

Labour exploitation in the context of human trafficking

A baseline study for Switzerland

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March 2016

Executive Summary

Context and aims of the survey

Economic globalisation, greater European integration and the increase in communication and transport have all had a global impact on working conditions and working relations. The growing inequality of wealth between the countries and regions of the world has given rise to new or forgotten forms of labour exploitation. Some of these forms of exploitation are closely linked to human trafficking. Until now, human trafficking has been associated first and foremost with the sexual exploitation of women. Since coming on the international agenda, human trafficking has become an increasing source of worry to Europe due to this phenomenon's potential impact on the social and economic fabric of the region. This applies equally to Switzerland, which has implemented various measures in the last decade to counter human trafficking in all its forms. Switzerland's anti-trafficking strategy is based on four pillars: prevention, prosecution, victim protection and partnership (at the political level, across various disciplines and at the international level). Responsible for the fight against human trafficking is the Swiss Coordination Unit against the Trafficking in Persons and Smuggling of Migrants (KSMM/SCOTT) at the Federal Office of Police.

Although a number of measures have been adopted to combat sexual exploitation, little has been undertaken with regard to human trafficking for the specific purpose of labour exploitation. Despite the increase in the number of research projects and reports at political level, empirical data on this form of trafficking is almost non-existent in Switzerland. The KSMM/SCOTT Permanent Secretariat therefore commissioned a study on the phenomenon in that country. Its three principal aims were to define labour exploitation in the Swiss context, to identify the economic sectors which are at risk or exhibit a significant occurrence of human trafficking for labour exploitation, and thirdly, to determine the profiles of (potential) perpetrators and victims.¹ In addition, the study considered measures that the authorities and civil society could adopt to prevent and detect this form of exploitation. On account of the methodological challenges involved in such an approach (Cyrus et al. 2010; ILO 2011), the study did not attempt to quantify the phenomenon, but adopted instead an exploratory approach.

¹ For methodological and practical reasons, the survey was limited to non-sexual exploitation, which is why sex work in the narrow sense or activities in the wider 'adult' sector, such as cabaret dancing, were not covered by the survey. On the other hand, the survey examined situations outside the sex industry where both sexual exploitation and labour exploitation exist.

Literature and field of research

Whereas trafficking for the purpose of sexual exploitation is well documented, there is relatively little reliable information on human trafficking for the purpose of labour exploitation in Europe. This is particularly true for Switzerland, where studies on the occurrence and characteristics of this phenomenon are lacking. This investigation therefore goes some way to filling the gap.

Much is known on the general phenomenon of trafficking from various international studies. However, these studies do not always differentiate between the various forms of trafficking. In so far as the existing literature focuses on trafficking for the purpose of labour exploitation, it uses different terms such as *forced labour*, *servitude*, *slavery*, etc. Some recent European studies are particularly relevant to studying labour exploitation and trafficking for that purpose. These include a comparative survey of labour exploitation within the European Union (FRA 2015), a series of publications on trafficking for the purpose of labour exploitation in Germany (Cyrus 2005, 2011; Cyrus et al. 2010) and a paper offering an overview of concepts and definitions to develop the concept of 'the continuum of exploitation' (Skrivankova 2010). In short, international research on trafficking for the purpose of labour exploitation depicts a phenomenon in which elements of criminal law and civil law are merged, often rendering a legal understanding of the phenomenon difficult. Without going into detail, the researchers who carried out the study in Switzerland were surprised by the many parallels between their research and the European studies, both with regard to the phenomenon of labour exploitation and trafficking for that purpose, as well as by the tepid response of the authorities.

In view of the absence within the social sciences of a consensual definition of labour exploitation and the meagre number of court decisions in Switzerland relating to human trafficking for that purpose, the researchers developed their own definition of labour exploitation for their use within the survey. The definition used in the research was based on the analysis of empirical data relating to instances of labour exploitation and trafficking to that end. Based on that definition (stated below), this report attempts to outline the phenomenon of labour exploitation. The authors consider the exploitation of labour and human trafficking as two (separate) phenomena. These two phenomena can culminate in human trafficking for labour exploitation when exploitation comes about as a result of trafficking. In the survey, labour exploitation was defined according to the prevailing legal standards for working conditions in Switzerland. A work situation diverging from the 'normal' working standards and putting the employee at a disadvantage was considered as labour exploitation. The key factor for determining the case for labour exploitation was not the employee's consent to working under exploitative conditions, but rather the employer's conduct: If an employer deliberately takes advantage of an employee's vulnerable situation, this indicates a case of exploitation. In other words, the definition of labour exploitation used in the survey emphasised the objective aspect of exploitation and not the (more or less) free will of the victim or the means of coercion used.

The study was based on the following working definitions:

Exploitation of labour

Exploitation of labour occurs when an employer benefits from the labour of a person without either providing adequate compensatory measures or guaranteeing decent working conditions. Remuneration and working conditions are significantly lower than the normal level in the relevant sector. The disproportion, to the disadvantage of the employee, between the labour provided and the benefits obtained is rendered possible by the employee's dependence on the employer. The employer takes advantage of the employee's vulnerable situation to enforce exploitative working conditions. Sometimes employers will also use other forms of physical or psychological coercion.

Human trafficking for the purpose of labour exploitation

Human trafficking for the purpose of labour exploitation corresponds to a succession of actions aimed at exploiting the labour of a person (as defined above by labour exploitation). By exploiting the vulnerable situation of a person and/or deceiving them as to the nature of the work or the working conditions, human traffickers force their victims to agree to recruitment and subsequently to work under exploitative conditions, sometimes by threatening their victims or exerting physical violence.

Method

The empirical research of a phenomenon that takes place largely in secret and illegally – as is the case with labour exploitation or trafficking for the purpose of exploiting labour – poses great challenges. For obvious reasons, research cannot be founded on the experience and information of those who are directly involved. Therefore, the researchers had to depend on the expertise of those who encounter cases of labour exploitation (and trafficking for that purpose) as part of their professional work. The research team gathered a maximum amount of information from the experts by means of an exploratory questionnaire, by conducting interviews with around 30 specialists (for example from the judiciary, the police, victim assistance, migrant support services and trade unions) and by analysing police and judicial files. The researchers also conducted several interviews with workers who had experienced exploitative situations. The data was mainly gathered in the cantons of Bern, Geneva, Ticino and Zurich.

Economic sectors involved

The study revealed that labour exploitation exists in Switzerland and, to a lesser extent, so does trafficking for that purpose. Representatives from the public sector and civil society observe instances of labour exploitation in many sectors. Some cases suggest that trafficking is also involved although this can rarely be verified. Most of the experts consulted believed that a large number of cases involving labour exploitation go undetected. Besides the fact that criminal activities take place furtively, the vulnerability of victims of labour exploitation (and trafficking) is not conducive to their disclosure of abuse at work.

Based on the examples of labour exploitation reported in the survey, it was possible to identify certain risk sectors, although considerable differences existed between the cantons investigated (Bern, Geneva, Ticino, Zurich). The construction industry appears to be the most affected in all four cantons, whereby a particularly large number of cases involve Canton Zurich. The catering and hotel sector is in second place, with a slight concentration of cases in Canton Bern. Exploitation in domestic service is evident mainly in Canton Geneva, including in the private residences of people with diplomatic immunity. A considerable number of cases involving exploitation are connected with illegal activities such as begging, theft, burglary and drug trafficking, particularly in big cities like Geneva or Zurich. In Canton Geneva two trials recently resulted in convictions for trafficking under Article 182 of the Swiss Criminal Code. Exploitation is also evident in the agricultural sector, albeit to a lesser extent. The survey also shows that exploitation has many facets. For example, women working in brothels are subject not only to sexual exploitation but are sometimes also coerced into cleaning duties. Conversely, domestic employees are sometimes forced into prostitution.

According to the survey, the profile of the victims (i.e. gender and country of origin) depends on the economic sector in which they are employed. For example, victims in the domestic sector are primarily women while in the construction industry the victims are exclusively men. In other sectors, they can be men or women. The survey found that they have little scope for manoeuvre and their living conditions are precarious. For the majority, this is due to their plight as immigrants and their uncertain residential status. According to all experts consulted, the majority of those subject to labour exploitation have no or only a precarious residence permit in Switzerland. The ability of victims to act is in some cases restricted by their age (in the case of minors) or by a disability, both reinforcing their dependency.

General features of exploitation

Those subject to exploitation originate mainly from the poorer countries of the world, particularly from Eastern Europe (including EU countries), the Balkans (especially in the construction industry and in connection with criminal activities), Africa and Latin America (especially in domestic work), and Asia (especially in the hotel and catering sector). Victims and abusers often come from the same geographic region, but the latter usually have permanent residence status in Switzerland. In the field of domestic service and agriculture in particular, abusers are often also Swiss nationals with no immigrant background.

When employers and workers come from the same region, recruitment usually takes place through social and family connections. Those recruited are frequently deceived about the prospective work and working conditions. They enter Switzerland either on their own or with the help of, and accompanied by, the person who will later exploit them. Often it is not even necessary to recruit workers abroad because the market for illegal labour in Switzerland has a sufficient number of persons who are prepared to work under very adverse conditions. Those already present in Switzerland are usually recruited within migrant communities and through recommendation. Swiss employers who have no connection to migrant circles often recruit workers through job advertisements or employment agencies.

Whether exploitation is a result of trafficking or not, employers benefit from the vulnerable situation of their employees, who often have little or no knowledge of the language or the law, few material resources, are socially isolated or whose family in the country of origin are put under pressure. According to the experts consulted, the use of severe coercion and punishment such as physical violence or restricted freedom of movement is rare in Switzerland. Rather, employers use psychological pressure (for example, by threatening to expose the victim's illegal stay in the country) or other forms of humiliation to enforce bad working conditions.

The strategy used by employers to exploit their labour force therefore consists of pushing the boundaries of what victims can endure while remaining within the limits of legality. By exploiting the vulnerability of their workers, employers can impose very adverse working conditions without having to resort to violence or to restrict freedom of movement. Also other surveys have found (Cyrus et al. 2010; FRA 2015), most situations involving exploitation take place largely on a consensual basis. Because of their vulnerability few victims report the abuse. Hence, labour exploitation remains a lucrative business in which the perpetrators run little risk of prosecution. Nor do victims, in general, have the resources necessary for legal redress; according to the cases observed in this survey, the few victims who managed to escape exploitation only decided to act once they met a person they could confide in and trust, and who was able to help them.

The fact that victims endure adverse working conditions for a long time before seeking help should not be interpreted as a deliberate choice; rather, this supposed contentment with bad working conditions is simply for want of a better job alternative. According to experts, victims only begin to cooperate with prosecution authorities once they realise they have rights that must be respected regardless of their residential status.

Legal framework and measures

The most important legal provision on human trafficking is the Palermo Protocol of 15 November 2000. It was ratified by Switzerland in 2006. On 1 December of the same year, Article 182 of the Swiss Criminal Code (Trafficking in Human Beings) came into force. This replaced Article 196, which outlawed trafficking only for the purpose of sexual exploitation. In keeping with international standards, the new provision extended the definition of trafficking to include exploitation of labour and trafficking of human organs. In more recent developments, the Council of Europe Convention on Fighting Trafficking was ratified and entered into force on 1 April 2013, at the same time Switzerland adopted a new federal law on the extra-procedural protection of witnesses. The rights of persons identified as victims are regulated in various statutory provisions. Where there is no evidence of human trafficking, some aspects of labour exploitation are covered by criminal or civil law provisions such as labour legislation (Code of Obligations, Employment Act, Illegal Employment Act, collective employment contracts, etc.). Unlike in some European countries, there are no legal provisions in Switzerland on labour exploitation or similar acts like bondage or forced labour that occur outside the context of trafficking. Moreover, since the term *exploitation of labour* can be interpreted in different ways, the survey's researchers decided to put forward their own definition for the purpose of the survey.

Very little case law exists on trafficking for the purpose of labour exploitation. There have been only four criminal convictions for this offence since 2007 (two in Geneva, one in Basel and one in St. Gallen). Although police inquiries and criminal investigations are more prevalent, their number in the four cantons analysed did not exceed twenty over the six years from 2009 to 2014. The small number

of residence permits granted to trafficking victims confirms these findings. However, it should be noted that the statistics are not complete, nor are they broken down according to the type of exploitation. Therefore, it is difficult to assess the true extent of trafficking for the purpose of labour exploitation. Above all – according to all the specialists consulted and the scientific literature – the figures reveal less about the extent of the phenomenon and more about the scope of law enforcement. Few measures exist at present to combat trafficking for labour exploitation, a situation similar to that of trafficking for sexual exploitation ten years ago. In the last decade, however, Switzerland has implemented various measures to combat trafficking for sexual exploitation; the various cooperation mechanisms that are now in place and achievements in detecting relevant cases bear witness to the progress in this field. In view of the high requirements of proof, which pose a particular challenge to law enforcement, several interviewees emphasised the crucial role of the public prosecutor with regard to human trafficking.

Although it is useful to draw on experience gathered from the field of sexual exploitation, new instruments are required to deal with trafficking for labour exploitation. This requires focusing on the broader phenomenon of labour exploitation before considering the aspect of trafficking. Those interviewed thought that cooperation with the labour market authorities and social partners should be strengthened since they are in the best position to detect exploitation. They are also the key players in implementing preventive measures or taking non-penal steps. The data collected shows that in the cantons of Basel-Land, Bern, Fribourg, Geneva, Neuchâtel and Valais, labour market authorities are already involved in anti-trafficking cooperation mechanisms. In Canton Geneva, a trade union is also involved. In fact, this canton has a network of associations that are very active in combating labour exploitation and trafficking. The absence of trade union involvement in Switzerland in general, however, is mirrored in other European countries such as Germany.

Thoughts on prevention

Cooperation between those involved in the areas of prevention, prosecution, victim assistance and partnership is just as important in fighting trafficking for the purpose of labour exploitation as it is in combating trafficking for sexual exploitation. The survey found that a major obstacle to effective cooperation was the absence of usable definitions of labour exploitation and trafficking for labour exploitation. The meanings of these concepts vary, sometimes within the same discipline but more so between different areas of intervention. This leads some to conclude that those who work in social services, for example, speak a completely different language from the judiciary. Establishing a consensual definition is only possible through a process of consultation between all those concerned. The wide experience of the specialists highlights that developing a proper cantonal strategy for combating trafficking depends on both the commitment of key players within public administration and NGOs, and the expertise of public prosecutors, police officers and victim assistance bureaus, amongst others. Implementing such a strategy will require availability of the necessary resources. And that, in turn, will require the appropriate political will.

Asked for their opinion on what preventive measures would be useful in fighting trafficking for the purpose of labour exploitation, the experts advocated measures to strengthen cooperation and networking between the various players, and further training. A checklist of indicators to help identify possible victims of exploitation would also be useful, as would information and awareness-raising campaigns for experts and the public. To ensure the effectiveness of such campaigns, resources for the necessary follow-up measures would have to be available and those involved in the various fields would have to be sure to take the necessary steps.

Several of the experts also pointed out that although the legal framework for victim assistance had improved, this was not the case in practice. The provisions on victim assistance leave wide scope for discretion, which leaves those concerned uncertain of the effectiveness of their efforts. Since most of the suspected victims are migrants, a preventive approach should be accompanied by measures in the field of migration, which respect human rights and ensure access to the courts by all migrant workers. In this respect, the approach taken by the Permanent Mission of Switzerland to the United Nations regarding people employed by diplomats and international functionaries subject to diplomatic immunity is an interesting model, albeit with potential for improvement.

Because trafficking is difficult to prove, representatives from law enforcement and other specialists advocate improving the coherence and legitimacy of repressive measures by introducing a subsidiary or complementary criminal provision punishing the exploitation of labour outside the sphere of trafficking. Certain European countries such as the United Kingdom and France already have an appropriate clause; others such as Germany are seriously considering introducing one.

Often, it is the uncertain residential status of workers that is the real obstacle for enforcing their rights. Ultimately, it is in the best interests of society to adopt an approach that captures the whole scope of labour exploitation. This means respecting the fundamental rights of all, making the most of the various legal provisions (criminal law, employment law, foreign nationals law, etc.) and enhancing cooperation between all those involved.

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