

Human trafficking and forced labour – Portugal



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HUMAN TRAFFICKING AND FORCED LABOUR

CASE STUDIES AND RESPONSES FROM PORTUGAL

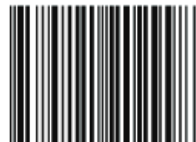
Sónia Pereira
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Special
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Sónia Pereira
João Vasconcelos

Translated by Joan Oliveira
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International Labour Office
Geneva, 2008

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FOREWORD

The present report is the result of a joint effort by the Portuguese Ministry for Labour and Social Solidarity, the Directorate-General of Studies, Statistics and Planning as well as the ILO to improve the understanding of human trafficking for the purpose of labour exploitation. It is part of a series of studies on the prevalence of forced labour and human trafficking, across various economic sectors, in source and destination countries, commissioned by the ILO in recent years.

In June 1998, the International Labour Conference adopted a Declaration on Fundamental Principles and Rights at Work and its Follow-up that obligates member States to respect, promote and realize freedom of association and the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation.¹ In November 2001, the ILO Governing Body established the Special Action Programme to Combat Forced Labour as one of several measures taken to promote the 1998 Declaration. SAP-FL's mandate is to raise awareness on forced labour and trafficking globally, to advocate for changes in policy and laws in cooperation with governments and social partners, as well as to increase the knowledge base on the scope and forms of forced labour in the world today.

Since 2001, the ILO has paid much attention to the forced labour outcomes of human trafficking and irregular migration. Research studies have focused on the root causes of trafficking, recruitment mechanisms, trafficking routes, demand factors and forms of exploitation in major economic sectors. Law and policy reforms that aim to strengthen the role of labour market institutions in national anti-trafficking programmes have also been analysed.

¹ The text of the Declaration is available on the following web site: <http://www.ilo.org/declaration>.

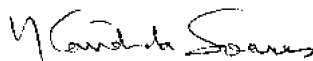
Human trafficking and forced labour

The authors of this study pioneered a difficult field of research. Trafficking as such is a sensitive issue because of its criminal and “hidden” nature. In addition, the authors explored a relatively new subject, namely trafficking for labour exploitation. The research was carried out in the context of an ILO project involving seven European source and destination countries of irregular migrants and trafficking victims. Funded by the European Commission and the Department for Work and Pensions of the United Kingdom, the project aimed at improving national legislation on forced labour and strengthening the capacity of law enforcement agencies to monitor private employment agencies. In Portugal, various public institutions were involved in the project, most notably the Employment and Vocational Training Institute, the Portuguese Public Employment Service, the General Labour Inspectorate, the General Prosecutor’s Office, the High Commissioner for Immigration and Ethnic Minorities as well as the Foreign Nationals and Border Service. Emphasis was put on wide inter-institutional dialogue and cooperation between various stakeholders at national and international levels to achieve the objectives of the project.

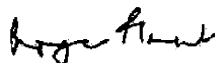
Results of this qualitative research were discussed during two national workshops in November 2005 and May 2006. In parallel, important legislative changes were introduced into Portuguese immigration law and the Penal Code in accordance with ILO Conventions, European Union and other international law and practice.

The report “Human trafficking and forced labour – case studies and responses from Portugal” together with workshops and conferences implemented in Portugal have contributed to a better understanding of the situation that migrant workers face in Europe as well as of adequate responses to end their exploitation.

We are grateful to the authors for their work and hope that it will further prepare the ground for remedial action, involving labour market institutions, workers’ and employers’ organizations as well as a wide range of civil society organizations.



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Portuguese Ministry for Labour and Social Solidarity



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The authors are grateful to the International Labour Organization for the opportunity to undertake a study on forced labour and trafficking of migrants in Portugal. We appreciate the guidance we received from Beate Andrees (ILO Anti-Trafficking Programme Officer) and the coordination assistance provided in Portugal by the *Direcção-Geral de Estudos, Estatística e Planeamento* (Directorate General of Studies, Statistics and Planning) of the *Ministério do Trabalho e da Solidariedade Social* (Ministry of Labour and Social Solidarity), represented by Cândida Soares and Joana Figueiredo.

We would also like to thank the ILO's Lisbon Office, especially Paulo Gárcia and Albertina Jordão, and the High Commission for Immigration and Ethnic Minorities, particularly the High Commissioners Rui Marques and Catarina Reis de Oliveira, for their invaluable collaboration in this project.

We are indebted to all those who helped us with the research, especially the immigrants and emigrants who had the courage to share their problems and anxieties with us, in the hope that this work might help to resolve some of their difficulties.

We would like to express our appreciation for their availability and commitment to the representatives of the various organizations with whom we discussed this work at the national seminar held on 16 May 2006, and who subsequently sent us their constructive ideas and comments.

Finally, our sincere thanks go to Professor Jorge Malheiros for his input, which was decisive in consolidating the scientific approach of this study.

Note:

The views expressed in this study are those of the authors' and do not necessarily reflect those of the Ministry of Labour and Social Solidarity, the Directorate General of Studies, Statistics and Planning or the ILO.

TABLE OF CONTENTS

Foreword	v
Acknowledgements	vii
List of acronyms	xiii
I Introduction	1
1.1 Background	1
1.2 Methodology	3
II Legal framework concerning trafficking in persons and forced labour	7
2.1 International Legal Framework	7
2.1.1 Definition and criminalisation of trafficking	7
2.1.2 Protection of and assistance to victims	11
2.2 EU law and regulations	13
2.2.1 The concept of trafficking	13
2.2.2 Victim support	13
2.3 National Legal Framework	15
2.3.1 Definition of trafficking in the Portuguese Penal Code.	15
2.3.2 Protecting victims on Portuguese territory	17
III Immigrant labour exploitation in Portugal	21
3.1 Recent research on trafficking in persons	21
3.1.1 Trafficking for labour	22
3.1.2 Trafficking for sexual exploitation	24
3.2 Countries of origin and sectors of employment.	27

Human trafficking and forced labour

3.3	Exploitation of migrant workers	30
3.3.1	The construction sector	30
3.3.2	The domestic services and cleaning sector	35
3.3.3	The hotel and catering sector.	42
3.3.4	The agriculture sector	49
3.4	Exploitation of immigrant workers in the sex industry	55
3.5	Exploitation of immigrant workers in other sectors	61
3.6	Characteristics of immigrants and their attitude towards exploitation	63
3.7	Main factors contributing to labour exploitation.	66
3.7.1	Labour supply and demand	66
3.7.2	Legal framework	67
3.7.3	Organization of economic sectors	69
3.7.4	Other factors	70
IV	Institutional approaches to the problem in Portugal	73
4.1	Institutional awareness of and response to labour exploitation.	73
4.1.1	Business Associations	73
4.1.2	Trade Unions	75
4.1.3	NGOs, Private Social Welfare Institutions, and Immigrant Associations.	76
4.1.4	Government agencies	78
4.1.5	Police Forces	80
4.2	Main difficulties encountered	82
4.2.1	Lacunae in the legal framework	82
4.2.2	Institutional constraints	83
4.2.3	Attitude of the Immigrants	86
4.3	Good Practices	87
4.3.1	Good practices in the legal framework	87
4.3.2	Good Practices in institutional intervention	88
4.4	Summing up the findings.	89
V	Labour exploitation and trafficking of Portuguese emigrants	93
5.1	Recruitment of Portuguese emigrants	96
5.2	Transportation to destination countries.	98

Table of contents

5.3 Reception and placement on the labour market.	99
5.4 Countries of destination examined	100
5.4.1 Portuguese labour exploitation in the Netherlands	100
5.4.2 Trafficking in Portuguese emigrants to the Netherlands	103
5.4.3 Portuguese labour exploitation in Spain	111
5.4.4 Trafficking in Portuguese emigrants to Spain	112
5.5 Institutional approaches to trafficking and labour exploitation of Portuguese emigrants.	115
5.6 In conclusion	120
 VI Recommendations	 123
6.1. Recommendations regarding the situation of immigrants in Portugal	124
6.1.1 Recommendations for strengthening legal immigration channels	124
6.1.2 Recommendations for action involving employers	125
6.1.3 Recommendations in respect of labour inspection	125
6.1.4 Recommendations for immigrant workers	127
6.1.5 Recommendations for the protection of victims	127
6.1.6 Other recommended actions in the destination country	128
6.1.7 Recommendations for action in the source countries	129
6.2. Recommendations regarding the situation of Portuguese emigrants	129
 Bibliography	 133
 Annexes	 137
Annex 1 – List of press articles on immigrants	138
Annex 2 – List of press articles on Portuguese emigrants	141
Annex 3 – List of interviews held	143
Annex 4 – Interview Script	145
Annex 5 – Responses to the questionnaire sent to IGT delegations	147
Annex 6 – Responses from Portuguese Communities’ Councillors	148
Annex 7 – Analysis Grid	149

Human trafficking and forced labour

Annex 8 – Summary table of labour exploitation practices
by activity sector 152

Annex 9 – Summary table of activities of associations interviewed ... 154

Annexe 10 – Seminar report Portugal. 156

LIST OF ACRONYMS

ACIME	<i>Alto Comissariado para a Imigração e Minorias Étnicas</i> (High Commission for Immigration and Ethnic Minorities)
AJA SUL	<i>Associação de Jovens Agricultores do Sul</i> (Young Farmers' Association of the South)
ANEOP	<i>Associação Nacional de Empreiteiros das Obras Públicas</i> (National Association of Public Works Contractors)
APAV	<i>Associação Portuguesa de Apoio à Vítima</i> (Victims' Support Association)
ARESP	<i>Associação da Restauração e Similares de Portugal</i> (Catering and Related Activities Association of Portugal)
CCP	<i>Conselho das Comunidades Portuguesas</i> (Council of Portuguese Communities)
CCT	<i>Contrato Colectivo de Trabalho</i> (Collective bargaining agreement)
CLAI	<i>Centro Local de Apoio ao Imigrante</i> (Local Immigrant Support Centre)
CNAI	<i>Centro Nacional de Apoio ao Imigrante</i> (National Immigrant Support Centre)
DCIPAI	<i>Direcção Central de Investigação, Pesquisa e Análise de Informação</i> (Central Directorate for Investigation, Research, and Information Analysis)
DGACCP	<i>Direcção Geral dos Assuntos Consulares e das Comunidades Portuguesas</i> (Directorate-General for Consular Affairs & Portuguese Communities)
DGEEP	<i>Direcção-Geral de Estudos, Estatística e Planeamento</i> (Directorate General of Studies, Statistics and Planning)
DIAP	<i>Departamento de Investigação e Acção Penal</i> (Investigation & Prosecution Department)

Human trafficking and forced labour

EEE	<i>Espaço Económico Europeu</i> (European Economic Area)
EU	European Union
GNR	<i>Guarda Nacional Republicana</i> (National Republican Guard)
IEFP	<i>Instituto de Emprego e Formação Profissional</i> (Employment and Vocational Training Institute)
IGT	<i>Inspecção-Geral do Trabalho</i> (Inspectorate General of Labour)
ILO	International Labour Organization
INE	<i>Instituto Nacional de Estatística</i> (National Statistical Institute)
JRS	<i>Serviço dos Jesuítas aos Refugiados</i> (Jesuit Refugee Service)
MTSS	<i>Ministério do Trabalho e da Solidariedade Social</i> (Ministry of Labour and Social Solidarity)
NGO	Non-governmental organization
OCPM	<i>Obra Católica Portuguesa de Migrações</i> (Portuguese Catholic Organization for Migrations)
PJ	<i>Polícia Judiciária</i> (Judicial Police)
SAP-FL	Special Action Programme to Combat Forced Labour
SEF	<i>Serviço de Estrangeiros e Fronteiras</i> (Aliens and Borders Service)
SI	<i>Solidariedade Imigrante</i> (Immigrant Solidarity)
UAVIDRE	<i>Unidade de Apoio à Vítima Imigrante e de Discriminação Racial e Étnica</i> (Support Unit for Immigrants and Victims of Racial and Ethnic Discrimination)
UGT	<i>União Geral de Trabalhadores</i> (General Workers' Trade Union Confederation)
UN	United Nations

INTRODUCTION

1.1 BACKGROUND

The objective of the present work is to study the phenomena of labour exploitation and forced labour to which immigrants and, in particular, victims of human trafficking, are subjected in Portugal. It also sheds light on the treatment of Portuguese emigrants in select destination countries.

This work is the result of an initiative of the International Labour Office (ILO) through its Special Action Programme to Combat Forced Labour (SAP-FL), in collaboration with the *Direcção-General de Estudos, Estatística e Planeamento* (General Directorate of Studies, Statistics and Planning (DGEEP)) of the *Ministério do Trabalho e da Solidariedade Social* (Ministry of Labour and Social Solidarity (MTSS)). The field research was carried out between September 2005 and May 2006, with support of the High Commission for Immigration and Ethnic Minorities (ACIME). At the time of writing, several laws have been introduced or amended affecting the situation of immigrant workers in Portugal. The study reflects these changes up to October 2006.

The design of this research, the results and recommendations were discussed in a long process involving all the relevant stakeholders in Portugal. This investigation is based on an earlier study entitled *Migrant Trafficking In Portugal: Sociological, Legal and Political Perspectives* (Peixoto et al, 2005), carried out by a research team (of which Sónia Pereira was a member) from the *Centro de Investigação em Sociologia Económica e das Organizações*, of the *Instituto Superior de Economia e Gestão*, Technical University of Lisbon.

The importance of immigrant workers for Portugal's economy and society has been recognised by the present Portuguese government, and is reflected in the new legislation on foreign nationals' entry, stay, departure and removal from Portuguese territory (*Anteprojecto de proposta de lei que regula as condições de entrada, permanência, saída e afastamento de*

Human trafficking and forced labour

estrangeiros de território português”).² If adopted, the new legal regime under debate will speed up the process of obtaining a residence visa for those immigrants who want to join Portugal’s labour market and have the necessary means to do so. This constitutes an important step in the promotion of legal entry channels to Portuguese territory for foreign nationals and, consequently, their chances of integration into the country.

While access to the labour market is important, the treatment of immigrant workers in various economic sectors requires more detailed analysis. This is the purpose of the present study, employment being the main reason for migration that structures every aspect of their lives in the destination country. Understanding the conditions they face in the destination labour market is, therefore, vital to everyone working on migration related issues. Our study reveals that, although difficult to quantify, there exists a notable dimension of exploitative situations involving immigrant labour in Portugal.

This work comprises six chapters: The methodology adopted by the authors is outlined in this chapter; Chapter II looks at the international, regional, and national legal framework for trafficking in persons; Chapter III begins with a review of existing national literature on migrant trafficking, and goes on to present the findings on exploitation of immigrant labour in Portugal. This is followed by industry profiles for construction, domestic service, hotel and catering, agriculture, the sex industry, and others, followed by the characteristics of immigrants and their own attitudes towards exploitation. The next section analyses the principal factors underlying exploitative situations, describes institutional approaches to the problem in Portugal, and present some conclusions.

In Chapter V, which deals with Portuguese emigrants abroad, we attempt to characterise the agents involved in recruiting Portuguese emigrants who are victims of labour exploitation and trafficking in persons. The recruitment, transportation, reception, and introduction of the victims to the destination labour markets are also described, followed by an outline of labour exploitation and trafficking practices involving Portuguese workers in the Netherlands and Spain. Lastly, Portugal’s institutional approaches to the problem of its emigrant workers are discussed.

Chapter VI contains recommendations on combating labour exploitation, forced labour and trafficking situations, as well as on victim protection. One set of recommendations relates to immigrants in Portugal, while another refers to Portuguese emigrants abroad.

² Available at http://www.acime.gov.pt/docs/Legislacao/LPortuguesa/LEI_IMIGRACAO/Anteprojecto_Lei_Imigracao.pdf

1.2 METHODOLOGY

Of the three main purposes of human trafficking (trafficking for labour exploitation, trafficking for sexual exploitation, and trafficking for organ removal), trafficking for labour exploitation of men and women was chosen as the main focus of our study, as this was an area about which little was known. However, we also sought to gain deeper insight from the relevant institutions into the exploitation of migrant women forced into prostitution in Portugal, although this was very much a secondary focus of our research.³ This study does not address trafficking for organ removal.

In respect of labour exploitation, a distinction can be made between i) the networks organising migration that are involved in exploitation of immigrants both during transit and after their arrival through extortion⁴ and ii) the employers who exploit immigrants in the labour market – an area which has not yet been systematically researched.

On the basis of this information, we identified the following questions for research purposes:

1. Are immigrant workers' rights violated, and are there forced labour situations (as defined by the ILO) in Portugal? What are the characteristics of these situations?
2. In what way are these exploitative working conditions a result of human trafficking or smuggling? What role do organised crime networks play in this process?
3. In which economic sectors do these forms of exploitation most frequently occur?
4. What are the factors contributing to these exploitative situations?
5. Who are the most vulnerable immigrants, and what is their point of view?
6. What are the institutional responses to these phenomena and how can they be improved?

After reviewing the existing literature, especially in respect of the legal framework and national research on the subject, we examined the Portuguese press for articles published between 2000 and 2006 on trafficking for labour exploitation purposes affecting (a) immigrants in Portugal, and (b) Portuguese emigrants abroad. This entailed researching the news archives of the *Diário de Notícias*, those of ACIME and of a research scholar, Clara Almeida Santos. Fifty news articles relating to immigrant trafficking and exploitation in Portugal were found (30 in 2000/ 2001, 19 in 2004/2005, and 1 in 2006),

³ This subject has already been documented in *O Tráfico de Migrantes em Portugal: Perspectivas Sociológicas, Jurídicas e Políticas* (Migrant Trafficking in Portugal: Sociological, Legal and Political Perspectives) (Peixoto, J. et al, 2005).

⁴ *idem*

Human trafficking and forced labour

and a total of 28 articles relating to trafficking and labour exploitation of Portuguese emigrants (4 in 2003, 8 in 2004, 12 in 2005, and 4 in 2006).

This consultation provided the first indications of the types of exploitation to which immigrants are subjected in Portugal, by employers and by human trafficking networks, and the sectors and regions in which the exploitation mainly occurs. It also enabled us to identify some of the organizations concerned with the protection of migrants as well as with inspection and monitoring of work sites. Furthermore, it alerted us to the fact that there was exploitation of Portuguese workers abroad.

After the documentation gathering process, we began interviewing the various institutional actors and a number of immigrants and emigrants (see Annex 3 for list of interviews). Twenty-eight interviews were conducted between November 2005 and March 2006. During these initial interviews, in addition to information about immigrant labour exploitation in Portugal, details of labour exploitation affecting Portuguese emigrants abroad began to emerge. It was then that we decided to include the latter dimension in our study.

The interviews were semi-structured, and conducted using a script prepared on the basis of the research objectives referred to above. The way it was structured was guided, above all, by the purpose of determining, on one hand, the occurrence of violations of immigrant workers' labour rights and, on the other, the identification of the basic features of labour exploitation of Portuguese workers abroad (see Annex 4 for the interview script). The interviews took between one and three hours and were tape-recorded, except when the interviewee objected (which happened in two cases). An interview report was written for each interview.

In addition to 28 such interviews, the authors contacted institutions that are considered key informants. These contacts turned out to be difficult and, in many cases, unproductive. It is noteworthy, for example, that the construction and hotel/catering trade unions in northern Portugal were most willing to assist in our project, in stark contrast to the attitude of the same trade unions in the south of the country, which we were unable to interview in spite of several attempts to do so on our part. Through the organizations contacted, we managed to conduct a further 5 interviews of immigrants in Portugal.

The interview data was supplemented with information from a questionnaire sent to all the regional delegations of the Inspectorate General of Labour (IGT). This was possible thanks to Luís Claudino of the IGT in Lisbon, and resulted in 13 responses from IGT delegations out of a total of 32 (see Annex 5). A further questionnaire relating to exploitation of Portuguese workers abroad was sent to the Councillors of the *Conselho das Comunidades Portuguesas* (CCP), thanks to assistance from its Chairman Carlos Pereira (see Annex 6). This initiative resulted in 10 responses from counselors out of a total of 96. Information obtained was processed using analysis grids (see Annex 7) that enabled the data collected via interviews to be systematised and compared.

We acknowledge that by basing our study on information gathered through interviews with secondary agents, we are limited to institutional knowledge that might not entirely reflect the experiences of the workers and employers directly concerned. However, since this is a first attempt to analyse such hidden phenomena we believe that these are valuable information sources that can convey a more comprehensive picture than individual agents involved in this process. Another limitation of the study is that it does not provide a balanced regional coverage, as the sources of data depended on the willingness of institutions to respond. For example, interviews were conducted on the Alentejo agricultural sector, but no such surveys were possible in the north and central regions. In contrast, interviews carried out in the hotel, catering and construction sectors mainly reflect the experiences of the centre and north of the country.

This study is a qualitative one and is not meant to be representative. It attempts to illustrate labour rights violations to which immigrants are subjected in Portugal as well as those to which Portuguese workers are subjected abroad.

LEGAL FRAMEWORK CONCERNING TRAFFICKING IN PERSONS AND FORCED LABOUR

II

Since the end of the last century, the international community and individual states have paid renewed attention to the problem of trafficking in persons and forced labour. In contrast to the reality during much of the twentieth century, forced labour practices nowadays are largely due to private rather than state actors. In addition to state imposed forced labour, new forms, such as human trafficking, have gained prominence where the profiteers are mainly actors in the private sector.⁵

Trafficking of migrant workers for forced labour purposes is one of the new forms of this phenomenon. It involves to some extent organised crime groups and generates substantial profits globally.⁶ Growing concern about human trafficking has led to the recent adoption of a number of international and national legal instruments to address the problem.

In this chapter we endeavour to give an overview of the main legal instruments dealing with trafficking for forced labour purposes. We start by looking at international legal instruments adopted by the United Nations and the ILO. Then we examine EU regulations governing trafficking in persons, and end with an outline of Portuguese domestic law on the subject.

2.1 INTERNATIONAL LEGAL FRAMEWORK

2.1.1 Definition and criminalisation of trafficking

The “**United Nations Convention on Transnational Organised Crime**”,⁷ adopted by the UN General Assembly in 2000, aims to promote cooperation

⁵ ILO, “*A Global Alliance against Forced Labour*”, 2005, p. 1.

⁶ According to the ILO, the total number of victims in forced labour as a result of trafficking is 2.45 million people. This figure is about 20% of all forced labour situations globally. Annual profits generated from trafficking are estimated to be 32 billion \$US (ILO, 2005 (1)).

⁷ Referred to in this study as the Convention. It was adopted in Portugal by Resolution 32/2004 of the Assembly and ratified by Decree 19/2004 of 2 April by the President of the Republic.

Human trafficking and forced labour

among Member States for more effective measures to prevent and combat transnational organised crime.

One of the Convention's key aims is that States that ratify it must criminalise a number of trafficking-related activities, including participation in an organised criminal group (Article 5), money-laundering (Article 6) and corruption (Article 8). The **"Supplementary Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children"**⁸ supplements the UN Convention on Transnational Organised Crime. The Protocol aims to prevent and combat trafficking in persons, paying particular attention to women and children, to protect and assist the victims of trafficking, and to promote cooperation among State Parties in order to meet those objectives (Article 2).

This instrument contains the first definition agreed upon by the international community of trafficking in persons.⁹ It is defined in Article 3 as: *"the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"*.

States Parties to the Protocol are committed under the terms of Article 5, paragraph 1, to establish as criminal offences the conduct of trafficking in persons as defined above. The obligation is to criminalise trafficking as a combination of constituent elements and not the individual elements themselves.¹⁰

According to the **Legislative guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children** (United Nations Office on Drugs and Crime, 2004), "trafficking in persons" as defined above comprises three cumulative elements:

⁸ Adopted in Portugal through Resolution 32/2004 of the Assembly and ratified by Decree 19/2004 of 2 April of the President of the Republic. The UN Convention on Transnational Organised Crime is also supplemented by the Protocol against the smuggling of Migrants by Land, Sea or Air. In the text, we shall refer to the *"Supplementary Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children"* as the Protocol.

⁹ The definition of trafficking in persons contained in the Protocol constituted the basis for the Council Framework Decision relating to the Fight against Trafficking in Persons (2002/629/JAI).

¹⁰ Thus, each State Party will decide whether to criminalise, for example, the transfer of a person using fraudulent means. The mandatory requirement to criminalise not only refers to the act of trafficking in persons when committed but also includes attempts to commit such an offence, subject to the basic concepts of States Parties' legal systems (Article 5, 2 (a) of the Protocol).

Legal framework concerning trafficking in persons and forced labour

a. **The act of recruiting, transporting, transferring, receiving or harbouring persons;**

With regard to the movement of persons, the interpretation of the Protocol together with the Convention¹¹ is that this applies not only when the victim crosses an international border but also to internal migratory trajectories.¹²

b. **Means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;**

The concept of “*abuse of a position of vulnerability*” is of key importance in this second constituent element of trafficking in persons. According to the Interpretative Notes of the Protocol, the words “abuse of a position of vulnerability” refer to any situation in which the victim has no real and acceptable alternative but to submit to the abuse involved (United Nations Office on Drugs and Crime, 2004).

It should be noted that, according to Article 3, paragraph (b) of the Protocol, the consent of a victim of trafficking is irrelevant to the qualification of conduct as “trafficking in persons” under the Protocol, once it has been established that one of the coercive means described above were used. The use of these coercive means becomes irrelevant in the qualification of conduct as “trafficking in persons if the victim is under 18 years of age” (Article 3, paragraphs (c) and (d)).

c. **Intention to exploit;**

The presence of this third constituent element of trafficking in persons means that it is enough to prove that there was the intention on the part of the agent to exploit the migrant (United Nations Office on Drugs and Crime, 2004).

The concept of exploitation, as the objective of the trafficker’s activity, includes, at a minimum, the exploitation of the prostitution of others or other

¹¹ According to Article 1 of the Protocol.

¹² Article 34, paragraph 2 of the Convention, applicable to the Protocol by virtue of Article 1, provides that, when criminalising trafficking in persons, national legislators should not introduce in their definition elements relating to transnationality or organised criminal groups into domestic offence provisions. The transnationality element and involvement of organised criminal groups will lead to the application of other provisions of the Protocol such as, for example, those relating to prevention and cooperation.

Human trafficking and forced labour

forms of sexual exploitation, forced labour or services¹³, slavery¹⁴ or practices similar to slavery¹⁵ servitude or the removal of organs.

According to the Report of the EU Experts Group on Trafficking in Persons¹⁶ **forced labour** constitutes the fundamental element of the trafficking process. It is the violation of the victims' human rights, embodied in the concept of forced labour that the Protocol aims to eliminate (Experts Group Report, 2004).

Article 2, paragraph 1 of ILO Forced Labour Convention, 1930 (No. 29)^{17 18} defines forced labour as "*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*".

States Parties ratifying this Convention are also committed to ensuring that the illegal exaction of forced labour is a punishable penal offence under national legislation.¹⁹ The concept of forced labour as defined by ILO Convention 29 comprises three basic elements:

- a. **the activity exacted must be in the form of work or service;**²⁰
- b. **the menace of a penalty** used to exact the work or service can take different forms, including the loss of rights and privileges. The ILO identified a number of practices that constitute such penalties and might be indicators of forced labour situations. These include²¹:
 - Physical or sexual violence against the worker, his/her family or close associates;
 - Restriction of the worker's movement;

¹³ The Protocol seems, with this enumeration, to make a distinction between sexual exploitation and forced labour. According to the ILO Forced Labour Convention, 1930 (No. 29), however, the concept of forced labour must be understood in the sense of also including forced sexual services (ILO 2005).

¹⁴ The concept of slavery is defined by the 1926 Slavery Convention of the League of Nations, as "*the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised*".

¹⁵ Article 1 of Section I of the UN 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery does not contain a definition of these. It does, however, state that serfdom, servile marriage, and debt bondage should be considered slavery-like practices.

¹⁶ Set up by the European Commission Resolution of 25 March 2003, JO L79.

¹⁷ Portugal's ratification of it was approved by Decree 40646, of 16 June, 1956. It entered into force in national legislation on 26 June 1957.

¹⁸ Supplemented by the ILO Abolition of Forced Labour Convention, 1957 (No. 105), which does not change the concept of forced labour provided by Convention 29. ILO Convention 182, 1999, seeks to secure the prohibition and elimination of the worst forms of child labour, including trafficking of children.

¹⁹ Article 25 of ILO Convention 29.

²⁰ ILO Convention 29 excludes from its sphere of application a number of activities, including work exacted in virtue of compulsory military service, and any work or service exacted as a result of a conviction in a court of law, provided it is supervised by a public authority.

²¹ ILO (2005 b)

Legal framework concerning trafficking in persons and forced labour

- Debt bondage or bonded labour;
- Withholding wages, non-payment of wages or illegal wage deductions;
- Retention of identity documents;
- Threat of denunciation to the authorities and of deportation.

Most of these practices are, in themselves, crimes provided for under States' legal systems.²² However, the imposition of forced labour, which can include one or more of the above practices, is of a different order, with a scope of application that is not exactly the same.

- c. **it is undertaken involuntarily by the victim.** This aspect includes situations in which there was initial willingness on the part of the victim, but where external constraints and coercion come into play at a later stage and the victim is no longer free to withdraw his/her consent (ILO, 2005).

2.1.2 Protection of and assistance to victims

The Protocol's provisions on protection of and assistance to victims of trafficking should, by virtue of Article 1, be applied together with Articles 24 and 25 of the Convention regardless of whether the victims are in their country of origin, a transit country, or a destination country (United Nations Office on Drugs and Crime, 2004)

With regard to the protection of and assistance to victims, the Protocol and the Convention contain three categories of rules: those that are obligatory for States Parties, those that States are called upon to apply, and those that are entirely optional.

Rules in the first category include:

- the obligation to protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to trafficking confidential (Protocol, Article 6, paragraph 1);
- The obligation to provide victims with information on relevant court and administrative proceedings (Protocol, Article 6, paragraph 2 (a));
- The obligation to ensure that victims are able to present their views and concerns at appropriate stages of criminal proceedings against offenders (Protocol, Article 6, paragraph 2 (b));
- The obligation to ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered (Protocol, Article 6, paragraph 6, and Article 25, paragraph 2 of the Convention).

²² The Portuguese Penal Code provides for a number of crimes whose scope of application could coincide with these practices: crimes of common assault, actual bodily harm and grievous bodily harm (Articles 143, 144 and 146), threats (Article 153), coercion (Article 154), serious coercion (Article 155), abduction (Article 158), sexual coercion (Article 163) and rape (Article 164).

Human trafficking and forced labour

With regard to provisions of the second type, Article 24, paragraph 4 of the Convention calls upon each State Party to take appropriate measures within its means to provide effective protection for victims taking part as witnesses in criminal proceedings²³ and, as appropriate, for their relatives and other persons close to them.

States Parties are called upon to endeavour to provide for the physical safety of victims of trafficking in persons generally, regardless of whether they are witnesses in criminal proceedings, for as long as they are within their respective territories (Protocol, Article 6, paragraph 5).

Consideration must be given by each State Party to measures that permit victims of trafficking in persons to remain in its territory and, in so doing, appropriate consideration must be given to humanitarian and compassionate factors (Article 7 of the Protocol).

Lastly, insofar as provisions whose implementation is left to the discretion of States Parties, Article 6, paragraph 3 of the Protocol sets out a number of measures for consideration that can assist victims' physical, psychological, and social recovery. These include appropriate housing, counselling and information in a language that victims of trafficking in persons can understand, medical, psychological, and material assistance, and employment, educational and training opportunities. Provision of such support must not be linked to the victim's willingness to cooperate with the authorities in criminal proceedings against traffickers (United Nations Office on Drugs and Crime, 2004).

A key question here, however, is exactly how victims of trafficking in persons are to be identified in order to be eligible for such victim support. The Protocol does not stipulate any procedure for determining the status of the victim.²⁴

²³ The Convention lists a number of measures, including: moving the victim to a different area; restriction or non-divulgence of information about their identity and whereabouts; procedural rules that ensure that the witness's testimony is given in conditions of safety.

²⁴ This objective could be achieved in different ways: establishing an administrative or legal procedure for police or border control forces, or others who come in contact with possible victims to determine the status of a victim of trafficking; a similar procedure being initiated on the request of the victims; or victim status being conferred by competent courts during the course of proceedings involving trafficking crimes (UN Office on Drugs and Crime, 2004).

2.2 EU LAW AND REGULATIONS

2.2.1 The concept of trafficking

The European Union adopted a **Council Framework Decision 2002/629/JAI**²⁵, on 19 July 2002²⁶ on combating trafficking in persons pursuant to Article 34 of Title VI of the Treaty of the European Union.

The concept of trafficking in persons is defined in the Framework Decision's Article 1 as "*the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:*

- use is made of coercion, force or threat, including abduction; or
- use is made of deceit or fraud; or
- there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved; or
- payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including pornography.

The concept of trafficking in persons enshrined in this instrument largely coincides with that provided in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*. It does not, however, include trafficking of persons for organ removal.

Article 1 calls upon Member States to criminalise human trafficking as defined therein by 1 August 2004, and to ensure it is punishable by effective, proportionate, and dissuasive criminal penalties. The conditions for criminalisation are similar to those provided for in the Protocol, namely insofar as the irrelevance of the victim's consent is concerned and the irrelevance of the means used in the case of child trafficking (Article 1, paragraphs 2 and 3).

2.2.2 Victim support

Although strong emphasis is placed on the criminal aspects, the Framework Decision does, nonetheless, include some references to protection of and assistance to child victims. Pursuant to Council Framework Decision 2001/220/JAI of 15 March 2001, on the standing of victims in criminal proceedings²⁷, the right of particularly vulnerable victims to benefit from

²⁵ In this text, we shall refer to Council Framework Decision 2002/629/JAI as the Framework Decision.

²⁶ JO L203 1 August, 2002.

²⁷ JO L82 of 22 March, 2001.

Human trafficking and forced labour

specific treatment best suited to their circumstances is upheld (Article 2, paragraph 2). Child victims will be protected from the negative impact of giving evidence in open court proceedings (Article 8, paragraph 4). The Framework Decision also determines that the prosecution of trafficking in persons offences will not be dependent on the report or accusation made by the victims (Article 7, paragraph 1).

The protection of and assistance to victims of trafficking in persons under community law was also the focus of EU Council Directive 2004/81/EC of 29 April, 2004.²⁸ This Directive addresses the possibility of human trafficking victims being granted a residence permit in the destination Member State.²⁹ For this, a number of cumulative conditions have to be met, namely: the victim's clear intention to cooperate with national authorities, the victim's severance of all relations with those suspected of the criminal acts in question, and the relevance of the victim's testimony to investigations or legal proceedings (Article 8, paragraphs 1 and 2).

The competent authorities of Member States are responsible for identifying victims of trafficking in persons that could benefit from such residence permits. They will inform the persons concerned of the possibilities and conditions relating to the permits in question (Article 5, paragraph 1).³⁰ Trafficking victims will be granted a reflection period³¹ that will allow them to escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the authorities. During the reflection period, victims of trafficking will not be subjected to any expulsion order against them, and they will be granted sufficient resources to ensure their subsistence and access to emergency medical treatment.

Holders of residence permits granted under this scheme can at least benefit from the rights associated with the reflection period and, in the case of special needs victims³², from medical and/or any other necessary assistance (Article 9). The Directive also provides for the possibility of victims being granted access to already-existing or tailored social rehabilitation programmes (Article 12).

Victims' access to the labour market, vocational training and education is still left to the discretion of the Member States, who are called upon to

²⁸ Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in persons or who have been the subject of an action to facilitate illegal immigrations, who cooperate with the competent authorities, JO L261 of 06.08.2004. The Directive should be transposed to Member States' legal systems by August 2006.

²⁹ The residence permit shall be valid for at least 6 months and be renewable if the conditions under which it was issued continue to be satisfied (Article 8° (3)).

³⁰ Member States may also delegate this task to specifically appointed NGOs or associations (Article 5, paragraph 2).

³¹ The duration and starting point of the reflection period is left to the discretion of Member States.

³² Pregnant women, the disabled or victims of sexual or other forms of violence.

Legal framework concerning trafficking in persons and forced labour

define the rules governing such access (Article 11). In the case of child victims of trafficking, Member States are called upon to take due account of their best interests when applying the Directive, and to ensure that the procedure is appropriate to their age and maturity, and that they have access to the educational system under the same conditions as nationals. In the case of unaccompanied minors, Member States must take the necessary steps to establish their identity and nationality, to locate their families, and to ensure legal representation (Article 10).

2.3 NATIONAL LEGAL FRAMEWORK

2.3.1 Definition of trafficking in the Portuguese Penal Code

Portugal's current criminal legislation on trafficking in persons is not yet entirely in line with the international sources discussed above.³³ Article 169 of the Portuguese Penal Code³⁴ describes the crime of trafficking in persons as follows:

“For whosoever, using violence, serious threat, deceitful trickery or manoeuvre, abuse of authority in a relationship of hierarchical, economic or employment dependency, or by taking advantage of any situation in which there is particular vulnerability, entices, transports, receives or harbours a person, or provides the conditions for that person, in a foreign country, to engage in prostitution or significant sexual acts, the penalty is imprisonment of between 2 to 8 years.”³⁵

³³ The “Council of Ministers, meeting on 27 April, 2006, at the Presidency of the Council of Ministers, adopted the draft Law providing for the twenty-first modification of the Penal Code, approved by Decree Law 400/82, of 23 September, should be referred to here. The draft Law so approved was subsequently put before the Assembly of the Republic, for the purpose of altering the General Provisions of the Penal Code, on the basis of work undertaken by the Mission Unit for Penal Reform, and taking into account Community and international instruments” (text of the Ministry of Justice, available at <http://www.mj.gov.pt/sections/justica-e-tribunais/justica-criminal/unidade-de-missao-para/aprovado-anteprojecto-de/>). With regard to the subject of this study, the draft Law typifies, in Article 160, the crime of trafficking in persons, and extends its sphere of application to labour exploitation and organ removal.

³⁴ Decree 400/82, of 3 September, modified by Law 6/84, of 11 May, Decree 101/88, of 26 March, Decree 132/93, of 23 April, Decree 48/95, of 15 March, Law 65/98, of 2 September, Law 7/2000, of 27 May, Law 77/2001, of 13 July, Law 97/2001, of 25 August, Law 98/2001, of 25 August, Law 99/2001, of 25 August, Law 100/2001, of 25 August, Law 108/2001, of 28 November, Decree Law 323/2001, of 17 November, Decree Law 38/2003, of 8 March, Law 52/200, of 22 August, Law 100/2003, of 15 November, Decree Law 53/2004, of 18 March, Law 1/2004, of 27 March and Law 32/2004, of 22 July.

³⁵ This wording of Article 169 of the Penal Code results from Law 99/2001, of 25 August.

Human trafficking and forced labour

Examination of this Article reveals that the (objective) elements of this crime are:

- a. **The act of recruiting, enticing, transporting, receiving or harbouring, or providing conditions for;**
- b. **use of violence, serious threat, deceitful trickery or manoeuvre, abuse of authority in a relationship of hierarchical, economic or employment dependency, or taking advantage of any situation in which there is particular vulnerability;**
- c. **to engage in prostitution or significant sexual acts.**

In the Portuguese Penal Code, the crime of trafficking in persons is a crime that is dependent upon the victim engaging in prostitution or sexual acts (Annotated Penal Code, 2002). In contrast to the Protocol's position for the crime of trafficking in persons to be proven, it is not enough to demonstrate the agent's intention to subject the victim to the conduct described.

"Sexual act" encompasses all forms of behaviour that, objectively, are of a nature, content or meaning directly related to the sexual sphere, the intention of the agent to arouse or satisfy a libidinous desire in himself/herself or in another person being irrelevant (Dias, 1999). Among such behaviour, in relation to trafficking in persons only *significant sexual acts* are considered, i.e. those that, from an objective point of view, are a considerable impediment to the victim's sexual self-determination. The following are excluded: "*acts that, although onerous or significant in themselves because of their improper, dishonest, distasteful or immodest nature, still, on account of their small quantity, infrequency or momentariness, do not significantly hamper the victim's free sexual determination*" (Dias, 1999).

In the above lies the key to the difference between the interpretation of trafficking in persons in the Portuguese Penal Code and that of the Protocol. While the Penal Code's scope of application is limited to trafficking in persons for sexual exploitation, the Protocol covers the illegality of forced labour and services, which as we have seen, includes but is not limited to sexual exploitation of another person as well as slavery and slavery-like practices, servitude and organ removal.

Notwithstanding this difference, certain constituent elements of trafficking in persons are, separately, considered criminal offences under Portuguese criminal law. These include threat (Article 153 of the Penal Code), physical violence (Articles 143, 144 and 146), coercion (Articles 154 and 155), sexual coercion (Article 163), abduction (Article 157), kidnapping (Article 158), slavery (Article 159), and extortion (Article 223).

d) in a foreign country;

This element gives rise to differences of interpretation. Some authors make perpetration of the crime dependant on the recruitment of victims exclusively in Portugal to work abroad. Under this interpretation, trafficking of foreign nationals to engage in prostitution or significant sexual acts in

Legal framework concerning trafficking in persons and forced labour

Portugal are not included. (Alves, 1995: 63, quoted in Peixoto, Soares, *et al.*, 2005 p.73).³⁶

The exclusion, from this crime's sphere of application, of conduct involving trafficking in persons for the purpose of prostitution or other significant sexual acts within the national territory seems conciliatory (Penal Code, 2002).³⁷

With regard to the specific case of **trafficking in minors**, paragraphs 2 and 3 of Article 176 of the Penal Code state:

“For whosoever entices, transports, receives or harbours a minor under the age of 16, or supplies the conditions for the minor to engage, in a foreign country, in prostitution or significant sexual acts, the penalty is imprisonment of between 1 and 8 years. If the agent uses violence, serious threat, trickery, deceitful manoeuvre, abuse of authority in a relationship of hierarchical, economic or employment dependency, act in a professional capacity or with intent to profit, or take advantage of the victim's psychological incapacity, or any other situation of particular vulnerability, or if the minor is less than 14 years of age, the penalty is imprisonment of between 2 and 10 years.”

In addition to the special characteristic of the victims concerned – they must be under the age of 16 – this crime differs from the crime of trafficking in persons examined above insofar as the means of coercion do not lead to criminalisation of the conduct. The means are relevant for determining the length of the sentence.

A further difference between the Penal Code and the Protocol is in the latter's wider scope of application, as “child”, according to Article 3, paragraphs (c) and (d) of the Protocol, applies to any person under eighteen years of age, in contrast to persons under sixteen years of age in the Portuguese Penal Code.

2.3.2 Protecting victims on Portuguese territory

The Portuguese legal system provides for a series of measures whose sphere of application – albeit not specifically intended for the purpose – offer a minimum legal support structure for the protection of trafficking victims.

Article 137 - B of Decree 244/98 of 8 August³⁸ provides for residence permits without visas to be granted to trafficking victims who “(...) *collaborate in the investigation of illicit activities liable to criminal prosecution, namely in connection with organised crime (...)*”. This law does not, however, provide for any reflection period, which, in addition to the documentation

³⁶ As a matter of interest, this interpretation of the crime of trafficking in persons was confirmed to us by an interviewee who belonged to a police criminal investigation unit.

³⁷ In contrast to the concept of trafficking in persons as defined by the Protocol for the purposes of criminalisation, which also includes cases of internal circulation of victims.

³⁸ Decree 244/98, of 8 August, modified by Law 97/99, of 26 July, Decree 4/2001, of 10 January, and Decree 34/2003, of 25 February, approves the conditions for the entry, stay, and removal of foreign nationals from national territory, except for citizens of the EU and the European Economic Area.

Human trafficking and forced labour

required for this type of residence permit to be granted³⁹, and the pending illegal status proceedings, could result in a limited application of this provision.

In the capacity of witnesses in criminal proceedings, victims of trafficking may be entitled to a number of protection measures under Law 93/99 of 14 July.⁴⁰ Such measures include concealing the witness's image and/or distorting their voice while testifying or giving evidence (Article 4).⁴¹ The use of teleconference is also admissible for relaying witness statements or evidence (Article 5). The law also provides for non-disclosure of the witness's identity, which may apply to one or all stages of the proceeding (Article 16).⁴²

Special security measures (Article 20) and witness protection programmes⁴³ (Articles 21 and 22) provide for, among other measures: indication during the proceedings of an address that is different to that of the witness's usual place of residence; police protection for the witness, relatives or close associates; provision of new official documents with altered identification details to replace the witness's original documents; granting of a new place of residence, either within the country or abroad; provision of a subsistence allowance for a limited period of time.

Law 61/91 of 13 August⁴⁴ provides for different measures of **protection of and assistance to women victims of violence**. They include State support for setting up shelters to provide victim assistance, refuge, and counselling (Article 5); establishment of a telephone helpline office at the Ministry of Justice (Article 6); establishment of direct victim support units at criminal police authorities (Article 7), and the right of associations that deal with

³⁹ Granting of residence permits without a visa involves submission of a passport or other valid identification document, blank criminal record for individuals aged more than 16, and proof of means of subsistence and accommodation (Article 54, paragraph 1 of Regulatory Decree 6/2004, of 26 April, which regulates Decree 244/98, of 8 August). Even if the last two requirements were not applicable, because of the specificity of the cases concerned, simply having to submit a valid passport could in itself, for a trafficking victim, prove to be an insurmountable obstacle.

⁴⁰ Law for the Protection of Witnesses in Criminal Proceedings, regulated by Decree 190/2003, of 22 August.

⁴¹ Application of these measures depends on proof of intimidation or high risk of intimidation of the witness. Intimidation means any kind of pressure or threat, direct, indirect or potential, exercised by any person over a witness, for the purpose of influencing their testimony or statement (Art. 4, paragraph. 2 and Art. 2, paragraph. b)).

⁴² Criteria for application of this measure include: testimony must relate to criminal offences involving criminal association, serious threat to the life, physical integrity, freedom or property of the victim, or the victim's relatives or close associates; credibility of the witness; witness's testimony constitutes a relevant contribution to the evidence.

⁴³ Application of these programmes requires that: the witness's testimony relates to the crime of trafficking committed by a criminal group; there is serious risk to the witness's life, physical or mental integrity or freedom; the witness's evidence or testimony constitutes an essential contribution to

determining the truth.

⁴⁴ Law on the Protection of Women Victims of Violence.

Legal framework concerning trafficking in persons and forced labour

protecting women victims of crime to assist in representing victims in criminal proceedings (Article 12).

In relation to the **protection of victims of child trafficking**, Law 147/99 of 1 September⁴⁵ applies to persons under the age of 18 who are resident or living in Portuguese territory (Articles 2 and 5, item a). The law provides for several measures designed to eliminate all dangers to the child's security, health, training, education and development that could arise from physical or psychological ill-treatment or sexual abuse (Article 3, paragraph 1, and 2 item a). Measures to promote children's rights and protection⁴⁶ are the exclusive responsibility of the Child and Youth Protection Commissions and the courts (Article 38).

In cases where there is an actual or imminent danger to a child's life or physical integrity and there is dispute about who has *de facto* guardianship, appropriate measures are taken for the child's immediate protection, and court or police authorities are called to intervene. Until court intervention is possible, the police will remove the child from danger and place him/her for safety reasons in a temporary refuge (Article 91, paragraphs 1 and 3).

As far as **patrimonial compensation for victims of trafficking in persons** is concerned, this can occur under certain conditions, under the terms of Decree 423/91, of 30 October.⁴⁷ This law provides for payment by the Portuguese State of compensation for patrimonial damages arising from the death of or grievous bodily harm to the victims. This is a complementary process, only applicable when restitution for damages suffered is not achievable through civil liability of the perpetrator of the crime or another source of effective and efficient compensation (Article 1, paragraph 1 (c)).

When the victim is a foreign national, compensation will only be payable in connection with damages arising from intentional acts of violence perpetrated within Portuguese territory or onboard a Portuguese vessel or aircraft (Article 1, paragraph 1).

To conclude, the Portuguese national framework contains basic provisions for criminal acts associated with human trafficking as well as for the protection of victims of such crimes. At the time of writing, it still lacks a comprehensive anti-trafficking law that would also cover trafficking for the purpose of labour exploitation as defined by the Protocol and the EU Framework Decision. Furthermore, victim protection measures need to be introduced that address the special needs and circumstances of trafficked persons as compared to other victims of crime. The Portuguese legislature has intro-

⁴⁵ Law 147/99, of 1 September, modified by Law 31/2003, of 22 August – Law on the Protection of Children and Young People at Risk.

⁴⁶ Measures relevant to child trafficking victim cases include, entrusting the child to a responsible person, foster home, or children's home (Article 35).

⁴⁷ Decree 423/91, 30 October, modified by Law 10/96 of 23 March, Law 136/99, of 28 August and by Decree 62/2004, of 22 March, which establishes the Legal Regime for Protection of Child Victims of Violent Crime.

Human trafficking and forced labour

duced draft legislation in this regard and its adoption will hopefully lead to improved justice and protection of trafficked persons in Portugal as well as contribute to the prevention of trafficking from Portugal.

3.1 RECENT RESEARCH ON TRAFFICKING IN PERSONS

The oldest and most extensive form of immigration to Portugal has been from Lusophone Africa since the mid-1960s. However, since 1998, there has been a noticeable change in the composition of migration flows to Portugal: significant numbers of Eastern European immigrants and new Brazilian immigrants⁴⁸ have entered. These are generally less skilled than those who had migrated earlier.

Whereas the earlier African immigrants entered with the help of relatives and acquaintances who provided services on the basis of trust, with the arrival of Eastern Europeans, the movement of people became a trade and the “migrant contraband”⁴⁹ phenomenon emerged. They were brought in through networks that were often highly organised and had criminal connections. Not only did these networks arrange transportation of immigrants, they continued to exploit them after their arrival in Portugal. The new wave of Brazilian immigrants has, to some extent, also been similarly exploited.

Trafficking being a relatively new phenomenon, the first study to reveal it was undertaken in 2004. It was carried out by a research team from the *Centro de Investigação em Sociologia Económica e das Organizações* (Research Centre for Economic & Organizational Sociology), and the *Instituto Superior de Economia e Gestão, Universidade Técnica de Lisboa* (Higher Institute of Economics & Management, Technical University of Lisbon).⁵⁰

Trafficking of immigrants from Eastern Europe and Brazil, including that of women for sexual exploitation, was the main focus of the project. The

⁴⁸ Known as the “2nd wave” (ACIME/ Casa do Brasil report, 2004).

⁴⁹ Expression used in Peixoto *et al*, 2005 pp. 301-303.

⁵⁰ Peixoto *et al*, “*Migrant Trafficking in Portugal: Sociological, Legal and Political Perspectives*”, 2005. The study was financed by the Fundação para a Ciência e Tecnologia (Science and Technology Foundation) and the High Commission for Immigration and Ethnic Minorities (ACIME).

Human trafficking and forced labour

study dealt with immigrant recruitment, transportation and harbouring carried out by organised networks or by individuals. The authors opted for a broad definition of trafficking, taking up cases in which migration was facilitated by a third party at source, during transportation, or in the destination country and in which the immigrants, either men or women, were introduced into the labour market, including into prostitution, in Portugal. It was a qualitative study, based on a number of interviews with various institutional actors: non-governmental organizations (NGOs), government bodies, police forces, and international organizations. In particular, thirty-one cases involving legal proceedings were examined (22 on trafficking for labour purposes and 8 on trafficking of women). The study did not include an in-depth examination of situations involving exploitation of immigrant workers by employers.

The main findings of the study concerning trafficking for labour and trafficking of women for sexual exploitation are described below. Where appropriate, additional information from other sources has been included.

3.1.1 Trafficking for labour

The initial flow of immigrants from Eastern Europe was mainly made up of men aged between 20 and 50 years coming from Ukraine, Moldova, Russia and Romania. They had various professions and, in most cases, medium to high levels of qualification. Immigrants paid between \$450 to \$1500 for a 'package deal' to travel agents in their country of origin or in a neighbouring country. This would include transportation mostly by van or bus across Central Europe, passports and tourist or short-stay visas for Schengen countries, the promise of a job in the destination country with at times contact details of a person at the other end who would help them find work.

These package deals were widely publicised in the countries of origin through newspapers and were made available through "sales persons" in rural areas. In most cases, the journey was without incident. In just two of the cases examined the immigrants were assaulted on the way. Several "groups" emerged to take advantage of these migration flows and, realising how vulnerable illegal immigrants were in Portugal, they soon began to exploit them.

The study found that mainly Moldovan, Russian, and Ukrainian groups, with varying degrees of organization and criminal sophistication, were actively involved in facilitating illegal immigration and extortion⁵¹ of labour migrants. In fact, extortion of immigrants after their arrival in Portugal was often their main incentive for collaborating with the network. They would receive or identify the immigrants as soon as they arrived in the country, often take

⁵¹ Extortion is understood here to mean obligatory payment of a 'protection subsidy' to these groups, which is unconnected with any debt the immigrants might have incurred in the source country. In some cases, it was found that immigrants were forced to pay the contact in Portugal who arranged their employment, amounts far exceeding what was initially agreed.

away their passports, and start controlling and regularly extorting money from them at their place of work and/or residence. They would use threats and physical violence, even going as far as murder, if immigrants refused to pay. The immigrants found they were hostages in a situation they had never anticipated while entering into the “package deal”.

According to Peixoto *et al*, the flow of Brazilians also consisted mostly of men aged between 20 and 50 years. However, a more recent study (Karin *et al*, 2005) has found that there are as many women as men. The pre-migration procedures were similar to those of the Eastern Europeans. They would travel by air, either directly to Lisbon or via Paris, Madrid, or Amsterdam and then go by train or bus to Portugal. Peixoto *et al* found that the Brazilians were often tricked by the networks that facilitated their migration. Promises of well-paid jobs never materialised and the immigrants were left to their own devices on arrival in Portugal. The evidence gathered shows that while in the case of Brazilians the networks that operated were informal, encouraging emigration to Portugal with false promises of work, the immigrants from Eastern Europe were subjected to more violent and well-organised forms of exploitation by groups whose members were also from Eastern Europe.

In the case of both Eastern Europeans and Brazilians, the study found that, after their arrival, immigrants would still have to pay the trafficking organizations or individuals for other “invented services” such as obtaining a tax identification number, a residence permit, or a change of employer, thus perpetuating their dependency and exploitation. In short, these organizations engaged in three kinds of criminal activity: aiding illegal immigration, placement of irregular workers and extortion.

It became clear during the course of the study, although examination was not pursued to any great depth, that the exploitation to which immigrants in Portugal were subjected continued far beyond exploitation by traffickers or smugglers from the source countries. It was found that immigrant workers were not only subjected to scams in job placement, constant extortion and even violence, but were also exploited on the Portuguese labour market. Employers, usually Portuguese nationals, would hire them directly from the foreign traffickers/smugglers, put them to work in illegal and extremely precarious situations, not pay them, and, in this way, take advantage of their vulnerability. This was not, however, an area that the abovementioned research project examined in any detail, but is the objective of the present study.

The research carried out also points to some changes in migration flows due to the economic crisis in 2002 that caused a fall in demand for immigrant labour. In parallel, immigrants who had achieved what they set out for returned to their countries. The combination of these two factors led to a reduction in immigrants from Eastern Europe.

This trend was somewhat reversed by family reunification of immigrants who had decided to stay on in Portugal. Although the same illegal

Human trafficking and forced labour

immigration channels were used to facilitate the entry of family members into the country, the role of the intermediary was now restricted to organising travel documents and transportation. Entry into the labour market could be arranged through the network of contacts that the immigrants were able to establish in Portugal.

As a result of changes in migration flows and Portugal's economic crisis, some networks and groups have broken up and traffickers seem to have changed their *modus operandi*. They have become less violent or, in the opinion of the police and some NGOs, may have cut back on their activities in Portugal. It is possible that they are diversifying their operations to include activities such as prostitution for which demand is likely to grow.

Another outcome of changing migration flows from Eastern Europe has to do with increased numbers of women immigrants, who usually either enter alone or through a family reunification process. During the previous period, evidence gathered suggested that women, although fewer in number, were subjected to the same kind of treatment by trafficking networks as men. Now, women are affected by isolation and exploitation, which are the result of long periods in an irregular situation, especially while they await the outcome of family reunification processes (Wall *et al*, 2005).

In the case of Brazilian immigrants, there is also a considerable flow of women who, like the Eastern European and African women, work in the service sector: domestic and industrial cleaning, care of the elderly, catering, and hotel work (Wall *et al*, 2005). Since intermediaries are still highly active in facilitating such immigration, many Brazilian women are faced with different types of scams and unfulfilled promises of work.

Generally speaking, women immigrants are victims of various types of labour market discrimination. This is most obvious in the case of African women, who are usually only able to find "invisible" work, i.e. work that does not require contact with the public. Women immigrants also have long working hours without paid overtime, receive lower wages than Portuguese workers for doing the same job, and face verbal abuse (Wall *et al*, 2005).

3.1.2 Trafficking for sexual exploitation

According to Peixoto *et al*, in recent years Portugal has witnessed a growth in trafficking in women that coincides with a boom in the prostitution industry in which, increasingly, women are of different nationalities, especially Brazilian, African (particularly Nigerian), and Eastern European.

It was found, however, that the proportion of Brazilian women (often from the poorest regions such as the North-East) was far greater than that of other nationalities. The next most numerous group comprised women from Eastern Europe (mainly Russia and Ukraine, and more recently, Romania) and from a few African countries. The comparatively low representation of Eastern Europeans in sex work in Portugal could be due to other European

countries being more appealing and profitable for the networks operating in this market.

The ways in which these trafficking networks are organised and operate vary according to nationality. Brazilian and African trafficking networks are relatively informal and have flat organizational structures (usually 3 or 4 individuals dealing with the necessary documentation and getting the women into brothels and other prostitution venues) than the more complex Eastern European networks. These, like the Eastern European labour trafficking networks are more organized and hierarchical. There is now, however, a tendency for these networks to become more informal and adopt simpler structures like their Brazilian and African counterparts.

The study states that, in the case of African networks, the traffickers work in small cells, with little contact between them and no long-term relationship. There are indications that part of the trafficking business from Africa may be controlled by Nigerians, often associated with “high-risk organised crime”. However, little is known about this.

Considerable involvement of Portuguese nationals in the Brazilian networks was found. They generally recruited women, with the aid of a contact in Brazil, to work in sex clubs in Portugal. There appears to be less significant involvement of Portuguese in recruiting Eastern European women for sexual exploitation, although they receive them and introduce them into the business.

Both Brazilian and Eastern European networks have recruiters in the source countries, or travel agencies that assist in recruitment. Young women are enticed by the “European dream” or by “lover boys” who gain their trust, pretend to be in love with them, and, once they are emotionally attached, convince them to leave for a European country with promises of a better life there. In the case of African women, the woman’s family is often involved in selling her to traffickers, or a family acquaintance pays her travel expenses, arranges her visa, and entices her with promises of work in Europe.

Peixoto *et al* found that recruiters would provide the money and necessary documents for the trip. Once in the destination country, the women would not only have to repay their travel expenses, but also pay the recruiters for their services, and pay them again to be introduced into the labour market. These repayments are deducted from the money they earn from prostitution. None of the court cases (involving Brazilians and Eastern Europeans) refer to external debts or excessive interest having been added to the original debt. With regard to the prices paid by the trafficked women from Brazil and Eastern Europe, various sums of money were mentioned – from US \$500 (for the journey alone) to US \$2,500. The amount most frequently cited is around US \$1,500 (\$800 for the job and \$700 for visa and travel expenses).

The women usually travel in small groups to avoid detection. For Brazil, the usual travel route is either to Madrid or Paris by air, and then overland by car to Lisbon. Some use the more direct method of getting a flight to Lisbon

Human trafficking and forced labour

or Porto, but the risk of being refused entry is greater, even when the women have money on them to show that they have come as tourists. Eastern European women usually travel in vans/people carriers passing through several countries before reaching Portugal. Information contained in the court cases examined shows that the preferred routes appear to be: Ukraine-Naples-Rome-Portugal; Ukraine-Spain-Portugal; Moscow-Kiev-Lisbon; Kiev-Amsterdam-Lisbon. African women often make the journey to Europe by boat, entering through Southern Spain.

On arrival, there is always a contact person of the network waiting to receive them at the different points of entry (e.g. Madrid and Paris for the Brazilian women). The women's documents are taken from them, and they are taken to work in brothels or other prostitution venues. In only one of the cases referred to, involving Eastern European traffickers, were the women "initiated" and raped by their compatriots before being taken to work in brothels.

Women working in night clubs/entertainment venues do not necessarily have to engage in prostitution. They can sometimes act as "escorts" and usually receive a commission on their clients' consumption. These women can choose whether or not to engage in sexual activity outside the bars, in an apartment, in which case the owner of the apartment might have to be paid a percentage. Others were clear cases of sexual exploitation by force, in which the women had to pay about 50% of their earnings to the owner of the bar or prostitution venue.

The extent to which the traffickers control the women varies, but there is little evidence of imprisonment or very tight control over the women's movements, especially after they have been in the country for some time and repaid the initial debt for travel expenses. Nonetheless, in comparison with how the Brazilian women are treated, the control that Eastern European traffickers exercise over "their" women seems to be far greater, as is the frequency and extent of their ill-treatment and punishment. Owners of brothels and other venues for prostitution in Portugal are keen to move the women around from one establishment to another and especially from one part of the country to another.

African women largely engage in prostitution on the streets, while the Brazilians and Eastern Europeans mainly work in brothels and apartments (except for the Romanians, who walk the streets). With regard to geographical distribution of trafficked women in Portugal, police and press investigations point to an over-representation of trafficked women in the north of the country. However, the question remains as to whether this over-representation is a reflection of the phenomenon's greater visibility (because of the number of raids carried out by the Aliens and Borders Service), or indicates a real increase in trafficking in that region. NGOs in particular doubt that this is a question of real over-representation, and are asking why the same energy is not put into investigating prostitution in Lisbon.

As it is not possible to establish a single profile of trafficked women, the study presents a series of characteristics that most trafficked women have in common. For example, many Brazilian women come from Brazil's poorest regions and are socially disadvantaged; many are illiterate or semi-literate and some had already worked in prostitution or as "escorts" in Brazil. The Eastern European women also have serious economic difficulties in their countries of origin, but their professional qualifications are usually higher, some even having graduated. The majority of them apparently had no previous involvement with prostitution. However, there is still much to be learned about the Eastern European women's situation.

The extent to which the women were duped is hard to determine, and there is much discussion about whether they knew they were coming to work in prostitution or not. There are two opposing opinions: in the eyes of the police, most of these women, especially the Brazilians, are well aware of the purpose of their migration. In the view of NGOs and other organizations that work directly with these women, however, regardless of their nationality, most have been tricked into coming and did not know that they were brought for prostitution. In either circumstance, there is always a degree of deception with regard to the working conditions they have to endure. Further research is required to find out whether, at any stage of the process, these women find themselves entangled in a cycle of abuse, violence, and dependency from which they are unable to escape.

3.2 COUNTRIES OF ORIGIN AND SECTORS OF EMPLOYMENT

According to the *Serviço de Estrangeiros e Fronteiras* (Aliens and Borders Service (SEF)), there is currently a large flow of Brazilians not just into Portugal but also into many other parts of Europe. Official statistics⁵² show that in 2005, they formed the largest immigrant community in Portugal (66,935 immigrants with stay and residence permits).⁵³ Ukrainians are a close second (66,288 immigrants) followed by Cape Verdeans (64,469 immigrants).⁵⁴

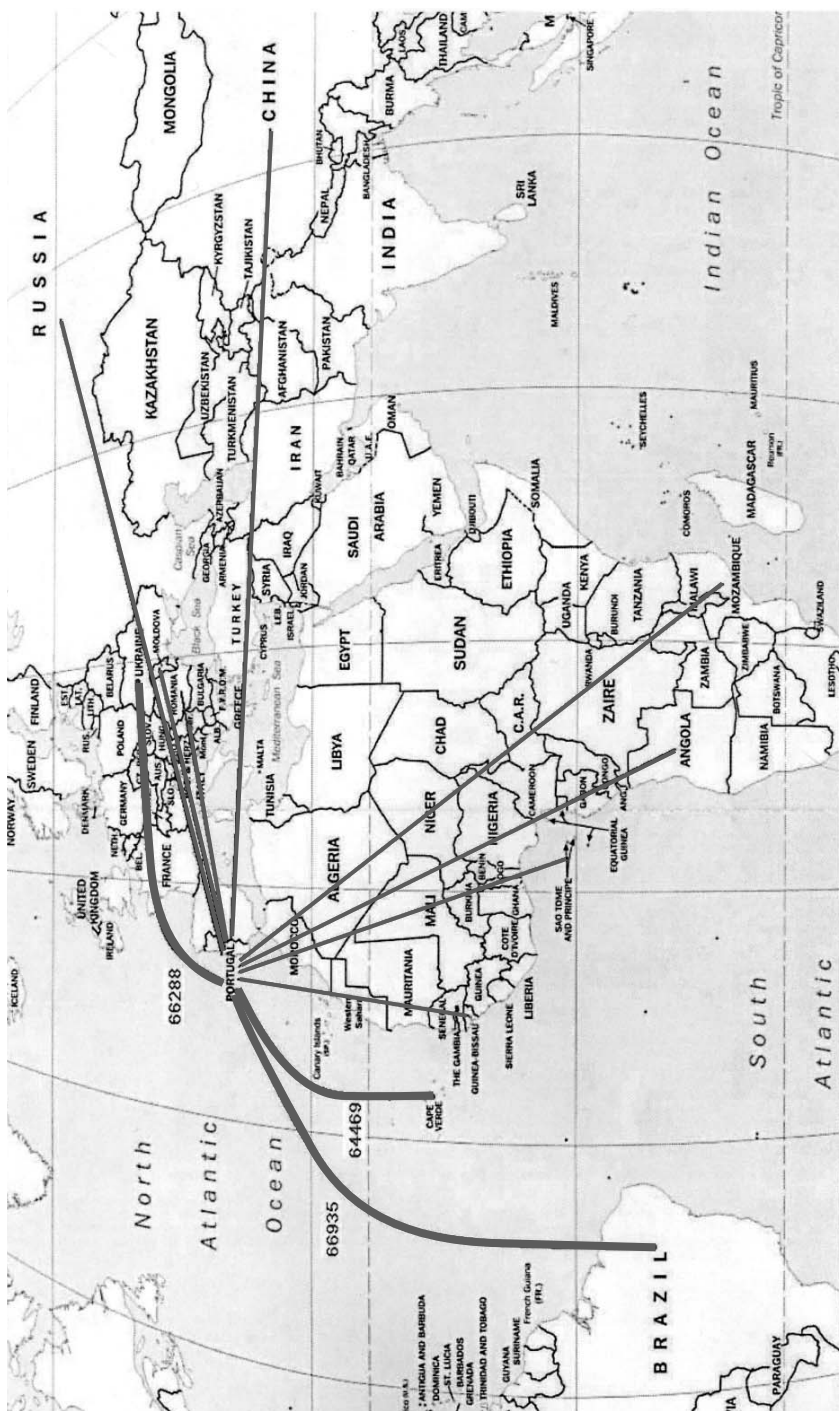
⁵² SEF figures quoted in Wall *et al.* 2005.

⁵³ Residence permits may be temporary (valid for 2 years, renewable for 3), or permanent (valid for 5 years and renewable). Stay permits (valid for 1 year, renewable for 5) were issued in 2001-2002 to those immigrant workers whose immigration status was irregular at the time but who had a contract of employment.

⁵⁴ There are many Cape Verdeans residing in Portugal who have become Portuguese citizens and therefore do not count as immigrants, even though socially they are still regarded as Africans.

Human trafficking and forced labour

Countries of origin of immigrant workers



The flow of Eastern European immigrants to Portugal, that was strong until 2002/2003, has diminished and currently comprises mainly those entering under the family reunification scheme. The exceptions to this are Romanian nationals, who, according to the SEF, are entering Portugal in significant numbers.

The statistics also reveal the distribution of these immigrants by economic sector. In 2001, their presence was significant in construction (14.8% of workers in the sector were immigrants), hotel and catering (11.7%), and business services (9.6%). Eastern European immigrants also have a strong presence in agriculture, forestry, game and fishing, mining and processing (Carneiro *et al*, 2006). These sectors continue to be the principal employers of immigrants. There are two other “invisible” sectors, employment in them being largely undeclared, that are key employers of immigrant labour. These are domestic work in private homes, including child and elderly care services, and the sex industry (which is not considered a professional activity in Portugal). Press reports examined indicate that immigrant worker exploitation takes place in construction, cleaning, agriculture, manufacturing, industry, as well as in prostitution. These are also the sectors with the highest concentrations of immigrant workers.

In terms of geographical distribution, we find that most of the active immigrant population is concentrated in the Lisboa e Vale do Tejo region (60%), followed by the North (13.4%), Central (11.4%), Algarve (9.7%) and Alentejo (3.5%) regions of Portugal (Carneiro *et al*, 2006). The press review reveals that immigrant worker exploitation occurs throughout the country, but especially in the Algarve and northern Portugal (9 and 7 cases respectively for 2000 and 2001, out of a total of 23 cases). There are also reports of employers who value skilled migrant workers and those they consider to be good employees, and who make efforts to help them legalise their situation.

The purpose of this study is to determine the incidence of situations in which the rights of immigrant workers are violated in the labour market, which we shall refer to here as “labour exploitation”. As this concept such, is non-existent in Portuguese law, it should be understood here as broadly including various violations of immigrant workers’ rights stipulated in the country’s labour legislation, social security legislation, and law on the entry, stay, departure and removal of foreign nationals from national territory. This paper also examines practices that can be considered forced labour and/or trafficking in persons, as defined in ILO Convention 29 on Forced Labour and the Palermo Protocol, regardless of whether these are classified as crimes under Portuguese law.

The authors have sought to understand the connection between the immigrant workers’ legal status (whether regularised or irregular), on the one hand, and compliance with labour, social security, and immigration laws in the employment of foreign nationals, on the other. With regard to the terminology used, “irregular” here will denote an immigrant who is not in

Human trafficking and forced labour

compliance with current immigration and employment legislation. Some of our interviewees also referred to these immigrants as being “illegal” or in an “illegal situation”.

The first indicator of labour exploitation, or at least of informal employment, is a comparison of the number of workers who declare their earnings to Social Security with the number of contracts registered with the IGT. According to Carneiro *et al*, in 2004, approximately 185,000 declarations of income from immigrant workers were made to Social Security, while the employed immigrant population was around 223,000.

Besides absent or false declarations to Social Security of immigrant workers’ earnings, this study also detected other exploitative practices that varied according to the economic sector in which the immigrant is working and according to his/her country of origin. The following section will look at specificities of each sector and describe some cases that illustrate practices that violate immigrant workers’ rights⁵⁵ (For a summary of labour exploitation practices, see Annex 8).

3.3 EXPLOITATION OF MIGRANT WORKERS

3.3.1 The construction sector

The construction sector is Portugal’s biggest employer of immigrant labour and the largest recipient of new immigrants: according to employment statistics for the last quarter of 2005, 561,200 workers were employed in construction, of which 15% were immigrants. It is estimated that between 15 and 37 percent of the sector’s work is undeclared (Centeno *et al*, 2006). As indicated by the Northern Construction Workers’ Union (*Sindicato dos Trabalhadores das Indústrias da Construção, Madeiras, Mármore, Pedreiras, Cerâmica e Materiais de Construção do Norte e Viseu*), precarious employment is prevalent throughout the construction sector.

Major building projects, especially the stadiums for the 2004 European Football Championship, have attracted new immigrants to Portugal. Although the sector has been in recession in recent years, fresh growth is expected as a result of large projects planned by the present government such as the construction of a new Ota airport and of rapid railways.

The exploitation of workers in the building trade is not a new phenomenon, and affects both Portuguese and immigrant workers alike. African workers from Lusophone countries were also affected by it. However, with the arrival of the Eastern European immigrants it became more visible. According to the Northern Construction Workers’ Union, precarious employment in the sector began 20 years ago when, instead of being on the staff of

⁵⁵ Names and other details that could lead to the identification of the individuals referred to in these cases have been changed.

the contracting company, workers began to be paid by the hour, by the metre, or on a piecework basis. This practice started with Portuguese workers and now affects many others involved in the construction sector.

The exploitative practices endured by Eastern European immigrants, mostly men employed in the building trade, at least during the initial phase, were varied and often marked by a level of brutality and violence hitherto unknown in Portugal. This had more to do with the activities of criminal groups from their countries of origin than with their situation in the Portuguese labour market. These occurrences have been drastically reduced, largely due to intervention by the Portuguese police who have dismantled many groups, but also as a result of a weaker flow of immigrants from these countries.

These immigrants faced exploitation from two fronts: they were victims of organised crime as well as targets for exploitation by employers. The former involved practices such as **extortion** and **induced indebtedness, retention of documents, physical violence, and control of movement**.

Exploitation by employers consisted of situations involving:

- **Irregularities in payment of wages:** non-payment (there are several cases in which sub-contractors filed for bankruptcy and failed to pay their workers); delayed payment (contractors often only pay their workers when the job has been finished which means that workers in remote locations have no means of leaving the place); unequal pay (e.g. in 2000/2001, an Eastern European immigrant, working 13-14 hours per day including weekends was paid €400 to €450 per month while a Portuguese worker earned around €1,000);
- Non-payment or only **partial payment of social security contributions:** in many cases employers trick their workers by saying that they are paying their contributions while paying only a few days per month (this also applies to Portuguese workers, but is worse for immigrants as it has implications for renewal of their visas);
- Provision of an employment contract only against payment⁵⁶ or **false promises** about the terms and conditions of employment. An employment contract is essential for an immigrant worker to obtain or renew her/his visa or stay permit;
- **Prolonged working hours** without payment of overtime;
- **Arbitrary dismissal** without payment of compensation and outstanding wages – workers, including Portuguese workers, are sometimes fired when the job is almost finished and are not paid their wages or given any reason for their dismissal. In such cases, the recovery of wages and compensation owed is hampered by the absence of a contract

⁵⁶ According to information provided by SEF.

Human trafficking and forced labour

or wage slips that make it hard to prove that an employment relationship ever existed;

- **Non-compliance with health and safety regulations**, including no industrial accident insurance. The occupational hazards to which immigrant workers, particularly Eastern Europeans, are exposed are greater because they are unfamiliar with construction work and the safety precautions that should be taken. Besides, they are often made to carry out the most dangerous tasks.⁵⁷ There are also many firms set up by immigrant workers, especially Africans and Eastern Europeans which then hire other immigrants, which do not provide proper safety equipment such as hand rails, etc. and generally do not comply with construction industry safety regulations or take the necessary insurance.⁵⁸ In terms of accidents involving immigrant workers in the construction industry, IGT figures for 2003 show that 57.7% of all fatal work-related accidents involving foreign workers occurred in this sector⁵⁹ and in 2005, 11.6% of fatal accidents in the construction industry involved foreign workers;⁶⁰
- There are reports of workers being **physically assaulted** or fearing physical assault. For instance, in the case of immigrants from Eastern Europe who were not familiar with the work, language difficulties gave rise to situations in which they were ill treated by their supervisor;
- **Threats of being reported** to the SEF;
- Some employers **confiscate employees' identity documents** on the pretext of legalising their situation. As a result, employees are at the mercy of their employer (*Casa do Brasil*).

Although the Eastern European immigrants are currently in a stronger negotiating position and can demand their rights with assistance from unions and NGOs, these forms of exploitation are still prevalent. They also affect Brazilian immigrants who have a strong presence in the sector at present.

Both employers and trafficking networks are to blame for the bad **housing conditions** that many of these workers endure. According to *SOS Racismo*, employers use accommodation as a way of gaining control over a worker. An employer may offer to rent accommodation to his workers, or to act as an intermediary or guarantor, alleging that, because of racism, African immigrants have difficulty in finding rented accommodation in Portugal. The workers then pay rent to their employer and, if they ever want to leave the job they also have to leave the accommodation. Due to this, they may feel

⁵⁷ Interview with the General Secretary of the Northern Construction Workers' Union.

⁵⁸ Interview with the IGT in Lisbon.

⁵⁹ Figures from the report "Estatísticas da Imigração" (Immigration Statistics) of December 2005 (p. 21), distributed by ACIME and accessible at http://www.acime.gov.pt/docs/GEE/Estatisticas_GEE_2005.pdf.

⁶⁰ Available at http://www.igt.gov.pt/IGTi_C06.aspx?cat=Cat_Estatisticas_CC&lang=.

obliged to carry on working for an employer even when they no longer wish to do so.

Hiring immigrants for the building trade is done mainly through sub-contractors who recruit and pay them their wages directly. The sub-contractors may be reputable firms, or bogus outfits set up for the purpose of exploiting workers, paying them less than what has been agreed with the main contractor. In some cases, the sub-contractor receives 6 per hour for each worker, but only pays them €3.50.⁶¹

The following cases present a wide spectrum of exploitative situations. Not all of them may fall under the orbit of the Palermo Protocol or ILO Forced Labour Conventions. They are nonetheless presented in order to highlight the grey zone in which exploitation takes place, which may in some cases degenerate into more serious forms of coercion at a later stage.

Case 1 – Left without shelter or food

The Northern Construction Workers' Union first heard of the plight of Eastern European workers being exploited in Portugal in January 1999, when a group of 19 Ukrainians, who were working on a building for which the city council of Vila Nova de Gaia (*Câmara Municipal de Vila Nova de Gaia*) was responsible, were abandoned by their employer. The migrant workers ended up sleeping in a forest with no money even to buy food. The Union arranged for them to get jobs and proper employment contracts with a large, reputable, private construction company.

Source: Interview with the Northern Construction Workers' Union

Case 2 – The price of legalisation

In 2005, a Brazilian approached a social worker from the Jesuit Refugee Service for help in legalising his situation. He had been working in the construction sector in Portugal for 5 months with an employment contract in another worker's name. He was earning less than the other employees, and €100 less than another Brazilian who was working legally. To make up for his low salary, he was working overtime. He was not insured against work-related accidents and his boss had threatened to report him to the SEF if he ever left the job. His employer was now willing to help him legalise his situation by providing him with an offer of a contract for which he would have to return to Brazil. In return, he would have to give the employer a part of his wages every month.

Source: Interview with The Jesuit Refugee Service (JRS)

⁶¹ Interview with the Secretary General of the Northern Construction Workers' Union.

Human trafficking and forced labour

Case 3 – Caught in a network

When Eastern European immigration to Portugal began, two Ukrainians, Vasyl and Micha, aged 19 and 18 years at the time, came to the JRS for help. Aided by a network, they had come to Portugal and were now living in a derelict building in the *Avenida da Liberdade* in Lisbon, along with many other immigrants. They were working seven days a week, 18 hours a day, but received no wages at all. They were extremely afraid that any action taken by the JRS would put their lives in danger. The JRS organised work for them in a shoe factory in the North, where they could escape from the network but, in the end, the immigrants disappeared.

Source: Interview with the Jesuit Refugee Service

Case 4 – The courage to protest

The first time that the IGT in Covilhã was alerted to labour problems involving immigrants in the region was in 2000-2001. Ukrainian immigrants working on the construction of a car park in the city had gone on strike and brought the job to a standstill. They were protesting against the bad housing and food provided by their employer, a Portuguese sub-contractor. According to the interviewee, the boss was convinced that he was doing even more for the Ukrainians than he did for his other employees and was apparently unaware of the bad housing conditions he was providing. The matter was settled through IGT mediation. It was probably only because of their large numbers on the site that the Ukrainians found the “courage” to protest in that way. Many other workers have stayed on in the region, being “passed from hand to hand”.

Source: Interview with IGT, Covilhã

Case 5 – Huge profits from trafficking

The daily *Público* reported that, in the early hours of 11 April 2006, 14 individuals were arrested in various parts of the Algarve on suspicion of belonging to a criminal group that was bringing immigrants illegally into Portugal. They were accused of obtaining work permits for Eastern European workers by submitting employment contracts for construction work that were bought from Portuguese contractors for €500 per contract. The network organised the immigrants' entry into Europe with these contracts and false promises of work. This network was allegedly responsible for enticing more than three hundred immigrants to travel to Europe. Once in Europe, the immigrants sometimes did not even reach Portugal, but were taken to Italy and Spain. The network had a cell in Portugal, headed by a Moldovan woman and made up of a Portuguese businessman who sold bogus contracts and a civil servant who validated the contracts. It had branches in Romania and Ukraine. In Portugal, another six Moldovans and a Romanian were arrested. The cell leader apparently sometimes carried out cleaning work in hotels and elderly care services, and would charge each foreigner €2,500 to €3,500. The SEF operation led to the seizure of €11,000 in cash and the discovery of bank transfers involving tens of thousands of Euros. The group had been investing money from migrant trafficking in top-of-the-range cars that were subsequently sent to Portugal, legalised and resold, generating huge profits.

Source: *Público* of 13.04.06

3.3.2 The domestic services and cleaning sector

The principal employment channel for women from Lusophone Africa and Eastern Europe is 'unskilled work in the services and trade', which includes private domestic work and office cleaning services (49.5% and 31.7% respectively, according to 2001 Census figures). This is also an important sector for Brazilian women, providing employment to 19.5% of these immigrants (Gonçalves e Figueiredo, 2005). Some immigrant men are employed in industrial cleaning services.

With increasing demand for support services for the elderly, the sector has an enormous growth potential all over Southern Europe. Yet this economic activity is not included as an occupation in the report on employment

Human trafficking and forced labour

opportunities,⁶² and the current immigration system in Portugal only authorises entry of new immigrants on presentation of an employment contract for one of the sectors stipulated in this report.

The most serious problem in the various types of domestic work is ethnicity-based **discrimination**. There are indications that families tend to prefer Eastern European and Brazilian women to Africans as domestic employees. However, this is yet to be proved by a more systematic and in-depth study of discrimination in the domestic and cleaning services sector in Portugal.

According to information from *Unidade de Apoio à Vítima Imigrante e de Discriminação Racial e Étnica* (Support Unit for Immigrants and Racial and Ethnic Discrimination Victims (UAVIDRE)) the following labour exploitation practices are common in this sector:

- **Non-payment of wages:** In cases where the employer stops paying the wages of the household employee and refuses to allow her to enter the home, it is often hard to recover outstanding wages. There is no employment contract and wages are often paid in cash, making it very hard to prove the existence of an employment relationship;
- **Absence of a contract:** When domestic workers are employed by an agency they generally have a contract, but those employed in private homes often do not have one. There are cases in which women immigrants have signed employment contracts that they do not understand. These often stipulate wage rates that are below what has been agreed verbally, or even provide for non-payment of wages. In other cases, where there is a valid contract it is not adhered to. In some urban cleaning firms, for example, there are collective contracts that provide for the transfer of workers from one firm to another, according to the needs of the firms. Despite this, employees are often dismissed when a contract

⁶² Council of Ministers Resolution 51/ 2004, published in *Diário da República I-Série-B* no. 87 of 13 April 2004, pp. 2248-2249, states that “Considering the enquiry into immigrant worker recruitment – 2003-2004, taking into account the view of the Instituto do Emprego e Formação Profissional, the Autonomous Regions, the Inspectorate General of Labour, the National Town Councils’ Association, the social partners, and the High Commission for Immigration and Ethnic Minorities,... establishes ... that the entry of non-EU nationals into national territory during 2004 will be in line with the following labour needs: Agriculture – 2100; Construction – 2900; Accommodation and Catering – 2800; Other activities and services – 700.” According to Regulatory Decree 6/2004 of 26 April (introduction), “Applications for work visas through Consulates shall be processed only on presentation of a promise of an employment contract signed by both parties, supporting evidence of job offer from the IIEFP, and proof of submission to the IGT of the application referred to in paragraph. 1 of Article 43 of Decree Law 244/98, of 8 August, with text according to Decree Law 34/2003, of 25 February, i.e. the requirement of a favourable decision. In considering the granting of a visa, the Direção-Geral dos Assuntos Consulares e Comunidades Portuguesas shall request the opinion of the Serviço de Estrangeiros e Fronteiras (SEF) and IIEFP, in order to assess the risk of migration, internal security and compliance with the report on employment opportunities, and shall also consult the IGT on the decision.” As mentioned above, this regime is expected to change with the draft proposed law on immigration.

with the client ends. (Interview with Solidariedade Imigrante (Immigrant Solidarity (SI)));

- **Non-payment of Social Security contributions:** Undeclared employment is characteristic of the sector, in respect of both Portuguese and immigrant workers. In fact, sometimes immigrants actually prefer that Social Security contributions are not made so that, instead, they can receive higher wages;⁶³
- Immigrant workers are usually given the **worst working hours**, those that no one else wants, but which they agree to because they have no other alternative. They work, for example, three hours in the morning, and possibly a further three hours in the afternoon, with a different contract for each period. These irregular working hours make life particularly complicated for single mothers (the case of many African women), because arranging childcare is not easy. The short hours also mean that they often earn less than €180 a month, and have to find other ways, such as hairdressing for other African women, to make money. In the case of live-in domestic employees, there are no fixed working hours and they can be on call almost 24-hours a day. Indeed the employer's family assumes that they should be available day and night, depriving them of freedom, privacy, or social life. For these reasons, most immigrant women do not want to be live-in employees.

This study revealed cases in which women, especially live-in domestic employees and those repressed by their husbands or partners, were working in situations that could be considered forced labour. These situations included such practices as **retention of passports**, often on the pretext that it was necessary for the legalisation process, **confinement** at the workplace, and **control over contacts** with the outside world.

Having to pay off a **debt** to relatives who have arranged for a woman to come to Portugal is also common in the case of African women. To repay the debt, both financial and moral, these women find themselves obliged to do unpaid work for the relatives who have helped them. They eat and sleep in the relative's house and work 7 days a week for them. They eventually manage to find work for themselves through informal contacts or through employment agencies, but this work can also be exploitative. These women usually enter Portugal as tourists, and then overstay and remain in an irregular situation.

UAVIDRE, a non-governmental organization (NGO) that provides assistance to victims of domestic violence, explained how immigrant women are controlled by Portuguese husbands or partners. They are attracted to Portugal usually by migrant returnees who tell them about the good life they

⁶³ When women are recruited through employment agencies, Social Security contributions are generally paid.

Human trafficking and forced labour

could have in Portugal with, in addition, the possibility of sending money to their families from there. They come to Portugal as partners or wives, usually on a tourist visa or, sometimes, in the case of married women, as part of a family reunification scheme. Once in Portugal, they are often confined to their homes. Without contact with the outside world they can never hope to become economically independent. They are exploited for domestic work, and often sexually abused. They are victims of physical violence and constant psychological oppression that imbues them with a sense of guilt and inferiority, or of ingratitude when they feel they do not live up to expectations. They are subordinated and subjugated by men on whom they are economically dependent, towards whom they feel emotionally bound and, in addition, to whom they are grateful for having brought them to Portugal. Hence, it is quite common for these women not to recognise the gravity of their situations. In the few cases where the woman tries to get out of an abusive situation, the man usually gets her pregnant. In such cases, UAVIDRE finds their attitude similar to that of Portuguese victims of domestic violence – the same psychological state of fear and way of describing their situation. The difference is that immigrant women seek help only after waiting a long time and when they are utterly desperate.

Case 6 – Irrecoverable dues

Ana worked as a domestic worker, taking care of an elderly man. One day she arrived at work to find the door locked. The building porter informed her that the man's son had taken him to a home for the aged. She tried to contact the son, and went to his workplace on many occasions. She had worked there for 10 months and still had 20 days pay, plus Christmas bonus and holiday allowances due to her. There was no way of recovering her dues.

Source: Interview with *Solidariedade Imigrante*

Case 7 – Isolated and overworked

Helena, a Russian, had been in Portugal for 4 years. She was working as a live-in domestic worker in "a large family house". She said she hardly got any sleep. She went to bed very late and had to sleep in a tiny bed, like a baby's cot, in a cupboard. In the morning she had to do everything very quickly and had no time to have breakfast herself. She was not allowed to speak to anyone on the telephone.

Source: Interview with *Solidariedade Imigrante*

Case 8 – Accommodation in lieu of pay

A young Russian woman, not more than twenty years old, worked as a live-in domestic worker in Portugal. The woman of the house had agreed to pay her a wage, but later refused to pay her at all on the grounds that the young woman was eating and sleeping at the house.

Source: Interview with *Solidariedade Imigrante*

Case 9 – The travails of living-in

Svetlana, a middle-aged woman from Omsk, Siberia, travelled by bus from Moscow to Lisbon in January 2001, passing through Belarus, Poland, Germany, France and Spain. She had the telephone number of a Russian woman living in Estoril, who was to help her find a job. The lady sent her to Porto but when she went there, there was no job and she had to return to Lisbon. When she phoned the lady again, she was told that there was a job as a dishwasher in a restaurant in Almoçageme. Svetlana started work in the restaurant in early February, a period that coincided with the “Stay Permits” scheme through which she could be regularised. She signed a contract with her employer who retained all the copies and promised to regularise her situation. Her hopes were in vain for the employer did not keep his word and did not start the process. Svetlana finally left that job and started working in a café, where they told her from the outset that they would not help her with legalisation. She was laid off at the end of the summer and remained unemployed until she got a job in a restaurant and was finally able to get a stay permit. However, she lost that job too and after another period of unemployment, she found a job, through the Ukrainian Church, as a live-in domestic worker, taking care of an elderly couple. She stayed there for 3 years, with a proper contract and Social Security contributions. When the old gentleman died, Svetlana stayed on to take care of the old lady. She did the shopping, cleaning, cooking, and serving. The work was gruelling but it was better than working in a restaurant or café. Although she became very close to the family, her living conditions were bad. She slept in a “closet” in the kitchen, which was hot in summer and very cold in winter. Her employers used to tell her that, as she was from Siberia, she should be used to the cold. Eventually she bought herself a blanket with her own money. When the old lady

Continued on page 40

went into a home, Svetlana was dismissed and spent a month unemployed. She contacted a domestic service agency that found her another live-in job with an elderly couple. Svetlana turned it down at first but went for the interview on the agency's insistence, and eventually agreed to work for the couple. She worked from 7 a.m. to 8 p.m. For health reasons, the couple were on a special diet. Svetlana was only allowed to eat the same food as they did and lost 8 kilos in two months. After a trial period of one month, the lady of the house drafted a contract, which Svetlana signed. To renew her visa, the contract had to be stamped by the IDICT. Her employer said she knew nothing about that and did not care about Svetlana's circumstances. After much argument, the woman's daughter finally prepared the necessary papers, but the mother did not want to sign them. Svetlana asked to take the day off on November 1, a national holiday, but was refused. She went out anyway and when she returned there was a lot of arguing and shouting because she had disobeyed. As a punishment she was locked in at night and not allowed to speak to anyone. They ordered her to leave the house and when she did, they paid her only half of what they owed her. They did not pay her the share of Christmas and holiday bonuses to which she was entitled. She later discovered that they had not been paying Social Security contributions for her and hence she was not entitled to unemployment benefit. She is still looking for work, but does not want to be a live-in domestic worker anymore.

Source: Interview with an immigrant

Case 10 – Disillusioned

Natalia is a 64-year-old Russian woman from a city 600 km south-east of Moscow. In September 2001, her only son died in an accident, leaving a wife and 1-year-old child behind, with no means of survival. They came to live with Natalia and her husband, who is crippled and unable to work. Natalia's neighbours told her about a country in Western Europe where people from Eastern Europe could get rich easily. Life was good there and there was plenty of work, wages were high, the climate hot, and the people welcoming. Everything seemed promising and easy. There was just the price of the journey. Natalia had no way of paying the travel expenses, but she was offered a loan, which she would have to pay back later, with interest. It was very hard to leave her family, but, convinced

Continued on page 41

that this was her only hope of survival, Natalia left for Portugal. On arrival, a network sent her to the Algarve, where she worked in a private house. She was not allowed to go out, and was not paid at all. One day she managed to escape and went to Lisbon. She was desperate. Someone suggested that she go to the Jesuit Refugee Service. After several failed attempts at integration into the Portuguese labour market, Natalia was helped to pay off her debt and return home.

Source: Farmhouse, 2002

Case 11 – Blamed for everything

A Brazilian immigrant who was working as a live-in domestic worker had to be on call at all times. Sometimes they even woke her up at night to do some work. In addition, whenever something went wrong, it was deducted from her wage. One day, the lady of the house had an accident and broke one of the car's headlights. The cost of repairing the car was taken out of her Brazilian employee's wages because, according to the employer, the accident had only happened because the employee had upset her!

Source: Interview with the ACIME Legal Office

Case 12 – Documents confiscated

A 16-year-old African girl was brought to Portugal in 2002 by a Portuguese woman who said she needed a domestic worker. The girl entered Portugal on a temporary visa, and her status remained irregular. The Portuguese woman had promised the girl's mother that she would give her a contract, pay her above average wages, and help her to integrate into Portuguese society. What she actually did, however, was to completely subjugate the girl. As soon as they arrived, the woman confiscated all her documents, and never gave them back. She didn't give her an employment contract either. She made the girl work every day from 7.30 a.m. to 11.30 p.m. As if this were not enough, she was often woken up at night to cook for the woman's sons when they arrived home in the early hours of the morning. She only had one half-day off a week. The woman told her that a monthly wage of €250 was being paid into a bank account in her name, but the girl had no access to it. Her boss would give her small amounts of money from time to time.

Continued on page 42

Human trafficking and forced labour

Her movements and telephone calls were closely monitored. When she asked for her documents her boss told her that she would only return them when she put her on a return flight home. She had worked for three years without being paid when she got in touch with the Centro Nacional de Apoio ao Imigrante (National Immigrant Support Centre (CNAI)). The CNAI began taking steps to get her documents back for her and started the procedure for regularising her status. However, the girl never came back to the CNAI, and the case was not pursued any further. Later, a Portuguese colleague of the girl said that she had still not managed to untangle herself from the situation.

Source: Interview with ACIME Legal Office

Case 13 – Isolated and invisible girl child labourer

The *Gabinete de Apoio à Vítima* (Victims' Support Office) in the Algarve, reported a case in Tavira of a girl who had been working for many years in a house. She was of school age, but was not going to school, and no one was allowed to see or talk to her. The only time she came out was at seven in the morning to put out the rubbish. The *Guarda Nacional Republicana* (National Republican Guard (GNR)) were alerted, as it could have been a case of child labour exploitation. The police tried but was not able to enter the house, and, in the end, the family moved away.

Source: Interview with UAVIDRE

3.3.3 The hotel and catering sector

Most of the immigrants working in this sector, especially in jobs involving serving the public, are Brazilian. Carneiro *et al*⁶⁴ found that 42.6% of Brazilian migrants surveyed were employed in the hospitality business. However, according to the Trade Union for Hotel, Tourism, Catering and related activities of North Portugal, immigrants of other nationalities are also present in more 'invisible' positions.

According to the union's General Secretary, most of the workers in the northern region who are 'undeclared' to Social Security, whom he calls 'illegal', are in the catering and beverages sector, while in the hotel sector there are fewer problems. The phenomenon of undeclared workers grows as

⁶⁴ ACIME/ Casa do Brasil, Study into the 2nd wave of Brazilian immigration to Portugal (1998-2003): Immigrants living in Lisbon and Setubal, Lisbon, 2004 (p.8).

more and more Brazilian immigrants arrive in Portugal, but the characteristics of the exploitation to which immigrants are subjected remain the same.

According to *Associação da Restauração e Similares de Portugal* (Catering and Related Activities Association of Portugal (ARESP)), immigrant workers are much sought after in this economic sector because the work calls for day and night shifts, which the Portuguese are not prepared to do. For this reason, employers are even willing to pay immigrant workers more than the minimum wage. The problem is, however, that immigrants are often not legalised, and have no work or residence permit. ARESP has to deal with a “Catch 22” situation in which the workers need an employment contract to regularise their situation, but employers cannot give them one as they are clandestine.

The Trade Union for Hotel, Catering & Related Activities of the North has come across workers in the catering/restaurant sector whose employers are willing to legalise their stay in Portugal. They offer to pay for their trip back to Brazil where they can obtain the necessary visa. However, after the regularisation process, the immigrants are made to reimburse the employer for the travel and other expenses they have incurred. Yet, the firms will have made large profits out of them since they did not pay for overtime or make their social security contributions.

The authors received reports of several practices in this sector that could constitute labour exploitation affecting the immigrants who were interviewed during this project. They included:

- **Long working hours** of up to 60 to 70 hours per week, sometimes more: Workers often only have one day off a week, and have to work on national holidays without being paid overtime for doing so. This was one of the most common complaints of the immigrant workers interviewed;
- Employers’ **under-declaration of employees’ earnings**: Employers usually declare only the minimum wage for the sector (€474 per month at present). When immigrant workers complain about the practice, employers threaten to pay them only what appears on their payslip. The Trade Union for Hotel, Catering & Related Activities of the North reported that there are 16,000 Brazilian immigrants working in the sector in the region, of which 10,000 are not registered with the Social Security Department;
- Payment of **wages at a rate that is less than the rate stipulated in the collective bargaining agreement (CCT)**. There is, however, a difference of opinion regarding this practice. According to the Trade Union for Hotel, Catering & Related Activities of the North, 63.51% of workers in the sector are paid less than the minimum wage established in the CCT. The ARESP however, states that, on the contrary, employers are obliged, by virtue of their membership of business associations that are

Human trafficking and forced labour

signatories to the CCT, to apply the agreed wages. The ARESP also added that, as we have said above, some employers pay more than the minimum wage established in the sector's CCT;

- The **absence of a written contract of employment** for foreign workers is common, even if employers are making the required Social Security contributions. According to the General Secretary of the Trade Union for Hotel, Catering & Related Activities of the North, this happens because once immigrants have a contract they become eager to regularise their stay. Many workers do, in fact, have an employment contract, even though sometimes the contract is not submitted to the IGT because of the employer's failure to comply with regulations, especially those concerning their operating licence. Immigrant interviewees reported that they were threatened by their employers with non-renewal of their contract if they did not work longer hours, accept lower wages, and carry out work for which they were not recruited (e.g. waiters having to wash dishes and clean out the restaurant at the end of the day);
- Pressure is brought to bear on workers **not to join a trade union**;
- Verbal **dismissals** without any payment of compensation.

According to reports, these problems affect Portuguese workers as well, especially with regard to undeclared employment and the number of daily working hours. The position of immigrant workers, however, is far more vulnerable, especially because there are fewer support structures available to them and their legal status is weaker. They are subjected to practices such as:

- **Threats of being reported** to the SEF; and
- **Threats of dismissal.**

The interviews conducted for this study did not reveal any cases of trafficking in persons into this sector. However, according to experts, a number of immigrants working in the sector come through "migrant contraband" networks. Currently, Brazilian immigrants arrive by airplane in Madrid or Paris and continue their journey to Portugal by train or bus. Transportation is usually organised through agencies in Brazil. The money for the trip and entry into the country is often borrowed from relatives or from a bank. Once in Portugal, the immigrants start repaying the loan. Brazilians generally find work in Portugal before leaving, through the agency that organised the travel, through friends/acquaintances, or even through newspaper advertisements.

Part of the Chinese community living in Portugal is involved in the catering business. However, trafficking for labour exploitation within this community is still largely unexplored. The interviewee from the *Polícia Judiciária* (Judicial Police (PJ)) said that, during his many years in the PJ force, he had come across two crimes involving the Chinese community: one of abduction and the other, extortion with violence. In both cases, the police had heard about the incidents because complaints had been officially lodged. The cases were denounced by the children and grandchildren of the Chinese

immigrants, who had “a different mentality” (in the words of the interviewee), and had turned to the police. The crimes themselves had to do with non-payment of gambling debts or refusal to pay protection demanded by certain groups. The PJ acknowledges that there are groups engaging in extortion within the Chinese community, but does not have much information about their membership and *modus operandi*.

Case 14 – An empty package deal

Jacinto, a Brazilian who has been in Portugal for 5 years, now lives with his Portuguese partner and their daughter. He worked in the catering sector in Brazil and was in debt when an “employment agency” in Brazil offered him the possibility of work in Portugal. He bought a “package deal” from the agency that included a job and contract of employment in Portugal. But there was neither job nor contract when he got here. He called the contact person he had been given and a meeting was arranged. Two Brazilian men turned up and told him that if he paid them US \$500 they would get him a job. They took him to a room in a *pensão* that did not even have a window and said they would be back later to take him to the place where he would work. Jacinto suspected that they were going to steal his money and left. Thinking he might be better off going back to Brazil as he had a return plane ticket, he went to the Brazilian Consulate for help. At the Consulate he met a Portuguese man who had lived in Brazil for years. He said he could arrange a job for Jacinto in a friend’s restaurant. Jacinto decided to take the chance since he had borrowed money from several people to pay for the trip to Portugal which he would not be able to repay if he went back. After working in Portugal for a year, he was able to save enough to pay off his debts.

Source: Interview with an immigrant

Case 15 – A 70-hour week without overtime pay

Eunice is a 38-year-old Brazilian immigrant who followed her brother to Portugal 3 years ago. She works as a kitchen assistant and has no previous experience in the sector. She was prepared to accept her current precarious employment situation because she knew that she would have to put up with a lot on arrival in Portugal but was hopeful that things would improve. The restaurant in which she works is not one of the worst. She knows of other workers in the sector that were a lot worse off and that even

Continued on page 41

Portuguese workers are exploited as they do not know their rights. Her biggest problem is working for about 70 hours a week, from 9.30 a.m. to 2.30 p.m. and again from 6.30 p.m. to one o'clock in the morning which she finds exhausting. She receives no extra pay for this.

At first, before the 'Lula agreement',⁶⁵ she had no employment contract, as the law at that time did not allow her employer to give her one. Only when the Lula agreement came into force was she able to regularise her situation. Eunice is still working in the same restaurant, earning the same money, but now she tries to avoid doing overtime. She signs a wage slip/receipt for a lower amount than she actually receives. National holidays and statutory salary rates are not taken into account, and her take home pay, thanks to trade union intervention, is now €600. She is not paid extra for working national holidays and gets no overtime, but what she earns in Portugal is good when converted into Brazilian Real. She is afraid to ask for anything else from her employer, as he is unaware of her union activities. A cook who was working illegally in the same restaurant did not receive any salary. When he asked for his wages the employer threatened to report him to the SEF and have him deported. He was afraid and left the job without the money he was owed. Eunice hopes that after 3 years of contract work, she will be made permanent and would then like to become a trade union shop steward.

Source: Interview with an immigrant

Case 16 – Better off working in construction

Paulo is Brazilian and has been in Portugal for 4 years. In Brazil he worked in the construction sector but got a job in catering when he came to Portugal. Although this work was not exactly what he wanted, he admits that it was a learning experience. He was a storeroom keeper in a hotel but had to do various jobs. He worked long hours, and one New Year's Eve worked for 24 hours. He was never paid overtime for all the extra hours he put in and always received €600. He had a contract but it was not valid for legalisation purposes because the hotel did not have a valid operating licence. He moved to the construction sector, and is happier there as the hours and wages are much better; he has weekends off, has an employment contract and pays social security contributions.

Source: Interview with an immigrant

⁶⁵ A bilateral agreement between Portugal and Brazil signed in 2003.

Case 17 – Undocumented workers preferred

Leta is from Guinea and has been in Portugal for 18 years. She came to Portugal as a university student on a study grant but gave up studying and started working as a cleaner. She later got a job as a supermarket cashier, and is currently working in a canteen. She finds that the working conditions for immigrants are not worse than those of her Portuguese colleagues. She is a trade union shop steward, and knows many cases of restaurants that only want to employ Africans because they are undocumented. The employers want them because they work weekends and long hours, and are only paid what the employer feels like paying them, nothing more.

Source: Interview with an immigrant

Case 18 – False statements extracted

There are currently several immigrant women – mainly Ukrainians and a few Brazilians – placed by a recruitment agency to work in the bars of the Casino in Póvoa. They live in fear of losing their jobs. Their working hours were unilaterally changed without notice and they now work two shifts in a row from 2.30 p.m. to 9 p.m. and from 9 p.m. to 3 a.m. – 12 hours non-stop. The firm does not pay the statutory rate for overtime or for national holidays on which they work. There is no ‘illegal’ work at the Casino as all of them are declared to the Social Security, but the women, being on fixed-term contracts, are under enormous psychological pressure. They are threatened with non-renewal of their contracts and therefore endure abusive working conditions so that they can continue working at the Casino, where the earnings are good, particularly because of tips from customers. In one particular case, they were forced by their employers to sign false statements about one of their colleagues, for the purpose of justifying her unfair dismissal. In the end, they had to withdraw their statements at the police station as the dismissed worker initiated legal proceedings.

Source: Interview with the Trade Union of the North for Hotel, Catering & Related Activities

Case 19 – Dismissed while pregnant with the employer's child

In January 2004, a Brazilian woman who was 5 months' pregnant at the time approached *Solidariedade Imigrante* in Beja. She was an irregular immigrant and had been "kicked" out of her job by the owner of the café where she worked, who was the father of her unborn child. The organization intervened successfully to get her employer to pay her outstanding wages. Later on, when he paid a further €1,100 that was still outstanding, he asked her to sign a document saying that he owed her nothing more. The organization could not get the employer to accept his responsibilities as the father of the child. Even though her stay in Portugal was irregular, the case was taken before the *Tribunal de Trabalho* (Labour Tribunal). The employer was found guilty of unfair dismissal of a pregnant woman and ordered to pay her a further €2,900 in compensation. Meanwhile, the child was born and the Public Prosecution Service has taken up the recognition of paternity by the employer. The woman applied for a residence permit on grounds that she is collaborating with the authorities in the case. If the Portuguese employer's paternity is confirmed, their child would be considered a Portuguese national, and the immigrant mother would, therefore, be entitled to a residence permit.

Source: Interview with *Solidariedade Imigrante*, Beja

Case 20 – Dues recovered on expulsion

A Brazilian immigrant who was a cook in a restaurant was ordered to leave Portugal, but had not received her wages from her employer. She appealed to the IGT, saying that, if she was not paid her outstanding wages, she would not be able to leave the country. The IGT intervened with the Aliens & Borders Service and she eventually received her money. The restaurant owner was fined 800,000 Escudos (approximately €4,000).

Case 21 – Employer condemned

The IGT in Covilhã received an anonymous telephone tip about a Bulgarian minor working illegally in a bakery cum pastry shop, following which an inspection of the premises was carried out by IGT and SEF officials. The inspectors found that the minor had come to Portugal as part of a family reunification scheme and was not authorised to work. Inspection of general working conditions revealed that there was no workplace accident insurance, that the workers had not undergone the statutory medical checks and had not been registered with Social Security. The employer was fined for each offence. Furthermore, he has been charged with employing a minor for which he could face up to 4 years' imprisonment or fines corresponding to 480 days at the appropriate rate if found guilty.

Source: Interview with IGT, Covilhã

3.3.4 The agriculture sector

The acute shortage of agricultural workers in Portugal is largely being filled by the wave of immigrants from Eastern Europe and, more recently, from Brazil. According to *Jovens Agricultores do Sul* (Young Farmers' Association of the South), when the first wave of Eastern European immigrants arrived four to five years ago, the region's farmers hired mainly Moldovan, Ukrainian, Russian and Romanian workers. Two years ago the Brazilians began arriving and now most of the region's immigrant workers are Brazilian because they are more reliable and stay longer. The Eastern European immigrants tend to change jobs as soon as they find better pay elsewhere. There are still large numbers of Eastern European immigrants doing seasonal work – grape and olive picking, and sheep shearing. Cork harvesting is a more skilled seasonal activity that is much sought after as it is better paid.

The sector employs only 2.7% of the total number of foreign workers in Portugal and these are concentrated in certain regions (Carneiro *et al*, 2006). In the Beja district, for example, according to SEF figures, there are about 5,000 legal immigrants working in agriculture and it is in this sector that most problems affecting immigrants in the region are to be found. According to the *União Geral de Trabalhadores* (General Workers' Trade Union Confederation (UGT)) clandestine seasonal work draws immigrant workers to the area around the Portuguese – Spanish border.

Agriculture is also a potential growth area in some regions, such as the Alqueva dam zone. According to SI in Beja, irrigation made possible by the dam will allow olive groves, orchards, and vineyards, to be extended far into

Human trafficking and forced labour

the interior of Alentejo. When that happens, the number of agricultural workers will shoot up, and most of them will be immigrants.

Especially for people like the Eastern European migrants who have never worked in agriculture, conditions of work are very hard. The workers are isolated in remote areas, with bad housing conditions and sometimes even without proper food. The Jesuit Refugee Service said that many of these jobs are taken by immigrants who have just arrived and who are still in an irregular situation, or by immigrants who are homeless. Some of them only stay in the job for a short time.

Various labour exploitation situations were detected in this sector, including very serious forms of exploitation that could be considered forced labour and trafficking in persons:

- **Prolonged working hours**, which are not compensated by overtime pay. The Young Farmers' Association of the South observed that the immigrants, especially the Eastern Europeans, work much longer hours than Portuguese workers, up to 12 hours per day, but were not paid accordingly;⁶⁶
- **Bad housing conditions**: Several NGOs including JRS and *SOS Racismo* stated that workers lived in derelict barns, shacks, or stables. The Young Farmers' Association was more positive and said that smallholding owners usually provided their workers with basic living quarters. According to this organization, some smallholdings might not have electricity, but as a general rule almost all had basic sanitation;
- Many cases of **non-payment, delayed payment and misrepresentation of wages** were reported involving, for example, workers who after 2 months on a farm without being paid at all had to leave and seek work elsewhere; workers having to wait for 2 or 3 months before being paid; false declarations of wages by employers, etc.;
- **Non-payment of Social Security contributions**: In Beja, this was stated to be the norm in the region;
- There are also cases of **unfair dismissal**, without any prior warning and without payment of statutory compensation. In some cases, employers have alleged that it was the worker who opted to leave;
- Situations in which **contracts** were **not in writing** and the IGT was not informed;
- Induced **indebtedness** by employers;
- **False promises** about working conditions;
- **Threats of physical violence** against workers;

⁶⁶ In the case of seasonal work, the IGT makes the employer pay for all hours in excess of 8 hours per day at overtime rate. When the statutory rest periods are not observed, it lodges a report with the police. This does not necessarily mean that these situations cease because, according to the interviewee from IGT, Lisbon, the workers themselves have something to gain from them.

- **Physical confinement in the workplace.** There were reports of employers withholding workers' documents in order to force them to stay in the place of work. The justification given for this **retention of documents** is always that they are needed for the regularisation process or for registration with Social Security. The documents can be further retained with the excuse that the accounts department in Lisbon has still not forwarded them, etc. (Interview with IGT Beja).

The IGT in Beja also reported that it is aware of and looking into a few forced labour situations. At times when labour is most needed, employers can place an "order" for workers through Portuguese "labour hire" firms, many of which are legal, but recruit immigrants whose stay in Portugal has not been regularised. Sometimes, farm owners themselves arrange for direct recruitment of labourers in source countries. In the Young Farmers' Association of the South (AJA Sul) we were told of a farmer who was visited by a man who spoke Portuguese with a Slavic accent, and who, according to the farmer, was "a Mafioso type" who turned up in a big BMW or Mercedes and asked the farmer if he needed labourers. Realising the type of organization the man probably belonged to, the farmer said he did not need anyone.

The IGT delegate in Beja acknowledges that firms are still recruiting workers directly from the source country, but stressed that currently they can only do so once the immigrants have obtained the necessary work visa. Recruitment is often done through informal contacts. When there is a labour shortage, the farm owner himself has a word with a trustworthy employee to ask whether he has friends or relatives back home that would like to come to Portugal.

According to SI, they arrive in the Alentejo through organised transport networks. Vans make return trips to Romania, Bulgaria, and Ukraine regularly. On their return, they stop off in Beja on Mondays, Almada on Tuesdays, and in Portimão on Wednesdays. The agents involved in transporting immigrants are foreigners, mainly Ukrainians.

Case 22 – On the spot dismissal

Mariane and her husband worked 19 hours a day milking cows for a large company in the Cavaleiro area. The company employed Brazilian labourers to do milking, and would make them work 2 or more consecutive shifts. At first, the workers would do more than one shift willingly, to earn extra money. The day Mariane's husband refused to work an extra shift, they were dismissed on the spot, like many other Brazilians before them. Their case was reported in the media because after being fired and thrown out of

Continued on page 52

their accommodation, they and their two children had to live in a car. The courts later awarded Mariane €20,000, and her husband €30,000 in compensation.

At the time of the Lula agreement, in 2003, the company dismissed several Brazilians. It had intentionally employed workers in irregular situations. The owner had gone to the Ministry of Labour to find out about the legalisation process but had then done nothing more about it. *Solidariedade Imigrante* affirmed that the Brazilian workers were in a slavery-like situation, because even when the immigrants went shopping to the Lidl supermarket in Odemira, a company supervisor would go with them. They were continuously under guard.

Whenever workers were dismissed, the GNR operated like the employer's personal police force, ensuring that the immigrants left the area, and signed a document stating that the employer had paid them €3,922 and did not owe them anything more. This document was later fundamental in proving that an employment relationship had, in fact, existed. The workers tried to take legal action against the employer but lost their case because the Public Prosecution Department had allowed the case to expire. The immigrants then took legal action it, because it had not initiated legal proceedings against the employer and should, therefore, be responsible for damages to the workers.

Source: Interview with *Solidariedade Imigrante* Beja

Case 23 – No way out of debt

In the parish of Cabeça Gorda, 15 km from Beja, a doctor drew attention to the case of a Lithuanian immigrant who was chronically ill with a degenerative nervous disease, and was being treated at Beja Hospital. Throughout his stay in Portugal he had been isolated on a farm with cows and hence could not express himself in Portuguese. He had no electricity or hot water, and used to wash in the dam nearby, even in winter. He was paid in food from the local shop that belonged to his employer's mistress. The employer inflated the price of the food he bought, with the result that no matter how much the Lithuanian worked, the employer always managed to keep him in debt - a situation that amounted to pure slavery. He would sometimes be given small amounts of money (€5 or 10) to buy things like cigarettes or alcohol on which he had become dependent.

Continued on page 53

The case was put before the labour tribunal, which ruled that he should receive €2,500 from the employer. An out-of-court settlement was reached between the immigrant and employer, and he was eventually paid €1,000. In Beja, many such cases that come before the labour court are settled by mutual agreement.

In agriculture, there are many such jobs that entail tremendous isolation and that sometimes involve abuses of this type. These workers are usually illiterate, have dependency and other problems, and stay on the farm waiting for the boss to turn up with their money.

Source: Interview with *Solidariedade Imigrante* Beja

Case 24 – Wages eclipsed by expenses

A group of Romanian seasonal immigrant workers were working for a firm belonging to an Italian in Vila Nova de Mil Fontes in the Alentejo. When they arrived in Portugal they were already in debt for their travel costs. They were taken to houses in extremely bad condition, for which they had to pay rent. They had come to work in Portugal for only 3 months. Of these, they worked for a month or 6 weeks exclusively to pay off their debts. Typically, during their last month of work they would not be paid any wages at all but were occasionally given small amounts of money just to cover their basic needs. When the season came to an end, they were taken back to Romania in vans.

Source: Interview with *Solidariedade Imigrante* Beja

Case 25 – A rural ‘underworld’

The IGT Beja Delegation discovered a Romanian immigrant employed to guard cattle and living in utterly degrading conditions. He was living in an extremely dilapidated part of the farm, and received €25 every two days. The owners themselves and their other employees also lived in deplorable conditions; they were illiterate and, according to the interviewee, lived in an “underworld” all of their own.

Source: Interview with IGT Beja

Human trafficking and forced labour

Case 26 – Work at gun point

A few years ago, the IGT dealt with a very serious situation involving a labourer from Sao Tome and Principe working on a farm and made to live in sub-human conditions. He was constantly being threatened by the gun-wielding female owner of the farm but managed to get a message out to the authorities. Eventually, GNR and SEF officials rescued him. The IGT is investigating a similar case of another worker on the same smallholding. The woman threatens labourers with firearms to make them work and stay on the smallholding, but they are not paid and are sometimes forced to live with the animals.

Source: Interview with IGT Beja

Case 27- Desperate to get out

During a joint operation on a farm in the Vidigueira area, IGT and SEF officials found an irregular Brazilian immigrant. In desperation, and fully aware that he could be sent back to Brazil (which was, in fact, the outcome), he had asked to be taken off the farm. He had been employed to take care of cattle and was left alone on an isolated smallholding. The employer had taken away his documents on the pretext that they were needed for his registration and legalisation processes. The employer was severely penalised by the SEF and IGT, but after just a few days he was found to be doing exactly the same only, this time, the victim was Portuguese from one of the islands. Such situations occur mostly on isolated smallholdings.

Source: Interview with IGT Beja

Case 28 – Controlled by fellow Romanians

A case of exploitation was detected in 2005 involving about 50 Romanian immigrants working on farms in Central Portugal. They had been brought over by an organised group of Romanians. The immigrants had come of their own free will, but they were controlled and regularly subjected to extortion by members of the group who lived in the area and whose only job was controlling and getting money out of immigrants by threats of physical violence – against them or their relatives back home – and of being reported to the SEF. The work was seasonal and clandestine, and

Continued on page 55

labourers were rotated around the farms. The farmers, who were members of a farmers' association, were alerted to what was happening and reported it to the SEF. The immigrants had been hired illegally, they had no contract and no social security contributions were being made. However, they were being paid and did not seem unhappy with their working conditions. One of the network members was arrested, others were charged with coercion, and the workers who are still in Portugal have been asked to cooperate in the criminal investigation underway and then apply for a residence permit (under the provision of Article 137-B of the Aliens Act). Ironically, they are being given protection because of their role as witnesses in the case and not because they were being exploited. No measures have yet been taken against the farmers who, although they treated the immigrants well, were nonetheless employing them illegally.

Source: Interview with SEF

Case 29 – Wounded and disowned

A group of Eastern European irregular immigrants, who were employed to work on olive groves, vineyards, and orchards, had an accident when they were going to work in the employer's car. Afraid because of their illegal status and the fact that they did not have a valid Portuguese driver's license, they ran away from the scene of the accident although some had been badly hurt. When they phoned their employer, he immediately washed his hands of them, told them it was not his responsibility, that, officially, he did not even know them and that they should leave the area.

Source: Interview with AJA Sul

3.4 EXPLOITATION OF IMMIGRANT WORKERS IN THE SEX INDUSTRY

For the purpose of this study, the term "sex industry" includes not only prostitution but also escort work, i.e. activities that entice clients in entertainment venues to spend their money. Escort work does not necessarily entail providing sexual services, but can lead to prostitution.

It is generally accepted that women who work in the sex industry are particularly vulnerable to exploitative situations and forced labour and that

Human trafficking and forced labour

many are victims of trafficking in persons.⁶⁷ Information gathered by other studies (see, for example, Peixoto *et al* 2005) and from the interviews conducted during this project, points to two divergent views on the women working in this industry. On the one hand, the authorities tend to believe that most foreign nationals working in the industry were not duped or deceived. They say that though they might find themselves confronted with unexpected employment situations, they were aware, before emigrating, that they were going to work in prostitution in Portugal. NGO sources, on the other hand, indicate that most of the women concerned have been victims of deception. No evidence was found of men forced into prostitution.

Trafficking for forced prostitution is characterised by women's lack of awareness of the kind of activity they would engage in Portugal. There are also situations in which, in spite of having agreed to engage in prostitution, women find themselves trapped in sexual exploitation and exposed to human rights violations that they had not anticipated. Lastly, there are cases in which prostitution is actually a conscious and freely made choice.

Methods for recruiting these women differ according to their place of origin. In the case of Brazilian women, Portuguese "businessmen" usually contact agents in Brazil, who then recruit the women and organise their travel to Portugal. Once in Portugal, the women are put to work in the escort business and/or prostitution. Escorts sometimes engage in prostitution on their own initiative. In such cases, very often, the women are only allowed to leave the establishment with a client once he has spent sufficient money there. Most of these women seem to have freedom of movement and a certain degree of control over their own situation. The Jesuit Refugee Service has come across many Brazilian women earning three times what they would otherwise earn, for example, working in a hotel and are therefore not willing to give up prostitution. A few cases were reported to us, however, involving women whose movements were severely restricted and whose documents had been taken from them.

Eastern European women engaged in prostitution and/or escort work in Portugal are often reported to be victims of violence and trafficking in which organised groups have arranged the victims' travel and have then forced them to work in prostitution. The involvement of African women in prostitution is increasingly visible. It started in Lisbon and has now spread to other parts of the country. It is still fairly uncharted territory in terms of research. However, a member of an NGO was able to provide some details about the treatment these women receive.

According to our interview, the same system that was used to send Nigerian and Ghanaian women into Germany and other EU countries now operates to bring women from these two countries into Portugal. The women

⁶⁷ According to one school of thought, sex work is always a form of exploitation. For more details see, for example, Gülçür and Ilkcaracan, 2002.

immigrants usually arrive in Portugal by bus or train via Spain or Germany. They are kept indebted for their travel and other expenses to the middlemen/pimps who bring them in. Their indebtedness is worsened by a feeling of eternal gratitude towards the person who rescued them from poverty and helped them to come to the “first world”. The pimps guard the women closely. There are reports that the Nigerian men involved are sometimes extremely violent. They convince the women that they have no one at all to turn to by telling them that the police will do nothing to protect them and that Portuguese justice is very slow.

Street prostitution of African women is most visible in Lisbon’s *Intendente* area, where the women can be seen meeting their smartly dressed pimps to hand over their earnings. This is a fairly recent phenomenon, which started between 1993 and 1996. The first network was run by Zairians living in France who were attracted to Portugal by the two special immigrant regularisation programmes, in 1992 and 1996, organised by the government. The first Nigerians to arrive in Portugal, in search of legalisation, did not come directly from Africa, but from France, Italy, and Spain, with the help of the Zairian networks. However, as soon as Nigerian women with Portuguese residence permits began to return to Nigeria, Portugal was added to the list of destination countries for Nigerian traffickers. Among those organising this movement is a network operating out of Lagos, Nigeria. Its members include Nigerian civil servants who obtain Schengen tourist visas, or visas valid for the Netherlands or Germany.

In contrast to other countries where raids were frequent, Portugal used to be, until the late 1990s, a country that was seen, and publicised by network members, as a place where one could freely engage in prostitution and live legally. Many foreign women working in prostitution in Portugal managed to obtain regular immigration status by obtaining contracts as domestic workers. There are also foreign nationals working as escorts with employment contracts as dancers or strippers. The SEF interviewee stated that in these cases there may be a combination of labour exploitation and sexual exploitation, because, in most cases, their professional activity is not declared. When raids or inspection operations take place, the venue owners simply say that the women were there on their own. The immigrant women often corroborate this as they can earn a lot of money through escort work or prostitution.

According to *SOS Racismo*, between 15 and 20% of women working in prostitution in sex venues are young descendants of African immigrants, who were born in Portugal. Poor employment prospects and a desire to make “easy money” have pushed them into prostitution. The young women, mostly from the Lisboa e Vale do Tejo area, generally work exclusively in prostitution and are controlled by groups involved in the night entertainment business.

Human trafficking and forced labour

Case 30 - Blackmailed

A young woman, born in Viseu, is working in Lisbon as a prostitute without the knowledge of her African immigrant parents. She said she could not leave the sex club where she worked because her boss threatened that, if she did, he would tell her family what she was really doing in Lisbon, and this would be a great shock and disappointment to her middle-class family. They would be ashamed to discover that their daughter, who they believed was studying in Lisbon, was in reality working in prostitution. She said she had been offered better jobs in other nightclubs but, because she was being blackmailed, could not accept them.

Source: Interview with *SOS Racismo*

Case 31 – Boyfriend turned pimp

A young Nigerian woman, who lives in the Rossio in Central Lisbon, rushed into the shop below her room, saying she had been beaten by her pimp. He knew she had to send money to her daughter, yet he insisted that she give him the day's takings and became violent when she refused. She was strong enough to defend herself and escaped with a few bruises. The young woman's case is typical of many. Her boyfriend, who was living in Germany, had helped her to travel to Europe from Africa. He had paid the travel costs and had arranged a tourist visa for her to enter Germany. He had also paid a German national to be her sponsor in order to obtain the visa. The couple then went to live in the Netherlands. It was there that they heard about the immigrant regularisation process in Portugal in 2001 and came there. On arrival, the boyfriend contacted people in the prostitution business so that she could start work and, ever since then, that had been her job. She said she depends on him because he has refugee status in Germany, and she can only regularise her stay in Portugal through him. She has never gone to the police to complain about the violence she is subjected to because of her irregular situation.

Source: Interview with *SOS Racismo*

Case 32 – Locked up, then expelled

About two years ago, a Brazilian woman went to the IGT to make a report against the owner of the sex club where she was working. He had taken away her personal documents and kept her locked in a room. She eventually managed to escape. She was not allowed to stay on in the country and an order had already been issued for her expulsion. In another similar case involving a Brazilian woman the SEF had to intervene.

Source: Interview with IGT, Covilhã

Case 33 – Expired tourist visas

On the night before our interview, the IGT in Beja, together with SEF and GNR officials, found a group of Brazilian women in a sex bar in the region, who had overstayed their 90-day tourist visas. When questioned, the employer/bar owner, a Portuguese national, acknowledged that they had been working for him and that he was paying them a percentage of his earnings. The IGT had already received a request for registration of employment contracts for them. The women later confessed that they had been engaging in prostitution in the bar. One of them, a 20-year-old woman was undocumented. She told officials that her “boyfriend” had paid for her travel to Portugal and had her documents with him at home. The IGT found out later that he was not her boyfriend at all and suspected that she may have been coerced as she had no identity documents. Five of the women found were arrested and taken to court.

Source: Interview with IGT, Beja

Case 34 – Rescued and regularised

The head of the IGT delegation in Évora came across an Eastern European woman during the inspection of a sex bar. The woman’s behaviour and the very provocative clothes she was wearing indicated that something was amiss. When asked for her documents, she said they were in her apartment, close to the bar. Before leaving to get them she asked if she could change into different clothes, even though it was three in the morning and her apartment was only 100 metres away. She was apparently under the control, not of the bar owner, but of an agency that had put her to work there.

Continued on page 60

Human trafficking and forced labour

That night, after finding the documents, she persistently asked the IGT official to help her. She had only been working there for 15 days and was already extremely anxious for someone to rescue her. He had the distinct impression that she was being coerced into working there and found that her wages were routed through the agency. The case was handed over to the SEF investigation department and the immigrant was eventually able to regularise her stay in Portugal.

Source: Interview with IGT, Beja

Case 35 – Raped on arrival from Moldova

When the first wave of immigration from Eastern Europe began in 2000, the SEF was informed about several Moldovan women who had been put to work in prostitution in the Alentejo. They had no documents and were living in a house with some Portuguese women who were also engaging in prostitution. The Moldovans were allowed to go out shopping with the other women. On one such occasion they escaped and went to the GNR. They reported that they had been brought over from Moldavia, raped on arrival by several men, and forced into prostitution. With the help of the SEF their situation was regularised.

Source: Interview with SEF

Case 36 – Remote control

The SEF inspected a nightclub in Porto where there was striptease and drinking with escorts, but no prostitution on the club premises. On the face of it, it seemed that the escorts engaged in prostitution independently in *pensões* (rented accommodation) nearby. In the course of the investigation, however, it was found that the owners of the *pensões* and the nightclub owner had a financial arrangement whereby the nightclub owner got a part of what the women paid the *pensão* owners for the use of the room and for condoms. Even when prostitution takes place outside a nightclub, it is often controlled by the club's owners, doormen/security staff, or managers.

Source: Interview with SEF

Case 37 – Psychiatric problems prevent reintegration

A 22-year-old Nigerian woman who was brought into Portugal by an unidentified prostitution network has been under treatment in a psychiatric hospital. Her medication was mysteriously provided for. She has no documents with her at all and though she is ready to be discharged, she has nowhere to go. The CNAI intervened and the Nigerian embassy agreed to provide safe-conduct back to Nigeria for her. However, she is still in Portugal because no one has yet been found to assist with her reintegration back in Nigeria. It is possible that her family when found will reject her as people with psychiatric problems are believed to be “possessed”.

Source: Interview with the ACIME legal office

3.5 EXPLOITATION OF IMMIGRANT WORKERS IN OTHER SECTORS

In addition to the sectors where there are large concentrations of immigrant workers, other areas were found in which immigrants have been victims of labour exploitation as well as deception.

The IGT in Lisbon finds it particularly difficult to detect cases of trafficking, irregular employment or non-payment of wages in Chinese-run shops and other establishments as all those working there seem to be related to each other and say they are only helping out. The inspection by the IGT of such enterprises in 2005 did not reveal any cases of trafficking. The Judicial Police (JP), however, said that Chinese immigrants arrive in Portugal via long air, sea or land routes, under the tight control of groups that charge them money for organising the journey, and arrange their documentation and employment. The JP was not aware of coercion or violence being used on the immigrants.

Case 38 – Lower wages declared

A Brazilian has an employment contract to look after dairy cows. His contract stipulates a 40-hour week but he works more than 8 hours a day six days per week. The salary mentioned on his contract is the national minimum wage but he receives more. This under-declaration is a frequent practice, and workers have no alternative but to agree. Besides, he is not being paid for working on Saturdays. He is afraid that if he questions his employer about this, he will start paying him only the national minimum wage as stated on the contract. He has not so far been able to regularise his situation.

Source: Interview with Casa do Brasil

Human trafficking and forced labour

Case 39 – High price for a visa

Sergei worked for a Spanish-Portuguese company as a driver based outside Portugal in the Schengen countries. In March 2005, he had to go to Portugal to extend his stay permit, but was not given leave by his boss for this. He could not run the risk of allowing his Portuguese visa to expire as that could lead to expulsion. So, without permission, he left work and travelled to Portugal to extend his visa. When he returned, he was dismissed from his job and could not recover the €1,500 that his boss owed him.

Source: Interview with *Solidariedade Imigrante*

Case 40 – No respite in court

A Portuguese woman working in a Chinese-owned shop went to the IGT to complain that her employers made her work 9 hours a day, instead of the statutory 8 hours. The Portuguese lawyer of the shop owners advised her to accept the employers' working conditions because taking them to court would be a long and drawn out process.

Source: Interview with IGT Covilhã

Case 41 – Extortion with violence

An employer came to the IGT to ask for help: his employee, completely covered in bruises, had taken refuge in his house. He had told him that extortionists were demanding, under threat of death, that he pay them €1,300. The immigrant worked as a welder in a workshop and was a highly regarded employee whom the employer did not want to lose. He therefore offered to pay the extortionists the money. The immigrant however refused, saying that if they got what they wanted they would come back and demand more. In the end the SEF removed him to a different location, far from the clutches of the network. His situation in Portugal was regularised and he has since found a job in another workshop. According to the IGT, extortion is now less prevalent than before.

Source: Interview with IGT Beja

3.6 CHARACTERISTICS OF IMMIGRANTS AND THEIR ATTITUDE TOWARDS EXPLOITATION

One of our concerns was to ascertain, over the course of our research, whether certain “types” of immigrants are more vulnerable to exploitation than others, on account of their legal status, country of origin, gender, or educational background.

The data gathered from the interviews revealed that irregular and undocumented immigrants are, in fact, more vulnerable to exploitation because they are, generally speaking, less likely to complain and less informed about their rights. However, as we were told in several interviews, it is not only irregular immigrants who are victims of exploitation.

“Having a job” is of paramount importance to any immigrant. All immigrants are, therefore, vulnerable to exploitation since, for survival, they tend to accept any job offer, regardless of the employment conditions attached. Immigrants usually need money in the short-term, and therefore do not value sufficiently the labour rights to which they are entitled under Portuguese law. Exacerbating this vulnerability is the fact that they are in an unfamiliar country without any social support networks.

Several interviewees also referred to the fact that, because the yearly renewal of immigrants’ stay permits depends on them having an employment contract, they feel pressured into taking any sort of job to ensure that they are entitled to renew their permits. The interviewee from *Solidariedade Imigrante* said that, regardless of an immigrant’s legal situation, the fact that there is “an army” of flexible labour willing to agree to any employment conditions pressures those whose situation is regularised into accepting more precarious conditions in order not to lose their jobs.

There are also differences according to the immigrants’ country of origin and date of entry into Portugal. Portugal’s newest immigrants, the Eastern Europeans, are often said to be those who are most exploited, at least during the early stage of the influx, when their unfamiliarity with the country and its labour rights are greatest. Immigration from Eastern Europe has been the most publicised, especially because it is new and on account of the reports of extortion by criminal groups from the immigrants’ countries of origin.

Due to their countries’ historical ties with Portugal, immigrants from Portuguese-speaking Africa usually have a better understanding of Portuguese society and of their rights. They are, therefore, less likely to be subjected to abusive employment situations. Those who have residence permits have more rights and greater autonomy. Even so, there is evidence that African immigrants are victims of discrimination. For example, Eastern European workers seem to be preferred to Africans for domestic work. In the catering sector, when it comes to dealing with the public Brazilians are preferred, while immigrants of African origin are relegated to more ‘invisible’ jobs. We received contradictory information regarding the construction sector. Some

Human trafficking and forced labour

interviewees (the Northern Construction Workers' Union and Portuguese Catholic Organization for Migration) indicated that most African workers have been working in construction for several years and are skilled and sought after. Other interviewees stated that African workers are also exploited and discriminated against in the construction sector.

Brazilians also fall victim to labour exploitation, especially in the catering sector. Brazilian women often complain that they feel stigmatised because of the association with prostitution. This leads, they say, to sexual harassment in various contexts in which they interact with the Portuguese, but especially in the workplace. Vulnerability to exploitation affects both men and women. Women, however, are more exposed to certain types of exploitation, namely sexual exploitation and domestic violence in the case of arranged marriages. Researchers from the project on "*Female Migration Vision: National Report Portugal*."⁶⁸ found that the waiting time for family reunification being as long as three years, many women enter the country illegally, and stay and work clandestinely until the process is complete. These women are more vulnerable to labour exploitation.

Immigrants with lower educational achievement and less command of the Portuguese language are also more easily tricked by their employers. Some NGOs said that lack of understanding of the Portuguese language and illiteracy, especially on the part of Cape Verdean immigrants, led to them signing terminations of contract or documents they believe to be their contract, without understanding the content.

Another important aspect has to do with the way in which immigrants regard their situation in Portugal and their attitudes towards the exploitative situations to which they are subjected. The interviewee from UAVIDRE revealed that, in most of the cases that his office deals with, immigrants do not even realise that they are being exploited (this was also emphasised by the SEF's inspection department). Immigrants go to UAVIDRE for several reasons, including situations involving domestic violence, industrial accidents, and discrimination, but it is only in the course of their conversation with the UAVIDRE expert that details of their employment situation emerge, and it becomes clear that theirs is another case of abusive labour practices.

The immigrants tend to accept their employment situation as inevitable (within certain limits), particularly during the early days of their stay in Portugal. Irregular immigrants often believe that because of their irregular situation, they are not entitled to make any demands. They fear and mistrust the authorities. This may stem from cultural factors connected with experience of possibly corrupt officials in their own countries of origin, but it is

⁶⁸ Wall, K., C. Nunes, et al.: "*Immigrant Women in Portugal: migration trajectories, main problems, and policies*" European Observatory of Family Policies, Lisbon, 2005.

also the result of their employers, or others who control them, actually fostering that fear for their own benefit⁶⁹.

Immigrants are generally very pragmatic. When their employment situation is unsatisfactory, they look for another job - they cannot afford to waste time without earning: they have debts to pay, responsibilities to relatives in their countries of origin, and have their own expenses in Portugal. They usually decide not to complain – the easiest way of resolving a labour dispute is to look for a new job, or seek help from an immigrants' association, NGO, or a trade union. Most would never consider going to the SEF or IGT to lodge a complaint about an employment problem. However, in the interview with the IGT delegation in Covilhã, we were told that several Eastern European immigrants came there for advice about statutory pay for the job they were doing, or in case of non-payment after dismissal.

Changing jobs can be more difficult for some immigrants. Irregular immigrants, in particular, fear being unable to find an employer willing to take them on. One Brazilian immigrant interviewed said that the longer he stayed in the same job the better. Eastern European immigrants, on the other hand, seem to be more mobile. The fact that they are quite prepared to change jobs if they are offered better wages was referred to in several interviews. This mobility increases once they are regularised.

Most immigrants do not see themselves as victims, and this is important to bear in mind when programmes for immigrants and likely victims of forced labour or labour exploitation are being designed. Once immigrants have worked in the country for some time, they become more demanding and look for better employment conditions. This usually happens when their situation has been regularised and they have a working knowledge of Portuguese. The interviewee from the JRS, for example, said that while Eastern European immigrants were, in the beginning, prepared to work for 14 hours a day and weekends too, now they are not willing to work on Sundays. This is often because many of them now have their families here with them. Of late, many immigrants seek help from NGOs and trade unions when they are involved in employment disputes, and several cases have even gone to court.

Immigrants' ambitions vary. Several of the NGO interviewees (Casa do Brasil, JRS, SI) said that many immigrants express the desire to start their own business as soon as they get their residence permit. This is often a way for them to escape the exploitation they suffer at the hands of their employers.

The authorities, including several interviewees from the General Inspectorate of Labour, stated that there is often complicity between irregular immigrant workers and their employers. Situations involving signing for lower pay than they actually receive so Social Security contributions are lower, and prolonged working hours persist precisely because there is agreement on the

⁶⁹ As in cases of, for example, women subjected to domestic and/or sexual violence.

Human trafficking and forced labour

part of the employees. However, the immigrants and representatives from NGOs and trade unions who were interviewed said that these situations only occur when immigrants do not know their rights and that, in most cases, they are at the mercy of their employers and do not feel capable of rejecting the conditions imposed on them. In the catering sector, for example, immigrants are clearly unhappy about the excessively long hours they have to work, as well as their employers' under-declaration of employees' earnings.

The attitude of women working as escorts and/or in prostitution deserves a special mention. There are opposing views between police forces and NGOs as to whether these women freely choose this activity or are forced or duped into it. The interviewee from *SOS Racismo* said that sexually exploited immigrants are passive because of the intense blackmail and fear they suffer. They are made to believe that if they report their situation they will be ill treated. The case of Nigerian women is even more complicated. They wholly believe in the influence and power of the individuals who are exploiting them and particularly that they are protected by shamanistic healers. They are convinced that even if these men were in prison they would still be a threat to them. Hence they do not cooperate with the authorities in identifying their exploiters.

3.7 MAIN FACTORS CONTRIBUTING TO LABOUR EXPLOITATION

3.7.1 Labour supply and demand

Our interviewees referred to two key aspects in the dynamics of recruitment and exploitation of immigrant labour: on the one hand, there are business people seeking to increase their profits by cutting down their labour costs and on the other hand, there are immigrants whose precarious legal status, their fragility from being uprooted and their urgent need for survival make them more submissive and willing to accept working conditions that are unacceptable to local workers. Moreover, what they are offered is, generally speaking, better than what they would get in their country of origin. The capacity of immigrants to ask for, reject, or negotiate working conditions is limited because they have few alternatives.

In other words, there is, on the one hand, a labour market with available jobs that encourages migratory flows, but, on the other hand, offers no guarantee of fair working conditions for immigrants. Several interviewees, however, said that only the most unscrupulous employers hire irregular immigrants, as the others fear the penalties for doing so.

Economic cycles also have an impact on this dynamic. Periods of economic crisis may serve to justify poor employment conditions granted to workers. This seems to be the situation that Brazilian workers are facing nowadays, according to the interviewee from the Casa do Brasil. Employers take advantage of the crisis and drop in employment to manipulate workers and pay lower wages.

The failure of the *Instituto de Emprego e Formação Profissional* (Employment and Vocational Training Institute (IEFP)) in its intermediation between employment supply and demand contributes to the fact that abusive labour practices can and do occur. The IEFP fails to provide responses to the demands for employment by immigrants, who therefore remain at the mercy of informal recruitment mechanisms and unscrupulous employers.

3.7.2 Legal framework

Most of the interviewees believe that there are several problems with the current legal framework for immigration, and that it contributes in various ways to the vulnerability of immigrants in the labour market. Firstly, in spite of the fact that the current system⁷⁰ creates enormous barriers to the regular entry of immigrants, it does not effectively prevent their entry into Portugal, especially in a context where the labour market needs immigrant labour.

As the UGT interviewee commented, if a company is unable to recruit legal immigrants as quickly as it needs to, then it will use irregular immigrants. Consequently, there are a large number of irregular immigrants, and they are more vulnerable to exploitation. Those who are already irregular immigrants in the country and who want to regularise their situation have to return to their country of origin, or go to the nearest Portuguese consulate (in the case of Brazilians) so they can apply in person for the relevant residence or work visa. Secondly, immigrants who already have stay permits are also vulnerable because they can only renew their permits by submitting a contract of employment validated by the IGT.

This framework makes immigrants dependent upon their employers for the regularisation of their immigration status and hence less demanding in their employment situation. There have been schemes involving the selling of bogus employment contracts to immigrants so that they can apply for

⁷⁰ The present system requires that immigrants entering Portugal are already holders of a work permit. The procedure currently in force is as follows:

- A company wishing to hire a foreign national identifies him/her and requests their recruitment.
- The foreigner worker the company wishes to hire applies for a Type IV work permit (for subordinate labour) through a Portuguese consulate.
- Before a work permit is issued, the SEF, IGT and IEFP must forward their opinions, and these are then submitted to the Consulate by the applicant worker. The IEFP attests that the job for which the worker is applying is within one of the sectors referred to in the report on opportunities (in the current version of this report occupations are not referred to). The IEFP also investigates the employer wishing to hire the foreign worker.
- Before issuing the visa, the Consulate asks the General Directorate of the Portuguese Communities to consult the relevant institutions. If everything goes smoothly, the process is concluded and the visa issued within 3 to 4 months.
- With this visa, the worker can travel to Portugal. Once in Portugal, she/he can change employers but not the sector of work (Interview at the IEFP). However, the ineffectiveness of this system has been recognized and appropriate changes introduced in the draft immigration law under discussion.

Human trafficking and forced labour

regularisation, and even cases in which employers actually charge workers money for giving them a contract.

A third difficulty is the long and complicated regularisation process itself: it leaves immigrants in a legal limbo and weakens their position in the labour market. The interviewee from SI Beja said that an example of this problem was the last exceptional regularisation process. Under Regulatory Decree 6/2004⁷¹, 50,196 immigrants submitted applications for regularisation. By November 2005, however, only 3,108 immigrants had been regularised under the regime (Oliveira et al 2006).

Fourthly, the legal system creates difficulties for immigrants who want to become self-employed. Setting up their own business is often the solution immigrants find to escape exploitation by employers. A fifth problem with the legal framework is that it does not address labour needs for seasonal activities in a timely manner, and this paves the way for the recruitment of irregular immigrants. Lastly, the live-in domestic work sector, characterised by a substantial need and demand for foreign labour, has not been referred to in the report on employment opportunities.⁷² It is not, therefore, among the categories of employment eligible for work visas. For this reason, employers in this sector would have to recruit immigrants whose status is already regularised in Portugal. When there are none available, they recruit irregular immigrants.

Nonetheless, as the SEF interviewee stated, current legislation was not formulated with the intention of generating situations in which immigrants could be exploited. What happens in practice is that ways have been found to get around the law, leading to abusive employer-immigrant worker employment relationships. The law has undergone many modifications and developed in the direction of solving these problems, namely facilitating the integration of foreigners. The modifications, however, always give rise to new ways to flout the established regime, which, in turn, generate new amendments to the law.

With regard to labour legislation and Social Security, according to the interviewee from *Solidariedade Imigrante*, the problem is not to be found in

⁷¹ Regulatory Decree accessible at <http://www.refugiados.net/cidadevirtual/legislacao/legislacao2.html>. It established a regularization mechanism for irregular immigrants who had legally entered Portugal before 12 March 2003, who were working on the labour market and had paid at least 90 days of contributions to Social Security and tax by 12 March 2003.

⁷² Council of Ministers Resolution 51/ 2004, published in the *Diário da República* I-Série-B nº 87, of 13 April 2004, pp. 2248-2249, states "Taking account of the survey on immigrant worker recruitment – 2003-2004, the opinion of the *Instituto do Emprego e Formação Profissional*, and having heard the views of the Autonomous Regions, General Inspectorate of Labour, National Association of City Councils, social partners, and the High Commission for Immigration and Ethnic Minorities, establishes that the admission to national territory of workers who are not nationals of a member state of the EU, during the year 2004, will be regulated in accordance with the following needs for labour: Agriculture – 2100; Construction – 2900; Accommodation and Catering – 2800; Other activities and services – 700."

the law but in the absence of political will and the lack of capacity to monitor and ensure that these laws are actually adhered to. One consequence of this lack of political will is the insufficiency of resources allocated to the IGT, which was mentioned by several interviewees.

3.7.3 Organization of economic sectors

The economic sectors in which there are large concentrations of immigrant workers are characterised by flexible and deregulated employment relationships. In the construction sector, most of the interviewees were critical of the long recruitment chain, the result of which is that the immigrant workers' only contact is the sub-contractor who hires them and pays their wages, and not the main contractor who is responsible for the project. Interviewees also criticised the ease with which small firms, whose only objective is to recruit immigrant workers for building work, can be set up. The Northern Construction Workers' Union said that these sub-contractors need only a van and a mobile phone, and that the sole purpose of many of them is to exploit the immigrant workers they recruit for building work. The sub-contractors are the ones who receive the money to pay the workers, but they often disappear without trace, and it is hard to track them down.

Recruitment mechanisms are marked by informality, and this leaves workers completely unprotected in their employment relationships. When problems arise, it is sometimes hard to find the company that hired them. However, according to the IGT Lisbon, in the case of large construction sites, where the owner and general contractor are well-known firms, building sites are generally fenced off and records are kept of everyone entering. On these sites, sub-contractors have to provide details of their workers' identification, nationality, Social Security number, and insurance policy. The facilities provided for those living on site for the duration of the job consist of decent prefabricated accommodation with beds, bathrooms, and a dining area. Most problems are caused by the small contractors that hire 4 or 5 men, pay by the day, and then dismiss them. The IGT believes it is on small, informally run building sites that immigrant workers are most likely to be taken advantage of. On these sites, poor working conditions affect both Portuguese and immigrants alike. The SEF inspection department also finds that it is the smaller building sites that cause most of the problems.

In the domestic work sector, informal employment relationships are prevalent. Much of the work is undeclared and the IGT finds it hard to ensure compliance with labour legislation. Workplace inspection is complicated because of lack of access to the private sphere of the household without the owner's authorisation. Furthermore, the fact that the domestic worker sometimes eats and sleeps at the workplace also makes it difficult to determine what wages the employee is entitled to.

Human trafficking and forced labour

The restaurant/catering sector is another sector where employers find it difficult to recruit and retain workers, according to the Secretary General of the Trade Union for Hotel, Catering & Related Activities of the North. The pace of work is intense, working hours are long, and weekends and national holidays are all working days. In addition, the business mentality, especially in smaller establishments, is still not very receptive to the practice of job rotation.

According to several interviewees from the IGT, immigrants themselves are unwillingly contributing to the perpetuation of deregulation in these sectors because they consent to practices such as prolonged working hours without being paid overtime, and their employers' under-declaration of their earnings.

3.7.4 Other factors

Another cause of immigrant labour exploitation is said to be the business culture in Portugal itself, which translates into discrimination and differential treatment of foreign workers. The existence of racism in recruitment systems is reflected by, for example, the incapacity of labour markets in the destination countries to provide employment opportunities that match the immigrants' training. It also contributes to immigrants being channelled into certain economic sectors on the basis of their nationality. Some firms actually state openly which nationalities they want to hire. As mentioned earlier, in catering they prefer Brazilians, while for domestic work Eastern European women are preferred.

The infiltration of members of organised crime groups into enterprises where immigrants work also poses problems. In the construction sector, it was found that even in reputable firms there were individuals linked to Eastern European organised crime groups who were receiving money for arranging for immigrants to work on building sites. Another problem in the sector was the substitution of skilled Portuguese workers, who emigrated, with unskilled immigrant workers or immigrant workers that were not trained for this particular profession as in the case of many immigrants from Eastern Europe. This has several repercussions, including a drop in the quality of building work (Interview at the Northern Construction Workers' Union).

In the domestic work sector, employers of live-in domestic workers tend to regard domestic workers as not being entitled to the same rights as other workers, especially rights relating to working hours and days off. At the same time, the nature of the work itself generates difficulties, such as being on call all the time. There is also lack of training on the part of the employees, who often take care of elderly people and children without having the skills required for care work of this nature. Proper training would also give them better insight into their rights as professionals and greater power to negotiate their employment conditions.

Immigrant labour exploitation in Portugal

The North-South divide may also be cited as a factor that stimulates migratory flows, especially that of irregular immigrants. In the opinion of *SOS Racismo*, what happens in the source countries is decisive. The rise in the standards of education in developing countries over the past 30 years has been accompanied by a rise in people's ambitions and greater migratory pressure, which has been directed towards the countries where there is the greatest hope of achieving those ambitions. African immigrants returning to their countries of origin feed into this phenomenon and contribute to the flow of people emigrating in a vulnerable position. When they go back to their countries of origin, even though they may have been living in deplorable conditions for years in the destination country, migrants never transmit that image to their fellow countrymen/women.

INSTITUTIONAL APPROACHES TO THE PROBLEM IN PORTUGAL

IV

This section describes institutional responses to immigrant labour exploitation, difficulties encountered by government, social partners and NGOs, and current good practices. The public sector bodies consulted in the course of this study were: the IGT, IEF, ACIME, and two branches of the police: the SEF and the PJ. The civil society actors interviewed were: employers' associations, trade unions, NGOs, immigrants' associations and the *Instituições Particulares de Solidariedade Social* (Private Social Welfare Institutions). Information gathered from them about current knowledge and practice forms the basis for recommendations for further action.

4.1 INSTITUTIONAL AWARENESS OF AND RESPONSE TO LABOUR EXPLOITATION

4.1.1 Business Associations

The business associations we interviewed were, by and large, not very aware of the existence of labour exploitation or immigrant trafficking in the sectors they represented. They acknowledge that clandestine work does exist and that irregular immigrants do work in the construction, catering, and agriculture sectors. They are aware that it is likely that some exploitation is taking place, but keep their distance from the ground level reality of immigrant worker exploitation in the sectors they represent. Some were reluctant to raise this issue with their members.

ARESP represents approximately 20,000 of the catering establishments in the Lisbon area. It has established a *Centro Local de Apoio ao Imigrante* (Local Immigrant Support Centre (CLAI)) at its office in Lisbon and is the first trade organization in Portugal to open a structure of this type. The centre has a dual function of responding to employers' questions about recruiting foreigners as well as providing help to immigrant workers. When it first opened, immigrants used to seek advice there, but, of late, the centre receives

Human trafficking and forced labour

more enquiries from employers than from immigrant workers. The CLAI was recently featured in a TV programme on immigration called *Nós* and since then enquiries from immigrants have been steadily increasing. Curiously, it is not those working in the catering sector who make most use of the Centre, but immigrants working in construction as well as those that are unemployed. The most common questions asked by them concern their legal status in Portugal, their right to access the labour market, and the steps required to be taken for family reunification.

Despite this key information source on the ground, ARESP considers that there are no abusive employment conditions in the sector. The information gathered by the Association from its members through periodic surveys that include questions about immigrant workers, has not revealed any immigrant exploitation in the sector. Indeed, the responses show that immigrants in the sector generally work under the same conditions as Portuguese workers, that there are no reports of discrimination and that they seem generally well integrated. In fact, according to the interviewee, immigrants working in the catering trade are on the whole satisfied with their conditions. She acknowledges, however, that there are breaches of labour regulations involving immigrant workers, and that some such cases have become public knowledge through reports in the media.

The *Associação Nacional de Empreiteiros das Obras Públicas* (National Association of Public Works Contractors (ANEOP)) represents the thirty largest construction companies in Portugal. According to ANEOP, large companies do not employ clandestine workers themselves, although the firms to whom work is sub-contracted may do so. However, these companies do not keep track of how many sub-contractors they hire per year, or how many workers those sub-contractors employ, or whether they are regular or irregular. It would be ill perceived if the association tried to obtain such information from its members since any complaints about abusive labour practices would be addressed directly to the sub-contractors who are not members of the association.

ANEOP admits that the existence of clandestine employment in the construction sector is not new. However, research undertaken about working conditions in the sector indicates that it does not constitute forced labour. ANEOP knows there are workers in the sector who earn low wages and sleep on the building sites, but it does not know whether these practices are common, and says it has no figures about work accidents. Its only source of information on this is random reports that appear in the press.

With regard to the agriculture sector, AJA Sul said irregular immigrant agricultural labourers are commonplace, but that the Association has no knowledge of other illicit employment conditions involving immigrant workers in agriculture in the Alentejo, or of any coercion of agricultural workers. The AJA Sul has never taken action against any of its members in relation to recruitment or abusive employment practices affecting immigrant

workers, as, in its opinion, the problem is not big enough to justify such action. Even in cases where farmers employ irregular immigrants, law enforcement authorities usually take action against them. In other cases, there is mutual agreement among the parties concerned and hence intervention by the Association is not required. The AJA Sul acknowledges, however, that in terms of workload, foreigners probably do more work than Portuguese workers for the same wage, and are hence more sought after.

4.1.2 Trade Unions

In view of their experience in employment and labour related issues, trade unions play an important role in combating immigrant labour exploitation. As we shall see, some unions, aware of the problems facing immigrants in Portugal, have sought ways to assist them and to tackle their problems. In fact, the trade unions we interviewed either have their own committees on immigration or have trade union delegates who are immigrants. When the UGT, for example, comes across labour exploitation and/or immigrant trafficking situations, it reports them to the competent authorities and requests their intervention so that the necessary investigations, inspections, and legal action can take place. The UGT also provides legal advice through the legal departments of the trade unions that are its members.

The trade unions located in the centre and north of the country were the ones most willing to assist with our research. This, in our view, indicated that on their part there is greater awareness and understanding of, and interest in issues relating to labour exploitation, forced labour and immigrant trafficking in Portugal.

The sector specific unions were found to have a wide knowledge of exploitation involving breaches of labour and Social Security legislation, but had less information about the occurrence of more serious forced labour and trafficking situations, which might indicate that they are less significant in the overall context of employment conditions faced by immigrants. The trade union confederations have more general information on immigrant labour issues, but also showed interest and commitment concerning particular cases. Much of the data referred to in the previous section was based on information we gathered from the trade union interviewees.

The Northern Construction Workers' Union recognises the importance of Eastern European immigrant workers in the sector and has elected two trade union leaders of Eastern European origin – a Ukrainian and a Moldovan – who take part in awareness-raising initiatives among labourers. The Union's membership currently includes more than one thousand Eastern European workers. When migration from Eastern Europe began, the Union negotiated employment contracts for immigrant workers with reputable firms and helped them apply for regularisation of their immigrant status. In 2000, the Union organised a conference with several other organizations on the theme *Same*

Human trafficking and forced labour

Work Same Pay. The purpose of the conference was to raise public awareness in Portugal of the exploitation to which many Eastern European workers were being subjected. The union also took the initiative of translating the collective employment contract into Russian, so that Eastern European workers could gain a better understanding of their rights. It has played an active role in publicising the exploitation of immigrant workers in Portugal in the media.

The Trade Union for Hotel, Catering & Related Activities of the North accepts both regular and irregular immigrants as members. It informs immigrant workers about their employment rights and obligations, encourages them to become members of a trade union, and refers employment disputes involving immigrants to the appropriate authorities (IGT/Social Security). The Union publicly condemns labour exploitation, goes to firms to mediate in disputes between workers and their employers, and provides legal support to immigrants who are union members. The Union also works towards raising the awareness of the authorities concerning the problems and difficulties facing immigrant workers in the labour market. On the occasion of the visit to Portugal of the Brazilian President, Lula da Silva, in 2003, the Union organised an event to discuss problems experienced by Brazilian workers in the hotel and catering sector in Portugal's northern region.

This Union has also taken legal action in cases of unfair dismissal. In many of these cases, the workers concerned were not registered with the Social Security Department. The Union undertook a study to determine the numbers of undeclared workers, both Portuguese and foreign, in catering establishments in several areas of northern Portugal. It found that most employees in the sector are Brazilian. The report was referred to the Labour Inspector General through the Ministry of Labour.

4.1.3 NGOs, Private Social Welfare Institutions, and Immigrant Associations

The civil society organizations interviewed are in direct contact with immigrants who seek support from them for various problems, including labour disputes. These organizations therefore have first-hand information on labour exploitation and were an important source of data for the previous chapter. These organizations are valuable resources to which immigrants can turn in case of violation of their rights in Portugal. All of them revealed that they had come across situations where immigrants had been exploited either during recruitment or at workplaces. They refer cases to the labour tribunal and also offer rights education to immigrants. There are some institutions that have specific skills in victim support and run shelters for trafficked women and women in prostitution. The specificities of the different associations interviewed are described in Annex 9.

Institutional approaches to the problem in Portugal

In cases of disputes concerning non-payment of wages, non-payment of Social Security contributions, or unfair dismissal and non-payment of entitlements, these organizations advise immigrants about their rights and refer cases to the labour tribunal, regardless of whether the immigrant is regular or irregular. However, intervention by these organizations alone cannot lead to prosecution of the employers concerned. Employers are answerable in court for breaches of labour regulations only when the IGT or SEF intervene. However, the JRS pointed out that referral to the IGT is a step taken with caution because an IGT inspection can put several people's livelihood at risk.

In the past 2 years, about 50% of all cases reported to *Solidariedade Imigrante*, several thousand per month, concerned labour disputes. In these cases, the organization first contacts the employer in writing to determine the exact nature of the situation and explore ways of settling the dispute. If wages are outstanding, SI tries to reach an agreement on the payment of outstanding wages. Some employers have even come to SI to pay them or to clarify the situation. Where no agreement is reached, SI refers the case to the labour tribunal or to Social Security, and requests legal aid from the Alien Legal Support Office of the Bar Association so that immigrants have the help of a lawyer. Immigrants are usually contacted four months after the case is filed and there is an attempt at reconciliation. This is when, in most cases, an agreement is reached. Otherwise, the case goes before the county court.

SI in Beja said that the biggest problem in the region is non-payment of Social Security contributions by employers. This was the reason why, on the request of the SEF, SI began to issue statements for the purpose of visa renewal, certifying that immigrants have in fact worked for an employer who has not provided them with a contract of employment. The SEF requires these declarations when there is no proof of Social Security contributions having been paid. Various associations have now adopted this procedure. Due to SI's intervention in the district, immigrants are no longer afraid of going to the IGT and the labour tribunal, and have started taking action when employers do not pay them their wages, especially in the agriculture sector. As a result, many complaints have been lodged with the labour tribunal. The interviewee knew of about 38 such cases that had gone through SI but said that there were many cases that immigrants were dealing with on their own.

The UAVIDRE was set up as a part of the *Associação de Apoio à Vítima* (Victims' Support Association (APAV)) to deal particularly with cases of domestic violence, including ill treatment of domestic workers. It is one of the few organizations having specific victim support skills. Its first step is to determine the type of support the person wants. The very basis of its intervention is the individual's own resolve to find a way out of her/his situation. Once the migrant has a full understanding of the situation, APAV facilitates the liberation process.

Human trafficking and forced labour

If the person is an irregular immigrant, she/he must first take steps to regularise her/his immigrant status as this is seen as fundamental to the process of gaining control over one's own life. If possible, the person's family is located so that they can lend support. Immigrant women exploited by their husband or partner will often have lost contact with their relatives as their aggressor ensures that family ties with the victim are cut.

When there is no family, there are various other options that are considered on a case-by-case basis. At first, sometimes just providing support over the phone is most appropriate. After some time, the person may find the courage to leave the house and go to the police. Taking victims to an emergency shelter for 48 hours, for example, is also an option, until other alternatives are found. As part of the process of (re)integrating into society, women are helped to find a job, the easiest being in domestic service. The relationship of trust established between the organization and the immigrant is fundamental for the person to learn about rights and start taking control of his/her life. Those who have been helped also inform others who are in similar situations. UAVIDRE (Unidade de Apoio à Vitima Imigrante e de Discriminação Racial ou Étnica) sometimes reports cases of labour exploitation to the IGT. It is regrettable that once a case has been passed on to the IGT, UAVIDRE rarely gets feedback on its progress and outcome.

4.1.4 Government agencies

The interviewees from public sector bodies had varying degrees of knowledge on the subject, depending on their area of competence and their experience with interventions.

On account of its remit, ACIME (Alto Comissariado para a Imigração Etnicas) is in close contact with the immigrant population and is aware of and concerned about their problems. It has two CNAIs (Centros Nacionais de Apoio ao Imigrante) in Lisbon and Porto. A comprehensive range of information and advice is available to immigrants at these centres as there are sections for enquiries relating to ACIME, SEF (Serviço de Estrangeiros e Fronteiras), Social Security, Employment, Education, Health, legal advice, and other matters. Indeed, the main public sector agencies providing victim support are the CNAIs.

The IEFP's (Instituto de Emprego e Formação Profissional) work with immigrants is in the realm of their formal recruitment for the Portuguese labour market, and it has little experience or knowledge of labour exploitation or immigrant trafficking. IEFP has competencies related to the formal recruitment of immigrant workers who reside legally in Portugal and, like national workers, have access to their job centres. They are part of the process that grants immigrants work visas for Portugal.

The Inspectorate General for Employment (IGT) has the authority to act only when employment relationships are documented. Its sphere of inter-

vention therefore does not include two pertinent forms of immigrant labour exploitation: those that are of a criminal nature and those involving prostitution as the latter is not covered by labour law. Situations that involve trafficking for forced labour purposes, in which immigrants are undocumented, both in terms of their immigration and employment status, fall within the remit of the SEF, PJ or other police forces. The IGT therefore does not have information about such cases.

The information supplied to the IGT by its different regional delegations varies according to the size of the immigrant communities in each region as this has an impact on the extent to which labour rights violations are reported. The delegations in Almada, Aveiro, Barreiro, Beja, Bragança, Faro, Figueira da Foz, Guimarães, Lamego, Leiria, Portalegre, Portimão, Porto⁷³, Tomar, Torres Vedras, Coimbra, Lisbon and Covilhã had all reported that, either via their information services or in the course of inspections, they had come across situations of labour exploitation and, in some cases, even forced labour.

The IGT works in two ways: it runs an information service, to which both employers and immigrants can go to report grievances and/or ask for advice, and it conducts workplace inspections. The two are related as the reporting of grievances, mainly by workers, is a mechanism that often triggers workplace inspections. However, a representative of IGT, Lisbon acknowledged that the branch does not have the capacity to respond to all the complaints received and gives priority to the most serious ones.

IGT inspections of workplaces are for the purpose of checking working conditions. The way in which workers are recruited does not fall within the IGT's remit, but is rather the SEF's responsibility. For example, when the Alqueva dam was being built there was considerable movement of construction workers, and it is probable that some abusive recruitment schemes were being operated. In this type of situation, cooperation with other bodies, such as the SEF, is paramount.

Where temporary work is concerned, the IGT also notifies the temporary employment agency to report back on the employment conditions provided to their workers by the client firm. In cases of abusive employment of workers who have an employment contract, the IGT prosecutes the employer in court.

In other cases penalties are imposed. For example, if an inspector of a building site discovers that the safety of workers has not been ensured and their lives are in danger, the inspector issues a notification for the immediate suspension of work and the employer is given a deadline, before which the situation must be put right. Only once all breaches have been rectified is authorisation given for resumption of work. Because of the high frequency

⁷³ In Greater Porto, the second largest district in the country, it is significant that few situations of exploitation had been found during inspections.

Human trafficking and forced labour

of work accidents in the construction sector, it is the focus of the IGT's inspection.

During an inspection, the IGT also checks to see whether any Social Security payments are outstanding, and, if so, informs the Social Security Department. Similarly, if any tax retention anomalies are detected, the IGT reports these to the tax office. When "minor breaches" are detected, e.g. in relation to personnel records, working hours notice, medical examinations, poor risk assessment, etc., the IGT notifies the employer and stipulates a date by which the breaches detected must be rectified.

The absence of an employment contract is an obstacle to the IGT's work because linking workers with their respective employer becomes difficult. Whenever a worker is found to be in an irregular situation, the IGT tries to get the employer to regularise the situation, and explains how this should be done. If the employer chooses not to comply, then the IGT informs the SEF, which will identify the worker and apply the appropriate penalties to the employer.

The IGT is also consulted when drafting employment contracts for recruitment of immigrant workers. In addition to ensuring that all the legal requirements are complied with, the IGT tries to educate employers by, for example, providing them with technical information on contractual terms and conditions that could be prejudicial to immigrant workers. Due to the sheer volume of applications they receive, however, IGT technicians are unable to provide proper training to employers, and limit themselves to providing information on three or four key aspects that must be addressed in the employment contract. They notify employers when any mistakes are made, and if these are not corrected the IGT will reject the contracts.

The same procedure is adopted when the IGT receives reports of foreign workers being recruited. The IGT carries out spot checks whenever they detect firms recruiting foreign workers in any significant numbers. Such situations are common in the construction and domestic work sectors. For example, if an individual reports the recruitment of 4 or 5 immigrant domestic workers in the course of a year, then the IGT looks into the case and informally discusses it with the SEF through the CNAI.

Whenever inspectors detect situations which fall within the remit of other institutions, whether or not they constitute a crime, the IGT forwards a report to the relevant organization - SEF, the Courts, Investigation and Prosecution Department (DIAP) or the Public Prosecution Department.

4.1.5 Police Forces

The PJ has competencies relating to the investigation of crimes such as aiding illegal immigration (conducted with the SEF), forgery of documents, money laundering, and sexual exploitation of women. The information that the Judicial Police has on immigrants is mainly connected with organised crime. In

Portugal, organised crime involves mostly Eastern European immigrants, and Brazilian women who are working in prostitution. The PJ also receives sporadic reports about cases involving Chinese immigrants.

When migration from Eastern Europe to Portugal began, among the flow of migrants seeking work were women introduced into the country to work in prostitution. The profile of women in prostitution began to change noticeably – they were no longer solely Portuguese and African women but, more and more, Eastern European women from Russia, Croatia, Ukraine and Moldova. In order to dismantle the Eastern European organized crime networks, the PJ made attempts to forge links with the women and other victims of trafficking for them to denounce their situation and agree to be witnesses to the crimes. At first, the immigrants regarded the police with enormous suspicion, as many of them were irregular and feared being identified as such by the police and deported. They were also afraid that the Portuguese police would be corrupt as is often the case with the police in their own countries. The PJ worked with them to show them this was not the case and gradually gained their trust. As a result, the immigrants soon began to lodge official complaints and the PJ managed to dismantle and bring to justice many of the groups involved. Several were given heavy sentences.⁷⁴

The SEF controls the entry and departure of foreign nationals at the border and issues and inspects documents relating to their immigrant status. In the course of this study, two separate departments of the SEF were interviewed: the *Direcção Central de Investigação, Pesquisa e Análise de Informação* (Central Directorate for Investigation, Research, and Information Analysis (DCIPAI)), which focuses mainly on trafficking and illegal immigration, and the Regional Directorate for Lisbon and the Tagus Valley that carries out inspections to ascertain whether immigrant workers are in a regular or irregular situation. In both cases, the departments have a lot of contact with immigrants and were, therefore, valuable sources of information. The DCIPAI is concerned with the process of job placement of immigrant workers. It focuses less on the role of employers, which is the remit of inspection authorities.

One of the SEF's overall priorities is to combat trafficking in persons and to eliminate the facilitation of illegal immigration. For this reason, the SEF has invested in training, and has been taking part in various working groups on the subject. Like the PJ, the SEF too has played a leading role in dismantling organised criminal groups from Eastern Europe that were involved in aiding illegal immigration, extortion, and other crimes.

The SEF does not yet have the volume of experience in labour exploitation matters as it has acquired in sexual exploitation – an area in which it has been working for several years. There are two reasons behind this: firstly, trafficking for labour exploitation up to now was not covered by current

⁷⁴ For further details of the arrest and sentences passed on these groups see Peixoto *et al*, 2005.

Human trafficking and forced labour

Portuguese legislation. There are related crimes such as illegal recruitment of labour, and fraud in relation to labour and employment. Secondly, information on situations of labour exploitation of immigrant workers gathered during inspections is only occasionally passed on to the DCIPAI for criminal investigation of illegal recruitment or extortion.

Inspections are carried out either alone or with other bodies: IGT; Social Security; Finance Inspectorate; Economic Activities Inspectorate; Tax Inspectorate, etc. The number of violations in which court cases were initiated was 13,959 in 2004 and 13,243 in 2005. There are some cases of recidivism in which the same employers have been sanctioned several times by the SEF inspectorate.

When inspectors come across irregular immigrants, their employers are fined. The immigrants involved are then referred, when eligible, to the regularisation process. Otherwise, they are given notice to leave Portuguese territory within 20 days (in accordance with the law of entry, stay, departure, and removal of foreign nationals from national territory). The 20-day period may be extended when circumstances warrant it, such as when there is a pending labour tribunal case for recovery of outstanding wages. If the victim is prepared to cooperate with the authorities in the investigation, they may be allowed to apply for a residence permit under the terms of Article 137-B of the Aliens Act. In addition, both SEF and the PJ can use the Witness Protection Act⁷⁵ to obtain a prolongation of their stay in the country.

When evidence of more serious situations is detected, they are reported to the Public Prosecution Department. This happens, for example, in inspections carried out in nightclubs.

4.2 MAIN DIFFICULTIES ENCOUNTERED

The difficulties faced by our interviewees in their efforts to tackle the phenomenon and protect the victims are of three kinds: difficulties associated with the legal framework, institutional constraints felt and difficulties stemming from the attitude of immigrants themselves.

4.2.1 Lacunae in the legal framework

There is at present an absence of specific legislation that would provide effective support to trafficking victims. Such legislation may however come into force soon, following a commitment by Portugal to the Council of Europe's Convention on Action against Trafficking in Human Beings (for

⁷⁵ **Law number 93/99**, 14 July **Implementation Decree** number 190/2003, 22 August.

Available at: http://www.pgdlisboa.pt/pgdl/leis/lei_busca_area.php?area=Penal++protec%E7%E3o+de+testemunhas

more details, see chapter II). Under Portugal's present legislative framework, in situations involving what is construed as trafficking in human beings, immigrants are returned to their country of origin using non-coercive measures. According to SEF, these are insufficient and inappropriate. It is a hard task reconciling what is in the best interests of victims and what is needed for the success of the criminal investigation. The law at present, as well as possible amendments to it resulting from international commitments is not likely to facilitate the investigation process for which it is essential that the victims be witnesses. By granting them a period of reflection, which is considered to be a necessary protective measure, the progress of the investigation is hampered because, as experience has shown, if victims do not give their testimony immediately they will, after a time, acquire defences and present less evidence, becoming less valuable as witnesses.

The transposition to the national legal system of the Council Framework Decision of 15 March, 2001, concerning the standing of victims in criminal proceedings, requires changes in too many legal instruments. This will be an obstacle to putting it into practice, particularly in combating this type of crime.⁷⁶

The fact that present legislation makes immigration status dependent upon having an employment contract places immigrant workers at the mercy of employers. Although the immigrant is free to change employers, she/he is bound to a certain economic sector and must prove the existence of a valid employment relationship in that sector in order to renew her/his visa every year.

In proceedings against an employer for non-payment of overtime, the onus of proof regarding the number of overtime hours worked but unpaid is on the immigrant. Such proof is generally in the form of a testimony from other (immigrant) workers, who are often reluctant to provide it because they themselves are in a precarious position, on fixed-term contracts, and therefore at risk of being dismissed when these expire. Even workers from other establishments are afraid of testifying in court because of the considerable connivance between the owners of the different establishments.

4.2.2 Institutional constraints

Establishing proof of an employment relationship and identifying the employer concerned is difficult when there is no employment contract. This makes it extremely hard for the IGT to resolve issues such as non-payment of wages because it is not possible to prove that an employment relationship ever existed. IGT's intervention is greatly hindered in cases involving, for example, prostitution and domestic work. In the case of prostitution, as it is

⁷⁶ Referred to by one of the working groups at the national seminar organized as part of this project.

Human trafficking and forced labour

not recognised as a professional activity, no institution is responsible for inspecting the working conditions of sex workers. What the IGT does is to try to gather evidence of legal subordination that would make it possible to prove the existence of an employment relationship (established working hours, the person being under orders and receiving instructions from someone else, a disciplinary regime, etc.).

Similarly, it is hard to apply any type of labour legislation to domestic work. In view of this, the IGT examines the tasks assigned to the worker and the organization of her work, and, on that basis, tries to establish proof of legal subordination which can then be considered a contract of employment. However, qualifying a situation as a “contract of employment” can be controversial. The employer can say that it was just a case of providing a service, or that the woman was there because she wanted to be, or because she was given her meals there, or because her boyfriend was there. When the relationship is described as a “contract of employment”, the employer is officially notified of the obligations that he/she must fulfil as an employer. Employers often appeal against these decisions, alleging that there was no employment contract, and the IGT then lacks evidence because the worker involved never comes back again. There have been cases in which, in spite of the employer’s appeal, the decision to qualify the situation as a “contract of employment” has been upheld, but then later overturned by a judge of the labour tribunal on grounds of insufficient proof of “a contract of employment”. The worker involved would then have to testify about her working conditions, the person who hired her, her tasks, etc., and this rarely happens. Whether the immigrant worker is regular or irregular has no bearing on the case, and in both circumstances employers are served with official notifications.

Intervention is further complicated in domestic work cases because even if the immigrant is a declared employee, an inspector has to verify the situation in person, which is not easy since they are not authorised to enter a private home without the owner’s permission. If the person manages to leave and reports her/his situation, the IGT does have the capacity to intervene. It refers the worker to the Labour Tribunal, or, if a crime is reported, to the Public Prosecution Department. The SEF’s Inspections Department encounters similar difficulties when investigating reports of labour exploitation in domestic work. When these involve very serious grievances, they are also referred to the Public Prosecution Department.

Several of the immigrant associations interviewed said that when IGT and SEF inspections are conducted and irregular workers are found, it is the immigrants and not the employers who are penalised. The immigrants are ordered to leave the country, but employers are not punished in any way. This also happens in cases of prostitution. According to these associations, immigrants are, therefore, often reticent about collaborating with the police. However, this information does not concur with what we were told by the IGT and SEF, revealing a lack of understanding between the associations,

Institutional approaches to the problem in Portugal

whose mission it is to protect immigrants, and that of the authorities, whose intervention is more punitive.

Another problem referred to in several interviews was insufficient IGT inspections. The IGT seems to lack the material and human resources to conduct more frequent and more effective inspections. One interviewee criticised the fact that in the course of IGT inspections, irregular workers have been able to escape detection because the IGT had not properly sealed off the workplace beforehand.

The IGT also has difficulty intervening in situations that have been under criminal investigation. In such cases, complaints are received at the DIAP and, because they are *sub judice*, are not disclosed to the IGT. Legal proceedings could be underway involving degrading working conditions, forced labour, and coercion but they will only be disclosed to the IGT when proceedings are over and the verdict becomes public. Only then can the IGT intervene. This never takes less than 6 months, with the result that when the IGT does eventually take action, it is unable to identify the elements that prove an employment relationship;

Some institutions complain that once they have referred cases to the IGT, they are in most cases unable to obtain any further information on them.

Communication with victims is problematic because of language difficulties and lack of understanding of the immigrants' point of view and behaviour. The PJ, for example, needed to understand the Eastern European immigrants' cultural background in order to determine which strategy to use to tackle immigrant labour exploitation. Several IGT delegations also referred to difficulties in communication with immigrants, in particular those from Eastern Europe, who are unable to speak Portuguese.

It is difficult to locate bogus companies (sub-contractors/agencies) operating in the construction sector that exploit workers because they are highly mobile and have no physical business address.

In the case of micro-enterprises, which predominate in Portugal's economy, workers are rarely unionised, making it difficult to detect immigrant labour exploitation that would otherwise be reported by union representatives. In medium sized enterprises, there are usually 3 or 4 workers who are trade union members who help to detect exploitative situations.

In the agriculture sector, inspection authorities have encountered difficulties in accessing smallholdings, especially in the Beja area.

The UGT finds that when immigrants work for more than one employer it is difficult to ascertain whether they work more than 8 hours a day.

There is an absence of statistical data that would enable the development of a more in-depth and ongoing understanding of immigrant labour exploitation, including a lack of data on irregular immigrants detected during inspection operations. At the IGT, for example, information on offences involving foreign workers is not kept separately. The IGT Lisbon interviewee

Human trafficking and forced labour

explained that this happens because cases of irregular foreign workers are not dealt with at the IGT. If the matter is connected with the worker's irregular immigration situation and residence permit, then the case is forwarded to the SEF. If the matter has to do with trafficking cases or other crimes, then it goes to court, and the IGT does not receive notification and does not, therefore, process it. For this reason, the IGT does not keep track of situations that are totally illicit and informal because these do not fall within the IGT's mandate.

In the opinion of the SEF, there is a lack of victim support structures. There is still no proper system with defined procedures and material conditions that can provide an immediate response to the needs of suspected victims of trafficking.

4.2.3 Attitude of the Immigrants

Cases often go unreported partly because the immigrants themselves do not realise that they are being exploited, and partly due to immigrants' fear of the authorities. Immigrants find it more difficult to go to trade unions, the police, or the IGT to lodge a complaint than to immigrant support associations and other NGOs. According to the UGT, however, they do come when it is necessary to lodge a formal complaint. Several IGT delegations also referred to the lack of claims from workers as an obstacle to combating exploitation that could, they said, be due to their fear of losing their jobs or of being deported. Immigrants sometimes hide from the authorities, which makes checking their working conditions impossible. Besides, these situations are hidden by employers, who stand to gain if their workers continue to be irregular. Some IGT delegates said that many immigrant workers prefer not to pay Social Security contributions based on their real earnings, although the immigrants we interviewed were most concerned about keeping their Social Security contributions up to date. Several immigrant support associations pointed out that immigrants have been using the labour tribunal to settle employment disputes.

Immigrants lack awareness of their rights. Many believe that because they are irregular workers they have no rights. This lack of knowledge inhibits their capacity to claim their rights from employers, and to lodge complaints with the authorities. *SOS Racismo* pointed out that the fact that, on return, immigrants do not talk about the hardships they endure to friends/relatives at home together with the idea still prevalent that it is "better to be a slave in Europe than to live badly in Africa" have helped to keep alive the practice of immigrant exploitation.

As immigrants think they are dependent on their employers for getting their immigrant status regularised, it limits their ability to claim their rights from employers. Immigrant workers find it hard to join trade unions and fight for their rights because they believe that this will damage their relationship with their employers. The UGT finds it difficult to ascertain whether there

are forced labour practices involving the Chinese immigrant population because it is a very closed community.

4.3 GOOD PRACTICES

In the course of this study, good practices have been identified in the legal framework, in institutional action, and in civil society organizations, such as those of employers.

4.3.1 Good practices in the legal framework

The Penal Reform Mission Unit is currently drafting **changes to the definition of the crime of trafficking in persons**, which also covers trafficking for labour exploitation purposes. Modifications introduced will be in line with international conventions ratified by Portugal and may improve the tools with which to tackle trafficking in persons.⁷⁷ However, in the view of one of the working groups organised during the national seminar organized by this project, these proposed changes could give rise to “...*difficulties, not only in relation to criminal investigation but, fundamentally, in terms of demonstrating the facts in court, i.e. production of evidence.*”

The law provides for **joint liability** in Article 144 of Decree 244/98, of 8 August, modified by Law 97/99, of 26 July, Decree 4/2001 of 10 January, and Decree 34/2003 of 25 February (which approves conditions for the entry, stay, departure, and removal of foreign nationals from Portuguese territory).⁷⁸ This Article provides for the possibility of making a general contractor or owner of a building project responsible for situations arising from the employment of a foreign worker who does not have the relevant work or residence permit, whenever it is not possible for the sub-contractor who actually hired the worker to be made accountable.

Irregular immigrants are able to **bring actions before the labour tribunal** to claim compensation in employment disputes or payment of outstanding wages. Claims for compensation for unfair dismissal or for payment of unpaid wages brought before the labour tribunal have, in general, had very positive outcomes.

⁷⁷ Ministry of Justice website states: “there is expected to be a new crime of trafficking in persons, which may be for sexual exploitation, labour exploitation or organ removal purposes, punishable by up to 12 years imprisonment. Along with this crime, conduct that up to now has not been considered criminal, such as the purchase and sale of children for adoption, is expected to be made a punishable crime (1 to 5 years imprisonment), along with concealment of documents of human trafficking victims (up to 3 years imprisonment) and making use of human trafficking victims (whether in labour or sexual contexts and also punishable by up to 5 years imprisonment). All these conducts would only be punishable if there were criminal knowledge and intent in respect of the trafficking situation”. Available at: <http://www.mj.gov.pt/sections/justica-e-tribunais/justica-criminal/unidade-de-missao-para-revisao-do-codigo-penal/>.

⁷⁸ Available at: <http://www.refugiados.net/cidadevirtual/legislacao/legislacao2.html>.

Human trafficking and forced labour

4.3.2 Good Practices in institutional intervention

Trade unions have established **special units dealing specifically with immigrant worker issues** and elected **union delegates who are immigrants**. Several of them do awareness-raising among immigrant workers of their labour rights. The UGT has a bus that regularly goes into immigrant neighbourhoods and provides information about employment and immigration rights. It has also devised a guide for UGT member unions to use in collective bargaining negotiations with employers with a model contract, in which there are specific references to equal rights for immigrant workers and to the employers' duty to provide Portuguese language training for immigrants. Another example of trade union action in favour of immigrant workers is the translation into Russian of the collective bargaining agreement for construction workers by the Northern Construction Workers' Union.

The SEF's sensitivity towards exploitation issues was commented on by the Northern Construction Workers' Union. When analysing situations of labour exploitation, it has sought solutions for immigrants found in such conditions.

The cooperation and networking between institutions has considerably helped to defend the rights of immigrant workers. For example, the IGT delegation in Beja pointed out that dealing with extreme cases of forced labour has not been difficult because as soon as they are reported, work has been coordinated with the SEF and police authorities, and the victims freed immediately. It was emphasised that the informality of working relationships between these organizations' experts facilitated and accelerated the resolution of problems. It is important to bear in mind, however, that networking should not be dependent on good informal relationships between the different experts involved. It is essential that there are established procedures that allow for networking, even in the absence of informal contacts.

- **Joint inspection operations** involving several bodies: IGT; Social Security; Finance Inspectorate; Economic Activities Inspectorate, etc. are carried out.
- IGT, Portalegre appreciated the **close collaboration between inspectorate authorities and regional trade union structures**, which detect and report cases of irregularity/clandestinity.
- **Statistical processing of crime reported to the PJ** and classified by nationality/country of origin of the victims and by crime, makes an important contribution to quantifying phenomena that, because of their characteristics, are otherwise difficult to estimate.
- The specialised and well informed assistance provided to immigrants by the CLAI, CNAI, *SOS Imigrante* help line and ACIME initiative was cited by several interviewees.
- The **CAIM Project** developed under the EQUAL Community Initiative Programme, whose aims include putting in place a system for detection,

Institutional approaches to the problem in Portugal

identification, reception and integration of trafficking victims in Portugal is commendable. The Project's lead partner organization is the *Comissão para a Igualdade e os Direitos das Mulheres* (Commission for Equality and Women's Rights). Other partners include the International Organization for Migration (IOM), the Secretariat General for the Ministry of Justice, the Secretariat General for the Ministry of Internal Administration, the Family Planning Association, and ACIME.

- ARESP is the first **employers' association** to open an **information centre on issues related to migration**. In response to the need for information expressed by its members, a CLAI was established to provide information to employers in person, by telephone, and through the monthly ARESP magazine. The information service has now been made available to a wider audience, including immigrants themselves and lawyers and accountants, etc., who have to deal with various aspects of corporate work.
- The ARESP also has **an observatory on immigrant employment** in the sector, including records of the number of immigrant workers in the sector, their nationalities, the number per firm, the type of jobs they do, whether they work night shifts, etc.
- The efforts by many **employers to regularise their immigrant employees** is commendable. The JRS has come across employers who give their employees extra bonuses. The SEF also reported that there are employers who provide good working conditions and good rates of pay to irregular immigrants because they value them as workers and do not want to lose them. At the start of the wave of immigration from Eastern Europe, there were many cases of Portuguese employers who, realising that Eastern European immigrants would carry on working even with a black eye or a broken arm, decided to take action and alert public opinion to their problems.

4.4 SUMMING UP THE FINDINGS

According to the information we were able to gather from our research, there are various kinds of irregularity and illicitness in employment relationships between foreign workers and their employers. Furthermore, it is common for employers to take advantage of the vulnerability of immigrants.

Generally speaking, there appear to be only a few cases of forced labour where migrant workers are physically prevented from leaving an exploitative employment relationship. There are, however, several more subtle forms of coercion and psychological pressure brought to bear on immigrant workers because of the precarious and disadvantaged nature of their legal status, and their weak negotiating power in the labour market. An example of this is the

Human trafficking and forced labour

practice used by employers of making false promises about working conditions or about providing an employment contract that will enable the immigrants to regularise or renew their visas. In such cases, even though immigrants are not being forcibly confined to their workplace, they carry on working there because they believe their employers' promises, which can be very damaging to their chances of being able to stay legally in Portugal. So, instead of using direct threats, employers give immigrant workers false hopes, in order to keep them working in conditions that are not favourable to them.

In addition to deception of this type used against immigrant workers, we found several relatively widespread practices of immigrant labour exploitation that indicate the use of subtle forms of coercion: non-payment of wages; excessive working hours without overtime being paid; non-payment of Social Security contributions; non-compliance with workplace health and safety regulations, including no statutory industrial accident insurance; bad housing conditions; no employment contract, or non-registration of employment contract with the IGT; unfair dismissal; and threats of reporting irregular immigrants to the SEF.

Immigrants are not generally forced to remain in their jobs, but many do so in the hope that their situation will change and because they think they have no alternative. There have been cases, however, in which immigrants have fought against exploitation and taken their employment dispute to the labour tribunal for settlement. This usually only happens when immigrants have regularised their situation and have a better understanding of the country. In some cases, the immigrants themselves agree to breaches of regulations such as lack of payments to Social Security.

Highly coercive practices appear to be less common, and include: retention of documents; confinement to the workplace; abduction and kidnapping; threatened or actual physical or sexual violence; induced indebtedness and extortion; threatened arbitrary dismissal; and exclusion from future employment.

The forms of labour exploitation encountered seem to occur mostly in the labour market itself and were not, therefore, linked to networks that organise transportation of immigrants. When these networks operate, as in the case of Eastern European networks, they resort to extortion. For this reason, and as the 2004 Report of the EU Experts' Group on Trafficking in Persons (p.10) states: "*Measures to combat trafficking should not only focus on the mechanisms of trafficking itself (i.e. the process of how the person is brought into the exploitative situation), but also on the forced labour and slavery like outcomes of trafficking that immigrants face in the destination countries, independent of whether such exploitation concerns a 'victim of trafficking', a 'smuggled person', an 'illegal migrant', or a 'lawful resident'.*"

This is primarily an exploratory study, and a more in-depth examination of some of the issues raised here should be undertaken. It would be particularly valuable to gain a broader vision of immigrant workers' own views of

Institutional approaches to the problem in Portugal

their employment situation, which would provide a better understanding of the relative importance of labour exploitation situations and, more specifically, forced labour referred to in this report. Another dimension that would be interesting to explore in the future, would be a comparative study of immigrant labour situations in various European countries, including Portugal.

LABOUR EXPLOITATION AND TRAFFICKING OF PORTUGUESE EMIGRANTS



In spite of dramatic changes in the country's migratory patterns over the past 20 years, Portugal today is still a country of emigrants. From the beginning of the 19th Century until the 1980s, approximately 4 million Portuguese men and women left the country (Baganha & Gois, 1999: pp. 231 - 233). By the end of 2002, the estimated number of Portuguese citizens, and people of Portuguese ancestry living abroad was estimated by the *Direcção Geral de Assuntos Consulares e das Comunidades Portuguesas* (Directorate-General for Consular Affairs & Portuguese Communities (DGACCP)) to be 4.9 million. On the basis of recent figures gathered by the *Instituto Nacional de Estatística* (National Statistical Institute (INE)) from statistical offices in other countries, between 2 and 2.3 million Portuguese nationals live abroad. According to this strict nationality criterion, France is probably the country that has taken in the largest number of Portuguese citizens – 533,663 according to the 1999 Census (OECD, 2003).

The year 2002 proved to be a landmark in Portugal's recent emigration history, characterised since 1997 by a slight but sustained decline in the number of Portuguese leaving the country. According to INE estimates, between 2001 and 2002 the number of emigrants rose sharply, from 20,589 to 27,358 citizens, reflecting the less favourable economic cycle that had begun (OECD, 2003). In 2003, the number of Portuguese who emigrated remained steady at 27,008 citizens (INE, 2004).

Since Portugal became a member of the European Union that permits workers to move freely between most member countries, the characteristics of Portugal's emigration have changed significantly. It has now acquired an eminently temporary nature and, in 2003, 93.5% of Portuguese emigration was towards European destinations. This figure has risen in relation to 2002, when it was 81.3% of the country's total emigration. In the same period, the American continent, particularly the United States and Canada, accounted for only 4.5% of Portuguese emigration (INE, 2004).

In 2003, the main destination countries for Portuguese emigration were France (7,399), Switzerland (4,785) and the United Kingdom (3,893), which

Human trafficking and forced labour

together accounted for 59% of all Portuguese emigration. Germany, Spain and Luxembourg also recorded significant percentages of Portuguese emigration (INE, 2004). Between 1993 and 2003, figures for temporary emigration⁷⁹ were constantly higher than those for permanent emigration, and constituted 75.2% of the total emigration. The Portuguese who emigrated in 2003 were mostly from Portugal's northern region (around 41%), followed by the Lisbon and Tagus Valley region (around 27%), and the country's central region (27%) (INE, 2004).

Statistics for 2003 show that the overwhelming majority of emigrants were male (76.3%). As far as the age distribution is concerned, 45% were aged between 15 and 29 years, 24% between 30 and 40 years, and 24% were above the age of 45. Lastly, with regard to their educational background, those with secondary and higher education represented only 9% of the total, against 77.4% who had completed basic education (INE, 2004).

As these statistics reveal, the main destinations for Portuguese emigration are currently European Union member States in which, as workers, the Portuguese are entitled to the same rights as the nationals of those countries. In spite of this fact, in recent years there has been a significant number of publicly reported episodes involving labour exploitation and trafficking of Portuguese emigrants.

However, between 1999 and 2004 only a very small number of crimes involving trafficking of Portuguese workers to other countries had been reported to the PJ, the police force responsible for criminal investigation.⁸⁰ Those that were reported were mainly connected with trafficking and exploitation of Portuguese emigrants in Spain for purposes of sexual exploitation and for forced labour in agriculture.

The number of labour exploitation and coercion cases officially lodged with the IGT and Portuguese consular authorities was also very low. According to the data gathered by the DGACCP, in 2005, 5 cases were reported to Portuguese consulates in the Netherlands, while only 2 cases were reported to consulates in Spain.

The small number of formal complaints should not lead one to conclude, *a priori*, that the incidence of this phenomenon among Portuguese emigrant communities is insignificant. As we were told during the course of this study, emigrants are extremely reluctant to report practices to which they have been subjected to the authorities, contributing to a false representation of the dimension of the problem. In the opinion of the DGACCP, the emigrants'

⁷⁹ According to the INE, temporary emigration is when an individual leaves the country with the intention of remaining in a foreign country for a period of up to one year.

⁸⁰ Reports of 13 crimes of trafficking in persons were lodged with the PJ in 1999, 12 crimes in 2000, 22 crimes in 2001, 17 crimes in 2002, 32 crimes in 2003 and 29 crimes in 2004. The crime of trafficking in persons only includes, in accordance with Article 169 of the Penal Code, cases involving trafficking for the purpose of the practice of significant sexual acts.

Labour exploitation and trafficking of Portuguese emigrants

fear of reprisals is the reason why so few complaints about maltreatment are being lodged.

We decided to focus our analysis on two destination countries for Portuguese emigration: the Netherlands and Spain. There were two reasons for this choice: firstly, time constraints did not permit us to extend the analysis to other EU destination countries, as this would have given the research too broad a scope; secondly, these were countries frequently cited by the interviewees and in the press articles reviewed as being the most relevant and recent. The UK would probably be the next country to deserve extra attention in this respect. Given the similarity between the information gathered on the Netherlands and the UK, we will mention certain parallels between the characteristics of the phenomenon in these two countries.

It would also have been interesting to determine how labour exploitation and forced labour of Portuguese emigrants fits into the broader context of labour exploitation and immigrant trafficking in these destination countries. Once again, time restrictions imposed by the project schedule and the fact that the research had to be physically limited to Portugal prevented the research team from undertaking this contextualisation.

In view of the lack of previous literature on labour exploitation and trafficking of Portuguese emigrants, and the absence of systematised information in the institutions we interviewed, trying to place the phenomenon in a historical perspective is a very delicate task. The institutions contacted and the media were first alerted to the problem at the end of the last century, with reports of Portuguese workers being abused in Germany. The years 2000 and 2001 marked the start of the appearance of systematic reports of labour exploitation and trafficking of Portuguese workers in the UK, which became the subject of a 2003 report by the UK House of Commons Environment, Food, and Rural Affairs Committee.⁸¹ In the case of the Netherlands, the oldest reports we were able to identify from interviews and through the press date back to 2001. According to the PJ, exploitation and trafficking of Portuguese workers in Spain go back two or three years. However, the press review uncovered cases of alleged trafficking of Portuguese to Spain dating back to the year 2000.

From a conceptual standpoint, we chose to ascertain, as we did in relation to immigration in this study, the impact of violation of emigrant workers' rights in the labour markets in the destination countries. "Labour exploitation" should be understood here to mean various types of violation of emigrant workers' rights, namely those contained in Portuguese labour and Social Security legislation. As the legal systems in the destination countries, with which the researchers are unfamiliar, are relevant in these cases, we decided to mention the practices that, in view of their gravity, would be

⁸¹ Fourteenth Report of the Committee, session 2002-03, HC691, published 18 September 2003.

Human trafficking and forced labour

illegal in the member States concerned. Practices that fall within the concept of forced labour and/or trafficking in persons as defined by the ILO Forced Labour Convention, 1930 (No. 29) and the Palermo Protocol will also be examined.

5.1 RECRUITMENT OF PORTUGUESE EMIGRANTS

A distinction must be made at the outset between temporary employment agencies operating legally in Portugal, and those operating outside the law. According to the DGACCP, complaints of systematic, serious violations of workers' rights in the destination countries involve, first and foremost, agencies that are not legally authorised to operate as temporary work agents or as private employment placement agencies.⁸²

Foreign temporary employment agencies that are not entitled to operate in Portugal can engage in this kind of "informal" recruitment. This seems to be the case for most recruitment for the Netherlands and UK. In the case of recruitment for the Netherlands, our interviewees frequently referred to temporary employment agencies, belonging to Turkish nationals, apparently also operating illegally in that country. We also found references to labour recruiters based in Portugal who were working for foreign temporary employment agencies.⁸³

Recruiters operate as brokers between emigrants and the foreign user company. We found, in such cases, references to former employees of the foreign user companies, or individuals who had a useful contact in the firm – a relative, for example. They often present themselves to immigrants as legitimate agencies, but operate merely as intermediaries, and do not sign temporary employment contracts with the emigrants in Portugal. In such cases, any formalisation of the employment relationship, whether with a temporary employment agency or the user company, occurs in the destination country.

The information gathered suggests that the agents who recruit workers in Portugal are often Portuguese nationals who have been living in the destination country for several years. They speak English or Dutch and travel to Portugal on behalf of the foreign temporary employment agency. In some cases, especially in the UK, these recruiters also intervene later on in the process as supervisors of the emigrants at their workplace and lodgings.

⁸² Specifically Decree 124/89, of 4 April, on the legal framework for private sector placement agencies; Decree 358/89, of 17 October, modified by Law 39/96, of 31 August, Law 146/99, of 1 September, and Law 99/2003, of 27 August, which regulates activities of temporary employment agencies and their contractual relationships with temporary workers and user entities.

⁸³ Case reported in the press of a Dutch temporary employment agency owned by a Turkish national and a national of the Dutch Antilles, who had a labour recruiter working for them in the north of Portugal.

Labour exploitation and trafficking of Portuguese emigrants

They may operate individually or collectively, although various sources indicated that groups did not number more than 3 people. The logistics used in these informal recruitment operations is said to be very simple, involving just a mobile phone and possibly a small office or even a hotel room used temporarily.

Contact between illegal recruiters and Portuguese emigrants appears to be mostly established by telephone, after an advertisement has been put in the press,⁸⁴ on a supermarket or hypermarket notice board, or even in cafes in the source locations. The victims are said to have been approached by the recruiters personally in their own neighbourhood or place of residence, and persuaded to emigrate after being made extremely generous offers of work. Some of those recruited are people with mental disabilities. The *Obra Católica Portuguesa de Migrações* (Portuguese Catholic Organization for Migrations (OCPM)) believes that this emigration flow is often facilitated by networks of acquaintances, relatives, and people of trust, and that this makes recruitment extremely informal and efficient.

The generous terms of employment – wages, housing conditions, overtime pay, etc. – described by the recruiters are elements common to all the recruitment processes analysed here, regardless of the destination country or type of recruiter involved. This, it seems, is the determining factor in successfully convincing workers to migrate.

According to several press reports, Portuguese of gypsy ethnic origin have been recruiting Portuguese workers for forced labour in the agriculture sector in Spain. The nomadic lifestyle of this ethnic group keeps them constantly on the move between neighbouring countries - Portugal, Spain, and France were the countries most cited. According to information provided by the PJ, they operate in hierarchical and organised groups, which suggests the existence of organised crime.

Concerning recruitment for construction work, according to the Northern Construction Workers' Union, agencies that are licensed and registered with *Instituto dos Mercados de Obras Públicas e Particulares do Imobiliário* (Institute for Public and Private Works Markets & Real Estate) for civil construction in Portugal recruit workers officially for this work and then place them in building work abroad. The people operating these firms are often former construction workers and small time contractors. These firms do not have many physical assets as they do not need to invest in construction equipment, tools, or an office but only in means of transportation and communication. They are also highly unstable, close down frequently to set up again later.

For the construction sector in Spain, most of the victims are apparently recruited from smaller cities such as Penafiel, Marco de Canavezes or Tarouca

⁸⁴ The daily “Correio da Manhã” and “Jornal de Notícias” were the most cited.

Human trafficking and forced labour

by Portuguese construction firms who subsequently arrange for their transportation to the contractors in Spain.

The DGACCP pointed out that legitimate temporary employment firms⁸⁵ operating in the Portuguese market are also regularly reported for violations of workers rights, such as payment of lower wages than what was initially agreed or at a lower rate than other workers for the same job, non-payment of statutory Social Security contributions, or non-fulfilment of promises to pay for transportation back to Portugal. There are sporadic reports of practices that, although they cannot be considered labour exploitation, involve nonetheless some form of coercion against the workers.

An important point to mention here is that, although not directly connected with employment conditions, a significant number of temporary work agencies fail to comply with their statutory obligation to notify the authorities (IGT and DGACCP) of specific details concerning the workers they place abroad.⁸⁶ According to the DGACCP and IEFPP, many agencies choose not to forward this information, in spite of being legally bound to do so.

There are both Portuguese and non-Portuguese temporary employment agencies operating legitimately in the Portuguese labour market. In the case of the latter, workers may be recruited directly through the company's branch in Portugal or this work may be contracted out to a local firm. Recruitment of workers in Portugal by legitimate temporary work firms is generally subject to a service provision contract entered into with the end user or company that will employ them in the destination country.

5.2 TRANSPORTATION TO DESTINATION COUNTRIES

The data gathered in the course of this study does not allow a systematic mapping of routes and methods of transportation used according to the different categories of recruiters and destination countries concerned. According to the DGACCP, when the destinations are Spain and France, overland transportation is generally used. When emigrants are being taken to Spain for construction work, most of them are transported by the contractors in company buses owned by the construction firm recruiting them. As a

⁸⁵ The firms referred to include, among others, Columbus or Atlanco, Ltd (based in Dublin). It should be noted, however, that as a rule firms deny accusations made against them. Atlanco, Ltd. took civil action against Rádio e Televisão Portuguesa (RTP) following claims by RTP that the firm was exploiting Portuguese workers in Northern Ireland. The action ended with a Court decision not to proceed with prosecution.

⁸⁶ According to Decree 358/89, of 17 October, modified by Law 39/96, of 31 August, Law 146/99 of 1 September, and Law 99/2003 of 27 August, temporary work firms must give prior notification to the IGT of the identity of the workers, the job they will perform, the place of work, the expected start and end of their employment, and provide collateral and guarantee payments to the IEFPP. They are also obliged to inform the DGACCP every six months of workers placed abroad.

Labour exploitation and trafficking of Portuguese emigrants

rule, the same method is used for transporting Portuguese victims of forced labour to work in agriculture in Spain.

In other cases involving informal recruiters working for temporary employment agencies or foreign user companies, the emigrant's journey might not be organised by the recruiter in Portugal. In many cases it is up to the emigrant to make the travel arrangements him/herself, and he/she is given a telephone number to call on arrival in the destination country. In these cases of informal recruitment, travel to the destination countries is generally by air. This is usually the case when the destination country is the Netherlands. However, some emigrants recruited by individuals working for Dutch temporary employment agencies use *Eurolines* coaches. We also came across references in newspaper articles and victims who said that they travelled to the Netherlands and to the UK in vans or trucks belonging to the foreign agencies that informally recruited workers in Portugal. Travel expenses are usually paid for by the emigrant. If transportation is organised by the recruiting agency, workers repay travel expenses out of their first pay packet in the destination country. It is noteworthy that we rarely came across evidence that workers were over-charged for travel expenses.⁸⁷

5.3 RECEPTION AND PLACEMENT ON THE LABOUR MARKET

Placement of emigrants in the labour market is generally done through a contract between the local temporary employment agency and the company that will use the migrant labour. The conditions in which newly recruited emigrants find themselves in their destination country appear to be similar in the Netherlands and the UK. The local temporary employment agencies are usually responsible for providing the recruited emigrants with somewhere to live. The rent that is charged for accommodation, often characterised by mediocre living conditions, constitutes a considerable part of the recruiter's income. Accommodation is sub-let, so the more occupants an apartment has, the more profitable it becomes.

Portuguese workers are usually received and settled in the destination countries by Portuguese nationals who work for the temporary employment agency as supervisors, responsible for the workers' transportation to and from their workplace in a company van. They also inspect the company accommodation used by the Portuguese emigrants, checking that they are being kept clean, and that workers comply with the regulations, especially regarding the prohibition of alcoholic drinks or drugs. As we shall see, these individuals who are part of the company structure appear to play a significant role in documented cases of coercion against recruited Portuguese workers.

⁸⁷ We found reports of £100 being charged in 2001 for a bus trip to the UK, and €300 being charged in 2003 for a flight to the UK.

Human trafficking and forced labour

The recruiter in Portugal might operate as a direct intermediary between the Portuguese workers and the user company that has requested the labour. According to the PJ, employers in Spain regularly inform the Portuguese intermediaries about their labour needs. Our review of the press revealed one such case in England: Portuguese workers were recruited by a Portuguese woman residing in England and put to work in a factory where her son was already working. He was responsible for telling the recruiter about the vacancies that arose in the company. If the demand for workers in the user company dropped due to seasonal variations, the few hours of work available would be distributed to the various emigrants that were under their control.

On the basis of the information we gathered, it is not possible to ascertain with any certainty the extent to which the end users were involved in the labour exploitation and forced labour to which Portuguese emigrants have been subjected at the hands of the intermediaries. Furthermore, we found no reference to their direct or intentional involvement in the practices described below.

5.4 COUNTRIES OF DESTINATION EXAMINED

5.4.1 Portuguese labour exploitation in the Netherlands

The review of the press revealed reports of labour exploitation and trafficking in Portuguese emigrants dating back to 2001. The earliest such reports concerning the Netherlands were from 2003. According to the Portuguese Communities' Councillor in the Netherlands, labour exploitation of temporary workers began to appear four years ago. The sectors most involved were agriculture and horticulture, especially work in greenhouses for growing flowers. There are other sectors of the Dutch labour market in which labour exploitation of Portuguese workers also apparently occurs such as food packaging, construction, and manufacture of car components. According to the DGACCP, incidence of more serious cases of coercion against Portuguese workers in the flower growing sector appears to be limited to certain temporary work agencies.

In view of the almost total absence of formal complaints and inexistence of quantitative data in the institutions interviewed,⁸⁸ it is not possible to estimate the dimensions of the phenomenon. As has already been mentioned, this research should be considered eminently qualitative and not quantitative in character. However, the informal perceptions of representatives of institutions in Portugal and in destination countries that are in contact with emigrant communities are worth noting. They receive complaints about

⁸⁸ The only quantitative data that were kindly made available to us by the interviewees have been included in Section 3.2.

Labour exploitation and trafficking of Portuguese emigrants

labour exploitation and trafficking, and are therefore best placed to assess the development and dimensions of the problem.

The perception of the DGACCP representative is that complaints of this nature have tended to increase and that there are a growing number of temporary employment agencies that subject emigrants to these abusive employment practices. In fact, the DGACCP has received complaints about threats of physical abuse of Portuguese workers in the Netherlands. The information given to the DGACCP by those making the complaints suggests that there are in fact numerous situations of this type but, for the reasons mentioned in the previous chapter, the number of formal complaints lodged by the victims themselves is very low. Although these practices have not actually been proven in court, the DGACCP believes they are consistent and credible testimonies.

It should be said, however, that the labour practices reported are normally denied by the temporary employment agencies accused. There was a case referred to by the DGACCP involving hundreds of complaints from Portuguese emigrants working in the flower growing sector in the Netherlands who said they had been victims of physical abuse. The incidents which occurred 2 years ago were reported by the Portuguese consular service and by the press. The temporary employment agency concerned demanded that the Portuguese consular service retract the accusation.

One of the central problems faced by Portuguese emigrants in the Netherlands is said to be the sub-standard housing provided to them by the local temporary employment agencies. There are reports of accommodation with neither hot water nor heating. Heating systems, when they exist, are unsafe. The DGACCP mentioned the case of a Portuguese worker who died in The Hague in 2002 as a result of an accident due to a faulty heating system.

A frequent complaint about housing conditions is overcrowding in the accommodation provided. According to numerous reports, Portuguese emigrants are forced to share their rooms with 6 other people, and there are apartments intended to house 15 persons in which several dozen workers, both men and women, are living. Facilities are inadequate and there are reports of one bathroom and small kitchen being shared, in some cases, by dozens of people.

Apart from having to endure bad and overcrowded living conditions, emigrants have to pay a weekly rent that can be as much as € 50. Rent collection is an enormous source of income for the temporary employment agencies involved, which explains why accommodation is so overcrowded.

Another frequently cited problem is non-fulfilment of the employment conditions that had been agreed at the time of recruitment. Emigrants often fall victim to **false promises** about housing conditions, wages, payment of overtime and bonuses, and even transport to and from the workplace. When workers are recruited informally, they may not even know what kind of job they have been recruited for. Even in cases where a temporary employment contract has been issued in Portugal, it can be substituted with a new contract

Human trafficking and forced labour

on arrival in the destination country, and the initially agreed employment conditions are not honoured at all.

Employment relationships are highly **precarious**, and there are cases in which there are no written contracts at all or the contract is in a language that the worker does not adequately understand. Unfair dismissal is commonplace, especially when emigrants are unable to work because of health reasons. In these cases there are also complaints about non-payment of all the workers' entitlements as, being in desperate financial situations, emigrants are obliged to sign a release document in Dutch, the content of which they do not understand. They then receive only part of what is owed to them by the temporary employment agency.

False promises about wages result in workers receiving **pay** that is generally lower than the rates of pay in the destination country, and is sometimes even lower than the local minimum wage rates. The scheme usually consists of offering a rate of pay that is higher than the national minimum wage in the source country but lower than the minimum wage in the destination country, to which the worker agrees because she/he has no knowledge of the concerned labour legislation.

According to the Portuguese Communities' Councillor in the Netherlands, the average net rate being paid in the flower-growing sector is in the region of €5 per hour, which is substantially less than the statutory rate for the sector. Another interviewee stated that the user company pays the temporary employment agency €15 per hour for migrant labour, but apparently only a fraction of it is handed over to the worker.

In the case of the flower-growing sector, in addition to the regularly cited situations such as non-payment or delays in the payment of wages, the high mobility of labourers between workplaces and user companies often gives rise to disputes when the number of hours they have actually worked is being calculated.

The long **working hours** are another concern of the workers, especially since overtime rates are not paid in accordance with the law. In flower growing, when the work is most intense, like in springtime, workers may have to work for more than 12 hours a day.

Although excessively long working hours is a frequently mentioned problem, it seems that the opposite situation causes migrants even more problems. According to several sources, the promised 40-hour week is not always provided by the temporary employment agencies. The **non-allocation of work**, which seems to happen on a regular basis, means that the migrant is at the agency's disposal, possibly for weeks on end without receiving any pay at all. As we shall see below, this appears to be at the root of the most serious problems faced by Portuguese migrants in the Netherlands.

According to the DGACCP, many migrants seek its services on account of the **lack of medical assistance** available to them in the destination country. The cause seems to be that the temporary employment agency does not pay

Labour exploitation and trafficking of Portuguese emigrants

the statutory Social Security contributions.⁸⁹ In the case of small workplace accidents, migrants also have to deal with the reluctance of the recruiters to ensure they get medical care.

Other irregularities identified include **fining** Portuguese workers for a range of reasons, such as non-compliance with regulations on cleaning their accommodation, or on the maximum number of trips per week to the supermarket. According to the report of one of the interviewees, corroborated by the press, one temporary employment agency used to deduct fines directly from the bank accounts that it had opened for each of its workers for the purpose of depositing their wages. The agency in question had free access to the accounts, and would deduct the fines without prior authorisation of the account holder. The possibility of applying such fines is said to be provided for in the contracts of employment entered into by the migrants themselves. There are reports of migrants being prohibited from doing certain things, such as owning a car, having Dutch language lessons, and answering phone calls. However, these constraints on personal freedom seem to occur less frequently.

A common problem, especially in cases involving informal recruiters, has to do with the non-payment of the worker's return trip to Portugal at the end of the employment period. As these are agencies operating irregularly in Portugal, they do not have collateral deposited with the IEFPP and it is impossible, therefore, to repatriate workers at the expense of the agency responsible. In these situations, the workers themselves or, in some cases, the consular services end up paying for their return trip. However, due to financial constraints, the consular services often have to refuse the payment of repatriation expenses.

5.4.2 Trafficking in Portuguese emigrants to the Netherlands

Forced labour has been characterised in this study as one of the central elements of the concept of trafficking in persons, according to international law. In this section, we shall endeavour to identify a series of practices affecting Portuguese migrants in the Netherlands that point to the possible existence of cases of trafficking in Portuguese workers, according to the ILO's definition of forced labour cited earlier.

One of the problems identified in this study is **physical and psychological coercion** against Portuguese workers by certain owners of temporary employment agencies and by the Portuguese supervisors who work for them. According to the DGACCP, there are cases of emigrants who, when they have

⁸⁹ This would prevent the migrant from being entitled to the same healthcare as the destination country citizens if she/he does not have the necessary forms from the Social Security in Portugal (E101 and E128, which have now been replaced by the European healthcare card). According to the DGACCP, the problem mainly affects migrants informally recruited in Portugal.

Human trafficking and forced labour

reported or threatened to report their exploitative working conditions, were then subjected to threats, physical abuse and reprisals. The threats and reprisals were often that of placing the migrants concerned in worse accommodation.

Threats of dismissal that, if carried out, would mean having to immediately vacate the accommodation provided, also seems to be used as a way of coercing workers to accept the labour exploitation to which she/he is being subjected. Portuguese emigrants coerced in this way may not have the necessary financial resources with which to return to Portugal. Furthermore, they may not wish to do so on account of the 'shame' in having to admit that their emigration has been a failure. All these factors may, in practice, contribute to coercive tactics having the desired effect.

This type of coercion in the Netherlands is likely to occur with emigrants working in sectors like agriculture and food packaging. As referred to above the information received from the DGACCP points to the existence of a significant number of situations of this type, although it should be reiterated that the number of formal complaints lodged by the victims themselves is very small.

The threats to which emigrants are subjected are apparently not limited to their stay in the Netherlands. According to the DGACCP, a very small number of complaints lodged by the victims themselves had to do with their fear not only for their own safety in the destination country, but also for their relatives in Portugal. One of the interviewees mentioned the case of a former emigrant to the Netherlands who, after returning to Porto, used to put pressure on his former house mates not to report the labour exploitation they had been victims of in the Netherlands.

One of the problems identified in the previous section was the false promises made at the time of recruitment, especially concerning wages, payment of expenses that were not initially agreed, and information about the possibility of non-availability of work. Particularly the last question can lead to enormous financial hardship for emigrant workers who, as they have to pay their weekly rent for accommodation, sometimes find they are not left with enough money to cover their most basic needs, like food.

There are apparently cases of workers who, faced with these problems, turn to the temporary employment agency for loans, and contract debts. They then have to work to repay these debts and, in some cases, wages are withheld at source to repay the amount due. One of the interviewees mentioned the fact that the agencies involved just ensure they provide the workers with enough hours of work required to pay their weekly rent for accommodation, which is generally equivalent to one day's work per week. According to the information gathered from the press review, loans are given at abnormally high rates of interest, which would of course exacerbate the migrants' financial dependency. The DGACCP said, however, that these situations are rare compared to the cases of labour exploitation described above, and had occurred mostly in the UK between 2001 and 2004.

Labour exploitation and trafficking of Portuguese emigrants

The role played by the Portuguese supervisors is significant in the practices described here. They have access to the migrants' accommodation, and are reportedly responsible for psychological and sometimes physical coercion against them. According to another interviewee, the power that the supervisor wields over the migrants also has to do with the fact that it is he who allocates the available hours of work among the migrants housed in the temporary employment agency's accommodation. It also has to do with his knowledge of the destination country language and society, on which the migrants depend for accessing, for example, local healthcare services.

Lastly, a female interviewee reported threats and moral harassment in the Netherlands by the owners themselves of local temporary employment agencies.

Case 1 – Incompatibility of work and family life

After several months of unemployment in Portugal, the Campilho family decided to answer a newspaper advertisement offering work in the Netherlands. During the time they spent in that country, they worked for a chicken packaging company. They had been hired through a local temporary employment agency.

They would receive their wages in an envelope, with no payslip or any proof of Social Security contributions having been made. They still do not know whether the agency that hired them actually paid any Social Security on their behalf. They never complained about these irregularities because they were afraid of being dismissed and had knowledge of the physical violence to which some of their colleagues had been subjected when they had dared to question the temporary employment agency about these matters: after being dismissed, some of their workmates were put into vans and left hundreds of kilometres away from their accommodation.

A few months ago, the Campilho family's situation took a turn for the worse when Mr. Campilho fell ill with a serious lung condition. He was hospitalised in the Netherlands and was unable to earn during his convalescence. He decided, therefore, to go back to Portugal until he was well enough to return to work. In Portugal his health worsened and he was admitted to hospital there.

His wife, who had remained in the Netherlands, was prohibited by the Turkish supervisor, who worked for the temporary employment agency, from travelling back to Portugal to be with her husband. She left for Portugal anyway. She was dismissed, and none of the statutory formalities were complied with.

Source: Survey of the Portuguese Communities' Councillor in the Netherlands

Case 2- Complaints stifled

The victim, a man living in the Leiria area, is currently a team leader in a private security firm. He was recruited in Portugal by a Portuguese firm working for a Dutch temporary employment agency. The Dutch agency provided him with very poor accommodation – he had to share a house with two dozen Portuguese men and women. They slept in bunk beds, the kitchen was small and there was only one bathroom for everyone. The houses allocated by the Dutch agency to migrants were located in isolated areas, close to pig sties that gave off foul smells and kept the house always full of flies.

He worked from 2001 in an automotive parts company. He had signed a contract in Portugal but, as soon as he reached the Netherlands, he had to sign a new contract, which contained abusive clauses, such as a salary below €900, and the requirement that he should undertake any job that he was allocated. He was told that he had to work 12 hours a day instead of the statutory 8 hours. Overtime hours were supposed to be paid on termination of the contract, but this rarely happened in practice. Other workers who had complained suffered reprisals, and were threatened with dismissal and made to go and live in far worse accommodation. They were fined by the agency on grounds of behaviour described in their contracts as “subversive” or likely to “disturb the peace of the team”. He and the other workers were prohibited by the agency from buying a car and getting in touch with Portuguese migrants living in other houses. Colleagues who had been unfairly dismissed were often abandoned in Antwerp, sick and penniless.

Source: *Correio da Manhã* of 18.03.2004

Case 3 – Interest on wages

A group of five young Portuguese, aged between 19 and 25, wished to earn some money so they could continue their studies. They had all completed secondary education. One of the victims, the grandson of a diplomat, was in higher education in England. Another in the group was a 19-year-old woman who, before going to the Netherlands, had obtained information from various sources, including the Dutch Embassy in Portugal.

They were recruited by two temporary employment agencies owned by Turkish nationals, who were sub-contracting Portuguese workers to various companies in the region around The Hague.

Continued on page 107

On arrival they were put to work in greenhouses for €6.25 per hour, in contrast to the statutory €13 in the Netherlands. They were paying €200 each per month for a house in very bad condition, which had been allocated to them by the temporary employment agency. It was agreed they would be paid €100 every other day but, because of repeated delays, they had to ask for their wages which were eventually given to them as pay in advance with a high rate of interest. For example, they were given €50 and they would have to repay €55. They were prohibited from answering telephone calls.

The 19-year-old woman was dismissed at around 6 a.m. the day that she woke up sick and was unable to go to work. The group was ordered to leave the house and they were threatened with physical violence if they reported what had happened to the authorities. They were given a document in Dutch to sign, stating that the employer did not owe them any money. Hungry and with no money, they agreed to sign the document even though they did not understand what it said. In the end they received only €100 of the €300 to €500 that the agency owed them.

They went to the police in The Hague, who said they could do nothing about it, and told them to go to the legal support department of The Hague City Council. They decided to decline the legal services offered to them there, as it would have cost them €90, which they did not have. With the aid of the Portuguese Embassy's Social Adviser, they claimed the money due to them and the owners of the agency finally paid up.

Source: Jornal Público, 16.01.2006

Case 4 – Trapped in a web of dependency

P. and S. left for the Netherlands on 4 July last year. (...) They saw a small ad in the daily (JN), promising well-paid work, accommodation, transportation to and from work, starting immediately (...) in the Netherlands. On Friday, 1 July, they were interviewed at the house of a Mr. Monteiro, the recruiter for the Dutch agency called *The Five*. Monteiro explained that they would be looking after flowers in hothouses, which was hard work but would be well paid - €15 per hour, paid every weekend, plus overtime hours. Their accommodation would have all the amenities, and said they would just need a little "patience" when it came to agreeing to a timetable for the use of the kitchen. They need not worry about the

Continued on page 108

contract – it would be arranged on their arrival. (...) They left on Monday at 10 a.m. in a 9-seater Mercedes. (...) The following day at around 3 p.m. they arrived in Den Helder, in northern Holland. (...) Then followed a long wait. There was not enough work. At the house, at midday, there were 15 people. At night there were about 80. As they were a couple, they were entitled to have their own room. The less fortunate had to sleep in bunk beds, and if things got very busy, then the younger ones would sleep in the loft.

For a week and a half, P. and S. did not work and were unable to speak to Yeltsin, the head of *The Five* agency. When they finally met Yeltsin, their list of questions was long: “When can we start work”? “Things are going to get better”, Yeltsin assured them. “We heard the rate is €5 an hour, and that is not what we were promised”, explained S. “It’s not true. It depends on the work. Be patient, you’ll see”, replied Yeltsin. “What about the contract”? “It will be sorted out. First we have to open an account, and get a tax number at the *belastingdienst* (tax office)”. They asked about Social Security. Yeltsin told them that the agency had insurance and that payment for this would be deducted automatically from their wages, which would be deposited at the end of each week. (...) They had already used some of the €600 they had brought for emergencies and did not dare to admit to their families that they had been duped. (...)

S. opened an account in a bank recommended by the agency, and after a few days received a contract written in Dutch. They did not sign it because they could not understand it. (...) The unwritten house rule was that whoever caused trouble did not work. Yeltsin would lend money to anyone not working, and whoever borrowed money from Yeltsin, bought silence and a guarantee that any work they would get would not be enough to pay off the debt.

In the middle of all this, the fact that the central heating was not working was a mere detail, the blocked drains paled into insignificance, the towels placed around the windows to stop the draughts were really there for decoration, and the cockroaches all over the house were there so you did not feel lonely.

In two and a half months, S. worked five days: three cleaning in an aparthotel, and two in the agency’s office. She was never paid. Her “sin” was being a teacher, knowing how to speak English, and asking forbidden questions. P. was luckier. In addition to the three days as an illegal worker, he worked carrying drums of fruit juice for €5 an hour. The van would leave the house at 5 in the morning

Continued on page 109

and leave him at the factory two hours later. He would work from 7 am until 5 pm or until 7 pm. (...) P. also worked for 2 weeks near Den Helder, picking and deseeding, which paid €6 an hour. In the end, he was not paid for his last week's work.

Personnel management at *The Five* is based on the principle of uncertainty. Whoever makes friends with the bosses will be looked upon favourably. They never keep someone working in the same place for very long, in case the user company wants to keep the worker. When there is a couple, while one is earning the other waits. Others are kept dependent on loans that are deducted from their wages (...)

Source: Miguel Portas, Portuguese member of the European Parliament for the Portuguese Bloco de Esquerda party.⁹⁰

Case 5 – Passport wanted

In 2004, L. answered an ad in the *Correio da Manhã* daily for work in the Netherlands in exchange for wages of €6 per hour. She got in touch with the recruiter through the telephone number given in the ad. The woman was a Portuguese national who received €50 from the Dutch temporary employment agency for every Portuguese worker she recruited. L. travelled to the Netherlands by coach. The recruiter's husband, also Portuguese, was there to meet her on arrival in The Hague.

The temporary employment agency allocated her a house in deplorable condition, damp and leaking. It was impossible to turn on the taps because the leakage was so bad, which meant that having a shower, washing clothes and using the bathroom was out of the question. L. arrived in the Netherlands on a Thursday and did not work until the following Tuesday. Meanwhile, she was taken to owners of the temporary employment agency, who were Turkish nationals. Although they promised to do so, they never arranged for her registration with Social Security.

She started work cutting roses in greenhouses. At the end of the first day, a Turkish national from the temporary employment agency picked her up from work. He proposed that she should marry his nephew. L. thought that he was joking but, over the next few days, her employer repeatedly insisted that she accept the proposal. Her housemates told her that Portuguese women in the

Continued on page 110

⁹⁰ Available at: [www.be-global.org/global/9/The Netherlands_0306.htm](http://www.be-global.org/global/9/The+Netherlands_0306.htm).

Netherlands were often willing to marry Turkish nationals so that they could regularise their stay in the country.

With the arrival of more Portuguese workers, L. now had to share her room with 6 people – from Coimbra, Porto and Pombal. After two days without water, gas and heating they were moved to a different house. At that time, they had no money for food because they had not yet been paid their wages.

Before moving house they went to the owner of the temporary employment agency and insisted he arrange for the electricity, gas and water supply to be repaired, but he refused. The occupants threatened to lodge a complaint with the inspectorate. Two of the Portuguese who stayed on the premises of the temporary employment agency were then physically abused and threatened with murder.

Following these incidents, the group of Portuguese workers decided to leave the house, report what had happened to the police, and ask for help from the Portuguese Embassy. As they were packing, the eldest son of the temporary employment agency's owner turned up at the house with one of the managers and ordered them to leave the house by nightfall. L. began to cry in sheer desperation, as she did not speak any Dutch and had no money.

L. never received any wages for her work. In spite of what had happened, they went back to work again for the same temporary employment agency. L. was allocated accommodation in an old rat-infested house, where at least she had her own room. She was welcomed at the house by the Turkish owner of the temporary employment agency, who this time offered to buy her passport and Portuguese identity card for €1000 and €500 respectively.

The following day, she went back to work in the greenhouses. At the end of the day, L. and a fellow worker were picked up and taken by a group of 6 Turkish nationals from the temporary employment agency. There was an extremely tense atmosphere throughout the 100 km journey back to their accommodation. The Turks and L.'s colleague kept arguing in Dutch, but L. could not understand what they were saying. Her colleague just told her in English to keep calm, because she was there to protect L. At the back of the van there was a mattress, and L. was very afraid.

When they arrived at her accommodation that evening, she realised that all her personal belongings had been tampered with. L. is sure that they were looking for her identity documents. Even though they still did not have enough money for the journey home, L. and the remaining Portuguese in the house decided to leave immediately.

Source: Interview with L.

5.4.3 Portuguese labour exploitation in Spain

As we said in the introduction to this study, forced labour of Portuguese citizens in Spain is, according to the PJ, a recent problem, which has arisen in the last 3 years. The cases of trafficking identified show that the preferred destination is Galicia in Spain. In the course of the press review carried out it was possible to identify more Spanish regions in which Portuguese workers are said to have been victims of labour exploitation. Forced labour of Portuguese workers in agriculture occurs in regions as diverse as Rioja and Zamora in Castilla & León, Badajoz in Extremadura; Murcia; Cuenca, in Castilla and La Mancha; Huelva and Jaén in Andalucía. The agricultural activities mentioned include fruit picking of grapes, strawberries and melons as well as tomato, pepper and olive picking.

In addition to the agriculture sector, in which most cases of forced labour have been reported, we found occasional references to such situations in the construction sector, entertainment parks, scrap yards, and sawmills. In these cases, the locations mentioned were the outskirts of cities such as Madrid and Barcelona, or the Galician region.

Construction seems to be the sector that is currently giving rise to most concern. According to the Northern Construction Workers' Union, about 20,000 Portuguese workers are presently employed in the sector in Spain. The enormous flow of Portuguese workers into construction work in Spain was confirmed by the IGT in Bragança, which referred to an extremely intense daily movement of small vans transporting Portuguese workers along the main roads leading to Spain. In fact, since 2002, Portuguese construction companies have started moving to Spain.

According to the Northern Construction Workers' Union, Portuguese workers are usually attracted by promises of net monthly wages as high as €1,500, similar to those of Spanish workers. These promises are not often kept, and there are reports of migrants receiving between €500 and €600 a month. They generally carry out less skilled work, regardless of their educational background. According to the IGT in Bragança, they also have to do the more dangerous jobs, and there are many serious and fatal accidents involving Portuguese workers in Spain. These accidents, widely publicised in the Spanish press, are given far less publicity in Portugal.

The Northern Construction Workers' Union has 250 cases pending of outstanding payments to Portuguese migrants to Spain, indicating the extent of labour exploitation in this sector. Together, these claims amount to over €200,000. Other aspects of labour exploitation of Portuguese workers in Spain's construction industry are discrimination in wages and functions, and disregard for workplace safety regulations. There are also reports of Portuguese workers being paid the same wages as their Spanish counterparts, but having to work 12 hours a day and 6 days a week in order to earn them. Working hours of 12 and 13 hours a day were mentioned several times in the press review and by some interviewees.

Human trafficking and forced labour

Other problems reported include the informality of employment relationships, in which written employment contracts are sometimes non-existent. In the press review, reports of poor living conditions provided on the building sites, particularly huts without heating or hot water, were found. The fact that a significant number of cases of labour exploitation involved agents who were of gypsy ethnic origin is sometimes the reason behind the victims' mobility, as they have been forced to follow the recruiters' nomadic lifestyle and work in different places over the year.

In spite of the significant number of cases of forced labour involving Portuguese workers identified in the review of the press for 2005, the PJ was optimistic about progress in eliminating this phenomenon. Criminal investigations carried out recently have apparently led to the dismantling of several criminal groups involved in these activities in the north of the country.

5.4.4 Trafficking in Portuguese emigrants to Spain

Spain, according to the DGACCP, is the country in which the most violent cases of coercion against Portuguese migrants occur. According to the PJ, Portuguese workers trafficked to Spain are victims of crimes of **abduction, kidnapping, slavery, threats, and physical violence**. The press review also revealed cases of emigrants forced to work against their will for periods of up to 5 years using threats and physical violence. We found reports of violent beatings and death threats with firearms, following complaints by emigrants about unfulfilled promises made at the time they were recruited.

In many of these cases, the workers were **confined to their accommodation** by a controller who belonged to the recruitment network. Their movements were constantly supervised, and some victims reported that they were only allowed to go from their workplace to where they were living and back. In one case, the victims were confined to a room in Portugal, and taken every day to Spain and forced to work there.

In some cases, the workers' **identity documents were taken from them** on the pretext of being needed for their legalisation process. One victim was given a forged Spanish identity document and forced to change his appearance so as to resemble the photo on the bogus document.

The **long working days** – as much as 17 hours work in some cases – are made possible by the climate of fear and terror in which the victims are kept. They are usually housed in conditions described by the PJ as sub-human, such as in stables or barns. They do not generally receive any pay at all, as the employers hand it over directly to the kidnappers.

Case 6 – Ghost employers

About 52 construction labourers were enticed by a company in Marco de Canaveses with promises of wages of €1,500 per month. They were put to work in the construction industry in the Pyrenees region of Spain, with a monthly salary of €600 instead of the €1,500 originally promised. Living in huts with neither heating nor hot water, they were not given the type of food they needed for working 12 and 13 hours a day. Neither were they given the statutory clothing and protective gear. The company concerned owed them 2 months' wages plus overtime. The workers discovered that the owner was paying €12 per hour to the Portuguese sub-contractor who was only paying them €5 an hour. The Spanish Ministry of Labour and Social Security ordered a reconciliation meeting between the labourers and the Portuguese company, but the latter did not show up. The workers filed a case against their employer. The company changed its name five times in the period of 18 months. It has neither working capital nor fixed assets.

Source: *Diário de Notícias*, 21.01.2004

Case 7 – Battered into submission

Three Portuguese men from Ovar and Guarda, aged between 30 and 50, were forced to work against their will in Spain for a year in one case, and 6 months in the other 2 cases. Two Portuguese recruiters of gypsy ethnic origin offered to arrange work harvesting grapes in Ovar, Spain for one of the victims. They were abducted and taken to a farm in Trigais, Belmonte, where they were kept in sub-human conditions. They were badly fed and slept in a kind of stable adjoining the kidnappers' house. There was a dog at the entrance to the house that helped to guard the victims. They were even watched while defecating.

They worked as day labourers on building sites and in agriculture. They never received any pay. Their wages were paid directly to their kidnappers. The kidnappers kept their victims in a climate of fear, beating them on several occasions and threatening to kill them. Their identity documents were taken from them. The three men were rescued by the PJ from Guarda, following an investigation started after a relative reported their disappearance to the police.

Source: *Correio da Manhã*, 24.12.03

Human trafficking and forced labour

Case 8 – Confined to the farm

Two men aged 25 and 23 from Vila do Conde took up the offer of work in Spain to do olive and grape picking. They were promised €25 plus a packet of cigarettes every day. They were forced to work on farms in Murcia for 6 months, where they were completely isolated and at the hands of their bosses. They were never paid and, since their identity documents were taken from them, they could not leave the farm. They worked from 8 a.m. to 5 p.m. and had no freedom of movement, “not even to go and have a coffee”. One of the victims telephoned his family on Christmas Day and asked for help. He told them he was afraid and wanted to return home. After a lot of insistence their bosses finally agreed to release them and give them €100 for the journey home.

Source: *Jornal de Notícias*, 11.03.2004

Case 9 – Forced labourer in fear of reprisals

A 38-year-old man from Vila Real was recruited by men of gypsy origin who persuaded him to go and do temporary work in Spain, promising a net wage of €600, plus food and drink. The victim disappeared from his home in July 2002. For two and a half years he was forced to work in entertainment fairs in Barcelona, where he would set up the rides and the lighting. In winter he used to work in the vineyards and olive groves in Spain and Valpaços, Portugal. Sometimes they would go to the Basque Region to collect paper and scrap metal.

They made him work from sunrise to sunset, but never paid him. He was constantly guarded and slept in a locked hut. They would occasionally give him small amounts of money to pay for things like coffee. To dissuade him from trying to escape, he was subjected to beatings and threats. He was given a Spanish identity document with a false identity, and they made him change his appearance so he looked more like the person in the photo on the new identity card. The victim managed to escape from the farm in Valpaços. He now lives in fear of reprisals, and is sure that the recruiters are looking for him.

Source: *Público*, 27.04.05 and *Jornal de Notícias*, 27.04.05

5.5 INSTITUTIONAL APPROACHES TO TRAFFICKING AND LABOUR EXPLOITATION OF PORTUGUESE EMIGRANTS

Because of the eminently transnational nature of trafficking and labour exploitation of Portuguese migrants, responding to their problems is a challenge to government bodies since they are mostly limited to working within the national territory.

The institutions contacted in the course of this study may be divided into two categories: **public sector institutional players with regulatory, inspection, punitive, or investigative authority**, such as the IEFPP, and IGT Lisbon, IGT Bragança and the Judicial Police; and **institutional players that provide support and protection to emigrants**, such as trade unions and the DGACCP.

The role of the IGT and its authority to investigate and sanction offences committed by private placement agencies and temporary employment firms is important in the **repression of migrant labour exploitation**. However, IGT, Lisbon said that it has little knowledge of the labour practices to which Portuguese workers in the destination countries are subjected and insufficient information on serious exploitative situations, victims' profiles or the way in which their transportation abroad is organized.

Aspects of the recruitment process that occur in Portugal, however, fall within its remit. The IGT has the authority to investigate the contract of employment entered into by the parties when the temporary employment relationship is formalised in Portugal. In such cases, action is only taken against the recruiters if the contract is in any way illegal. In cases where labour problems arise not from conditions formalised in Portugal but from an abusive *de facto* or *de jure* contractual relationship in the destination country, the only possible approach is, in their view, cooperation with European counterparts that have the authority to intervene in those countries. Apparently, there is no investigation into the illicit activities of recruiters or firms that are not legally authorised by the IEFPP to engage in recruitment for work abroad.

The IGT's response to the problem of labour exploitation of emigrants in the EU has consisted of liaising with Portuguese consular services, via the DGACCP, and sharing information with its European counterparts. For example, via the DGACCP, the IGT requested clarifications from its Dutch counterpart concerning labour exploitation of Portuguese citizens in the Netherlands. Bureaucratic and workload constraints on the different national inspectorates, however, do not always permit the rapid responses desired.

In October 2003, Portugal and Spain entered into an Exchange and Cooperation Agreement (*Acordo de Intercâmbio e Cooperação*) for the purpose of sharing information and increasing cooperation in the fight against exploitation of workers in both countries. However, the Protocol signed by the Portuguese IGT and its Spanish counterpart has, according to the IGT,

Human trafficking and forced labour

Bragança, not sufficiently facilitated investigative measures on the ground. An addendum to the Protocol was signed recently concerning the construction of a bridge between the two countries situated on the IP6 motorway in Trás-os-Montes. The IGT, Bragança is hopeful that this initiative, which will at first allow joint investigation only along border areas, will later be extended to include the interior regions of both countries.

In 2004, the IGT took part in the exploitation prevention campaign, “Working Abroad”, run by the DGACCP. The purpose of the campaign was to raise awareness and prevent labour exploitation of emigrants in the destination countries.

The **IEFP** is responsible for granting the permits that commercial temporary employment agencies and private placement agencies need in order to operate in Portugal. Temporary employment agencies are granted permits if they fulfil the statutory requirements and provide collateral that is intended to compensate workers in case of non-payment of wages or Social Security contributions.⁹¹ When the agency ceases to function, the IEPF only returns the collateral once the IGT and Social Security have confirmed that there are no outstanding payments.

The PJ has a key role to play in combating migrant trafficking. The information that this crime investigation force shared with the interviewers was almost exclusively about migrant trafficking to Spain. This institution’s investigation into crimes involving trafficking in persons is generally reactive and follows reports of disappearances lodged by relatives of the victims or complaints from Portuguese workers who manage to escape from situations of labour exploitation and are brought to the Portuguese border by Spanish authorities.

Investigation work by the PJ into the disappearance of citizens focuses on identifying the victims and ascertaining how they were recruited. If the circumstances are indicative of trafficking, then cooperation with the Spanish authorities is set in motion in an effort to rescue the victim. There are references in the press to approaches made by the PJ to their Spanish counterparts for the purpose of engaging in joint raids to identify Portuguese victims of forced labour. This type of police cooperation was not mentioned during the interview conducted with the PJ.

Assistance and protection to victims of labour exploitation and trafficking in persons involving Portuguese workers has, until now, been the responsibility of the **DGACCP**, the public authority that has the legal mandate for this.

The DGACCP has developed an extensive knowledge base on the various components of migrant labour exploitation – recruitment, trans-

⁹¹ Cf. Decree 358/89 of 17 October, modified by Law 39/96, of 31 August, Law 146/99, of 1 September, and Law 99/2003 of 27 August, regulating the activities of temporary employment agencies and their contractual relationships with temporary workers and user entities.

Labour exploitation and trafficking of Portuguese emigrants

port, placement in the labour market and the labour exploitation itself – through its personal contacts with emigrants, and information received from them, both in writing and, particularly, through telephone calls. In contrast to other public authorities, the DGACCP is the only one that has the authority to intervene internationally – through Portuguese consular representations – in the destination countries where migrants are victims of labour exploitation.

In accordance with the law, details of Portuguese workers recruited by temporary employment agencies to work in user companies abroad are submitted on a weekly basis to the DGACCP. These details include the name, Social Security number, start and end date of the contract, place of work, occupation, basic pay, and dates of departure from and entry into national territory. According to the DGACCP and IEF, a number of agencies do not comply with this obligation.

When it receives reports that are unrelated to labour exploitation but involve crimes against Portuguese emigrants abroad, the procedure adopted by the DGACCP is to communicate the occurrence, via the Portuguese embassy, to the crime investigation authorities in the destination country. As the DGACCP has no authority to inspect or sanction in labour related areas, the reports of labour exploitation it receives, whether from the public in Portugal or via Portuguese consulates abroad, are forwarded to the IGT. According to the DGACCP, its services receive regular feedback from the IGT concerning the outcome of its investigations into cases referred to it by the DGACCP.

An essential aspect of the assistance provided to exploited emigrants abroad by the DGACCP is financing their repatriation to Portugal. Portuguese consular services in the Netherlands have supported the repatriation of 80 Portuguese workers in 2004 and 15 in 2005 (Pereira, 2006). The DGACCP also mentioned initiatives taken to ensure emigrants abroad had legal representation, namely to secure jurisdictional authority over their labour claims. The support delivered by the DGACCP, especially in respect of provision of information, is eminently reactive and is offered to victims when the exploitation has already occurred.

In an attempt to reverse this situation and to take a more preventive approach to the problem, the DGACCP organised an awareness-raising campaign, in the first half of 2004, designed to inform the emigrant community. The campaign included TV and radio spots, advertisements in the press, leaflets and posters, all designed to warn emigrants of the risks of migrating without being properly informed of their rights. A pamphlet specifically designed for workers intending to emigrate to the UK was produced in conjunction with the British Embassy in Lisbon.

The trade unions interviewed combat labour exploitation of emigrants through denunciation in public accompanied by information exchange and partnership with their European counterparts. Faced with the same territorial

Human trafficking and forced labour

restrictions that hamper the work of public institutions, the trade unions have chosen to enter into agreements, under the umbrella of the European Trade Union Confederation. In addition to the UGT, the CGTP has also entered into such partnerships, for example, in the UK where it has set up the “Portuguese Workers Association” in collaboration with the Trade Union Congress. It has taken similar action in other EU and EEE countries, such as Luxembourg, France, Germany, Spain and Switzerland.

In February and March 2005, the Northern Construction Workers’ Union, which has been extremely active in condemning labour exploitation of Portuguese migrants in Spain, organised a tour of Spanish construction sites where Portuguese workers were employed. As a result of the meetings held with its Spanish counterparts, Spain’s IGT conducted inspections of Portuguese firms operating there and took action against those found to be violating the regulations.

The main difficulties identified by the institutions in respect of labour exploitation of emigrant workers were, above all, the lack of available information on the characteristics of the phenomenon and, as mentioned earlier, their inability to provide an adequate response to a transnational problem because their sphere of action is restricted to domestic affairs. The improvement of mechanisms for operational cooperation and information exchange with European counterparts is one possible solution, which institutions like the IGT and DGACCP have decided to adopt.

In this respect, it is worth pointing out that none of the interviewees mentioned any institutionalised mechanisms for trans-European cooperation. Apart from the *Acordo de Intercâmbio e Cooperação* (Exchange and Cooperation Agreement) between the IGTs in Spain and Portugal, collaboration between Portuguese authorities and their European counterparts seems to stem mainly from ad hoc initiatives triggered by concrete problems. Subsequent evaluation of this ad hoc bilateral cooperation by the players involved points to varying degrees of effectiveness, but everyone clearly feels that much more can be done in this domain.

The DGACCP regards bilateral cooperation with the Dutch authorities, in particular, as being not very efficient. The institution has found little receptiveness on the part of authorities like the police and local labour inspectorates towards investigating labour exploitation cases reported to them by the DGACCP. In contrast, the attitude of the British authorities is the opposite of this. Contacts established with the British Embassy in Portugal and authorities in the UK work on an informal basis, sometimes via e-mail, and results are achieved extremely quickly. The cooperation with the British Embassy in Lisbon during the 2004 information campaign is just one example of the close working relationship that exists.

A considerable constraint mentioned by IGT, Lisbon was its over-stretched resources, particularly inspection resources, for addressing all its areas of work. The institution necessarily has to set priorities, as it must

Labour exploitation and trafficking of Portuguese emigrants

respond to the thousands of requests it receives every month and, at the same time, adopt a proactive approach to problems.

The collaboration established between the DGACCP and the UK authorities is the basis for some of the **good practices** in combating labour exploitation and migrant trafficking that were identified during this study. These include strategies for prevention, suppression of illegal recruitment, suppression of labour exploitation, and assistance to the victims:

- The **information campaign** directed at emigrants, jointly organised by the DGACCP, IGT and British Embassy in Lisbon in 2004. As a source country of victims of labour exploitation, one of the most effective approaches that Portugal can adopt is prevention. Initiatives such as this are key to diminishing the risks inherent in the migration process. An emigrant who is well-informed about the employment rights to which she/he is entitled in the destination country is far less likely to become a victim of labour exploitation.
- The willingness expressed by a number of **temporary employment agencies operating legally in Portugal to cooperate with the State** in combating labour exploitation of Portuguese emigrants by other agencies. Given that inspection and sanctioning by the IGT of illicit recruitment activities is difficult, self-regulation, awareness raising and cooperation from players in the temporary employment sector are essential to ensuring there is compliance with regulations and that effective procedures are in place to combat fraudulent recruitment.
- **Agreements** entered into by the UGT and CGTP **with their European partners** under the umbrella of the European Trade Union Confederation, which extend their members' union protection to other European Union countries.
- The signing, in October 2003, of an **“Exchange and Cooperation Agreement” between Portugal and Spain**, for information exchange and increased cooperation between their respective Labour Inspectorates to combat exploitation of workers in both countries. As we have seen, labour exploitation and migrant trafficking is, by nature, a trans-national process. Piecemeal domestic interventions alone are unlikely to provide an effective response to the different agents and illicit practices involved.
- The planned establishment of a **Consular Emergency Office** to help all Portuguese citizens abroad in crisis situations. This permanent structure, which will have the means to arrange immediate operational intervention in emergencies, could include the provision of support to victims of exploitation and trafficking until they are repatriated.
- The formation of **victim assistance associations by Portuguese diaspora communities** in destination countries. By setting up non-governmental associations, Portuguese diaspora communities could make

Human trafficking and forced labour

available important social, psychological and legal support to Portuguese migrants who are victims of labour exploitation or trafficking in persons.

5.6 IN CONCLUSION

Portuguese emigration today, which is overwhelmingly directed towards European Union Member States, seems to be at crossroads. Between formal entitlement to an employment status equivalent to that of the destination countries' own citizens and the labour exploitation documented here, there is a deep divide that must be bridged.

This brief incursion into the problem of labour exploitation and trafficking involving Portuguese workers should be regarded as an exploratory study that gives a number of pointers for future, more in-depth examination of this issue. Like the Portuguese institutions interviewed, we also face the constraints of addressing a phenomenon, spread over different countries, from an eminently domestic perspective. Characterising and assessing the extent of the violations of Portuguese emigrants' rights on the labour markets of the destination countries has been particularly difficult.

In spite of the limitations that characterise this study, the phenomenon of labour exploitation of Portuguese emigrants in some EU member States seems to have clearly emerged from the research.

According to the DGACCP, the majority of emigrants who fall victim to these practices are poorly skilled people who go to a foreign country to provide services in agriculture, flower growing, or the manufacturing industry. In spite of not having specific data to confirm it, the interviewees from the DGACCP suggest that these Portuguese workers are recruited mainly from the north and centre of the country, especially from Greater Porto, Minho, Trás-os-Montes, Beira-Alta and Beira-Baixa, as well as from the Lisbon and Tagus Valley region. Although vague, this was the most complete victim profile that could be obtained from the interviewees. Apart from the victims of forced labour in agriculture in Spain, who are mostly Portuguese citizens of gypsy ethnic origin or people with mental disabilities, other possible risk factors in the victim profile still need to be identified. These factors could be useful in the short-term, namely for devising and implementing prevention strategies, such as information campaigns targeting emigrants.

As shown, temporary employment agencies and informal recruiters working for foreign agencies play a key role in leading Portuguese workers into labour exploitation and forced labour situations. According to the OCPM, in the past three or four years the number of temporary employment agencies operating in Portugal has tripled or even quadrupled. It is imperative that effective and rigorous application of current regulations be done and, to this end, sectoral associations and legitimate temporary employment agencies

Labour exploitation and trafficking of Portuguese emigrants

should be mobilised. A proactive inspection policy, implemented by the IGT with the aim of identifying and sanctioning the agents who are now illegally recruiting Portuguese workers for user companies abroad would constitute an indispensable tool for addressing the problem.

Exploitation of Portuguese migrant labour in Spain and in the Netherlands seems to be clearly more common than extreme cases of forced labour. This conclusion does not exclude, however, that psychological coercion against emigrant workers who are victims of labour exploitation is a recurrent practice. In line with our observations concerning exploitation of immigrant labour in Portugal, physical coercion or abduction used to force migrants to stay in a place of work seem to have given ground to more subtle psychological coercion. According to the DGACCP, unemployment, the shame they would feel going back to Portugal without any financial resources, and the embarrassment of having to admit they had been cheated, lead many migrants to succumb to the abusive employment conditions imposed upon them.

The extremely fragile financial situation in which many migrants abroad find themselves also appears to contribute to the effectiveness of threats like arbitrary dismissal and subsequent homelessness. Being in a foreign country, where they do not speak the language, do not know anyone, and where winters are usually very harsh, the mere thought of being homeless is enough for them to avoid dismissal at any cost. Furthermore, many emigrants in these situations do not even have the necessary resources for going back home. They would have to contact their family for help, and face the spectre of having to confess to being a failed emigrant.

In this study we only addressed exploitation of Portuguese emigrant labour in the Netherlands and Spain. However, the phenomenon of labour exploitation and psychological coercion against emigrants is not limited to these two countries. In response to a questionnaire survey on exploitation of Portuguese workers, conducted during our research, the Portuguese Communities' Councillor in Switzerland commented: "(...) *'Human resources' agencies scandalously exploit workers. (...) The prices workers have to pay for the accommodation provided by the temporary employment agencies are high and sometimes they do not have even minimum standards of hygiene. At the same time, the worker's private life is constantly intruded upon by the agencies' collaborators; their correspondence is opened, their contact with other people is monitored, and there is a permanent climate of suspicion. Anyone who does not play the game runs the risk of dismissal the following day.*" The similarities between this description and information about what happens in the countries studied are obvious.

Lastly, there should be reference here to the absence of an institutionalised system for identifying and referring migrants who are victims of labour exploitation and forced labour that would ensure that, after their repatriation, they would be protected and integrated with the help of the competent authorities in Portugal.

RECOMMENDATIONS

The recommendations presented below were identified jointly by the various stakeholders who participated in the national seminar in Lisbon, held on 16 May 2006. The report from this seminar can be found in annex 10. In addition, the authors have considered suggestions from interviews with institutional actors that were carried out in the context of this research.

The recommendations are guided by the four main principles defended at an international level (EU Experts Group on Trafficking in Persons, 2004) and nationally (Peixoto *et al* 2005) for combating migrant trafficking in Europe:

- First, trafficking issues should be treated within the framework of human rights. As the EU Experts' Group on Trafficking in Persons points out: "*Mechanisms should be established to ensure that anti-trafficking measures comply with existing human rights norms and do not undermine or adversely affect the human rights of the groups affected, in particular trafficked persons but also female migrants, asylum seekers or prostitutes.*"⁹²
- Second, it is vital that the measures adopted take into consideration the need to improve the protection of the victim;
- Third, emphasis must be placed on the creation of legal migration channels;
- Lastly, it is important to complement action in the destination countries, with preventive measures in the countries of origin.

These principles should serve as a basis for a strategy that aims to

- i) minimise the risk factors that increase the occurrence of trafficking and labour exploitation, and
- ii) improve the working environment in sectors in which trafficking and labour exploitation occur.

⁹² Report of the EU Experts' Group on Trafficking in Persons, 2004, p.10

Human trafficking and forced labour

6.1. RECOMMENDATIONS REGARDING THE SITUATION OF IMMIGRANTS IN PORTUGAL

6.1.1 Recommendations for strengthening legal immigration channels

It has already been pointed out that one of the basic principles in devising strategies for combating trafficking and labour exploitation of immigrants is strengthening mechanisms that encourage legal immigration.

- **Recommendation 1:** To create legal entry channels, for which immigrant workers would not be required to have contracts of employment in order to be allowed into the destination country (this is already contemplated in the new “*draft law regulating the conditions of entry, stay, departure and removal of foreign nationals from Portuguese territory*”.⁹³)

Some interviewees suggested that, for example, immigrants could be allowed to enter the country without a contract of employment but in possession of their own means of subsistence. Immigrant workers would be granted temporary residence permits for a certain period to look for work or even set up their own business. Once they had a job they would go to the authorities so that the existence of a real employment relationship could be verified. The employer would be required to provide a contract of employment, register the immigrant with Social Security, etc. Compliance with the employment conditions could then be checked by the competent authorities. At the end of the period, immigrants would be granted permanent residence permits, with which they could then freely access the labour market, and negotiate contracts, terms and conditions, without having to accept any job just in order to be able to renew their visas. This would be a form of empowerment for immigrants in labour relations. This measure would, however, have to fit in with the country’s labour needs.

- **Recommendation 2:** To revise the report of employment opportunities so that it more accurately reflects the Portuguese economy’s real labour needs. During the review process, it would be important to consult not only employers’ associations but also other stakeholders such as the independent social welfare institutions. The inclusion of live-in domestic service in the report should also be considered, as long as labour needs justify it, which seems to be the case at the moment.⁹⁴

⁹³ Available at http://www.acime.gov.pt/docs/Legislacao/LPortuguesa/LEI_IMIGRACAO/Anteprojecto_Lei_Imigracao.pdf.

⁹⁴ The current draft law that regulates the conditions of entry, stay, departure and removal of foreign nationals from Portuguese territory contemplates the substitution of this report by a ‘global contingent of job opportunities not filled by national citizens, community citizens, or foreign residents in Portugal’, identified by seeking the opinion of the Standing Committee on Social Harmony.

- **Recommendation 3:** To make information about employment opportunities in Portugal widely available through Portuguese consulates abroad and, for this purpose, to strengthen consular structures so that they can deal with requests for information from potential emigrants in source countries.
- **Recommendation 4:** To speed up the legalisation processes for immigrants already in Portugal who have contracts of employment or effective employment relationships.

6.1.2 Recommendations for action involving employers

Creating mechanisms that strengthen the legal entry channels in the destination country is an important step, but it is necessary to go even further, and ensure that those who employ immigrant workers actually comply with labour legislation. This involves changing the business mentality so that immigrants are no longer regarded as vulnerable labour, willing to accept employment conditions that are inferior to those of domestic workers. We propose therefore:

- **Recommendation 5:** To organise labour rights education sessions, and distribution of information leaflets, especially through business associations, targeting employers who employ immigrant workers, informing them about the rights of immigrants, and the penalties for immigrant exploitation.
Special emphasis should be placed on small enterprises where most problems arise. This awareness raising process should employ methods of engaging or persuading employers to propagate these rights. Furthermore, these sessions should promote information sharing by trade unions, NGOs and immigrant associations (who deal on a daily basis with the difficulties immigrants face on the labour market) with the associations representing employers.
- **Recommendation 6:** To strengthen the mechanisms for making the employer responsible for exploitative working conditions throughout the supply chain, regardless of whether there is connivance on their part.

6.1.3 Recommendations in respect of labour inspection

As has been said throughout this report, inspection work is fundamental to ensure there is compliance with labour legislation. There are, however, some difficulties pertaining to it that should be addressed.

- **Recommendation 7:** To strengthen workplace inspections of enterprises employing immigrants, including the creation of a system to assess and monitor immigrant workers' employment conditions,

Human trafficking and forced labour

especially in the absence of documentation attesting to an employment relationship.

This system should include specific mechanisms for proving the existence of an employment relationship for cases of prostitution whereby it would not be mandatory for the women to testify in court. This system should also include immediate response procedures for cases of suspected trafficking and forced labour.

- **Recommendation 8:** To increase the supervisory resources of the IGT, Social Security, and the SEF. Intervention by these bodies is fundamental because it is only through them that employers who exploit immigrants can be penalised.
- **Recommendation 9:** To promote the sharing of data between these institutions and others that have information relevant to inspection intervention. For example, a cooperation protocol could be established between such institutions. This protocol should clearly define rules relating to data protection.
- **Recommendation 10:** To seek ways of checking domestic workers' employment relationships, particularly live-in domestic workers.

This could be achieved, for example, through the promotion of closer cooperation between inspection authorities and organizations that have easy access to domestic workers, such as NGOs or Social Security services.

- **Recommendation 11:** To promote closer working relationships between construction companies and their sub-contractors, particularly the smaller sub-contractors, so that the companies can verify that the sub-contractors are complying with labour and Social Security regulations, and thus minimise immigrant exploitation practices.

There could be, for example, certification procedures for sub-contractors, to ensure ethical behaviour in recruitment of immigrant workers (in this respect, the British initiative to set up a '*gangmasters licensing authority*'⁹⁵ could be looked into). Strengthening the concept of 'joint and several responsibility' in immigration law might also make an important contribution, and was referred to by various interviewees.

- **Recommendation 12:** Introduction of more rigorous regulations for granting licences to new firms in the construction sector, together with mechanisms for ongoing follow-up checks on compliance with the criteria for holding licences.

⁹⁵ For further details, see for example: <http://www.defra.gov.uk/farm/gangmasters/pdf/labour-prov-note.pdf>

6.1.4 Recommendations for immigrant workers

Immigrants themselves have an important role to play in combating these phenomena, so it is important that they are informed about their rights and obligations.

- **Recommendation 13:** There must be emphasis on educating immigrant workers about their rights and obligations, and also interventions that particularly target sectors in which there is no trade union representation to defend workers' interests, such as the domestic service sector. We propose, therefore, the creation of sector-specific support and education units for immigrant workers, with experts trained to deal with situations of forced labour and labour exploitation.

6.1.5 Recommendations for the protection of victims

- **Recommendation 14:** The protection of victims of forced labour and trafficking must be promoted in all circumstances and not just in their capacity as witnesses to a crime.
- **Recommendation 15:** To grant victims of crime a period of reflection, and make efforts to reconcile this period with the criminal investigation needs.
- **Recommendation 16:** To involve the 'victims' in the process of finding solutions to their problems, using participative and empowering methods.

This approach involves identifying the immigrant's aspirations and motivation and together working out alternative ways to integrate in the destination society. This will also include educating immigrants about their rights.

- **Recommendation 17:** To put in place procedures for dealing with the most serious cases of trafficking and forced labour, with various bodies involved through networking. Procedures should include identification, referral, and assistance to the victims. Furthermore, to devise ways of networking for dealing with less serious labour exploitation situations involving immigrant workers. In both these areas, the involvement of NGOs is very important. In this respect, it is important, as the SEF interviewee put it, to give NGOs their own space and (supported) autonomy in which to work.
- **Recommendation 18:** To encourage immigrants to report abusive employment conditions imposed by employers. This will entail promoting the credibility of national authorities among the immigrant communities, so that victims and potential victims will turn to them.
- **Recommendation 19:** To train agents of authority and others who are in contact with immigrants, so that they know how to act in the presence

Human trafficking and forced labour

of potential situations of trafficking and labour exploitation, and to adapt existing procedures to the specific nature of labour relations involving immigrant workers.

- **Recommendation 20:** To find ways of dealing with the plight of irregular immigrants who are victims of coercion or who are being tricked by their employers into believing that their regularisation process is underway. The purpose is to find alternatives to the measures involving removal from national territory, whenever immigrants are in an employment situation that would allow them to stay in Portugal.
- **Recommendation 21:** The OCPM suggests that ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted by the UN General Assembly will also be an important contribution to ensuring respect for immigrants' rights.⁹⁶

6.1.6 Other recommended actions in the destination country

- **Recommendation 22:** To put into effect the transposition into Portuguese law of international instruments relating to this issue that have been ratified by Portugal, and to promote their implementation, namely through NGOs.
- **Recommendation 23:** To ensure more efficient handling of these issues, it is important that the various organizations that are in contact with these phenomena should initiate statistical data collection on these situations. For example, in the IGT's sphere of intervention it would be valuable to centralise information on immigrant workers detected during inspections, and on the type of breaches identified.
- **Recommendation 24:** Raising the awareness of society at large of the social harm that illegal labour causes, in order to make the destination society's approach to its immigrant workers fairer and more ethical (interview at *SOS Racismo*), and encouraging the public to report cases of forced labour and labour exploitation involving immigrant workers to the competent authorities.
- **Recommendation 25:** Centralisation in one organization, for example ACIME, of all issues relating to the employment situation of immigrant workers.

⁹⁶ The English version of this Convention is available at: http://www.unhcr.ch/html/menu3/b/m_mwctoc.htm

6.1.7 Recommendations for action in the source countries

- **Recommendation 26:** Immigrant associations in Europe should encourage immigrants to report their real experiences and try to counter the idea that is deep-rooted in many immigrants that they ought to transmit a positive image of their migration experience.
- **Recommendation 27:** Holding education campaigns in source countries to warn immigrants of the dangers of irregular immigration, and promoting partnerships between organizations and immigrants in order to find alternative life strategies to emigration.
- **Recommendation 28:** Promotion of cooperation and information sharing between the destination and source countries, including development cooperation.

6.2. RECOMMENDATIONS REGARDING THE SITUATION OF PORTUGUESE EMIGRANTS

- **Recommendation 29:** To systematise, deepen, and share existing knowledge of labour exploitation and trafficking of Portuguese workers abroad, namely in respect of the profile of the victims.

This study should be seen as a departure point for a more in-depth understanding of labour exploitation and trafficking of Portuguese emigrants. In this respect, it is essential to promote, within and among the national entities that intervene on different aspects of labour exploitation and trafficking of emigrants, the collection, processing, and systematic exchange of their information on these phenomena. The profiling of what in our view are particularly relevant actors – the informal recruiters, the dishonest temporary employment agencies and, above all, the victims must be developed. Since Portugal is also a source country, a consistent response to the problem should, necessarily, put emphasis on preventive and repressive policies, and these will depend on knowledge of the actors referred to. We believe that getting to know the victims is essential in order to make preventive measures, such as public information campaigns, effective. In relation to this point, the consular network, particularly their social services, could play a key role in the systematic collection of data proposed here. They have the motivation, the opportunity and the skills required.

- **Recommendation 30:** To undertake prevention through public information targeting emigrants designed to alert them to the dangers involved in migration processes.

As has already been said, conducting information campaigns and appealing to Portuguese emigrants to get information from the competent authorities about their rights in the destination countries is, without a doubt,

Human trafficking and forced labour

good practice in the prevention of labour exploitation and should be repeated regularly. Just as in the case of the 2004 “Working Abroad” public information campaign, these should be inter-institutional initiatives that could include, namely, the DGACCP, IGT and local authorities.

As this study shows, the problem of emigrant labour exploitation and, in particular, trafficking in persons, is often a *de facto* and not a *de jure* problem. Abusive employment can occur regardless of the employment conditions formalised in contracts, and of the emigrants’ knowledge about their rights as community citizens.

For this reason, information provided to emigrants, namely via publicity campaigns, should specifically alert them to the labour exploitation and forced labour to which they could fall victim, and of the dangers of getting involved in informal recruitment processes, which are generally linked to this type of practice.

Another method to ensure that information designed to prevent labour exploitation reaches emigrants would be to disseminate, via the IGT’s website for example, the serious offences practiced by temporary employment agencies in the placement of emigrants abroad. Information on non-compliance with the collateral regulation, the non-payment of wages and Social Security contributions, and the condemnation of agencies for abusive labour practices abroad involving Portuguese workers should be publicised so that workers are in a position to make an informed decision before they emigrate. This measure would also serve to protect bona fide temporary employment agencies from suspicion that might otherwise overshadow the whole sector.

- **Recommendation 31:** To update the legal framework for temporary employment agency activity, namely in respect of sanctions.

According to some of the interviewees, the current Decree 358/89 of 17 October, modified by Law 39/96, of 31 August, Law 146/99, of 1 September, and Law 99/2003 of 27 August, stipulates a number of offences for which the respective penalties are not sufficiently dissuasive for corrupt agents.

Some interviewees said that the European Union should have a set of minimum standards relating to temporary employment agencies. A legal framework of this type would serve to allay some of the fears felt by emigrants and the organizations supporting them, about the labour regime awaiting them in the destination country.

- **Recommendation 32:** To strengthen supervision of the legal framework on temporary employment agency activity and private placement agencies, namely those unauthorised to operate by the IEFPP.

This study points to some temporary employment agencies and informal labour recruiters working for foreign agencies as being those responsible for leading emigrants into labour exploitation situations. It also shows that victims are usually recruited by informal recruiters via advertisements placed in the press. It would therefore be important to strengthen supervision of the legal

framework mentioned, with a special focus on the activities of private placement or temporary employment agencies that do not have IEFP authorisation.

- **Recommendation 33:** To speed up and publicise the intra-community recruitment processes, namely the employment centre network EURES.

Most transnational recruitment of Portuguese emigrants within the European Union ought to be done through the advertisement of job opportunities by public agencies like the IEFP. In this respect, dissemination to the general public of the recruitment services and information that EURES provides ought to be improved and increased.

The intervention of the IEFP in emigrant recruitment by private placement and temporary employment agencies would ensure that job offers were above board. As the role of these agencies is clearly important to the dynamics of the European labour market, the presence of a public intermediary in the advertising of transnational job offers could contribute to reducing labour exploitation of Portuguese emigrants.

- **Recommendation 34:** To strengthen information exchange and operational cooperation between national Labour Inspectorates within the European Union.

As we have said, the exploitation of Portuguese migrant labour appears to be more prevalent today than migrant trafficking. We shall therefore refrain here from addressing the complex issue of police cooperation on criminal matters within the European Union. We feel we should, however, refer to the absence of a community framework on information exchange and possible operational cooperation between different national entities responsible for supervision of working conditions in the member States. Such a framework would constitute a central component in the knowledge base necessary for effective preventive and repressive policy on labour exploitation of community citizens within the EU.

- **Recommendation 35:** To update the legal, penal framework on trafficking in persons provided for under the terms of Article 169 of the Penal Code, so that situations involving all kinds of forced labour – not just significant sexual acts – are included therein.

The cases of migrant trafficking identified in this study are mainly connected with work in agriculture, flower growing, or manufacturing activities. In this respect, and in spite of the cases of trafficking in Portuguese women for sexual exploitation reported to the PJ, the definition of this crime should be extended beyond the practice of ‘significant sexual acts’ to include all types of forced labour.

- **Recommendation 36:** Institutionalisation of a permanent structure with the operational means necessary for delivery of information and support to Portuguese migrants in emergency situations abroad.

Human trafficking and forced labour

As we have seen, Portuguese emigration is, at present, overwhelmingly temporary. Portuguese emigrants have been victims of trafficking and labour exploitation generally due to their own inability to make use of the resources that were available to them in the destination countries. Language difficulties are a particular barrier to their access to these entitlements. There are, on the other hand, extreme cases in which the victims of these practices find themselves in a desperate emotional and financial state in the destination country, and are in need of emergency psycho-social support until they are repatriated.

The mandate of a permanent structure of this kind, equipped with the means to deliver immediate help in crisis situations, could include provision of support to victims of exploitation and trafficking in the destination country, such as delivery of specialised information and referral to the appropriate institutions in the destination country. In extreme situations referred to above, victims would also be given the short-term support they need for their repatriation. Setting up a single telephone number within the EU to access the structure, along the lines of the *SOS Imigrante* help line in Portugal, could facilitate its dissemination and effectiveness.

- **Recommendation 37:** To institutionalise a system for the identification and referral of Portuguese citizens who are victims of trafficking and labour exploitation.

Until now, assistance to Portuguese citizens who are victims of such practices has been provided by the DGACCP and, to a lesser degree, by the IGT.

Delivery of the psychosocial, legal, and possibly financial assistance, which victims of trafficking and labour exploitation need after their repatriation, calls for a system to be put in place that will deal with their identification and referral to the appropriate Portuguese institution on their arrival.

Compliance with obligations and recommendations under Article 6 of the *Supplementary Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*, which supplements the *UN Convention against Transnational Organised Crime*, reinforces the need for a system of this type.

As the protection of Portuguese citizens abroad falls within the remit of the DGAACP, it appears that this institution would be best placed to take on this new function. The permanent support structure for Portuguese emigrants could also play an important role in such a referral system.

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Human trafficking and forced labour

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Human trafficking and forced labour

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ANNEXES

Human trafficking and forced labour

ANNEX 1 – LIST OF PRESS ARTICLES ON IMMIGRANTS

Year	Heading	Source and author
2000	“Slavery in the construction sector” “Immigrants recruited in Eastern Europe by bogus firms then reported with police collaboration ”	Alfredo Teixeira; <i>DN</i>
2000	“Eastern European immigrants in the soup kitchen”	Catarina Carvalho, <i>Expresso</i>
2000	“21st Century Slaves”, including an interview with Deputy Secretary of State for Internal Administration, and numbers of SEF expulsions 2000.	Alexandra Correia, <i>Visão</i>
2000	“Clients help dismantle trafficking of women”	Felícia Cabrita, <i>Expresso</i>
2000	“Jerson, unemployed and beaten”	Elizabete Vilar, <i>Público</i>
2000	“Construction Workers’ Union wants to improve plight of Eastern European immigrants”; “Against slavery, Yes to integration”; “More clandestine workers in Portugal” “Situation a lot worse under the Socialist government than under Cavaco Silva, Northern Construction Workers’ Union accuses. There are obvious cases of slavery, says General Secretary.”	Cesaltina Pinto; <i>Público</i> and Ilídia Pinto; <i>DN</i>
2000	“Algarve attracts Eastern European mafias”, with a small additional article entitled “ Warehouse used as housing for 15 men”	João Pedro Fonseca and José Manuel Oliveira, <i>DN</i>
2000	“Home prostitutes annoyed about competition”	João Pedro Fonseca and José Manuel Oliveira, <i>DN</i>
2000	“Peace, after the abuse”	João Pedro Fonseca and José Manuel Oliveira, <i>DN</i>
2000	“Pay up or your family gets it”	João Pedro Fonseca and José Manuel Oliveira, <i>DN</i>
2000	“Intermediaries ask contractors to keep quiet”	João Pedro Fonseca and José Manuel Oliveira, <i>DN</i>
2000	“Construction jobs spark competition among private sector contractors”	João Pedro Fonseca and José Manuel Oliveira, <i>DN</i>
2000	“Clandestine Eastern European immigrants work in slavery like conditions on the south bank of th Tagus” “My wife works at the SEF”;	Elisabete Vilar with José Milhazes; <i>Público</i>
2000	“Slaves in Portugal” news	Author not identified, <i>Capital</i>
2000	“Mafia networks demand high interest”	Leonete Botelho, <i>Público</i>

Year	Heading	Source and author
2000	"Cheated and underpaid"	Augusto Freitas de Sousa, <i>Tal & Qual</i>
2000	"Bogus firms exploit illegal workers", with short additional article: "He paid 200 dollars to cross the border"	Vitor Agra, <i>24 Horas</i>
2000	"Union proposes measures to combat mafia style networks" "Down with exploitation of East European workers in Portugal"	<i>DN</i>
2001	"Cheated and underpaid"	Augusto Freitas de Sousa, <i>Tal & Qual</i>
2001	"50 thousand immigrants without contracts"	José Bento Amaro, <i>Público</i>
2001	"New slavery forgets about contracts"	Inês Cardoso, <i>Jornal de Notícias</i>
2001	"New law 'promotes' labour trafficking"	Leonete Botelho
2001	"50 thousand men working in the construction sector" "Active in reporting exploitation cases, Porto union hears stories of disenchantment every week"	Elsa Costa e Silva; <i>DN</i>
2001	"Angry Ukrainians report former boss" "Immigrants went to the factory in Pombal to demand wages. Boss says they "walked off the job" so he will not pay them"	Jacinta Romão; <i>DN</i>
2001	"Land of Hope turned cemetery"	Pedro Olavo Simões, <i>Jornal de Notícias</i>
2001	Público: "Edifer takes in Ukrainian scam victims" "Construction Workers' Union will take businessman who ran off with workers' wages to court" <i>DN</i> : "Eastern European workers victims of deceit and poverty"	Marta Encarnação; Público and Alfredo Mendes; <i>DN</i>
2001	"Moldavia resolves problem of Sinteme"	Baía Reis, <i>Correio da Manhã</i>
2001	"Dozens of Moldavians hired with all rights and benefits"	Olga Leite, <i>Público</i>
2001	"Exploited"	Teresa Nogueira, <i>24 Horas</i>
2001	"Wages paid to Ukrainian victims of sub-contractor"; "Union pays for return of Moldavians"	Ana Sousa; <i>DN</i>
2004	"Marina's journey"	Adriana Vale, <i>Independente</i>
2004	"Seven arrested on suspicion of trafficking women"	S.A., <i>O Primeiro de Janeiro</i>
2004	"Freedom for couple who exploited prostitutes"	Francisco Pedro, <i>Correio da Manhã</i>

Human trafficking and forced labour

Year	Heading	Source and author
2004	“Brazilian women recruited for houses of prostitution”	Paula Gonçalves, <i>Jornal de Notícias</i> , Edição Centro
2004	“They were trafficking women”	Ricardo Marques, <i>Correio da Manhã</i>
2005	“Eastern European mafia gave prostitutes shocks”– with additional information entitled “Lucrative Activity”	Teixera Marques, <i>Correio da Manhã</i>
2005	“Illegal Brazilians despair in Evora waiting for unpaid wages: Workers accuse contractors”	José Pinto de Sá; <i>Público</i>
2005	“SEF dismantled organised Eastern European network in the Algarve”	José Bento Amaro, <i>Público</i>
2005	“Authorities claim that the business in Portugal is sporadic”	Ana Cristina Pereira, <i>Público</i>
2005	“An immigrant recruiter of immigrants”	Ângelo Teixeira Marques, <i>Público</i>
2005	“President disappointed with Portuguese resistance to foreign workers”	Ricardo Dias Felner, <i>Público</i>
2005	“Lula da Silva asks Sócrates to pardon illegal immigrants’ fines”	Andreia Azevedo Soares, <i>Público</i>
2005	“North: more than ten thousand illegal Brazilians in restaurants and cafes”	S.A., <i>Lusa</i>
2005	“Eight thousand illegal workers in catering”	Hélder Robalo, <i>Diário de Notícias</i>
2005	“Labour’s jobs”	Joana Amaral Dias, <i>Diário de Notícias</i>
2005	“Run for Tolerance alerts about immigrant labour exploitation”	CMP., <i>Lusa</i>
2005	“Ukrainian Worker used and discarded”	Hugo Machado, <i>Diário de Notícias</i>
2005	“Immigrant Victim Support Unit attended around 30 cases since May”	MCL, <i>Lusa</i>
2005	“CLAI’s: Association of Catering & Related Activities opens Support Centre”	MCL, <i>Lusa</i>
2006	“Dismantled Algarve network that exploited illegal immigrants”; “SEF arrests contractors who were selling bogus employment contracts”	Idálio Revez and José Bento Amaro; <i>Público</i>

ANNEX 2 – LIST OF PRESS ARTICLES ON PORTUGUESE EMIGRANTS

Spain

Year	Heading	Source and author
2003	“Portuguese workers exploited”	SA, <i>Correio da Manhã</i>
2005	“Emigrants all over Spain”	SA, <i>Diário de Notícias</i> Online
2003	“Slavery in Beiras”	Luís Oliveira with A.A., I.J. and F.P., <i>Correio da Manhã</i>
2004	“Portuguese workers exploited in the Pyrenees”	Ilídia Pinto, <i>Diário de Notícias</i>
2004	“Portuguese treated inhumanely”	Carlos Ferro with Ilídia Pinto, <i>Diário de Notícias</i>
2005	“Suspects enslaved more than 20 people in four years”	Ana Cristina Pereira, <i>Público</i>
2005	“Journeys with no return”	Eduarda Freitas, <i>Expresso</i>
2005	“Police await permission to go to Spain”	Tânia Laranjo, <i>Jornal de Notícias</i>
2005	“Escape ended with two years of hell”	Almeida Cardoso, <i>Jornal de Notícias</i>
2005	“Three more suspects enslave Portuguese”	Alfredo Teixeira, <i>Diário de Notícias</i>
2005	“Slavery network appears in court”	Báa Reis and Luís Ribeiro, <i>Correio da Manhã</i>
2005	“Portuguese enslaved in Spain”	Tânia Laranjo e Margarida Luzio, <i>Jornal de Notícias</i>
2005	“If the police come here they’ll find out plenty”	Helena Norte and Leonel de Castro, <i>Jornal de Notícias</i>
2005	“Trafficking reaches 40 thousand just in private construction”	João Saramago, <i>Correio da Manhã</i>
2005	“Secretary of State announces creation of Consular Emergency Office”	S.A., <i>Notícias Lusófonas</i>

Human trafficking and forced labour

The Netherlands

Year	Heading	Source and author
2004	“Portuguese treated inhumanely”	Carlos Ferro, <i>Diário de Notícias</i>
2004	“The Netherlands wakes up to ill-treatment of Portuguese”	Joaquim Forte, <i>Jornal de Notícias</i>
2004	“Portuguese emigrants in the Netherlands denounce restricted freedom and threats”	S.A., <i>Lusa</i>
2004	“Six months that I did not live”	Isabel Jordão, <i>Correio da Manhã</i>
2006	“Portuguese in the Netherlands complain of exploitation”	Ana Cristina Pereira, <i>Público</i>
2006	“Consular services in the Netherlands with no funds to repatriate Portuguese”	Ana Cristina Pereira, <i>Público</i>
2006	“Five young Portuguese exploited in the Netherlands”	Ana Cristina Pereira, <i>Público</i>
2006	“Seasonal workers reunited in the Netherlands”	Ana Cristina Pereira, <i>Público</i>

United Kingdom

Year	Heading	Source and author
2003	“We can tell you to go to hell”	Catarina Gomes, <i>Público</i>
2003	“Underpaid in the UK”	S.A., <i>Correio da Manhã</i>
2004	“Portuguese “gangs” exploit compatriots in England”	<i>Público</i> , Rita Jordão Silva
2005	“One cooker for over 20 people”	<i>Público</i> , Ana Cristina Pereira

ANNEX 3 – LIST OF INTERVIEWS HELD

Organization	Interviewee
1 ACIME	Ana Cristina Casas
2 ANEOP – Associação nacional de empreiteiros das obras públicas	Isabel Castro
3 ARESP – Associação da Restauração e Similares de Portugal	Ana Jacinto
4 Associação dos Jovens Agricultores do Sul	Tiago Appleton, Director-General
5 Casa do Brasil, Lisbon	Eliane Bibas (President) and Gustavo (Legal Advisor)
6 CEPAC (Centro Padre Alves Correia)	Ana Rosalina
7 CGTPin and Sindicato dos Trabalhadores de Serviços de Portaria, Vigilância, Limpeza, Domésticas e Profissões Similares e Actividades Diversas	Carlos Trindade
8 IEFPP – Institute of Employment and Vocational Training	Alice Brandão
9 IGT –Inspectorate General of Labour	Luís Claudino
10 IGT - Inspectorate General of Labour, Beja Delegation	Carlos Graça
11 IGT - Inspectorate General of Labour, Covilhã Delegation	Ayres de Sá
12 IGT - Inspectorate General of Labour, Bragança Delegation	Rui Arrifana
13 Russian immigrant	Confidential
14 MNE – DGACCP	Cristina Pedroso
15 Obra Católica Portuguesa de Migrações – OCPM	Padre Rui Pedro
16 Judicial Police - Direcção Central de Combate ao Banditismo	Chief Inspector Vitor Marques
17 SEF - Direcção Central de Investigação, Pesquisa e Análise de Informação	Joaquim Pedro Oliveira (Division Chief)
18 SEF - Direcção Regional de Lisboa e Vale do Tejo	Paulo Baptista (Regional Sub-Director)
19 The Jesuit Refugee Service	Rosário Farmhouse
20 Sindicato dos Trabalhadores da Indústria de Hotelaria, Turismo, Restaurantes e Similares do Norte	Francisco Figueiredo
21 Sindicato dos Trabalhadores da Indústria de Hotelaria, Turismo, Restaurantes e Similares do Norte - comissão para a imigração	Collective interview with immigrant members of the Commission
22 Sindicato dos Trabalhadores das Indústrias da Construção, Madeiras, Mármore, Pedreiras, Cerâmica e Materiais de Construção do Norte e Viseu	Albano Ribeiro

Human trafficking and forced labour

Organization		Interviewee
23	Solidariedade Imigrante – <i>Associação de Defesa dos Direitos dos Immigrants</i>	Timóteo Macedo
24	<i>Solidariedade Imigrante</i> – Beja	Alberto Matos
25	<i>SOS Racismo</i>	Mamadou Ba
26	UAVIDRE – <i>Unidade de Apoio à Vítima Imigrante e de Discriminação Racial e Étnica</i>	Carla Amaral
27	UGT	José Cordeiro
28	RTP journalist – Brussels delegation	António Esteves Martins
29	Portuguese emigrant to the Netherlands	L. S.
30	Portuguese emigrant to the Netherlands	T.C.

ANNEX 4 – INTERVIEW SCRIPT

1. Are you aware of any migrant labour exploitation situations?
2. In which sectors do exploitation/forced labour situations occur?
3. Characteristics of the phenomenon
 - 3.1. What type of employment bond is usually involved? Do they have a contract of employment? What is the contract's duration?
 - 3.2. Is it easy to change jobs?
 - 3.3. Working hours?
 - 3.4. Wages – average pay (differences between what is paid and rates of pay for the sector)? Do they receive their earnings?
 - 3.5. Are Social Security contributions paid?
 - 3.6. Is there compliance with workplace health and safety regulations?
 - 3.7. Housing conditions?
4. Are you aware of any extreme cases of forced labour?
 - 4.1. Abduction or kidnapping of workers
 - 4.2. Confinement of the migrant to the workplace or other place
 - 4.3. Psychological coercion
 - 4.4. Imposition of debts/Extortion
 - 4.5. False promises about conditions of employment
 - 4.6. Withholding of documents
 - 4.7. Threatened or actual physical abuse against the worker or third parties
 - 4.8. Threatened or actual sexual violence
 - 4.9. Threatened or actual reporting to the authorities/deportation
 - 4.10. Threatened arbitrary dismissal
 - 4.11. Exclusion from future employment
5. Are these situations involving exploitation and/or forced labour linked to networks dealing in trafficking of persons/aiding immigration?
 - 5.1. If they are:
 - 5.1.1. How are recruitment, transportation, and placement on the destination labour market carried out?
 - 5.1.2. Composition of the networks: internal organization, nationalities, functions, amounts of money they charge?
 - 5.1.3. Operation of the networks: involvement in exploitation/forced labour
 - 5.2. If they are not:
 - 5.2.1. How are workers recruited, that is, how do they get into contact with their bosses/employers?
6. What are the characteristics of the exploited migrants?
 - 6.1. In the case of foreign workers in Portugal
 - 6.1.1. Legal status?
 - 6.1.2. Countries of origin of the immigrants who are most vulnerable to exploitative situations?
 - 6.1.3. Pre-migration situation and reasons for migration
 - 6.1.4. Qualifications

Human trafficking and forced labour

- 6.2. In the case of Portuguese workers abroad:
 - 6.2.1 Men/ women?
 - 6.2.2 What ages?
 - 6.2.3 Region of origin?
 - 6.2.4 Qualifications?
 - 6.2.5 What occupations did they have in Portugal, and what work do they engage in the destination country?
 - 6.2.6 Reasons for emigration?
7. What are the migrants' attitudes to these situations?
8. Which factors contribute to the exploitation of migrants/trafficking of migrants in the destination countries?
 - 8.1. Policies and legislation relating to foreign nationals in the destination countries
 - 8.2. Labour and Social Security legislation in destination countries
 - 8.3. Demand for cheap flexible labour in destination countries
 - 8.4. Structure/characteristics/regulation of the economic sectors in destination countries
 - 8.5. Lack of information in migrants' countries of origin
 - 8.6. Poor transnational articulation between the competent authorities in the countries involved
 - 8.7. Other factors
9. How did you personally come across or hear about this reality?
10. Do you know of any examples – description of concrete cases of exploitation or trafficking for labour exploitation purposes?
11. Development of this phenomenon
 - 11.1. Volume and pace of growth of migrant trafficking and exploitation?
 - 11.2. Recent developments in the characteristics of these phenomena (in the past 2 years)?
12. Action taken/response by institutions
 - 12.1 What authority does your institution have in the sphere of migrant labour exploitation and trafficking?
 - 12.2 How does your institution deal with these situations? Is there any supervision/control?
 - 12.3 Which institutions have authority to deal with migrant exploitation/trafficking situations?
 - 12.4 What difficulties are encountered when dealing with these issues (combating exploitation/trafficking for labour exploitation purposes, and victim support)?
 - 12.5 How could responses to these problems be improved? What measures could be taken? By whom?
 - 12.6 What support resources are available to victims? Are there any formal reporting/complain mechanisms? What needs to be put in place?
13. Do you know of any examples of good practice in dealing with these problems (combating the phenomenon and victim support)?
14. Suggested contacts for future interviews?

ANNEX 5 – RESPONSES TO THE QUESTIONNAIRE SENT TO IGT DELEGATIONS

Delegation		Subject
1	IGT Delegation - Almada	Immigration; Emigration
2	IGT Delegation - Aveiro	Immigration; Emigration
3	IGT Delegation - Barreiro	Immigration
4	IGT Delegation - Coimbra	Immigration; Emigration
5	IGT Delegation – Figueira da Foz	Immigration; Emigration
6	IGT Delegation - Guarda	Immigration; Emigration
7	IGT Delegation - Guimarães	Immigration; Emigration
8	IGT Delegation - Lamego	Immigration; Emigration
9	IGT Delegation - Leiria	Immigration; Emigration
10	IGT Delegation - Portalegre	Immigration
11	IGT Delegation - Portimão	Immigration; Emigration
12	IGT Delegation - Tomar	Immigration; Emigration
13	IGT Delegation – Torres Vedras	Immigration; Emigration

Human trafficking and forced labour

ANNEX 6 – RESPONSES FROM PORTUGUESE COMMUNITIES’ COUNCILLORS

Organization		Respondent
1	Portuguese Communities’ Councillor - Andorra	José Luís Carvalho
2	Portuguese Communities’ Councillor – South Africa	Silvério da Silva
3	Portuguese Communities’ Councillor - Brazil	José Miranda Reis de Melo
4	Portuguese Communities’ Councillor - Brazil	Ângelo Leite Horto
5	Portuguese Communities’ Councillor – United States of America	Claudinor Salomão
6	Portuguese Communities’ Councillor - The Netherlands	José Xavier
7	Portuguese Communities’ Councillor – Sweden	Amadeu Batel
8	Portuguese Communities’ Councillor - Switzerland	Manuel Beja
9	Portuguese Communities’ Councillor - Mozambique	António Pires
10	Portuguese Communities’ Councillor - Zimbabwe	Artur Cabugueira

ANNEX 7 – ANALYSIS GRID

1. Awareness of the phenomenon
 - Organization
 - Are you aware of any migrant labour exploitation situations?
 - Are you aware of any extreme forced labour situations?
 - How did you come across personally or hear about this reality?
2. Characteristics of the labour exploitation phenomenon
 - Organization
 - Which sectors?
 - What type of employment bond is usually involved?
 - Is there an employment contract?
 - What is the duration of the contract?
 - Is it easy to change jobs?
 - Working hours?
 - Wages – average pay (differences between pay received and pay rates for the sector? Do they receive their earnings?
 - Are Social Security contributions paid?
 - Is there compliance with health and safety regulations?
 - Housing conditions?
3. Characteristics of the forced labour phenomenon
 - Organization
 - Abduction or kidnapping of workers
 - Confinement of migrants to their workplace or to another place
 - Psychological coercion
 - Imposition of debts/Extortion
 - False promises about working conditions
 - Withholding documents
 - Threatened or actual bodily harm to the worker or to third parties
 - Threatened or actual sexual violence
 - Threatened or actual reporting to the authorities/deportation
 - Threatened arbitrary dismissal
 - Exclusion from future work

Human trafficking and forced labour

4. Link between trafficking and labour exploitation / forced labour

Organization

Are these situations involving exploitation and/or forced labour linked to networks dealing in trafficking of persons/aiding immigration?

If so: How are recruitment, transportation, and placement on the destination labour market carried out?

Composition of networks: internal organization, nationalities, functions, amounts charged?

Network operations: involvement in exploitation/forced labour

If not, How are workers recruited, i.e. how do they get into contact with their bosses/employers?

5. Description of Cases

Organization

Description of concrete cases

6. Development of the phenomena

Organization

Volume and pace of growth of migrant trafficking and migrant exploitation?

Recent developments in the characteristics of these phenomena (past two years)?

7. Characteristics of foreign immigrants exploited in Portugal

Organization

Legal status?

Countries of origin of immigrants most vulnerable to these exploitation situations?

Pre-migration situation and reasons for migration?

Qualifications?

8. Characteristics of Portuguese workers who are exploited abroad

Men/women?

What ages?

What regions are they from?

Qualifications?

What occupations did they have in Portugal and what job do they have in the destination country?

Reasons for emigration?

9. Attitudes of the Immigrants/ Emigrants

Organization

What are the immigrants attitudes to these situations?

What are the emigrants' attitudes to these situations?

10. What factors contribute to migrant exploitation/migrant trafficking for labour exploitation in the destination countries?

Organization

Policies and legislation in the destination countries

Labour and Social Security legislation in the destination countries

Demand for cheap flexible labour in the destination countries

Structure/characteristics/regulation of the economic sectors in the destination countries

Lack of information in the source countries

Poor transnational articulation between competent authorities in the countries involved

Other factors

11. Action/Response of institutions

Organization

What authority does your institution have in the sphere of migrant labour exploitation and trafficking?

How does your institution deal with these situations? Is there any supervision/control?

Which institutions have authority to deal with migrant exploitation/migrant trafficking?

What difficulties are encountered when dealing with these issues (combating exploitation/trafficking for exploitation purposes, and victims support)?

How could responses to these problems be improved? What measures could be taken? By whom?

What support resources are available to victims? Are there any formal reporting/complaint mechanisms? What needs to be put in place?

Good institutional practices

ANNEX 8 – SUMMARY TABLE OF LABOUR EXPLOITATION PRACTICES BY ACTIVITY SECTOR

		Construction industry	Domestic Service and Cleaning ⁹⁷		Hotel and Catering	Agriculture
			Live-out Domestic employees	Live-in Domestic Employees		
Wages	Non-payment	2	2	2		2
	Wage discrimination between foreign and domestic workers	2				
	Payment on completion the job	2				2
	Under-declaration on payslip of real earnings				2	2
Social Security contributions	Non-payment/non-declaration	2	2	2	2	2
	Under-declaration	2			2	
Working hours	More than 8 hours per day and non-payment of hourly overtime rates.	2		2	2	2
	Reduction in working hours		2			
	No days off			2		
	1 day off per week				2	
Contract	Without a contract				2	
	With contract, but non-registration of contract with the IGT	2	2	2	1	2
Health & Safety	Non-compliance with Workplace Health & Safety regulations	2				
Housing	Precarious housing conditions, bad living conditions	2				2
Discrimination in access to employment						
Abduction or kidnapping of workers			2	2		
Confinement of immigrants to the workplace or other place				1		1

Psychological coercion				1	
Imposition of debts/Extortion				1	1
False promises about working conditions	2			1	2
Retention of documents	1			1	1
Threatened or actual bodily harm of the worker or third parties	2				1
Threatened or actual sexual violence					
Threatened or actual reporting to the authorities/deportation	2			1	2
Dismissal			1	1	2
					1
Unfair dismissal (without compensation)	2				
Exclusion from future employment					

Notes:

- The degrees of intensity considered are:
0– No incidence
1– Rare occurrence (occasional cases)
2– Occurring with some frequency

As it is not possible, given the methodology used, to infer the representivity of the practices mentioned, the degrees of incidence adopted correspond to the perception that was transmitted to us by our interviewees, and which enables us to indicate whether the practices occur with some frequency, rarely, or not at all. The blank cells correspond to situations where there was no information.

- This table corresponds to a simplified summary of what was presented in the sector descriptions.
- In this table we limit ourselves to exploitation practices carried out by employers, and have left out the practices of organised networks involved in immigrant worker exploitation, which are particularly relevant in the case of Slavic immigrants.
- In this case, sex industry activity was not considered because of its different character compared to the other activities.

⁹⁷ Situations involving women brought to Portugal by partners or husbands with promises of a better, but who then find themselves in domestic and sexual slavery, as referred to in the description of the sector in this study, have not been included under this heading.

Human trafficking and forced labour

ANNEX 9 – SUMMARY TABLE OF ACTIVITIES OF ASSOCIATIONS INTERVIEWED

Organization	Type of intervention
SI	<p>Association working to defend immigrants' rights, regardless of their nationality and legal status.</p> <p>Labour rights education for immigrants.</p>
JRS	<p>Immigrant support association, especially for Slavic and Brazilian immigrants, and to a lesser degree Africans. Support is delivered mostly to Ukrainians, followed by Moldovans and Russians.</p> <p>They have an employment club, in which 80% of vacancies are for domestic service. Others include agriculture and manufacturing. They try to avoid jobs in the construction sector due to previous bad experiences. They only accept job offers when they know the company well and when the wages are in line with statutory pay rates. They follow-up employment relationships, check that there is a contract and that the proper deductions are being made. Immigrants contact the JRS if any problems arise with their employers.</p> <p>They look for ways to legalise irregular immigrants.</p> <p>They are involved in the skills recognition programme with support from the Calouste Gulbenkian Foundation.</p> <p>They run a micro-credit project with the Caixa Geral de Depósitos, which provides support to immigrants who want to start their own business.</p>
SOS Racismo	<p>An advocacy organization, providing labour rights education, and involved in anti-racism and xenophobia work.</p>
Casa do Brasil	<p>Provides immigrant rights information.</p> <p>They have a legal office that provides support in specific cases.</p>
OCPM	<p>Provides support to emigrants and immigrants. In the past they have conducted literacy classes, and believe there is again a need for such classes for Brazilians.</p>
CEPAC	<p>Social workers and a lawyer work with immigrants. They also have a team working with homeless people.</p> <p>They provide social, legal, and material support to immigrants in the Greater Lisbon Area..</p> <p>For example, they provide financial help to immigrants who need money for transport to job interviews and to work for the first month before they receive their wages, and give financial help to parents who need to go to work but have no money to pay a carer to look after their children.</p> <p>They help with immigrants' regularisation, and refer them to the UNIVA centre.</p> <p>When an immigrants' situation does not allow for regularisation, they also help with their voluntary return.</p>

Organization	Type of intervention
UAVIDRE	<p>Supports immigrants who are victims of crime and discrimination. The office team consists of a coordinator (lawyer), and two Russian-speakers – a psychologist, and a volunteer (sociologist).</p> <p>They deal with psychological and social referrals, and rights education. They provide information/advice over the telephone and in person. When immigrants are outside Lisbon, they can be assisted at APAV offices. Leaflets explaining what UAVIDRE does will soon be available at various institutions, and accessible to the immigrants who go there.</p> <p>They try to understand the everyday problems that immigrants face.</p> <p>They also help immigrants who wish to return to their own countries.</p> <p>Their support work is mainly with women who in many cases are in domestic violence situations.</p>

Human trafficking and forced labour

ANNEX 10: SEMINAR REPORT PORTUGAL

Combating human trafficking and forced labour in Europe – The case of Portugal Lisbon, May 16, 2006

1. Introduction and background to the seminar

The seminar was the second national event organized under the AGIS project entitled “Capacity building to combat the forced labour outcomes of human trafficking”, funded by the European Commission and the Department for Work and Pensions of the United Kingdom. ILO and the International Centre for Migration Policy Development (ICMPD) implement the project jointly. At the beginning of the project, the Portuguese Government requested research to study the nature of forced labour affecting migrant workers in different economic sectors in Portugal. A desk review was prepared and discussed during an earlier seminar in November 2005.

The results of the desk review indicated that forced labour in sectors such as construction, agriculture or domestic service exists, often linked to organized crime networks that bring undocumented migrant workers to Portugal and exploit them through extortion and blackmail. The main groups of migrants are from Latin America (Brazil), Portuguese speaking Africa and Eastern Europe. Participants at the November seminar recommended further investigations into the area, also with regards to the pending revision of the penal code to introduce trafficking for labour exploitation as a new offence.

Current research, in particular a study carried out by SOCIUS in 2004, focused exclusively on trafficking for sexual exploitation as well as on transportation routes. It was therefore recommended to focus on labour exploitation. There was also a request to look into the situation of Portuguese migrant workers abroad since cases of serious exploitation had been reported by migrant workers’ organizations and trade unions. This research could prove to be innovative and helpful in stimulating further debate with regards to legal revisions and institutional good practice. The study is comprised of two parts focusing on the situation of migrant workers in the Portuguese labour market as well as on Portuguese working abroad.

The present seminar served to validate the research into the nature of: 1) exploitation of migrant workers in Portugal; 2) exploitation of Portuguese migrants abroad; and 3) legal and policy frameworks to respond to the crime of forced labour as a result of trafficking. Researchers were asked to focus in particular on the modes of coercion, exploitation and recruitment. The results of the study were presented and discussed in the morning. Participants then discussed the recommendations in three different workshops focusing on legislation, law enforcement, recruitment and victim protection. Recommendations from this seminar will also feed into the parliamentary drafting committee working on the revision of the penal code.

The seminar was organized in collaboration with the Ministry of Labour and Social Solidarity, Department for Research, Statistics and Planning, that accepted the

overall coordination of the project in Portugal. Ms. Cândida Soares, director of the department, chaired the workshop. The studies were presented by two independent researchers, Ms. Sónia Pereira and Mr. João Vasconcelos, and commented by Jorge Malheiros from the University of Lisbon, Centre for Geographic Studies. Ms. Petra Ulshoefer, Director of the Sub-Regional ILO Office in Budapest participated in the first part of the seminar and spoke about trafficking/migration from the perspective of countries in Eastern and Southeastern Europe.

Summary of research results

The first part of the study presented 36 cases of trafficking involving migrant workers in Portugal and the second one nine cases concerning Portuguese migrants abroad, focusing on empirical evidence from Spain and Holland. Cases were either based on information obtained through semi-structured interviews with victims or on secondary information, such as media, court material and interviews with authorities and others. The study does not claim to be representative as it is largely based on qualitative evidence. Each sector was presented according to its structure and working conditions affecting migrant workers.

The **construction industry** employs about 560,000 workers of which an estimated 15 percent are migrant workers. Most of them are from Eastern Europe, and they are controlled at their workplace by the networks that brought them to Portugal. The networks extort part of the workers' salary and impose serious threats if workers refuse to pay. Employers deceive workers with regards to their salary (non-payment, late or reduced payment of wages). Since contracts often do not exist, workers can easily be deceived. In some cases, workers sign fictitious contracts with suppliers that disappear before any wages have been paid. Retention of identity documents is rather sporadic, but forced overtime, violation of health and safety regulations, bad lodging and physical threats have been frequently reported.

Domestic service and cleaning is mainly carried out by migrant women. Those working on a daily basis are less exploited than "live-in" domestic workers. Migrant domestic workers are either recruited through informal networks (e.g. family) or temporary work agencies. "Live-in" domestic workers often have no contact with the outside world, and the employer keeps their passport. In some cases, they are held in "moral" or financial debt bondage within one and the same family (e.g. African women or minors). Payment is often made through food and lodging, and there is no vacation.

About 12 percent of all agricultural **workers** are estimated as being migrants, many of them working without documents. There is a shortage of labour in the sector. Workers are recruited in Brazil, countries of Eastern Europe and Africa. Recruitment and transportation are facilitated through contact persons that have emigrated earlier linked to informal networks, or organized criminal networks. These networks then keep control over the workers once they arrive in Portugal. A case of extortion in the agricultural sector was presented involving Romanian workers on a farm in southern Portugal where the employer denounced the criminal activities of these networks to the authorities. In many other cases, however, employers are either complicit in the exploitation or choose not to watch the situation more closely. Forms of coercion are similar to those in other sectors: deception, threats, non-payment of wages combined with bad housing, and sub-standard working conditions. Various forms of exploitation were also reported in the hotel and catering industry even though a link to trafficking in human beings could not be established, according to the research.

To complete the analysis, examples of serious cases of trafficking were provided from the **sex industry**. They mainly involved Brazilian women recruited through Portuguese recruiters and more recently Nigerian women recruited through their own informal networks. Sex work is not legal in Portugal; therefore contracts are either not given at all or false. Deception with regards to the nature of the work is common, as well as violence and retention of identity documents.

Exploitation of Portuguese migrant workers abroad involves mainly young men from rural areas in the north of Portugal. Most migrate on a temporary basis for agriculture and other work to Western Europe. Emigration is also continuing to Canada and the United States. Experts agree that emigration from Portugal is on the rise after a period of decline at the end of the 1990s when the economy was growing. According to the Direcção-Geral dos Assuntos Consulares e Comunidades Portuguesas (DGACCP), forced labour is a rather marginal phenomenon; however, denunciation of labour law violations is on the rise. There were 13 trafficking cases in 1999 and 29 in 2004, according to official information.

Human trafficking and forced labour

The research presented evidence showing that temporary work agencies (TWA) either based in Portugal or abroad, play a major role in the recruitment of Portuguese workers. They recruit via the Internet, but also through advertisements in supermarkets and restaurants. Many of these TWA lack professional skills and equipment. TWA either place workers with employers abroad or act as subcontractors in the supply chain. Cases have been reported involving Roma recruiters as well as migrants of Roma origin being exploited abroad. Transportation is organized using vans owned by the company, or private vehicles. Costs for recruitment and transportation are usually deducted from the salary.

The study presented cases of exploitation from Spain and the Netherlands. The main problem is that migrants are bound to the recruitment agency that keeps control over them. Work permits and contracts are issued by the agency (often involving deception). The owner of the agency may impose forced overtime, threaten workers with the cancellation of work permits, or make unreasonable wage deductions.

Both parts of the study analysed the **legal and institutional framework** to combat trafficking for forced labour in Portugal and abroad. The research concluded that the legal framework with regards to trafficking for labour exploitation and the regulation of Private Employment Agencies was insufficient. Recruitment agencies are not aware of the dimensions of human trafficking, and more awareness would be needed to improve business practices in the industry. Labour inspectors in Portugal carry out regular worksite inspections and provide information to immigrants; however, in the absence of legal contracts, protection of workers is difficult. Spanish and Portuguese labour inspectors have signed a collaboration agreement to exchange information and work together in specific cases of labour law violations.

There is also a functioning network of trade union experts and migrant worker NGOs in place that helps migrant workers claim their wages back and/or regularize their status if possible. Immigration authorities also provide similar assistance. Joint worksite inspections are carried out in particular cases.

The research also pointed to deficiencies in the legal and institutional frameworks, namely insufficient legal regulations on trafficking and forced labour, since the penal code is still pending revision. It was also noted that the elimination of the “social responsibility clause” from the labour code would make the prosecution of offenders in the supply chain more difficult. Regulations and enforcement procedures were also missing with regards to the regulation of Private Employment Agencies/TWA. Furthermore, the burden of denouncing exploitative situations is mainly placed on migrant workers who are in a very vulnerable position. There is a need for more public awareness on trafficking and forced labour, also targeting employers.

Both parts of the study were discussed in light of the evidence presented and recommendations for practical action. The President of the Council of Portuguese Immigrants, Carlos Pereira, emphasized that Portuguese migrants abroad still risk serious exploitation despite changing transportation and communication means. Participants generally welcomed the double focus of the study, recognizing that trafficking for labour exploitation can also occur within the EU when ignorant workers are deceived and exploited by unscrupulous recruiters. It was also pointed out that precarious employment relations are on the rise, and trafficking in human beings is part of this development. TWA have become major players in facilitating flexibility in the labour market while at the same time obscuring employment relationships.

Participants mentioned the example of the United Kingdom, where public awareness on these issues had risen in recent years and more decisive Government action had been taken to curb criminal activities of some labour contractors. A closer look into the situation of Portuguese migrant workers in the United Kingdom as well as possible changes following the introduction of the Gangmaster Licensing Act was recommended.

3. Recommendations from working groups

Working group I

Rapporteur: Ms. Helena Fazenda

1. Legislation needs to be revised to establish a criminal offence of trafficking for forced labour/labour exploitation (draft still pending) in a manner that provides clear guidance to prosecutors and judges. Specific provisions for victim protection are also needed.
2. There is a need to harmonize anti-trafficking legislation within Europe, in particular between source and destination countries of trafficking victims.
3. There should be joint investigation teams as a useful tool to combat the trans-national crime of trafficking in human beings.
4. A multi-disciplinary and interagency coordination structure should be established at national and international levels to discuss anti-trafficking measures in the areas of prevention, protection, investigation and prosecution.
5. There is a need for more targeted anti-trafficking training for different professional groups.
6. An awareness raising campaign should be developed to inform migrants about risks and dangers as well as on their rights in the destination countries.

Working group II

Rapporteur: Ms. Alice Brandão

1. An updated job opportunity report should be published, also involving opinions of the social partners.
2. The process of granting visas and work permits should be studied more closely as well as the registration of migrant workers.
3. Awareness raising campaigns for immigrants informing them about their rights in Portugal should be implemented. Awareness raising campaigns should also target employers regarding their responsibilities when employing migrant workers. Finally, information should be provided to Portuguese citizens leaving for employment abroad.
4. Job pools should be established for migrant workers recruited through bilateral agreements with countries of origin. Job vacancies should be published through consular offices.
5. Guidelines on THB should be developed and disseminated to practitioners in the field.
6. A closer look at existing employment regulations is needed, in particular with regard to joint liability of employers.
7. The legal framework on TWA should be revised.
8. The EURES network involving Public Employment Services should be promoted more widely.
9. More joint inspection teams are needed to monitor worksites where trafficking and forced labour may occur.

Working group III

Rapporteur: Mr. Luis Claudino de Oliveira

1. The flow of information between different institutions should be improved.
2. The research should be discussed more in depth, and police, labour inspectors, border police, service providers and other stakeholders should be involved in such further discussion.

Human trafficking and forced labour

3. There needs to be more public awareness on the problem in order to find political solutions.
4. While police already have cooperation mechanisms in place facilitated through Europol and Interpol, labour inspectors lack these. (Exchange is facilitated through the International Association of Labour Inspectors and the Senior Labour Inspectors Committee in Europe but intervention in cases of labour violations taking place abroad is not possible). There should be focal points in the labour inspectorates of countries of destination for Portuguese workers to facilitate cooperation.
5. Regulations on TWA need to be improved. While a new law would take some time, there could be improvements made through administrative proceedings for better monitoring and enforcement of existing regulations.
6. The network of consular staff and social advisors to inform and advise Portuguese workers abroad should be extended. Offices of international organizations could also be used to obtain information and contacts in countries of origin.

4. Follow-up activities

The draft study will be circulated among participants and other stakeholders to review content and recommendations. It will be disseminated at the final conference under the AGIS project, in Lisbon, 29-30 June 2006. The conference will further increase the awareness of Portuguese lawmakers, enforcement and assistance agencies on the importance of the subject and the need to take effective action. Ms. Candida Soares from the Ministry of Labour and Social Solidarity offered to host further consultation meetings if required.

The ILO Training Manual “Trafficking for forced labour: How to monitor the recruitment of migrant workers” is currently being translated and published in Portuguese. A legal guide on Private Employment Agencies covering issues of regulation in light of ILO Convention No. 181 as well as of monitoring and enforcement has also been prepared under the project and can soon be made available to relevant stakeholders. A separate workshop with representatives of Private Employment Agencies, including TWA, and Government authorities could be organized to discuss implications for national law and practice.

Participants were also encouraged to register at the ICMPD anti-trafficking web site (www.anti-trafficking.net) to exchange information with counterparts in other European countries, and to download relevant tools, reports and guidelines.