



What Obstacles are Encountered by NGOs when Addressing Labour Trafficking and Related Exploitation?

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Labour exploitation is not recognised and often seen as ‘just a violation of labour law’

The first challenge NGOs face when receiving complaints from potential victims of trafficking for labour exploitation, is that it often will remain unclear if the person ‘will actually qualify as a victim of human trafficking’, meaning that relevant stakeholders recognise the indicators and take action to further investigate the case. Of course this issue is also present with victims of sexual exploitation, but especially with victims of labour exploitation we see that relevant stakeholders refer to labour exploitation cases often as just ‘bad working conditions’, and ‘violations of labour law’, not seeing the link with human trafficking.

A challenge here is also that European countries hold different views of who may qualify as a trafficking victim. As UNODC phrased it earlier, the ‘potential breadth and narrowness of the international definition has raised several issues to which States have taken quite different positions’. The lack of legal guidance and absence of alternative offences at the national level, prevents that many serious cases of severe forms of labour exploitation are recognised as trafficking in human beings.

Since December 2022, when the Commission announced the revision of the EU Trafficking Directive, we have lobbied for the inclusion of a specific reference to labour exploitation or particular exploitative working conditions in the definition of article 2, in line with the EU Employers Sanctions Directive, especially as it is so difficult all over Europe to get severe forms of labour exploitation recognised as human trafficking¹. But unfortunately we failed and instead the Commission, Council and Parliament have added forced marriage and illegal adoption, while the parliament has even proposed to add surrogacy, while we see in practice, particular cases of severe labour exploitation and human trafficking for labour exploitation to be on the rise. This is also acknowledged in data collected by international bodies including Eurostat statistics.

No definition or stand alone offences for labour exploitation

A reference to labour exploitation in the Directive could encourage more EU Member States to take legislative steps and to establish stand-alone offences for other severe forms of labour exploitation, including forced labour. Nowadays many EU countries have only criminalised human trafficking, but have no separate criminal offences for labour exploitation or forced labour. Next to lacking awareness and separate criminal offences, another obstacle is the high threshold of proof, which makes it generally difficult to successfully prosecute a case of human trafficking.

¹ As also acknowledged by the FRA in 2021



Especially in cases of trafficking for labour exploitation, when there is no proof of force, or physical threat or violence and the worker consented to the work to be conducted – even though consent is considered irrelevant in the UN Palermo Protocol – prosecutors seem to hesitate to investigate cases of labour exploitation as human trafficking. Even, if there are clear indicators of severe exploitation.

Lacking evidence leading to dismissals or settlements under administrative law

When cases are reported to our members, persons might be already out of the exploitative work environment and might have failed to collect useful evidence and information and it might be too late to collect that information still. Furthermore often we see that exploited workers are quite isolated, for example this is the case with persons working in remote areas or in private housing and then there are also not witnesses who could provide a witness statement.

When persons in exploitative situations contact us, we always ask them to collect evidence, e.g. by noting down the hours they worked, examples of violations, harassment or violence and take pictures of the working environment, housing etc. Also to keep proof of correspondence including chat messages with their employers, which can evidence the exploitation and abuse.

When there is no sufficient evidence, we see that cases are dismissed and or settled under administrative law, while criminal law would offer victims more rights and benefits. This happens frequently, which is also noted from the low number of successful investigations and prosecutions for trafficking for labour exploitation. What also plays a role is that decisions to investigate and prosecute are still taken on moral grounds and that sexual exploitation is still perceived and judged as ‘a more severe form of exploitation’ than trafficking for labour exploitation or other forms of human trafficking

Lack of unconditional support and lagging successful investigations and prosecutions

The access to support for victims of human trafficking in most European countries, remains closely tied with the criminal justice system. Assistance and protection are still made dependent upon reporting the crime and to victims’ participation in legal proceedings; as well as the initiation of an investigation, continuation of a prosecution and or a successful prosecution of perpetrators and if it is qualified as human trafficking.

As a result many victims can only receive assistance if we or other civil society actors or others provide them with support, while they have no access to compensation or remedy, regular/declared employment and inclusion. This contradicts the provisions in the European Anti-Trafficking Convention (Article 12), and the EU Victims’ Rights Directive (Article 8 and 9) that provide for assistance to be available from the earliest possible moment, irrespective of cooperation or whether the crime has been reported. This will remain in the revised EU AT Directive, but we had hoped it be stronger reflected in the revised directive, to ensure that unconditional access is applied in practice.

Currently, victims are fully dependent on successful investigation and prosecution, while we see that these are lagging behind and even if victims are able and willing to make a complaint, press charges,



and cooperate with the authorities, they risk having no access to protection and support beyond the reflection period, just because a criminal procedure has not started or is being dismissed or the crime of human trafficking could not be proven, while there are clear indications that the person has been severely exploited.

Victims of human trafficking should be entitled to adequate assistance and support, regardless of their residence status and on the basis of (indications of) their victimhood and violations of human rights, and not on the basis of their cooperation with the authorities. Possibilities for unconditional support should be extended, to grant trafficked persons a victim status outside the criminal framework.

Concerning is also that we see increasingly with Third Country Nationals (TCNs) that they might also not receive the reflection and recovery period and thus no temporary assistance at all. This especially goes for those with a Dublin claim.

No mandate for CSOs in identification process

The fact that persons are not recognised as a victim of trafficking for labour exploitation, is not only related to the fact that this concerns 'labour exploitation', but also that it often concerns third country nationals, so while there might be attention for national victims being several exploited abroad or within the country, it seems more difficult for Asian or African migrants that have been possibly trafficking to get recognised, as we can also see from the EU statistics. Still the large majority of people identified in Europe are EU citizens.

To guarantee the right to unconditional assistance, multiple stakeholders including civil society actors and victim protection organisations, should be enabled to identify presumed victims, based on agreed common indicators, as part of national referral mechanisms (NRMs).

NGOs have often no mandate in identifying presumed victims, so if we assist a person and see and report indicators of human trafficking, the person might still not be identified as a presumed victim by the authorities or other stakeholders. Generally only few victims are identified.

It is needed to strengthen inter-agency cooperation to improve the identification of all forms of human trafficking. Identification should not be the responsibility of a single government agency only, but should be carried out by multidisciplinary teams including (civil society - Ensure more role for NGOs to identify potential victims of trafficking and exploitation) and other organisations providing services to trafficked persons. It is also important to increase efforts to proactively reach and inform all vulnerable persons, including asylum seekers, refugee and other migrants from 3rd countries, as well as undocumented migrants, minority groups and minors, those working in private and diplomatic households, as well as those working in other sectors that are vulnerable for exploitation; like domestic and care work, agriculture and construction.



Absence of safe reporting and complaint mechanisms

Another challenge related to the non-identification and the absence of referral and support, is the fact in many European countries safe reporting and complaint mechanisms are absent. Undocumented migrants risk detention and deportation when they report the crime. Hence we call for a clear ‘firewall’, which will allow workers to safely file a complaint to police or labour authorities and courts, and to get access to services and justice, all without facing immigration enforcement as a result.

Safe reporting policies and effective complaint mechanisms should be implemented, with firewalls, to ensure that workers with precarious or irregular status can safely file a complaint to police or labour authorities and courts, and get access to services and justice, without facing immigration enforcement as a result. Ensure that undocumented workers can report the crime in any European country and receive access to protection and support.

Limited access to remedies and back wages

Alongside a lack of information, legal support and awareness, the right to compensation is also hampered through the long duration of criminal and civil proceedings, and – in the case of foreign victims – their return or deportation to their country of origin before a verdict is reached. Even when compensation is granted, trafficked persons rarely have the means to ensure a compensation order is enforced so they receive some payment. Consequently, legal remedy provisions remain underused and trafficked persons rarely receive the justice they deserve. With the current revision of the EU THB Directive we have been pushing for strengthening article 17 on compensation and fortunately the EU parliament has included stronger provisions in their report which was adopted on 5th October. Also the current draft proposal for revision of the EU Victim Rights Directive – which was presented on 12 July by the Commission enhances the access to compensation, by proposing advance payments by states, when judges order compensation and by demanding that compensation claims are dealt with within criminal procedures and not referred to civil procedures. This is positive.

The EU is currently also discussing the forced labour ban regulation, and we push with a NGO consortium under the lead of Anti-Slavery International for inclusion of remedies including compensation in this regulation as well. EU policy makers have referred to the EU Trafficking Directive instead, but workers outside the EU in forced labour situation cannot obtain rights under this EU law. Hence it is important that companies who put workers in situations of forced labour, pay remedies.

Lacking access to residence on personal grounds, which leads to lack of social inclusion

Another challenge is providing support to persons that cannot remain in the country, including those that might have been identified as a trafficking victim. Generally, we see in Europe that residence permits are usually only granted for the period beyond the recovery and reflection period on the condition that human trafficking is reported to the police and a criminal investigation against the perpetrator is initiated – and is still ongoing. However, granting a residence status on personal grounds,



taking into account a range of situations, such as the victim's safety or vulnerability, state of health and family situation, would significantly increase victims' incentives to co-operate with the authorities

We have been advocating for more access to residence with the revision of the THB Directive, however unfortunately with the EU Asylum and Migration Pact, access to residence for victims of trafficking is a very sensitive issue at EU level and unfortunately now not embedded in the Commission, Council or Parliament proposals for the revision of the trafficking directive. However Trafficked persons should have access to residence on personal grounds and regularisation programmes should ensure that persons can access a secure and long-term status to reduce inequality and social exclusion.

Multiple difficulties to hold private sectors accountable

Businesses find legal loopholes to avoid compliance with labour rights standards, like abusive subcontracting practices and making use of letter box companies to deny responsibility for the exploitation and abuse, When there is severe exploitation identified, it is very complex to find out who is accountable, moreover the shady companies, then go bankrupt, making it very hard to still prosecute them. Sanctions are low and often not binding. It is also difficult to prosecute companies for profiting or the use of exploitative labour, while we oppose the 'binding provision for criminalising knowing use, it could be used to hold companies more accountable, however so far it seems mainly an anti-prostitution measure in most EU states. It would be good to see how this legislation 'has helped to criminalise companies'. Binding legislation and control mechanisms should be established to ensure businesses' compliance with labour standards and human rights, enacting sanctions for businesses that do not respect human rights and the law. Further, there needs to be a greater focus on monitoring contractors and subcontractors and job recruitment agencies, particularly in high-risk labour sectors

Further there are all kind of practical challenges to deal with THB for labour exploitation

Lastly, we face challenged to assist victims of labour exploitation due to all kind of practical barriers, for example that lack of shelters to place exploited men or families, lack of adequate legal support, and also here the condition of services. There are often no emergency funds available, NGOs and charities often lack the resources to support those not formally identified. Our members try to mediate with employers, and or to go to labour tribunals to claim back wages.

Access to legal aid should be increased and barriers and criteria that limit this access should be lifted. Legal aid should also be available for those not able to cooperate with the authorities on the basis of their victimhood.

Recommendations

To conclude just 3 recommendations to prevent trafficking for labour exploitation:

- Mainstream specific protective measures for migrants and trafficked persons into migration policies and bilateral agreements on employment and generally increase opportunities for



regular, gainful and non-exploitative labour migration for workers of all skill levels; also taken into account the preventive impact we have seen from the Temporary Protection Directive for Ukrainians.

- Strengthen regulatory and supervisory mechanisms to protect the rights of migrant workers regardless of status. Ensure access to adequate information, assistance, safe reporting and effective complaints mechanisms and enable people to access justice.
- Make decent work for labour migrants a real priority and follow through with political leadership, policy and funding. Informal and unregulated work should be brought within the protection of labour laws. It should be ensured that labour rights are applied to all workers, without discrimination, and irrespective of their migration and residence status.