour. Sexual and reproductive health policies specifically aimed at migrant populations should also highlight such a link. Mandatory school attendance, coupled with policies aimed at improving access to and the quality of schools, is also another important intervention that would primarily affect children who

are facing subsistence poverty. Empirical evidence (Saha 2019) has shown that educated parents are more likely to send their children to school. Indeed, education appears to have a dynastic effect, where educational attainment leads to a virtuous circle, while the lack of education could lead to a poverty trap. Consequently, policies aimed at improving the quality of schooling will increase the returns to education, making education a relatively more attractive alternative to child labour. The critical role of education in economic growth is demonstrable (Gilbon 2014). The empirical evidence indicates that human capital explains a great deal of the differences in output between households (Tagliaventi 2002). Therefore, increasing school attendance should have positive long-term effects on reducing child labour.

When addressing more specifically forced labour of children, in order to tackle vulnerability and, accordingly, to challenge a system of black markets, labour exploitation, and sexual abuse, the adoption of a comprehensive perspective built on human rights standards, including labour rights, is indispensable. A comprehensive approach inevitably implies long- and medium-term aims. Certainly, the first systemic factors that should be tackled in the long run are the deep economic disparities among countries which lead populations to migrate. In a context of global injustice, individuals choose to migrate to work abroad because economic pressures all but coerce them to. The wide gap between rich and poor countries is itself a form of coercion. On the other hand, medium- and short-term objectives should include actions aimed at strengthening and monitoring the respect of labour rights standards by promoting, for example, economic and legal incentives for non-exploitative business to help them in upholding labour rights standards and bearing costs of production. In this regard, the provisions offered by the 2014 ILO Forced Labour Protocol, which makes clear the need to adopt effective strategies of prevention and protection, can be extremely useful. Furthermore, changes should also embrace the creation of more legal and viable migratory channels.

In Italy, the work started by some local institutions, associations, and experts to address all forms of abuse experienced by young migrants seems to be moving towards addressing some of these points. There are now various forms of intervention to tackle the structural factors that render migrant minors vulnerable. M – specifically, centres to provide social and legal support to migrant workers, mainly those with children.

8. Concluding remarks

In addressing child labour and forced labour of children in Italy, it is pivotal to further investigate forms of work that can be reconciled with school attendance in opposition to situations that represent the exploitation of minors, where minors are harmed and deprived of their fundamental rights. Consideration of cultural

differences seems to emerge as a significant fact in the effort to integrate migrant children from disadvantaged social backgrounds into the tapestry of Italian society (Melossi, Giovannetti 2002). In working conditions that respect health and safety regulations, it should be emphasised that for some minors being in Italy confronts them with a different reality and model of childhood. For some minors, work could represent a simple adaptive tool often perceived as a personal social inclusion channel. In this regard, it is possible to argue that there is a conceivable positive value of work in the process of building the identity of a minor and their sense of belonging to society (when work is carried out respecting legal rules).

Different representations of childhood could shed some light on some meanings of the work experience of foreign minors living in Italy and could lead to implications of work concerning the migration process. For foreign minors, it is important to explore the meaning that work assumes in their experiences and to try to understand how to reconcile the original cultural variables with the real possibilities of inclusion in a different cultural setting, one often perceived as hostile. Obviously, the dimension of work cannot be isolated from other variables. Still, it can certainly be central in the projects of inclusion for those willing to reside in Italy, as well as for those wishing to repatriate.

The greatest challenge posed by any intervention aimed at banning or regulating child labour likely concerns the ability to protect individuals, guaranteeing respect for the rights of children and adolescents together whilst responding to their expectations – not by dissociating them, but by building shared paths together, around the dimensions of training and work as well (Thévenon, Edmonds 2019).

Subsistence poverty, inequalities in accessing the labour market and parental preferences may all contribute to sending a child to work. Therefore, no one policy instrument on its own can be expected to eradicate child labour. This is especially true in the case of a ban on child labour or a boycott of products produced by child labour, which are aimed at the symptoms rather than the root causes of child labour. Such policies on their own are not likely to significantly reduce child labour. Indeed, they can have the opposite effect, making children and their families worse off. Bans and boycotts will not produce the desired results if the children and their families do not have alternatives. Preventing children from working without providing alternative options can have devastating consequences for children because they become vulnerable to further exploitation. To successfully eliminate child labour, policies must address the causes of child labour and provide viable alternatives. This is by no means an easy task, but it can be achieved by ensuring access to quality schooling, addressing inequalities in accessing the labour market and providing economic support to those who face subsistence poverty, as well as by pursuing long-run economic growth strategies.

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References

- Abebe T. and Bessell S. (2011). 'Dominant discourses, debates and silences on child labour in Africa and Asia'. *Third World Quarterly* 32(4), pp. 765–786.
- Ali F.R.M. (2019). 'In the same boat, but not equals: The heterogeneous effects of parental income on child labour'. *The Journal of Development Studies* 55(5), pp. 845–858.
- Allievi S. (2010). 'Multiculturalism in Italy: The missing model'. In A. Silj (ed.) *European Multiculturalism Revisited*. London, New York: Zed Books.
- Atrigna D. (2011). *La problematica del lavoro minorile: Aspetti giuridici* [The problem of child labor: Legal aspects]. Doctoral dissertation. University of Geneva.
- Baland J.M. and Robinson J.A. (2000). 'Is child labor inefficient?'. *Journal of Political Economy* 108(4), pp. 663–679.
- Baraghini F. (2017). *Lavoro minorile e forme di schiavitù* [Child labor and forms of slavery]. Perugia: Cosmopolis.
- Basu K. and Van P.H. (1998). 'The economics of child labor'. *American Economic Review* 88(3), pp. 412–427.
- Benevene P., Lagioia B. and Callea A. (2010a). 'Atteggiamenti verso il lavoro degli adolescenti: Indagine su un gruppo di studenti medi italiani' [Attitudes towards adolescents' labour: Survey on a group of high school Italian students]. *International Journal of Developmental and Educational Psychology* 2(1), pp. 581–589.
- Benevene P., Lagioia B. and Callea A. (2010b). 'Validazione del questionario 'atteggiamento verso il lavoro minorile' [Validation of the 'attitude towards child labor' questionnaire]. *Ricerche di Psicologia* 33(2), pp. 255–271.
- Bhalotra S. (2007). 'Is child work necessary?'. *Oxford Bulletin of Economics and Statistics* 69(1), pp. 29–55.

- Bovarnick S. (2010). 'How do you define a trafficked child? A discursive analysis of practitioners' understandings of trafficking'. *Youth & Policy* 104, pp. 80–96.
- Buffa F., Caracuta F. and Anelli A. (2005). *Il lavoro minorile: Problematiche giuridiche* [Child labor: Legal issues]. Macerata: Halley Editrice.
- Calcaterra V. (2016). 'L'advocacy nella tutela minorile. Prime esperienze italiane del lavoro del portavoce professionale' [Advocacy in child protection. First Italian experiences of the professional spokesperson's report]. *Minorigiustizia* 2, pp. 155–162.
- Caocci D. and Finelli M. (1999). Il dibattito internazionale [The international debate]. *Pianeta Infanzia. Questioni e Documenti* 7, pp. 24–42.
- Castles S. and Davidson A. (2000). *Citizenship and Migration: Globalization and the Politics of Belonging*. New York: Routledge.
- Creswell J.W. (1998). *Qualitative Inquiry and Research Design: Choosing Among Five Traditions*. Thousand Oaks, CA: Sage.
- D'Ovidio F. (2014). 'Riflessioni sull'attuale paradigma del lavoro minorile' [Reflections on the current paradigm of child labor]. *Rivista Giuridica del Lavoro e della Previdenza Sociale* 1, pp. 89–116.
- Daalen E. van and Hanson K. (2019). 'The ILO's shifts in child labour policy: Regulation and abolition'. In Ch. Gironde and G. Carbonnier (eds.) *The ILO @ 100: Addressing the Past and Future of Work and Social Protection*. Leiden: Brill Nijhoff, pp. 133–151.
- DiScala S.M. (2018). *Italy: From Revolution to Republic, 1700 to the Present*. London: Routledge.
- Fang Y. and Ceccarelli M. (2014). 'Findings on Italian historical developments of machine technology in 19th century towards industrial revolution'. In I. Visa (ed.) *The 11th IFToMM International Symposium on Science of Mechanisms and Machines*. Cham: Springer, pp. 493–501.
- Feagin J.R., Orum A.M. and Sjoberg G. (eds.) (1991). *A case for the case study*. Chapel Hill: University of North Carolina Press.
- Federico G. and Tena-Junguito A. (2014). 'The ripples of the industrial revolution: Exports, economic growth, and regional integration in Italy in the early nineteenth century'. *European Review of Economic History* 18(3), pp. 349–369.
- Feldman C. and Kuyken W. (2011). 'Compassion in the landscape of suffering'. *Contemporary Buddhism* 12(1), pp. 143–155.
- Finkelhor D. (2008). *Childhood Victimization: Violence, Crime, and Abuse in the Lives of Young People*. Oxford: Oxford University Press.
- Fors H.C. (2012). 'Child labour: A review of recent theory and evidence with policy implications'. *Journal of Economic Surveys* 26(4), pp. 570–593.
- Ghosh D. (2020). *Parents, Children, and an End to Child Labour: Is Conditional Cash Transfer (CCT) the Solution?*. Doctoral dissertation. Fielding Graduate University.
- Gilbert P. (ed.) (2017). *Compassion: Concepts, Research and Applications*. Abingdon: Taylor & Francis.

- Gillborn D. (2014). *Multicultural Education*. London: Routledge.
- Glick J.E. and White M.J. (2003). 'Academic trajectories of immigrant youths: Analysis within and across cohorts'. *Demography* 40(4), pp. 759–783.
- Glind H. van de (2010). *Migration and Child Labour: Exploring Child Migrant Vulnerabilities and those of children left-behind*. Geneva: ILO.
- Goetz J.L. and Simon-Thomas E. (2017). 'The landscape of compassion: Definitions and scientific approaches'. In E.M. Seppälä, E. Simon-Thomas, S.L. Brown, M.C. Worline, C.D. Cameron and J.R. Doty (eds.) *The Oxford Handbook of Compassion Science*. Oxford: Oxford University Press, pp. 3–16.
- Gupta M.R. (2000). 'Wage determination of a child worker: A theoretical analysis'. *Review of Development Economics* 4(2), pp. 219–228.
- Hopkins P. (2010). *Young People, Place and Identity*. London: Routledge.
- Huijsmans R. and Baker S. (2012). 'Child trafficking: 'Worst form' of child labour, or worst approach to young migrants?'. *Development and Change* 43(4), pp. 919–946.
- Invernizzi A. and Milne B. (2002). 'Are children entitled to contribute to international policy making? A critical view of children's participation in the international campaign for the elimination of child labour'. *International Journal of Children's Rights* 10(4) pp. 403–431.
- Jafarey S. and Lahiri S. (2002). 'Will trade sanctions reduce child labour?: The role of credit markets'. *Journal of Development Economics* 68(1) pp. 137–156.
- Lagomarsino F. (dic. 2002). 'Lavoro minorile e immigrazione: Il caso dei minori marocchini a Genova' [Child labor and immigration: The case of Moroccan minors in Genoa]. *Studi Emigrazione* 39(148), pp. 880–906.
- Long J. (2012). 'Il lavoro dei minori stranieri in affidamento familiare: Tra protezione dallo sfruttamento e diritto al lavoro' [The employment of foreign minors in foster care: Between protection from exploitation and the right to work]. *Minorigiustizia* 2, pp. 132–142.
- Mangiavacchi L., Piccoli L. and Pieroni L. (2020). *Fathers Matter: Intra-Household Responsibilities and Children's Wellbeing during the COVID-19 Lockdown in Italy*. Bonn: Institute of Labour Economics.
- Melossi D. and Giovannetti M. (2002). *I Nuovi Sciuscià: Minori Stranieri in Italia* [The new Sciuscià: Foreign Minors in Italy]. Rome: Donzelli.
- Miscione M. (ed.) (2002). *Il lavoro dei minori. Legge, prassi amministrativa e contrattazione collettiva* [The work of minors. Law, administrative practice and collective bargaining]. Milano: IPSOA.
- Morello M. (2019). 'Alle origini della tutela del lavoro minorile nello Stato unitario: La l. 11 febbraio 1886 n. 3657, a tutela dei bambini sfruttati' [At the origins of the protection of child labor in the unitary State: Law 11 February 1886 n. 3657, for the protection of exploited children]. *Italian Review of Legal History* 5, pp. 254–284.
- Moro A.C. (2014). *Manuale di diritto minorile* [Handbook of child law]. Bologna: Zanichelli.

- Napolitano G.M., Pietrobono B. and Sebastiani G. (2001). 'La disciplina sul lavoro minorile alla luce della direttiva comunitaria n. 94/33 e della riforma dell'obbligo scolastico' [The regulations on child labor in the light of the community directive n. 94/33 and the compulsory schooling reform]. *Difesa Sociale* (3), pp. 7–29.
- Nesi G., Noglier L. and Pertile M. (2008). *Child labour in a globalized world. A Legal analysis of ILO action*. Aldershot: Ashgate.
- Nobile S. and Sebastiani G. (2001). 'Il lavoro minorile in Italia: Ricerche, problemi, prospettive' [Child labor in Italy: Research, problems, perspectives]. *Difesa Sociale* 80, pp. 7–33.
- Nogler L. and Pertile M. (2016). *Child labour in a globalized world: a legal analysis of ILO action*. London: Routledge.
- Nunin R. (2000). 'Lavoro e minori: Novità normative' [Work and minors: Regulatory changes]. *Il Lavoro Nella Giurisprudenza* 4, pp. 317–323.
- Paone G. and Teselli A. (ed.) (2000). *Lavoro e lavori minorili: L'inchiesta Cgil in Italia* [Labor and child labor: The CGIL investigation in Italy]. Roma: Ediesse.
- Petti G. (2004). *Il Male Minore: La tutela dei minori stranieri come esclusione* [The Minor Evil: The protection of foreign youth as exclusion]. Verona: Ombre Corte.
- Policek N. (2016). 'Turning the invisible into the visible: Stateless children in Italy'. In M.O. Ensor and E.M. Gozdzia (eds.) *Children and Forced Migration: Durable Solutions during Transient Years*. London: Palgrave Macmillan, pp. 79–102.
- Policek N., Ravagnani L. and Romano C.A. (2019). 'Victimization of young foreigners in Italy'. *European Journal of Criminology*. Available online: <https://doi.org/10.1177/1477370819850963>.
- Ranjan P. (2001). 'Credit constraints and the phenomenon of child labor'. *Journal of development economics* 64(1), pp. 81–102.
- Saha B. (2019). 'Household self-employment eliminates child labour'. In S. Bandyopadhyay and M. Dutta (eds.) *Opportunities and Challenges in Development. Essays for Sarmila Banerjee*. Singapore: Springer, pp. 357–366.
- Scannavini K. and Teselli A. (eds.) (2014). *Game Over: Indagine sul Lavoro Minorile in Italia* [Game Over: Survey on Child Labor in Italy]. Roma: Ediesse.
- Spadaro C.M. (2019). 'Il lavoro minorile nelle miniere calabresi in età borbonica tra antiche regole e nuovi 'diritti'' [Child labor in the Calabrian mines in the Bourbon period between ancient rules and new 'rights']. *Italian Review of Legal History* 5, pp. 168–200.
- Spesso L. (1953). 'L'utilizzazione delle forze di lavoro minorile in Italia. Commissione parlamentare di inchiesta sulla disoccupazione' [The use of child labor in Italy. Parliamentary Commission of Inquiry into Unemployment]. *La Disoccupazione in Italia. Studi speciali. Atti della Commissione* 4(5), pp. 153–200.
- Thévenon O. and Edmonds E. (2019). 'Child labour: Causes, consequences and policies to tackle it'. *OECD Social, Employment and Migration Working Papers* 235. Available online: <https://doi.org/10.1787/f6883e26-en>.

- Thomas C. (2019). 'Freedom from child labour: A fundamental right'. In J.R. Bellace and B. ter Haar (eds.) *Research Handbook on Labour, Business and Human Rights Law*. Cheltenham: Edward Elgar Publishing, pp. 253–273.
- Zutshi A., Creed A. and Sohal A. (2009). 'Child labour and supply chain: Profitability or (mis) management'. *European Business Review* 21(1), pp. 42–63.

Internet sources

- Department of Penitential Affairs (2019). Available online: https://www.giustizia.it/giustizia/it/mg_14_7.page?numEle=0&search=minori&faccetta_1=4_54&pageCode=mg_14_7 [22.02.2021].
- ILO (2018). ILO-EC Conference: Italy presentation by A. Simonazzi. Available online: <https://www.ilo.org/Search5/search.do?searchLanguage=en&searchWhat=child+labour+Italy> [22.02.2021].
- INAIL (2020). *Ispettorato Nazionale del Lavoro* [National Labour Inspectorate]. Available online: <https://www.ispettorato.gov.it/it-it/studiestatistiche/Pagine/default.aspx> [22.02.2021].
- ISTAT (2019). *Minors in juvenile justice institutions*, Istituto Nazionale di Statistica [National Institute of Statistics]. Available online: <https://www.istat.it/en/archivio/145106> [22.02.2021].
- Silvano G. (2017). *Diritti umani negati: Il lavoro e lo sfruttamento dei minori* [Human rights denied: Labour and minors' exploitation], Morethesis. unimore.it. Available online: <https://morethesis.unimore.it/theses/available/etd-02062017-112832/> [8.03.2021].
- UNICEF (2019). *Every child is protected from violence and exploitation. Global Annual Results Report 2019*. UNICEF. Available online: <https://www.unicef.org/media/73766/file/GARR-2019-Goal-Area-3-2020.pdf.pdf> [20.03.2021].



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Labour trafficking victim participation structures in the United States, Russia, and globally: Strategic implications

Typy angażowania się ofiar w pracę przymusową w Stanach Zjednoczonych, w Rosji i na świecie: implikacje strategiczne

Abstract: Using data from the Counter Trafficking Data Collaborative (CTDC; N = 9,900), we developed breakdowns of labour trafficking victims worldwide, for two countries (the USA and Russia), and by job category (e.g. 'domestic worker'). These tables refer to the frequency with which each of nine victim types occur, based on their motivation to participate in a trafficking arrangement. For instance, 'Tricked and Trapped' comprises a large segment of US labour trafficking victims. Such victims willingly begin jobs, but are subsequently forced to continue. Based on attitude-behaviour and marketing theory, the intervention framework prescribes specific interventions for each victim type. These include 'information sharing', 'radical and moderate confrontation', 'economic and noneconomic rewards', and more. The results of our study indicate that labour trafficking victim types can vary substantially by region and job category. For instance, Russia's highest percentage of labour trafficking victims hold construction jobs as 'Enlightened Apostates' (e.g. those tricked by a friend) while most US victims perform 'unspecified' work as 'Trapped and Robbed' (i.e. minors and coerced adults) victims. Thus, the interventions prescribed for them will vary.

Keywords: human trafficking, intervention marketing, social marketing, social activist marketing

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Abstrakt: Bazując na danych z Counter Trafficking Data Collaborative (CTDC, n=9.900) została opracowana charakterystyka ofiar handlu ludźmi do pracy przymusowej na poziomie globalnym, ponadto wykonano analizę dwóch krajów jako studiów przypadków (USA i Rosji), w tym uwzględniając podział na poszczególne kategorie zawodów (np. dla pracowników wykonujących prace domowe w prywatnych gospodarstwach). Charakterystyka ta (participation structures) odnosi się do częstotliwości, z jaką pojawia się każdy z dziewięciu typów ofiar w zestawieniu „Victim Intervention Marketing”. Na przykład ofiary zaliczone do grupy „oszukiwani i uwięzieni” stanowią dużą część ofiar pracy przymusowej w Stanach Zjednoczonych. Są to osoby, które rozpoczęły pracę dobrowolnie, po czym zostały zmuszone, by ją kontynuować. W oparciu o teorię postaw-zachowań oraz teorię marketingu został opracowany model interwencji dla każdego typu ofiar pracy przymusowej. Obejmuje on takie płaszczyzny, jak m.in.: wymianę informacji, konfrontację frontalną lub umiarkowaną, analizę korzyści ekonomicznych i pozaekonomicznych. Wyniki przeprowadzonego badania pokazują, że struktura udziału ofiar pracy przymusowej może się znacznie różnić w zależności od regionu oraz kategorii zawodów. Przykładowo największy odsetek takich ofiar w Rosji stanowią osoby wykonujące prace budowlane jako tzw. „oświeceni odstępcy”, czyli osoby które zostały oszukane przez znajomego. Z kolei w USA większość ofiar wykonuje proste prace i wpisuje się w kategorię osób „uwięzionych i okradzionych” (są to np. osoby niepełnoletnie lub osoby dorosłe, które zostały do tego zmuszone). Dlatego też interwencje podejmowane wobec każdej z tych grup muszą się od siebie różnić.

Słowa kluczowe: handel ludźmi, marketing interwencyjny, sytuacje konsumenckie, marketing społeczny, marketing działaczy społecznych

Introduction

The International Labour Organization (ILO) defines labour trafficking as ‘all work or service which is extracted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.’ The ILO’s description of forced labour also includes ‘manipulated debt,’ ‘retention of identity papers,’ and ‘threats of denunciation to authorities.’

Labour trafficking is a global problem that affects millions of men, women, and children each year. Bales (2012: 194–195), Kara (2012: 1), and others have provided many narratives of forced labour. Bracy, Lul, and Roe-Sepowitz (2019) found that labour trafficking in the United States primarily occurs in private homes, followed by restaurants, hotels, and other industries. They noted that ‘the scope of labour trafficking [...] has been difficult to estimate due to [...] [its] [...] hidden nature.’ Lasocik, Rekosz-Cebula, and Wieczorek (2014) noted, ‘there is not enough knowledge on certain aspects of human trafficking, and there are some significant gaps in the system which has been built to eliminate it.’

National labour trafficking interventions are typically based on the paradigm of the ‘4 Ps’ of human trafficking: ‘protection,’ ‘prosecution,’ ‘prevention,’ and ‘partnerships’ (Winterdyk 2018). Alternatively, Murray, Dingman, Porter, and Otte (2015) suggested the heavy use of victim-focussed ‘influence strategies’ (Frazier, Sheth 1985) as interventions. As these two approaches are complementary, they

may be combined. For instance, when interventionists target job-seekers (victims), an awareness campaign can indicate which employers tend to enslave. This would be an example of both 'information sharing' (Murray et al. 2015) as an 'influence strategy' (Frazier, Sheth 1985) and 'prevention' as a 4-P strategy.

The purpose of this discussion is two-fold. Firstly, it identifies the breakdown of labour trafficking victims at three levels: globally, for the USA and Russia, and by job category. The USA and Russia were selected because of their large sample sizes ($N > 1,000$). This size is intended to offer a sufficient representation of the variety of cases within a nation. The second purpose of this discussion is to offer interventions based on marketing theory and the 4-P human trafficking paradigm. Thus, in marketing language, it asks, 'What types of jobs do labour trafficking victims perform by region?', 'How does the breakdown of victims vary by job type?' and 'Given the breakdown by job type, what mix of interventions will most likely help victims in each job type?' In the language of human trafficking, this discussion asks, 'Given the breakdown of a region, which "Ps" should it emphasise?'

Two points should be noted. To avoid confusion, the '4 Ps' of marketing (i.e. product, price, promotion, and place) are not directly related to this discussion. In addition, we define a labour trafficking 'victim' as someone who is formerly, currently, or potentially exploited in a human labour trafficking context. 'Survivor' is less appropriate here, because victims who phoned in to hotlines may have still been working the exploitive job.

Human trafficking defined

The United Nations' Palermo Protocol of 2000 (UNODC 2000: 41) defined human trafficking as 'the recruitment, transportation, transfer, harbouring, or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs' (UNODC 2000). Similarly, the Trafficking Victims Protection Act of 2000 defines human trafficking victims in terms of 'vulnerability' to sex, labour, and organ exploitation.

Since we approach human trafficking from a marketing perspective, we apply the definition from Murray et al. (2015). Thus, 'human trafficking involves the activities of an egregious, interorganisational, opportunistic, marketing distribution system wherein people (or their organs) are treated as products or property. All other things equal, egregiousness (severity of abuse) ranges from relatively low under voluntary participation, where fraud is often employed, to relatively high,

where traffickers use force and coercion to elicit involuntary participation (slavery).’ Thus, consistent with Murray et al. (2015), all slavery (involuntary servitude under conditions of force or coercion) is human trafficking, but not all human trafficking is slavery. This view of trafficking is also consistent with Weitzer (2014) and with Chuang (2012), who noted that ‘through exploitation creep, the concept of ‘slavery’ is now fully conflated [...] with trafficking.’

Human labour trafficking

Bakirci (2009) argues that labour trafficking victims should not be referred to as ‘workers’ or ‘labourers’ as the ILO describes them. However, the ILO does not regard ‘normal civic obligations’ as labour trafficking, where, ‘normal’ is subjectively determined. Similarly, Ollus (2015) argues ‘a rigid interpretation of forced labour is not always useful in understanding forms of labour exploitation.’ In addition, Petrunov (2014) distinguished ‘Forced Labour’ from ‘Forced Servitude,’ arguing that ‘pickpocketing’ and ‘begging’ are not ‘labour.’ According to Lasocik et al. (2014), ‘forced labour is a special form of enslavement and in extreme situations may take the form of slavery.’ Thus, their concept of forced labour aligns with the CTDC’s operationalisation of forced labour. The CTDC asked victims to reply ‘yes’ or ‘no’ to whether they were victims of ‘Forced Labour.’ However, in subsequent questions, roughly half of the victims replied ‘no’ when asked about violence, threats, coercion, etc. Thus, all slavery is forced labour, but not all forced labour is slavery. As there is disagreement over what should comprise labour trafficking, our definition is consistent with Murray et al. (2015). It does not exclude, and is not limited to the ILO’s categories of labour.

Labour trafficking intervention

Feasley (2016) identified four categories of labour trafficking accountability that a nation might employ. These include international regulation, market-based, civil liability, and domestic regulation. For instance, from a domestic regulation standpoint, Bowe (2007) suggested there was too little monitoring of labour trafficking among the South Florida orange groves. Arhin (2016) noted that in labour trafficking channels, the trafficker and the victim are often of the same ethnicity. The author suggests that this can impede intervention. Similarly, from the standpoint of international regulation, various efforts have sought to remove forced labour from product supply chains. For instance, the Harkin–Engel Protocol (Aronowitz 2018) attempts to minimise child labour in the cocoa industry.

Likewise, Kimberley Certification attempts to reduce slave mining for 'blood diamonds.' Overall, labour trafficking research and intervention have emphasised either law enforcement or consumer avoidance of goods tainted by slavery. Our approach incorporates law enforcement in some instances, whilst in others it focusses more on the social marketing aspect of intervention (e.g. awareness campaigns, information sharing, etc.).

Social marketing

Our analysis and the interventions we prescribe are anchored in social marketing. According to the United States Agency for International Development, 'social marketing is the use of commercial marketing techniques to achieve a social objective. Social marketers combine product, price, place, and promotion to maximise product use by specific population groups.' According to Lefebvre (2012), 'social marketing develops and applies marketing concepts and techniques to create value for individuals and society [...]. These inputs and perspectives are used to design more effective, efficient, sustainable, and equitable approaches to enhance social well-being. The approach is [...] associated with change among individuals, organisations [...] and public policy.'

To facilitate social change management, Sheth and Frazier (1982) developed their Model of Strategy Mix Choice for Planned Social Change. It presents an attitude-behaviour matrix wherein targets are 1) behaviourally 'engaged' or 'non-engaged' and 2) have either a positive or negative attitude toward the desired change. Each of the four cells within the ensuing matrix represents a unique mix of the target's attitudes and behaviours. Therefore, each cell prescribes a unique mix of interventions. For instance, 'rationalisation' and 'attitude change' are prescribed when the attitude is negative and the behaviour is 'engaged'. In contrast, 'inducement' and 'behavioural change' are prescribed when the attitude is positive and the behaviour is 'non-engaged'.

Murray et al. (2015) adapted the concepts of Sheth and Frazier (1982) and Frazier and Sheth (1985) to develop 'Victim Intervention Marketing.' This concept seeks to apply 'elements of strategic planning and decision-making' (Sheth, Frazier 1982) in human trafficking intervention. By incorporating social marketing's emphasis on measurable results, our discussion may help interventionists more effectively manage labour trafficking opposition. In the following sections we develop breakdowns by type of victim and then offer interventions based largely on marketing theory.

Victim intervention marketing

Intervention marketing is a branch of social activist marketing 'that uses traditional and non-traditional marketing techniques to prevent or end a vulnerable population's introduction into, or continuance in, a human trafficking distribution channel. Thus, it entails efforts to assist both current and potential trafficking channel participants, where the latter is at substantial risk of abuse by a trafficker.'

'Social activist marketing' (Murray 1997) is defined as a subset of social marketing (Kotler, Zaltman 1971) that involves '1) more important and socially divisive issues, 2) conflict between the social marketer and the target, and 3) greater reliance upon coercive influence strategies such as boycotts, protests, strikes, etc.' The outcome of an intervention marketing analysis is a matrix of victim modes (e.g. the percentage of 'Willing Assimilators'). The percentages of various victim types combined with job category will suggest specific intervention marketing strategies.

Rationale for specific interventions

In the approach of Murray et al. (2015), human trafficking intervention is largely a marketing problem. Thus, it requires marketing and communication interventions grounded in theory. It is an attempt to move beyond simple awareness campaigns. For instance, many victims know beforehand that they are to be trafficked (e.g. debt bondage). The problem is they have no better options. Thus, a victim's beliefs, attitude, and behaviour (Frazier, Sheth 1985) toward a trafficking arrangement result in their voluntary (due to economic desperation), semi-voluntary (due to pressure from a loved one), or involuntary (e.g. due to coercion or status as a minor) entrance and continuance. In turn, these attitudes and beliefs prescribe appropriate marketing intervention 'influence strategies.' For instance, 'Willing Assimilators' enter and depart trafficking arrangements voluntarily. However, 'Disillusioned Contrastors' enter voluntarily, but are (non-coercively) dissuaded from leaving. Reasons for continuing in the trafficking arrangement can include a romantic relationship with the trafficker, passport confiscation, etc. Based on Frazier and Sheth (1985) and Murray et al. (2015), 'radical confrontation' would be a prescribed influence strategy for Willing Assimilators. However, 'inducements' would be appropriate for Disillusioned Contrastors.

Table 1: Victim Intervention Marketing Framework

Voluntary Entrants
<i>Willing Assimilators:</i> Economic desperation drives these exploited victims to accept jobs under deplorable working conditions. They work, are paid, and depart at will. They are not pressurised to stay [Protect].
<i>Disillusioned Contrasts:</i> These victims accept jobs due to economic desperation. They are strongly discouraged from leaving, but they are not forced. Methods of discouragement include passport theft, false romance, and facilitating drug dependence [Prevent and Protect].
<i>Tricked and Trapped:</i> Victims exploited in this mode accept jobs due to economic desperation. Subsequently, the trafficker uses threats or coercion to force them to continue working [Protect and Prosecute].
Semi-voluntary Entrants
<i>Peaceful Displacers:</i> Here, a friend or relative persuades the victim to accept a certain job. There is no force or coercion. The victim begins working because of social pressure. However, they continue because it is their preference [Prevent and Protect].
<i>Responsible Martyrs:</i> These victims accepted and remained in a given job because of social pressure from a friend or loved one [Prevent].
<i>Enlightened Apostates:</i> Social pressure from a friend or loved one led this type of victim to accept a certain job. However, subsequently, the victim was forced or coerced to continue working [Prevent and Prosecute].
Involuntary Entrants
<i>Stockholmers:</i> These victims have Stockholm Syndrome. They were forced into the trafficking situation, but remain voluntarily [Protect and Prosecute].
<i>Karmic Acceptors:</i> They were forced into the trafficking situation. However, they remain out of some sense of a cosmic plan. They believe they are ‘supposed’ to be enslaved—at least in the short run [Prevent and Prosecute].
<i>Trapped and Robbed:</i> This group consists of two types: minors (below the age of 18) and adults who entered into and continued the trafficking situation due to force or coercion [Prosecute].

* Adapted from Murray et al. (2015).

Table 2: A Subset of Intervention Marketers’ Influence Strategies and Tactics

Reinforcement: This strategy would be used when the marketing channel participant (the victim) has a positive attitude towards the intervention marketer’s channel programme and behaves in accordance with it. Here, the intervention marketer would reinforce the participant’s efforts towards leaving the channel.
Rationalisation: The channel manager uses this when the participant has a negative attitude towards participation, but participates anyway. For instance, a woman in India may not want to donate her hair to traffickers, so the intervention marketer might leverage her attitude to dissuade her from future participation.
Information Exchange: Here, the channel manager offers information to persuade the potential victim to participate (or continue) in the channel. For instance, an intervention marketer might inform a cross-border victim of his rights in the new location.
Confrontation: An intervention marketer might use <i>moderate confrontation</i> with a victim who is considering joining a trafficking channel and <i>radical confrontation</i> if the victim actually decides to participate in it.
Negative and Positive Normative: Here, an intervention marketer might encourage a victim who has a positive attitude and behavioural intention regarding participation by telling them it is, for instance, socially acceptable to be a disloyal girlfriend to a partner who wants her to work at a dangerous job.
Rewards: These are arranged by the channel manager and levied upon the victim. Intervention marketers may use both economic and noneconomic rewards for victim behaviour that is consistent with leaving the channel.
Inducement: In some cases, the potential victim likes the idea of joining the intervention marketer’s channel program, but declines to participate in it. The reason may be others’ opinions (i.e. a subjective norm). Here, the intervention marketers may offer such inducements as small amounts of money to dissuade a financially desperate person from joining the channel.
Request: Here, the channel manager expresses his or her wishes regarding the victim or potential victim’s participation in the channel. However, they do not threaten or take a hard-sell approach. For instance, a wealthy family in a poor country may ask a poorer family to give them one of their children to raise, educate, etc. These have the potential to become exploitive, as seen among the ‘Restavek’ children of Haiti.
Free-Market Solutions: In instances where a person voluntarily joins an exploitive channel, as in the case of debt bondage, one way to liberate them is for the intervention marketer to pay off the debt to the channel manager.
Cultural Pluralism (Information Exchange): In some cases (e.g. temple hair donation in India, or in China where it is dishonourable to renege on a debt bondage agreement, the intervention marketer should consider dissuading the victim’s participation in a trafficking channel. This might be achieved by informing them that in other parts of the world, it is the debt bondage trafficker who would be shamed, not the victim.

*Source: Murray et al. (2015), Frazier et al. (1985).

Breakdown of victim type by region

Table 1 indicates a nation's percentage of victims in each category of the intervention marketing framework as well as the recommended intervention strategies (in square brackets). Identifying each group's participation is an important step in strategic intervention. This is because the mix of victim categories determines the mix of intervention influence strategies (Murray et al. 2015; Table 2). And, as proposed earlier, structure can help determine which of the 4 Ps should be emphasised more or less. For instance, 'radical confrontation' (one of the influence strategies) and 'protection' are prescribed for Willing Assimilators, whilst 'information exchange' and a combination of 'protection and prevention' are prescribed for Disillusioned Contrastors.

Breakdown of victims by job category

Participation by job category addresses the extent to which, aside from job tasks, victims performing Job A are better or worse off than those doing Job B. For instance, all other things being equal, if all workers in Job A are Willing Assimilators, while all Job B workers are Tricked and Trapped, then the former group would be better off because the first group is not being (interpersonally) forced to work, while the second one is. Thus, an underlying assumption is that most people prefer more freedom rather than less.

Level of severity

We offer 'severity' (egregiousness of the exploitation) to operationalise the concept of one trafficking victim being better off than another, all other things equal. It is based on Murray et al. (2015), who suggested that voluntary, semivoluntary, and involuntary victim participation exist on three different levels of egregiousness on an ordinal scale. Severity can be measured in at least two ways. The first is to estimate a 'Trafficking Misery Score' (Murray, Dingman, Porter 2015; Murray et al. 2016; Murray et al. 2018). This metric weighs each cell in the nine-cell framework (of intervention marketing) for egregiousness. Thus, Willing Assimilators experience the least egregious working conditions because they enter and continue working voluntarily (i.e. no interpersonal coercion). In contrast, Trapped and Robbed victims experience the most egregious working conditions because they enter and continue involuntarily. Next, misery score computation weights each cell by its percentage of victims. The products of each cell (severity weight and percentage of victims) are then summed together. Conceptually, misery score is designed to indicate, *ceteris paribus*, how unfortunate the average trafficking victim is.

The problem with misery score is that some of the nine severity weights may vary by culture, etc.

We propose a simpler approach to estimating severity. Our proposed method avoids the problem of cultural subjectivity in the weighting scheme. Referred to as ‘Enslavement Rate,’ it aggregates only the percentages of *involuntary* victims in the framework. Thus, high severity is implicit. The enslavement rate computation totals victim percentages for *Tricked and Trapped*, *Enlightened Apostates*, *Trapped and Robbed*, *Karmic Acceptors*, and *Stockholmers*. Conceptually, it indicates the likelihood that a participant/victim will be enslaved.

Combining Victim Intervention Marketing and the 4 Ps

Victim Intervention Marketing’s (VIM) limitation is that it omits the 4-P paradigm (i.e. prosecution, protection, prevention, and partnerships (US Department of State 2020). Prosecution entails law enforcement. Prevention reduces vulnerability (e.g. via awareness campaigns). Protection focusses on the ‘3 Rs’ of rescue, rehabilitation, and reintegration. Partnerships entail strategic alliances and interorganisational cooperation. Since theorists and practitioners rely on the 4 Ps, we propose an extended framework that incorporates them (Table 3). This includes the ‘dominant P’ combination for each component (i.e. cell) in intervention marketing (Tables 2 and 3). A dominant strategy offers the best solution among the alternatives in a game theory context (Koutsoyiannis 1985: 408). In our framework, it is the combination of Ps that will most likely benefit victims and/or harm traffickers. Table 3 presents our rationales for each proposed dominant and subordinate P strategy. As the table suggests, an emphasis on protection is best in voluntary situations. Prevention is best in semivoluntary situations, whilst prosecution is best in involuntary situations. Effective partnerships will vary according to the areas of expertise the parties offer.

Table 3: Rationales for Dominant and Subordinate 4-P Strategies in the context of Victim Intervention Marketing

Victim Entry and Continuance Mode	Dominant 4-P Strategy	Subordinate 4-P Strategies
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Voluntary	<u>Protection</u> Victims have a positive attitude towards assistance (e.g. food donations); Traffickers have no incentive to oppose assistance.	<u>Prevention</u> Victims have a positive attitude towards accepting these jobs. Therefore, they have a negative attitude towards prevention. <u>Prosecution</u> Victims have a negative attitude towards losing their jobs.
Semivoluntary	<u>Prevention</u> Victims have a negative attitude towards the job tasks, but a positive attitude towards pleasing their loved one (i.e. by accepting the job [Murray et al. 2015]). Prevention would please the victim.	<u>Prosecution</u> Neither job candidates nor the actual victims have an incentive to press charges. <u>Protection</u> Protection is inferior to prevention.
Involuntary	<u>Prosecution</u> Per the UN protocols, highly egregious (high severity) human trafficking should be prosecuted.	<u>Protection</u> The trafficker has an incentive to oppose protection. <u>Prevention</u> Physical vulnerability (e.g. to organised crime) mitigates prevention. Victims are susceptible to abduction, etc. or are minors.

Methodology

Dataset source

We identified a convenience sample of human trafficking victims. The source was the Counter Trafficking Data Collaborative. The CTDC describes itself as ‘the first global data hub on human trafficking, publishing harmonized data from counter-trafficking organizations around the world.’ Its goal is to ‘[...] equip the counter-trafficking community with up to date, reliable data on human trafficking.’ The main contributors of the data are the International Organization of Migration (IOM), Polaris, and Liberty Shared. The initiative is supported by the U.S. Department of State and the United Nations. IOM (a UN affiliate) has provided counter-trafficking programs since 1994.

Data limitations

The CTDC convenience sample suffers from selection biases. For instance, victims who call the Polaris (or an affiliate) hotline, or enter an office of the IOM (or an

affiliate) may differ from those who do not call or register. Or, upon registering, victims may omit certain pieces of information to avoid identification by traffickers. Thus, Polaris (2020) indicated that ‘this dataset should be interpreted as a biased sample of actual victim data, rather than a representation of all existing victims. The data contributed by Polaris should not be compared to the findings of more academic studies which included systematic surveys.’ Similarly, the CTDC (2020) indicated that ‘it is challenging to infer to what extent trends within identified victim populations are representative of the total victim population [...] since cases are not random samples of the population.’ We employed this dataset for two reasons. Firstly, it is the only publicly accessible dataset of its kind (i.e. multinational and large). Secondly, as better-quality datasets become available, comparisons with the CTDC dataset may facilitate theory development. For instance, Murray (2019) compared the breakdown of victim types derived from the CTDC dataset with one derived from UNODC coded narratives ($N = 1,200$). Each dataset is presumed to incorporate selection biases. However, he found a similarity between the two. In both instances, victims were concentrated among three segments: Willing Assimilators, Tricked and Trapped, and Trapped and Robbed. There were relatively few Disillusioned Contrastors, Peaceful Displacers, etc.

Sample selection

We isolated the labour victims from a sample ($N = 55,000$) of sex and labour trafficking victims in this study. This was based on their affirmative answer to having been trafficked for labour ($N = 9,900$). Thus, bona fide labour trafficking victims who did not reply to the labour trafficking question are not included in our analysis. All countries where labour exploitation occurred were included in our sample. This amounted to 27 nations identified by name, comprising roughly 8,500 victims. Roughly 1,400 victims did not indicate their country of exploitation. The average sample size by country was 316.

Focal nation selection

The USA and Russia were selected as focal nations in this study. The primary reason for their selection was their relatively large sample sizes. Out of the 27 nations identified by name in the CTDC dataset, only those two yielded sample sizes over 1,000. In our judgement, a sample of 1,000 labour trafficking victims within a given country is sufficient for accurately representing the variety of trafficking

arrangements within its borders. Different (focal) countries were included to demonstrate how the participation of different victims can vary by region.

Data analysis

We categorised variables in the dataset according to the nine cells in Murray et al. (2015). However, while that study entailed coding UNODC human trafficking narratives, this study categorised variables in the CTDC spreadsheet. We employed a categorisation system based on the level of egregiousness. Thus, in Table 4, if a victim replied ‘yes’ to any variable on the ‘Involuntary’ list, then he or she was categorised as an involuntary entrant, continuant, or both. The same process was used for semivoluntary participants. The victims were categorised as voluntary participants if they did not fall into either of the two previous categories. Voluntary participation refers to the absence of interpersonal coercion. It is the equivalent of ‘consent’ in the UN (2000) human trafficking guidelines. Next, entrance and continuance data for each victim was combined. Thus, each victim was categorised into one participation mode (i.e. either ‘Willing Assimilator’ or ‘Disillusioned Contrastor,’ etc.).

Table 4: Coding Method for CTDC Data

	Voluntary	Semivoluntary	Involuntary
Victim’s Entrance	Debt bondage False promises Recruited All cases not involuntary or semi-voluntary	Other notable person Intimate partner Friend Unspecified prior relationship Family	Abduction Minor/Child Forced marriage Forced military
Victim’s Continuance	All cases not involuntary or semi-voluntary	Psychological abuse Psychotropic substances Threat of police Documents withheld	Threats Physical abuse Sexual abuse Movement restricted Medical care restricted Children used Necessities withheld

*All variables in this table have corresponding variable names in the CTDC Codebook.

CTDC and VIM congruence

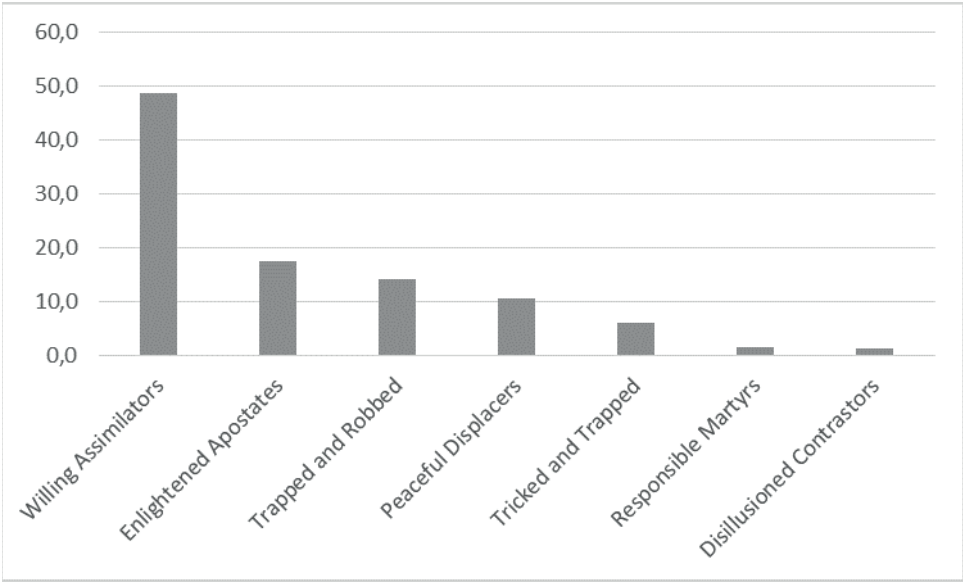
We assume that the CTDC variables are congruent with the intervention marketing framework because both are anchored in the 4-P paradigm. Interventionists try to prevent entry into exploitative arrangements. Thus, the CTDC refers to entry as 'recruitment.' Similarly, intervention marketing employs the term 'entrance.' 'Prosecution' and 'Protection' imply a post-entrance period of exploitation. The CTDC implies this period by referring to the trafficker's 'Means of Control.' Similarly, intervention marketing refers to this as 'continuance.' In other words, it is the victim's reason for continuing to work for the trafficker. Moreover, both the CTDC and the intervention marketing framework include such variables as 'debt bondage,' 'age minority/adult status,' 'fraudulent romantic relationships,' 'drug use,' and 'passport confiscation (by traffickers).' This is presumably because each approach was designed during roughly the same time period (2010–2015 for VIM; Murray et al. 2010; Murray et al. 2015; and 2018 for public access to the CTDC dataset), and had access to the same sources of published data. They were based on roughly equivalent sources with essentially the same types of cases. For instance, the intervention marketing variables and categories were inductively derived from 200 narratives. They appeared in the UN's Human Trafficking Case Law Database. Similarly, according to the CTDC, their victim survey variables were derived from actual cases (not legal) via Polaris, the IOM, etc. The CTDC variables were presumably not designed to fit into the intervention marketing framework. However, their congruence may have stemmed from independent attempts to include and measure similar (and in some cases identical) variables (e.g. debt bondage) along similar dimensions and based on the same paradigm.

Results

Global breakdown of victims

For the overall breakdown of victim types ($n = 9,968$), see Figure 1. At the global level, roughly half of all labour trafficking victims enter and depart at will (Willing Assimilators = 49%). This is followed by Enlightened Apostates (18%), who enter via social pressure from a friend or loved one. Trapped and Robbed (14%), Peaceful Displacers (11%), Tricked and Trapped (6%), Responsible Martyrs (2%), and Disillusioned Contrastors (1%) make up the remainder. The global labour trafficking enslavement rate is 38%. Thus, more than one third of victims are forced to work (involuntarily) at some point in their exploitive situation.

Figure 1: Global breakdown of victims by type (%)



Global breakdown of victims by job category

Severity

Globally, all other things being equal, the most egregious job type is Peddling, followed by Construction. The former exploits children, whilst in the latter victims are enslaved after pursuing job leads due to the encouragement of a friend or relative. The least egregious arrangement is for Domestic Work, wherein relatively few workers are enslaved.

Job type percentages

Roughly one third (32%) of global labour trafficking victims are domestic workers. This is followed by Unspecified Labour (22%), Construction (19%), and roughly 7% each for Agriculture, Manufacturing, and Other. There are small amounts of Begging, Aquafarming, Hospitality, and Peddling.

Prescribed interventions

Due to the high enslavement rates (ER) of Enlightened Apostates, Tricked and Trapped, and Trapped and Robbed victims in certain job categories in the list below, interventions should focus on those prescribed for those three victim categories (Table 5).

- *Peddling*: [ER = 98%] Globally, 98% of Peddling victims are *Trapped and Robbed* (specifically children), while the remaining 2% are *Willing Assimilators*.
- *Construction*: [ER = 81%] Most construction labour victims are Enlightened Apostates (65%), followed by Tricked and Trapped (14%), Willing Assimilators (10%), and a small proportion (<7% each) of Responsible Martyrs, Peaceful Displacers, and Trapped and Robbed labourers.
- *Other Labour*: [ER = 75%] There are roughly equal proportions of Tricked and Trapped (27%), Trapped and Robbed (24%), and Enlightened Apostates (24%). Disillusioned Contrastors and Willing Assimilators represent 10% and 8%, respectively. Responsible Martyrs and Peaceful Displacers are each less than 5%.
- *Manufacturing*: [ER = 73%] Most victims of manufacturing labour are Enlightened Apostates (71%), followed by Peaceful Displacers (17%), Willing Assimilators (9%), and small proportions (<2% each) of Tricked and Trapped and Responsible Martyrs.
- *Unspecified Labour*: [ER = 55%] Roughly half of the victims trafficked for unspecified labour are Trapped and Robbed (49%), and another 43% are Willing Assimilators. There is a small degree of Tricked and Trapped, Disillusioned Contrastors, Enlightened Apostates, Responsible Martyrs, and Peaceful Displacers being represented.
- *Hospitality*: [ER = 35%] The largest group of victims trafficked in hospitality is Willing Assimilators (37%), followed by Peaceful Displacers (19%), Tricked and Trapped (17%), Trapped and Robbed (15%), and small proportions of Responsible Martyrs, Enlightened Apostates, and Disillusioned Contrastors.
- *Domestic Work*: [ER = 15%] Most victims trafficked for domestic labour are Willing Assimilators (54%), followed by Peaceful Displacers (28%). There is a small number of Enlightened Apostates, Trapped and Robbed, Responsible Martyrs, Tricked and Trapped, and Disillusioned Contrastors.

Table 5: Prescribed Interventions by Victim Type

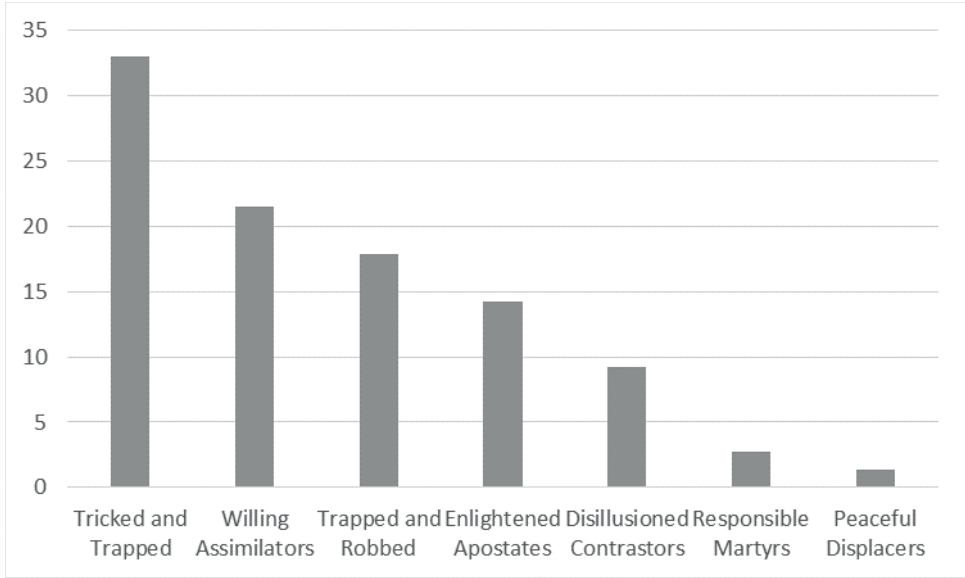
<u>Willing Assimilators</u> Discourage entry according to the risks of enslavement (involuntary) or near enslavement (semivoluntary). Use <i>radical confrontation</i> for those at high risk and <i>moderate confrontation</i> for those at low risk. <i>Change entrants’ beliefs and attitudes</i> toward performing the job tasks they are contemplating. <i>Add attributes</i> to consider (e.g. passport confiscation). 4 Ps: Protection (e.g. overseas passport services, food supplements, etc.).
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<u>Disillusioned Contrasts</u> Follow intervention guidelines for Tricked and Trapped. In addition, support victim <i>post-assimilation contrasts</i>. Offer <i>free-market solutions</i> (e.g. money to free debt-bondage victims). 4 Ps: Prevent entry. Protect current and former victims with necessities, rehabilitation, etc. Partner with passport offices.
<u>Tricked and Trapped</u> Interventionists should offer job seekers <i>inducements</i> such as <i>economic and noneconomic rewards</i> to pay attention to anti-trafficking messages. Message content should be <i>negative normative against deceptive traffickers</i>. Request that victims carefully weigh the risks of participation. Base media and messaging on the risk of enslavement. 4 Ps: Protect former victims and prosecute traffickers.
<u>Peaceful Displacers</u> Use <i>radical confrontation</i> when the risk of enslavement is moderate to high. Interventionists should <i>counter-argue</i> pro-trafficker positive and negative beliefs. Use <i>rational appeals</i> (e.g. statistics on enslavement risk). <i>Change attitude towards trafficker to negative</i>. 4 Ps: Prevent and Protect.
<u>Responsible Martyrs</u> Follow intervention guidelines for Tricked and Trapped. In addition, support victim <i>post-assimilation contrasts</i>. Offer <i>free-market solutions</i> (e.g. money to free debt-bondage victims). Use <i>culturally plural messages</i> and <i>change beliefs to negative</i>. 4 Ps: Prevent entry. Protect current and former victims with necessities, rehabilitation, etc. Partner with passport offices.
<u>Enlightened Apostates</u> Discourage participation. Use age-appropriate media and messaging for ages 0–9 vs 9–17. Consider <i>inducements</i> such as <i>economic and noneconomic rewards</i> and <i>requests</i> for older minors. Messaging should be <i>negative normative against the trafficker</i>. <i>Exchange information</i> where possible. <i>Correct inaccurate information</i>. <i>Encourage and facilitate escape</i> where possible. 4 Ps: Prevent and Prosecute.
<u>Trapped and Robbed</u> Discourage child participation. Use age-appropriate media and messaging for ages 0–9 vs 9–17. Consider <i>inducements</i> such as <i>economic and noneconomic rewards</i> and <i>requests</i> for older minors. Messaging should be <i>negative normative against the trafficker</i>. <i>Exchange information</i> where possible. <i>Correct inaccurate information</i>. <i>Encourage and facilitate escape</i> where possible. 4 Ps: Prosecute traffickers.

Breakdown of victim types for the USA

As Figure 2 indicates, one third (33%) of the victims (N = 1,285) voluntarily enter labour trafficking arrangements in the USA and are subsequently forced to continue working involuntarily (i.e. *Tricked and Trapped*). Fourteen per cent are persuaded to enter trafficking arrangements by a friend or relative and are subsequently forced (*Enlightened Apostates*). The ER is 65%, which means that roughly two thirds of labour trafficking victims in the USA are held involuntarily at some point.

Figure 2: Breakdown by victim type in the USA (%)



Breakdown of victims in the USA by job category

Severity

The job types below are arranged by level of severity (highest to lowest), when operationalised by the enslavement rate. Accordingly, the worst job type (the highest rate of involuntary participation) is Peddling, followed by Begging. Follow-up research indicated that they involve high percentages of children. Furthermore, in the intervention marketing framework child participation is always categorised as involuntary.

Job type percentages

The largest job type among labour trafficking victims in the USA is Unspecified (32%), followed by Agriculture (28%) and Other (22%). Domestic workers, beggars/panhandlers, hospitality workers, peddlers, and construction worker percentages each range from two to five per cent.

Interventions prescribed for the USA

US policy-makers must weigh the trade-offs between category size and severity. These should be consistent with cultural norms, etc. Regarding size, two thirds (64%) of labour trafficking victims exploited in the USA are voluntary entrants. Thus,

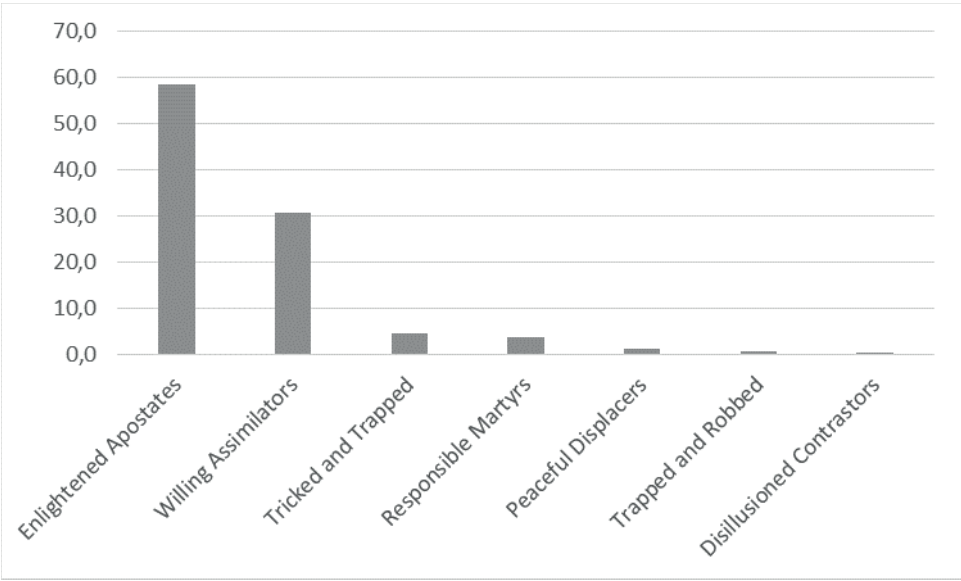
economic development programmes would decrease the demand for exploitive work. For each job type in the section below, its largest group of victims is listed. For instance, Peddling has a high percentage of Trapped and Robbed victims, while Domestic Work has relatively few cases of coerced labour. To minimise repetition in our analysis, the prescribed interventions appear in Table 5. For instance, the prescribed interventions for Begging can be found under interventions for 'Tricked and Trapped' and 'Trapped and Robbed'.

- *Peddling*: [ER = 98%] Of the victims indicating an age range, most (63%) are aged 9–17 years, while some (18%) were aged 0–8 years. They were primarily classified as Trapped and Robbed. See Table 5 (under 'Trapped and Robbed') for interventions.
- *Begging*: [ER = 91%] In the USA most (86%) begging victims are minors. By definition, minors are categorised as Trapped and Robbed (involuntary labour). A few (5%) in this category are adults who were classified as Tricked and Trapped.
- *Agriculture*: [ER = 76%] Twenty-eight per cent of labour trafficking victims in the USA are exploited in agriculture. Roughly half (56%) are enslaved by strangers (Tricked and Trapped), while 18% are enslaved because they trusted a job lead from a friend or relative (Enlightened Apostates).
- *Other Labour*: [ER = 75%] Most (26%) 'Other' labour victims are Tricked and Trapped. Roughly half are Enlightened Apostates (24%) and Trapped and Robbed (24%). Relatively few (14%) in this category reported an age range. However, at least 15% were minors.
- *Construction*: Two thirds (65%) of these victims were enslaved after trusting a friend or relative, and 14% were enslaved after trusting a stranger.
- *Unspecified Labour*: [ER = 56%] The largest segment within this group is Trapped and Robbed (49%), followed by Willing Assimilators (43%). Thus, victims are concentrated at the extremes. One third (36%) of unspecified labour victims are minors.
- *Domestic Workers*: Roughly half (54%) of domestic workers enter and leave labour trafficking arrangements at will (i.e. they are Willing Assimilators). Over one fourth (28%) work voluntarily after initially being pressurised by a loved one. At 16%, the enslavement rate is low to moderate.
- *Hospitality*: [ER = 35%] The largest segment (37%) of hospitality workers in the USA are Willing Assimilators. One out of five (20%) are tricked into slavery by either a friend or a relative.

Breakdown of victims in Russia by job category

Figure 3 illustrates the overall breakdown of victims (n = 1,649) by type. Most labour trafficking victims in Russia are *Enlightened Apostates* (59%), followed by *Willing Assimilators* (31%). There is a small percentage of the other categories (Figure 3).

Figure 3: Breakdown by victim type in Russia (%)



Breakdown of victims in Russia by job category

Severity

In the Russian sample, victims trafficked for agricultural labour were all enslaved. Construction work has an 82% enslavement rate, whilst those engaged in ‘Unspecified’ labour have only a 2% enslavement rate.

Job type percentages

The largest category (72%) of labour trafficking victims in Russia consists of construction workers, followed by ‘Unspecified’ (27%) and agricultural workers (<2%).

Interventions prescribed for Russia

The interventions for *Enlightened Apostates* and *Willing Assimilators* are presented in Table 5. The former group requires interventions that advise potential victims whom to trust among their friends and relatives. It also requires a heavy emphasis on prosecution and related law enforcement. *Willing Assimilators* need economic development programmes and an emphasis on protection (Table 5).

- *Agriculture*: [ER = 100%] All agricultural workers in the Russian sample are Enlightened Apostates. Thus, they followed job leads from friends and/or relatives that ended in slavery.
- *Construction*: [ER = 82%] In Russia, most (73%) construction workers who are trafficked are Enlightened Apostates. Tricked and Trapped victims account for 9%. Eight percent are Willing Assimilators and Responsible Martyrs make up 6%. There are fewer than 3% each of Disillusioned Contrastors and Peaceful Displacers.
- *Unspecified*: [ER = 2%] The majority (98%) of unspecified labour victims are Willing Assimilators.

Summary

Almost three quarters (73%) of the world's labour trafficking victims are forced by poverty into volunteering for jobs under such poor terms as to be illegal. While most of those voluntary entrants are never enslaved, many are. An apparent solution is global economic development. This should greatly reduce poverty, and as a result, labour trafficking's prevalence. The problem becomes macroeconomic—how to provide economic assistance, but without creating harmful side effects. For instance, there may be increased risk of creating a growing, permanent underclass. Or, traffickers may solve their labour shortage problem by increasing child labour or adult coercion. Roughly 25% of volunteers are Disillusioned Contrastors. Many in this segment continue working because their passport was taken, or they are afraid of the local police, etc. This segment would benefit from NGO or governmental services that address those needs. Several general interventions were prescribed for this group in this discussion. It would be the task of local interventionists to design more targeted social marketing campaigns, but, based on the intervention marketing prescriptions. In comparing the U.S. and Russia, it is clear that they differ in terms of participation structure at both the country and job type levels. Essentially, it is suggested that intervention marketing solutions be applied at increasingly granular levels. This would minimize the problem of global strategies that are ineffective locally.

Limitations

This study is based upon a dataset that is assumed to suffer from selection biases. Since it is not random, the percentages presented here are questionable. Data of unknown quality is a common problem in human trafficking research. Another problem with the sample is similar to the first. Presumably, the countries where the CTDC data was collected were not randomly chosen as well. There are no Central or South American countries in the dataset by name. However, respondents could be among the 1,400 victims who did not reply to the 'Country of Exploitation' survey question.

Directions for future research

Future research in this stream should experiment with the theory-based interventions presented in this discussion. For instance, theory calls for 'radical confrontation' to discourage voluntary entry into trafficking situations. This is to minimize the chance of being enslaved. However, the risks (i.e. enslavement rate) associated with volunteering, as shown here, may vary by country and job type. Interventionists who are perceived as overstating the enslavement risk stand to lose credibility among their audiences. This is problematic, as several prescribed interventions call for 'information exchange.' How might interventionists manage the tension between 'over-warning' and 'under-warning' their audiences?

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References

- Arhin A. (2016). 'A diaspora approach to understanding human trafficking for labor exploitation'. *Journal of Human Trafficking* 2(1), pp. 78–98.
- Aronowitz A. (2018). 'Regulating business involvement in labor exploitation and human trafficking'. *Journal of Labor and Society* 22(1), pp. 145–164.
- Bakirci K. (2009). 'Human trafficking and forced labour: A criticism of the international labour organisation'. *Journal of Financial Crime* 16(2), pp. 160–165.
- Bales K. (2012). *Disposable People: New Slavery in the Global Economy*. Berkley: University of California Press.
- Bowe J. (2007). *Nobodies: Modern American Slave Labor and the Dark Side of the New Global Economy*. New York: Random House.
- Bracy K., Bandak L. and Roe-Sepowitz D. (2019). 'A four-year analysis of labor trafficking cases in the United States: Exploring characteristics and labor trafficking patterns'. *Journal of Human Trafficking* 7(1), pp. 35–52.
- Chuang J. (2012). 'Exploitation creep and the unmaking of human trafficking law'. *American Journal of International Law* 108(4), pp. 609–649. Available online: <http://dx.doi.org/10.2139/ssrn.2315513>.
- Feasley A. (2016). 'Eliminating corporate exploitation: Examining accountability regimes as means to eradicate forced labor from supply chains'. *Journal of Human Trafficking* 2(1), pp. 15–31.
- Frazier G. and Sheth J. (1985). 'An attitude-behavior framework for distribution channel management'. *Journal of Marketing* 49(3), pp. 38–48.
- Kara S. (2012). *Bonded Labor: Tackling the System of Slavery in South Asia*. New York: Columbia University Press.
- Kotler P. and Zaltman G. (1971). 'Social marketing: An approach to planned social change'. *Journal of Marketing* 35(3), pp. 3–12.
- Koutsoyiannis A. (1985). *Modern Microeconomics*. New York: St. Martin's Press.
- Lasocik Z., Rekosz-Cebula E. and Wieczorek L. (2014). *Human Trafficking for Forced Labour in Poland. Effective prevention and Diagnostics of Mechanisms*. Warsaw: Adstringo.
- Lefebvre C. (2012). 'Transformative social marketing: Co-creating the social marketing discipline and brand'. *Journal of Social Marketing* 2(2), pp. 118–129.
- Murray V. (1997). 'Social activist marketing: A reconceptualization of countermarketing and demarketing'. *Journal of Nonprofit & Public Sector Marketing* 5(4), pp. 3–25.
- Murray V., Dingman S., Porter J. and Otte M. (2015). 'Victim intervention marketing: An application of social activist marketing in opposition to human trafficking'. *Journal of Marketing Theory and Practice* 23(3), pp. 272–286.
- Ollus N. (2015). 'Regulating forced labour and combating human trafficking: The relevance of historical definitions in a contemporary perspective'. *Crime, Law and Social Change* 63(5), pp. 221–246.

- Petrunov G. (2014). 'Human trafficking in Eastern Europe: The case of Bulgaria.' *The Annals of the American Academy of Political and Social Science* 653, pp. 162–182.
- Sheth J.N. and Frazier G.L. (1982). 'A model of strategy mix choice for planned social change.' *Journal of Marketing* 46(1), pp. 15–26.
- Weitzer R. (2014). 'New directions in research on human trafficking.' *The Annals of the American Academy of Political and Social Science* 653, pp. 6–24.
- Winterdyk J. (2018). 'Combating (child) human trafficking: Building capacity.' *Oñati Socio-legal Series* 8(1), pp. 106–129.

Internet sources

- Murray V., Dingman S., Otte M. and Porter J. (2010). *Intervention Marketing: An Application of Social Activist Marketing in Opposition to Human Trafficking*. Annual Macromarketing Conference. University of Wyoming. Available online: <https://journals.sagepub.com/doi/abs/10.1177/0276146710380586?journalCode=jmka> [11.02.2021].
- Murray V., Dingman S. and Porter J. (2015). *Computing a Global Human Trafficking Misery Index*. Annual Interdisciplinary Conference on Human Trafficking, University of Nebraska. Available online: <https://docplayer.net/82753501-Conference-program-schedule-7th-annual-interdisciplinary-conference-on-human-trafficking.html> [11.02.2021].
- Murray V., Dingman S., Porter J., Parris J. and Heaton K. (2016). *The Relationship Between Income and National Trafficking Misery Scores*. Annual Interdisciplinary Conference on Human Trafficking, University of Nebraska. Available online: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewiR2tfOruDuAhVQMt8KHRDbCJsQFjAAegQIAxAC&url=https%3A%2F%2Ftrafficking-conference.squarespace.com%2Fs%2FReconfiguring-the-3Ps-of-Human-Trafficking-on-an-Ordinal-Scale-Implications-for-Trafficking-Misery-I.pdf&usg=AOvVaw0-YwRwm2l3X2qn35ekmr27>.
- Murray V., Dingman S., Porter J., Ziman T., Parris J. and Heaton K. (2018). *Reconfiguring the 3P's of human trafficking on an ordinal scale: Implications for trafficking misery index computation*. International Human Trafficking and Social Justice Conference. Toledo: University of Toledo. Available online: <https://www.traffickingconference.com/2018-conference-abstracts/2018/9/20/finding-a-voice-from-africa-to-europe-the-effect-of-voodoo-secrecy-oath-sworn-by-victims-sgp4f-my52t-4fm97-ybrmn-g4gnk-wa5rp-a9der-ywp85-5mfg6-fzkm2-g87hr-5fn8t-z5e6j-jmed2-j6t9m-244hg-83pld>.
- Murray V. (2019). *A comparison of global and U.S. human trafficking structures: UNODC vs. IOM/Polaris datasets*. Human Trafficking and Social Justice Conference. Toledo: University of Toledo. Available online: <https://www.traffickingconference.com/2019-abstracts/tag/20%3A9%3A00>.

- Polaris Organizational Profile (2020). *Overview of Polaris's datasets: Helpline data*. Available online: <https://www.ctdatacollaborative.org/polaris-organizational-profile>.
- UNODC (United Nations Office on Drugs and Crime) (2000). 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime'. In United Nations Convention Against Transnational Organized Crime and the Protocols Thereto. Available online: [www.unodc.org/ documents / treaties / UNTOC/ Publications/TOC%20Convention/TOCebook-e.pdf](http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf).
- US Department of State (2020). Policy Issues: Human Trafficking. Available online: <https://www.state.gov/policy-issues/human-trafficking/>.



Sebastián Arévalo Sánchez, Juan Pablo García Sepúlveda, John Winterdyk ■

Using design thinking and innovation camps to combat forced labour: A case example

Myslenie kreatywne i obozy innowacyjne, jako instrumenty eliminowania pracy przymusowej - studium przypadku

Abstract: Educating young people on the risks of forced labour is not only one of the most critical duties in eradicating human trafficking, but due to its clandestine nature, it is also one of the most challenging. Drawing on practical experiences in Colombia, the authors exalt the value of integrating co-creation and innovation tools to promote a more effective, meaningful, and impactful knowledge transfer on forced labour between education disciplines. This article, therefore, begins by presenting a descriptive overview of the application of design thinking and innovation camps. Next, the article approximates the application of those methods and instruments in teaching the issue of human trafficking, including forced labour. Then, it examines the opportunities of using design thinking and social innovation camps to educate a new generation with the knowledge, skills, and power to disrupt forced labour. Finally, this article concludes that design thinking and innovation camps are practical methods and instruments to create alternative learning environments to educate the next generation of young changemakers capable of disrupting forced labour through innovation, entrepreneurship, and technology.

Keywords: design thinking, innovation camps, forced labour, education, technology

Abstrakt: Nauczanie młodych ludzi o zagrożeniach związanych z pracą przymusową jest zarówno jednym z najważniejszych, jak i jednym z najtrudniejszych zadań w zakresie zwalczania handlu ludźmi. Trudność ta wynika z charakteru zjawiska – ukrytego i niewidocznego gołym okiem. Opierając się na doświadczeniach z Kolumbii, autorzy podkreślają znaczenie zintegrowania narzędzi współtworzenia

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i innowacji w celu promowania bardziej efektywnego przekazu wiedzy na temat pracy przymusowej pomiędzy różnymi stylami uczenia, mającego jednocześnie na nie realny wpływ. Dlatego niniejszy artykuł rozpoczyna teoretyczny przegląd dwóch metod i narzędzi nauczania – myślenia projektowego oraz obozów innowacyjnych. W dalszej części artykułu przybliżono sposoby zastosowania tych metod i narzędzi do nauczania o problematyce handlu ludźmi, w tym pracy przymusowej. Następnie analizie poddano możliwość wykorzystania ich do przekazania nowemu pokoleniu wiedzy i umiejętności w zakresie przeciwdziałania pracy przymusowej. W podsumowaniu podkreślono, że myślenie projektowe i obozy innowacyjne są praktycznymi metodami i narzędziami do tworzenia alternatywnych środowisk nauczania młodszych pokoleń, które będą zdolne do przerywania powielania zjawiska pracy przymusowej poprzez wykorzystanie innowacji, przedsiębiorczości i technologii.

Słowa kluczowe: myślenie projektowe, obozy innowacyjne, praca przymusowa, edukacja, technologia

Introduction

Educating young people on the risks of forced labour is one of the most critical duties in preventing and eradicating this and other forms of human trafficking. The Protocol of 2014 to the Forced Labour Convention states that it is necessary to promote educative programmes and measures to change behaviour and practices that can lead to forced labour and related abuses. Educating young people emerges as an opportunity to form a generation of citizens with the knowledge, skills, and power to disrupt forced labour. Young people are an important risk group ‘susceptible to false job offers that lead to forced labour’ (ILO 2018: 46), but given the opportunity, they are a population that can lead impactful actions anti-trafficking field all around. As the UN Youth Strategy (2018) highlights, it is only by engaging and working with the young people and supporting them in standing up for their rights and creating the conditions to play an active role that the international community will be able to achieve peace, security, and justice.

While the education in forced labour in graduate programmes is comprehensive, most of the current educational efforts on forced labour aimed at young people in non-specialised university contexts are mainly focused on awareness-raising. According to the ILO (2018), in recent years, there has been significant progress in awareness-raising educational activities targeting young people in countries such as Peru, China, Ethiopia, Croatia, Hungary, and Mauritania. In those countries, education manuals, mentoring materials, workshops, and campaigns have been developed to educate teachers and students at schools on preventing forced labour. Also, social media channels, theatre productions, and songs are becoming other essential tools for informing young people about the dangers of forced labour. However, their educational content can sometimes be diffuse.

Although the efforts mentioned above are essential, education aimed at preventing forced labour is limited in its scope and assessment. On the one hand, those educational programmes on forced labour aimed at young people are intended to

inform them about the crime and its risk factors; thus, the content of those lessons generally tends to be necessary and provides a better, though partial, understanding of the issue. On the other hand, evaluating the impact and knowledge acquisition of awareness-raising education has always been challenging. Often, such prevention activities do not generate tangible outcomes and lack standard criteria by which to measure their impact. Actually, 'few awareness-raising initiatives to date have generated evidence of their impact on knowledge, attitudes, and practices relating to forced labour' (ILO 2018: 46).

Consequently, to support and complement the ongoing educational efforts on the risk of forced labour, it seems necessary to explore new methods and instruments that allow richer learning environments – beyond current awareness-raising activities – to be created in non-specialised university programmes. Those learning environments should equip the youths with the essential knowledge and skills to identify risk factors, to protect themselves, and to become conscious citizens prepared to disrupt forced labour from different roles. They should also contemplate assessment strategies that improve the organisations and experts' capacity to measure the impact of education on the issue and continue building effective educational programmes.

This approach raises several critical questions: What alternative methods and instruments can be used to educate young people on forced labour? How can conscious, motivated young citizens be trained to disrupt forced labour? How can the scope of current education on forced labour be expanded and its impact assessed? This article argues that design thinking and social innovation camps are practical methods and instruments to create alternative learning environments to educate the next generation of young changemakers capable of disrupting forced labour through innovation, entrepreneurship, and technology.

With this objective in mind, this article introduces design thinking and innovation camps and provides a general view of using those in education. It also approximates the integration of those methods and instruments in teaching about forced labour, addressing some concrete initiatives and emphasising a three-year experience led by the authors in Colombia. Finally, it examines the opportunities to use design thinking and innovation camps to educate young people on forced labour and offers some conclusions.

Design thinking and social innovation camps in education

Design thinking originated in the 1960s when different researchers and theorists studied how designers create innovative designs (Clarke 2019). In fact, Nobel Prize laureate Herbert A. Simon is credited with being the first to mention design

thinking in his 1969 book, *The Sciences of the Artificial*. Simon subsequently contributed many ideas to its principles.

The academic work around design thinking analysed the design action, revealing that creation and innovation result from a process and not from a spontaneous act. According to Dschool.stanford.edu (n.d.), design thinking is currently understood as a methodology for creative problem-solving that combines empathy, creativity, and rationality, promoting a holistic and multidisciplinary approach to seeking, developing, and implementing any solution.

Although the design thinking methodology can take different forms, its more common structure comprises six phases: empathise, define, ideate, prototype, test, and implement. The entire process illuminates the problem and the people affected by it and explores creative ways to tackle ill-defined or unknown issues (e.g. human trafficking and forced labour). The process is structured to help inform possible solutions through prototyping, implement the solutions, and begin the cycle by applying modifications or solving an adjacent problem. Clarke (2019) pointed out that design thinking methodology can be used to create physical, digital, and intangible intellectual solutions: from artifacts and software to curricula, processes, and policies.

Design thinking has been part of many businesses for years and most recently has taken hold in different sectors, including education (Koh et al. 2015). In industrial and commercial activities, design thinking has been used to create user-centred products and services and to continuously improve business models and production lines, among other things. The interest in how agile methods, including design thinking, could be applied in all areas of education emerged in the late 1990s, when the societal and global economic demand for professionals with appropriate skill sets for solving contemporary challenges, creating and innovating intensified.

The demand for professionals with more skills arose, as did the need to rethink traditional learning environments based merely on transferring knowledge that falls short of educating people with required capacities (Scheer, Noweski, Meinel 2012). Since then, design thinking has been recognised in education for its potential to contribute to the transition from an educational model based on transferring fragmented knowledge to one where equipping students with '21st-century skills' and promoting interdisciplinary learning are the priorities.

On the one hand, as Binkley et al. (2012) stated, 21st-century skills are a set of abilities – such as creativity, critical thinking, flexible problem-solving, and social responsibility – that young people need to succeed at work. According to Berman and McCartney (1995), most of those skills are meta-competencies that cannot be traditionally taught; they are acquired when people face and solve personal, academic, and professional challenges. Design thinking offers teachers a concrete approach to foster those skills in their students and learners, motivating them to face real-life problems within hands-on projects and following some or all the design thinking phases as a continuous practice and assessment method. Going

through the design thinking process pushes the learner to apply their knowledge and be creative, deal with different points of view, make decisions, and face difficulties.

On the other hand, and linked to the above, design thinking promotes interdisciplinarity and reduces subject fragmentation. Interdisciplinarity entails the collaboration and integration of disciplines (Darbellay, Moody, Lubart 2017). Therefore, seeking innovative solutions based on the design thinking phases makes it intuitive for students and teachers to overcome disciplinary boundaries and explore how all disciplines can be integrated and applied towards problem-solving. It is particularly relevant considering that 'splitting up a complex phenomenon into subjects and only examining isolated facts makes it hard for the student to recognise links between facts and phenomena' (Scheer, Noweski, Meinel 2012: 10).

Like design thinking, innovation camps have long been a well-known method used in private companies and non-profit and public organisations to move people to temporary camps (i.e. retreats) to solve problems or create new products and services (Bager 2010). Therefore, it is not surprising that most of the documented experiences on the use of innovation camps in education are linked to entrepreneurship education. They have been recognised as valuable tools to develop essential skills by direct experience. According to Rissola, Kune, and Martinez (2017), innovation camps are a condensed process in which economic, social, technological, cultural, and environmental challenges can be addressed, tackled, and solved innovatively at the policy, strategic, or operational levels.

Innovation camps are intensive workshops that provide a platform for changing the educational structure and its content by moving learners and educators from traditional learning contexts to an interdisciplinary and project-based format. Changing the educational structure implies taking students/learners and educators from their usual learning environments to another location or creating new atmospheres within traditional educational facilities. The camps also signify modifying the group's composition by including external students, teachers, and experts and assuming different teaching/learning processes. As Bager (2010) wrote, teachers become facilitators of specific knowledge orientated towards the camp's real-life challenges. The learners take the role of problem-solvers by applying that knowledge to innovative solutions to challenging issues/problems.

Regarding the content, instead of transferring established general knowledge like in traditional learning contexts, the curriculum of innovation camps focuses on providing the participants with relevant information to solve the camp challenges. As Rissola, Kune, and Martinez (2017) observed, 'it combines an entrepreneurial way of thinking and working with a concrete process for developing breakthrough ideas and insights, aiming at producing real-world impact' (p. 15). Thus, innovation camp programmes are based on agile methodologies and include skill-building sessions on pitching ideas, working as a team, and communicating effectively. Moreover, Kwong et al. (2012) assert that camps are a crucial complement to classroom education once those foster student skills such as independent thinking,

opportunity recognition and exploitation, readiness for change, risk-taking, and self-confidence.

In practice, innovation camps in education adapt competitions commonly referred to as boot camps, hackathons, and data jams – with the last two being used when referring to tech-based camps. Innovation camps have a structure composed of one or more challenges that need to be solved within a limited time frame. A pre-determined number of participants and teams use agile methodologies such as design thinking. Several external experts help facilitate the camp's objectives to act as mentors, facilitators, and evaluators.

In summary, design thinking and innovation camps are two different methodologies and processes. Still, at the same time, complementary practices have taken root in education in the past few decades (see Rissola, Kune, Martinez 2017). Both methods have raised expert's interest in pedagogy, entrepreneurship, and innovation, as the methods represent concrete ways to rethink educational dynamics and their content. The two methods favour the creation of richer learning environments focussed not only on learning essential knowledge but also on acquiring individual meta-competencies to face the challenges and demands of the 21st century.

Application of design thinking and innovation camps for human trafficking and forced labour

There is a shortage of academic research about integrating design thinking and innovation camps in young people's education on forced labour and other forms of human trafficking. However, according to Enrile and Smith-Maddox (2018), a paradigm shift has taken place where technological innovation, entrepreneurship, and collaboration represent the new efforts for dismantling the complex trafficking ecosystem. A growing number of schools, universities, non-profit organisations, companies, and other stakeholders have started to recognise the potential impact of integrating alternative tools and methodologies in the education, prevention, and disruption of human trafficking.

This section addresses some concrete initiatives integrating design thinking and innovation camps in education on human trafficking, including forced labour. Although they do not exclusively address forced labour, there is no doubt they constitute interesting practices that can be adapted and applied to education on the subject. First, some remarkable initiatives led by different sectors are approached, reviewing their application and the context of their objectives. Second, using the three-year innovation competition on human trafficking led by the first two authors as a case study/example, we provide a descriptive overview of the design thinking methodology's main elements and the innovation camps' model. We also

described how it was applied to enhance the teaching/learning process of how best to combat human trafficking.

Incorporating design thinking and innovation camps in education on human trafficking has created an opportunity to generate innovative strategies and protocols to develop short-term proposals and promote entrepreneurship and leadership on more complete and long-term projects. Regarding design thinking, it is used as a tool for educating young business leaders on human trafficking at schools and motivating university students to apply their knowledge to develop legal and policy solutions to trafficking. In the innovation camps model, hackathons, data jams, and technological innovation competitions bring together different stakeholders, including young people, around anti-trafficking solutions. The combination of design thinking and innovation camps has developed hybrid initiatives that strengthen participants' learning processes and streamline programme activities, dynamising people's interactions.

Design thinking learning schemes have been integrated into traditional education to advance decision-making and strengthen students' adaptive capacities, where imaginative scenarios have allowed inter-institutional collaboration between academic programmes. Examples such as the Law Schools of the University of Arizona, the University of San Diego, Duke University, and Harvard University use design thinking and systemic thinking to map the needs of trafficking survivors; the Human Freedom Entrepreneurial Leadership Program of Babson College seeks to educate the next generation of business leaders and entrepreneurs on the issue of human trafficking. Both represent the institution's willingness to incorporate design thinking and agile methodologies into educational programmes at secondary and higher education. In other words, educational programmes have been adapted to contemporary dynamics to improve students' learning processes, being part of young people's interest in breaking with the traditional knowledge acquisition methods to create more competitive professionals.

In comparison, initiatives that respond to the innovation camp modality have focussed on developing proposals to solve trafficking challenges mainly with the technological objectives represented in competitions like Hacking4Humanity2019, Hack4World, #hacktrafficking4good, YPT Stop Human Trafficking Hackathon, and five other hackathons against human trafficking with the multi-agency collaboration of universities, institutes, research centres, technology companies, not-for-profit organisations, and governmental institutions such as George Mason University, the George Mason University Schar School of Policy and Government, the University of Pittsburgh, the Ford Institute for Human Security, Google, HackerEarth, Blue Compass, Garage48, Visorix Information Technology Park, Youth Professionals in Transportation Sacramento, Erase Child Trafficking, Thorn, Whatever It Takes, AfriKo, the US Department of State, and the City of Austin, Texas.

The previous technological competitions with an innovation camp structure mainly were developed and implemented in the United States and Europe. However, there are cases in other regions and on different continents that understand the

need for initiatives and the innovation component's potential. Hack4World in 2018 represented the first such event in Lithuania. The camp sought to empower tech-savvy young people to participate in challenges in human trafficking and sustainable energy, organised as a competition of student teams with expert guidance. Similarly, in October 2018, IBM, the National Secretariat of Justice, GLO. ACT, and the Brazilian Association for the Defence of Women, Childhood, and Youth ran Brazil's first hackathon against human trafficking, being encouraged by the success of the authors' initiative months before. Although experience is limited in the rest of the world, progress has been made in incorporating other countries' successful models and applying them in different social and economic realities.

It is essential to mention that several of the initiatives discussed above may have components of both design thinking and innovation camps. Still, given the limited information available about them, it is not clear to what extent these events incorporate them. For example, Hacking for Freedom – run by the MIT Innovation Initiative in partnership with Uncharted, Freedom Lab, Childsafe.ai, and Seattle Against Slavery – experimented with the power of technology and creativity models to stop sex trafficking. Additionally, the Manhattan District Attorney's Office, Cornell Tech, Twilio, and the Entrepreneurship at Cornell run an End Human Trafficking Hackathon using expert conferences and training materials in forced labour and trafficking to improve participants' knowledge acquisition. Both examples are complemented by the Bluehack Against Human Trafficking of IBM, Stevens Institute of Technology, Fundación Pasos Libres, and the United Nations Office on Drugs and Crime (UNODC), a hackathon aimed at developing technologies to combat human trafficking. These initiatives directly reveal the use and joint implementation of the innovation camp model and incorporate agile methodologies such as design thinking in their management.

Despite those initiatives' main objective being related to the compliance of technological, non-technological, and innovative solutions development, there is a striking educational component. Firstly, their agendas include training and workshops on human trafficking, forced labour, technological tools, marketing, and social and economic approaches. Secondly, experts and advisers guide the participants throughout the competition to respond to any concerns, strengthen knowledge in multiple areas, refine the proposals presented, and direct the teams' educational approaches from their areas of expertise to achieve the event's objectives. Thirdly, design thinking and innovative methodologies help teams better understand the problem and key points of interest, generate a whole world of ideas and application perspectives for their solutions, and improve the proposal prototyping and testing processes.

Finally, these methodologies and their dynamics are based on understanding the issue to look for solutions. The agile educational methods on human trafficking and forced labour at the competitions reinforce a more in-depth understanding because the process 'can be incorporated into the learning context to enhance project-based learning, collaborative experiences, and student-led learning, and can

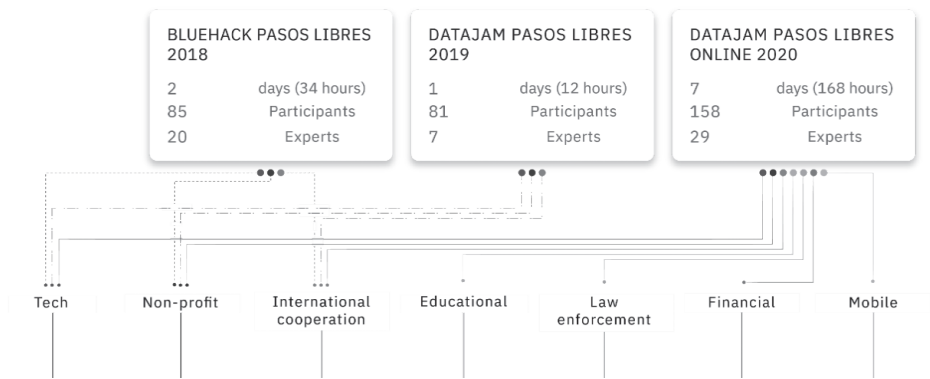
support learning that is goal-driven rather than plan-driven’ (Parsons, MacCallum 2019: 6). As learning and training scenarios, these competition approaches are significant to participants’ careers and educational programmes.

The Colombian Experience – Fundación Pasos Libres

Pasos Libres is a not-for-profit organisation based in Bogota, Colombia that seeks to revolutionise how to prevent and disrupt human trafficking through the design, development, and implementation of innovative strategies, methodologies, and technologies. Since its creation in 2017, the organisation has been advancing to formulate innovation camps and a curriculum based on the rigorous integration of co-creation and innovation tools. The purpose is to enhance teaching/learning on the human trafficking issue within non-traditional educational environments where young people and experts can acquire the necessary knowledge and skills to assume an active role in proposing, designing, and developing solutions to face trafficking challenges.

Guided by the non-traditional goal, Pasos Libres established a partnership with the global technology company IBM to create a technological innovation competition format. The industry’s young people and experts can learn, transfer knowledge, and collaborate to develop tech-based solutions to disrupt human trafficking. The organisation came up with a competition model that combined IBM’s cutting-edge technologies and a training curriculum on human trafficking developed by Pasos Libres (see Figure 1).

Figure 1: General metrics of Pasos Libres technological competitions



To date, the organisations have run three contests that have brought together 324 young participants representing 48 universities, 56 industry experts, and 15 partners and have generated 12 advanced winning solutions and 68 prototypes.

The initiatives include Traffik Analysis Hub, Western Union, Stop The Traffik, Platzi, Movistar, One Young World, The Future Society, Minderoo Foundation’s Walk Free Initiative, the Office of the Attorney General of Colombia, The Think Tank of Disruptive Ideas Against Organised Crime, UNODC, and the British Embassy in Colombia.

In 2018, Pasos Libres and IBM created the BlueHack Pasos Libres, the first hackathon against human trafficking (which included forced labour) in Colombia and Latin America. The initiative sought to develop apps, gadgets, and web platforms to tackle three challenges in preventing and investigating human trafficking and identifying victims. Born out of the Hackathon’s success, Pasos Libres and IBM moved to a Data Jam format to create the DataJam Pasos Libres. DataJam is a technological innovation competition that seeks to develop data-based solutions and data use cases to identify human trafficking patterns, networks, and hotspots. This event was run face-to-face in 2019 and online and globally in 2020. The initiative became the first-ever global competition to fight all forms of human trafficking. The competition attempted to address different sets of challenges around developing predictive models and natural language processing tools.

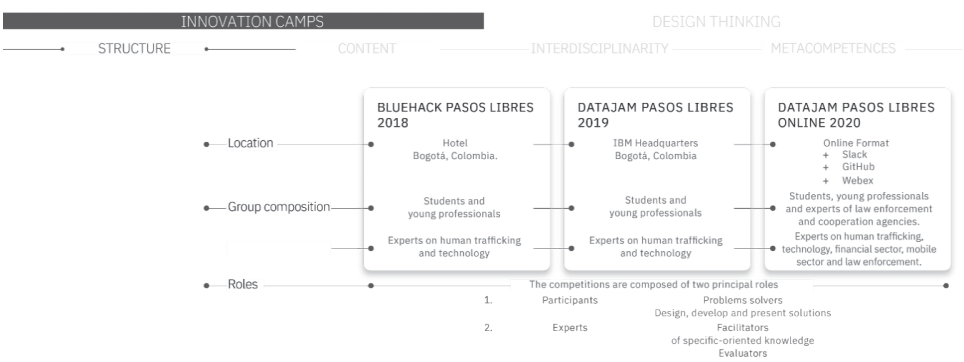
Creating the format for BlueHack Pasos Libres and DataJam Pasos Libres involved the challenge of formulating a condensed and balanced programme. The participants could acquire as much valuable knowledge about human trafficking as possible to apply it effectively to the development of innovative tech-based solutions. In this scenario, while the innovation camp model was used as a practical tool and guide for developing the competition format structure and content, the design thinking served to position interdisciplinarity and the acquisition of meta-competencies as its guiding pillars. The integration of design thinking and innovation camps has materialised in specific competitions’ characteristics, evolved based on every year’s experience, and adapted to each version’s particular needs. Figure 2 describes what the application of those tools has signified in practice.

Figure 2: Components of innovation camps and design thinking competition



The integration of the tools shapes the competitions’ structure in terms of location, group composition and roles, and vital elements in creating alternative learning environments. Although they may not seem like necessary logistical and operative arrangements, they are crucial to creating an appropriate atmosphere with the power to convene participants, make them feel part of something out of the ordinary, and motivate them to engage actively (see Figure 3).

Figure 3: Structure of Pasos Libres’ innovation competitions



Since the project is novel and has demonstrated relative merit and benefits, we provide a descriptive overview of the competition process’s significant elements below.

Structure

1. Location

The three events took the young participants and experts from their usual learning and work environments to neutral, interactive, and engaging physical and digital locations. While the BlueHack Pasos Libres 2018 took place in a hotel with access to work and game rooms and side activities, the DataJam Pasos Libres 2019 brought the participants closer to a cutting-edge technological ecosystem at the IBM headquarters in Colombia. The 2020 version of the DataJam was online and used several digital tools, allowing cooperation between participants and experts from several countries and continents.

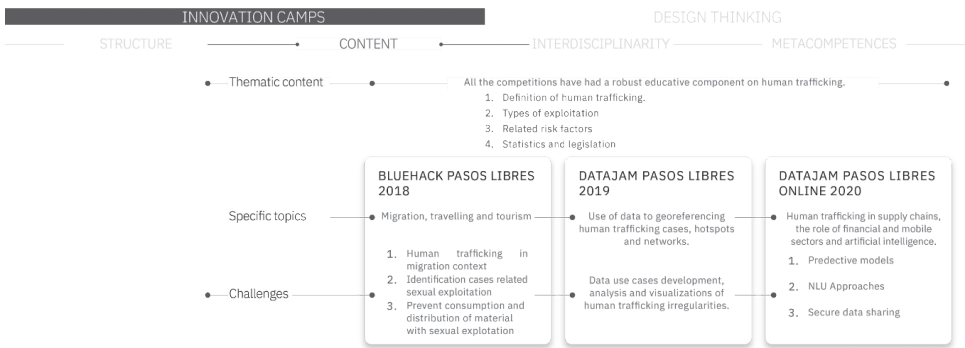
2. Group composition and roles

The competitions are composed of two principal roles: participants and experts. The participants are the problem-solvers, designing, developing, and presenting solutions for the competition’s challenges. The experts become mentors and facilitators of specific knowledge about human trafficking, technology, design,

and other related topics. Additionally, the experts with more experience in the event’s challenges serve as judges in selecting the best solutions. While the first two events focussed on bringing together university students and young professionals as participants, the third expanded the call to include industry experts from law enforcement agencies and international cooperation organisations.

Secondly, every competition’s thematic and technical content has changed alongside the challenges to provide the participants with relevant, valuable, and context-suited knowledge to develop their solutions. The thematic and technical content has served to inform the curriculum, resources, talks, and mentorships. The content adaptation positively impacts participants’ capacity to overcome the challenges, but the interest of those to do more in-depth investigation and learn for themselves (see Figure 4).

Figure 4: Content and challenges of Pasos Libres’ innovation competitions



Content

1. Thematic content

All three competitions have had a robust educative component on human trafficking, each with a different emphasis. The three events’ base curriculum included introducing the basics of human trafficking – the definition, types of exploitation, related risk factors, statistics, and legislation. Regarding the emphasis, while the first two competitions focussed on trafficking in Colombia, the third approximated the issue from a Latin American perspective and included some global context. Moreover, as Figure 5 shows, the 2018 version focussed on human trafficking in the context of migration, travelling, and tourism. The 2018 competition also centred on victim identification, online sexual exploitation, and the challenges of collecting reliable and valid data from the two subsequent events, which addressed more specific human trafficking issues, such as trafficking in supply chains and financial and mobile data in the anti-trafficking field.

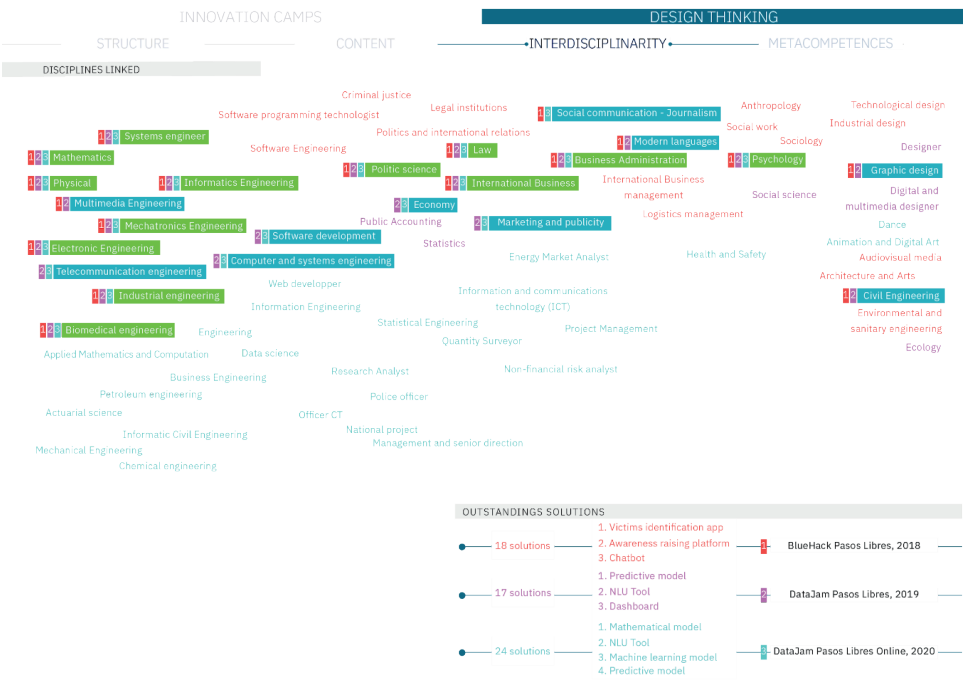
2. Challenges

The competition challenges have been defined based on the changing human trafficking dynamics, the needs of the victims and anti-human trafficking organisations, and a prioritisation of the problems that can be solved through tech-based solutions. The peculiarities of the challenges have varied from event to event, but they have remained open enough to allow participants to be genuinely creative. In that vein, the challenges of the 2018 competition focussed on victim identification and management of alerts. In 2019, the competition introduced a more general challenge regarding data-use cases, analysis, and human trafficking irregularities. The last round set three challenges about developing predictive models, natural language processing tools, and solutions to encrypt, store and share information.

3. Interdisciplinarity

Thirdly, the integration of design thinking has allowed us to position interdisciplinarity as a pillar of the competitions. The interdisciplinary nature of design thinking and its classic six-phase process can only be materialised to the fullest when the people use and apply it within a framework of teams with multiple backgrounds.

Figure 5: Diagram of the interdisciplinarity of Pasos Libres’ innovation competitions



Interdisciplinarity

1. Teams and experts

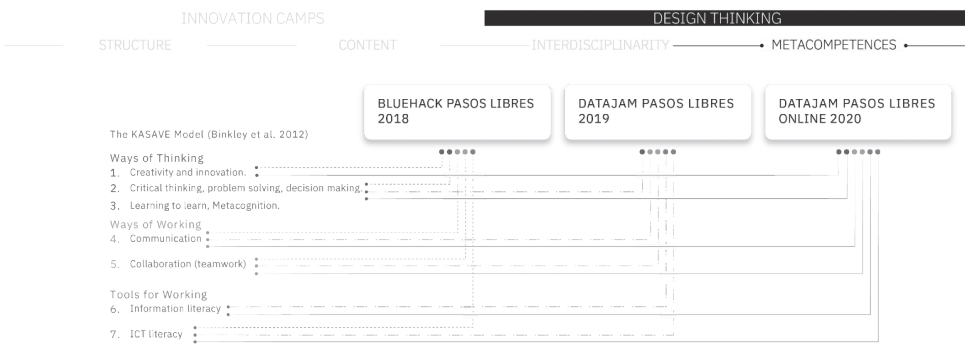
The Pasos Libres competitions are based on the multidisciplinary nature of design thinking. The three events established selection criteria that promote teams composed of members from different disciplines and professions to overcome subject fragmentation. The interested participants had to form groups of 4 to 5 members from distinct domains and experience in the social, applied, and formal sciences. In functional terms, it allowed the participating teams of the three competitions to understand the challenges and their implications from multiple points of view, explore ways to solve the problem, and propose comprehensive and concrete solutions.

2. Solutions

The teams’ interdisciplinary work directly impacts the solutions developed in the competitions, offering concrete responses to the challenges, and integrating engineering, business administration, design, and law approaches. The participants successfully integrated elements such as the proposals’ scalability, transferability design, usability, and effectiveness. Critical aspects can only be correctly developed through the interaction of multiple domains.

Lastly, the integration of design thinking has contributed to fostering meta-competencies by motivating young people to face real human trafficking challenges (see Figure 6). The design thinking methodology has made it possible to teach about human trafficking and to foster the participants capacity to understand the decisive role they can play in the fight against human trafficking, as well as how they can contribute to it from their areas of expertise.

Figure 6: Pasos Libres’ technological innovation initiatives – competition meta-competencies



Meta-competencies

1. Ways of Thinking

The competitions themselves explore innovative approaches that promote and encourage participants to think ‘outside the box’ to create disruptive and non-traditional proposals. The challenges have made it possible to guide the teams with the different initiatives’ objectives enhancing the information acquired to exceed expectations. As noted above, throughout the three competitions, the participants have used innovative technologies and methodologies known from their educational or work programmes and the platforms and methods presented during the events to strengthen the generation of ideas and the construction of proposals. Design thinking sessions and expert talks have improved critical thinking skills, understanding of the essential elements of human trafficking, and technology use and have fostered problem-solving skills.

2. Ways of Working

The Pasos Libres competitions have been built through a collaborative ecosystem where young innovators, experts, organisers, and partners converge. Although it is a competition, creating an innovation community focussed on developing ideas and proposals with social impact has been promoted. Therefore, the acquisition of teamwork skills has been prioritised to allow the participants to appropriately communicate their ideas, explore new horizons, and understand the problems first-hand. Moreover, the initiatives create appropriate terms to discuss, analyse, and develop teamwork diversity through the participants’ multidisciplinary nature and effective interaction to devise, plan, and execute projects.

3. Tools for Working

All the competitions integrated training and mentoring on using technologies and digital tools to reach a practical tech resource application. The participants’ knowledge and expertise are continually supported by experts in human trafficking and technology from the Fundación Pasos Libres and IBM. Likewise, the teams are provided with large volumes of data and information to strengthen proposals, apply technological resources, and enhance their ideas’ potential. The tools, data, and mentoring are provided for free and allow teams to appropriately target their skills and inputs to make the right decisions and increase the probability of developing winning products.

As shown in this section, a growing number of organisations from multiple sectors have started to use and integrate design thinking in the development of social and technological innovation competitions with an essential educational component and the education of human trafficking and forced labour itself. Fundación Pasos Libres and IBM's experience demonstrates how the different design thinking elements and the innovation camp model have supported the creation and development of an innovation competition format that has evolved over the three years. The BlueHack Pasos Libres and the two versions of the DataJam Pasos Libres have created a robust educational component and set a unique precedent on the field, bringing together young people, global experts, and partners from all sectors.

Opportunities of using design thinking and innovation camps to educate young people on forced labour

Forced labour is one of the most complex forms of human trafficking and a phenomenon that requires a multidimensional approach (see *An Introduction* 2008). Virtually all sectors of society, such as business, the financial industry, consumers, governments, and third sector organisations have both the responsibility and the opportunity to disrupt forced labour. Therefore, young people's awareness of the issue should match the complexity of the phenomenon in question to ensure they can progress beyond engaging in basic awareness-raising activities. This section will address the opportunities of using design thinking and innovation camps to educate the next generation of young changemakers capable of disrupting forced labour.

The innovation competition format developed by Pasos Libres has been consolidated as an alternative learning scenario that integrates design thinking and innovation camps as practical tools to educate young people on human trafficking. In that format, technology has been the means to incorporate new content, resources, and ways of solving problems and motivating young people to assume an active role. Therefore, the Pasos Libres experience in Colombia is a significant contribution to advance in the design of a programme based on the rigorous integration of co-creation and innovation tools in education on forced labour.

The DataJam Pasos Libres 2020 had a first approximation of the competition format's potential impact on educating about forced labour. The inclusion of human trafficking in supply chains as a topic and one of the challenges in the competitions' programmes have revealed an opportunity to establish multisector dialogues with the stakeholders that have a direct influence on the phenomenon. Moreover, it has reaffirmed that the design thinking methodology and the innovation camp

model could effectively educate young people about forced labour. The teaching based on hands-on projects and the search for specific solutions that is promoted by design thinking and innovation camps can lead to a better understanding of complex problems, the acquisition of meta-competencies, assessment strategies, and interdisciplinary, multi-stakeholder participation.

Developing solutions to specific challenges implies an understanding of the complex problem and approaching it comprehensively. Instead of teaching general or decontextualised knowledge about forced labour in traditional learning, a curriculum based on the innovation camp model can provide young people with relevant information to solve challenges. In practice, it would facilitate moving from general definitions or statistics without any objective beyond memorising information to exploring study cases, victims' statements, and business reports with a specific goal in mind.

The very selection of the challenges is crucial, considering that the curriculum of an educational environment based on the innovation camp model responds directly to the challenges' topics. Therefore, it is essential to continuously update the challenges based on the current forced labour dynamics, the critical stakeholders' needs, and the specific gaps of the field to keep the content relevant and guarantee that the students are receiving a context-appropriate education. Additionally, the content based on the innovation camp model itself would promote the incorporation of forced-labour-related information and valuable additional resources from diverse domains, including technological and digital tools such as software and datasets.

The diversity of content and resources implies interdisciplinarity and multi-stakeholder participation. On the one hand, the design thinking methodology offers a concrete guide to promoting interdisciplinarity and reducing subject fragmentation. The development of solutions to forced labour requires multiple points of view and several knowledge areas. The innovation camp format also brings together key stakeholders around an initiative with clear objectives and roles in the teaching/learning process. Thus, young people learn in a national or international learning environment where multiple perspectives converge on local, regional, and international interests. Additionally, innovation competitions open the possibility of strengthening academic exchanges and consolidating networks to influence the field.

It is essential to emphasise that design thinking is a favourable methodology for meta-competency acquisition – a skill set that forced labour education should always foster. The knowledge about forced labour gains much more value when the learners acquire the tools to use and apply what they learn in their personal, academic, and professional lives. Thus, this practical approach brings participants closer to understanding their current and potential roles, either as consumers, entrepreneurs, businesspeople, or overall, as citizens who can assume a role in preventing and fighting forced labour.

Educational environments based on design thinking and innovation camps allow knowledge acquisition to be assessed through solutions' ideation, design, development, and presentation. For example, the summations or pitches typical in an innovation competition such as a hackathon follow a basic structure with minimal evaluation criteria. The jury can validate the participants' learnings and measure a specific topic's domain and understanding.

In summary, design thinking and innovation camps represent multiple opportunities to reinforce young people's learning processes with new and precise educational content and valuable knowledge generation that help them understand forced labour dynamics in greater depth. Similarly, the solutions and proposal development are guided by innovative approaches and technical application tools that help to facilitate individual and collective capacities to face current and future challenges, gaining an active role as community problem-solvers and anti-human trafficking leaders. Despite representing a highly vulnerable population exposed to a higher probability of forced labour, young people are decisive in ensuring assertive decision-making, generating bold proposals, and promoting innovation to create social impact solutions.

Conclusions

Design thinking and innovation camps have taken root in education over the past 10–15 years as reliable approaches to rethinking educational dynamics and content and creating richer learning environments. A growing number of schools, universities, non-profit organisations, companies, and other stakeholders have started to recognise the potential impact of integrating those alternative tools and methodologies in education, prevention, and in helping to think differently about disrupting the blight of human trafficking. There is a shortage of academic research on integrating design thinking and innovation camps in human trafficking and forced labour. Still, this article shows how such a project can be used to educate and combat human trafficking by capitalising on a proven protocol and utilising young people's potential through a robust, interdisciplinary educational component.

Furthermore, the current practices in Colombia led by Pasos Libres in partnership with IBM have demonstrated that design thinking and innovation camps are practical tools to create alternative learning environments. The Pasos Libres project is an example of educating the next generation of young changemakers capable of disrupting forced labour through innovation, entrepreneurship, and technology. The Pasos Libres' innovation competition format and the three years of experience running the initiative in Colombia and globally are significant contributions to advance the design of programmes based on the rigorous integration of co-creation and innovation tools in forced labour education. Virtually all sectors of society have

the responsibility – and the opportunity – to help disrupt human trafficking and forced labour. The teaching of young people on the issue must be up to the problem's dimension and go beyond awareness-raising activities to form a generation of citizens with the knowledge, skills, and power to disrupt forced labour.

As illustrated in the articles in this Special Issue, forced labour trafficking has been and continues to be an enigma for researchers and policymakers in their efforts to address the growing problem effectively (see Robertson 2008; Zimmerman, Kiss 2017). Although this article is a descriptive account of an initiative that has demonstrated its usefulness in other domains, the authors hope that in sharing some insight into the programme that its relative merits will prompt others to explore the protocol as a mechanism for helping to educate and resolve the challenges of combatting human trafficking and forced labour trafficking.

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References

- Asquith L., Dorst K., Kaldor L., and Watson R. (2013). 'Introduction to Design+Crime'. *Crime Prevention and Community Safety* 15, pp. 169–174. Available online: <https://doi.org/10.1057/cpcs.2013.7>.
- Bager T. (2010). 'The camp model for entrepreneurship teaching'. *International Entrepreneurship and Management Journal* 7, pp. 279–296. Available online: <https://doi.org/10.1007/s11365-010-0149-9>.
- Bain C. (2017). 'Entrepreneurship and innovation in the fight against human trafficking'. *Perspectives on Human Trafficking and Modern Forms of Slavery* 5(2), pp. 81–84. Available online: <http://dx.doi.org/10.17645/si.v5i2.924>.
- Berman R. and McCartney S. (1995). 'Competence is not enough: Meta-competence and accounting education'. *Accounting Education* 4(1), pp. 43–53. Available online: <https://doi.org/10.1080/09639289500000006>.

- Binkley M., Erstad O., Herman J., Raizen S., Ripley M., Miller-Ricci M. and Rumble M. (2012). 'Defining Twenty-First century skills'. In P. Griffin, B. McGaw and E. Care (eds.) *Assessment and Teaching of 21st Century Skills*. Dordrecht: Springer, pp. 17–66.
- Degnegaar R., Degnegaar J. and Coughlan P. (2015). 'How to design for large-scale multi-stakeholder co-creation initiatives: Reframing crime prevention challenges with the Police in Denmark'. *Journal of Design, Business & Society* 1(1), pp. 7–28. Available online: https://doi.org/10.1386/dbbs.1.1.7_1.
- Endrissat N. (2018). 'Hackathons: A field of dreams for 'collaborative innovation'?'. *Entreprendre & Innover* 38, pp. 69–75. Available online: <https://doi.org/10.3917/entin.038.0069>.
- Enrile A.V. and Smith-Maddox R. (2018). 'Social innovations in human trafficking: Solutions to a wicked problem'. In A.V. Enrile (ed.) *Ending Human Trafficking and Modern-Day Slavery: Freedom's Journey*. Thousand Oaks: SAGE, pp. 289–312.
- Konst T. and Jagiełło-Rusiłowski A. (2017). 'Students' and Higher Education stakeholders' concepts of resilience in the context of innovation camps'. *Dyskursy Młodych Andragogów* 18, pp. 19–33. Available online: https://innopeda.turkuamk.fi/uploads/2020/06/a41fab86-02_konst_jagiello-1.pdf [19.09.2020].
- Kwong C., Thompson P., Cheung C. and Manzoor H. (2012). 'The role of environment in fostering conducive entrepreneurial learning: Teaching the 'art' of entrepreneurship in boot camps'. *Journal of General Management* 38(1), pp. 45–71. Available online: <https://doi.org/10.1177/030630701203800103>.
- Lara M. and Lockwood K. (2016). 'Hackathons as community-based learning: A case study'. *TechTrends* 60(5), pp. 486–495. Available online: <http://dx.doi.org/10.1007/s11528-016-0101-0>.
- Lodato T. and DiSalvo C. (2016). 'Issue-oriented hackathons as material participation'. *New Media & Society* 18, pp. 539–557. Available online: <https://doi.org/10.1177/1461444816629467>.
- Robertson B.C. (2008). *Forced Labor: What's Wrong with Balancing Work and Family*. Spence Publishing Company.
- Wrigley C. and Straker K. (2015). 'Design thinking pedagogy: The educational design ladder'. *Innovations in Education and Teaching International* 54(4), pp. 374–385. Available online: <https://doi.org/10.1080/14703297.2015.1108214>.
- Zimmerman C. and Kiss L. (2017). 'Human trafficking and exploitation: A global health concern'. *PLoS Medicine* 14(11). Available online: <https://doi.org/10.1371/journal.pmed.1002437>.

Internet sources

- An Introduction to Human Trafficking: Vulnerability, Impact and Action* (2008). Vienna: UNODC. Available online: https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf [19.09.2020].
- Clarke I. (2019). *Design Thinking*. ALA Neal-Schuman, Chicago, Serch.ebscohost.com. Available online: <http://search.ebscohost.com.ezproxy.uniandes.edu.co:8080/login.aspx?direct=true&db=e000xww&AN=2433506&lang=es&site=eds-live&scope=site> [19.09.2020].
- Darbellay F., Moody Z. and Lubart T. (2017). *Creativity, Design Thinking and Interdisciplinarity*. Singapore: Springer. Available online: https://www.researchgate.net/publication/322202870_Creativity_Design_Thinking_and_Interdisciplinarity [19.09.2020].
- Dschool.stanford.edu (n.d.). *Dschool.stanford.edu*. Available online: <https://dschool.stanford.edu/> [19.09.2020].
- ILO (2018). *Ending forced labour by 2030: A review of policies and programmes*. Available online: https://www.ilo.org/global/topics/forced-labour/publications/WCMS_653986/lang--en/index.htm [19.09.2020].
- Koh J., Chai C., Wong B. and Hong H. (2015). *Design Thinking for Education Conceptions and Applications in Teaching and Learning*. Singapore: Springer. Available online: <https://www.springer.com/gp/book/9789812874436> [19.09.2020].
- Kwek S. (2011). *Innovation in the Classroom: Design Thinking for 21 st Century Learning*. Master's thesis. Available online: <https://web.stanford.edu/group/redlab/cgi-bin/materials/Kwek-Innovation%20In%20The%20Classroom.pdf> [19.09.2020].
- Liedtka J. (2018). *Exploring the impact of design thinking in action*. Available online: <https://designatdarden.org/app/uploads/2018/01/Working-paper-Liedtka-Evaluating-the-Impact-of-Design-Thinking.pdf> [19.09.2020].
- Parsons D. and MacCallum K. (2019). 'Agile education, lean learning'. In D. Parsons and K. MacCallum (eds.) *Agile and Lean Concepts for Teaching and Learning. Bringing Methodologies from Industry to the Classroom*. Singapore: Springer, pp. 3–23. Available online: <https://www.springer.com/gp/book/9789811327506> [19.09.2020].
- Rissola G., Kune H. and Martinez P. (2017). *Innovation Camp Methodology Handbook: Realising the potential of the Entrepreneurial Discovery Process for Territorial Innovation and Development*. Publications Office of the European Commission. Available online: <https://ec.europa.eu/jrc/en/publication/innovation-camps-methodology-handbook-realising-potential-entrepreneurial-discovery-process> [19.09.2020].
- Scheer A., Noweski C. and Meinel C. (2012). 'Transforming constructivist learning into action: Design thinking in education'. *Design and Technology Education:*

- An International Journal* 17(3), pp. 8–19. Available online: <https://ojs.lboro.ac.uk/DATE/article/view/1758> [19.09.2020].
- Sweeny S. (2016). *Babson to Hold First Annual Multi-school Business Plan Competition for Human Freedom Entrepreneurial Leadership Program*, Blogs. babson.edu. Available online: <http://blogs.babson.edu/news/2016/05/11/babson-to-hold-first-annual-multi-school-business-plan-competition-for-human-freedom-entrepreneurial-leadership-program/> [19.09.2020].
- UN Youth Strategy (2018). *Youth 2030 Working with and for Young People*. Available online: https://www.un.org/youthenvoy/wp-content/uploads/2018/09/18-00080_UN-Youth-Strategy_Web.pdf [19.09.2020].
- University of Arizona (2019). *Four law schools launch collaboration to support human trafficking survivors*, Law.arizona.edu. Available online: <https://law.arizona.edu/news/2019/08/four-law-schools-launch-collaboration-support-human-trafficking-survivors> [19.09.2020].



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Zbigniew Lasocik ■

Forced labour – well-hidden mechanisms of dependence and enslavement

Praca przymusowa – ukryte mechanizmy zależności i zniewolenia

Abstract: Forced labour is a social phenomenon which is difficult to comprehend and accept due to its exceptional nature. The existing legal definition is not very helpful. This article reflects on a different approach to understanding forced labour and a different operational definition of the phenomenon. The starting point is to look at forced labour from the perspective of social pragmatism and symbolic interactionism by referring to the humanistic coefficient, a concept developed one hundred years ago. Using the experience of Poland in unsuccessful attempts to deal with forced labour, but also referring to global experiences in that field, this article attempts to define the phenomenon in the context of work in general. The key question that arises here is this that if work is a noble and socially visible phenomenon, how is it then that forced labour is almost completely invisible, not only to people, but also to law enforcement? It is suggested in this text that forced labour, burdened with a strong social taboo, is hidden behind a façade of the nobility of labour. At the end of the article, there is a proposal for a new analytical scheme with which the phenomenon can be described in a completely different language than that of criminal justice.

Keywords: labour, forced labour, new definition of forced labour, combating forced labour, cultural taboo, social communication

Abstrakt: Praca przymusowa jest zjawiskiem społecznym, które ze względu na swój wyjątkowy charakter jest trudne do zrozumienia i zaakceptowania. Istniejąca definicja prawna nie jest szczególnie pomocna. W artykule przedstawione jest inne podejście do rozumienia pracy przymusowej oraz nieco inna, ale operacyjna definicja tego zjawiska. Punktem wyjścia jest spojrzenie na pracę przymusową z perspektywy społecznego pragmatyzmu i symbolicznego interakcjonizmu, odwołujące się do

koncepcji współczynnika humanistycznego, wypracowanej sto lat temu. Patrząc na doświadczenia Polski, tzn. nieudane próby radzenia sobie z problemem pracy przymusowej, ale także na podobne doświadczenia w skali globalnej, podejmuję próbę zdefiniowania samego zjawiska – jako takiego, ale także w kontekście pracy w ogóle. Kluczowe pytanie, które się pojawia, brzmi: praca jest zjawiskiem szlachetnym i społecznie widocznym, więc jak to jest, że praca przymusowa jest tak mało widoczna dla ludzi, ale także dla organów ścigania? Stawiam tezę, że praca przymusowa, obciążona silnym społecznym tabu, skrywa się za fasadą pracy, jako zjawiska wyjątkowo godnego i szlachetnego. W końcowej części artykułu pojawia się propozycja nowego schematu analitycznego, który pozwoli opisać zjawisko pracy przymusowej, zupełnie innym językiem niż język wymiaru sprawiedliwości w sprawach karnych, ale przede wszystkim, jako fenomen społeczny.

Słowa kluczowe: praca, praca przymusowa, nowa definicja pracy przymusowej, zwalczanie pracy przymusowej, kulturowe tabu, komunikacja społeczna

Introduction

Human trafficking and forced labour are social phenomena which are difficult to comprehend or accept due to their completely exceptional nature (Winterdyk, Perrin, Reichel 2012). Even though it may seem hard to imagine, I continually come across people who, upon finding out about the subject of my scientific interests, ask, 'But what is human trafficking? Does it really exist? What forced labour are you dealing with, the modern kind?' My first reaction has always been astonishment, but because I have been astonished for years, I often quickly conclude that such 'ignorance' is, in a certain sense, normal because it is difficult to imagine the total enslavement of another person and treating others as items. To be brief, one can venture to say that the level of society's awareness about human trafficking is low because in many places human trafficking is not a matter of public debate, i.e. the authorities' interest is minimal, little is said or written about it, and it is not the subject of regular scientific study. Without challenging the justifiability of such statements, I believe that some of my interlocutors react the way they do not because they know nothing, but because human trafficking does not fit into the cognitive patterns of a modern person. The information that 'forced labour takes place next to us' cannot find a place in the mind of the recipient where it can be located and internalised. And if this is the case, to avoid the discomfort resulting from cognitive dissonance, it is natural to push away the uncomfortable facts (Myers 1996: 484).

The low level of awareness about human trafficking and forced labour may also be a consequence of the language that we are using. In practice, in the description of these crimes, we emphasise one of the key aspects, i.e. we present them as grave crimes that come with the risk of harsh penalties or as a violation of human rights, with the right to freedom at the fore. It is quite common to stress both these aspects together. A relatively new approach is the socioeconomic one, which allows us

to look at human trafficking, and especially forced labour, from a labour market perspective (Andrees, Belser 2009: 3). However, the fourth dimension is equally important: the one that positions these negative behaviours at the civilisational level and requires that they are viewed as a negation of humanity and a misappropriation of the basic requirements of culture (Bales 2005). Thus, to properly understand human trafficking and forced labour, we must see them as very serious crimes, as violations of fundamental human rights (particularly the right to dignity), as a consequence of faulty regulation of the labour market, and, finally, as behaviour that does not fit within the canons of a civilisation that has been built over many decades on such foundations as equality, security, and humanistic values (Lasocik 2014).

The purpose of this article is to reflect on a different approach to understanding forced labour and a different operational definition of the phenomenon. Using Poland's experience in the fight against forced labour, I try to demonstrate the weaknesses of the 'official' understanding of the phenomenon and propose a new model for analysing it. The essence of this new approach is to change the language which we use to describe forced labour.

Analytical framework

Forced labour and human trafficking are difficult for many people to accept, irrespective of age, education, legal knowledge, or historical experiences, because reducing a person to the rank of a commodity is contradictory to the elementary principles of people co-existing. On the other hand, among the many features of the crime of forced labour described in the literature, little is said about the fact that this behaviour is well hidden precisely because it is difficult to recognize it (Shepherd, Wilkinson 2020: 8) and because information about it is not expected by society. This is why some people willingly reject such 'bad' information in order not to feel uncomfortable, as mentioned above. Therefore, it is necessary to write and speak about forced labour and human trafficking as much as possible in order for people to reach the highest possible level of intellectual and mental readiness to accept the fact that such behaviour does take place in our midst. This accomplishment was possible in reference to environmental issues. Nowadays, hardly anybody turns away from information about the climate crisis.

Therefore, is it worth changing the language that is used to describe forced labour? Presenting this issue in political and criminological jargon may not guarantee broad societal interest. Could it be that the metaphor of 'modern slavery', used so extensively in the literature and in politics, is not the very best instrument to communicate with a mass audience (Ngwe, Elechi 2012; O'Connell, Davidson 2015; Broad, Turnbull 2018)? Let us note that Ricard-Guay and Hanley, whose

paper is featured in the monumental work edited by John Winterdyk and Jackie Jones, entitled one of the sub-chapters of their text 'Labour trafficking: Still under-detected? Or rather called by another name?' (Ricard-Guay, Hanley 2020: 292). The question marks in the title are quite telling and I interpret them as an invitation to a discussion. I am willing to take part in it.

It seems that all texts about human trafficking and forced labour have to contain a statement that this is a serious problem, the scale of the phenomenon is significant, and forcing people to work is a violation of the basic standards of a modern society. If we add that according to the most recent estimates the global number of victims of various forms of servitude is as high as 40 million (Globalslaveryindex.org 2018), whereas the number of identified victims does not exceed 100,000 (Trafficking 2019: 38), we can be certain that this is a grave problem which modern civilisation is simply not handling well. Human trafficking and forced labour are truly two of the most painful and urgent social problems of our times.

However, from the point of view of describing the phenomenon, there is also another observation, possibly more important – the fact that not all forms of human trafficking and forced labour enjoy the same interest from politicians, experts, and the media (Zhang 2012: 470). It goes without saying that most attention was and still is devoted to sexual exploitation, whereas forced labour is treated as a marginal phenomenon. However, numerous authors have noted with satisfaction that this situation is fundamentally changing and that forced labour is garnering the broader interest of researchers and analysts (Andrijasevic 2016: 60). This differentiation also greatly affects the quality and nature of national policies aimed at counteracting human trafficking and forced labour (Brysk 2010).

On the other hand, an interesting regularity can be observed, as mentioned in the introduction, that according to the estimates, the most common problem at the moment is forced labour, whereas the majority of the victims identified by law enforcement authorities are still victims of sexual exploitation (Trafficking 2014: 29; Data collection 2020: 16). This disproportion, even though unsurprising, is nonetheless an interesting phenomenon which may lead to scientific reflection and more in-depth studies. Nevertheless, I am interested in a slightly different research problem, the one that underlies the concept of this Special Issue and inspired the writing of this article. It is about the disproportion between the estimated scope of forced labour and the actual interest in the problem. This issue can be broken down into three research questions:

1. Why is the gathering of data on forced labour so slow compared with that on sexual exploitation?
2. Why is progress in eliminating forced labour negligible compared with that in sexual exploitation?
3. Why are many countries not interested in changing the situation?

The answer to these questions is not easy because trafficking in human beings and forced labour are phenomena that pose difficult challenges for the authorities of states and societies, regardless of their level of development or legal culture

(Nelken 2010). Moreover, it has serious implications for the practice of social life around the world. Although numerous experts have analysed this issue (Zhang, 2012), it is worth taking a moment to reflect, study it a little deeper, and broaden the scope of analysis. This is the original idea of this article, but I am limiting my role to posing questions – I am of the opinion that we should all be seeking answers. And because it is being published in Poland, perhaps it would be a good idea to use Polish experiences so that these research questions can be presented in the Polish context and the directions of research can be outlined.

In taking on this difficult task, I would suggest moving away from the legal definitions of human trafficking as outlined in the ILO Convention of 1930 (FLC 1930) and the Palermo Protocols (Protocol to Prevent 2000). To overcome the interpretative difficulties arising due to the nature of these definitions, I would like to also suggest that we depart from the established analytical scheme based on the AMP system (action, means, purposes). This concept works well as a phenomenological description of events, especially for the purposes of criminal justice, including the liability of perpetrators. On the other hand, this type of language is not very likely to reach politicians – and even less so average citizens – to the extent that the problem of forced labour would become the subject of their sincere interest and the basis for social dialogue.

This is why the *criminal justice* language should be enriched by looking at the problem from a perspective that can be described as humanistic, in the sense given to this term by sociology arising from the work of F. Znaniecki, G. H. Mead, J. Devey and W. I. Thomas. It is all about an approach that is strongly supported by the philosophical elements of social pragmatism (Mead 1934) and the treatment of the individual that is distinctive of symbolic interactionism (Krzemiński 1986). Pragmatism, which rejects idealism and behaviourism, made significant space for knowledge, particularly knowledge accumulated from social experience. Therefore, not only is human behaviour guided by ideas that organise the will or by stimuli coming from the environment, to which people respond, but an individual's actions are solving problems in communication with others based on collected information. This is why pragmatists argue that the mind and knowledge, together, facilitate effective action (Duncan 1969). And if so, perhaps the lack of in-depth knowledge and full understanding of the essence of forced labour limits the potential of our actions? This is why I am trying to replace the interpretation of the legal definition of forced labour with the interpretation of social reality seen through the resources of common knowledge (Shibutani 1961).

On the other hand, symbolic interactionism raised the social rank of the individual as a free, active, and creative entity. Human actions are not merely reactive, but are based on the current definition of the situation (Znaniecki 1971: 421). Thus, a description of this action must also take into account the point of view of the actor. This, in turn, fundamentally changes the social role of communication, which serves not only to convey content, but also to construct reality. Thanks to this, it was possible for the Chicago School to make such a fundamental break-

through in the description of society and the genesis of crime (Lindsey, Beach 2000: 17). However, what is most important in interactionism is the role of meanings in stimulating action. To put it simply, people take specific actions based on the meanings they learn in the process of social communication (Blumer 1986). This observation may lead to the question, 'Does forced labour mean the same thing to everyone? What if it does not?' This will be discussed later.

Meanwhile, let us return to the question of why forced labour is predominant in the estimates and why the number of victims of sexual exploitation is predominant among the victims identified. The answer is not difficult, since it is much easier to identify a victim of forced prostitution than an enslaved and exploited worker. Police forces around the world monitor the sex industry because it is a useful source of operational information, and therefore it is not particularly difficult to ascertain the details of the status of sex workers. Where prostitution is illegal, it is even easier, because all that is needed is to arrest such persons from time to time in order to obtain useful information. Pimp informers also continue to be sources of information. Thus, identifying a victim of sexual exploitation is less of a problem for the police, provided that the police are willing. Identifying a forced labour victim, unless they are, for example, in a labour camp, is much more difficult because there is no operational control of the labour market. On the other hand, the structure of interests, wherein the migrant is interested in earning money and the dishonest employer in cheap labour, means that no-one is motivated to disclose any information. Also, a loss of independence or influence over working conditions is treated as an acceptable cost of migration (Szulecka 2012: 181). Finally, labour inspection services in many countries, including Poland, are quite ineffective.

However, the presented explanation is incomplete, as it abstracts from the essence of the behaviours that are the subject of our interest. To complete the picture, it is worth looking at the problem while taking into account the above-mentioned 'humanistic coefficient' (Znaniecki 1968: 36) – to depart from the structural and normative definition of sexual services and forced labour in favour of an interpretative, semiotic approach (Sullivan 2009: 468). Then, the key descriptive category becomes the *symbolic visibility* of these phenomena, i.e. their meanings, which are determined during the process of social communication. Let us explain this term using two examples.

In these categories, commercial sex is symbolically very 'visible' because it undergoes the individual experience twice, so to speak. Firstly, the offering and buying of sexual services – particularly when it is illegal – is socially obvious as a violation of a legal norm. Anyone who does this is committing a crime. Therefore, it is relatively easy to collectively determine the meaning of such behaviour, and whether the individual was forced into it or not is not actually important. Secondly, commercial sex is a social taboo and is burdened with moral reproach, even when it is legal. In this case, ascertaining the negative meaning is also easy, because this very type of moral judgement is what determines it. If we follow the thoughts

of W. I. Thomas and assume that opinions and actions are a consequence of the interpretation and definition of a situation (Thomas 1975), we are likely to think of sex workers as sinners rather than victims of coercion. This is also because we are unable to imagine how brutal the methods used to force another person to provide sexual services must be.

Things are completely different with forced labour, because it is hidden by a 'double invisibility'. The difficulty of eliminating forced labour as a criminal activity stems in part from the fact that it is very difficult to distinguish it from the exploitation of someone else's work, which occurs, for example, in corporations (Ylinen et al. 2020: 13). Unlike paid sex, forced labour is well hidden behind the façade of work as a legal – and even very noble and glorified – activity. Yet, the history of the world had periods when work was a shameful and degrading activity (Sztumski 2017: 13). At present, at the level of meaning, we no longer have any doubt that work is something good and expected. However, forced labour is also invisible because those who take advantage of it make every effort to conceal it, using subtle and sophisticated methods of enslaving and taking control of their workers. This applies equally to working conditions, remuneration, and the legality of employment. On the other hand, an employee who, for example, does not have a work permit, will do everything to remain invisible, even in a symbolic sense.

Descriptions of two typical cases of forced labour in Poland and in Italy

All these statements and hypotheses result from an analysis of publications, previous research, and experience with the functioning of systems for eliminating trafficking in human beings in Poland and in other countries. Now my intention is to establish whether, at least in part, what seems obvious on the level of theoretical analysis is confirmed in real life. To this end, it will be necessary to follow two criminal cases of forced labour. I chose one in Poland and another in Italy on the basis of a substantive criterion – they represent two popular models of enslavement through labour. In the first case, from 2004, the victim was a Vietnamese citizen, recruited by his compatriots in Vietnam and illegally brought to Poland and exploited here to work in a trade by other Vietnamese people. In this case, the source of the victim's dependence was *debt bondage*, as he owed the perpetrators the money they had spent to cover the costs of his travel to Poland (the classic debt bondage mechanism). In terms of meaning, the victim defined his position as 'no way out' and accepted his fate.

The second case concerned a large group of Poles who had been recruited to work in agriculture in southern Italy by a Polish criminal group through newspaper and internet advertisements. In most cases, they were misled about the working

conditions and pay. Upon arrival they were forced to work, intimidated, and even beaten. In this case, the source of the enslavement was a legitimate fear of a very real threat. Additionally, the victims wanted to earn money, so they defined the submission and exploitation as rational – this is how the mechanism that combines knowledge, the mind, and emotions works.

Due to the analytical potential of both these cases and their undoubted educational value, I present them in a little more detail below.

Vietnamese citizen forced to work in Poland – work for debt

This is the first case of forced labour in Poland – it happened in 2003 (III K 145/04 2003). The victim was Pham, a 44-year-old farmer from Vietnam, married with two children – 9 and 16 years old; he had a primary-school education and no other training.

There were three perpetrators. The first – Sinh – was a Polish citizen of Vietnamese origin. At the time of his arrest, he was 37 years old, married (to a Polish woman) with five children aged 1 to 7; he had a primary-school education. Before he was detained, he had been involved in commercial activities at city markets. According to the collected data, he did not have a criminal record.

The second perpetrator was a citizen of Vietnam living in Poland, Tien – 33 years old, married (to a Polish woman) with one child, aged 9; he had a secondary-school education and was a tailor by trade. Until his arrest, he sold clothing at open-air markets. He lived with his wife in her house. According to the collected data, he did not have a criminal record.

The third culprit was Duc, also a citizen of Vietnam, 40 years old, living in Poland. He was married with two children, aged 16 and 11, and a chef with vocational training. Before his arrest, he earned a living from commercial activities at city markets. He lived with his Polish wife. According to the collected data, he did not have a criminal record.

In January 2003, Duc left Poland for Vietnam. There, he contacted Pham, whom he offered to help him illegally get to Poland and then find a job for USD 3,000. The man agreed to this offer. Because he did not have the full amount, he borrowed money from his family and took out a bank loan. Still, he only managed to get USD 2,000. At this stage, Duc offered to lend him the missing USD 1,000, allowing Pham to work it off in Poland; Pham accepted this offer. Duc gave the money to the people responsible for organising the Vietnamese man's trip to Poland, but the identity of these people has never been established.

Pham's trip to Poland took place in April 2003 in several stages. First, he flew from Hanoi to Moscow by plane. At the airport in Moscow, he met a man ('European') who took his passport and then drove him and 12 other Vietnamese citizens by car to Minsk, Belarus. From there, they were all taken to the Polish border, and

on 8 April 2003 they crossed it illegally at night. Two men were responsible for this part of the operation – Pham also referred to them as ‘Europeans.’ The identity of these people has not been established.

After crossing the Polish border, the smugglers took the 12 individuals to Warsaw, to the then 10th Anniversary Stadium.¹ Pham, along with three others, was placed in the apartment of a Vietnamese citizen, whose job was to keep an eye on his fellow countrymen until the dues were settled. Once his family had given the traffickers the agreed sum (USD 3,000), Pham was released from the quasi-custody. For several weeks, he worked at a stadium fair, and then was moved to another apartment in the Świętokrzyskie Voivodship in south-central Poland. He lived there with three other Vietnamese people. All of them traded at local bazaars. In June, Pham received a fake driver’s licence from Duc.

Pham was forced to work by Duc and his family members. He did not receive any pay for his work, working off his debt (USD 1,000). Since Duc never specified how long it would take to ‘work off’ the loan, Pham asked because he wanted to send money to his family and pay off his financial obligations. In response, he was told that it would take approximately four to five years. When Pham expressed his displeasure, Duc sold him to his relative, Tien.

The new ‘owner’ did not pay Pham for his work either, arguing that he had bought him and that Pham now had to pay back the amount Tien had paid. Yet, on 10 August 2003, Pham was arrested by Border Guard officers as a result of a routine check at the city market in Kielce. The basis for his detention and subsequent arrest was that he was using a fake driver’s licence. During the inspection, Pham stated that he had come to Poland illegally along with a group of a dozen other foreigners, and that he had been forced to work and received no remuneration.

At the level of meaning, Pham’s situation was difficult because he had broken border regulations, worked illegally, and used fake identification. However, what raises the most reservations in this case is the conduct of the state authorities towards the victim of the crime of human trafficking for forced labour. On 8 December 2003, by a judgement of the District Court in Kielce, Pham was sentenced to eight months’ imprisonment for two crimes: illegally crossing the Polish border and using a forged identity document. The court suspended the sentence for a period of two years and released the defendant from court fees. Let us recall the context: it was 2003, the provisions on human trafficking had appeared in Polish criminal law in 1997, since 1996 a branch of the La Strada Foundation had operated in Poland (Lastradainternational.org n.d.; Strada.org.pl n.d.), and in Europe work was underway on the European Convention on Action against Trafficking in Human Beings, which includes a non-punishment provision for victims of human trafficking (Article 26).²

¹ At the time, the stadium served as a huge marketplace with a very poor reputation. Currently, the National Stadium – a sports facility – is located there.

² Article 26 – Non-punishment provision: Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties

It did not end there, because on 13 January 2004 the Border Guard Headquarters petitioned the court to arrest Pham for the purpose of deportation, claiming that 'his continued stay in Poland would endanger the rhythm and course of social life, which was ordered by way of legal regulations and free from disturbances. Anyone reading this justification now would feel embarrassed. However, as expected, the District Court in Kielce granted the request of the Border Guard, and Pham was arrested and then deported.

The perpetrators in this case were also convicted. The court found two of them guilty of human trafficking and sentenced Duc to three years and six months' imprisonment, and Tien to three years' imprisonment. In both cases, the prosecutor had asked for tougher punishment. The third defendant, the alleged organiser of this smuggling operation, was convicted of illegally possessing weapons, because the prosecutor did not prove that he had trafficked in human beings.

In conclusion we can state that this case features all the elements of human trafficking for forced labour and the imperfections of the criminal justice system's response to such a case. To start with, let us list the elements of the phenomenology of this crime: intra-ethnic recruitment (Arhin 2016), recruitment at the victim's place of residence, the typical mechanism of debt bondage, the smuggling of the victim to Poland via Russia and Belarus, the transformation of smuggling into debt-related human trafficking, passport seizure, imprisonment, exploitation of labour, deprivation of earnings, and passing of the victim between traffickers.

When it comes to the reaction of the system, we have accidental identification during a routine check, incorrect diagnosis of the victim's situation, deprivation of liberty for the illegal border crossing of a victim of human trafficking, no contact with an NGO, a conviction for a minor crime related to the victim's situation, the use of arrest for the purpose of deportation, and finally deportation.³ This happened despite the fact that one of the procedural documents mentions that Pham asked to stay in Poland and earn at least a part of the money that the family had invested in his trip (Klaus 2017). On the other hand, the victim's departure from Poland deprived us of the possibility of learning his definition of the situation, something that is currently referred to as the *victim journey* (Victims 2018: 17; Journey 2019: 9).

on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

³ This would no longer be possible under current migration law.

***Terra Promesa* (Promised Land), or mass enslavement of Poles in Italy**

A discussion of the second case is difficult, because its scale goes beyond the scope of the Introduction. However, I cannot help but present it, because it was the first case in which a well-organised criminal group created an effective system of mass recruitment and exploitation of Polish labour abroad. Also, the group's operations continued for nearly four years (2003–2006). Finally, since then, there has never been a case in Poland in which the number of victims was remotely similar – it is estimated that approximately 800 people were exploited. The case is known by its telling code name – *Terra Promesa* (III K 21/07 2013).

It all started in 2003, when Łukasz Z. (who later formed a criminal group), went to Italy and worked as a seasonal worker on vegetable and fruit farms. When he realised that the demand for labour was enormous, he created a simple business plan: one only needs to help Poles find such work and transport them abroad. In a very short time, Łukasz Z. and his wife had built a system that consisted of several elements:

1. a network of recruiters who advertised the possibility of working in Italy (usually via newspapers), answered phone calls from interested parties, and directed them to intermediaries;
2. a network of intermediaries who took over contact with interested parties and organised transport, usually by minibus, and collected money for the journey;
3. transport companies that transported the workers to Italy – such trips usually involved a 'guide' or 'guard';
4. private individuals, hired on occasion, who knew Italy and played the role of drivers and 'guides';
5. a group of organisers, whose task was to search for appropriate job ads and provide workers; these were often people living in Italy or working there long-term, who spoke Italian;
6. a group of men who can be described as 'disciplinary staff', whose task was to intervene in situations where the workers did not accept the working conditions or pay or when they demanded better housing or a return to Poland; these people included Poles and Ukrainians, but there was also an Italian of Moroccan origin and an Albanian;
7. a network of employers who colluded with a criminal group and paid the organisers for each worker, but offered terrible living conditions and low pay to compensate for the expenses incurred;
8. some employers who, although they used the services of the criminal group, offered decent living conditions and fair pay;
9. an unknown group of public officials – mainly officials of law enforcement and local authorities who colluded with the criminals. In the court proceedings that took place in Poland, it was not possible to form a credible picture of this

group of people; some of the victims spoke about corruption, and they are mentioned in the press.

In a typical situation, the group's *modus operandi* was as follows: an advertisement was published about the possibility of working in Italy, interested parties called the telephone number in the advertisement and found out about the conditions of the trip, i.e. the nature of the work, the cost of transport to Italy, the cost of job placement, and the fact that the employer provided accommodation but no food, unless an additional fee was paid. After agreeing the details, the recruiter put the person in contact with an intermediary, who set the date of departure and meeting place – providing, for example, the car's number plates – and informed the person how much money they should have with them (in EUR or PLN). At the meeting place, an intermediary appeared; they presented a forged employment contract with the seals of companies with names indicating that they were Italian companies (the contracts were often forged by Łukasz Z. himself or by one of his closest associates), collected the agreed amount, and placed the person in the minibus. Sometimes, a representative of the criminal network participated in such a trip, and sometimes the driver was the 'guide'. After arriving, the workers were left with a specific employer, and this is where the situation becomes more complicated, because there were several possible scenarios.

First scenario: the employee immediately realised that the living conditions were unacceptable (for example, dirty mattresses in a dilapidated house and sanitary conditions that violated human dignity) and called the intermediary to request changes, or returned to the car (bus) and asked to be taken elsewhere. If it was impossible to find such a place, the worker returned to Poland, and had to pay EUR 50–100 for the return. Those who did not have the money had to ask their relatives to gather the appropriate amount or make a transfer to a bank account.

Second scenario: the employee remained at the location and only after the bus departed realised what the accommodation, working conditions, and remuneration were like. In extreme situations, deductions for costs meant that employees earned EUR 1 per hour. To avoid the first scenario, the criminals deliberately drove the workers to the location at night. If the conditions were unacceptable, the worker called the intermediary or organiser, who usually refused to intervene after only one conversation. After further phone calls, intermediaries took some sort of action and, for example, transported the employee to another employer, where the conditions were the same or worse, or offered a return to Poland for an additional fee.

Third scenario: the employee remained at the location, but discovered very quickly that the workplace was a type of labour camp, where people were supervised or deprived of liberty, forced to work excessively, and punished for the slightest offence or low productivity. The supervisors were both Poles and citizens of other countries (Ukrainians) who intimidated the employees and used violence, some of whom carried firearms. There was also a reduction in wages to a level that meant the victims worked almost for free. In such a situation, phone calls to intermediaries did not bring about any significant results. The only way out of the situation was to

run away, and many opted for this solution – some of them stayed in Italy looking for a job on their own, whilst others returned to Poland.

Fourth scenario: this scenario was a mutation of the third, where it sometimes happened that the phone call to the intermediary or organiser proved to be effective or that circumstances brought about their intervention. For example, the victim managed to contact their family in Poland, who in turn put pressure on the members of the criminal group in Poland. Then the organiser demanded an additional fee for finding a new job, or placed the employee in another location that was only slightly better than the previous ones. Some workers quit altogether and then had to cover the costs of returning to Poland. Some returned on their own after their release.

Fifth scenario: some workers found employers who provided them with decent living conditions and remuneration in line with the agreed amount. These people were successful and after some time returned to Poland, either through a criminal group or on their own.

We should add that the available information shows that none of the victims contacted the Italian police or any other authority. Similarly, no-one directly reported the situation to the Polish police. This can be explained quite simply. Firstly, the recruitment model – and especially the way illegal work/labour was organised – made the victims afraid to turn to law enforcement or any other services for help. Secondly, in almost all cases, the instruments of victim control were the implicit threat and progressive deprivation of key needs. I think the two elements come together and create a state that can be described as a frozen-will effect, leading directly to submission, and even to a kind of fatalism. It was not difficult to fall into this state, because the victims did not know Italian and those brought at night often did not even know where they were. This made them vulnerable to deteriorating living conditions and lowering of pay under the smallest pretext, which we know as a *continuum of exploitation* (Andrees 2008). Add to this the lack of money, and we have a situation of complete enslavement.

In conclusion, one can say that the criminal practice of exploiting Poles who are unsure of their legal and factual situation was effectively hidden behind the façade of legal employment in Italy. The pathology arose at the intersection of two important social needs, i.e. the financial needs of Polish workers and the demand for labour among Italian farmers. In all respects, an important and socially desirable business activity combining these two needs only turned into a criminal activity because one important element of the employment relationship was eliminated: the legality of employment and full clarity and transparency of the contract (Ihrb. org n.d.).

The reaction of public authorities to cases of forced labour – example of Poland

Taking into account purpose of this article and the assumptions adopted above, I will now present a few facts that illustrate the reaction of the Polish authorities to the described cases, seeking an answer to the question of why this reaction was so limited, or in some respects even missing.

More than fifteen years have passed since the first criminal case of forced labour in Poland, and over five years since the disclosure of the cases of exploitation of Poles in Italy. Thus, a reasonable question is whether the Polish authorities used this time properly. Have these two cases aroused a real interest in forced labour from the authorities, civil society, and public opinion in Poland? Has the resulting knowledge re-orientated human actions? Do we know enough thanks to these forced labour cases to deal with this problem well? Can we see significant progress in eliminating this phenomenon at the level of social life? The answers to many of these questions are still out of our reach, although some of them can already be answered in the negative.

On the other hand, the cases presented herein did have an impact on the level of awareness of law enforcement agencies and citizens. The Vietnamese case was almost completely overlooked by the media, but it was commented on by public officials and experts and also quoted in scientific studies (Lasocik 2006: 252). On the other hand, many Polish media outlets wrote about the Poles abused in Italy, often in a very emotional way. Articles often mentioned that Poles were sent to 'labour camps', which has very specific connotations in the country that saw the Holocaust, Auschwitz, and Treblinka.

However, none of these cases resulted in concrete actions by the authorities. The lack of interest in the issues around forced labour resulted in the fact that on 11 March 2010, the Human Trafficking Research Centre organised the First National Meeting on the Elimination of Forced Labour in Poland. The meeting was attended by representatives of the National Labour Inspectorate, the Ministry of the Interior and Administration, the Police, the Border Guard, the Public Prosecutor's Office, the Ministries of Labour and Social Policy, the Office for Foreigners, non-governmental organisations, including the La Strada Foundation, and independent experts and researchers.

The participants of the meeting agreed the following:

- the system, including the legal system, is not fully adapted to solving the problem of forced labour
- there is an urgent need to formulate solutions that will guarantee the effectiveness of specific institutions
- Polish criminal law does not penalise forced labour
- the powers of the National Labour Inspectorate are too narrow to be effective

- there is no effective network of full-time forced labour coordinators in the regional Police and Border Guard units
- it is necessary to allocate funds for professional staff training
- there is no institution in Poland that could assume a leadership role in the difficult task of eliminating forced labour
- the infrastructure of NGOs dealing with the issue of forced labour in Poland is far from sufficient
- state authorities and local governments should create organisational and financial solutions that would allow the situation to be changed
- a weakness of the institutional system is the lack of competence in the field of intercultural dialogue

The participants of the meeting also adopted a resolution in the form of a memorandum (Memorandum 2010), which was submitted to the state authorities. In this document, they highlighted the urgent need to take a number of specific measures, the most important of which are:

1. involving the real interest of state and local authorities in the issue of forced labour,
2. conducting thorough studies and analyses of this problem,
3. taking steps to create a system for identifying victims and eliminating forced labour in Poland,
4. guaranteeing the participation of trade unions and employer organisations in this process, and
5. creating a support system (including financial support) for citizen activity within the civil society.

Even though 10 years have passed since that meeting, all of the above remarks are still valid: although the diagnosis was accurate, none of the recommendations have been implemented. The fact that the elimination of forced labour in Poland has been and is ineffective is confirmed by the reports of the GRETA Group of Experts of the Council of Europe, which visited Poland in 2012 and 2016. In the documents that followed their visits, the GRETA experts expressed critical opinions on the operation of state services and on the level of knowledge about forced labour. In the report after the first visit, the GRETA Experts wrote that

trafficking for the purpose of labour exploitation in Poland is on the rise, in particular from Azerbaijan, China, Nepal, the Philippines, Vietnam, Bangladesh, and other Asian countries. However, although many foreigners have been found victims of labour law violations, only a few have been identified as victims of trafficking for forced labour. As regards Polish nationals trafficked abroad, the types of exploitation in recent years have involved sexual exploitation, forced labour in the agricultural sector, domestic service, benefit fraud, and using victims' documents to establish false bank accounts and credit agreements (GRETA 2013: 10).

As for the specifics of forced labour in Poland, GRETA stated that 'it is difficult to indicate which sectors of the Polish economy are mainly affected, but according to various sources, THB [trafficking in human beings] for forced labour occurs mainly in agriculture, construction, food processing, agriculture, and domestic help' (GRETA 2013: 23). Elsewhere, there is the following recommendation: 'It is [...] necessary to step up the gathering of intelligence and the sharing of information between relevant actors as regards detecting cases of THB for forced labour' (GRETA 2013: 36).

After four years, GRETA once again visited Poland. The report noted that 'there are gaps in the Polish anti-trafficking framework and forced labour is still not adequately addressed' (GRETA 2017: 16). The GRETA experts also noted that 'there is a lack of effective mechanisms to check whether companies meet the basic conditions for the elimination of forced labour and only a few Polish companies have codes of conduct for socially responsible production or service' (GRETA 2017: 22). Regarding the prosecution of perpetrators, we can read that

GRETA was informed that some cases of forced labour detected by labour inspectors had not led to prosecutions. An example was given of a case of Ukrainian workers employed to dig ditches in freezing temperatures who were locked in a cellar during the night, which was reportedly not prosecuted. [...] the Criminal Code contains no provision criminalising forced labour [...]. However, the National Labour Inspectorate has expressed the view that forced labour should be criminalised as a stand-alone offence as this would make prosecutions easier (GRETA 2017: 39).

Finally, GRETA formulated a very unambiguous recommendation to the Polish authorities:

GRETA is concerned by the rather low number of convictions for THB and urges the Polish authorities to take measures to ensure that THB offences are prosecuted as such, and lead to effective, proportionate, and dissuasive sanctions, including by reviewing the existing legal provisions and court rulings on forced labour with a view to extending the scope of forced labour to include working conditions contrary to human dignity in line with the ILO indicators of forced labour' (GRETA 2017: 40).

The second foreign institution that regularly assesses Poland's progress in combating human trafficking and forced labour is the US Department of State, which publishes annual reports (TIP reports) (State.gov n.d.). In the 2019 Report, Poland was dropped from the list of countries that effectively eliminate human trafficking (Tier 1) to one of the countries that are deficient or negligent in this matter (Tier 2) (Ricard-Guay, Hanley 2020). The allegations included ones that directly referred to forced labour. Here are two examples: 'Police and prosecutors, however, acknowledged authorities lacked the expertise to identify forced labour

victims and child victims' (Trafficking 2019: 384) and 'there was no clear definition of what constitutes forced labour in the Polish criminal code; and prosecutors and judges often lacked expertise in labour trafficking cases' (Trafficking 2019: 384). The State Department also made a number of recommendations to the Polish authorities, the first of which is as follows: 'Vigorously investigate and prosecute trafficking crimes, particularly forced labour cases, and increase training for law enforcement and prosecutors on evidence collection' (Trafficking 2019: 383). In June 2020, another TIP Report was published (Trafficking 2020), in which the Department of State kept Poland in Tier 2 and reiterated a number of allegations made in the 2019 Report. There is no need to cite them again.

In conclusion, let us note that 17 years have passed between the first case – in which a Vietnamese citizen fell victim to forced labour – and the most recent TIP Report published; 15 years have passed since the first media reports on the mass exploitation of Poles in Italy. However, the problem of forced labour is still present and is a serious challenge. Of course, it exists and is a challenge everywhere, but in Poland, forced labour has never become a subject of real interest from the authorities, serious public debate, or appropriate systemic changes. Moreover, Poland is openly criticised for its lack of progress in eliminating this phenomenon. This is a particularly difficult issue if we take into account the changes in Poland's external environment, i.e. the actions taken by the UN, ILO, European Union, and Council of Europe. Of course, we cannot say that nothing has changed during this time; however, the changes are by no means adequate to the passage of time and the needs of a country such as Poland. And these needs are special, because Poland is the country of origin of victims of forced labour exploited in Western Europe, a destination country for victims coming from Asia or Ukraine, and finally a transit country for victims from the East being taken to Western Europe (Lasocik 2019).

When it comes to assessing the scale of the phenomenon, it is a real challenge. According to the 2018 Global Slavery Index (globalslaveryindex.org 2018), there are an estimated 128,000 victims of slavery in Poland;⁴ however, based on the available data we can say that the number of identified victims is less than 200 per year (National Action Plan 2020). This is also an approximate number, because in Poland there is no uniform system for gathering data on human trafficking and forced labour. Out of necessity, the sources of information are national action plans and reports published irregularly by the Ministry of the Interior and Administration (handelludzmi.eu n.d.). However, they present data in such a way that does not form a clear picture. In the latest such report (2017), we can read, for example, that the police identified 84 victims and the Border Guard identified 43 victims (a total of 127 people), but it is unclear whether these figures are comparable.⁵ On the other hand, the prosecutor's office recorded 129 victims of human trafficking, but since these two numbers are different, it is not known whether the same people were

⁴ The 2016 Global Slavery Index Report put the number higher – at 180,000 people.

⁵ This may include, for example, whether the aggrieved individual has been officially recognised as a victim.

identified by both the police and the Border Guard. However, according to data provided by La Strada – an NGO that supports victims of human trafficking – in 2017, it provided support to 187 victims.⁶ We should add that the report of the US Department of State shows that in 2018–2019, the National Labour Inspectorate did not identify a single forced labour victim in Poland (Trafficking 2020: 410). Finally, there is information that shows the context of this data: the government website on human trafficking under the ‘Forced Labour’ tab features information about the events of 2010–2011 (Wykorzystanie 2020). On the other hand, attempts by the Human Trafficking Studies Centre at the University of Warsaw to obtain funding from the National Science Centre for an in-depth study of the issue did not garner the interest of that institution.

New analytical model

It seems that the information presented above constitutes further reasons for the argument that interest in the issue of forced labour is still limited, and that progress in eliminating this phenomenon is modest (Bateman 2020). Everything points to the fact that unlike sexual exploitation, forced labour is quite effectively protected from being recognised. Finally, it turns out that the knowledge we acquire translates only to a limited extent into specific actions and more effective law enforcement systems.

Against the background of these claims, there seems to be an assumption that if there is a problem, it should be explored through data collection and the absorption of knowledge about forced labour by public services, which either do not exhibit enough determination in this regard or demonstrate incompetence. There is probably a lot of truth in this, but perhaps we should also look from another perspective. Shouldn't we be asking about the quality of the picture of forced labour we have? Perhaps the description of the phenomenon and its interpretation are flawed, and that is why they do not sufficiently convince the government to change the practice of the state apparatus. Perhaps what we know does not mobilise society to act in such a way as to be able to better identify victims and provide them with effective support. In this way, we focus on issues such as the limits of scientific discovery, agreeing on the meanings of social phenomena in the communication process, and the intensity and style of public debate on forced labour.

To join this new trend of research and enhance reflection on human trafficking and labour exploitation, I propose a five-factor model for the description and analysis of these phenomena. In creating this tool, I departed from classic, legal definitions (Andrees, Belser 2009; Lasocik 2014) and instead looked at the problem

⁶ These people also include those who applied to the Foundation but did not report to law enforcement agencies, and so were never registered by them.

from the theoretical perspective which I outlined in the introduction of this article, referred to as the humanistic perspective. Therefore, instead of examining whether the specific behaviour of the perpetrators constituted human trafficking within the meaning of the Palermo Protocol or forced labour under the ILO Convention, let us define the situation the victim found themselves in based on established societal meanings, whilst bearing in mind that these meanings are modified through interpretation by individuals in certain situations (Blumer 1986: 2). A chair is not always presented and perceived as something to sit on.

From this perspective, the approach presented here is embodied in the question of whether a corporate employee who, under peer pressure, takes out a mortgage to purchase a home in a 'better neighbourhood' and then works 12–13 hours a day to pay it off is in a fundamentally different situation to the Vietnamese citizen mentioned above who was exploited by his countrymen? Of course, such a question has only a scientific value, because from the legal perspective the matter is obvious. But does the legal perspective alone suffice? Without prejudging anything, I pose this question to myself and to all those who would like to continue in this direction. My task here and now is limited to outlining this perspective and creating a model that can be helpful in research. In order to assess its diagnostic value, I compare forced labour with sexual exploitation and begging as the most popular forms of human trafficking. The model is outlined below.

The first item is *exploitation*. Being aware that this term raises serious doubts and controversies (Plant 2009), for the purposes of this argument, this issue boils down to determining whether the perpetrators aim to exploit the victim's vital forces, body, or intellect for their own benefit. The answer is affirmative for all three tested forms of human trafficking.

The second element is *façade*, i.e. the existence or non-existence of some cultural 'curtain' behind which the behaviour we are analysing is hiding – in fact, not the behaviour itself, but its negative manifestations. In the case of forced prostitution, there is no such façade, because sex work, irrespective of whether it is legal or illegal, is culturally frowned upon. It is similar with begging, because at the societal level, this is a phenomenon that is difficult to accept. On the other hand, forced labour effectively hides behind the 'curtain' of labour as the most praiseworthy behaviour of modern mankind (Weber 2001).

The third element is *cultural taboo*, which removes some behaviours from the view of the public and the authorities, whilst making others even more visible. In almost all cultures, irrespective of the legal regulation model, the paid provision of sexual services is a moral and social taboo (Green 1989: 525). This has not always been the case. In antiquity, in countries such as Babylon, Phoenicia, Persia, Greece, and India, prostitution existed and was widely respected and sacred (Rosner 1998; Beard, Henderson 2002; Shingal 2015), which in some cultures and mythologies (Egypt or Japan) was treated as a form of hierogamy, i.e. sacred marriage (Sacred prostitution n.d.). Current moral taboos render the people who provide such services in a completely open manner – making it their own way of life – a minority.

On the other hand, begging is marked by extreme poverty, which modern society is ashamed of, and perhaps even fears. Beggars' taboos are a mixture of shame, sympathy, and the rejection of deviation (Gore 1958: 23). Even if some religions have an obligation to give alms, a beggar is still a visible sign that something has gone wrong in the striving for social equality (Martyres 2007).

Work is not only not covered by any taboo, it is also something noble, and in many cultures is treated as the most praiseworthy way of achieving financial success. Sometimes it was even treated as a condition of an individual's full membership in society (Baillie 1911: 249). However, this has not always been the case. In ancient times, it was something shameful, even disgraceful, and put people who work professionally at the bottom of the social hierarchy. In the era of slavery, work, as a burden and toil, was pushed onto the backs of slaves, who in some cultures (Greece) were treated as talking tools (Sztumski 2017: 12). It is only recently that work became praiseworthy.

The fourth element is symbolic visibility, which is understood as the availability of certain behaviours to common perception, and their susceptibility to having meaning imparted on them. It can be said that it is the sum of the 'façade' and 'taboo', where the lack of a 'façade' and a strong 'taboo' make something clearly visible. It is relatively easy to correctly interpret forced prostitution and begging as highly visible and at the same time burdened with a cultural taboo. In the case of forced labour, which is deceptively similar to normal work, this is not the case. For this situation to become different, the model of communication would have to change drastically, because meanings are its result. However, are contemporary societies ready for this?

And now finally, we come to the fifth factor, which I tentatively describe as the level of subtlety of control measures. Forcing another person to provide sexual services against their will is difficult, because the realm of personal sexuality is the best-protected area of human activity. People who do not want to do this are ready to sacrifice their health and even life for the sake of their own autonomy. Forcing such people to prostitute themselves is only possible if the pressure mechanism is effective enough. And this is the case, for example, with drug dependence of the victim or when the safety of loved ones is at stake. I do not know how many women are able to refuse cooperation with traffickers when their children are in danger of being beaten or raped. Forced begging is not necessarily any less drastic. In Poland, there was a case of a criminal group that forced women to beg with children who sometimes were not their own (Wieczorek 2017: 251). The brutality of the control methods meant that some children were taken from their mothers and begged with someone else. This resulted in completely effective control. The situation is vastly different in the case of forced labour. Here, employers who intend to successfully exploit victims for a long time do everything they can to make the mechanisms of enslavement and creating dependencies as subtle as possible. The system works very well when the social business environment is unable to recognise pathological symptoms in the treatment of employees. Going further, the system works perfectly

when the employees themselves are convinced that what they are experiencing is necessary or even right, particularly if they are foreigners. This effect cannot be achieved by violence or the threat thereof, but by a very subtle manipulation that makes the employee completely unaware of falling into the above-mentioned spiral of dependence referred to as the ‘continuum of exploitation’ (GRETA 2013).

Conclusion

Recently, forced labour has attracted public attention around the world,⁷ even though for years it remained somewhat in the shadow of sexual exploitation. When it was mentioned by politicians and experts, it was most often presented as a migration problem that threatened the economic stability of a given country (Trafficking in persons 2020: 11). Since it was partly illegal migration, forced labour was ultimately equated – or rather confused – with the smuggling of people (Forced Labour 2002: 3). And since this was the case, it was also treated as one of the most important challenges for the security of states (Forced Labour 2002: 3) or regions. This is particularly true because smuggling and exploitation of labour were related to the criminal activity of well-organised syndicates involved in human trafficking (Global Report 2009: 43). The issue of terrible working conditions (Questions 2012), which are an inseparable attribute of modern slavery, appeared quite late in forced labour analyses and research. And even later, experts tackled the problem from a purely economic perspective (Profits 2014), which may mean, for example, examining the consequences of slave labour for market mechanisms (for example, free competition). Another dimension of the economic approach is looking at forced labour from the perspective of the labour market (Ending 2019), and more as a need to protect the labour market from slave labour or the market’s reaction to its presence. Although forced labour usually occurs in private companies, part of the phenomenon still remains within the domain of states (Global Estimates 2017: 11). It is hoped, however, that the volume of work forced by authoritarian and totalitarian authorities will be constantly reduced thanks to the fact that this issue is making its way into the political debate (Global Estimates 2017: 41; Ending 2018: 35). Let us also note that the gender perspective is increasingly present (Hennebry 2016); an inseparable component of it is a focus on sex and on the psychological effects of enslavement.

This broad and rich palette of perspectives is not yet complete, as it lacks the approach that has been discussed extensively herein and which Polish sociologist Florian Znaniecki called the ‘humanistic coefficient’ (Znaniecki 1968: 36). Our

⁷ As examples of the growing interest of state authorities, one can mention the British Modern Slavery Act of 2015, the French Duty of Vigilance Law of 2017, or the Australian Modern Slavery Act of 2018.

knowledge of forced labour will be further enriched if we introduce into the debate the element of symbolic meanings attached to actions, namely, the core of communication between people. Accepting this perspective, let us try to approach forced labour as a form of sophisticated manipulation that is very strongly present in modern society (social media are an example). In both of the criminal cases described herein, it was manipulation that was the key instrument of enslavement and exploitation. Clearly, for this approach to make sense, forced labour cannot be seen only as a 'contemporary form of old slavery', but as a new and even very 'modern' social phenomenon. A phenomenon in which uncritical trust in sources of information, faith in the good intentions of others, and the desire to improve one's own fate make even adults and well-educated people fall prey to criminals trading in human lives.

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References

- Błachut J., Gaberle A. and Krajewski K. (1999). *Kryminologia* [Criminology]. Gdańsk: Arche.
- Brysk A. (2011). 'Sex as slavery? Understanding private wrongs'. *Human Rights Review* 12(3), pp. 259–270. Available online: <https://doi.org/10.1007/s12142-010-0182-7>.
- Cockbain E. and Bowers K. (2019). 'Human trafficking for sex, labour and domestic servitude: How do key trafficking types compare and what are their predictors'. *Crime, Law and Social Change* 72, pp. 9–34. Available online: <https://doi.org/10.1007/s10611-019-09836-7>.
- Lasocik Z. (2012). 'O handlu ludźmi w Polsce, czyli o ewolucji zjawiska i budowie system jego eliminowania' [On human trafficking in Poland, meaning the evolution of the phenomenon and building a system to combat it]. *Archiwum*

- Kryminologii* 34, pp. 481-529.
- Ricard-Guay A. and Hanley J. (2019). 'The challenge of addressing both forced labour and sexual exploitation' [in:] J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 287-302.
- Trafficking in Women. The misery behind the fantasy: from poverty to sex slavery. A Comprehensive European Strategy* (2001). The European Commission, Justice and Home Affairs. Available online: https://ec.europa.eu/commission/presscorner/detail/en/MEMO_01_64 [24.02.2021].
- Winterdyk J. and Jones J. (eds.) (2019). *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan.
- Forced Labour, Child Labour and Human Trafficking in Europe: An ILO Perspective. Technical paper for the EU/IOM STOP "European Conference on Preventing and Combating Trafficking in Human Beings", 18-20 September 2002* (2002). Brussels/Geneva.

Internet sources

- Data collection on trafficking in human beings in the EU, Final Report – 2018* (2018). Luxembourg: Publications Office of the European Union. Available online: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_data-collection-study.pdf [20.07.2020].
- Ending forced labour by 2030: A review of policies and programmes* (2018). Geneva: International Labour Office. Available online: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_653986.pdf [20.07.2020].
- Fight against trafficking needs radical shift to genuinely human rights-based approach: UN expert* (2020), Reliefweb.int. Available online: <https://reliefweb.int/report/world/fight-against-trafficking-needs-radical-shift-genuinely-human-rights-based-approach-un> [19.07.2020].
- Forced Labour Convention [FLC]* (1930), Ilo.org. Available online: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 [16.07.2020].
- Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (2017). Geneva: ILO Available online: https://www.alliance87.org/wp-content/uploads/2018/07/global_estimates_of_modern_slavery-forced_labour_and_forced_marriage.pdf [14.07.2020].
- Global Report on Trafficking in Persons* (2018). New York: UNODC. Available online: https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf [19.07.2020].
- Globalslaveryindex.org (2018). *Globalslaveryindex.org*. Available online: <https://www.globalslaveryindex.org/> [20.09.2020].
- Handel ludźmi w Polsce. Raport 2017* [Human trafficking in Poland. 2017 Report] (2018). Available online: <http://www.handelludźmi.eu/hl/baza-wiedzy/>

- raporty-analizy-strateg/raporty-i-analizy-dotyc/6936,Handel-ludzmi-w-Polsce-Raport-2017.html [20.07.2020].
- International Labour Standards on Forced labour* (n.d.), Ilo.org. Available online: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm> [20.07.2020].
- Profits and Poverty: The Economics of Forced Labour* (2014). Brussels: ILO. Available online: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf [18.07.2020].
- Protocol of 2014 to the Forced Labour Convention, 1930* (2014), Ilo.org. Available online: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029 [19.07.2020].
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* [Protocol to Prevent] (2000). Available online: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> [16.07.2020].
- State.gov (n.d.). *Trafficking in Persons Report*. Available online: <https://www.state.gov/trafficking-in-persons-report/> [18.07.2020].
- Trafficking in human beings* (2014). Luxembourg: Publications Office of the European Union. Available online: <https://ec.europa.eu/eurostat/documents/3888793/5858781/KS-TC-14-008-EN.PDF/3c9da893-54a6-41c7-b3b8-8aba03ef2595> [20.07.2020].
- Trafficking in Persons Report* [TIP Report] (2019). U.S. Department of State Publication Office of the Under Secretary for Civilian Security Democracy, and Human Rights. Available online: <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> [16.07.2020].



ARCHIWUM KRYMINOLOGII

Archives of Criminology

John Winterdyk, Marcel Van der Watt ■

Epilogue

Epilog

Abstract: The Epilogue begins by describing the ambiguity of the meaning of human trafficking (HT) before offering a review of the 4P's that represent the primary responses to combatting HT. A brief reference is then made to a 'new' P - participation – and how it can play an essential role in fighting HT. The article then notes that there remains a dearth of research on forced labour trafficking despite its rich history. A summary of the articles is presented with an emphasis on identifying existing gaps in our knowledge and research. The Epilogue concludes with several vital suggestions for future efforts to combat forced labour trafficking.

Keywords: human trafficking, labour trafficking, forced labour, Palermo Protocol, exploitation

Abstrakt: Epilog rozpoczyna opis niejednoznaczności terminu „handel ludźmi”. Następnie zostały przedstawione cztery podstawowe sposoby zwalczania tego zjawiska (4P), a także omówiono zagadnienie „nowego uczestnictwa”, mogącego odgrywać kluczową rolę w walce z handlem ludźmi. Zauważono także, że mimo bogatej historii badań poświęconych handlowi ludźmi, wciąż brakuje badań dotyczących pracy przymusowej. W epilogu zawarto także podsumowanie artykułów opublikowanych w niniejszym numerze, przy czym szczególnie nacisk położono na identyfikację luk w dotychczasowej wiedzy i badaniach. Epilog kończy się kilkoma sugestiami odnośnie do przyszłych działań na rzecz zwalczania pracy przymusowej.

Słowa kluczowe: handel ludźmi, handel ludźmi do pracy, praca przymusowa, Protokół z Palermo, wykorzystanie

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Human trafficking or trafficking in persons—the official terminology used by the United Nations Office on Drugs and Crime (UNODC)—is yet another type of crime whose meaning and expression are both *relative* and *evolutive*. As has been widely debated among various scholars, although there is general agreement about what constitutes the main elements of human trafficking (i.e. the *act*, the *means*, and the *purpose*), there is less agreement on what the meaning of human trafficking is (Kakar 2017; Scarpa 2019). This point is clear and transparent in the articles of this Special Issue (SI).

Both human trafficking and the response to it are *evolutive*. In 2000, the United Nations adopted the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (more commonly referred to as the Palermo Protocol).¹ The UNODC advocated three main approaches to combating human trafficking: prosecution of trafficking perpetrators, protection of victims of trafficking, and prevention strategies. Commonly referred to as ‘the 3 Ps’, these three methods parallel how the criminal justice system attempts to address crime in general. Although much has been written about the merits of the three Ps, there is little research into whether any Ps might represent a more effective response protocol than the others. Instead, most governments call for approaches that include all three of the Ps and some countries, like Canada and the United States, have a fourth P, which stands for a *partnership* to build capacity at local, regional, and national levels for combating human trafficking—including (forced) labour trafficking.² Despite an increasing push towards the protection of victims, the literature on the subject shows an ongoing disproportionate emphasis on the offender’s prosecution (Farrell, Owens, McDevitt 2014). However, by way of example, when one looks at prosecution rates for human traffickers, the results are arguably abysmal (Board, Muraszkievicz 2019). Finally, on several levels, prevention has been touted as a more effective and efficient response than prosecution. Still less clear is which form of prevention tends to work better? Is it *primary*, *secondary*, or *tertiary* prevention (Bales 2005)? Not to mention the various levels of the other two Ps.

¹ 28 October 2020 marked the 20th anniversary of the United States signing their *Trafficking Victims Protection Act* (TVPA), as did many other countries, and when governments and scholars around the world began to give increasing attention to human trafficking. The Canadian Human Trafficking Hotline was not launched until 29 May 2019. Ironically, it was only after the Palermo Protocol was signed that we saw the emergence of a dedicated journal on human trafficking: for example, the *Journal on Human Trafficking* was not founded until 2015; the journal *Anti-trafficking Review* was established in 2012; and the *Journal of Trafficking and Human Exploitation* was not established until 2016.

² In 2012 the Canadian Federal Ministry of Public Safety introduced the ‘National Action Plan to Combat Human Trafficking’. In the plan, they identified the 4 Ps and list several initiatives to combat human trafficking. The Plan notes that relative to trafficking for the purposes of sexual exploitation, there is both a lack of evidence and awareness of the problem in the country (<https://www.publicsafety.gc.ca/cnt/rsrccs/pblctns/ntnl-ctn-pln-cmbt/ntnl-ctn-pln-cmbt-eng.pdf>).

In 2004, then United States Secretary of State Hillary Clinton proposed a fourth P: partnership. This fourth P spoke to the need to build a cross-sector approach combining diverse strengths and services to combat human trafficking more effectively. However, depending on which source or perspective one reads, partnership is expressed as either dynamic or static in nature. Hence, it is a relative and dynamic concept that lacks a clear operational definition, like all the Ps.

Finally, as further evidence of the term human trafficking's enigmatic nature, a fifth P has been advocated by several human trafficking scholars (Winterdyk 2019) further to strengthen our responses to this type of crime. Although not formally acknowledged by the UNODC or any other formal organisations, the fifth P is participation, which emphasises a need for partners to work together cooperatively and collaboratively in (more) effectively addressing the complex phenomenon of trafficking. Not only does it denote the active engagement of all multidisciplinary role-players and service providers in efforts against human trafficking, but participation also amplifies the requisite 'density, intensity, and quality of [...] connections that allow it to change and respond to disturbances' (Van der Watt 2019: 772) from the human trafficking system. Without the fifth P, the 3 Ps +1 will remain flagrantly disconnected, and for this reason, it is an indispensable pillar to combating forced trafficking—in fact, any form of human trafficking. Without participation, the response to human trafficking will not be evolutive.

When the United Nations first acknowledged human trafficking and signed the Palermo Protocol, the primary focus of combating human trafficking was on trafficking for the purposes of sexual exploitation. This orientation's evolutive legacy can be traced back to 1921, when the League of Nations (the forerunner to the United Nations formed in 1919) signed a multilateral treaty titled the International Convention for the Suppression of the Traffic in Women and Children. The purpose of the Convention was to address the perceived problem of the *international* trafficking of women and children for the purposes of sexual exploitation. The Convention was also relative in that it responded to the need for further follow-up to the social reform movement that began in Paris in 1901 and was revised in 1904 (the International Agreement for the Suppression of the White Slave Traffic) and subsequently in 1910, when just over 40 countries signed the International Convention for the Suppression of the White Slave Traffic. However, since the League of Nations was unable to prevent the outbreak of war, it dissolved, as did the Convention's efforts.

As social reform grew and women's rights began to gain traction, however, the plight of girls and women being trafficked retained some attention among various vested interest groups, reinforcing the primary focus of human trafficking on sexual exploitation. As a result, forced labour trafficking and other forms of trafficking remained comparatively obscure and understudied and investigated, allowing them to flourish. For example, the organ trafficking industry, according to Bain (2018), is a multi-billion-dollar industry wherein a kidney can fetch more than 62,000 USD on the black market. While the UN acknowledged that other forms

of trafficking exist, the purpose of sexual exploitation remains the primary focus of most scholars. A review of the literature (related books and journal articles) will reveal that a disproportionate number of scholarly output focuses on the sexual exploitation of children and women. Without applying a critical lens, the evidence put forth by such organisations as the UNODC, the International Organization for Migration, Walk Free, Polaris, and the International Justice Mission, among others, would lead one to conclude that sex trafficking is the number one type of human trafficking in the world.

Although human trafficking for the purposes of forced labour also has a rich history there has been a relative dearth of research on the subject.³ Nonetheless, some scholars assert that the market for labour trafficking may be far more extensive than the demand for sex trafficking (Kaye et al. 2014). Here again, we see a need to ensure that the response to human trafficking is tailored to its evolutive and relative nature.

In the criminological theory known as crime opportunity theory, the view is based on the premise that criminals can make rational choices gauged by the target's perceived *suitability*. For example, Africans were readily exploitable and of substantive stature to be subjected to hard work (i.e. the *motivated 'offenders'*). Simultaneously, the plantation owners preferred cheap labour to optimise their profits, and there was an *absence of capable guardians*—there were no laws to restrict the sale or mistreatment of slaves. The Routine Activities Theory developed by Cohen and Felson in the early 1970s can be used to explain how and why forced labour trafficking has emerged as a thriving enterprise and a by-product of globalisation, internet connectivity, extensive international transportation links, sophisticated financial systems, and mass migration.

What is forced labour? Like Marx, one could argue that wage slavery requires us all to engage in forced labour. However, this understanding negates the possibility of a standard against which society could measure whether labour is acceptable or coerced. History tells us that the designations of free and unfree labour are subjective. Although indentured servitude has a long history, it was understood as free labour during much of the nineteenth century since employees ostensibly consented freely to contracts that committed them to work for a set period. Some of the countries where indentured servitude was more common include India and Mauritius (Harrington-Watt 2019). By today's standards, such instances would fall under the category of forced labour, as the state guaranteed the terms of these contracts—regardless of how the employees were treated—by employing the help of the police or sheriff to physically return those who sought to escape exploitative,

³ As described by Wilkins (2019), among others, human trafficking is seen by some as being virtually synonymous with the term 'slavery' and with the abduction of Blacks from Africa and their relocation to the southern United States to serve as workers on cotton and sugar plantations which began around 1619 when British privateers brought nearly two dozen African slaves Point Comfort, Virginia, near Jamestown.

abusive, or brutish conditions and by allowing employers to administer corporal punishment for breach of contract (Steinfeld 1991).

Just as the term human trafficking is nebulous, so is the term forced labour (Cockbain, Kleemans 2019). Using Marx's perspective on labour and the fact that any work involving a wage, or some form of compensation can never be genuinely equitable—because, for the employer to survive, they must make more money than what they pay their workers—the workers, though they can (at times) negotiate their wages, are always required to be dependent on what their employer is willing and able to pay. The challenge in a capitalist system is to objectively gauge whether the labour needed for the wages offered are acceptable or coerced. Therefore, as we have seen throughout history, what constitutes free or unfree labour is subjective. For example, there has been limited discourse on how much profit should accrue to owners. Yet, many major companies accrue great riches to owners and shareholders. At the same time, employees sometimes earn wages less than adequate to ensure access to such essentials as education, health care, and essential goods. Thus, as several of the SI articles have expressed, forced labour remains a somewhat elusive concept.

Ever since the signing of the Palermo Protocol, the body of criminological and sociological literature on human rights and other related disciplines and themes associated with human trafficking has increased. However, most of the literature has been primarily focused on sex trafficking (Mancuso 2014; Savona, Giommoni, Mancuso 2014; Cockbain 2018; Serie et al. 2018; Wijkman, Kleemans 2019). Some of the more common research themes have focussed on the victims and the characteristics (i.e. risk factors), making them vulnerable to exploitation. There is also a substantial body of research on the role and structure of criminal networks.

By contrast, and as acknowledged in the Introduction and several articles in this SI, empirical research on labour trafficking is still in its infancy and tends to be more local in its focus. The latter point is evident in most of the articles included in this SI. Furthermore, no transparent or standardised methodologies are in place to stem the generalisability of forced labour literature. For example, Cockbain et al. (2018) recently conducted a systematic review of the available literature on labour trafficking in Europe. Of the 6,000 documents they found on labour trafficking, only eight (less than 0.2 per cent) met the essential criteria of scientific rigour to be considered scientifically sound. The authors concluded that even though there were many documents, very few studies were published in peer-reviewed journals. Most of the studies' content was fragmented and mostly descriptive, and almost exclusively reliant on qualitative data collection techniques. As Cockbain and Kleemans (2019: 1) noted, 'when it comes to human trafficking, hype often outweighs evidence'. Yet, as noted in the Introduction to this SI and expressed in several of the articles, one of the first steps in our effort to counter labour trafficking is to begin to identify and acknowledge it because labour trafficking to date has infrequently been a concern for law enforcement agencies (Ricard-Guay, Hanley 2019).

In this SI, 11 articles discuss different aspects of forced labour. Although their

respective themes vary, the subject matter is the same. Collectively, we can make several observations about forced labour trafficking. Although most of these points not novel, they are collectively presented in this SI for the first time and they serve to reinforce what is found throughout this SI and related literature. Here is a summary of the key points raised and identified throughout this SI.

- Despite various efforts, there are no reliable (i.e. non-dubious) estimates of how many people are involved in labour trafficking. Still, there seems to be a reasonable consensus that the numbers are more than 20 million and growing. The articles in this SI have served to reinforce, if not prioritise, the need for more reliable data to better inform policy and response protocols.
- As noted in several of the articles in this SI, there is no explicit definition of forced labour. Ironically, internationally, more specific laws cover a spectrum of situations—from severe cases of slavery to other possible manifestations, such as the intermediation, employment, and exploitation of a workforce (Corrado et al. 2018).
- Regardless of whether we look at the literature on sex trafficking or forced labour trafficking—although 20-plus years have passed since the Palermo Protocol was signed and the body of related research has mushroomed—as Bryant and Landman (2020) and others have pointed out, we still do not have any reliable answers for combating any form of trafficking. Therefore, there is an (urgent) need for vested scholars and decision-makers to stand together and commit to eradicating all forms of forced labour.
- As van Meeteren and Heideman noted in their contribution, ‘too many assumptions are made about labour trafficking based on research findings from studies on sex trafficking’. Despite the same definitional elements being present in both forms of trafficking, there remain significant differences in how these phenomena manifest, the victim and perpetrator profiles, where these crimes are perpetrated within the borders of countries, and, arguably, the constellation of circumstances surrounding the trafficking processes and why victims submit to exploitation. With the research *lacunae* so evidently documented in this SI, one can only speculate on the scholarly community’s motivation to expand and broaden the focus on forced labour.
- Except for specific forms, women and girls are disproportionately victimised by forced labour. Still, there are regional (e.g. particularly in regions in Africa and South Asia) and work-environment differences (e.g. men in the fishing industry vs women in the textile industry) that deserve closer attention on an international and comparative level to better inform response policies.
- Forced labour trafficking is still commonly seen as a problem of organised crime, but as evidenced in this SI and eloquently described in Choi-Fitzpatrick’s 2017 book on indentured labour in India, just as there

are different forms of sex trafficking, the scope and breadth of forced labour exploitation remains hidden (Viuhko 2018; van Meeteren, Heidemann, in this issue). Therefore, as referenced in this SI and discussed by Purkayastha and Yousaf (2019: 146), if we are going to prevent and protect against labour trafficking, we will need to move beyond the (regional and local) descriptive accounts to look at how we might be able to improve preventive and protective efforts 'through political, economic, and social channels'. As noted above, this will require the actualisation of active 'participation', a fifth P, by the vested parties.

- As illustrated in the articles in this SI by Haverkamp and Murray, Solin, and Shea, greater attention needs to be paid to the nexus between migrations and exploited labour and peculiar patterns and insights that may be overlooked in human trafficking scholarship. Haverkamp poignantly highlighted the resiliency of the Bulgarian day labourers in Munich, who are from a Turkish-speaking ethnic minority. The day-labourer exchange in Munich, consisting mostly of people from the same Bulgarian town, is well acquainted and supports each other in a self-organising network. To circumvent the scarce and expensive accommodation, these migrants save money in Munich by living on the streets and depending on welfare. Their vulnerability to labour exploitation is self-evident. Murray, Solin, and Shea point to a 'specialisation' of specific regions in particular labour trafficking types. These include the observation that strangers tend to trick people into involuntary (i.e. forced) work in the USA.
- In contrast, family members and friends trick victims into slavery in Russia and Kazakhstan. Lebanon is identified as the frontrunner for tricking people into factory enslavement. Leading nations in child begging, unspecified child labour, and children in the hospitality industry include Senegal, Uganda, Ghana, and Haiti.
- Forced labour can involve a wide range of areas ranging from domestic workers to the fishing industry, the sex trade industry, the catering industry, and private individuals using forced labour with the state authorities' complicity in the spectrum of abuses (Cortes-McPherson 2019).
- Human trafficking law, legal reforms, 'agency', and the lack of unanimous agreement on what can be considered labour trafficking continues to contentious and controversial, yet several contributors call for clarity and uniformity about the essence of forced trafficking in order to more coherently and effectively combat forced labour trafficking.
- The focus is on conditions within a country or region. These include Polish men recruited for forced labour in the UK, the experiences of Bulgarian day labourers in Munich's train station district, child labour exploitation in Latin America, victims' experiences and the 'ignored topic' of forced labour and trafficking in Hungary, and debt bondage, labour, and human rights violations in the Thai fishing industry. Only two of the articles in

this SI focus on forced labour from a broader perspective (see Bryant and Sanchez in this SI). Most of the articles with a national or regional focus are primarily qualitative and show some nuanced methodological approaches. Cockbain and Kleemans (2019) included several articles in their recent special issue, a follow-up to a conference they hosted in 2018, which focussed on ‘innovations in empirical research into human trafficking’. Future research on forced labour should consider using mixed-method designs, which have the advantage of enhancing the validity and reliability of the results through a convergence of different data and findings. In so doing, the results reduce the risk of making ill-informed response protocols (Bachman, Brent 2014; Creswell, Clark 2017).

- As observed in several of the articles in this SI and the literature on forced labour trafficking, there is an (over-)reliance on qualitative data. For example, while open-source data is commonly used, caution should be exercised because of variations in law enforcement priorities, journalists’ subjective selection process in reporting what is newsworthy, etc.
- The country accounts could best be described as ‘exploratory’ studies that, while essential to helping map out the nature and extent of the various forms of exploitation in the respective countries covered in this SI, remain mostly descriptive. Notwithstanding the implicit limitations in all human trafficking scholarship, the articles in this SI serve as additional arrows in the forced labour and trafficking knowledge quiver.

Moving forward: Responding to the globalisation of indifference

Forecasting, or predicting, the nature and extent of forced labour trafficking can take many forms. They range from the ad hoc practices of staring into crystal balls or bowls of tea leaves, reviewing experts’ (informed) opinions, brainstorming in focus groups, generating scenarios, using Monte Carlo methods, and other strategies. Since two of the key pillars of combating human trafficking are prevention and participation, it requires proactive measures. However, solving (i.e. forecasting) equations dictated by the impacts of physical laws, political ideologies, social events, or economic theories—and thus constituting largely unknown variables—is at best a risky business. Or as James Q. Wilson commented in 2011, ‘hopelessly, embarrassingly wrong [...]’. Since then, I have embraced the view that social scientists should never predict, leave that job to pundits’ (Winterdyk 2019: XIIX). Nonetheless, we have a moral and ethical obligation to address the blight of forced labour trafficking in all its manifestations at the risk of doing nothing.

Not only does this SI coincide with the 20-year commemoration of the Trafficking Victims Protection Act (TVPA), the adoption of the United Nations Palermo Protocol, and the 75th anniversary of the United Nations,⁴ it also weaves into a new era of complexity and opacity in efforts to combat human trafficking stirred up by the ongoing COVID-19 pandemic, geopolitical discontent, and widespread systemic injustices with concomitant calls for systemic reforms. Arguably, global efforts in combating (forced labour) human trafficking over the past two decades have been normative (Winterdyk 2019). Forced labour remains primarily overshadowed by sex trafficking among researchers in the bid for attention and a piece of the investment 'pie'. Simultaneously, the globalisation of indifference increasingly cloaks its victims in trades and practices that are brazenly visible. As Lasocik observed in the Introduction, there is a discomfort with the uncomfortable facts resulting from cognitive dissonance, which is part of the problem faced by practitioners and researchers alike.

The '*broad and rich palette of perspectives*' (see Lasocik, Introduction to this SI) on the issue of forced labour brings with it a fair amount of uncertainty, ambiguity, and volatility in the contested spaces of research, response, and policy. Another prickly issue that demands more attention in labour trafficking research is clarity on the meaning of 'exploitation', which is still not clearly defined in international law and may have unintended consequences for exploited people that policymakers aspire to protect (Howard 2020). The non-exhaustive list of exploitative practice examples—provided by the Palermo Protocol—is simply not good enough. Practices listed and defined elsewhere in international law—including slavery, practices like slavery, and forced labour—were intended by the Protocol drafters to allow for flexibility in understanding trafficking and suggest limitations on the type of exploitation being addressed. However, research shows that this 'lack of precision' challenges the consistency of responses to human trafficking (McAdam 2020).

The ever-present perplexing dynamics of the trafficking phenomenon, trafficking research, and trafficking responses are evident in this SI. However, solutions and opportunities await to be coaxed from this dizzying landscape. As pointed out in this SI and this Epilogue, the imperfections of a criminal justice response to forced labour are amongst those that can benefit from a reconfigured lens. From a societal and corporate perspective, the loss of independence or lack of influence on working conditions and wages can no longer be treated as an acceptable cost of migration. Here the inclusion of new variables into a factor analysis by country of exploitation may prove valuable and may serve as evidence-based justification for more culturally relevant interventions.

Finally, as Kevin Bales noted in his 2005 article on forced labour, the primary criterion for combating forced trafficking should be predictive validity. However, as he and several of the contributors in this SI have noted, how can we begin to predict 'when there is no way of being sure that the variables under consideration

⁴ 10 December 1945.

are valid?’ (Bales 2005: 351). In preparing this SI we hope to have helped shed some light on the enigma of forced labour trafficking. We also trust that, as the Member States and Observer States to the United Nations have acknowledged, by 2030 (i.e. the Social Development Goals Agenda—specifically target goal 8.7), we commit to ending forced labour in all its forms and manifestations.

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References

- Bachman R. and Brent J. (2014). ‘Mixed methods’. In J.S. Albanese (ed.) *The Encyclopedia of Criminology and Criminal Justice* 1–5. New Jersey: Hoboken, pp.1-6. Available online: <https://doi.org/10.1002/9781118517383.wbeccj332>.
- Bales K. (2005). ‘International labour standards: Quality of information and measures of progress in combatting forced labor’. *Contemporary Labor Law and Policy Journal* 24, pp. 321–364.
- Board R. and Muraszkiewicz J. (2019). ‘The investigation and prosecution of traffickers: Challenges and opportunities. In J. Winterdyk, J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 1–17.
- Bryant K. and Landman T. (2020). ‘Combatting human trafficking since Palermo: What do we know about what works?’. *Journal of Human Trafficking* 6(2), pp. 119–140. Available online: <https://doi.org/10.1080/23322705.2020.1690097>.
- Choi-Fitzpatrick A. (2017). *What Slaveholders Think: How Contemporary Perpetrators Rationalize What They Do*. New York: Columbia University Press.
- Cockbain E. (2018). *Offender and Victim Networks in Human Trafficking*. London: Routledge. Available online: <https://doi.org/10.4324/9781315628578>.
- Cockbain E. and Kleemans E.R. (2019). ‘Innovations in empirical research into

- human trafficking: Introduction to the special edition.' *Crime, Law and Social Change* 72, pp. 1–7. Available online: <https://doi.org/10.1007/s10611-019-09852-7>.
- Cockbain E., Bowers K. and Dimitrova G. (2018). 'Human trafficking for labour exploitation: The results of a two-phase systematic review mapping the European evidence base and synthesising key scientific research evidence.' *Journal of Experimental Criminology* 14, pp. 319–360. Available online: <https://doi.org/10.1007/s11292-017-9321-3>.
- Cohen L.E. and Felson M. (1979). 'Social change and crime rate trends: A routine activity approach.' *American Sociological Review* 44, pp. 588–608.
- Cortés-McPherson D. (2019). 'Labor trafficking of men in the artisanal and small-scale gold mining camps of Madre de Dios: A reflection from the 'diaspora networks' perspective.' In J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 1785–1802.
- Creswell J.W. and Clark V.L.P. (2017). 'Choosing a mixed methods design.' In J.W. Creswell and V.L.P. Clark (eds.) *Designing and Conducting Mixed Methods Research*. Los Angeles: SAGE Publications, pp. 53–106.
- Farrell A., Owens C. and McDevitt J. (2014). 'New laws but few cases: Understanding the challenges to the investigation and prosecution of human trafficking cases.' *Crime, Law and Social Change* 61, pp. 139–168. Available online: <https://doi.org/10.1007/s10611-013-9442-1>.
- Harrington-Watt K. (2019). 'The legacy of indentured labor.' In S. Ratuva (ed.) *The Palgrave Handbook of Ethnicity*. Cham: Palgrave Macmillan, pp. 1767–1794.
- Kakar S. (2017). *Human Trafficking*. Durham: Carolina Academic Press.
- Kaye J., Winterdyk J. and Quarterman L. (2014). 'Beyond criminal justice. A case study of responding to human trafficking in Canada.' *Canadian Journal of Criminology and Criminal Justice* 1, pp. 23–48.
- Purkayastha B. and Yousaf F.N. (2019). *Human Trafficking: Trade for Sex, Labor, and Organs*. Cambridge: Polity Press.
- Ricard-Guay A. and Hanley J. (2019). 'The challenge of addressing both forced labour and sexual exploitation.' In J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 287–302.
- Savona E.U. (2010). 'Infiltration of the Public Construction Industry by Italian Organised Crime (Mafia, N'drangheta and Camorra).' In R.V. Clarke, K. Bullock and G. Laycock (eds.) *Situational Prevention of Organised Crimes*. Davon: Willan Publishing, pp. 130–150.
- Scarpa S. (2019). 'UN Palermo trafficking protocol eighteen years on: A critique.' In J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 623–640.
- Serie C.M.B., Krumeich A., Dijke A. van, Ruiter E. de, Terpstra L. and Ruiter C. de (2018). 'Sex traffickers' views: A qualitative study into their perceptions of the

- victim-offender relationship'. *Journal of Human Trafficking* 4(2), pp. 169–184. Available online: <https://doi.org/10.1080/23322705.2017.1337439>.
- Van der Watt M. (2019). 'A complex systems stratagem to combating human trafficking'. In J. Winterdyk and J. Jones. (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 763–782.
- Viuhko M. (2018). 'Hardened professional criminals, or just friends and relatives? The diversity of offenders in human trafficking'. *International Journal of Comparative and Applied Criminal Justice* 42(2-3), pp. 177–193. Available online: <https://doi.org/10.1080/01924036.2017.1391106>.
- Wijkman M. and Kleemans E.R. (2019). 'Female offenders of human trafficking and sexual exploitation'. *Crime, Law and Social Change* 72(1), pp. 53–72. Available online: <https://doi.org/10.1007/s10611-019-09840-x>.
- Wilkins D. (2019). 'Understanding historical slavery, its legacies, and its lessons for combating modern-day slavery and human trafficking'. In J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 3–18.
- Wilson J.Q. (2011). 'Crime and the criminologist. Commentary'. In J. Winterdyk (ed.) *Crime Prevention: International Perspectives, Issues, and Trends*. Boca Raton, Fl.: CRC Press. Introduction.
- Winterdyk J. (2019). 'Explaining human trafficking: Modern day-slavery'. In J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Cham: Palgrave Macmillan, pp. 1257–1274.

Internet sources

- Bain C. (2018). Organ trafficking: The unseen form of human trafficking, ACAMStoday.org. Available online: <https://www.acamstoday.org/organ-trafficking-the-unseen-form-of-human-trafficking/>.
- Corrado A., Caruso F.S., Lo Cascio M., Nori M., Palumbo L. and Triandafyllidou Anna. (2018). *Is Italian Agriculture a 'Pull Factor' for Irregular Migration - And, If So, Why?.* European Policy Institute. Available online: <https://www.opensocietyfoundations.org/uploads/ba12312d-31f1-4e29-82bf-7d8c41df48ad/is-italian-agriculture-a-pull-factor-for-irregular-migration-20181205.pdf>.
- Howard N. (2020). *What is exploitation anyway? Beyond trafficking and slavery*, Opendemocracy.net. Available online: <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/what-exploitation-anyway/> [10.12.2020].
- Mancuso M. (2014). *Sex trafficking and ethnicity: A case study analysis of ethnic networks in indoor and outdoor prostitution in Italy*, Tesionline.unicatt.it. Available online: <http://tesionline.unicatt.it/handle/10280/2459>.
- McAdam M. (2020). *Exploitation in trafficking: Questions of context, commerce, and conduct. Beyond trafficking and slavery*, Opendemocracy.net. Available online: <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/what-exploitation-anyway/> [10.12.2020].