

	Improved Response to Labour Trafficking
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Introduction

Labour trafficking, or trafficking for the purposes of labour exploitation or forced labour, has not been receiving the attention it deserves. It is now widely recognized that a large and apparently growing proportion of human trafficking cases involve labour trafficking (Farrel, Owens, and McDevitt, 2014; UNODC, 2012; IOM, 2012). Yet, as compared to human trafficking for the purpose of sexual exploitation, labour trafficking has received relatively little attention.

In Canada, it is clear that the majority of labour trafficking cases never come to the attention of the authorities. Victims of labour trafficking rarely report their experiences to authorities and the latter rarely identify cases of labour trafficking. As a result, few cases of labour trafficking have been identified and prosecuted in Canada. Our knowledge on the prevalence of this crime is therefore limited and so is our understanding of the challenges associated with its detection, investigation, and prosecution.

Canada's National Action Plan to Combat Human Trafficking includes a commitment to raise awareness of labour trafficking with labour inspectors, and other federal and provincial officials (Canada, 2012). The National Action Plan also includes measures to strengthen relationships with and among relevant stakeholders in order to enhance knowledge of the problem and improve the current response to human trafficking. A lack of effective coordination and collaboration amongst stakeholders can create an environment in which labour trafficking can emerge and go undetected. In addition, poor coordination between different government agencies or levels of government weakens both law enforcement and victim protection efforts.

This note summarizes the findings of consultations and research conducted by the ICCLR since 2013. It identifies the challenges typically encountered in preventing and responding to incidents of human trafficking for the purpose of labour exploitation and offers suggestions on how to improve our current response.

Labour trafficking

Trafficking for forced labour occurs in the broader context of exploitation of labour, often affecting migrant workers (Vogiazides and Hedberg, 2013). A focus solely on trafficking for forced labour can obscure the larger structural and contextual factors that facilitate exploitation and make workers vulnerable to labour trafficking (Ollus and Jokinen, 2013; Vogiazides and Hedberg, 2013).

The problem of identifying incidents of labour trafficking is receiving more attention in recent years (e.g., Clark, 2013; UNODC, 2012; IOM, 2012; OSCE, 2011), still relatively little is known about the recruitment of workers, how they end up in situations of exploitation and trafficking, or the patterns of coercion and exploitation. The patterns of trafficking and exploitation obviously vary from sector to sector, but these patterns are still poorly understood. It is crucial to better understand these patterns and their implications for regulators, investigators, and prosecutors. Some of these patterns are becoming clearer through recent work focussing more specifically on labour trafficking in various sectors (Andrees, 2008; Beirnaert, 2011; Dandurand, 2012a; Jokinen, Ollus, and Aroma, 2011; Ollus, Jokinen, and Joutsen, 2013; Skrivankova, 2010).

Labour trafficking most commonly involve labour exploitation in the hospitality, agriculture, and construction industries. Within these industries long hours, undocumented workers being paid very little wages or nothing at all, fear and intimidation used as coercion techniques, sexual assault, and sexual/racial harassment were identified as typical occurrences. Cases that are identified by community organizations and service providers are not necessarily investigated or confirmed by authorities.

Labour traffickers use various means to lure and entrap victims, including persuasion, deception, threats and physical violence or coercion. Different individuals may be involved in the process, including recruiters, intermediaries, transporters, employers, and even families and friends. These methods of entrapment vary considerably from country to country and from situation to situation (ILO, 2002). They are influenced by cultural factors, local circumstances, and popular beliefs. The methods evolve and adapt constantly to changing circumstances.

Relatives, family, friends, and acquaintances tend to play an important role in both the recruitment and exploitation of workers. It is not always a case of organized recruitment or labour exploitation, but rather a way to organise bringing relatives into the country under the guise of looking for work. Since family ties facilitate dependence and vulnerability, some of these situations degenerate into systematic exploitation (Jokinen, Ollus, and Viuhko, 2011: 71).

Furthermore, it is now quite clear that trafficking, forced labour and exploitation are all part of a continuum of coercion, with clear cut labour cases at one end of that continuum and much more subtle forms of exploitation and coercion at the other end (Ollus and Jokinen, 2011; 2013; Vogiazides and Hedberg, 2013; Skrivánková, 2010; Andrees, 2008). Restricted freedom of movement and wage manipulation are perhaps the most common form of exploitation, but they do not necessarily amount to labour trafficking. Less serious forms of exploitation can be a breeding ground for more serious acts, leading up to trafficking for forced labour (David, 2010).

Finally, it must be noted that, although the law makes a distinction between trafficking for sexual exploitation and trafficking for labour exploitation, in reality many victims are subjected to both forms of exploitation. Some studies have also confirmed that very commonly, there is a combination of sexual exploitation and labour tasks, such as waitresses and female cleaners having also to provide sexual services (Surtees, 2008: 56).

The vulnerability of migrant and undocumented workers

Research in Europe and in Australia shows that labour trafficking is an extreme form of exploitation which is specifically criminalized, but exists within a much broader spectrum of exploitation. That spectrum is perhaps best described as a range of unlawful conduct, which includes industrial breaches, unlawful discrimination, and criminal offences perpetrated against certain migrant workers (David, 2010). There are real connections between exploitative labour conditions and trafficking for forced labour and strict lines between these two may not always be easily drawn.

For many migrant workers the ultimate goal may not be the short-term goal of wages, but the longer-term goal of permanent residence or even citizenship in a new country. This can obviously be used by unscrupulous employers (false promises of sponsorship, withdrawal of sponsorship, threats of firing, etc.) to manipulate and exploit workers (Canadian Council for Refugees, 2013; David, 2010).

Migrant workers are rarely in a position to negotiate the terms of their employment (OSCE, 2010: 13). Adding to the power imbalance between the migrant worker and the employer is the fact that migrant workers are often recruited from countries where working conditions are appalling and yet socially acceptable. This predisposes the migrant workers working in Canada to accept working and living conditions that would be totally unacceptable in this country.

It is quite telling, as some researchers have observed, that the victims of labour exploitation rarely disclose their experiences to the authorities when applying for an extension or renewal of their work permit (Ollus and Jokinen, 2013: 81). This could be an opportunity to disclose the problem, but the workers do not necessarily see it in their own best interest to do so.

Domestic workers

It is becoming quite clear that labour trafficking involving domestic servitude deserves special focus. It is the most difficult form of trafficking in persons to detect, partly because it occurs in private places, behind closed doors. (Vermeulen, Van Damme, and Debondt, 2010: 73). There exists an enormous diversity as to the different actors involved in these crimes, whether it is an organized criminal group, an individual trafficker or smuggler, or even friends and family of migrants or of trafficking victims.

There are several cases of women having been recruited overseas by employers and brought into Canada using a visitor's visas. Upon arrival the women are forced to work long hours and under hard conditions. The employers exercise extreme control over them, utilizing threats, isolation, and strict supervision to ensure compliance. Fraudulent job offers, false promises, and abuses of cultural traditions are often part of the recruitment process.

Because one of the distinguishing features of domestic work is that it takes place in domestic households and therefore out of sight, domestic servitude is an almost invisible form of human exploitation. It is very difficult to detect due to the hidden nature of the work provided by the victims as well as their social isolation. The domestic work sector is often poorly regulated and is prone to various forms of worker exploitation. The worker is most often a migrant worker. Placement and recruitment agencies are often used and, in some instances, a ruthless agency contributes to and enables the exploitation of the migrant workers. The workplace is a household and the migrant workers typically live with their employer. Their workplace becomes their living place, something which can influence their autonomy and private life and places them in a situation of having to be always available for service.

The worker-employer relationship is often informal and, in the absence of proper regulation, is mostly defined by the private employer. In many cases, that relationship is based on a verbal agreement rather than on a written contract. When a contract exists, it is often treated as a pure (and unenforceable) formality to satisfy immigration authorities. If there is an employment contract, there is in fact usually more than one contract: an official contract to satisfy the authorities and another contract based on a totally different agreement (with different conditions) or based on the unfavourable working conditions and wages that the employee could expect in his/her country of origin (Jokinen, Ollus, and Aroma, 2011). In such circumstances, the employer/employee relationship is not defined in terms of obligations, protection and responsibility, but in terms of exploitation, dependency and owed “gratitude” (Anderson, 2007). In many instances, the migrant workers are not even aware of the terms of their employment contract (or even of the existence of a contract).

Structural factors increasing vulnerability

It is important therefore to try to understand why certain migrants appear to be vulnerable to labour trafficking and to consider the role that immigration status and the immigration process may play in enhancing their vulnerability (Dwyer, Lewis, Scullion, and Waite, 2011: 20). There are some vulnerabilities arising out of migrants’ participation in “lower skilled” occupations and the programs that allow for such work in Canada (Faraday, 2012).

In Canada, migrant workers involved in the Seasonal Agricultural Workers Program (SAWP) and the Low Skill Pilot Project (LSPP) can also be vulnerable to exploitation. They have little recourse when faced with poor treatment or contractual conflicts. The fear of repatriation or of loss of future employment is a strong motivator. The migrant farm workers find their stay contingent upon employers with serious constraints on their mobility (Hennebry, 2012).

Many aspects of conditions imposed on foreign workers increase their vulnerability to labour trafficking. In particular, programs that tie foreign workers to a particular employer render them quite vulnerable to various forms of exploitation. There is also evidence that the program has been abused by recruiters and employers in situations where labour trafficking was suspected (RCMP, 2010). It is frequently noted that, although two-step (temporary to permanent) immigration makes sense in a number of ways, it also has unintended consequences – unethical employers can use that system as added leverage to their advantage (Worswick, 2013).

Understanding patterns of exploitation of victims

A number of reports have discussed the notion of a “continuum of exploitation” (Skrivánková, 2010; Andrees, 2008; Geddes, Craig, and Scott, 2013). The notion of a continuum should actually be used to describe the complexity of the exploitative environment and concrete individual situations of migrant workers, with labour trafficking and forced labour at one end of this continuum because they involve coercion and denial of freedom (Skrivánková, 2010).

According to Beate Andrees:

“(…) the evidence suggests that forced labour has to be understood as a process and not as a static relationship between workers and employers. The vulnerability of migrants often increases over time as they are under pressure to repay their debts, or as they have been subjected to immigration controls and extortion from criminal networks. Moreover, employers often “test” the resistance of workers before they squeeze them into more exploitative situations. One could think of this process of an ever narrowing labyrinth where the decision making power of the worker is surrendered in the end.” (Andrees, 2008: 22).

Studies of labour trafficking in Finland, Sweden, Estonia, Poland, and Lithuania, showed the exploitative practices encountered by migrant workers differ very little from one country to another (Jokinen and Ollus, 2013; Jokinen, Ollus, and Viuhko, 2011; Lasocik and Wieczorec, 2011; Kask and Markina, 2011).

Understanding patterns of control and coercion

It is crucial to understand the methods of control and exploitation used by labour traffickers, many of which have already been identified in the research literature. In particular, understanding the relationship between offenders and victims is a major consideration in improving current strategies for the identification and protection of victims and the conduct of successful investigations. Non-physical methods of control over the victims are used depending on the victim’s susceptibility and context (Aronowitz, Theuermann, and Tyurykanova, 2010; Dandurand, 2012a; Simmons, O’Brien, David, and Beacroft, 2013). It is important therefore to understand histories and relationships between offenders and victims and the situations that enable these relationships to be manipulated for criminal purposes (Simmons, O’Brien, David, and Beacroft, 2013:10).

The threat of deportation also plays a role in coercing migrant workers (Sikka, 2013). The threat of denunciation and deportation creates a situation where migrant workers may not be physically constrained but subjectively perceive a lack of freedom of movement (Andrees, 2008). As was emphasized by the stakeholders consulted, the threats take many forms and are often subtle and implicit; they may for instance simply build on a person’s sense of shame. The control is often mostly psychological (Dandurand, 2012a). Threats are so effective because migrants, and in particular irregular migrants, are faced with informational and financial constraints (Andrees, 2008). As Andrees explained, “they are dependent on the employer or trafficker to find employment and to receive regular status. And employment is key to overcome financial constraints; often exacerbated by debts accumulated during the migration process. Once arrived in the destination country, migrants find themselves in a foreign

environment, where these double constraints play further to their disadvantage” (Andrees, 2008: 24).

One crucial indication of the subordinated position of the exploited employee or the victim is that his/her freedom of movement is restricted and that he/she is not allowed to spend leisure time freely (Jokinen, Ollus, and Viuhko, 2011). The absence of a written contract or double contract is also a very common method of controlling the worker (Kask and Markina, 2011; Dandurand, 2012a). Control is also strengthened by forcing victims to live in accommodations controlled by the employer (Lasocik and Wieczorec, 2011). A study conducted in Poland also confirmed that intermediaries played a large role in the deception/false representations (Lasocik and Wieczorec, 2011).

Improved prevention

Labour trafficking is best addressed through preventative measures that tackle victimization before it occurs (OSCE, 2011). However, several factors can make it difficult to devise effective labour trafficking prevention strategies. These include our limited knowledge about the various forms it takes in our respective communities, the very small number of cases that come to the attention of the authorities, and the persistent confusion that there is around what labour trafficking is and how it differs from migrant smuggling, illegal immigration, and various other forms of human exploitation. Added to these problems is the fact that trafficking patterns and methods change frequently and adapt themselves to defeat efforts to combat these criminal activities.

It is also true that prevention strategies need to address the market factors which enable and exacerbate various forms of human trafficking for labour exploitation. The business side of human trafficking must be addressed (Aronowitz, Theuermann, and Tyurykanova, 2010). Such strategies, however, must be based on far more information than what is currently available in most countries. Reliable and up-to-date empirical information is generally unavailable on patterns of trafficking, groups at risk, modus operandi, recruitment methods and practices, seasonal factors, or the market demand factors that fuel exploitation and trafficking.

During a national consultation on the prevention of human trafficking, experts deplored the fact that many of our existing prevention activities risk increasing rather than reducing the vulnerability of potential victims. It is clear that we must refine our prevention tools and that, in so doing, we must take care not to increase the vulnerabilities of various groups at risk. In particular, we must focus on measures that will reduce the invisibility of the exploitation that results from human trafficking (Dandurand, 2012).

The city of Toronto is estimated to have the largest number of undocumented workers in Canada. In 2013, City Council adopted a resolution which reaffirmed the City’s commitment to provide services for undocumented workers. It adopted a motion requiring several city offices and city funded agencies to conduct an internal review to boost undocumented workers’ access to these services. The review also looked at ways to provide training for front line staff and managers in prevention techniques and to aid in reducing the potential fear experienced by undocumented residents seeking access to services.

Employment standards and their enforcement

Employment standards and their enforcement are quite relevant to the identification and protection of victims of labour trafficking. It is frequently argued that labour inspectors and other inspection authorities can play an active role in the prevention of labour trafficking (Andrees, 2008a; David, 2010; Farrell et al., 2012; Sikka, 2013). Labour inspectors can enter workplaces that are available for inspection without a search warrant. They also have a wide range of discretionary measures at their disposal giving them a potential role to play in the prevention of forced labour and protection of victims (Andrees, 2008a: 1).

According to the ILO, trade unions also have an important role to play in preventing labour trafficking. This includes ensuring governments fulfill their obligations to give effect to and protect the rights of migrant workers (ILO, 2008). They can also monitor employment agencies as well as companies to detect and combat forced labour and trafficking practices. They have a role to play in providing assistance to migrant workers and workers in the informal sector (David, 2010)

Regulating and monitoring the intermediaries (agents, brokers)

The agent's role is central in the whole process of migration. They often arrange not only a job in the destination country, but also the loan required to sustain the migrant through that process. There is often competition among agents working in a same region or area of recruitment. There is fraud and deception and numerous examples of immigrants arriving at their destination without a visa or a job (Harris, 1995).

Brokers/agents often charge exorbitant fees for non-existing jobs or completely misrepresent the jobs that are available (Sikka, 2013; Faraday, 2012). They often mislead foreign workers about the immigration prospects, the nature of the work and other matters (see, Alberta Federation of Labour, 2007). The excessive and mostly illegal intermediation fees paid by migrant workers are a global issue (Jokinen, Ollus, and Viuhko, 2011). In addition to these fees, migrant workers are often required to pay other fees such as education/training fees, relocation fees, and various taxes, real or invented. Some of these fees include bribes and alleged payments to various officials, e.g. for visas, exit permits, etc. (see also, Lasocik and Wieczorec, 2011; Vogiazides and Hedberg, 2013).

Many of the recruitment agencies' practices involve deceit, but they may not necessarily develop into labour exploitation or labour trafficking situations (Kask and Markina, 2011). For example, victims may be pressured into making decisions quickly and signing documents without reading them, or they are not given enough time to verify the claims made by the agency (Kask and Markina, 2011; Lasocik and Wieczorec, 2011).

Most labour related complaints have indicated that some degree of deception was involved in the process by which the foreign workers were organized to come to Canada (RCMP, 2010). The Canadian employers are also the frequent victims of labour leasing or placement agencies. Third party agencies have been reported to law enforcement regarding questionable business practices like wage disputes and wage garnishing (RCMP, 2010).

Some experts have raised the issue of the weakness of existing mechanisms to monitor the compliance of immigration consultants and employment brokers with relevant regulations.

There is also mounting concern that the compliance checks conducted by Immigration Consultants of Canada Regulatory Council (ICCRC) are most likely insufficient.

Information to employers

Businesses and employers can also play a significant role in the prevention of labour trafficking. They, among other things, can exercise due diligence in the choice of the recruitment agencies to work with, the management of their supply chain, and their own employee management practices. It is possible to engage business actors to fight against forced labour and trafficking. Providing employers with information about immigration law, labour standards, and the liability they may expose themselves to when there is a subcontracting chain (see Plant, 2012; Allain, Crane, LeBaron, and Behbahani, 2013). The ILO has produced a handbook for employers and businesses to assist them in understanding and tackling the various dimensions and issues related to forced labour and human trafficking (ILO, 2008).

Information to workers

Information to migrants, irregular migrants and temporary foreign workers is an important aspect of labour trafficking prevention. Some of that information should obviously be made available in the country of origin to individuals considering coming to work in Canada. Typically, there are awareness raising, literacy and education programs for migrant workers and irregular migrants. There are also hotlines for workers to anonymously ask questions and receive information in one of several languages about their rights and relevant Canadian law (see also, Andrees, 2008a; David, 2010).

Improved detection and identification of victims

Detection of labour trafficking cases and the identification of victims are typically difficult. Cases of labour trafficking remain severely underreported to the authorities and NGOs. Improved detection and investigation of labour trafficking cases must start with an understanding of who the most likely victims of labour trafficking are. Current research has found that the most likely victims of labour trafficking are irregular migrants and migrant workers whose immigration status is precarious or has been compromised by illegal activities. These illegal activities are often the results of the deceitful and exploitative practices of recruiters and employers.

By reporting their victimization to police, victims of labour trafficking may be exposing themselves to a host of other risks, including retaliation by the offenders or their accomplices, deportation, penalties, and even persecution in their own country upon their return. Due to potential consequences, it is rarely in the victims' interest to ask for the protection of the authorities. In most instances where the victim would do so, the most likely result is for the victim to be treated by the authorities as an illegal immigrant or for the offender to avoid any consequences. In order to increase reporting by victims, the risks involved must be mitigated. A number of effective measures can be taken to ensure the immediate safety of labour trafficking victims who report their victimization. This may include, the victims' removal or the removal of their personal effects from the offender's business or property, placement in a

safe house, maintaining the confidentiality of their personal information, protective court orders, and escorting victims when necessary.

Victims of labour trafficking do not come forward for a variety of reasons, generally involving fear of deportation, accusations of participation in illegal activities, or compromising their chance of achieving landed immigrant status. Various steps can be taken to mitigate these fears and encourage victims to seek the protection of the justice system. Given the associated fears, it is rarely in the victims' interest to ask for the protection of the authorities. In instances where a victim would do so, the most likely result is for the victim to be treated as an illegal immigrant by authorities and for the offender to avoid any consequences.

One of the favourite modus operandi of labour traffickers consists of making their victims more vulnerable and compliant by placing them in a situation of illegality with respect to immigration laws or other laws. Investigations into labour trafficking are unlikely to be very successful unless there is a way to convince victims that they will be protected not only against the offenders, but also against the possibility of deportation and the prospect of losing any compensation. Therefore, law enforcement and other regulatory agencies trying to address the problem of labour trafficking must be able to guarantee to victims that their coming forward to denounce a serious crime will not result in their deportation or attract other sanctions.

There remains a critical role to be played by law enforcement agencies and criminal justice agencies in detecting, investigating, and prosecuting cases of labour trafficking. In Canada, as well as in many other countries, there have been relatively few successful investigations and prosecutions of labour trafficking cases. This is partly due to difficulties identifying and recognizing victims, but also to the lack of proactive investigations (Dandurand, 2017). Disappointing results yielded by law enforcement efforts demonstrates the importance of identifying strategies or practices that would increase the ability of criminal justice agencies to identify, investigate and successfully prosecute labour trafficking cases.

Misidentifying victims as illegal migrants or criminals will only add to the harm, trauma and injustice they have already suffered (United States, 2013). In that context, it will be difficult to convince regulatory agencies to collaborate with law enforcement when one of the likely consequences of that collaboration is to make the already precarious position of undocumented migrants even worse.

Mitigating the risk of reporting for victims

By reporting their victimization to the police, victims of labour trafficking may be exposing themselves to a host of other risks such as retaliation by the offenders or their accomplices, deportation, penalties, and even prosecution in their own country upon their return. It is difficult to imagine many situations where it might actually be in the personal interest of labour trafficking victims, once they have escaped the clutches of those who exploit them, to report the matter to the authorities and agree to collaborate with a police investigation. At present these victims have everything to lose and almost nothing to gain by reporting their situation to authorities. Since few investigations are successful and conclusive, it is difficult to convince victims to accept the risks associated with reporting their victimization to the authorities. Foreign workers lodging a formal complaint against their employer risk losing their only chance at gaining permanent residence in the country.

Common barriers to reporting included the fear of deportation, the fear of immigration enforcement proceedings, the lack of financial and social support, and the fear of reprisal actions from the employers. The lack of local housing alternatives and income support for migrant workers exiting an abusive employment situation was also a factor. It was noted that the importance of debt and debt bondage in cases of labour trafficking is often underestimated by agencies which are trying to intervene. The debt burden of the victims can be used by their exploiters to manipulate and control them. It is important to remember that the debt incurred by labour trafficking victims is not suddenly erased by virtue of the fact that they have reported their victimization to the authorities.

Labour trafficking victims do not necessarily perceive themselves as the victim of a crime; they have been led into an illegal situation and fear the consequences of their infractions. Cultural interpretations of what constitutes “exploitation” and “extreme exploitation” may vary, which can also affect reporting rates.

Community groups and victim support associations are an essential part of the cooperative relationships needed to support victims and encourage them to seek the protection of the justice system. These efforts will be more effective if they are survivor-centred and if sufficient protection can be offered to victims without putting them at risk of imminent deportation.

Increasing victims’ access to remedies or redress

Victims of labour trafficking have very few effective remedies available to them – for example regaining lost wages or obtaining compensation for an injury. The time and resources needed to process a claim or obtain restitution may be enough to deter the workers from taking advantage of existing recourses. Victims may assume that they are unlikely to get compensation from the offender (see Clark, 2013).

The ability of labour trafficking victims to obtain compensation for the harm suffered is linked to the problem of access to justice and their right to an effective remedy. Various legal and other obstacles prevent victims of labour trafficking from accessing remedies. These obstacles need to be understood and corrected (ILO, 2014).

While various steps should be taken to assist and protect victims of labour trafficking, this would not be sufficient to convince most victims to bring their situation to the attention of the authorities. The process of convincing them to seek the protection of the justice system is slow, complicated, and built on trust. Victim assistance organizations need to work collaboratively with law enforcement and help everyone to understand the difficult predicament of a foreign worker who becomes a victim of forced labour or labour trafficking.

Mobilizing the collaboration of regulatory agencies

It is often suggested that the identification of victims of crime can be improved if police, labour inspectors, immigration personnel, and others who may come into contact with victims of trafficking are well trained on the characteristics of the crime, its impact on victims, and victim-centred responses (David, 2010; Sikka, 2013; United States, 2013).

Regulatory agencies have access to resources and situations that other agencies do not have. It is quite important to mobilize the various agencies involved to obtain access to work sites and

to detect potential cases of labour trafficking. Some law enforcement officers have been able to work more closely with labour inspectors and to gain access to work sites. So far, these efforts may not have resulted in the identification of any new cases, but seem to have had a definitive preventive effect in terms of exploitative and dangerous labour practices.

One of the main obstacles to interagency cooperation was found to be the privacy protection laws and measures which complicate the free exchange of information among concerned agencies. Although collaboration is already taking place, it is usually based on informal agreements among the individuals concerned. Formal information exchange agreements could be developed between key agencies. Such arrangements are a prerequisite for effective victim identification and protection and for successful investigations.

Advantages

Officials who inspect or have access to establishments where labour trafficking victims may be found are uniquely positioned to identify these victims. Labour inspectors, port inspectors, factory inspectors, food industry inspectors, consular officers, agricultural inspectors, housing inspectors, tax authorities, and many others may have access to victims in a way that law enforcement agencies do not (United States, 2013).

Although in Canada these vary from province to province, there are many regulatory systems that can contribute to the protection of foreign workers (legal and undocumented) and the detection of labour trafficking. However, there is always a danger of seeing a conflation between these regulatory frameworks and those linked to the detection (and deportation) of unauthorized workers and undocumented migrants. It must become possible for exploitative working practices and forced labour situations to be reported to the authorities and for the authorities to intervene to protect the workers whatever the status of the workers is and without subjecting them to further hardship. This, for example, has been achieved by the Health and Safety Executive in the UK which provides protection for migrant workers, whether they are working “legally” or not (Kagan et al., 2011).

Role of labour inspectors

As has been mentioned earlier, labour inspectors and other inspection authorities, because they have easier access to worksites and wider discretionary authority, can play a key role in the identification of labour trafficking cases.

In Finland, the labour inspectors of the Occupational Safety and Health Inspectorates of the Regional State Administrative Agencies (labour inspectorates) are responsible for monitoring the use of migrant labour. Ollus and Jokinen reported that there are currently a total of 17 labour inspectors specialized in monitoring the use of migrant labour. They noted that the inspections largely focus on whether the employers have fulfilled their legal obligations in line with the requirements of Finnish law, but the labour inspectorate is required by law to report certain violations and offences to the police (Ollus and Jokinen, 2013). Unfortunately, trafficking in persons is not included among these offences. In most countries, labour inspectors do not have any legal obligation to detect and or report suspected incidents of labour trafficking - for an example, see Estonia (Soo and Markina, 2013).

There are a number of measures which can be taken to ensure labour inspectors play an active role in responding to forced labour and labour trafficking (David, 2010). Fiona David, based in part on the work of Beate Andrees, mentioned the following: (1) ensuring arrangements are in place to facilitate cooperation and coordination among concerned parties, including labour inspectors, the police and other concerned agencies (including a referral process, clarity about the respective roles and responsibilities of the agencies); (2) operational guidelines for labour inspectors (including indicators to help determine whether a particular situation may constitute labour trafficking); (3) a regime of enforcement, prosecution, and penalties that covers the spectrum of labour law violations and the criminal law; (4) arrangements to ensure cooperation between labour inspectors and workers, and employers organisations; (5) measures to ensure the safety of labour inspectors, including clear, deterrent sanctions for those who obstruct the work of labour inspectors; and, (6) ensuring that labour inspectors focus primarily on responding to abusive working conditions, even in situations where a worker has violated immigration law (David, 2010; Andrees, 2008).

Improved prosecutions

Prosecutors have different perspectives on how the law should be interpreted. There can be many valid reasons why they may decide not to proceed with a prosecution (Jokinen, Ollus, and Viuhko, 2011).

The complex nature of the legal definitions of the offence of labour trafficking in Canada may be part of the reason why prosecutions are still relatively rare. From the point of view of the investigation and the prosecution, obtaining corroboration of the victim's story is essential. Because the evidence of individual victims is heavily relied upon in labour trafficking prosecutions, corroboration of this evidence is often necessary to meet the standard of proof required in criminal proceedings (see, Canada FPT Working Group, 2013; Australia, 2011). Documentary evidence seized from the trafficker may support the victim's story. Independent witness statements can corroborate the story. Above all, it is crucial for the authorities to establish a relationship of trust with the victims and to ensure that the victims are safe and receive the assistance they need. Victims are initially fearful of cooperating with authorities and the latter need to establish a relationship with the victims based on trust. Investigators and prosecutors, and eventually the judiciary, must be careful not to misinterpret the fear and hesitation of the victims in a way that challenges their credibility (see also, Farrell, McDevitt, Pleffer, and Fahy, 2012; Farrell, Owens, and McDevitt, 2013).

In a case of labour trafficking, it is to be expected that the credibility of witnesses, including the victim, will be vigorously tested by defence counsel. The credibility of the victim tends to become a significant issue at trials for human trafficking offences. Allegations will likely be made that the victim is fabricating the story in order to stay in Canada. A victim will likely be on the witness stand for days, if not weeks, under both direct examination and then extensive cross examination. Support mechanisms for the victim during trial are absolutely essential. Also, at every stage of the trial, officials must remain aware of and be sensitive to the victim's cultural differences, as well as language and interpretation issues

It can also be a challenge to convince judges and juries that a given circumstance constitutes coercion or labour trafficking. They may not always understand that victims can be effectively

coerced by subjecting them to very subtle forms of coercion (Australia, 2011). Several guides now exist for prosecutors and judges (Canada FPT Working Group, 2013; UNODC, 2008; 2011; ILO, 2009). The UK Crown Prosecution Service's Policy for Prosecuting Cases of Human Trafficking notes that "human trafficking cases tend to be serious, complex and require sensitive handling" (United Kingdom Crown Prosecution Service, 2011). It suggests that a specialist prosecutor may typically be required in such cases and emphasizes that early consultation are required between the prosecutor and the police to ensure that "all possible avenues of evidence are explored, and that correct charge(s) is identified" (United Kingdom Crown Prosecution Service, 2011: 8).

Investigators and prosecutors, and eventually the judiciary, must be careful not to misinterpret the fear and hesitation of the victims in a way that challenges their credibility (see also, Farrell, McDevitt, Pleffer, and Fahy, 2012; Farrell, Owens, and McDevitt, 2013).

Conclusion

The most likely labour trafficking victims are irregular migrants or those migrant workers whose immigration status is precarious or has been compromised by illegal activities. This simple realization is full of implications for strategies to improve the detection, investigation and prosecution of labour trafficking cases. Firstly, given the fear of deportation and other detrimental consequences for the victims, it is rarely in the victims' interest to ask the authorities for protection. Secondly, law enforcement agencies must be prepared to more proactively investigate, if possible with the collaboration of the relevant regulatory agencies. Thirdly, that labour trafficking investigations are unlikely to succeed unless there is a way to convince victims that they will be protected not only against the offenders, but also against the possibility of deportation and the prospect of losing all avenues of redress or compensation.

Forced labour is part of a continuum of coercion, with clear cut labour cases at one end of that continuum and more subtle forms of exploitation and coercion on the opposite end. Restricted movement and manipulation of wages are some of the most common forms of exploitation, but do not necessarily amount to labour trafficking. Effectively, labour trafficking has to be understood as a process and not as a static relationship with the worker and employee. In many countries, labour trafficking primarily takes place in the context of the exploitation of migrant labour. The patterns of trafficking and exploitation vary from sector to sector, but these patterns are still poorly understood. It is also important to recognize that, although the law makes a distinction between trafficking for sexual exploitation and trafficking for labour exploitation, many victims are subjected to both forms of exploitation.

Many of our existing prevention activities risk increasing rather than reducing the vulnerability of potential victims. It is clear that we must refine our prevention tools and take care not to increase the vulnerabilities of various groups at risk. In particular, we must focus on measures that will reduce the invisibility of the exploitation involved in human trafficking. Prevention strategies must also address the market factors which enable and exacerbate various forms of human trafficking for labour exploitation. It is important to address the business side of human trafficking by gathering up-to-date empirical information on patterns of trafficking, groups at risk, modus operandi, recruitment methods and practices, and the market demand factors that fuel exploitation and trafficking.

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