



Compilation of

# Reports

from the Conference on 'Trafficking of Human Beings and Migration: A Human Rights Approach'.

Lisbon, Portugal, 4-5 March 2005  
Fundação Caolouste Gulbenkian  
Anti-Slavery International 2005



This project is funded  
by the European Union

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## **Introduction**

“Hands Up for Freedom” is a development education project that Anti-Slavery International has been involved with, in partnership with four other non-governmental organisations (NGOs) in Europe: CICA (Comunità Internazionale di Capodarco) in Rome, IEPALA (Instituto de Estudios Políticos para América Latina y África) in Madrid, MLAL (Movimento Laici America Latina) Progetto Mondo in Verona and OIKOS in Lisbon. The project’s purpose is to create public awareness of contemporary forms of slavery and in particular of trafficking in human beings. This is an often misunderstood phenomenon that involves the exploitation of women, men and children, in every part of the world. “Hands Up for Freedom” is aimed at secondary school and university students, educators, trade unions representatives, employers, politicians and the public in general.

In March 2005, Anti-Slavery International, CICA, IEPALA, MLAL Progetto Mondo and OIKOS took part in a two-day conference held at the Fundação Caolouste Gulbenkian in Lisbon, Portugal. We addressed the current trafficking and migration situation in our respective countries, actions taken by our governments and policies we would like implemented. We also invited our global partners to present papers on various topics relating to the conference theme, “Trafficking of Human Beings and Migration: A Human Rights Approach”. This report is a summary of information made available during the conference in Lisbon.

# **Female Migrant Workers in Spain: Study and Analysis in the International Context, the European Community Context and in Spain**

Gina Gallardo, Sandra Gil and María Paredes

Presented by Belén Andrade, Co-ordinator of Co-operation and Development Activities

IEPALA

## **Female Migrant Workers**

Study and analysis of the international context, the European community context and the Spanish case.

## **Methodology**

This paper is the result of data collection, analysis, case studies and statistics on the working conditions of women, mainly Latin American, in Spain. The study covers analysis within Europe, as well as the movement of people, particularly workers, at the international level. Relevant experiences were found that balanced out this phenomenon and were useful in the exchange of information for the present analysis.

Gina and Maria come from the Dominican Republic, and Sandra is from Argentina. From their own experience as migrants in Spain and from the wide analysis of research, dialogue and experiences, they have summed up the situation of female migrant workers in Spain, starting with a global analysis and then looking at particular cases, including the norms and peculiarities of the Spanish State and system, and the movement of people to Spain.

The method used is that of participant analysis, where the people involved have become protagonists in the process of building up knowledge about the subject under study, detecting problems and needs and elaborating suggestions and conclusions.

## **International Context**

With the expansion of the capitalist economy there has been an increase in the movement of people as the more productive sectors have an increasing need for labour. Therefore migration flows move to these areas.

Characteristics of the international context:

- Feminisation of poverty and labour;
- Connections between the impact of economic policies in developing countries, and the growth and feminisation of trans-border paths;
- At the same time, an increased presence of women in migration movements has become apparent, due to the application of neo-capitalist policies;
- Polarisation of public expenditure: responsibilities for health and education are being transferred to families and there is an increase in female-headed households;
- Unemployment is putting more pressure on women to find other financial support.

## **Community Context**

As relations between nations within a community become stronger, a global gap appears between regions and countries as free access and movement in the community space is denied to people from non-community countries.

Freedom of movement only applies to the market. Hence social, political, economic and cultural hierarchies are stratified worldwide.

Another effect of the creation of a community space, such as the European Union, is the absence of visa and border controls between member countries and greater rigidity outside this space.

Furthermore, the agreements reached in matters of immigration in the European Union space affect only border controls and not the development of a common policy for integration of the migrant population. Protecting fundamental human rights, which are universal, would be the way to achieve this. The only directives that have been taken into account regarding the rights of undocumented persons are the right to family reunion and the statute of long-time residents from non-community countries.

## **Spain as a Country of Immigration**

Characteristics: A fragmented labour market and an extensive informal economy.

Figures for documented migrants from Latin America have risen from 61,000 in 1991 to 514,485 in 2003. This represents 38.61 per cent of the total number of migrants resident in Spain.

There is a noticeable increase in the presence of people from Latin American countries, partly due to the importance of colonial and historical ties with these countries, and to the change in the choice of destination of migrants, which up to the end of the 1990s was the U.S.A.

The main characteristics of the new employment sectors taken up by migrants are the precarious nature of employment and the fact that the work available for women and young people is mainly in the areas of health, education, catering and leisure.

## **Spain's Labour Context**

The end of the Franco dictatorship paved the way for a democratic system and more social and political participation, accompanied by the transference of revenues towards lower income sectors. Between 1976 and 1985, the crisis ended in strong economic re-structuring. Policies of expansion and redistribution of jobs were replaced by progressive deregulation in the labour market. The model for economic growth since then is based on extension of temporary and flexible work. Increase in unemployment, expansion of the informal economy and fragmentation of the labour market are some of the effects of these changes.

- Demand for labour comes from highly precarious and temporary sectors.
- Inclusion of Spanish women in the labour market gives rise to greater demand for domestic workers.

- Social protection system linked to a limited welfare state, high levels of unemployment and an increase in migrant labour.

## **Spain and the International Market**

Because of the requirements of the international market and the existence of an important informal economy a pattern begins to appear: a small number of employees in executive posts and a majority of workers without contracts. In this hierarchical structure, there is room for migrant workers stratified by gender, ethnic origin and nationality. In the agricultural sector, there is an important source of irregular migrant employment. This is part of the dynamics of trying to reduce costs in order to compete in international markets.

Another characteristic of the Spanish labour system is the widespread demand for female domestic workers, as work in the home is not shared equally between men and women.

## **Legal Frame, Policy on Migration**

The first Immigration Law in Spain came in 1985 to coincide with Spain's entry in the European Union in 1986.

It did not include such rights as family reunion. Regularisation and systems for annual quotas were set up. A change was introduced in the regularisation process but no new legal offers of employment were made.

At the end of 1999 and after nearly a year of negotiations between parliamentary groups, NGOs and migrant associations, a new law, Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration was passed. The Popular Party (in government from 1996 to 2000) expressly opposed this law, which included rights to medical care, education, right of association for undocumented migrants, residency, free legal advice, and fines instead of deportation. Opposition from the Government meant that a new law, Law 8/2000, was approved in December 2000 suspending the mechanism for automatic regularisation, suppressing the rights of undocumented people, and making provision for internment and expulsion of foreigners without a residence permit.

It also gave transport companies greater involvement in checking documents from the migrant's country of origin. The new directive included data exchange on the foreign population between official bodies and it made family reunion more difficult (i.e. migrants had to obtain separate work permits).

During the Popular Party years, the Ministry of the Interior gained greater power in the area of migration and integration of migrants. The PSOE Government (2004-2008) set up an Office for Immigration within the Ministry of Labour and Social Affairs with a director's post specifically dedicated to integration headed by a former Red Cross chairwoman. The new Government drafted Act 14/2003, which brings into force a new process of regularisation, albeit only for 2005.

## **Insertion of Migrant Workers in the Labour Market**

Due to the character of the Spanish labour market, the different foreign communities can be found in five different sectors: finance, insurance and services, commerce and catering, domestic work, agriculture and construction work.

There is however a clear polarisation of jobs, with those that are more 'prestigious' being occupied by workers from the EU, the US and Japan, while 'undervalued' posts are occupied by workers from Latin America, Asia and Africa.

The figures indicate that 50 per cent of Latin American workers perform low-skilled labour, of which 19 per cent is in the service sector.

In the case of community workers, seven per cent are in non-qualified posts and 50 per cent are in prestigious sectors.

As mentioned, there are sectors exclusively reserved for migrants, such as domestic work and agriculture, where irregularity has always been the norm, and building, which is typified by fragmentation, subcontracting and disregard for professional qualifications.

### **Options for Residing in Spain as Set in the Current Law of Immigration**

It is possible to be a resident in Spain through work, studies, family reunion or to a lesser degree for humanitarian reasons. Most migrants obtain residence through work.

To renew a residence permit, it is necessary to be making National Insurance contributions. This is difficult when workers lose their jobs and are not paying contributions. Through the quota system – the legal option that allows entry in Spain – a person must prove that they are not in the country when they apply for residence. Before making vacancies available each year, the State looks at the employment situation in the country. This means that job offers vary and are subject to the requirements of Spanish society and economy. In 2004, entry under the quota numbered 300 women from the Dominican Republic and Ecuador. This indicates that few people can gain entry into the country legally by this procedure.

### **Participation of Female Domestic Workers in Spain**

As mentioned before, women from non-community countries work in domestic work, the sex industry, commerce and catering.

41.6 per cent of non-community female foreign workers are in domestic work, 6.9 per cent in catering, 6.4 per cent in office work and 3.6 per cent in cleaning services.

Domestic work is the main road of entry into Spain for 63 per cent of non-community women. Only 19 per cent of migrant workers from developing countries arrived in Spain with a work permit. 80 per cent started working illegally.

### **Characteristics of Domestic Work**

The current legislation allows employers to decide the working hours. In practice, domestic workers work on average between 9 and 11 hours daily.

According to Act 1424/1985, “it is legal to pay the minimum monthly wage (460 Euros) for full-time work, and 45 per cent of this wage can be paid in kind (food and lodging)”.

Domestic work does not require employers to make a written contract or to pay National Insurance for their employees. Often the employees pay it themselves since making National Insurance contributions is a pre-requisite for renewing a residence permit when the existing one ends.

### **Characteristics of the Sex Industry**

The sector is characterised by lack of regulation. Work permits or residence permits cannot be obtained for this kind of work. Most workers in the industry get their permits either as domestic or agricultural workers. Women in the sex industry suffer abuse by the police and often have to be helped out as not possessing a residence permit means they are often victims of ill treatment.

Each autonomous community in Spain drafts its own social assistance action plans for migrants and for each specific sector. In the case of prostitution, the following actions have been set in motion:

- The Madrid Town Council has started an action plan to fight sexual slavery in order to put an end to street prostitution.
- In Catalonia, prostitutes who work in public spaces receive a fine until a new rule is being drafted! In general, government debate tends to criminalise street prostitution yet normalise business activity in the sector. The women who work in this industry are not always happy with these proposals, which do not consider them as part of the industry.

There is ample and diverse demand in this sector, and the business will continue blooming. But as Laura Agustin (2001) points out, “the role of demand is central in this area, but misunderstood; the discourse – the dominant discourse – tends to be patronising and to forget that prostitution does not consist of prostitutes and exploiting procurers, but of links between providers and clients”.

### **Sexual Work**

State law 11/1999 of 30 April penalises any inducement into prostitution. This is the main worry for business in the sector: “Whosoever forces an adult to work in prostitution or to stay in it, by the use of violence, intimidation or deceit, or by abusing their superior position or the need or vulnerability of the victim, will receive a prison sentence of between two and four years and a fine of between 12 and 24 months. The same penalties will apply to those who facilitate entry into, stay, or exit from, the national territory to persons in order to exploit them using violence, intimidation or deceit or by abusing their position of superiority or the need or vulnerability of the victim.”

There is high and diverse demand in the sex industry in the receiving countries, which accounts for its survival.

Some people consider any exchange of money for sex exploitation, while others consider it an economic activity. Women in the sector call themselves workers.



In the fieldwork on prostitution, the situations of exploitation mentioned are all atypical and few and far between.

### **Some Sociological Reflections on Sex Work**

Emotional, erotic and sexual needs are part of a complex social situation where it is not easy to make clear differentiations; the sex for money modality is not widely different from concepts such as “sex without money” or “personal attention for money”.

The borders between these modalities and their social status are the by-products of social norms and their means of regularisation, which are historically changeable.

The emotional contribution made by migrant women employed in the sex industry in industrialised countries is an “emotional plus” and the relationships that they establish with families are “worldwide chains of emotional support and help”.

### **Diversity of Situations: Women in the Sex Industry**

There are, as in every sector, different reasons for working in this sector: the desire to migrate; an agreed journey with trafficking networks but deception as to the type of work that is to be done; neither trafficking nor sexual exploitation; use of networks of acquaintances in order to migrate and find work in the sex industry; choosing sex work after having decided to migrate; use of professional networks to travel and in some cases a move to the sex industry from domestic work.

### **Trafficking in Persons and Migrant Labour**

It is important to distinguish between trafficking in women for sexual exploitation and migration to work in the sex industry.

There is a view that defines trafficking as not only when somebody is forced into it but also when a person consents.

Article 41.3 of the Immigration Law states that residence permits can be obtained if information about the persons involved in trafficking is provided. However measures against trafficking are aimed in general at its repression rather than at victim protection and therefore, any action taken does not have the desired practical effect nor does it offer the victim an alternative to become free from exploitation or dependence.

### **Some Final Notes**

50 per cent of the 150 million international migrants are women and work in nursing, domestic work and the sex industry.

This lack of job opportunities in other sectors has established a link in Spanish society between being a female migrant and working in domestic or sex work.

Furthermore, the immigration law establishes a policy of quotas with a demand for manpower in specific jobs as the only way to obtain work and residence permits for non-community workers.

These jobs are typically the least regulated and worst paid, and within an institutional framework, marked by gender discrimination and market fragmentation.

The situation in domestic work: The importance of having a contract to renew work and residence permit generates dependence on the part of the worker, and makes exploitation at work, ill treatment and sexual abuse easier.

Women from non-community countries are particularly affected by a lack of regulation in sex work.

With the incorporation of Spanish women into the workplace, it has become necessary “to hire the emotional services” of a person from another country willing and able to come into the home and be a mother substitute. Given that in Spanish society it is generally the women who take care of the very young and the old, it is also female foreign labour that is needed for these jobs.

From a trafficking in persons point of view, where migration, trafficking in women and sexual work are seen as one and the same, sex industry workers are seen as victims or delinquents with ties to the international mafia or to trafficking networks.

To be considered for regularisation in the exceptional period of normalisation that took place between 7 February and 7 May 2005, applicants had to show a work permit and prove that they had lived in Spain for more than a year. This rule particularly penalised women in domestic work and the sex industry because the irregularity in those sectors meant that they could not prove that they had been working.

Many women from countries in the South and the East are forced to leave their families to look after families in the North; this creates a globalisation of motherhood and the breaking down of the family unit in their country of origin.

Borders are not the only limitation. States set parameters of inclusion and exclusion of foreign and national population, and limit their rights and freedoms. This mirrors the international system that marginalises certain countries.

In spite of the fact that laws recognise fundamental rights to all foreigners independent of their administrative status, “the women who talk to us make it clear that, suspended between two worlds, they live a negative existence between forced domestic work and prostitution, that the bodies and roles of women are particularly vulnerable and that this vulnerability is made worse by laws and their interpretation. Laws often label women as victims, which denies them their right to autonomy...” (*Campus delle Culture Donne*, 2000).

The expansion of alternative circuits means that the manpower involved in global processes of production and reproduction is not visible. The link between the impact of models of economic growth and the increased presence of women in the alternative circuits across borders allows for observation of the implications of globalisation, its reach and specific characteristics. This approximation reveals that the role of people with low social status (as migrants from countries in the South are usually considered to be) has considerable economic importance. Many of the people

considered poor, increasingly present in these circuits, far from being a burden – as usually defined – are an important source of income to families, businesses and States.

# **The Trafficking of Children into the UK for Sexual Purposes**

Executive Summary  
Christine Beddoe, Director  
ECPAT UK

ECPAT UK conducted research in 2004 to identify how UK Government social services were dealing with cases of child trafficking and how much they knew about the phenomenon of human trafficking. This research followed an earlier research report and a 2001 three-month operation conducted by UK police at Heathrow airport to monitor and track unaccompanied children arriving at Heathrow. Operation Paladin revealed that in a three-month period 1,738 children came through Heathrow without an adult or guardian. 12 children could not be traced at the end of the three-month period.

## **UK Legislation**

The UK has a relatively strong legal framework for the prosecution of human trafficking.

The Nationality, Immigration and Asylum Act 2003 and the Sex Offences Act 2003 criminalise trafficking for sexual purposes, and the 2004 Asylum and Immigration Act addresses trafficking in people for all forms of exploitation – *“including slavery, forced labour, the use of force, threats or deception to induce someone to provide services or benefits of any kind to another person”*.

However, even with strong laws prosecution is still very difficult. Victims do not want to testify because of threats to their safety or the fear of returning to their home country and what might happen to their family.

## **The UK Context in the European Situation**

*The UK is a destination and a transit country.*

ECPAT partners in Eastern Europe agree that the most vulnerable children at risk of trafficking are between the ages of 13 -18 years old. The majority trafficked are between 15-17 years old.

ECPAT UK is a partner with ECPAT in Albania on a joint research and training project. The Albanian Government estimates that 4,000 children were trafficked out of Albania between 1992-2000. Most of these children went to Greece and Italy.

The International Organization for Migration (IOM) Moldova estimates that between 2000-2003, 1,074 trafficked women and children were returned. 30 per cent were recruited as minors – and 42 per cent of these were still minors on their return.

The majority of Eastern European girls identified in the ECPAT UK research were trafficked for prostitution.

## **Research Results (Summary)**

There are two main routes for trafficking of children to the UK:

## **1) Unaccompanied Minors Missing from Care**

The first route is well known and documented. As early as 1995, West Sussex Social Services (around the Gatwick airport area) noted the disappearance of unaccompanied asylum seeking minors from their care. It was soon discovered that this was not an isolated case and children were regularly going missing, but under similar circumstances.

The children who went missing were mainly Nigerian, although there were some children alleged to be Sierra Leoneans, Liberians and Chinese. The children, predominantly girls, enter the country as unaccompanied minors, and owing to their age are taken in by West Sussex Social Services, as it is the nearest Social Services to Gatwick airport. Once in care, the children go missing after a varying amount of time, from one day to six months. However, not all the children go missing and some children who are believed to be at risk have been in care for two to three years, but even in these cases they are not safe. There is some evidence that indicates that some of the girls are being prostituted in the UK whilst the boys still in care are made to deal drugs or commit credit card fraud. Those who go missing are thought to be taken to Europe, with northern Italy being a preferred destination. Once there they are forced into prostitution.

This information is based on the testimonies of the children taken in by West Sussex Social Services, and the evidence of one girl rescued after being taken to Italy. What happens to the boys is unknown, as the police investigation only looked at missing Nigerian girls, and the boys do not talk to Social Services about why they have been brought into the UK. With regards to the girls, some know that they will be involved in sexual exploitation, but are unaware of the conditions, however there are some who are duped into leaving their homes thinking they will get good jobs, while others are sent away by desperate parents, who want a better life for their daughter.

As a result of the investigation, West Sussex Social Services have put together an 'at risk profile'. The profile was put together for Immigration to easily spot children who are deemed to be a risk of trafficking and sexual exploitation. For example, the children arriving from Nigeria may have documentation that is not West African, they appear anxious or distressed, want to know where they are or to use the phone. A solicitor or legal representative has often already been informed by a third party and attempts to make contact with Immigration and Social Services very soon after the child's arrival. This profile has been circulated but appears to be underused by Immigration Officials at ports other than Gatwick.

Another similarity between the children is their fear of voodoo. In a majority of the cases, and all the cases from Nigeria, the children have been made to undergo religious rituals before they leave West Africa, which may include taking clippings from the nails, hair cuttings or their blood. These tokens are taken to make a curse. If the child breaks the curse, they and their families will come to harm, or so they believe. Many of the children strongly believe in the curse and therefore submit to the traffickers' demands. In some cases, even the girls that have decided to stay in the UK and evade the traffickers still believe in the curse. The only way the curse can be taken away is by the girl paying back the money she owes the trafficker for her transport, food and other necessities. In many cases, the girls owe about £25,000. If they do 'break' the curse and fail to pay back the traffickers, the threat to their safety and their families becomes a reality. In some cases, the traffickers have visited the relatives of those in care to find out where the children are being kept. If the relatives have refused to give the whereabouts of the child, they have been severely physically assaulted by the trafficker.

The disappearance of children from the Social Services has been investigated by local and national police forces, but the investigation has since been closed down. However, the children continue to go missing. Since 1995, 66 children have gone missing from West Sussex Social Services. The majority of these children have gone missing in the last two years. This problem may affect children in the care of other social services that are near ports of entry.

Although those that remain in care may feel some sense of security, the care workers cannot promise that the girls can stay there. Those that have decided to stay in care have claimed asylum, but their asylum claims have been turned down. There has recently been a case where one girl's appeal has been turned down and the girl is due to be deported.

## **2) Eastern European Children**

The second known trafficking route involves Eastern Europeans. The possibilities of trafficking from this region are well known, and when asked about the nationalities of trafficked victims, those interviewed for the research noted a huge increase in women particularly from Eastern Europe, and especially Albania. Other countries noted were Kosovo, Russia, Lithuania, Romania and Bulgaria. Some respondents also stated that children from China and South-east Asia were also being brought in.

Although it is known that Eastern European children are being trafficked into the UK, there is very little hard evidence. Many working with Eastern European women came into contact with women who maintained that they were over 18 years of age, even though the care worker and/or police believed they were about 16 years old. It is for this reason that primary research is required on this area, as there could be many children being sexually exploited without any services noting their age and specific needs as children. In October 2001 the Metropolitan Police found two 15-year-old Romanians who had been trafficked into prostitution

## **Other Forms of Trafficking**

### **Cultural Placements**

The traditional West African practice of sending a child to a family member for a better education is now being exploited by traffickers. In the UK the practice is called cultural placement – and it is accepted in Africa and in the UK as a mostly positive tradition where children are provided care and education by an extended family member who is able to give the child a better life. However, it is now being exploited as a way to get children into the UK and placed with people who are not family members. There are currently no DNA checks available to prove a family connection.

### **New Trends**

It has become apparent that new trends are emerging.

Children are exploited in prostitution but are also trafficked for other forms of labour exploitation, drug trafficking and benefit fraud.

Recent research indicates that more Vietnamese women and children are entering the UK supposedly to work in 'nail bars' (beauty parlours). This could be a front for prostitution but the

Vietnamese and Chinese communities are very closed and it will require Vietnamese-speaking researchers to work on this issue.

Vietnamese and Chinese boys are trafficked for labour on building sites and in restaurants.

Of the 35 children (under 18) identified in the ECPAT UK research:

- 3 Eastern European;
- 24 African (including 8 Ugandan, 4 Congolese and 4 Nigerian);
- others were Chinese and Vietnamese;
- All African cases were working in domestic service as house slaves;
- All Eastern European children were in prostitution;
- 9 cases out of 35 were under 16 years.

And it is not only in London. Oxfordshire Social Services recently carried out a survey with their social workers. It was found that in the area around Oxford there were at least 21 suspected cases of trafficked children.

### **Summary Points**

- Children are definitely being trafficked into the UK as a destination and as a transit country.
- It is not easy to identify exact numbers. It is often disclosed after the child has been in the country for a few years.
- Children are trafficked from a variety of eastern European and African countries
- Children are trafficked for a variety of purposes.
- Trafficked children are under constant threat of violence and threat – this means they will often lie to protect their families.
- Traffickers use voodoo (juju in West Africa) to manipulate and threaten children.
- Social workers, education, immigration, health and police need to understand more about the techniques used to threaten and traffic children.
- Must work in partnership with other countries to identify ways to protect children from being re-trafficked if they are returned to country of origin.

# **Migration and Trafficking in Migrants on the Border between Haiti and the Dominican Republic**

Emilia Ceolan, Project Co-ordinator in Central America  
MLAL Progetto Mondo

## **1. Introduction**

For the past three and a half years, I have been working for the non-governmental organisation (NGO), MLAL Progetto Mondo, co-ordinating projects in Central America, the Caribbean and Colombia. The situation in Hispaniola, at the northern Dominican-Haitian border, is of particular interest.

When I started my work on the Dominican-Haitian border, more precisely, in Dajabon and surrounding areas, a rural environmental project run by the Confederazione Agricola Campesina (CAUCA) was already in progress. Our presence in Dajabon immediately revealed the relationship between the two countries. Surprisingly, I was asked to “distinguish” the Haitians because they were different, “more black”.

I then learned more about the Haitians’ situation, thanks to information from the Jesuit Refugee Service, the Dominican farmers’ camps, motorbike rides, meetings on the other side of the border and the Solidaridad Fronteriza (Border Solidarity), which was beginning to play a significant role in the defence of human rights on the border.

So from the Dominican Republic, we turned our attention to the border. It is an area of clashes, maltreatment, forced repatriation, exploited and deprived workers, as well as of human rights violations. It was also a possible meeting place, a bringing together, a re-establishment of human rights, and a reinforcement of local organisations, human rights activists, farmers, women, and children. It was the start of alternative economic experiences.

The SIR research centre has initiated important research into the Haitians’ working conditions in the entire area paying particular attention to human rights abuses and slave labour. The research has not yet been concluded, but when complete, it could make an important contribution, not only to our understanding of the situation, but also towards the setting up of appropriate and sustainable initiatives for these frontier people.

## **2. Some Case Studies**

(Image)

Johnny la Guerre, 58 years old, was born in Haiti but when he was young he emigrated to the Dominican Republic where he worked on sugarcane plantations for 40 years and lived in the *bateyes* (shantytowns).

In October 2000, while he was coming home from work, he was arrested by the Dominican Republic immigration police and deported to Haiti. He was not allowed to inform his wife and three children about his deportation. Being poor and not having a telephone, he was not able to contact his wife after his arrival in Haiti. Desperate at not being able to contact his wife, he declared: “I cannot live without her”. He wants to return to the Dominican Republic to be reunited with his family, but without documents he cannot cross the border.



(Image)

This elderly man's son died in April 2001. He was working for very little money on a farmer's property when he was arrested by the Dominican army and imprisoned in a village near the northern border. The police told his wife that he had died of a serious illness but three other prisoners revealed that he had been beaten to death. "We knew that he wasn't ill because his wife used to visit him every day", the father of the deceased told us. He was not even allowed to see his son's body...

(Image)

This is the 5-year-old child of the deceased's son.

(Image)

This young Haitian woman has a very sad story to tell. She had a very tough experience as a domestic worker, which resulted in a pregnancy and her fleeing the house with the help of her future husband. In December 1999, she was deported from the Dominican Republic while she was six months pregnant. The soldiers captured her in a local market and sent her to the border on the back of a lorry. They did not allow her to inform anyone, not even her husband.

Many Haitians live in *bateyes*<sup>1</sup>, which house large numbers of cane cutters and are generally located at the periphery of the sugarcane plantations. Living conditions in the *bateyes* are extremely harsh and people live in abject poverty.

In its Annual Report 1999, the Inter-American Commission for Human Rights criticised the lack of space, hygiene, drinking water and latrines all too common in the *bateyes*. The worst ones are those with a metal roof, known as 'shacks'. These shacks do not have any furniture, only metal camp beds with no mattresses.

(Image)

These are the hands of a 62-year-old Haitian who has worked all his life cutting sugar cane in the Dominican Republic. The cane cutters in this region near Barahona in the south-east, earn from 40 to 120 pesos per day, which is approximately US\$1.25 - 4.

### 3. Background

The Dominican Republic and Haiti share the island of Hispaniola and have never been good neighbours. With a history marked by mutual antagonism and conflict, the two countries have always feared each other.

Many Dominicans are scared of the overwhelming poverty of Haiti and its inefficient political system. They believe that their country has borne the brunt of the Haitian exodus; recent research shows that 75 per cent of Dominicans support the repatriation of Haitians, while only 5 per cent believe them to be of some use to the country. They do not take into account that agriculture, and in recent times, the construction industry are heavily dependent on Haitian labour. The very survival of the sugar industry, the second largest source of export revenue (after mining), depends upon thousands of Haitian cane cutters who work for very little money in terrible conditions.

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<sup>1</sup> *Bateye* is the *Taino* word to define the squares in which ball games, social and ceremonial activities were conducted.

With almost the same numbers of inhabitants, Haiti has only half the territory of its bigger neighbour. The linguistic, cultural and racial differences perceived by the population became fixed during the colonial era when the Dominican Republic was colonised by the Spanish and Haiti by the French. The Haitians speak Creole and descend from African slaves, while the Dominicans, who are also of African descent, speak Spanish and many claim to descend from the Spanish or French.

There are no reliable figures on the number of Haitians and Dominican-Haitians currently living in the Dominican Republic. This is a controversial issue. The Inter-American Commission, quoting sources from the Dominican Migration Authority, claims that in 1999 there were between 500,000 to 700,000 people of Haitian origin living in the Dominican Republic. The chief of the Dominican Republic army quotes higher figures: “a million, more or less” was his estimate. It is likely that at least half of these, or maybe more, were born in the Dominican Republic. Of those born in Haiti, only a small number are legally residing in the country with a visa or a work permit.

### **3.1 Sugar Production, Haitian Workers and Economic Development**

Sugar production on an industrial scale in the Dominican Republic started to develop in 1870. From 1880, the industry employed a substantial number of seasonal migrant labourers initially from the Lower Antilles islands then subsequently from Haiti. The Haitian migrants lived in *bateyes* belonging to the sugar companies located near the plantations. From 1952 Haiti and the Dominican Republic set up a series of bilateral agreements to guarantee the presence of seasonal Haitian cane cutters in the Dominican plantations. The Dominican Government created the Consejo Estatal de Azucar (CEA) to run the sugar processing equipment and to contract Haitian labour. The CEA’s role consisted in recruiting enough cane cutters for each harvest, by force if necessary. At the same time, however, with an apparently schizophrenic policy towards Haitians, the Dominican authorities started carrying out mass deportations. Even though the profitability of the sugar industry has recently diminished considerably, Haitian workers continue to make a crucial contribution to the country’s prosperity, particularly in the agricultural and construction sectors.

The Dominican economy, in contrast to that of Haiti, has grown considerably in recent years. Sugar continues to be one of the country’s main exports despite tourism and tax-free zones having also significantly increased their revenues.

Haiti, on the other hand, continues to be the poorest country in the Western Hemisphere and one of the poorest countries in the world. Because of the terrible economic conditions and political instability, it is no wonder that many Haitians flock to the Dominican Republic in the hope of a better life.

### **3.2 Racial Prejudice and Anti-Haitism**

Racial prejudice is deep-rooted in the Dominican Republic. After independence, the nationalists started establishing an independent Dominican Republic, largely determined by the perceived Haitian threat. Dominican nationalists have self-defined themselves as ‘Spanish’ and the Haitians as ‘blacks’; a distinction based on prejudice that ignores the racial diversity present in their own country and seeks to emphasise the racial and cultural distance between themselves and the Haitians.

General Rafael Trujillo fully adopted this prejudice and made absolutely clear that he considered Haitians inferior. In 1937, with a brutal abuse of power, he ordered the massacre of all Haitians found outside the sugar plantations. The estimated number of casualties varies, but there were undoubtedly many thousands.

The river that flows along the northern border is called 'Massacre' and is sadly still infamous today because of the number of Haitian workers who are thrown into it after having been robbed of their meagre earnings.

Joaquin Balanguer, who became president after Trujillo's dictatorship, continued the racist attacks and defined the Haitians as 'lazy', 'idle by nature', 'people who make no effort unless forced to, in order to survive'.

Even today, expressions of anti-Haitian sentiment are commonplace at all levels of Dominican society. The arrival of Haitian migrants has in fact become a cause of resentment among the people and is viewed as a threat to national sovereignty.

Those who sympathise with the terrible plight of the Haitians are labelled anti-Dominican. Many Dominicans think that all black people are Haitian or have Haitian blood, risking the same resentment.

Forced repatriation still takes place today, in fact, the socio-political context of the Dominican elections of the past ten years has been dominated by strong anti-Haitian sentiment. Even the current president won the elections by promising mass repatriation.

On an official level, the Dominican Republic denies the existence of the problem even going as far as informing UN Committee for the Elimination of Racial Discrimination that "racial prejudice does not exist in the Dominican Republic".

## **4. Some Situations and Some Data**

### **4.1 Sugarcane Cutters**

Each year thousands of Haitians are employed by the CEA to cut sugarcane during harvesting period. The conditions in which the workers live and the maltreatment they are subjected to have given rise to numerous complaints. International interest has gone beyond concern for purely working conditions to denouncing the police and the military's participation in the recruitment of workers and the existence of abusive practices in the CEA before and after the harvesting period. Haitian workers are cheap because of economic and market conditions in their country, and exploitation is tolerated due to the lack of an alternative to a life of misery.

Historically the claims of abuses by the authorities range from murder to maltreatment, from mass expulsions to flagrant exploitation, from deplorable living conditions to the failure to acknowledge workers' rights.

These days it is not just the sugarcane workers who are affected, but coffee, rice and cocoa plantation workers too. In addition to agriculture, Haitians have now entered into domestic service

and urban sectors. Haitian participation in the construction industry has also increased in recent years.

The regime of forced child labour in CEA plantations is highlighted in particular. The Dominican Republic's response to these claims was the forced repatriation of children under the age of 16 and the elderly over 60.

#### **4.2 Expulsions and Mass Deportations**

As previously mentioned, schizophrenic mass expulsions and deportations continue to be carried out. Expulsions concerned and continue to concern mainly Haitians, but also Dominicans of Haitian origin. In the first months of 1997 alone, it is claimed that the Government deported approximately 25,000 Haitians. The deportations are still continuing, even if in smaller numbers. The violent and rapid manner in which they were and are carried out prevents the migrant workers from taking their few possessions and collecting their wages. Indeed, some companies take advantage of the deportations as a way of not paying the salaries owed.

The deportees are imprisoned and receive little or no food, and in some cases they are beaten by the Dominican authorities. At no time are they allowed to inform their families. There have been reports of children being snatched from their homes while their parents were at work and of wives taken while their husbands were out, causing families to split up and children to suffer in particular.

There have been reports of cases in which the police and the army carried out raids destroying the workers' identity documents and then forcing them to repatriate. In many cases, these workers were born in the Dominican Republic.

The Government justifies the expulsions on the basis of its migration law, which it claims would not be respected by Haitian workers. However, the law provides that the deportee be given a hearing and a chance to defend him/herself. Furthermore, the law sets out that no foreigner can be expelled without previously being given the reasons for this action and the possibility to challenge it.

#### **4.3 Living and Working Conditions**

Haitian workers on sugarcane plantations continue to suffer restrictions to their freedom of movement. These include the presence of armed guards on the plantations to prevent the workers from escaping. The CEA keeps a register of all Haitians employed and in some cases gives them identity cards covering only the harvesting period. Once this time elapses, the person automatically becomes an illegal migrant and must move on. The work contracts are drawn up in Spanish and Creole but this does not guarantee that the workers understand what it is they are agreeing to, as most of them are illiterate. In some places, the workers are not paid in cash but are given *vales* (vouchers) that can only be redeemed in the company's own stores. Wages were and are very low. The remuneration for any rural labourer was approximately US\$3-4 (it is worse these days because the price of sugar has dropped substantially) for every tonne of sugarcane cut. The total depended on the ability of the worker and on the scales used to weigh it.

Living conditions were no better; the shacks in the *bateyes* were rent-free but inadequate with no electricity or sanitation. The lack of space, hygiene, drinking water and toilets constitute a serious

problem. These conditions encourage illness such as diarrhoea, malaria and tuberculosis. Medical dispensaries didn't and still don't exist and the majority of children do not go to school but instead help their parents eke out a miserable subsistence. This creates a vicious cycle in which a future of misery is unavoidable.

#### **4.4 State of Permanent Illegality**

Migration authorities state that out of 500,000 to 700,000 Haitians in the Dominican territory, only five per cent have identity documents. One of the main problems is that Haitians live in a state of permanent illegality.

Criminal gangs have formed around the border area taking advantage of Haitians by extorting the little money they have with promises of jobs. Recently here in Dajabon, the Dominican authorities have dismantled an operation that had been falsifying passports and identity cards for hundreds of people.

A large number of Haitians have been living in the Dominican Republic for twenty or thirty years without ever obtaining legal status. The majority of Haitians enter the Dominican Republic without documents to prove their identity and are not registered with the Haitian Embassy or Consulate. Although they are not recognised as citizens or residents of the Dominican Republic, after many years they and their children have lost contact with Haiti.

Their illegal status is passed onto their children, even if the children are born in the Dominican Republic. The children do not possess documents because their parents do not possess them. It is practically impossible to obtain identity documents because the officials at the hospitals or in the registration offices refuse to supply birth certificates and the relevant authorities also refuse to enter them onto the civil register.

This situation should be analysed in light of Article 11 of the Dominican Republic's constitution which sanctions the principle of the right to claim nationality from the country of birth which declares that: 'Dominicans are all those who are born on Dominican soil with the exception of the legitimate children of foreign residents in the country as diplomatic representatives or in transit'.

#### **4.5 Trafficking of Undocumented People**

Human trafficking on the Dominican-Haitian border continues to be a profitable illegal activity for those involved. On a daily basis, it is commonplace to see car and bus drivers taking part in this activity.

The Haitians are recruited in Haiti by networks of Dominicans and Haitians. Usually it is the Haitians who make the first contact, then other members of the network take over. They hide the people at strategic points along the border and in the early hours of the morning, they are taken across the border via less used, secondary roads. It is not unusual for accidents to happen during these crossings, as army or police chases each month result in many injuries or deaths.

Usually people pay between 1,500 to 2,000 pesos just to be taken to a safer place from which to continue the journey without being stopped by the military. If they are caught by the army, they are

taken to the prison in Dajabon known as the *Fortaleza* (Fortress), where they are locked up with common criminals.

If they are stopped far from Dajabon, they are not given any food during transportation to the city. Haitians have no opportunity of defending themselves and if their money and their belongings are taken from them, they are never returned.

#### **4.6 Child Trafficking**

UNICEF reports that each year 2,500 Haitian children are sent to the Dominican Republic to work as beggars or cheap labour, often with the complicity of their parents and the Dominican military. The children are taken into the country by traffickers and made to work as shoe-shine boys, agricultural workers, domestic workers, construction workers or simply beggars.

On many occasions, however, the children are taken into the Dominican Republic without their parents' consent. Unfortunately, however, these crossings are often organised 'by common agreement' between the other family members and the traffickers who demand payment in advance as well as a portion of the child's earnings. The person organising the crossing receives between 300 and 400 Haitian dollars (US\$60-80) for getting somebody across the border into the Dominican Republic.

The research document entitled *Child Trafficking of Haitian Children into the Dominican Republic* commissioned by UNICEF and International Organization for Migration (IOM) explains that traffickers usually take charge and 'manage' the money the children earn for the period that they are in the Dominican Republic, which ranges from one to five months. According to the report, children under five are exploited as beggars in urban areas in exchange for some food. They do not get to keep any of the money they earn. Children who work in agriculture earn from 400 to 800 Dominican pesos (US\$23 - 45) a month, and children from 12 to 17 years old who work in construction can earn about 1,000 pesos (US\$55).

The research claims that in the Haitian areas where field research was carried out, there were 15 to 20 people living on profits made from child trafficking and in the three northern provinces of Haiti, there were 35 well-known traffickers.

### **5. Conclusions and Expectations**

#### **5.1 The International Response**

The Dominican Republic has been the object of intense international criticism for the way in which it treats Haitians and Dominicans of Haitian descent. Various intergovernmental organisations, such as the UN Committee for Human Rights, the Inter-American Committee for Human Rights and the UN Committee for the Rights of the Child, have all expressed concern regarding the maltreatment of the Haitian population. Their analysis of the situation is based on continuous work carried out by Haitian and Dominican human rights groups. The Dominican authorities' reaction to this criticism has often been defiant and at times overtly hostile.

Belaguer viewed this international concern as a "campaign of threat towards his country". His successors, while appearing more open-minded, have often responded with intransigence branding

the criticism partial and unfair. A typical example of this tendency is the fairly recent report presented by the Dominican Republic to the Committee for the Elimination of Racial Discrimination. It states: 'The accusation that the country suffers from racial prejudice completely lacks foundation... it is a pretext for the survival of national and international NGOs...'

Some current tendencies show a certain amount of optimism. For example, in 2001 Ippolito Majia's Government reached an agreement with the Inter-American Commission to resolve the case against two children who had been denied Dominican citizenship.

## **5.2 Our Response in Co-operation**

I do not wish to conclude without incorporating an element of hope for the future. I also do not wish to get into the analysis put forward by the human rights and the Haiti and Dominican Republic Solidarity NGOs, although I am aware that they are numerous and active. I do not know them well enough to be able to make a full analysis but I can, however, attempt to examine our choice of partners.

Our presence in the Dominican Republic from the 1980s saw us directly involved with the Centro Juan Montalvo and Ciudad Alternativa (Alternative City). This environmental project was marked by strong popular participation and organisation in the marginal areas of Santo Domingo.

This enabled us to come into contact with Haitians already living in the Dominican Republic, and recent migrants and children (Haitian and Dominican) without papers. This also allowed us to experience first-hand the difficult cultural relations between the two countries. We were simultaneously carrying out an agricultural project in Las Vegas, but it was in the 1990s that saw us move to the border to work on agro-environmental development. In the meantime, CAUCA had acquired methodologies and techniques for soil recuperation, organic agricultural production, organisation and marketing, and is currently in a position to offer its support to various Haitian communities.

However, it is human rights that keep us on the border: Cruzando Fronteras (Crossing Borders) is a pilot project promoting human rights in the northern territories of the Dominican-Haitian border.

Knowledge of the social and economic fabric acquired during our previous project and the contacts established with our local counterparts have enabled MLAL to become an active part of the process of defining a new approach to the problems at the border, placing particular emphasis on the concept of dual nationality and exchange at the trans-border level.

The existing economic and political situation in Haiti and the resulting loss of hope for eventual structural changes are forcing many to seek personal or domestic solutions on the Dominican side of the border. In an effort to seek better living conditions, people will emigrate despite the physical, legal or military barriers at the border. This irregularity is intensifying social relegation and labour exploitation, which affect Haitian migrants and their families. They live in fear of being discovered, detained, repatriated and deported, and fall victim to extortion. This situation also favours human trafficking aimed at obtaining cheap labour for the sugarcane plantations and construction industry. This situation and its consequences are being used as a political strategy in an attempt to contain the migration flow and are the basis for the criminalisation of irregular migration. The situation has allowed the Dominican Republic to set up highly repressive control mechanisms, such as strong military presence at the border and tight collaboration between

immigration offices and the army. These mechanisms have resulted in raids and deportations in cities, *bateyes*, etc.

In an attempt to defend and promote human rights, civil society organisations around the border area have attempted to develop a response to this situation. Concerted efforts by civil society organisations on both sides of the border put pressure on the Government and on public opinion in order to contain State action and social reaction to the migration issue. By means of monitoring, information gathering and complaints, the network proposes to monitor the conduct of the military, the police and the judiciary to ensure that they conform to the laws and fundamental principles of human rights.



# **Reflection Period for Vulnerable Victims of Trafficking in Persons**

Presented by Carmelo Garcia, General Secretary  
IEPALA

Several institutions and organisations that deal directly or indirectly with victims of trafficking in persons held a meeting at the Spanish Ministry of the Interior on 14 December 2004 with the aim of promoting protection for “Victims of trafficking in persons”.

This document summarises the conclusions and recommendations that arose from the discussions.

## **I. Director for Home Affairs Speech**

The general objective of the fight against trafficking in persons is based on:

- a) Prevention;
- b) Protection of victims;
- c) Prosecution of traffickers.

These objectives are to be achieved through specific actions, such as:

- a) Adopting precise action in the legal, political and social areas, with particular emphasis on victims;
- b) Real long-term integration of victims;
- c) Strengthening the level of co-operation between all agencies concerned.

The ideal framework should take into account the legal framework that is at present being analysed in order to incorporate into national legislation all the directives on asylum adopted by the European Union (EU).

## **II. Main Expectations of the Participants**

- To create a communications network;
- To identify and offer adequate and effective protection;
- To exchange information;
- Greater social and political awareness of these crimes (there is a clear lack of awareness in comparison to other types of illegal trafficking such as weapons, drugs, etc.);
- To try to set up co-ordination mechanisms;
- To establish a committee or working group with one or two attainable objectives;
- To have a strong commitment to protect the victims;
- To remember to refer to minors as victims of trafficking;
- Possibility of introducing legal reforms.

### III. Recommendations by the Participants

The report prepared by the Congress and Senate Joint Committee on trafficking in persons must be taken into account.

A. Setting up of a working group to discuss the possibility of creating an action plan to fight against trafficking in persons.

- To include the whole network of agencies that work on the subject;
- To make links with the Action Plan on Sexual Exploitation of Children;
- To get information on action plans in other countries such as Germany, Belgium and East European countries.

B. Specific meetings on possible objectives of an action plan with the following objectives:

B.1. Collection of data and analysis of the situation of trafficking in persons

There is little information available on the subject at the level of protagonists, co-ordination, who the victims are, identification of same, their needs, what happens to them after they make an official complaint and co-operate with the authorities, more precise statistics on the number of victims, their nationality, etc. We need to exchange information in a co-ordinated and regular way.

Specific aspects:

- Collection and processing of fragmented data: number of victims in general and of liberated ones. Improving the register of cases kept by police and NGOs;
- Analysis of the different types of trafficking: sexual exploitation, forced labour (in domestic work, agriculture, and industry), similarities, differences, identification and visibility of the different types of victims:  
Example: anti-trafficking situations,  
Example: post-trafficking situations;
- Analysis of motivations, causes of vulnerability in the victims, and especially fear of reprisals, in order to identify the respective needs;
- Analysis of trafficking networks: their trans-national character, “political” links, traffickers, clients; and
- Analysis of the heterogeneity of situations, resources, capabilities, needs of the different victims, special problems of minors, female Nigerians, etc.

B.2. Improvements in the law and its application or interpretation

The ideal framework is the adoption of the European Directive before June 2006 and in matters regarding asylum, the adoption of those same Directives before 2006-7, bearing in mind that the Council of Europe Convention on Trafficking is expected to be signed in the summer of 2005.

Specific aspects:

- Law on Witness Protection: immunity for victims from charges of illegal immigration, illegal work, prostitution, etc.;
- Immigration Law (*Ley de extranjería*): repeated references were made to the practical limitations in applying Article 59 of the Immigration Law which foresees the possibility of amnesty for victims of trafficking who have co-operated with the police authorities. Due to its limitations, it requires that the victim provide information that actually leads to the break up of a trafficking network. In this context the ombudsman stated that a recommendation had been made to the Secretary of State that the application of the said Article should be relaxed in order to encourage victims to inform and co-operate with the authorities;
- Legislation on children: how it can affect the victims;
- Legislation on victims of violent crimes: cases of victims from other crimes (such as terrorism) should be examined in order to compare assistance given;
- Asylum Law: acknowledgment of refugee status or humanitarian-subsiary protection.
- Improving the drafting and specialisation of the asylum law: progress made in matters regarding gender discrimination;
- Act of August 2004 on compensation to those taking part in international peace and security operations: protection of victims of those troops;
- Legislation to protect against gender related violence: impact of the new law;
- Sanctioning measures in the penal code;
- Finding new ways to facilitate recognising victims of trafficking in persons by social services and/or governments; and
- Protection of the families of victims.

### B.3. Improvements in assistance to and protection of victims

Assistance and protection must not be necessarily linked to the level of co-operation by victims in breaking up trafficking networks. While this is valid in order to obtain certain types of protection, it should not be extended to all types of protection and assistance.

Specific aspects:

- Creating adequate protocols for referring victims to the police and NGOs;
- Legal assistance: improving access to information, better legal literature, information leaflets, resources, witness protection, information on possible statutes on immigration, asylum, etc.;
- Detecting problems in the network of shelters in order to improve habitation, education, health, access to the workplace, medical and psychological treatment, support with integration and with repatriation, seeing different needs of victims, cultural aspects and what they expect from the network, for example Nigerian women;
- Specific measures for minors: age issues, permits, shelter network, unaccompanied minors, etc.;
- Co-ordinating action with the National Action Plan against Sexual Exploitation of Children and heightening public awareness of trafficking of children and adults for forced labour or services;

- From the point of view of asylum, to discuss and inform when the time comes about the directives being drafted at present by ACNUR on the recognition of refugee status for victims of trafficking in persons. Similarly to introduce training recognising victims as refugees; and
- To improve mechanisms for the co-ordination between institutions, organisations and authorities.

#### B.4. Fight against impunity, reparation for victims

Specific aspects:

- Compensation, restitution, rehabilitation, resettlements;
- Analysis of sentencing penalties;
- Making provision for victims;
- Accessing information on compensation rights;
- Problem with deporting traffickers when sentences are below six years; and
- Co-ordination between the Office for Refugees and Asylum Seekers, and the Police/Civil Guard in order to detect or to guide victims in need of international protection.

#### B.5. Training of agencies involved

Training of personnel who are first to come into contact with victims and other qualified personnel who give assistance (police, judges, lawyers, asylum authorities, NGOs and troops in peace missions). The possibility of obtaining funds from the European Commission to fund training programmes for police, civil guard, NGOs, etc. was mentioned.

Best practice documents should be taken into consideration, for example OSCE documents, Anti-Slavery International's training manuals and workshop modules.

#### B.6. Awareness and information

Among others: public opinion, specific sectors (education, health services, etc.), and potential clients. Preparation of an information leaflet for victims so that they know where they can go, what expectations there are, alternatives, etc. This leaflet may or may not be included with the one that will be designed to comply with European directives.

#### B.7. Repatriation and voluntary return

Due consideration should be given to the risk factor in returning victims who do not find a place in any of the protection networks available in Spain. Voluntary return must be decided after having access to complete information about opportunities for protection and assistance in Spain and information about the situation of trafficking victims who have returned to their country of origin.

Specific aspects:

- Safe voluntary return;
- Travel safety;

- Possibilities for reintegration and available programmes; and
- Protection of relatives.

#### **IV. Tasks Outstanding**

- Putting together a working group to include participants in the study day and others who were not present. The next meeting will take place in February 2005 and the role of the group will be defined there. As well as this working group, another one will be started to prepare draft agendas and meetings of the general group and the working group.
- The Hope Project will circulate the report prepared by the Congress and Senate Joint Committee before 31 January 2005.
- Amnesty International will make available documentation relevant to the discussions on that subject within Europe as well as in the Congress and Senate Joint Committee. The aim is to analyse this documentation in order to co-ordinate with the organisations involved and to identify ideas and action plans that can be borrowed from them. This documentation should be made available before 31 January 2005.

Anne Gallagher will design a simple questionnaire to develop an inventory of resources. She will prepare a list of documents/reports on trafficking in persons in Spain and a short bibliography of documents and Internet sites that are relevant to trafficking in persons.

## **Actions Taken Regarding Trafficking of Human Beings in the UK**

Norma Muico, Education Officer  
Anti-Slavery International

### **What is Trafficking?**

Traffickers use violence, coercion and deception in order to move people away from their homes and then exploit their labour or services. The internationally recognised definition of trafficking entered into force in 2003, which makes clear that trafficking is not limited to sexual exploitation and also takes place for other forms of labour exploitation. This means that people who migrate for work in areas like agriculture, catering, construction or domestic work, but then find themselves coerced into working in conditions they did not agree to, are also trafficked persons.

### **Scale of the Problem**

Trafficking in people is a global problem that affects countries and families on every continent. In the 2005 Global Report, the International Labour Organization (ILO) estimates that more than 2.4 million people have been trafficked worldwide. An earlier 2000 ILO study estimated that 1.2 million children had been trafficked for labour or sexual exploitation internationally. However it should be stressed that, due to the clandestine nature of trafficking, all statistics relating to trafficking are estimates.

West Sussex Social Services, where Gatwick airport is located, were the first to identify that unaccompanied asylum seeking children were being trafficked to the UK. Trafficked girls were told to apply for asylum at the port and were then referred to Social Services by immigration officers. They subsequently disappeared from social services' care when the traffickers made contact with them. Most of the children would have been taken onto other EU destinations, like Italy, where they were likely to have been forced into prostitution.

West Sussex profiled children at risk of being trafficked; recorded statistics on trafficked children; and put in place a protocol for co-operation with immigration, the police and non-governmental agencies. Through these systems they identified that, since 1995, more than 70 children who were profiled as trafficked had gone missing from West Sussex Social Services. It is highly unlikely that West Sussex is an isolated example and where trafficked children are brought in with adults who claim to be relatives, it will be much harder to identify them.

*Cause for Concern? London Social Services and Child Trafficking* (2004), the most recent research conducted by a London-based NGO, ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) UK, documents the details of 35 cases of child trafficking in 17 London boroughs. Most of these children were trafficked for domestic work or for prostitution, but there were cases of trafficking for benefit fraud, restaurant work and involvement in illegal activities. While many boroughs could not provide details of cases, 32 out of the 33 boroughs in London were concerned that they had a problem with trafficked children.

In relation to adults, research carried out by Kelly and Regan for the Home Office (Police Research Series Paper 125, 2000) estimated that up to 1,420 women are trafficked into prostitution in the UK each year. Since this study was completed it is widely acknowledged that the problem of human trafficking has increased significantly.

Between 1999 and 2002, the Vice and Clubs Unit in London prosecuted 18 cases (mostly for living off immoral earning) involving some 125 women who they believed were trafficked.

Between March 2003 and March 2004, the POPPY Project, which was set up to assist people trafficked into prostitution, had 114 referrals and 46 women were given full access to the project (see below of more details on the project).

Between 2001 and July 2003, 49% of domestic workers (511 people) registered with the NGO Kalayaan had their documents taken by their employers. No statistics are available for agricultural labourers, catering, building, packing and processing.

## **Responding to the Problem**

### **Prosecution of Traffickers**

In July 2002, the EU Council Framework Decision on combating trafficking in human beings was adopted. This required all EU member states to bring their domestic legislation in line with the Framework Decision by 1 August 2004, which includes establishing minimum penalties for trafficking for both labour and sexual exploitation.

The UK introduced an offence of trafficking for sexual exploitation in the Sexual Offences Act 2003. It has also introduced a separate offence in the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, which covers trafficking for all forms of labour exploitation. Exploitation is defined as: slavery or forced labour; use of threats, force or deception to obtain a service; or a request or inducement to get someone to undertake an activity that someone who wasn't young, disabled or a family member would be likely to refuse.

These trafficking offences came into force on 1 May 2004 and 1 December 2004 respectively, and both carry a maximum penalty of 14 years in prison. The first successful prosecutions using the trafficking for sexual exploitation offence took place in December 2004 when two Albanians were sentenced to 18 years and nine years respectively (for trafficking people for sexual exploitation and two counts of false imprisonment).

Legislation that prohibits trafficking for all forms of exploitation and which makes the punishment commensurate with the crime is a necessary first step. However, trafficking should not be looked at simply as a law and order issue or a problem of organised crime. Trafficking is a human rights violation and the rights and welfare of the trafficked person must be at the heart of any counter-trafficking strategy.

### **Protection and Support**

The EU Framework Decision on trafficking does not contain minimum standards relating to the treatment and protection of victims of trafficking. The UN Protocol on trafficking does outline various measures, which should be made available to support and protect victims of trafficking, but States ratifying the Protocol are not obliged to implement these measures.

These minimum standards should include a properly funded specialised agency or agencies to provide support and assistance to victims of trafficking, including: appropriate accommodation; information in a language they can understand; medical/psychological assistance; legal assistance; and training opportunities.

Anti-Slavery International also believes that trafficked people should have access to a reflection period (a temporary stay of deportation) so that they can be referred to this type of agency. During this time they would have the opportunity to recover from their traumatic experiences, receive advice and support, and make an informed decision on whether to co-operate in a prosecution. The Netherlands currently operates a three-month reflection period for victims of trafficking.

Without the reflection period, victims will face immediate deportation. This is not in the interests of the victim, who may well be re-trafficked, or the police who will lose the opportunity to gather valuable information and possible witness testimony, which would help them combat trafficking in the long term.

Without a reflection period, it will also be impossible to evaluate whether a victim's life is in danger or whether they may be subjected to rape, torture or some other form of punishment if deported. This is frequently the case for trafficked people and may occur because the victim is re-trafficked or because the traffickers punish the individual. The punishment may take place because the traffickers think the victim has co-operated with the authorities; as a warning to others; as a punishment for getting caught; or for not paying back the money they allegedly owe.

Whenever there is a reasonable likelihood that a trafficked person will be subjected to re-trafficking or other serious harm, they should be granted temporary or permanent leave to remain in the UK, irrespective of whether they are co-operating in a prosecution. Officials in Italy say their system (under Article 18), where residency permits are granted on the basis of risk and not conditional on co-operation in a prosecution, has assisted in securing prosecutions. In the five years to June 2001, over 7,500 individuals were investigated, charged or sentenced for trafficking related offences, involving some 2,750 victims.

### **Assistance Available in the UK**

The POPPY Accommodation and Support Service, is run by Eaves Housing for Women and funded by the Home Office (currently until September 2005). The project provides housing and a range of support services to up to 25 women who have been trafficked for prostitution, providing they fulfil the following Home Office criteria:

- that she was brought to the UK;
- that she was working as a prostitute in the last 30 days (in the UK);
- that she has been forcibly exploited;
- that she has come forward to the authorities; or
- that she is willing to consider assisting the authorities later during her time on the scheme.

Procedures for providing trafficked people with long-term protection do not seem to be working effectively. None of the trafficked people assisted by the POPPY project who have been given a



final decision were granted refugee status or humanitarian protection on their initial application, but six of the 11 who have had final decisions obtained protection on appeal.

National Missing Persons Helpline run a 24-hour freephone, Runaway Helpline (with interpreters), for anyone away from his or her home or home country. Advice line workers are trained to assist trafficked people.

The International Organization for Migration (IOM) in London also has a programme, Assisted Voluntary Return for Irregular Migrants, for those who wish to return home and want assistance.

## **Other EU Standards to Protect and Support Trafficked Persons**

### **The EU Council Directive on Short Term Permits (2004/81/EC)**

On 29 April 2004, the *EU Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration who co-operate with the competent authorities*, entered into force. The Directive sets out the criteria for issuing a residence permit to victims of trafficking, which includes that they have shown a clear intention to co-operate with the authorities.

The Directive also stipulates that trafficked people should be informed of “the possibility of obtaining this residence permit and be given a period in which to reflect on their position. This should help put them in a position to reach a well-informed decision as to whether or not to co-operate with the competent authorities”. Member States will provide trafficked people with subsistence, access to emergency medical treatment and attend to the special needs of the most vulnerable during a reflection period. Where a government considers that a trafficked person does meet the criteria for a residence permit, then this will be issued for at least six months. Residence permit holders should be authorised to access the labour market, vocational training and education according to rules set out by national governments.

All EU states are obliged to bring their national law into line with the Directive before 6 August 2006. However, the UK has an “opt out” from this type of EU legislation and has declined to sign up to this Directive.

### **The Council of Europe Convention on Trafficking**

On 3 May 2005, the Council of Europe agreed on the first international law, which specifically protects trafficked people’s rights. The *European Convention on Action Against Trafficking in Human Beings* provides all trafficked people with guaranteed minimum standards of protection, whether trafficked into sexual exploitation or forced labour. This includes at least 30 days to remain in the country to receive emergency medical assistance, safe housing and legal advice. The Convention was opened for signature and ratification two weeks later. To date, of the Council’s 46 members, 15 governments, including Austria, Italy, Portugal and Moldova, have signed. Spain, France and the United Kingdom are among those that have not.

## **Prevention**

Prosecution and protection measures do not deal with the root causes of trafficking. If trafficking in people is to be tackled effectively in the long term, then governments will also need to address the issues which encourage or compel people to leave their homes and family in order to search for employment opportunities elsewhere. Poverty, discrimination, corruption, and growing inequalities both within and between countries increase people's vulnerability to trafficking and must be addressed. Increasing the opportunities for regular migration and ensuring that there is proper protection from exploitation for these migrant workers would also reduce trafficking, as it would negate the need for migrants to go to people who then turn out to be traffickers.

# **Trafficking of Persons to Europe: the Perspective of Nigeria as a Sending Country**

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## **Definition**

Section 50 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 of Nigeria defines trafficking as including:

“...all acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in force or bonded labour, or in slavery-like conditions.”

The above definition is drawn largely from the definition in Article 3 of the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children*. But the Nigerian definition is unique in the sense that it also envisages attempted acts involved in human trafficking and captures the situation of human trafficking within Nigeria's borders.

## **Background**

Nigeria has a population of over 139 million persons. A high rate of unemployment, poverty and civil and political unrest are some major internal factors responsible for a high trend of migration and thereby human trafficking. Other factors are discrimination against women, high levels of illiteracy, adventure, family instability, fallen value system and inadequate laws and policies against human trafficking. The major external factor that has fuelled the trend is the high demand for cheap/submissive labour especially in the informal sectors in the destination countries.

Nigerians migrate to other countries in West Africa, Europe and the Middle East in search of better opportunities and human trafficking from Nigeria follows basically the same routes.

Within Africa, Nigeria is the largest single source of trafficked women to Europe and Asia. The *Trafficking in Persons Report* of the US State Department, July 2001 identified Nigeria as a source, transit and destination country for trafficked persons. The victims of human trafficking are men, women and children.

## **Forms of Trafficking in Nigeria (International and Intranational trafficking)**

International trafficking is the trafficking of persons from Nigeria to other countries. The most notorious purpose of international trafficking is for prostitution. Others include:

- Domestic work/child minding or babysitting;
- Farm labour/sweatshop labour;
- Armed conflict/child soldiers;

- Drug couriers;
- Criminal activities (armed robbery, gangsters);
- Street hawking;
- Begging;
- Mining.

Most of the victims of international trafficking are from Edo, Delta, Kwara, Kano and Kaduna states. The major destinations are Italy, Spain, Gabon, Saudi Arabia, Burkina Faso, Togo, Cameroon, Ghana, Guinea, Morocco, Niger Republic, Mali, Libya, UK, Netherlands, Belgium, Republic of Benin, and South Africa.

Intranational trafficking is the movement of persons from one place to another (mostly from rural to urban) within the country. The victims of this form of trafficking are mostly children. The purposes of this kind of trafficking include:

- Domestic work/child minding or baby sitting;
- Farm labour/sweat shop labour;
- Street hawking;
- Begging;
- Mining;
- Organ removal.

Most people trafficked internally are from Cross-Rivers, Akwa-Ibom, Benue, Ebonyi, Kwara, Bayelsa, Imo and Anambra States, Shaki in Oyo State, border villages in Ogun State and are trafficked to the urban or city centres such as Lagos, Kano, Port Harcourt, Ibadan and Kaduna.

Nigeria also receives trafficked persons from surrounding countries that include Benin, Togo and Niger.

### **Some Measures in Place in Nigeria to Combat the Trend**

#### **Legislation:**

Prior to the enactment of the Anti-trafficking Law there were relevant provisions concerning human trafficking scattered in various legislations namely:

- The Criminal Code (sections 222A, 223, 224, 225A, 227, 365, 366, and 369);
- The Penal Code (sections 271, 272, 275, 277, 278, 270, 280, and 281);
- The 1999 Constitution (sections 34, 35, and 41);
- The Child Rights Act of 2003 (sections 25-34) which criminalises exploitative child labour and other forms of child abuses hitherto left unpunished by the criminal codes;
- The Labour Act (CAP 198) Laws of the Federation of Nigeria which has clear provisions (sections 59, 60, 61, 62, and 63) prohibiting the involvement of young persons for forced labour, recruitment of persons to work abroad, guidelines for recruitment agencies and

employers of labour. The Act in section 73 prohibits forced labour and punishes the act with a fine of ₦1, 000 or imprisonment for a maximum of two years or both. The Act is currently undergoing review.

- The Edo State law Against Human Trafficking amending sections 222A, 223, 225 and 225A of the Criminal Code.

In 2003 the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act was signed into law. The Law contains far-reaching provisions on trafficking and establishes the National Agency for the Prohibition of Trafficking in Persons and Other Related Matters (NAPTIP).

NAPTIP has the responsibility to enforce laws against trafficking in persons, investigate and prosecute persons suspected to be engaged in traffic in persons, take charge and co-ordinate the rehabilitation and counselling of trafficked persons, and other related matters.

Some international conventions with provisions against trafficking in persons, which are applicable in Nigeria are:

- *UN Convention against Transnational and Organized Crime and the supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* adopted in October 2000;
- UN Slavery Convention 1926;
- *Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others* 1949;
- ILO Worst Forms of Child Labour Convention 1999 (Convention 182);
- ILO Convention on Forced or Compulsory Labour 1930 (Convention 29).

At the sub-regional level, ECOWAS Foreign Affairs Ministers adopted in December 2001 in Senegal a Political Declaration and Action Plan against Human Trafficking which commits their respective government to, as a matter of urgency amongst other acts, ratify and fully implement the International Instruments, training of law enforcement agents, mount joint cross border patrols, set up national task forces, set up direct communications between its border control agencies, and expand efforts to gather data on human trafficking.

In 2002 in Libreville, West and Central African countries agreed to a common platform of action to enact laws designed to protect child workers; improve the system of custody for child victims of trafficking; strengthen co-operation among governments and establish transit and reception centres for returned children.

In September 2002 an African-European Expert Meeting on trafficking in human beings sponsored by the governments of Sweden and Italy called for a number of measures in both origin and destination countries relating to: prevention and combating of trafficking and awareness raising; protection and assistance to victims; legislative framework and law enforcement; and co-operation and co-ordination within and between states and regions.

Other measures include:

- Information and awareness campaigns targeted at prevention;

- Rehabilitation/reintegration;
- Security surveillance at major exit routes, destinations and transit areas;
- Investigation and prosecution.

#### Challenges:

- Many of the government responses are prevention oriented. These prevention initiatives in turn do not focus on developmental activities such as grassroots-oriented poverty reduction schemes, which would serve to reduce predispositions to trafficking.
- Government pays less attention to awareness raising and rehabilitation initiatives leaving it to the NGOs alone. The NGOs on their part are severely constrained by funds and infrastructure with which to effectively achieve their aims.
- There is inadequate data on the human trafficking trend in Nigeria, which makes planning for efficient and effective initiatives a difficult task. This is also tied to lack of information sharing amongst the various government agencies as well as NGOs and CBOs.
- Government agencies charged with the responsibility of combating human trafficking are inadequately funded thereby reducing their level of effectiveness.
- Reception facilities for victims of trafficking are grossly inadequate.
- Inadequate implementation of policies and laws on trafficking. Also low levels of enforcement of international obligations and bilateral agreements on the issue.
- Lack of technical training for law enforcement agents, care givers and organised labour.
- Lack of organisation of labour in the informal sector leading to a further lack of institutional machinery with which the exploitative tendencies of employers in these sectors could be checked.

### **Trafficking of Nigerians to the United Kingdom, Spain, Portugal and Italy**

#### **United Kingdom**

The movement of Nigerians to the UK dates as far back as the immediate post-colonial period, with many Nigerians taking advantage of scholarship opportunities offered by educational institutions to take up permanent residency in the UK with their families. The civil war, which lasted from 1967-1970 also saw a mass movement of refugees from Nigeria to the UK and Northern Ireland thus establishing firm family roots and facilitating the entrance of wider family networks. With these family networks came their traditions and cultural practices.

In Nigeria as indeed many parts of Africa, traditionally, childrearing is a communal responsibility within close knit rural areas; in addition the cultural setting regards a child as an economic asset as such from an early age children are gradually integrated into performing various services within the family's productive process. With these cultures taken together is borne the age-old practice of child fostering where a child is given to relatives or friends who are wealthier and better able to provide the socio-economic needs of the child. This act is believed to have benefits of consolidating tribal relations, securing a better future for the child and thereby its immediate family as well as increasing the labour power available within the host family. Unfortunately this practice has been widely abused and many children who are sent into this fostering relationship end up in nightmare

situations. They are forced to work for unending hours catering to every whim of family members, they are treated as less than human and often denied the promised economic cum educational opportunity for which their release was secured in the first place. They suffer all manner of physical and sexual abuse, the indignity of sexual exploitation, and in extreme cases ritual killings come into the equation (e.g. boy Adam). In essence, they become victims of human trafficking and forced labour. The majority of these victims are young girls who are dispatched to the homes of wealthy relatives for domestic work.

This type of trafficking is more rampant in the international form in the UK with many families from Nigeria and other parts of Africa bringing in children of their relations or friends to live with them and provide domestic services with the promise of providing a “better life” for the child in return (UNICEF News, 2003). There is no concrete data on the extent of this type of trafficking in the UK but several cases have come to light. The case of Alice Ukoko who arrived in the UK on 6 October 1970 lived with and helped her brother’s family cope with the arrival of a new baby. In turn, Alice was supposed to step into a world of better opportunities for the economic advancement of herself and her family back home. After several years of unabated domestic work and bearing a large chunk of the financial burdens of the host family, she is asking herself what went wrong? And the most important question, “Am I a victim of human trafficking for domestic servitude?”

## **Measures**

In response to this issue and related problems, the Sexual Offences Act of 2003 makes trafficking for sexual exploitation a criminal offence with up to 14 years in jail for those convicted of the crime. The 2004 Asylum and Immigration Act makes the trafficking of persons into, within and out of the UK for the purposes of exploitation a criminal offence with up to 14 years in prison.

The UK has also served as a route and transit point for the trafficking of young girls especially from Benin City in Nigeria via Gatwick airport to Belgium and finally Northern Italy where they are engaged in sex work. The Government through the West Sussex County Council provided safe houses for suspected victims of trafficking (specifically unaccompanied minor females) where they were counselled and placed under intensive supervision until they could safely establish their independence. The health needs of the girls were also addressed and they could partake in sexual health programmes.

On 19 November 2004, the Government of the UK and Northern Ireland entered into a Memorandum of Understanding (MOU) with Nigeria on Co-operation to Prevent, Suppress and Punish Trafficking in Persons. The MOU aims to: facilitate international co-operation, develop common goals and prevent, suppress and punish trafficking in persons; protect victims of trafficking and provide them with assistance to enable reintegration into their original environment; and provide mutual support, capacity building and strengthening of institutional capacities to effectively prevent, suppress and punish the offences of trafficking in persons.

Notably the MOU provides that, “the participants will not subject any victim of trafficking in persons to degrading or inhumane treatment and will to the extent, that they are legally bound to do so provide for the physical safety of victims of trafficking in persons in their respective jurisdictions”. Also that, “the participant repatriating a victim of trafficking in persons will have regard to the safety, human rights and well-being of such a victim and will allow the victim, subject to provisions in legislation relating to proceeds of crime, to return with their property and possessions”.

## **Italy**

Italy has gained notoriety in Nigeria as the major destination for traffickers and their victims especially for the sex trade. The major source of these victims is Edo and Delta states in Nigeria. The migration of women to Italy began in the late 1980s, when Italy was importing immigrant labourers to feed its booming informal economy. Nigerian women went to the central Italian region of Campania to pick tomatoes. From here they were attracted to the large cities of Rome, Naples and Florence where they found a high demand for their charms, since then the trade has grown and traffickers have moved in to take advantage of the poverty and collapse of social programmes that occurred under military rule. In October 1999, the Italian Ambassador to Nigeria, Dr Giovanni Germano illustrated the magnitude of the problem by stating that Nigerian girls constitute 60 per cent of all prostitutes in the sex trade in Italy, many of them victims of traffickers. (The News: 4 October 1999, p. 44) Between 1997 and 2000, 477 Nigerian girls were deported from various countries with Italy topping the list at 386.

Many young women from the key states are lured to Italy with the promise of a better life, opportunities to engage in menial work (sometimes there is the knowledge that sex work will be involved), or acquire an education, earn the much valued foreign currency and ultimately gain their independence. The modes of recruitment of women for trafficking to Italy are as dynamic as they are clandestine. Often victims are made to swear oaths of secrecy with fearful deities or to enter into bogus contracts prepared by fraudulent lawyers with the aim of keeping them in debt bondage to their traffickers and making their voluntary escape or denouncement of the traffickers difficult and even impossible. On getting to Italy the false promise become just that, a false promise; the girls have their travel documents withheld, are kept in isolation, suffer severe physical and psychological abuse, sexual exploitation, threats of violence or death and denouncement to the Italian authorities. Victims are exposed to a high level of physical danger as some of them get killed in the course of their work by criminals or aggrieved clients and sponsors. They are also at high risk of contracting HIV/AIDS and other STDs.

Data from the Article 18 Interministerial Commission show that out of 5,577 trafficking victims taken into custody in Italy between March 2000 and February 2001, 52 per cent (2,896) were Nigerians.

## **Measures**

The “Merlin” Law No. 75 of 1958 in Italy effectively decriminalised prostitution so long as it was practised privately. The law prohibits prostitution in brothels and makes it a criminal offence to exploit prostitutes or lead women into prostitution. The law provides a seven-year jail term for any foreigner who brings a migrant woman into Italy for purposes of prostitution.

On 27 March 1998, the Italian Government passed a new immigration law (No. 40), which prescribed penalties of up to 15 years imprisonment for anyone who traffics, controls or exploits immigrants. Under the law, victims of trafficking can receive social support whether or not they denounce the traffickers. They also have the right to remain in Italy on a work or study visa, or to return home. The law also provides for emergency health assistance, maternity protection, and preventive health measures against infectious diseases even if they are not legal residents.



On 9 March 1999, the Italian cabinet modified the law on slavery providing that victims who denounce their abusers and testify against them will be given the same scale and kind of protection given to those who speak out against the Mafia. The Government would also provide shelter and assistance to victims who take advantage of the provisions of the law.

In practice, though, there is a lot of vagueness and ambiguity surrounding these laws and often deported victims of trafficking have claimed knowledge of these provisions but that they were denied the opportunity to take advantage of them. Many of the women deported from Italy have harrowing tales to tell of the indignity they suffer during the process; they are kept in holding centres and placed on available flights with the same clothes they wear to work on the streets and they are not allowed the benefit of taking along with them the few possessions or savings they had acquired during their stay. Any foreigner in Italy is liable to arrest if found without papers. They are put in detention centres for a maximum of 15 days before being released with a warning if they are first offenders and deported if they have been caught before.

In September 2000 in Rome the Governments of Nigeria and Italy entered into an agreement on Immigration Matters. The agreement basically provides the procedures for repatriation of illegal immigrants between the two countries (in a dignified manner that guarantees their human rights) and other related issues. Notably the agreement provides in Article 10 that “Repatriation carried out in application of this agreement will not prejudice the possibility of interested persons to enter the territory of the contracting party...”

The Government of Italy also undertakes in Article 16 of the agreement to within the limits of its capabilities and resources assist the Government of Nigeria with:

- a) Technical assistance on immigration matters;
- b) Training facilities for Nigeria Immigration and Consular Offices; and
- c) Co-operation in the field of control of HIV/AIDS and other sexually transmitted diseases as a part of the process of resettlement and integration into the society of the persons concerned.

While this agreement has formed the basis for the recent wave of repatriation of Nigerian girls (mostly victims of human trafficking) from Italy, one issue, the absence of which remains glaring in this agreement is the lack of a concrete commitment on the issue of the protection of these victims of human trafficking (whether they are illegal immigrants or not) and conditions in which they are repatriated. The agreement does not once refer to human trafficking but the provision of Article 16 (c) above would seem though to be making reference to the situation of these same victims of trafficking into sex work. There is also no guarantee that repatriated persons will be allowed – within the limits of relevant law – to return with their possessions. According to figures released by the Nigerian Embassy in Italy, between February 2001 and September 2002 1,316 irregular migrants were repatriated from Italy to Nigeria. Many were victims of trafficking.

It is worth mentioning that the Italian Government in keeping with the terms of this agreement has provided funding through the UNODC for the establishment of a data-monitoring centre at the National Agency for the Prohibition of Trafficking in Persons (NAPTIP). The data-monitoring centre is fashioned along the lines of the Italian anti-mafia database and is designed basically for criminal justice purposes. Equipment worth millions of Naira has been donated to the centre but the necessary software to get it up and running is yet to be developed. The Italian Government has also provided technical assistance to the Nigerian Police Force.

## **Spain and Portugal**

Spain and Portugal have been placed together in this discourse for several reasons: firstly, the magnitude of the problem in both countries is not as high as the ones previously examined. Secondly, they share a common boundary and have the same types of trafficking. Thirdly, because of their proximity to the horn of North Africa they are most often used as landing points and then transit routes for onward movement of people from Nigeria to other parts of Europe. Finally, the majority of the studies of the human trafficking phenomena in Nigeria have not placed much emphasis on both countries, neither have they revealed figures which are as alarming as the previous countries examined. It should be noted though that not much is known about trafficking from Nigeria to Portugal.

In research on human trafficking from Nigeria, Spain usually pops up as routes to a final destination. To a lesser extent, Spain is a final destination but there is very little data on the trend or the actual conditions of trafficked victims within the country. A UNODC/UNICRI report of 2003 highlights Spain as a destination country for traffickers and their victims. The same report traces the routes for trafficking to Europe with Spain coming into the picture often:

- a) When travelling by air, the routes are Lagos to any Schengen country, including Spain and Italy;
- b) When by road the routes vary, they could be:
  - Lagos – Togo – Morocco – Spain – Italy
  - Lagos – Togo – Morocco – Spain – France - Italy
  - Lagos – Togo – Burkina Faso - Morocco – Spain - Italy
  - Lagos – Togo – Burkina Faso - Mali – Spain – France - Italy
  - Lagos/Benin City – Katsina/Borno – Chad/Niger – Libya – Spain – Italy.

Travel by road often involves travelling many days in the Sahara Desert in tightly packed jeeps with up to twenty or more victims (male and female) to safe houses along the way. The journey could also be undertaken on foot in a long tortuous trek under the scorching sun broken spatially with the help of camel runners at a highly exorbitant fee. The journey often lasts anything from two months to one year as traffickers have to stop along the way to prepare fake travel documents or determine safe periods to continue the journey. The victims then cross from Morocco or Algeria by sea in small boats carrying up to 20 or more persons. Crossings are done at night to avoid Spanish maritime patrol boats. In Spain, an agent would meet and take them to Italy by air or train.

## **Measures**

While Portugal has as yet no known agreement with Nigeria on the issue, the Kingdom of Spain in November 2001 entered into an agreement with Nigeria on Immigration Matters. This agreement though fashioned along the lines of the Italian agreement is the first of its kind to specifically refer to victims of human trafficking. It provides in Article 10 for "... the person who is to be repatriated or readmitted to carry his or her legally acquired personal belongings..."

The agreement is also forward looking in the sense that it has specific human rights guarantees, stating that, "Nationals of both contracting States shall not be subjected to inhuman or degrading

treatment in the other contracting State, nor shall undue force, torture, cruel, inhuman or degrading treatment be used in the repatriation of persons under this agreement”.

Also it provides for technical assistance from the Government of Spain to the Government of Nigeria in the areas of:

- a) Mutual exchange of information between competent authorities about human trafficking networks and individuals involved, and provision of technical assistance on immigration matters;
- b) Training facilities for Nigeria Immigration and Consular Offices;
- c) Co-operation in the field of controlling HIV/AIDS and other sexually transmitted diseases as a part of the process of resettlement and integration into the society of the persons concerned;
- d) Co-operation in the establishment of skills acquisition centres to facilitate the resettlement of persons repatriated to Nigeria;
- e) Legal access for Nigerian workers to Spain;
- f) Reciprocal treatment of nationals.

The extent of actual implementation of this agreement is still vague.

## **Conclusion**

Human trafficking is a global phenomenon and has accordingly acquired a wave of international attention. Nigerians form a significant population of the migrants and trafficked victims in many parts of the world especially in Europe. The reasons for this massive migration are not far fetched but can be found in the socio-political and economic as well as the human rights situation in the country. Also contributory in this regard is the increasing demand for cheap migrant labour from the destination countries, especially in the informal labour sectors and the tightening of border/immigration controls to effectively reduce an overwhelming influx of migrants from “undesirable” sources, thus creating an enabling environment for human trafficking to thrive.

The issue of trafficking is complex and therefore requires a multi-dimensional approach, which addresses the root causes, protects victims and generates the necessary technical support to ensure the effective apprehension and prosecution of traffickers. Bilateral agreements with destination countries are useful in this regard but their content must be effectively protective of the rights of immigrants from the contracting parties and the necessary mechanisms must be put in place for their effective implementation. The importance and the role of NGOs should also not be relegated to the background, as their effective collaboration with government agencies, both in sending and destination countries, will serve to balance out the diversity of approaches required to curb and hopefully reverse the trend.

## **Recommendations for Measures in Destination Countries**

- Governments of destination countries need to enact/enforce laws, which criminalise and punish forced labour as a way of tackling the problem from the destination end.

- Governments of destination countries should live up to their bilateral agreements, especially to offer capacity building and institutional support to the Nigerian government agencies charged with tackling the problem of human trafficking.
- Governments of destination countries should also guarantee the humane treatment of victims of human trafficking during repatriation. Specifically the victims should be allowed to take along their personal belongings to prevent their making desperate attempts to go back in search of all they have slaved for.
- Governments of destination countries that have a high demand for migrant labourers in specific (especially informal) labour sectors should recognise and enforce existing international agreements on the rights of migrant workers. Specifically they should develop a framework for the orderly migration of citizens of developing countries (including Nigeria) where there is need for their services.
- The Government of Italy should put measures in place to guarantee the protection of the rights of Nigerian sex workers, regardless of their immigration status, bearing in mind that a significantly large proportion of them are victims of human trafficking.
- All Governments should recognise and enforce the human rights standards for the treatment of trafficked persons.
- Although for many Nigerians migration holds the key to better economic opportunities, a large number of those who migrate face abusive and exploitative conditions without effective access to legal protection. Migrant women in particular are more vulnerable. Thus destination countries should make efforts to guarantee the protection of the rights of migrants in conformity with international standards.
- Consular offices of destination countries should provide information to all intending Nigerian migrants about their rights in destination countries and information on how they can seek help from abusive or exploitative conditions.
- Labour and social welfare inspectors in destination countries should be trained to maintain a high level of awareness when they encounter immigrants who are working or living in extreme conditions or suffering from very serious untreated medical conditions and to report such situations to the appropriate authorities.
- Police, investigators and prosecutors handling smuggling, labour abuse and sexual abuse cases involving immigrants should be trained and equipped with skills to consider the possibility that trafficking may be involved and take necessary action.
- For the above two recommendations, governments can develop an “identification guide” to serve as a tool for law enforcement agents and other government authorities involved with migrants or likely to come into contact with migrants in the course of their work.
- Law enforcement officers in destination countries need to change their attitudes to victims of human trafficking in order to better appreciate their situation as victims and accord them the necessary treatment.

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# **“New” Forms of Labour Exploitation: Exploitation of Portuguese Migrant Workers in Europe and Eastern European Migrant Workers in Portugal**

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## **Situation**

Immigration, even when it is a national fact, happens in a global context, so it is essential to consider the situation from this point of view. Generalisation of exchange and mobility, with or without governments' wishes, has included increasing numbers of people and workers.

Some forms of migration are internal while others are not; governments can only intervene in the former. In the past, governments tried to limit the large scale or strategic entry of multinational companies, whereas today they encourage companies not to relocate and to make investment in their country more attractive for these companies.

An essential characteristic of globalisation is the intensification of relations that eventually overcomes the traditional limits imposed by States to be replaced by a world where free relations among individuals prevail. These relations are less and less defined by the States and more by economic issues and individual citizens. Globalisation radically questions the nature of nationality; the State cannot hope to play the hegemonic role that it used to, even when dealing with labour markets, worker mobility, and in particular migrant workers. This is how many national workers and employees are being attracted by other labour markets, and job vacancies for irregular foreign migrant are integrated into the national labour market, in theory against the State's will and formally demonstrated through their speeches, policies and law.

As a last resort, the strategy to legislate in order to regulate successive irregular foreign migrant employment and define new frameworks for the future may be well intentioned, but it does not hide its impotence in the face of the influential instigators of these migratory flows, as well as economic factors, in particular companies, but also workers. This is also the case in the EU, which has lost many powers, as have the Member States themselves – both have the same problem in recognising their own weaknesses.

Although there are national, regional and local characteristics, we are facing a global challenge that demands a global strategy to deal with this issue, as defended in a recent document by the International Labour Organization (ILO). In the 2003 World Report on Migration, the ILO highlights the need for a change in migratory policies, based on the principle of migrant contributions to sustainable development, promotion of global economic growth, the strengthening of democracies, the importance of cultural diversity and the prevention of conflicts. It also argued for co-operation among States and others involved in the management of migration.

Migration was for a long time a delicate subject related to national sovereignty, but is now acquiring ever more international dimensions (Michael Doyle, Professor at Columbia University).

Governments and international organisations are focusing their discussions on “immigration management”, while NGOs focus on human rights, which makes this phenomenon difficult for the general public to comprehend.

## **The EU and Immigration Policies**

The European Union's failure to define a common policy on migration contributes greatly to the lack of respect to the human, social and labour rights of migrants, in particular those who are not considered highly skilled. We can characterise the situation of migration policies, which we hope is temporary, as being incapable of generating consensus due to the fact that cultures, State policies, administration practices and levels of regulation are substantially different from country to country.

However, within the EU we can highlight:

- Inclusion of immigration in social policies.
- Acceptance that zero immigration policies are inadequate.
- Policies of active recruitment of nationals of third countries by various Member States.
- Discussion regarding opposition to migration or adequate migration control.
- A continued tolerance in face of the exploitation of immigrants who work in less socially exposed and more economically exploited sectors, such as those who work in domestic work, the sex industry, agriculture, construction, catering and the hotel industry. This allows the existence of conditions whereby powerful groups can exploit and traffic human beings through illegal and criminal practices. These groups are very seldom identified and develop without regard for legitimate economic development and social safeguards.
- Debate focused on traditional channels with a cautious attitude to new strategies in cultural policy, structural organisation of the labour market, management of migratory flows and partnerships at various levels.
- Continued lack of definitions with regard to international dimensions of this phenomenon in the formation of a common policy.

## **Irregular Migration - the Only Alternative?**

The good intentions, expressed in speeches, national and international institutional texts, conventions, and State laws, have found fulfilment in reality. The truth is that irregular migration has been the general rule. There are countless examples and the Portuguese reality is very representative.

The factors that exercise influence upon the weight of irregular migration are mainly:

- Pressure of globalisation without regulation of the world economy.
- The loss of ethical standards, understood as transparency in the business sector, compliance with duties of a fiscal, social security and labour nature, in parallel with the devaluation of human work.
- Growing difficulty in drawing distinctions between the responsible and irresponsible companies, which brings into question the idea of a company.
- Changing nature of migration itself, much more flexible in relation to destination and origin, composition of flows, growth in the short-term, cross-border movements, more immigrants initiating business activities, etc.



- Market needs follow rhythms and variations typical of the information and communication sectors, and demand flexibility from those involved.
- The States, their policies and management instruments are strict, not transparent and slow to operate, not adapted to the information and communication society.
- The State does not have a hegemonic role, although it behaves as if it did. They exclusively value their own management instruments and accept strategies based on control of borders and immigrants, often on a quota system, which the EU itself considers impracticable and prefers a system of identifiable aims and an open approach based on dialogue and partnerships.
- Global competitors looking for qualified labour are becoming ever fiercer.
- In fact, it is the flow of irregular migration that develops intensely and rapidly through informal routes, while the formal routes opened by the governments are nearly deserted, apart from the one reserved for skilled workers.

### **Management or Imposition of Migratory Flows?**

What is happening in many cases is not just the management of migratory flows by the State, but an imposition of migratory flows. Management of migratory flows through the traditional channels does not have the benefit of adequate anticipative strategies. Intervention has a more corrective than a guiding or preventative role. Lack of intervention in the labour market has been observed and is almost exclusively focused on migrants (upon whom the State has limited powers of intervention) and little on internal economic agents.

There is a lack of innovation, the State is isolated, and mechanisms and instruments are slow and outdated. The fundamental players in the management of the flow have been, substantially against the wishes of the States, the migrants themselves and the economic agents.

In Portugal the dualism in the economy, with a growing hidden economy and unfair competition, facilitates the ease of operating on the margins of the State and outside responsible companies. The lack of management of migratory flows implies that the whole economy has been contaminated at different levels.

### **Integration of Migrant Workers with Rights**

General advantages of migration contributions are identified, namely:

- Incentives are factors for economic growth without inflation;
- Use of established productive capacity;
- Revitalisation of economic sectors and regions, more cohesion and prevention of desertification;
- Rejuvenation of population and labour;
- Improvement in welfare;
- New opportunities. The “fixed amount of work” thesis was a mistake that took a long time to be dropped.

## **Long-term Advantages of Integrating Migrants**

For all to enjoy the advantages in the long term, the following are fundamental:

- Prevention of migrant integration as cheap labour with low qualifications or in low-skilled jobs with low wages, such as a recent study in Portugal concluded it was happening. The consequence, according to the investigators, is “a stagnation of Portuguese economic growth”.
- Migration should be used as an opportunity to attack structural weaknesses in the labour market, for instance, the levels of qualification, training, participation, discrimination and the lack of rights.
- Clandestine work and economics must not be fuelled, as they are a strong constraint on productivity.
- Quality jobs and respectable work. According to the ILO, a large percentage of migrant workers work under abusive, exploitative and even forced conditions, and are targets of discrimination.
- Identify and prevent new risks associated with migration, in particular professional impoverishment and social exclusion.

## **Immigration Policies in Portugal**

The national political consensus reached in 2000, the approved legislation (DL 4/2001) and practices in administration introduced innovative measures in migration with the following advantages:

Policies:

- More influenced by respect for human rights;
- Priority to act upon the organisation of the structure of the labour market and companies;
- More integrated and proactive;
- Greater involvement and strengthening of regulation systems;
- Greater participation of social partners, NGOs and migrant associations.

Legislation:

- New flexible instrument for the integration into the labour market, such as leave to remain and regularisation in national territory.
- New instruments for regulation and prevention, such as responsibility of all participants – in particular of major companies and business owners – for labour, social security and fiscal plans.
- Participation of social partners and migrant associations with the purpose of regularising migrants.

- Holders of public posts to be held responsible for introducing irresponsible companies in subcontracting chains, through civil and criminal legislation plans.

The last legislative framework (DL 34/2003 of 25 February and DR 34/2004), benefited very little from the most recent experiences and expressed a more defensive immigration policy with no dialogue, lack of innovation and again centred around the almost exclusive responsibility of the State, the internal security channels and combating illegal migrants, which brings more risk to society, companies and migrants.

In general:

- There is no assurance of integration/legalisation of all immigrants operating in the labour market.
- Instruments of prevention and regulation are weakened in some cases and eliminated in others. For example, mutual benefit of all companies and business owners involved in the contracting and subcontracting chains.
- The report on work opportunities is an instrument that does not integrate dialogue and participation at national, sectoral and regional levels; it is strict and long-term with no attention to the needs, opportunities and rhythm of the economy and companies.
- Lack of integration, among social organisations, social partners, global companies, temporary employment agencies and agencies that provide management of labour flows. This integration based on trust and partnership is needed in order to dissolve the State monopoly.
- Strict individual demands not adapted to the management of collective flows for seasonal and other temporary work, without flexibility and mobility of workers, companies and economic groups that operate in diverse and complementary markets, and can even suggest the use of the same labour at different times and in different countries.

Regular migration channels are limited, they do not work, and the number of irregular migrants in the labour market is calculated at 70,000 to 100,000. They have no rights and no priority for regularisation, which allows illegal and mafia networks to continue to act and feed on the high profits that their businesses generate.

### **Context of the Exploitation of Eastern European Migrants in Portugal**

Migration from Eastern Europe was highlighted by various criminal practices and the exploitation of migrants, such as:

- Intervention of informal networks (some of a mafia nature) in countries of origin and in Portugal with associated criminal activity, namely trafficking in human beings; extortion; charging high prices for transportation and accommodation; crimes of an economic, fiscal and social security nature; crimes and the threat of crimes against them and their families in the countries of origin, as well as in Portugal.
- Creation and development of strategies of coercion to keep migrants dependent on the network.

- Strategies for contracting and subcontracting in chains with no responsibilities in order to keep workers unaware of their real employers with the convenient collaboration of large companies, private and state economic groups, who accepted in their contracting and subcontracting chains, irresponsible companies and with resources of labour dependent on the networks of trafficking and their labour supply.
- Intense secrecy in work relations (according to EU estimates, around 22 per cent of the Portuguese economy is informal).
- Forms of illegal contracting with no social security, including precarious forms of labour, which is the typical way of contracting migrants (it is estimated that 90 per cent of migrants are in a precarious situation, many of whom are in permanent employment posts).
- Discriminatory and illegal conditions of work. As a rule, migrants occupy the lowest professional categories, the lowest wages, and only part of their wages are declared in some sectors of the economic activity. They are often subject to psychological coercion in relation to conditions of safety, hygiene and health in the workplace.

In the Third National Meeting on Social Support to Migrants<sup>1</sup>, organised in 2003, the Portuguese Church was worried about the phenomenon of the transnational networks of organised crime, trafficking in people and the growing number of “foreign women, even minors, forced into prostitution”. In this respect, the Portuguese authorities, with few exceptions, do not have planned strategies and actions of prevention in regards to labour and social security issues, aimed against employers and agents of trafficking networks. This means that current security and police activities are directed mainly against migrants. There is frequent news of identification, detention and even expulsion of migrants with no consequences for the economy that employs and exploits them.

In the course of the last three years, the legislative and action plans of the Public Administration have brought to light the labour exploitation of migrants as a consequence of a labour code that highlights precariousness, facilitation of clandestine and illegal work relations, in particular short-term ones. The code also reinforces the employers’ powers in work relations with no regards to the level of the preventative and regulatory instruments in the labour market that would allow citizenship at work to be developed and would assure collective and individual workers’ rights.

### **Exploitation of Portuguese Migrants Abroad**

The level of economic development is characterised by the continuous pressure of low skill work, low salaries and the imposition of poor working conditions. It is increasingly influenced by a global reduction in employment, namely due to clandestine situations in work relations and reduced social protection for workers not included in central or permanent posts. This strategy for reducing costs and striving for greater competitiveness among key sectors and companies has led many national workers (it is officially estimated at more than 30,000 per year, but in fact there must be a few dozen thousands more) to search for better conditions of work and life in other EU countries, South Africa and United States, instead of accepting to be part of the national labour market.

The inclusion of Portugal in the EU makes the mobility of Portuguese workers easier, but as a rule they do not have the same assurance of rights as the nationals of those countries, and there are many known examples of this:

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<sup>1</sup> The organisations involved in this meeting were the Portuguese Catholic Institute for Migration and the Portuguese Caritas.

- Thousands of Portuguese nationals perform temporary or precarious work for irresponsible companies in the United Kingdom, Spain, Holland, Germany and France, among others. There are stories of poor working conditions, company abandonment, lack of payment of wages, lack of social protection, etc. A similar phenomenon also happens in countries such as South Africa and even in the United States, where tens of thousands of Portuguese nationals have been integrated into the labour market for many years and become prisoners of a legalisation process that is slow and difficult. This stops them from even visiting their families in Portugal.
- As an example, we can cite the cases of Portuguese construction workers in Corsica who were undernourished, kept under psychological coercion and eventually abandoned by subcontracting companies. In Spain, many cases have been observed of workers in construction, agriculture and the sex industry who work in conditions close to slavery, sometimes involving children and vulnerable people. In the United Kingdom, there are frequent and scandalous situations of exploitation of low-skilled Portuguese workers with low wages, no social protection and in poor accommodation.

In summary, we can characterise the situation in Portugal as being a base for migrant workers from Eastern Europe where work conditions are poor. It is a temporary bridge to richer countries with higher salaries. Portuguese workers who refuse to enter the labour market under such poor conditions in their own country, look to other markets, namely other EU countries, but they do not realise that as a rule they are not assured of the same rights as the nationals of those countries, and are often victims of labour exploitation. This brings into question the social cohesion of the EU itself, European standards, principles and the fundamental values of the construction of Europe.

Paradoxically, there are a reduced number of contracts for highly skilled workers in Portugal, namely in technical and scientific professions, who prefer to enter other markets, in particular in the United States and other EU countries.

# Proposal for the Council of Europe Convention on Action against Trafficking in Human Beings

José Leitão, Portuguese MP

(Former Portuguese High Commissioner for Migration and Ethnic Minorities)

Trafficking in human beings, sexual exploitation and forced prostitution is a reality in Europe and Portugal. This must not be underestimated.

As the Swiss socialist Jean Ziegler wrote in 1998: “*A spectre devastates Europe: organised crime*” and demonstrated that the fundamental role that human trafficking represented in this context, (see Jen Ziegler, *Les seigneurs du crime. Les nouvelles mafias contre la démocratie*, Paris, Seuil, 1998). In the Report of 17 December 2001, regarding *The Evolution of the Migratory Phenomenon*, the High Commissariat for Immigration and Ethnic Minorities (ACIME), the Borders Service (SEF) and the Inspector General for Labour (IGT) felt the need to refer expressly to this problem, affirming particularly that: “In the course of the year 2001, the existence of criminal organisations dedicated to illegal activities directly related to what can be called trafficking in human beings, whatever the purpose (illegal work, sexual exploitation and others), continue to be noticed always with the aim of making large profits from these activities and many times resorting to the practice of acts equally illegal and even violent”.

Last year, the filmmaker João Canijo, in his very beautiful and realistic film *Noite Escura (Dark Night)*, brought to a large audience some of these manifestations of intimidation, violence, sexual exploitation and trafficking in women that continue to happen here among us.

Trafficking in human beings constitutes a breach of human rights and an affront to human dignity and integrity that can lead to a situation of slavery for its victims.

It is not surprising that the Council of Europe among its 46 States, countries of origin, transit and destination of trafficking victims, has created an *ad hoc* Committee for Action against Trafficking in Human Beings (CAHTEH), with the aim of developing a project for a Convention with this purpose.

The task given to the Committee was described as follows:

- “Put a special focus on the human rights of the victims of trafficking and design a comprehensive framework for the protection and assistance of victims and witnesses, also taking gender equality aspects into consideration, as well as the effective prevention, investigation, prosecution and international co-operation;
- Define a monitoring mechanism to ensure compliance of State Parties with the provisions of the Convention;
- Take into account the standards of the Council of Europe in the fields of human rights, criminal law and judicial co-operation which are specific to this offence, particularly on the basis of existing legal instruments dealing with trafficking in human beings and those dealing with other serious forms of crime which are related to it;
- Take into account the existing universal and regional international legal instruments dealing with trafficking in human beings; in particular the Committee should accept the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime as

the basis of its work, with a view to improving the protection afforded by it and to developing the standards contained therein. Moreover, it should abstain from altering the Protocol's definition of "trafficking in human beings" and should, if possible, integrate it as such among the provisions of the future European Convention."

It is also worth adding that the Parliamentary Assembly of the Council of Europe has been alarmed by the growth of trafficking in women and forced prostitution in the Member States of the Council of Europe, and the growing activity of criminal organisations in these activities used to finance and expand their activities in other criminal activities, such as the trafficking of weapons and narcotics, and money laundering. In Recommendation 1325 of 1997, they affirmed that this evolution will lead to the enslavement of women.

The Parliamentary Assembly of the Council of Europe has been highlighting, in a clearer way, the need to ensure the assistance to and physical protection of victims, as well as the possibility of remaining legally in the country. It began by defending that the Convention should anticipate the grant of a temporary residence permit in the aforementioned Recommendation of 1997. The Parliamentary Assembly of the Council of Europe also defended the grant of a permanent residence permit in cases where the victims agreed to testify in court. In addition, they considered that the Convention "should offer help and protection to victims of trafficking, requiring the parties to grant legal, medical and psychological help to these victims, assuring their safety and the safety of their family".

The project for the Convention was approved by the aforementioned ad hoc Committee in December 2004, and submitted to the Committee of Ministers, who asked the opinion of the Parliamentary Assembly of the Council of Europe.

Apart from the preamble, the project has ten chapters, in which the following subjects are dealt with: (I) purposes, scope, non-discrimination principle and definitions; (II) prevention, co-operation and other measures; (III) measures to protect and promote the rights of victims, guaranteeing gender equality; (IV) substantive criminal law; (V) investigation, prosecution and procedural law; (VI) international co-operation and co-operation with civil society; (VII) monitoring mechanisms; (VIII) relationship with other international instruments; (IX) amendments to the Convention; (X) final clauses.

The fundamental aims of the Convention are the respect for the rights of victims and action against trafficking in human beings. This action must not be discriminatory and must consider the aspect of gender equality, as well as the rights of children.

The Convention should build on the United Nations' achievements in this field in a European context, *Convention for the Protection of Human Rights and Fundamental Freedoms* (1950) and its protocols, and more recently the *United Nations Convention against Organized Crime* and its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, with a view to improving the protection afforded by this instrument and to developing the standards contained therein.

The Convention establishes in Article 1

1. The present Convention pursues the following aims:

- a) to prevent and combat trafficking in human beings, also taking gender equality aspects into consideration;
  - b) to protect the human rights of the victims of trafficking and to design a comprehensive framework for the protection and assistance of victims and witnesses, also taking gender equality aspects into consideration, as well as ensure effective investigation and prosecution;
  - c) to promote international co-operation on action against trafficking in human beings.
2. In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

It is worth mentioning that Article 3 of the present Convention approves the principle of non-discrimination, determining that: “The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

However, the Convention project does not seem to completely satisfy the Parliamentary Assembly of the Council of Europe. The Commission’s report for equal opportunities for men and women of 17 January 2005, by the Swiss MP Vermot-Mangold of the Socialist Group, recognises the merits of the project for the Convention, but highlights the aspects she considers questionable, and proposes several changes. Vermot-Mangold is not certain that she will be able to maintain her support for the Convention if the most important amendments proposed, are not adopted by the Committee of Ministers, because as she highlights: “A Convention that does not focus on the protection of victims will make their situation worse.”

Similarly, the opinion from the Committee on Legal Affairs and Human Rights elaborated by the UK MP, Kevin MacNamara, also from the Socialist Group, released on 25 January 2005, recommended support for the project of the Commission for equal opportunities between men and women.

Among the positive aspects of the project recognised, we highlight: the drawing up of a European Convention on action against trafficking in human beings; the fact that in its preamble it is explicitly mentioned that trafficking in human beings constitutes in itself a violation of human rights and an attempt on their integrity; its field of application is the widest possible covering all forms of trafficking, either national or transnational, linked to organised crime or not; and lastly, the fact that the foreseeable monitoring mechanism, by a group of independent experts (GRETA) be appropriate.

However, the current wording of the draft is subject to several criticisms. It is already considered to be far from guaranteeing effective and sufficient protection of victims, contrary to its aim. The measures for the protection of victims have become weaker in the course of the negotiations.

The current draft rather gives the impression of reflecting the Member States’ desire to protect themselves from illegal migration instead of accepting that trafficking in human beings is a crime and that its victims must be protected. The Member States of the Council of Europe were accused by Vermot-Mangold of not being willing to accept difference between illegal migration and trafficking in human beings.



Other aspects have also been justifiably criticised in detail, such as the fact that the reflection period, granted for victims to recover and escape the influence of traffickers, and take an informed decision on co-operating with the authorities should be long enough for this effect, which is not guaranteed in the draft. Moreover, Vermot-Mangold stressed that there should be a minimum period of thirty days. Article 14, related to the granting of a renewable residence permit, is considered to have a rather vague wording, and the rapporteur defended the possibility that it should last a period of a minimum of six months. Residence permits for child victims shall be renewed until a lasting solution is found. Also discussed was the issue of a long-term residence permit where the victim is in a particularly vulnerable situation.

Also, the provision related to non-punishment of victims (Article 26) is not very clear, and this lack of clarity creates doubts regarding the willingness to protect victims that were led to commit unlawful activities.

The rapporteur also considered that civil society was not sufficiently involved in formulating the text and some difficulties were observed during the course of negotiations of the text, which was a result of the increased powers that the European Union awarded itself in this matter and its enlargement.

In her understanding, the request for a reservation on Article 45 must be suppressed. It is my view that this is an excessive position based on a general position of refusal to accept the reservations in the amendments of the Convention.

More relevant is the fact criticised by Vermot-Mangold that the Convention leaves States a wide margin of discretion. In addition to taking into account the several legal systems, it was intended that Community Law define the concepts in this matter. The rapporteur said that considering the gravity of the matter, there are provisions that should be binding, such as Article 6, which related to the measures to discourage the search of trafficking victims, in particular women and children; Article 7 related to measures for monitoring the borders; Article 14 regarding residency permits granted to victims; and Article 19 related to criminalisation of the use of services of victims.

The rapporteur still considers it necessary to improve the terminology used, for instance, replacing “also taking gender equality aspects into consideration” with “guaranteeing gender equality”.

The European Community expressed reservations in relation to Chapter VII, related to the monitoring mechanism, and the chapters related to the relationship with other international instruments (VIII) and the final clauses (IX). The rapporteur considers that any proposal submitted by the European Commission at this stage would be out of time, and insists that the Member States of the European Commission should be subject to the same monitoring mechanism as all other States Parties.

Regardless of the reservations mentioned, we are convinced that the draft will lead to a Council of Europe Convention for Action against Trafficking in Human Beings that will contribute positively to reinforce the efficiency of this action.

On 22 and 25 February 2005, the Committee had a new meeting regarding the action against trafficking in human beings. It was not possible to have more information about this meeting apart from what is available on the website of the Council of Europe, viewed on 25 February 2005, dedicated to the action against trafficking in human beings, which only mentions that the Committee analysed the opinion of the Parliamentary Assembly of the Council of Europe, and finalised the explanatory report of the Convention draft.

The criticisms formulated will find echoes, especially in legislation that might be adopted by the most demanding States in relation to human rights. The observations made in relation to action against illegal migration being mixed up with that against trafficking of people, as well as the need to reinforce protection for trafficking victims, especially female and child victims of violence, sexual exploitation and forced prostitution, by granting legal residency and added protection against the traffickers, will certainly have a growing number of supporters.

# Exploitation of Domestic Labour and the Case of Romanian Carers in Rome

Executive Summary

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This research focuses on female migrants from Romania, the country from which recent migration flows come to Italy. More specifically, the report deals with carers employed as domestic help in the city of Rome.

By ‘carer’, I mean private care workers of foreign origin who, either on an individual basis or for an organisation, render their services in exchange for a wage. Or more commonly, those workers who operate on their own account and receive inadequate compensation for their efforts.

My choosing to highlight Romania is not fortuitous since from the early 1990s there has been a large concentration and an increase of the Romanian community both in the region of Lazio and in the province of Rome<sup>1</sup>.

The issue of work integration among the migrant population needs to be analysed within the context of Italian migration; defined as the Mediterranean model in which, from the late 1960s and more significantly, from the 1980s onwards, immigration has replaced emigration. Furthermore, the phenomenon in the countries of new migration and the lack of legislation to regulate entry has resulted in the spread of irregular situations.

An additional element that characterises the work placement of the migrant workforce is its employment in the tertiary sector, mainly in care and domestic work determining the type of migration to be found on the northern shores of the Mediterranean, which is made up, for the most part, of women who have often migrated alone.

In Rome, the sectors in which there are the most foreign labour present, due to a large and flexible job market, are those with little structure and high levels of informality and adaptability.

In fact, Rome is becoming what Saskia Sassen has defined as a ‘global city’<sup>2</sup>, where the processes of globalisation have materialised bringing about changes in the economic and productive fabric through the development of the tertiary system and the service industry, leading to rising needs tied to work patterns and organisation, amplifying the demand for a new type of worker and frequently opening up opportunities for informal work.

A substantial part of the carers’ phenomenon is tied to the world of the elderly and the presence of strong social demand for carers is linked to the ageing population, and changes in the structure and organisation of Italian families.

A direct result of poor public service intervention is a strong recourse to private carers. This correlation can be observed in the fact that in Lazio itself, where resort to ‘carers’ is higher, integrated public homecare services are less adequate.

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<sup>1</sup> Residents of Romanian origin represent 21 per cent of the total migrant population in the region. In the city of Rome, however, there are almost 60,000, which is a fifth of all migrants regularly admitted to the country (322,824 in 2003).

<sup>2</sup> Romanian domestic workers regularly insured by INPS (office of social security) on 31 December 2002 were 15,019 of which about 80 per cent were women.

Due to changes to working hours and working patterns as well as the consequent progressive integration of women to the job market and their abdication from care duties from within the nucleus of contemporary families, it has become apparent that families today are struggling to offer real care and support to their most vulnerable members (i.e. children, the elderly and the sick).

This has resulted in the demand for domestic help extending to the lower middle classes who are not always in a financial position to guarantee formal employment to migrant workers. A detailed analysis of the social phenomenon of Romanian carers is not easily quantifiable due to its complexity. In fact, it is not possible to establish the number of active carers in Italy based on the numbers of domestic workers registered with the office of social security, *Istituto Nazionale di Previdenza Sociale* (INPS), as they do not take into account the undeclared labour undertaken by legal or illegal foreign citizens.

In the case of Romanian women, the element that facilitates their integration in the homecare sector is their willingness to accept very harsh working conditions. Everything is accepted in order to fulfil their own migration projects, which are very precise in terms of time and objectives. These are aimed towards economic savings to be carried out in a few months and usually involve older women, between 30 to 50 years of age, who are housed at their place of work and receive an average monthly wage of about 800 euros. Furthermore, their irregular status makes their placement in the irregular labour market easier, as they are not interested in obtaining a work permit.

The results of domestic inspections supplied by the Ministry of Foreign Affairs and the *Ispettorato del Lavoro del Comando dei Carabinieri* (Police work inspectors) show that by the end of 2002, 45 per cent of care workers were working in the black labour market<sup>3</sup>, 27 per cent were illegal workers and only the remaining 28 per cent were regular and working according to the regulations set out in the Collective National Contract to regulate domestic work.

At this stage, domestic servitude can be characterised by:

- A personal relationship between exploiter and exploited. The live-in situation, particularly in the case of foreign workers, implies a sense of a deep involvement, almost always within an ideological, patriarchal-familial context, resulting in the absence of any kind of negotiation in the domestic service relationship.
- The absence of remuneration. Although wages are not always absent, payments are small and below subsistence levels.
- The absence of any rules regarding working hours or daily and weekly rest periods which not only exploits the workers economically, but also perpetuates personal subjugation. Isolation is also an essential element of servitude.

The lack of respect for a person's dignity both as a human being and as a worker can also be added to the aforementioned factors. Paradoxically, while proclaiming the carer's status as a member of the family, there is, however, little tolerance of the carer sharing the same space and enjoying the same amenities as the rest of the family.

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<sup>3</sup> This concerns both legal and illegal migrants.

In domestic servitude, coercion takes place in subtle ways; the person is induced into submission by the allurements of hospitality and the proclaimed inclusion into a network of family relationships, which substitutes the family of origin.

Therefore, the abusive interpersonal component that induces submission facilitates the establishment of consensual ways in which super-exploitation is voluntarily accepted but compensated by elements of convenience, mainly that of remuneration. A servant, on the other hand, has no compensation for the punishing workload or for the lack of autonomy.

The bond that links the foreign worker to the family is such that it transforms the latter into a particular type of employer. In exactly this type of relationship, it is not uncommon to find examples of 'expectation of excessive loyalty', which tie the migrant to the family disproportionately in respect to the contractual relationship to which the need for affectionate reference points are added.

On the one hand, a peaceful live-in situation fosters the consolidation of the ties of affection but on the other hand, loyal and obedient behaviour limits the possibility of asserting one's rights as a person and a citizen.

These demands are not explicit and in some ways they form part of a normal everyday contractual relationship, and are brought about by the strong necessity of the foreign woman to work.

In cases of long stays in Italy, many foreign women have initiated procedures of emancipation from living with the family they work for and have been joined by their own families.

However, the fact that other migrant workers have taken their place has generated a continuous employment turnover in the sector. This is due to the new arrivals' willingness to accept working conditions inferior to those of their predecessors.

The early years of the migration experience are those in which the strongest bond is formed with the employing family. In fact, it is only in later years that emancipation procedures are set in motion and new rights obtained, thanks to the consolidation of links within their community and, to a lesser extent, with the local population.

With this aim in mind, there exists in Rome – more than in any other Italian city – solidarity networks, even among the migrants themselves, which compensate for the inadequate services and facilitate full social integration.

# Exploitation of Domestic Labour and the Case of Romanian Carers in Rome

Excerpts (Chapters 4, 6-8)

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## 4. A Typical Case: Migrant Romanian Women Employed As Domestic Workers

The data from the applications for work permit regularisation presented in the capital city confirm the trend at the national level. For migrant women residing in Rome, working as domestic workers and carers represents one of the main employment options and this sector is responsible for one of the largest pockets of unregistered employment (*lavoro nero*<sup>1</sup>) in the city. More generally, the results of the 2002 Eurispes research on domestic work in Italy show that, when looking at the geographical distribution of non-EU migrants employed as domestic workers, one finds that over a fourth of them (28.9 per cent) are concentrated in the region of Lazio. In this region, more than one out of 10 non-EU migrants are employed as domestic workers.

Prominent within this context is the role of migrant women from Eastern European countries: Romanian, Polish, Moldavian and Ukrainian women who are employed as cleaners, babysitters and carers for the elderly. Restricting the scope of observation to include only Romanian migrants, one finds that the truly surprising outcome of the work permit amnesty concerns precisely the regularisation of the work status of Romanian citizens. With 141,670 work permits issued to them, Romanians represent the largest migrant group in Italy (in 2002, they were only the third largest group.) Furthermore, according to the results of a 2001 research study carried out by ISMU Documentation Centre, the largest concentration of Romanian citizens holding a regular permit is found in the province of Rome, followed respectively by the provinces of Milan and Turin. More generally, Lazio is the Italian region that plays host to the largest number of Romanian citizens.

Romanian women residing in Lazio and working as domestic workers appear to be favoured, when compared to women from other countries, by their medium to high level of education and willingness to accept irregular or unregistered employment, the latter being a typical tendency of migrant groups that have only recently entered the job market.

Italian legislation introduced a classification of domestic workers, identifying four separate categories to be used for purposes of retirement benefit and wage calculation. In reference to this classification, it should be noted that, for the most part, the Romanian women working in Rome's province fall within the third category. This group, the last in increasing order, includes domestic workers engaged in generic duties of a purely manual nature and lacking specific professional qualifications. Another essential element to be considered in defining the work situation of Romanian domestic workers and carers in Italy is the fact that the highest percentage of them is employed on an hourly basis. In other words, they work only a few days a week, for different families, and with a weekly schedule falling below the mark of 24 hours per week. A lower percentage, it appears, holds part-time positions (working at least four hours a day, or 24 hours a week, for the same family) or full time positions (living with the employer's family and receiving room and board as well as wages). These findings confirm the phenomenon taking place in the country at large of the broadening of the social class that creates a demand for domestic help. For reasons relating to family budget, the growing demand for domestic help on the part of the Italian

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<sup>1</sup> *Lavoro nero*, literally “black work”, refers to any kind of employment that is not regularly registered, thereby evading taxation and not having access to legally protected benefits, such as paid vacation, sick leave, workman compensation, etc. (*translator's note*)

middle class goes hand-in-hand with the formula of employing a domestic worker for a few hours a week.

Providing an interesting contribution to the discussion of this phenomenon, data collected in 2003, by the Silvano Andolfi Foundation and the Lombard Regional Centre for Integration and Multi-ethnicity, shows a typical profile of domestic workers residing in Lombardy. The study looked at 400 foreign women, mainly from the Philippines, Peru, Eastern Europe, Eritrea, Ethiopia, Somalia and Cape Verde<sup>2</sup>. Women from the former Italian colonies came first, followed by Philippine women, South Americans and, lately, by Eastern Europeans. For the most part, they are not particularly young: only 21.7 per cent are under thirty, while 15.8 per cent are over fifty. Their motives for coming to Italy include more often the chance to make personal choices, move beyond a “pre-determined” life, go to school, and enjoy the same rights as men. Most, however, work for economic reasons and despite high education levels (46.6 per cent have secondary schooling and 27.1 per cent have tertiary level education), hold positions for which they have little regard, since it is not unusual for them to have left behind more qualified, although less well paid, employment. The majority (68 per cent of answers) quotes a desire to help their family or children (altruistic motive). However, a not irrelevant portion of the remaining answers refers to the desire for a better life for themselves (individualistic motive). Having an economic motive for working does not prevent almost a third of the interviewees from considering their job important also because of the feelings of affection, which tie them to the people for whom they care. A fourth of the interviewed women did not hold a work permit and had the chance to apply for regularisation through the “Bossi-Fini” Act (deadline for application was November 2002). As far as job descriptions, they are fairly diversified and depend on the group the women belong to, but the main characteristics are as follows:

- 36 per cent are engaged in domestic work; 26 per cent care for the elderly; 9 per cent look after children; several, however, describe themselves at the same time as “doing a little of everything”;
- average monthly wages amount to about 700 euros;
- in general, they live with the employer’s family, holding therefore a full time position in a situation of ‘co-habitation’.

Domestic workers have the closest contact with Italian families and can act as mediators for the integration of newcomers who have an interest in entering the new cultural system while maintaining their original culture. The Andolfi/CNEL research showed that migrant domestic workers do not hold an optimistic view of the Italian family. In their view, Italian parents spoil their children and enjoy little respect from them, the elderly are considered a burden, and the charge of running the household falls mainly on women, even though husbands are increasingly helping out. The culture is individualistic and production-oriented.

While distance may lead to a nostalgic view of what they have left behind, the interviewees look at the future in very realistic terms. Only one sixth thinks about going back home or moving on; the others are aware that they will have to stay in Italy. Often, the very family the women left at home, aware of the economic benefits, urges her to continue to work in Italy. The desire to return is more prevalent among the women who have been in Italy for more than 10 years, who not only feel the burden of a tiring job, but also suffer greatly from loneliness. For this reason, in the little free time at their disposal, domestic workers seek the company of fellow compatriots and rarely develop

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<sup>2</sup> See tables 3 and 4.

relationships with Italians. Another group that tends to think more about going home are women who live in the home of their employer and thus, are more likely to suffer from depression. Disappointed by the encounter with a country that turned out to be very different from what they had imagined it to be – even those who do not think about returning hold idealised views of their original culture and of the environment they left behind.

While living with a family would seem to represent a means for reciprocal integration, the migrants, as it turns out, are dissatisfied with the degree of interest the employer's family shows towards their culture, as well as of mutual exchange. Live-in domestic workers find themselves working longer hours, with no overtime pay, no sick leave and no guaranteed free time. The open-mindedness and inquisitiveness of the family is often only superficial and it seems that the foreign workers have replaced the Italian women who used to work in their capacity as victims of the family's negative attitudes.

## **6. Labour Exploitation and Domestic Servitude**

The exploitation of migrant workers is only part of an even larger and much more serious phenomenon generally referred to by the phrase “new forms of slavery”. In general terms, this definition applies to life conditions in which a person's human dignity, in its various forms, is compromised or completely obliterated by the perverse action of underhand and hurtful mechanisms. These include violent practices acting on a person's psychological, social and cultural dimensions, and causing, through isolation from public life and in particular from one's own community, the complete loss of social and cultural identity which results from gradually losing touch with one's own country and origins.

Basically, contemporary forms of slavery have three principal causes, which relate to:

- Property or possession: these are an expression of slavery inherited from the past and still existing in some parts of Africa, in which the slave is an object to be bought or sold and his children belong for life to the master.
- Debt: in order to repay a debt, the slave is obliged to work without compensation and the terms for repayment are set by the creditor who will generally keep on changing them to the creditor's advantage.
- A contract: while formally sanctioning a legal work relationship, the contract hides conditions that limit individual liberty, enforcing them through threats or acts of violence.<sup>3</sup>

Naturally, slavery is by no means a new phenomenon. Established practices that conferred legal recognition to the possession of a slave and allowed the master to buy slaves without risking any penalty have long existed in the past. Slavery was, moreover, widely held as a socially acceptable practice, drawing justification and legitimisation from its economic value. In fact, it represented an actual profit-oriented institution and one of the decisive variables in the commercial development of some of the wealthiest countries.

The move towards modernisation generated global phenomena that have profoundly altered, along with many aspects of human life, the traits characterising the institution of slavery. On the one hand, the demographic explosion flooded the world's job markets with millions of workers, i.e. potential slaves. On the other hand, the introduction of technology and innovation in agriculture

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<sup>3</sup> Kevin Bales, *I nuovi schiavi: la merce umana nell'economia globale*, Milan 2002, p. 23.



caused many farmers, who could no longer compete with large-scale production, to abandon their land and to migrate to urban centres in search of a new job, thus becoming vulnerable to enslavement.

In most western countries, progress saw the evolution of civil and social rights protected by a constitution or declaration that formally abolished slavery as a practice. The phenomenon of modern day slavery, therefore, exists in a state of absolute social as well as economic illegality since its earnings enter the mainstream economy only at a later phase through money laundering operations. Despite its illegality, however, the practice draws justification and legitimisation from its high profitability. Through the considerable reduction of production costs it affords, slave labour has an indirect value in the world's economy that amounts to about US\$13 billion per year. In a further break from the past, the work relationship in contemporary forms of slavery covers a short span of time. Apparently, the slave is considered as a 'single use', disposable item: the cost of his labour is so low that 'retaining possession' for any length of time makes no economic sense. In addition, the absence of any visible link to the owner makes it impossible to trace reciprocal responsibilities connected to the work relationship.

It is now possible to delineate a descriptive picture of domestic servitude. Its first distinctive trait lies in the personal relationship between the exploiter and the exploited that always marks its particular configuration. In juridical terms, domestic work places the worker at the disposal of the employer, requiring the worker to satisfy the personal needs of the employer and those of the family. Co-habitation, which is almost always present in the case of a migrant worker, determines an even greater intensity of involvement in the relationship. The personal relationship may therefore be considered as an actual qualitative and constitutive element of domestic servitude.

Taking place, as it almost always does, within the context of a familial-paternalistic ideology, the exploited worker's involvement in a personal relationship excludes her from the possibility of resorting to negotiation. This characteristic of the servile relationship is made possible and even encouraged by the cultural and juridical background of the domestic work relationship. Since the limited worker's rights prescribed by this kind of contract are difficult, if not impossible, to enact, social perception views the absence of negotiation as plausible and fails to recognise exploitation. Indeed, a sort of 'presumption of normality' masks the complete exclusion of the worker from her rights. The general context, therefore, impedes identification, social stigmatisation and repression of criminal behaviour resulting in the exploitation and servitude of domestic workers.

Lack of compensation is a second distinctive element, although wages are not always completely absent. In the specific case of the servile relationship, while it is compatible with the payment of small amounts of money, these are always kept below the subsistence threshold and are therefore insufficient to grant a minimum of independence. Lack of compensation or insufficient wages serve a twofold purpose: while enhancing the exploiter's economic advantage, they keep the worker in a state of dependency and subjugation.

The third element is the absence of rules concerning the work schedule, as well as daily and weekly rest. Often, the woman is required to work all day with no time set aside that she can devote exclusively to herself. If present, the weekly allotment of free time is in any case very limited and not arranged according to a pre-defined schedule, so that the worker cannot count on it and is unable to manage it as she pleases. Although she may be granted a few hours of free time during the week, the domestic worker is still caught in the family-centred, abusive relationship. The lack of free time or its extreme limitation serves also to perpetuate the personal subjugation of the worker. In general, isolation is precisely one of the essential elements of servitude. The exploited

person is kept from enjoying the company of friends and fellow compatriots from receiving information and sharing experiences with others who may be engaged in similar work or share the same cultural background.

In addition to these elements, there is another decisive and distinctive aspect: the lack of respect for the person's dignity, both as a worker and as a human being. Paradoxically, even while the exploiters may declare the worker to be part of the household, they will not allow her to share the same space or enjoy the same comforts and free time as the rest of the family members.

Despite hearing over and over that she is "part of the family", the domestic worker is constantly humiliated and insulted, and at times subjected to beatings, abuse or rape. If the exploited person is a woman, this situation often results from the superimposition, on the racist subculture that often marks the exploiter's behaviour, of a patriarchal and sexist background that sustains the overlapping of work and sexual exploitation. The exploiter sometimes demands the worker's sexual favours for himself, but there are instances in which the worker is handed over to others for use as a sexual plaything, in exchange for money or as 'a gift'. In these cases, domestic servitude blends into forced prostitution.

Within the familial centrism-subjugation cycle, the familial-paternalistic ideology covers up and masks abuse, whether sexual or otherwise, also when perpetrated within the actual family circle by the 'strong' member against the 'weak'. Here one finds the roots of domestic violence and abuse, an endogenous phenomenon in western societies, not limited in scope to intercultural relations. In the case of the female domestic worker, however, the social relationship and the power balance are completely tilted in favour of the employer. Being a woman, a foreigner, and a subordinate, isolated and lacking in culture-specific knowledge, the domestic worker runs a higher risk of seeing the relationship degenerate into an abusive one.

The involvement in an interpersonal relationship is the primary element of differentiation between domestic servitude and forced labour, since, in the case of domestic servitude, coercion occurs in subtle ways. Lured by the prospect of the claimed – but deceptive – inclusion in a network of family relationships presented as a substitute for the original family, the worker becomes entrapped and is induced to submission. The exploiter takes advantage of her sense of loss and homesickness resulting from her uprooting. In this psychological context, the worker falls prey to the delusion of receiving protection and hospitality at a time of great personal crisis, a time when she feels isolated in an unknown and hostile environment. However, the entrapment in the cycle of the abusive relationship may actually perpetuate indefinitely, and progressively worsen, her state of isolation and vulnerability.

In the presence of the interpersonal abusive element, which hides the coercive aspects and induces submission, it becomes difficult to identify the criminal profile of domestic servitude and distinguish it from other forms of domestic work in which the worker willingly accepts the super-intensive work schedule. In the case of "voluntary servitude", however, one finds elements that are similar to those characterising domestic servitude, such as the long working hours and limited free time, but they are almost always compensated by other benefits, generally in the form of higher wages. A worker may indeed be willing to accept a heavy work schedule as long as it allows her to save, however slowly, the money necessary to go back home and make a real estate or professional investment there. In this case, the migrant has devised a precise plan for migration, with specific details as to the means to achieve its goals and the time it will take. The exploited domestic worker has no such compensation for the exhausting work schedule, lack of independence and limited

freedom of movement. She lives in a virtual universe, devoid of space and time references, a universe where there is no future.

We may therefore define domestic servitude as the condition experienced by a worker caring for the needs of a person or family within the context of a personal relationship and family environment, yet in isolation, in exchange for a salary insufficient for subsistence, without certainties as to his/her allotment of free time, and with no alternatives to the present condition of subjugation. While providing a good representation of the vulnerability of these workers, though, this definition fails to account for the courage and determination of many women who pursue a difficult and risky migration project in order to secure a future for themselves, their family and their children. It does not account for the bravery of those who have risked it all, and sometimes lost it all, in order to break the servile relationship and commit their exploiters to justice. Today, we know something about servitude only because some of these women found the strength to break free and tell their story.

## **7. Domestic Work and Servitude**

In Rome's metropolitan area, the most significant portion of foreign migrants, especially Romanians, present in the city is involved in domestic work. While in the last ten years duties have become more varied (originally limited to cleaning and house chores, they now involve also caring for the elderly, the disabled, patients with chronic illnesses and children), the nature of the relationship between the migrant worker and the employing family has not changed. It is a particular type of relationship, so particular, in fact, that it connotes even the family as a particular kind of employer. In many instances, this particular relational model leads not so much to forms of servile work, but rather to the expectation of an 'excessive loyalty' to the family on the part of the migrant. The expected degree of loyalty is certainly disproportionate to the contractual agreement and must be understood also within the context of the migrant's need and search for affective points of reference.

Taking place mainly during the initial phases of the migratory experience, the phenomenon is sometimes present even after years of residence if the migrant lives in isolation or suffers from a lack of contact with her original community. In other cases, different kinds of fear may be at play, but these also result in the acceptance, on the worker's part, of particularly onerous work conditions. Sometimes the migrant's fears derive from objective conditions, such as the absence of a regular permit or the lack of points of reference. In other instances, the origin of the fears lies with the psychological subjugation to the employing family that the worker develops over time. In fact, the worker may sometimes feel 'responsible' for her irregular work situation (even when actually holding a work permit,) as if she were an accomplice to, rather than a victim of, the situation.

Finally, in some instances the migrant worker may choose to avoid regularisation of her work situation or request a regular contract covering only the minimum number of hours per week required to keep a work permit in order to save larger amounts of money as quickly as possible<sup>4</sup>.

Dependency in domestic work occurs at different levels and acquires specific traits in different situations. Most of all, it seems to be strongly related to the different phases of the foreign worker's migration experience. In most cases, instances of exploitation and servile work decrease in inverse

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<sup>4</sup> By accepting to work without a registered contract, the worker avoids taxation and other required contributions (for health coverage, pension, etc.) and receives more cash for the same amount of work. (*translator's note*)

proportion to the progress the worker makes from the time of arrival to the concrete achievement of inclusion (access to rights of citizenry).

In the past few years, various kinds of agencies acted as mediators for the migrants' arrival in Italy and conditioned, to a degree, the way they entered the job market. As far as domestic work is concerned, these were not criminal organisations but rather an array of different agencies (including religious organisations) that in past years helped foreign workers find positions with Italian families requiring the services of 'day and night' domestic help. The very first instances were in the late 1960s when Ethiopian women, who were already in the service of Italian families, followed the families to Italy when the families were recalled because of the war. This practice tied the worker's entrance into the country to an existing work contract. It should be noted that the worker had no contractual power in the work relationship, in part because residence in Italy depended on its continuation and also because those who had arrived in the country by way of this mechanism lacked other connections and ties with the local community.

In the last decade, however, other forms of agency, similar to the *caporalato* used in agriculture<sup>5</sup>, are becoming more widespread. Intermediaries visit bus depots where migrant women, mostly from Eastern European countries, go to meet fellow compatriots or arrive directly from abroad. For an agency fee of about 200 euros per placement, the intermediary puts the women in contact with families in need of a domestic worker or a carer for the elderly. In other cases, the employing family will search on their own, contacting the potential domestic worker on the streets or in locations where migrants are likely to gather (associations, churches, etc.).

Looking at the process of integration, one finds that, for the most part, the situation can be described as 'peaceful co-habitation'. Frequently, experiences such as taking meals at the table along with the host family, sharing the daily routine of the family's children and having access to the family physician (rather than resorting to the public health service) make the migrant worker feel protected. Whether or not this is indeed true in juridical terms, many find this environment a welcome 'shelter' from the difficulties of migration.

Very often, a woman who worked for the same family for years may leave her documents with them or sometimes even her children for safekeeping. Even after the work relationship is over, many women consider the family they used to work for as a permanent point of reference and keep their official address at the family's residence. Nonetheless, in exchange for this family-like situation, the woman gives up a lot. First, it is difficult for the worker to insist that her contractual rights are respected, such as adequate wages to commensurate with the amount of work, observance of the work schedule, free time and holidays. Indeed, the sense of loyalty towards the family limits the assertion of personal and civil rights. While requests for exception are not explicit, they are somehow part of the customary work relationship and derive from the worker's inability to negotiate, which in turn are a result of her need to work. In Rome, the average pay of a live-in domestic worker is about 700 euros per month. The kind of duties involved, the nationality of the worker and whether the family residence is located in the city proper or in the province are some of the factors determining her wage.

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<sup>5</sup> This exploitative mechanism was used to recruit additional workers for use as field hands, generally during the more labour-intensive harvesting season. An intermediary, called *caporale*, would visit spots where unemployed peasants congregated, pick those who looked better suited for the job and retain a percentage of the workers' wages. Generally, the worker was dismissed after the day's work and had no way of knowing whether he would be employed again the next day. (*translator's note*)

Because the issuing or renewal of a work permit depends on the work situation of the applicant, workers who do not hold a work permit find themselves in a condition of even greater vulnerability. In some cases, these situations of dependency have resulted in the sale of work contracts and permits, as the difficulties in finding regular work and the resulting fear of losing the work permit may cause the worker to resort to producing false documentation.

Less prevalent in workers whose duties revolve around cleaning and house chores, loyalty and compliant behaviour are found more often in workers employed as carers, especially when caring for the elderly. Because they lack ties to the local community and are unfamiliar with local services, migrant workers find it necessary to rely on the family for practical aspects (permit application, health care, etc.) but also view it as the main provider of emotional and affection exchange. Indeed, many women leave 'day and night' employment, and therefore co-habitation with the employing family, only after securing the objective or subjective (affective) conditions for creating (or re-creating) a family of their own.

While situations of prolonged residence in the country and family reunions have led several women to seek emancipation from the co-habitation with the employing family, other migrant workers have taken their place. The newcomers' willingness to accept work conditions even below the standards achieved by their predecessors has determined a process of continuous re-negotiation of the work contract for this sector.

Normally the emotional involvement with the employing family is stronger in the first few years following the migrant's arrival. Emancipation and assertion of one's rights come at a later phase, following a strengthening of the ties with the migrant community and, somewhat less prominently, with the local community. In comparison to other cities, Rome has a stronger support network and this is also true among migrants. The development of this network is attributed to the need to make up for the lack of community services that would address the migrants' problems, such as hospitality in the initial phase of migration and in between jobs.

One last consideration regarding the situation of domestic workers, especially those holding 'day and night' jobs, touches on the reports (or rather on the failure to file reports) of abuse, including sexual abuse, at the hands of a member of the employing family. Attempts to discuss this aspect meet with a significant degree of reticence. Unfortunately, it represents a rather commonplace and hidden phenomenon, which is hardly ever brought to light and reported, even when it concerns acts of violence or rape. Rather than the consequence of an excessive loyalty towards the family, the failure to report these incidents is probably the result of the domestic worker's fear of repercussions<sup>6</sup>.

The witness account we relate below is meant precisely as a way to give full visibility, in all their horrors, to living conditions that in the era of 'positive' globalisation amount to an actual denial of a human being's right to exist.

## **8. The Voice of "New Slaves"**

*E* has been living in Italy for two years and eight months. She is on her own. After divorcing her husband in Romania at the age of 52, she came to Rome. She recalls that a friend had told her many things about Italy and she came here full of hope. In Romania, she had been working in the

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<sup>6</sup>Romani Ciconte, *Le nuove schiavitù: il traffico degli esseri umani nell'Italia del XXI secolo*, Rome, 2002, p. 111.

administration office of a very small textile factory. The first few days in Rome were horrible, *E* tells me. With no place to go, she camped out on the sidewalks at Tiburtina Train Station. Then she was taken in by volunteers from the Caritas Organisation and found temporary accommodation. Through the volunteers, she came in contact with a medium to high income Roman family: the wife was a physician, the husband worked in an office, and their two children were aged 8 and 13. “The house was huge,” she tells me. “They asked me to work six days a week, sometimes even on Sundays, for 800,000 lire<sup>7</sup> per month.” She relates that she worked 10-hour days with a variety of duties, such as looking after the children, housekeeping and gardening.

*E* tells me that after six months, she lost 23 kilograms. “They were nice to me, but the work was much too heavy. And when I asked the lady for an increase, she said she didn’t have the money and that what she was giving me was already too much. I decided to leave because, when I went to see a doctor at the dispensary, he told me that if I went on like that I would get sick. Really sick.”

After a few months, through an ad she posted in one of Rome’s hospitals, *E* came in contact with an elderly woman who needed help. *E* explains she had decided to try a different type of work. But things went from bad to worse.

Right from the start, the woman demanded that she work six days a week, 10 hours a day for 500 euros a month. The pay was better, but the woman was horrible. She insulted *E*, calling her a “gypsy”, forbade her to eat anything during the day except during mealtimes, checked to make sure *E* would not take anything from the refrigerator, and even came to the point of accusing her of stealing a jumper.

*E* explains how ridiculous that idea was: “The lady was much fatter than I was. I would never have taken one of her jumpers, not even for fun.” In order to smooth matters over, *E* offered to buy her a new jumper. Nonetheless, the relationship became increasingly tense. As *E* did not hold a regular work permit, the elderly lady would often threaten to report her to the police. One day, the woman also resorted to beatings: she hit *E* twice hard across the face. When *E* complained about the incident to the elderly woman’s son, he took his mother’s side and threw *E* out.

At present, *E* works as a domestic worker for another family, but prefers not to discuss her current situation. She just adds, by way of a conclusion, that she would like to be able to work in a different capacity, preferably as a rubbish collector. Ironically, I tell her that in a sense she has been doing that already for the past two years and eight months – she has been picking up a lot of the rubbish one finds indoors<sup>8</sup>.

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<sup>7</sup> Equivalent to 413 euros. (*translator’s note*)

<sup>8</sup> Witness account collected at the Anti-violence Centre of Rome’s Central Police Station.

Anti-Slavery International, founded in 1839, is committed to eliminating all forms of slavery throughout the world. Slavery, servitude and forced labour are violations of individual freedoms, which deny millions of people their basic dignity and fundamental human rights. Anti-Slavery International works to end these abuses by exposing current cases of slavery, campaigning for its eradication, supporting the initiatives of local organisations to release people, and pressing for more effective implementation of international laws against slavery. For further information see: [www.antislavery.org](http://www.antislavery.org)

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