

DETECTING AND TACKLING FORCED LABOUR IN EUROPE

This study of nine European countries (France, Germany, Italy, Ireland, Latvia, the Netherlands, Poland, Spain and Sweden) detected forced labour in each. Analysis of responses by governments, enforcement agencies, non-governmental organisations (NGOs), unions and affected workers identified key issues and lessons for the UK.

Key points

- Although international measures outlaw forced labour, it occurs in all nine countries and is not always recognised by official bodies. Forced labour as a specific offence is not consistently unlawful across the countries.
- Most forced labour is in undeclared or clandestine jobs, but sometimes contributes to prominent companies' supply chains.
- Measures for combating exploitation are sometimes ineffective, with workers reluctant to make use of them. Prosecutions do not always seek compensation, and workers have sometimes been deterred by the burden of proof required and length of time taken.
- Forced labour is associated with vulnerability, which immigration status and other personal circumstances could cause.
- Labour inspectors and police are important in identifying forced labour. Although excessive working hours are a key indicator, there were no examples of using enforcement of working time rights to identify and respond to forced labour.
- Some workers subjected to forced labour have reacted with strikes, demonstrations or legal action. Responding supportively is crucial for NGOs and unions seeking to combat forced labour.
- Housing, healthcare and subsistence support is generally limited and designed with rehabilitation of trafficking victims in mind. Such services may prove unattractive to those workers who, despite exploitation by one employer, need to find another employer.
- Recommendations include: better information and training on forced labour indicators, enlarging relevant inspectorates, establishing main contractor liability in areas like construction and agriculture, and pursuing unpaid wages and compensation in prosecution cases.

The research

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BACKGROUND

This study considers how those exposed to forced labour are supported in nine EU Member States: France, Germany, Italy, Ireland, Latvia, the Netherlands, Poland, Spain and Sweden. It draws on specially prepared national reports on practices, policies and debates regarding forced labour in each of the countries. The study also identifies lessons which can inform the development of responses in the UK.

Forced labour in Europe

Forced labour practices occur in all nine countries studied, but reliable studies measuring the size of the problem are rare. The International Labour Office (ILO) has estimated that 880,000 workers are subject to forced labour in Europe.

Forced labour relates to workers who cannot freely choose to leave an abusive employer. In much of Europe, however, the term is associated with trafficking and unlawful cross-border mobility. Migration is a major source of the vulnerability which can end in forced labour, notably for migrants from Bulgaria, Poland and Romania (within the EU), and China, Morocco and Turkey (from outside the EU). However, forced labour does not always involve migrants.

Sectors frequently identified as those using forced labour were domestic service, construction, agriculture, hospitality, cleaning, food manufacturing and processing, and textiles and clothing. But forced labour also occurred in the supply chains of significant sectors such as pharmaceuticals (e.g. berry pickers in Sweden) or major fashion labels (e.g. clothing workshops in Spain).

Forced labour and the law

Plenty of international laws and regulations seek to suppress forced labour, including the European Convention of Human Rights, the Council of Europe Convention on Action against Trafficking in Human Beings, the 'Palermo Protocol', ILO Conventions and the EU Charter of Fundamental Rights. However, there is little consistency over how these translate into national laws or practice. The nine national reports showed four areas of law which might be relevant to forced labour: criminal, labour, human rights and immigration.

Forced labour and intensive exploitation are not consistently unlawful across all the nine countries, even though all EU states are required to create a criminal offence for trafficking. Definitions of exploitation and vulnerability are imprecise, and subject to differing interpretations by national legal systems.

Recognising forced labour

Forced labour is imperfectly understood, and not widely recognised as occurring in the developed world. Where acknowledged, it is approached as being caused by the vulnerability of 'victims' rather than by deficiencies in labour market regulation.

Forced labour can be detected through various methods:

- workers' claims against employers (e.g. for non-payment of wages);
- the activities of unions, labour inspectors or police;
- migrant workers approaching information centres; or
- inspections by immigration authorities or housing officials.

However, although excessive working hours feature regularly in reports of forced labour, the study found no evidence of using inspection or enforcement of working time rights to detect or prevent it.

Remedies and support

Existing provisions for combating trafficking and labour exploitation are sometimes found wanting. Some workers subjected to forced labour have proved reluctant to make use of these means. Consequently, fresh initiatives have begun. These include pilot inspections of private households with domestic staff in Ireland, and cooperation between law enforcement bodies in Italy and Latvia to prosecute abusive employers operating across borders.

The need for organisations to effectively support resistance by exploited workers is also being recognised, and may show the best results. There were examples of worker resistance such as strikes, demonstrations or legal action in nearly all the countries studied.

Those experiencing forced labour are likely to be in undeclared jobs or even (because of their immigration status) unlawful ones. In some countries, the consequence is that their contracts are unenforceable by labour inspectors or through the courts. Only in some countries can an intermediary such as a trade union conduct cases on workers' behalf, which might be necessary for those no longer in the country. The length of time taken for legal procedures might also deter workers from resorting to them.

Non-governmental organisations (NGOs) and unions have found ways to assist at least some workers in pursuing their rights. These responses have been ad hoc rather than systematic. Initiatives aimed at assisting migrants (particularly undocumented workers) have found themselves campaigning and representing those who have been subject to forced labour. However, such schemes are less likely to reach EU migrants or citizens facing forced labour.

Once identified, cases of forced labour may qualify for compensation, but this seems not to be a well-used mechanism. It might depend on getting a criminal prosecution, but the national reports show that this presents challenges, such as high burdens of proof. The practice of pursuing several legal routes simultaneously (e.g. employment and criminal cases) may offer the best option for those experiencing forced labour; this has been done in the Netherlands and France, for example. There is no general provision for 'regularisation' for undocumented migrants exposed to forced labour, although this is clearly regarded as an important protective measure.

Those exposed to forced labour have no specific provision for temporary housing, healthcare, education or legal support, but might be entitled to use services provided for trafficking 'victims'. These tend to be quite limited, and focus on return to countries of origin or 'rehabilitation'. Consequently, workers do not often take them up: they may be unattractive to those who, despite having been abused by one employer, need to find another as a priority. This indicates the need to provide services more closely related to what exploited workers themselves see as the priority.

Conclusion

The key lesson is that the stronger labour market regulation and associated inspection and enforcement powers are, the more likely it is that forced labour practices will be detected and those subjected to forced labour will be offered potentially acceptable routes to restitution. However, government agencies, labour inspectors, advice organisations and trade unions are often unfamiliar with indicators of forced labour. This lack of knowledge is even more marked among the media and the general public.

Furthermore, seeing forced labour in the context of trafficking leads to a focus on immigration controls, which can deter migrants subjected to forced labour from seeking assistance. It also fails to assist those who are EU nationals or not migrants at all. It would be better to approach the problem of forced labour as an extreme element of the labour market, rather than one of trafficking.

Policy implications for the UK

Information campaigns and training on forced labour indicators and practices are required. The capacity of inspection bodies such as the Health and Safety Executive, Gangmasters Licensing Authority and National Minimum Wage Inspectorate needs increasing.

Penalties against employers who inflict forced labour should include recovery of unpaid wages and damages compensation for workers. The idea of main contractor liability for the actions of subcontractors in industries such as construction and agriculture ought to be examined.

Trade unions and NGOs need to consider how they could develop litigation strategies and the organisational approaches adopted elsewhere. Clear government guidance that employers' unlawful actions cannot automatically nullify employment rights could help bring more cases to tribunals. When migrant workers opt to leave the country before legal cases are heard, systems need to exist to permit their cases to be pursued on their behalf and in their absence.

About the project

This report has been compiled from nine national reports prepared in 2011 by Working Lives Research Institute staff and a team of expert partners (available at www.workinglives.org). The national reports were based on a common template to ensure that they addressed specific themes, and drew on academic, government and other literature and data, as well as key interviews. Each report included a case study showing good, innovative or illustrative practice in response to forced labour. The initial findings and conclusions were presented to a seminar in July 2011. Following subsequent revision of the national reports, a final report drew them together to reflect their key issues and findings.

FOR FURTHER INFORMATION

This summary is part of JRF's research and development programme. The views are those of the authors and not necessarily those of the JRF.

The full report, **Detecting and tackling forced labour in Europe** by Nick Clark, is available as a free download at www.jrf.org.uk

The nine national reports are available online at www.workinglives.org

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