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SPHERES OF EXPLOITATION

THWARTING ACTORS WHO PROFIT FROM ILLEGAL LABOR, DOMESTIC SERVITUDE, AND SEX WORK

By Meghan Benton

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Executive Summary

Large-scale movement across borders is too often exploited by “bad actors” for profit. This exploitation falls along a continuum of severity: ranging from criminals who violently exploit trafficked persons, to employers who fail to meet legal standards for pay and overtime, to consumers who may not know the source of their goods and services. In addition to the severe human cost, exploitation has deleterious effects on the whole of society, compromising labor standards, security, and public faith in the management of migration. But combating it is a complex proposition, as a diverse set of actors benefits from exploitative labor, and the enforcement tools available to governments do not always match the threat.

Analyzing the business model of crime helps explain what sustains exploitation. This report focuses on exploitation in three spheres: the domestic care sector, the labor market, and the sex industry. Across all three, perpetrators are broadly motivated by the lure of high profits and low risks. Meanwhile, victims are often “trapped” by a power imbalance that allows bad actors to successfully evade detection. Governments hoping to weaken such actors face several obstacles:

- **Victims may be unwilling to report crimes.** The risks of reporting crimes (e.g., retaliation from traffickers or the attention of authorities) routinely outweigh the perceived benefits, making it difficult for complaints-driven law enforcement agencies to take action.
- **Crimes committed often fall into a “gray area.”** Identification and prosecution are complex, especially if there was a consensual agreement between employer and employee at some stage during the process (e.g., if migrants paid a fee to smugglers or initially consented to work in prostitution).
- **Masterminds deflect blame to the “low-hanging fruit.”** Those higher up in criminal operations can protect themselves by implicating foot soldiers and victims in illegal activity (from immigration violations to prostitution) and thus divert enforcement operations.

Policies to disrupt the business model of exploitation seek to increase risks and reduce profits for facilitators, and they may also aim to reduce the supply and demand of exploitable labor. One of the main legal tools—anti-trafficking legislation—aims to increase the risks of severe exploitation, but low prosecution rates along with trivial sentences cast doubt on whether this constitutes a serious deterrent. The strategy of increasing penalties for employers who hire illegally faces a number of practical challenges, such as proving employer guilt and administering high enough fines. Moreover, if inspections are used as a vehicle for immigration enforcement, this can make workers even less likely to blow the whistle on exploitative practices. Increasing subcontractors’ regulations, if successfully implemented, can raise standards across the board, but may also inadvertently lead to more severe exploitation (and more illegal immigration) if some operators are pushed underground. Finally, supply- and demand-side policies, including awareness campaigns and revised legislation, have had mixed results.

Creative criminal organizations exploit legal routes wherever possible, sometimes flying under the radar of police.

One of the biggest challenges facing law enforcement is that the focus on serious criminals and lawbreakers ignores those who operate on the edge of legality; the reality is that creative criminal organizations exploit legal routes wherever possible, sometimes flying under the radar of police. Thus the twin goals of reducing illegal immigration and reducing the space in which bad actors operate will not always align. Some policies to encourage legal migration—like those that tie workers to a particular



employer—can facilitate exploitative practices, while policies designed to reduce exploitation (such as licensing systems) might make some operators more likely to hire unauthorized workers. None of these policies alone is robust enough to combat the fact that exploitation “pays,” while still being sensitive enough to change behavior across the continuum; hence a comprehensive approach is necessary. Even then, governments have to make hard choices between tackling the most severe offenders and cracking down on those industries where exploitation is most pervasive.

I. Introduction

Vast numbers of people move across borders every year for tourism, business, study, and work. This migration is largely regulated and orderly, and is integral to meeting people’s social and economic needs. But the movement of migrants also provides opportunities for a small number of bad actors to profit from their exploitation.

Exploitation takes many forms, from the violent abuse of trafficked women to dangerous working conditions to failure to meet legal standards for pay and overtime work. Some of the actors involved are part of criminal networks that provide illegal alternatives to legal routes. Border controls and constraints on legal migration have made migrants more susceptible to recruitment by traffickers and to ending up in an exploitative situation at their destination—for example, as their meager earnings are further cut to pay off smugglers. Other actors take advantage of legal routes to exploit migrants; for example, cases of domestic servitude can arise where workers are tied to a particular employer by the conditions of their visa. In sum, migration channels both legal and illegal can be exploited for profit, with tragic results. The International Labor Organization (ILO) estimates that there are now 6 million migrants being severely exploited—e.g., as victims of sexual abuse, domestic servitude, or other forced labor—around the world.¹

In many cases, citizens—particularly in the roles of consumers and employers—implicitly support exploitative practices, with varying levels of awareness that they are doing so.

The human, social, and political costs of immigrant exploitation are far-reaching. At the individual level, victims suffer a plethora of human rights abuses. For society as a whole, the exploitation of workers may drive down wages and labor standards while allowing unscrupulous employers to cheat the system and avoid contributing to the public purse. The prevalence of routinely unreported crime undermines the rule of law and casts doubt on the ability of governments to protect public safety. And public trust in migration management—already under pressure from the scale of illegal immigration in some countries—is damaged by high-profile reports of extreme criminality. It is as if bad actors operate in a parallel world, where legal and social norms do not apply.

¹ In total, 20.9 million individuals were estimated to have been in forced labor or sexual or domestic servitude in 2012, 1.5 million of them in industrialized countries. Twenty-nine percent of the global figure was cross-border migrants; the percentage of cross-border migrants in the industrialized world is likely to be higher. See International Labor Organization (ILO), *ILO Global Estimate of Forced Labour: Results and Methodology* (Geneva: ILO, 2012), www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf.



But in many cases, citizens—particularly in the roles of consumers and employers—implicitly support exploitative practices, with varying levels of awareness that they are doing so.² Industries with tight profit margins and high labor costs sometimes depend on the labor of unauthorized workers and/or on a culture of unpaid overtime. The employment of low-paid domestic workers enables professionals to perform demanding, high-status jobs or maintain dual-career families. Men purchase sex from prostitutes without questioning the process by which they came to be working in the sex industry. Even shoppers are complicit; many have come to expect low-cost food and clothing, even when they know that cheap prices often come at a human cost. This complicated landscape can make it difficult to identify the true villains.

Determining the victims can be equally complex. While unauthorized migrants are extremely vulnerable to exploitation, they are often perceived as “bad actors” themselves, particularly if they entered the destination country of their own accord rather than through traffickers. Others are complicit in their own exploitation: even substandard conditions may be preferable to the opportunities they have at home.

This report identifies those actors who benefit from the exploitation of migrant workers, both unauthorized and authorized, across a continuum.³ It describes the business model that compels these actors, and identifies the characteristics that make unauthorized migrants so vulnerable to profiteers. It examines the ways in which different actors directly and indirectly profit from exploitation in three spheres (domestic work, the sex industry, and the conventional labor market), and considers what governments should prioritize in their attempts to shrink or mitigate these illegal worlds. Finally, it analyzes those policies that aim to do just this, with an eye to their cost-effectiveness, political feasibility, and overall alignment with other government objectives, including reducing illegal immigration.

II. Definitions

A. *The Continuum of Exploitation*⁴

Exploitation ranges in severity, from forced labor to dangerous and unhealthy work conditions to payment below the minimum wage. In the extreme, exploitation is readily identifiable, but it is more difficult to establish at the moderate end of the spectrum. For example, is paying a highly skilled migrant less than an equally qualified citizen exploitative if the wage meets legal requirements and is much more than the migrant would earn in his or her home country? To avoid value judgments, this report defines exploitation as illegal exploitation (e.g., payment at below the minimum wage rather than below the market rate).⁵

2 For the point that “illicit trade involves everyone,” see Moisés Naím, *Illicit: How Smugglers, Traffickers and Copycats are Hijacking the Global Economy* (New York: Doubleday, 2005). For the similar argument that there is a “symbiotic relationship between upper- and underworld activities,” see Alexis Aronowitz, Gerda Theuermann, and Elena Tyurykanova, *Analyzing the Business Model of Human Trafficking to Better Prevent the Crime* (Vienna: Organization for Security and Cooperation in Europe and the United Nations Global Initiative to Fight Human Trafficking, 2010), www.osce.org/cthb/69028?download=true.

3 Migrants are clearly not the only victims of the types of exploitation discussed here. However, they raise a specific set of challenges that compose the subject of this report. The exploitation of children, including migrant children, raises a different set of challenges beyond the scope of this report.

4 Numerous authors refer to the need to see illegal work or exploitation on a continuum. In particular, see Klara Skrivankova, *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation* (York, UK: Joseph Rowntree Foundation, 2010), www.jrf.org.uk/publications/between-decent-work-forced-labour.

5 Paying someone below the market rate can be illegal in some circumstances, however; for example, if the person is on a work visa that specifies that the employer must pay the “prevailing wage.”



An outline of the different levels of exploitation in the three spheres discussed in this report is provided in Table 1. In practice, there are no clear distinctions between the categories, and exploitative work conditions often have a cumulative effect. Exploitation is therefore more accurately conceptualized as a continuum.

Table 1. The Continuum of Exploitation

	Domestic Work	Labor Market	Sex Industry
Mild	Unpaid overtime; payment below minimum wage.	Unpaid overtime; payment below minimum wage.	Being required to give proportion of earnings to pimp or brothel owner.
Moderate	Substandard working or living conditions; no time off; mild coercion and/or abuse; constantly being on call.	Fraud and/or abuse; violation of safety measures; imposition of arbitrary and disproportionate fees such as for equipment.	Having to service a certain number of clients a day; being forced to give away a large share of earnings; fraud or deception about work conditions.
Severe	Domestic servitude; physical and sexual abuse.	Forced labor; debt bondage; violent coercion.	Forced prostitution; violent coercion or sexual assault.

Severe exploitation as defined here is roughly equivalent to the definition of exploitation set out in international, European, and domestic law on human trafficking.⁶ For an act to be classed as trafficking, a transaction has to have taken place, such as recruitment or transportation across borders. This report takes the view that conceptualizing exploitation in a broader context enables a richer policy response, as it reveals the landscape of individuals involved and their various incentives. This report therefore assesses the exploitation of all migrants, whether authorized or unauthorized, trafficked or not.⁷

B. A Typology of Exploitative Actors

A diverse range of actors is involved in exploitative labor. Box 1 outlines several types who profit from exploitation across the continuum. They are broadly set out in order of criminality, although within each category the degree of infraction may vary. For example, employers may have committed only minor labor infractions, or may have violated a cluster of immigration, labor, and criminal laws.

Two major recent shifts in the labor market and the immigration business might account for the wide range of actors complicit in exploitation. First, in the labor market, the delegation of the recruitment and organization of labor is on the rise. Complex employment relationships and long supply chains multiply the opportunities for law breaking and increase the ease with which illegal practices can be concealed.

⁶ According to the Palermo Protocol, trafficking is defined as the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the 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 is defined (somewhat circuitously) as “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” See United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, United Nations, 2000, www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf.

⁷ Note that it is possible for migration to be legal but to also involve elements of trafficking, such as when a European Union citizen is recruited under coercive or deceptive conditions to perform exploitative work in another Member State.



Box I. A Typology of Bad Actors

Smuggling and trafficking organizations

Financers, recruiters, and other facilitators who traffic migrants for the purposes of exploitation operate at the criminal end of the continuum. These organizations range from highly organized hierarchical operations to loose networks; their operations may be large to small in scale. Some migrants who pay for the services of smugglers end up as victims of trafficking, for example, if they are forced to work or prostitute themselves to repay the cost of passage.

Employers

Employers can commit a range of offenses that violate labor, immigration, or criminal law in the exploitation of migrant workers. These offenses vary in severity. Immigration infringements include employment of unauthorized workers; labor infractions include unpaid overtime or failure to respect maximum hours; and criminal acts encompass violence, fraud, coercion, and slavery-like conditions.

Labor providers, temporary work agencies, and “gangmasters”

Whether legitimate or unregistered, labor agencies come under pressure to provide cheap labor. This means they often adopt practices in the gray area between legality and illegality, for example, not paying for overtime or charging equipment or job-finding fees. As subcontractors they are one step removed from the workplace and so it is harder to trace responsibility.

Private households

A culture of mild exploitation, such as always having to be on call, can easily give way to more severe forms of exploitation in the private setting. Employment of domestic workers is usually exempt from labor standards (e.g., minimum wage or maximum hours).

Officials

Criminal operations often rely on public corruption, including bribes taken by border, law enforcement, and other public officials.

Professionals, acquaintances, and informal social networks

Lawyers or housing providers may supplement legitimate income by providing services they know enable exploitation. Friends and relatives and informal institutions like churches may facilitate illegality for nonfinancial reasons.

Workers

Unauthorized migrants are likely to have committed a set of immigration offenses including entering the country illegally, working without authorization, forging documents, supplying fake documents, or borrowing the identity of another. Some migrants may become involved in criminal activity (either voluntarily or through coercion) such as drug smuggling or prostitution to pay a smuggling debt.

Consumers

Consumers benefit from the purchase of goods produced under exploitative work conditions. In the sex industry, purchase of sex from a victim of trafficking is routinely criminalized under strict liability laws, even in countries where the purchase of sex is not criminalized.

Supermarkets and other large-scale buyers of exploitative goods

Large-scale buyers of goods are not usually liable for the means by which such goods are produced, but it is sometimes illegal to purchase goods in the knowledge they were produced under exploitative conditions.

Source: Categorization based on author's own research.



They might also make it more difficult to trace accountability for infractions and to demonstrate that those responsible for exploitation knowingly violated the law. Indeed, “fissured” industries reliant on subcontracting, franchises, third parties, and self-employed workers have been found to be associated with substandard and exploitative work practices.⁸ A case in point is the 2004 tragedy in which 23 Chinese migrants died in Morecambe Bay in the United Kingdom, attributed to the increased reliance of the agricultural and shellfish industries on small networks of recruiters who organize informal “gang” labor (“gangmasters”).⁹ Subcontracting can create a “grey area in which the formal and informal economies meet and where labor exploitation can occur,” as a recent report put it.¹⁰

Second, an increasing number of actors profit from exploitation indirectly, for example, by facilitating illegal border crossings, or by providing fraudulent work or study offers. Recruiters and other intermediaries increasingly organize the full set of unauthorized travel arrangements including housing, documentation, and transport.¹¹ This provides multiple opportunities for profit at the expense of migrants. While the clandestine movement of people across borders is not the main focus of this report, in many cases there is no clear divide between organizations that profit from bringing people in, and those that benefit from the labor they provide.¹²

III. The Business Model of Exploitation

Incentives for individual actors who profit from exploitation vary widely depending on their level of complicity, their role, and the scale of the operation (from domestic servitude in a private household to a large-scale sex-trafficking racket). But at an organizational level, criminal activity follows the same logic as legal economic activity; in other words, it flourishes where there is high profit, low cost, and considerable supply and demand.¹³ Examining the business model of exploitation brings to light two constants across the three spheres: the profits are often high, and the risks relatively low.

A. The Profits Are High

As a whole, the exploitation business is profitable. Profits from forced labor were estimated at \$44 billion a year worldwide in 2005, of which \$15 billion was made in industrialized countries.¹⁴ Forced labor is highly profitable because it involves the continual exploitation of a worker over time, and allows

8 David Weil, *Improving Workplace Conditions through Strategic Enforcement: A Report to the Wage and Hour Division* (Boston: Boston University, 2010), www.dol.gov/whd/resources/strategicEnforcement.pdf. See also Donald M. Kerwin, with Kristen McCabe, *Labor Standards Enforcement and Low-Wage Immigrants: Creating an Effective Enforcement System* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/laborstandards-2011.pdf.

9 The Gangmasters Licensing Authority (GLA) was set up in the wake of the tragedy. See GLA website, <http://gla.defra.gov.uk/>, updated August 10, 2010.

10 Mumtaz Lalani and Hilary Metcalf, *Forced Labor in the UK: The Business Angle* (York, UK: Joseph Rountree Foundation, 2012), www.jrf.org.uk/publications/forced-labour-uk-business-angle.

11 For a detailed analysis of the different types of intermediaries operating at different levels of legality, see Dovelyn Agunias, “Guiding the Invisible Hand: Making Migration Work for Development” (Human Development Research Paper 2009/22, United Nations Development Program, April 2009), www.migrationpolicy.org/pubs/agunias_HDRP_2009.pdf.

12 For example, a study of farm worker contractors in the United States found that they offered other services including cash advances, transport, housing, and false documentation. See Fred Krissman, “Sin Coyote Ni Patron: Why the ‘Migrant Network’ Fails to Explain International Migration,” *International Migration Review* 39, no. 1 (2005): 4–44.

13 Economists of crime observe that illegal practices are adopted if the profits are high and the transaction costs low. See, for example, Gianluca Fiorentini and Sam Peltzman, *The Economics of Organized Crime* (Cambridge, UK: Cambridge University Press, 1995). The idea that illegal immigration is a business was first proposed by John Salt and Jeremy Stein in “Migration as a Business, the Case of Trafficking,” *International Migration* 35, no. 4 (1997): 474–75, but is now widely referred to in the literature. See also Andreas Schloenhardt, “Organised Crime and the Business of Migrant Trafficking,” *Crime, Law and Social Change* no. 32 (1999): 203–33.

14 For these figures, see Patrick Belser, *Forced Labour and Human Trafficking: Estimating the Profit* (Geneva: ILO, 2005), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1838403.



employers or intermediaries to profit from the full extent of a worker's labor with minimal recompense. Likewise, forced prostitution is profitable because brothel owners or pimps take all or almost all of the prostitutes' earnings. But trafficked prostitutes can also be required to service more clients and to perform services that other prostitutes will not—thus the income they generate is eight to ten times that of a normal prostitute.¹⁵ According to one estimate, a woman in forced sexual servitude is estimated to generate \$150,000 a year,¹⁶ and other estimates have placed the figure significantly higher.

In the labor market, employers have significant financial incentives to hire unauthorized workers who accept lower wages.

Highly organized criminal operations may be extremely profitable,¹⁷ but profits from exploitation on the whole are often concentrated in the hands of the few at the top. Many of the people involved—such as drivers, security guards, or other facilitators at the lower end of a hierarchical organization—derive only a modest living from exploitative businesses but may be motivated by their desire to work their way up. Economic factors can explain individual motives to only a certain degree, however. Some criminal groups are linked by family or national ties. Or members may have a disposition toward criminal and violent behavior. It is also common for victims of forced prostitution to become recruiters themselves through a combination of coercion and destitution: they become too old or unhealthy to work as prostitutes, but cannot afford to return home.¹⁸

Outside of criminal operations, other legitimate businesses in the formal economy may profit from less severe, but arguably more widespread, forms of exploitation. In the labor market, employers have significant financial incentives to hire unauthorized workers who accept lower wages. Such employers can more easily avoid paying indirect costs like taxes, social security, health benefits, and annual leave.¹⁹ Unauthorized migrants are also more likely to tolerate the violation of safety measures and other substandard or exploitative work conditions, and are less likely to complain, join unions, or seek other forms of redress.²⁰ An exploitative culture can spread across an entire industry as employers compete to lower their bottom line.²¹ Likewise, in domestic work a culture of being constantly on call makes it difficult to establish where fair employment conditions end and exploitation begins. Without the norm of unpaid overtime, some families would not be able to afford domestic care. But such a culture can lead to conditions of more severe exploitation.²²

15 Julia Pennington, Dwayne Ball, Ronald Hampton, and Julia Soulakova, "The Cross-National Market in Human Beings," *Journal of Macromarketing* 29, no. 119 (2009): 119–34.

16 Polaris Project, "Domestic Sex Trafficking: The Criminal Operations of the American Pimp" (undated; accessed via the Virginia Department of Criminal Justice Services, December 17, 2013), www.dcsj.virginia.gov/victims/humantrafficking/vs/documents/Domestic_Sex_Trafficking_Guide.pdf.

17 Alexis Aronowitz, "Smuggling and Trafficking in Human Beings: The Phenomenon, the Markets that Drive It and the Organizations that Promote It," *European Journal on Criminal Policy and Research* 9, no. 2 (2001): 163–95.

18 For a discussion of individual incentives, see Aronowitz, Theuermann, and Tyurykanova, *Analyzing the Business Model of Human Trafficking*.

19 For an in-depth discussion of employers' incentives, see Madeleine Sumption, *Polices to Curb Unauthorized Employment* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/unauthorizedemployment-2011.pdf.

20 For an analysis of the United States, see Kerwin with McCabe, *Labor Standards Enforcement and Low-Wage Immigrants*.

21 See J. David Brown, Julie L Hotchkiss, and Myriam Quispe-Agnoli, "Does Employing Undocumented Workers Give Firms a Competitive Advantage?" (working paper 2012-2, Federal Reserve Bank of Atlanta, February 2012), www.frbatlanta.org/documents/pubs/wp/wp1202.pdf.

22 For a discussion of how the social norms of domestic work can create the conditions for work standards to gradually deteriorate, see Bridget Anderson and Julia O'Connell Davidson, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study* (Geneva: International Organization for Migration, 2003), www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/mrs15b.pdf. Evidence on the prevalence of exploitative practices provides some support for this claim. The UK domestic workers' rights charity Kalayaan registered 340 new migrant domestic workers in the 12 months between April 2006 and April 2007, and reported that 69 percent reported psychological abuse, 24 percent physical abuse, and 68 percent were allowed no time off. See Mumtaz Lalani, *Ending the Abuse: Policies that Work to Protect Migration Domestic Workers* (London: Kalayaan, 2011), www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf.



B. *The Risks Are Relatively Low*

The risks of the exploitation business are clearly higher than for legitimate trade. In particular, the considerable penalties attached to trafficking and forced labor represent a considerable risk. But compared to other criminal activities, there is a very low risk of exposure.

Bad actors take advantage of (and in some cases deliberately strengthen) a power imbalance vis-à-vis their victims. This allows them to reduce the risk of detection. There are several dimensions to this power dynamic. First, a common feature of severe exploitation is that the exploiter holds power over the immigration status of the migrant.²³ It is widely noted that unauthorized migrants are unlikely to report mistreatment for fear of denunciation to the authorities, so their exploitation is inherently low risk. But the power imbalance is felt by legal migrants, too. For example, certain types of domestic work visas tie workers to a particular employer, thus reducing the chances a worker will report exploitative conditions (for fear of having to leave the country). If workers are dependent on an employer fulfilling certain conditions or filling in a form, or their travel documents have been withheld, they will be similarly disinclined to seek redress for maltreatment for fear of immigration enforcement repercussions.²⁴ While these acts are not necessarily illegal (employers are generally banned from withholding travel documents but are not required to renew an employee's visa), they provide employers with considerable bargaining power relative to their employees.

The second dimension is that perpetrators are often protected by the complicity of migrants in their own exploitation. In the labor market, the ease of replacing low-skilled workers gives migrants limited bargaining power: many would rather continue in a substandard job than return home. Similarly, in the sex industry, the social stigma of returning home without having earned any money may be accompanied by shame at having been recruited into prostitution. The anticipation of paying off debts accumulated in passage or at the onset of the employment relationship can make the situation seem temporary and hence tolerable.²⁵ By contrast, in the domestic care sector the social acceptability of migrant exploitation is normalized. Hence many domestic workers may simply accept exploitation as part and parcel of the work, and a necessary consequence of a job overseas.²⁶

Perpetrators are often protected by the complicity of migrants in their own exploitation.

Third, migrants are often highly dependent on their exploiters, for various reasons. In the recruitment process, criminal groups target migrants who have poor language skills, low social capital, or even disabilities in order to retain a monopoly over the information available to them.²⁷ An alternative tactic is to implicate migrants in crimes such as drug smuggling or soliciting in the process of transit or employment.²⁸ Employers can threaten migrants with physical violence, deportation, retaliation against

23 Bridget Anderson and Ben Rogaly, *Forced Labour and Migration to the UK* (Oxford: University of Oxford Centre on Migration, Policy and Society, undated), www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/Forced%20Labour%20TUC%20Report.pdf.

24 An extreme example of this is the kafala sponsorship system in the Middle East, which makes employers responsible for the legal status of workers.

25 See, for example, Aronowitz, Theuermann, and Tyurykanova, *Analysing the Business Model of Human Trafficking*.

26 See Anderson and O'Connell Davidson, *Is Trafficking in Human Beings Demand Driven?* The authors report that some agencies offer workers of different nationalities like menu items, extolling their docility or propensity to accept certain conditions.

27 See, for example, Tetyana Kiryan and Mariska Van der Linden, *Trafficking of Migrant Workers from Ukraine: Issues of Labour and Sexual Exploitation* (Geneva: ILO, 2005), www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_082022.pdf; Sónia Pereira and João Vasconcelos, *Human Trafficking and Forced Labour: Case Studies and Responses from Portugal* (Geneva: ILO, 2008), www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_093650.pdf.

28 Aronowitz, Theuermann, and Tyurykanova, *Analysing the Business Model of Human Trafficking*.



family members, or denunciation as a prostitute back home—all of which increase the dependence of migrants on their exploiters.²⁹

Finally, the day-to-day work of the more sophisticated exploitative operations is likely to be carried out by middlemen and foot soldiers. This makes detection difficult, and may deflect attention from those higher up the “food chain” as low level operatives are likely to be apprehended first by any law enforcement investigations. The worst perpetrators may therefore operate with near impunity.

C. Policy Challenges

High profits and relatively small risks of detection make it difficult to tackle exploitation. The biggest obstacles faced by policymakers include that:

- **Victims may be unwilling to report crimes.** The victims of exploitation are unlikely to report crimes. The considerable risks of doing so—prosecution or deportation, returning home jobless or stigmatized, and violent retaliations—are likely to outweigh the perceived gains. It is therefore up to law enforcement agencies to root out suspected offenders; however, law enforcement tends to be complaints driven and often lacks the necessary expertise and infrastructure for investigative work.³⁰
- **The crimes committed are often ambiguous.** The identification and prosecution of an exploitative act is more complex if there was an initial consensual agreement between the parties involved (e.g., employer and employee). Countries have found it difficult to get trafficking convictions where women initially consented to working in prostitution, or where migrants paid a fee to smugglers.
- **Those higher up in criminal operations are protected from detection.** The loose structure of criminal networks lends itself to the apprehension of foot soldiers rather than those higher up in the operation, particularly if the kingpins are located offshore.³¹ And victims of exploitation are often perpetrators of minor offenses themselves (from immigration violations to drug offenses to prostitution). The ease of finding the “low-hanging fruit” may thus distract from attempts to dismantle the whole operation.

29 Research on methods employed by operators is largely qualitative and based on interviews with victims of exploitation. For a detailed description, see Beate Andrees, *Forced Labour and Trafficking in Europe: How People Are Trapped In, Live Through and Come Out* (Geneva: ILO, 2008), www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf. Research based on interviews with convicted traffickers, although more limited and based on a less reliable sample (convicted traffickers rather than those still operating), identifies many similar themes. For example, Sarah Webb and John Burrows, *Organised Immigration Crime: A Post-Conviction Study* (London: Home Office, 2009), www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/horr15/horr15-report?view=Binary.

30 United Nations Office on Drugs and Crime (UNODC), *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (Vienna: UNODC, 2010), www.unodc.org/unodc/en/data-and-analysis/tocta-2010.html.

31 Interviews with convicted traffickers suggest that low-level operatives are more likely to be prosecuted under new trafficking legislation. See Webb and Burrows, *Organised Immigration Crime*. A distinction is often made between trafficking networks and hierarchical organizations. While there is higher division of labor in the latter, the former model spreads the risk across more parties. See Schloenhardt, “Organised Crime and the Business of Migrant Trafficking.”



IV. Policies to Tackle Exploitation

The complexity of domestic, labor, and sex exploitation—the number of actors involved, and the diversity of ways in which they profit—means that governments must make choices about the allocation of resources in curbing exploitation.

Another report in the Migration Policy Institute’s (MPI) “Curbing the Influence of ‘Bad Actors’ in International Migration” series sets out two approaches to reducing harm: where it is most severe or where it is most pervasive.³² The offenders who inflict the most severe harm derive profit from severe human-rights abuses such as illegal deprivation of liberty, forced prostitution, and rape. But since exploitative practices are widespread across certain industries, where standards are dragged down across the board, adjusting incentives for the bad actors in these fields would theoretically have a positive impact on a larger number of people.

Governments have adopted a number of approaches to tackling exploitation across the continuum of severity. These seek to make the business model less viable in any of four ways: decreasing profit, increasing risk, decreasing supply, decreasing demand.

A. Expanding Anti-Trafficking Legislation

Criminal sanctions aim to raise the risks of exploitative operations. In recent years, governments have taken significant steps to criminalize trafficking and forced labor, and there is now considerable convergence in the legislation of Organization for Economic Cooperation and Development (OECD) countries, along with reasonably high penalties.³³ Domestic and international intelligence operations have been stepped up alongside this new legislation, resulting in the apprehension and prosecution of some high-profile transnational organizations.

Very low conviction rates along with trivial prison sentences have raised questions about the extent to which these efforts represent a serious deterrent, however.³⁴ Governments have adopted a range of strategies for increasing convictions, some of which seek to conquer the three policy challenges outlined in the previous section. These include:

I. Prosecutorial Discretion

Several countries have introduced comprehensive policies of prosecutorial discretion (permitting prosecutors to decline to prosecute minor offenses). For example, several U.S. states have passed “safe harbor” laws to grant minor trafficking victims with immunity against prosecution for prostitution

32 Demetrios G. Papademetriou and Will Somerville, *Creating Legality and Order in Immigration: A Strategic Framework* (Washington, DC: Migration Policy Institute, 2014).

33 The Council of Europe *Convention on Action against Trafficking in Human Beings* has come into force in most countries in Europe, and an EU Directive requires Member States to criminalize recruiting, transporting, transferring, harboring, and reception of trafficking victims, as well as instigating, aiding, abetting, or attempting to do any of those things. See European Commission, *Directive 2011/36/EU* of the European Parliament and of the Council, L 101/1, April 5, 2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDE> The only EU Member State that has yet to create a specific crime of trafficking in persons and adopt international or European definitions of trafficking is Estonia. U.S. legislation (initially set out in the *Victims of Trafficking and Violence Protection Act*, VTVPA) criminalizes traffickers, aiders, abettors, assistants, conspirators, and colluders, as well as those who knowingly conceal or procure documents for the purposes of trafficking. Sentences tend to range between five and 15 years, but some are considerably lower. For example, Spain has a sentence of two to six years.

34 UNODC laments that convictions are going down despite the proliferation of legislation in recent years. See UNODC, *Global Report on Trafficking in Persons* (Vienna: UNODC, 2009), www.unodc.org/documents/Global_Report_on_TIP.pdf. One illustration of this is that in Germany in 2011, there were 482 sex trafficking investigations, of which 139 were prosecuted; 117 were convicted but only 28 received any jail time. See U.S. Department of State (DOS), *Trafficking in Persons Report* (Washington, DC: DOS, 2013), www.state.gov/documents/organization/210739.pdf.



offences. Questions arise over which offenses should be eligible (e.g., just immigration offenses, or criminal offenses, too?). In practice, lack of awareness about the coercive tools employed by criminal groups to implicate victims means that those who have suffered exploitation are often prosecuted or simply deported.³⁵

2. Visas for Victims

Most countries offer visas to trafficking victims. This is meant to encourage them to report crimes, and to keep them in the country for cooperation in criminal prosecutions. But there is considerable variation in the length of time provided (from one year to permanent residence), the administrative process (ease of submitting an application, and the stage at which financial and social support kicks in), and associated benefits (some countries offer protection for threatened family members, for example).³⁶ The devil seems to be in the details: in some countries large numbers of victims still choose not to be referred to police or referral systems that determine whether someone has been trafficked (often called “national referral mechanisms”) because they do not see adequate benefits and fear reprisals from traffickers or authorities.³⁷ The drawback to providing designated visas for trafficked migrants is that immigration authorities are involved in the identification of a victim. In some cases this has meant that the initial response to a potential case of trafficking has been to check whether he or she is a genuine victim and thus eligible for legalization, rather than to provide support. There is a fine line between effective scrutiny of applicants and creating a disincentive for victims to report crimes. Effectively disrupting the exploitation business model means that the benefits of reporting crime need to outweigh the risks.

Skilled operators can avoid behavior that signals trafficking.

3. Separate Criminalization of Forced Labor

Forced labor prosecutions have been especially difficult to achieve under trafficking legislation. In part this is because of higher awareness of trafficking for sexual exploitation, a trend that is reversing as the profile of trafficking grows. A more intractable problem is the focus on determining whether a migrant crossed borders consensually. Although movement across borders is not a necessary criterion of a trafficking prosecution, if the victim did cross borders the focus becomes determining how he or she did so—which routinely leads to a diagnosis of smuggling rather than trafficking.³⁸ To mitigate this trend, some countries have introduced separate forced labor or slavery legislation.³⁹ But critics claim that this legislation replicates the drawbacks of trafficking legislation: drawing an arbitrary line between forced labor and other severe forms of exploitation so that only the worst-off victims receive support.⁴⁰

³⁵ For an overview of policies of prosecutorial discretion, and for several examples of where this has not worked in practice (e.g., children being prosecuted for growing cannabis where they had been trafficked for the purposes of drug cultivation), see DOS, *Trafficking in Persons Report 2013*.

³⁶ Visas provided to victims vary considerably from country to country. While most grant at least temporary status, some go so far as securing permanent residence. For a discussion of the U.S. approach, see Citizenship and Immigration Services (CIS) Ombudsman, *Improving the Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa* (Washington, DC: CIS Ombudsman, 2009), www.dhs.gov/xlibrary/assets/cisomb_tandu visa_recommendation_2009-01-26.pdf. Recent amendments to U.S. legislation provide for family members to receive nonimmigrant status if they fear reprisals, to encourage victims to testify.

³⁷ The domestic worker’s charity Kalayaan found that 102 of 157 migrant domestic workers identified as trafficked chose not to be referred to the National Referral Mechanism, the determination process in the United Kingdom for deciding if someone is a genuine victim and then providing appropriate support. See Serious Organised Crime Agency (SOCA), *National Referral Mechanism Statistics—July to September 2011* (London: SOCA, 2012), www.ecpat.org.uk/sites/default/files/soca_stats_nrm_july_2011-sept2011.pdf; and Lalani, *Ending the Abuse*.

³⁸ In Germany, 45 percent of sex-trafficking victims had agreed to work in prostitution, hence there are high numbers of smuggling rather than trafficking convictions (and often these are noncustodial). In the Netherlands, average sentences are less than two years. See DOS, *Trafficking in Persons Report 2011*.

³⁹ For example, the *UK Coroners and Justice Act* (2009) introduces a separate offense for subjecting an individual to forced labor or domestic servitude that carries the same sentence as trafficking.

⁴⁰ Lalani and Metcalf, *Forced Labor in the UK*.



While anti-trafficking legislation has considerably expanded the penalties for perpetrators, these will only be perceived as real risks if prosecutions increase. But it is unclear whether this is likely in a business as complex as exploitation. Concerns have been raised that the anti-trafficking framework is focused too narrowly on the worst offenders.⁴¹ Since trafficking and forced labor legislation adopts rigid definitions for an activity that is in practice nuanced and ambiguous, skilled operators can avoid behavior that signals trafficking.⁴²

B. Labor Standards Enforcement

Labor standards enforcement aims to make it less profitable for employers to engage in exploitative practices. Giving employees the right to claim back pay, for example, increases costs for employers and therefore diminishes the lucrative nature of the exploitation business model. Other policies seek to increase the likelihood and cost of detection.

I. Employer Sanctions

Sanction regimes seek to deter employers from hiring unauthorized workers through fines or a combination of fines and a prison sentence. While the primary aim of these policies is to reduce illegal hiring, many countries have graduated sanctions regimes that implicitly take account of the continuum of exploitation set out in this paper. Repeat offenders or those who adopt severely exploitative practices are subject to higher penalties.⁴³

But while in theory employer sanctions mitigate exploitative practices, in practice their application is difficult and too often inadequate. Accompanying MPI papers suggest that the deterrent effect of sanctions is undermined by the challenges of proving employer guilt, securing adequate enforcement resources, and administering high enough fines.⁴⁴ This means the role of sanctions is largely punitive: they disrupt offenders who cause the most severe harm (rather than raising standards across the board in industries with ubiquitous harm). Sanctions also have limited reach to small businesses and domestic employers where inspections would either be inappropriate (as in private households) or overly costly.

A further problem is that sanctions might inadvertently reinforce the business model by reducing migrants' propensity to report crimes. Workplace raids have been criticized as a means of furthering immigration enforcement goals by arresting and deporting unauthorized workers rather than going after unscrupulous employers. There are also indications that such actions provides further ammunition to employers, who may threaten their workers with deportation if they complain about working conditions or pay.⁴⁵ Deportation of immigrants before the completion of investigations into employers could also jeopardize criminal proceedings by removing potential witnesses.

41 Several academic commentators express concerns that the trafficking framework results in other severe exploitation that does not fulfill its exact criteria being overlooked. For example, Bridget Anderson, "Illegal Immigrant: Victim or Villain?" (working paper 64, ESRC Centre on Migration Policy and Society, COMPAS, University of Oxford, Oxford, 2008), http://www.compas.ox.ac.uk/fileadmin/files/Publications/working_papers/WP_2008/WP0864%20Bridget%20Anderson.pdf; Benjamin S. Buckland, "Human Trafficking and Smuggling: Crossover and Overlap," in *Strategies Against Human Trafficking: The Role of the Security Sector*, ed. Cornelius Friesendorf (Vienna: National Defense Academy and Austrian Ministry of Defense and Sport, 2009).

42 For instance, new trafficking operations in Denmark and Sweden avoid retaining victims' travel documents and recruiting girls under 18 for sexual exploitation as these are two commonly accepted indicators of trafficking. See Daniel Gustafsson, *A Study of the Operational Strategies and Organisational Structures of Traffickers Operating the Danish and Swedish Market for Commercial Sex* (Aalborg, Denmark: SPIRIT, Aalborg University, 2011), http://vbn.aau.dk/files/55669091/spirit_phd_series_28.pdf.

43 See Milica Petrovic, "Comparing Employer Sanction Regimes in Europe: Data and Policy Frameworks" (Migration Policy Institute unpublished paper, Washington, DC, 2012) for an overview of different countries' sanction regimes.

44 Sumption, *Polices to Curb Unauthorized Employment*; and Susan Sachs, "Employer Sanctions in Europe: The Gap between Goals and Impact" (Migration Policy Institute unpublished paper, Washington, DC, 2012).

45 Sumption, *Polices to Curb Unauthorized Employment*.



Firewalls between labor inspectors or trade unions and immigration enforcement can alleviate these problems, as they would prevent those apprehended in an inspection from being prosecuted for immigration infringements. A drawback of this approach is that it hinders interagency information sharing, which is critical for apprehending sophisticated, large-scale exploitative operations.

While in theory employer sanctions mitigate exploitative practices, in practice their application is difficult.

2. Tackling Exploitative Agencies and Informal Working Practices

Regulatory frameworks and licensing systems have been introduced in recent years to improve worker protection in industries where there is a high prevalence of subcontracting and informal organizational structures. But it is not clear whether these eradicate exploitative practices or simply shift exploitation elsewhere.

For example, the Gangmasters Licensing Authority (GLA) was introduced in the United Kingdom following the deaths of 23 unauthorized Chinese migrants at sea (the cockle pickers scandal). The GLA provides licenses to labor providers in the agriculture and shellfish industries on condition that they pay the minimum wage, do not subject workers to debt bondage or harsh treatment, provide suitable accommodation, respect employment rights, and follow health and safety requirements. GLA evaluations indicate that these licenses have encouraged the movement of quasi-legal operations into the formal economy and the raising of standards, but that unscrupulous operators still exist. While the GLA has received wide approval (especially considering its modest budget), its limited scope raises questions about other industries still governed by light-touch regulation. Some gangmasters have begun operating in the construction industry, while other employment agencies have moved further underground as unregulated collectives face greater competitive advantage.⁴⁶ In a cut-throat environment, under considerable pressure from large-scale purchasers such as supermarkets to cut labor costs, additional regulation spurs agencies to undercut one another by transferring costs onto migrants through equipment and hiring fees.⁴⁷

3. Identifying Industry Leaders and Encouraging Self-Regulation

A snowball effect can be achieved if big-name clients further down the supply chain are encouraged to comply with higher standards, and thus set a tone for the rest of the industry. In the United States, the Labor Department's Wage and Hour Division (WHD) is attempting to create "communities of compliance" around lead or dominant employers.⁴⁸ Investigations of branded hotels have been found to improve industry compliance in specific geographical areas, suggesting that hotels "follow the leader."⁴⁹

In deciding whether to impose additional regulations, policymakers are faced with difficult choices between improving conditions in industries where exploitation is rife but not severe, and improving

46 See, for example, Sam Scott and Andrew Geddes, *Gangmasters Licensing Authority 2nd Year Annual Review* (Nottingham, UK: GLA, 2009); and for a more critical evaluation, Krisnah Poinasamy and Antonia Bance, *Turning the Tide: How Best to Protect Workers Employed by Gangmaster Five Years after Morecambe Bay* (London: Oxfam, 2009), <http://policy-practice.oxfam.org.uk/publications/turning-the-tide-how-best-to-protect-workers-employed-by-gangmasters-five-years-114054>; Mick Wilkinson, "New Labour, the Gangmasters Licensing Authority and the Woefully Inadequate Protection of Migrant Workers in the UK," www.social-policy.org.uk/lincoln/Wilkinson.pdf.

47 Lalani and Metcalf, *Forced Labor in the UK*.

48 See Kerwin with McCabe, *Labor Standards Enforcement and Low-Wage Immigrants*.

49 Weil, *Improving Workplace Conditions*. For a more thorough discussion of this type of approach, see Kerwin with McCabe, *Labor Standards Enforcement and Low-Wage Immigrants*.



conditions for the worst off. Raising labor standards can increase the cost differential between authorized and unauthorized migrants, and thus provide an incentive for employers to hire illegally. In turn, this would increase the pool of migrants susceptible to more extreme forms of exploitation.

There is also a fine line between improving labor standards and making national industries less competitive, especially in the context of economic uncertainty and recession. The food industry in many developed countries faces tight profit margins, and increased regulation may increase food prices and encourage supermarkets to buy abroad.

C. Reducing Exploitability

The first two sets of policies focus on reducing profits and increasing risks for exploiters. An alternative approach is to address the protection of victims, with the aim of reducing the supply of exploitable labor. Interventions to reduce migrant exploitability can be made at each stage of the migration process.

Helplines, legal advice, shelters, and other types of victim support ... reduce the dependence of migrants on a particular employer.

1. Predeparture Policies

Susceptibility to exploitation is influenced by information available to migrants in their home country.⁵⁰ Unscrupulous recruitment agencies thrive where they have a monopoly on information provided to migrants. Information campaigns in countries of origin that seek to deter migrants from migrating or to encourage them to take legal routes appear to have limited impact, in part because the desperation to migrate outweighs the perceived risks.⁵¹ But information can better prepare migrants for the challenges of migration, prepare them to recognize exploitative situations if they arise, and provide information on the supportive institutions available.⁵²

2. In-Country Support

Helplines, legal advice, shelters, and other types of victim support not only provide routes out of an exploitative situation, but may prevent exploitation from happening in the first place as they reduce the dependence of migrants on a particular employer. Similarly, free language classes aim to prevent isolation and dependence—key indicators of exploitation—from developing. But many systems for supporting victims are reliant on nongovernmental or community organizations (NGOs), hence provision is patchy. For example, migrants can encounter obstacles in accessing housing and domestic violence shelters.⁵³ These services are additionally out of reach of the worst-off victims, including domestic workers sequestered inside private residences with no access to a phone or fear of being overheard, or victims of forced labor in an isolated factory.

50 For an analysis of how the process of recruitment makes a difference to individual outcomes, see Andrees, *Forced Labour and Trafficking in Europe*.

51 Papademetriou and Somerville, *Creating Legality and Order in Immigration: A Strategic Framework*.

52 The Swedish trafficking rapporteur reports that most trafficked women have very little knowledge of how Swedish society functions or where to go to for support. See Kajsa Wahlberg, *Trafficking in Human Beings for Sexual and Other Purposes* (Stockholm: Swedish National Police Board, 2011), www.polisen.se/Global/www%20och%20Intrapolis/Informationsmaterial/01%20Polisen%20nationellt/Engelskt%20informationsmaterial/Trafficking_1998_/Trafficking_report_12_20120502.pdf.

53 Magdalena Mostowska, "Services for Homeless Immigrants: The Social Welfare Capital of Polish Rough Sleepers in Brussels and Oslo," *European Journal of Homelessness* 5, no. 1 (2011): 27–47.



3. Rehabilitation and Reintegration Strategies

Interventions at the final stage of the process provide support for victims to prevent re-trafficking. In the United States a compensation claim for victims (“restitution”) is an automatic part of criminal proceedings. Having the funds to return home helps prevent victims from being picked up by the trafficking operations that exploited them and either re-trafficked or recruited as traffickers. The Netherlands has a system to evaluate victims’ safety in countries of return and a victims’ register to monitor movements.⁵⁴ While very few victims of severe exploitation gain the status of “trafficked person” (as many are deported prior to the identification of trafficking), these policies may also have an important preventative effect by disrupting the vicious circle of dependence. If victims know that they can return home without the shame of having earned no money, they may be less likely to remain in an exploitative situation (hoping they will one day pay off their debts).⁵⁵

Breaking the exploitation cycle is a significant challenge when funds for shelters, helplines, and legal aid for migrants are politically unpopular and are therefore generally provided on a piecemeal basis and/or by NGOs. A larger problem is that migrants are often willing to work in poor work conditions out of desperation. To provide an adequate incentive to exit an exploitative situation, these policies may therefore need to be accompanied by a path to legalization.

Legal migrants are also susceptible to exploitation, particularly if they hold visas that provide employers with some power over their immigration status.

D. Addressing the Abuse of Legal Migrants

Not all exploitation involves unauthorized or trafficked migrants. Legal migrants are also susceptible to exploitation, particularly if they hold visas that provide employers with some power over their immigration status. For example, exploitation of domestic employees is common if they are tied to their employer and cannot seek employment elsewhere.⁵⁶

More broadly, creative criminal organizations exploit legal routes where possible, since the risks of apprehension in passage are lower. This suggests that tackling organized immigration crime requires more than reducing illegal immigration overall. Opening up legal channels could reduce flows of unauthorized migrants but fail to shrink the space in which nefarious actors operate.

Two issues arise in regard to the design of temporary visas:

- **Preventing misuse.** Certain temporary visas are associated with exploitation and misuse. For example, visas for artists and entertainers have been used to recruit migrants for the purposes of forced labor.⁵⁷ One option is to improve the checks that visa applicants are subject to. For example, the United States is taking action to prevent the exploitation of domestic workers,

54 U.S. Department of State (DOS), *Trafficking in Persons Report* (Washington, DC: DOS, 2011), www.state.gov/j/tip/rls/tiprpt/2011/.

55 A key risk factor in re-trafficking is the shame in returning home with nothing. Some victims are persuaded to become recruiters—particularly in the case of trafficked prostitutes as they are seen as more persuasive in recruiting young women. One Austrian expert reported that “respect can be bought through money”—if someone comes back with money they are not asked how they earned it, whereas if they are deported and come back with nothing they are stigmatized. See Aronowitz, “Smuggling and Trafficking in Human Beings,” 164.

56 Diplomats’ employees are particularly at risk because this is a common provision and their employers have diplomatic immunity. See, for example, Senate Committee on the Judiciary Subcommittee on Human Rights and the Law, *Legal Options to Stop Human Trafficking*, 110th Cong., 1st sess., March 26, 2007, www.gpo.gov/fdsys/pkg/CHRG-110shrg37695/pdf/CHRG-110shrg37695.pdf.

57 Aronowitz, Theuermann, and Tyurykanova, *Analysing the Business Model of Human Trafficking*.



including monitoring bank accounts, tracking allegations of abuse, and denying visas to foreign missions if there is evidence that domestic workers have been abused and the mission turned a blind eye. However, these are resource intensive, and for the most part these routes are used legitimately.

- **Avoiding dependence.** Visas that tie an individual to a certain employer are highly associated with susceptibility to exploitation. One solution is to introduce visa portability, allowing workers to seek employment elsewhere if working conditions are substandard. Domestic workers' NGOs report that this is critical to preventing domestic servitude.⁵⁸ But if a culture of exploitation has taken hold across an entire industry and there is a large supply of unskilled workers, the choice between one exploitative employer and another will do little to disrupt the business model overall.

For low-skilled occupations like domestic work, developing politically palatable visas is a challenge. Temporary work permits that require migrants to remain with an employer are often seen as a way to mobilize public support as they ensure that migrants will remain in the country only as long as they have a job. But they provide the employer with considerable power and scope for exploitation. Likewise, policymakers have a clear interest in designing visas that restrict access to public services, but this can also place migrants in a situation of extreme dependence on employers. There is a fine line between incentivizing legal hiring and providing employers with the power to exploit workers.⁵⁹

E. Reducing Demand for Exploited Labor

Another approach is to reduce demand for exploited labor—in particular demand for trafficked prostitutes. One strategy has been to roll out campaigns to warn customers that prostitutes may be victims of trafficking. For example, the UK campaign “Walk in a punter, walk out a rapist,” or the Blue Blindfold Campaign, which is now being adopted worldwide.⁶⁰ Dutch police have enacted several campaigns targeted at different groups of consumers. In 2010 the police sent text messages to 1,300 mobile-phone users who had used escort sites, and ran a campaign aimed specifically at tourists entitled “Appearances Can be Deceptive.”⁶¹

A more radical approach has been to adjust legal prostitution legislation with a view to reducing demand for trafficked prostitutes. Most countries have now introduced strict liability laws for sex with exploited/trafficked prostitutes. Others have sought to overhaul their prostitution legislation more comprehensively, taking one of two broad approaches.

I. Criminalization

The rationale for criminalizing prostitution is that reducing demand overall will reduce the demand for trafficked women (the “scale effect”).⁶² In 1999 Sweden made it illegal to purchase, but not sell, sex. This explicitly intended to reduce the demand for trafficked women. Empirical estimates appear to suggest

⁵⁸ See reports from domestic workers' NGOs in Lalani, *Ending the Abuse*.

⁵⁹ For example, in the United States the H-2B visa was criticized for making it easy to exploit guest workers, but the Department of Labor response—making it more cumbersome and costly—risks disincentivizing its use. See Julia Preston, “Labor Department Issues New Rules for Guest Workers,” *New York Times*, February 10, 2012, www.nytimes.com/2012/02/11/us/rules-revised-for-h-2b-guest-worker-program.html?_r=1.

⁶⁰ The British word “punter” means customer, so the campaign was employing shock tactics to raise awareness of how consumers were inadvertently supporting the trafficking trade. The Blue Blindfold Campaign initially provided information about indicators of trafficking and has now been taken up as a symbol of awareness, in the same way as red ribbons symbolize AIDS awareness.

⁶¹ DOS, *Trafficking in Persons Report 2011*.

⁶² For a discussion of the opposing economic theories of adjusting prostitution legislation, see Seo-Young Cho, Axel Dreher, and Eric Neumayer, “Does Legalized Prostitution Increase Human Trafficking?” (discussion paper 96, Courant Research Centre, Poverty, Equity and Growth in Developing and Transition Countries, Georg-August-Universität Göttingen, September 2011 [updated January 2012]):19, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1986065.



that the prohibition on the purchase of sexual services has been successful in keeping the numbers of trafficking victims low in Sweden. For example, in 2004 it was estimated there were only about 500 victims of trafficking in Sweden.⁶³ Debates about emulating Sweden's approach are currently underway in Northern Ireland. Legislation has been proposed to criminalize paying for sex in general, on the rationale that it is difficult to prove that those who pay for sex with trafficked prostitutes were aware they had been trafficked.⁶⁴

2. Decriminalization

Other countries have taken the opposite approach and decriminalized certain aspects of prostitution. This strategy does not aim to affect demand, but to make sure customers are visiting legal prostitutes rather than those who have been trafficked into prostitution (the "substitution effect"). For example, Denmark reformed its laws in 1999 to allow individual self-employed prostitution. But while its numbers of trafficked prostitutes was similar to Sweden in 1999, estimates indicate it now has several times as many.⁶⁵ In the Netherlands, the lifting of a ban on brothels in 2000 is thought to have had none of its intended impact on levels of trafficked women. But it has reduced the numbers soliciting on the street.⁶⁶

Reducing the market for organized immigration crime is a critical aim for governments.

One explanation for the negative effect of legalization is that it leads to a slippery slope where officials become disinclined to prosecute customers for purchasing sex from trafficked women or to shut down exploitative operations (rather than having its intended effect of freeing up law enforcement resources to investigate the worst actors).⁶⁷ But drawing definitive conclusions about the relationship between trafficked prostitutes and prostitution policy is problematic due to the number of variables at play and the fact that the exploitation industry as a whole has grown in recent years.

The choice is also more complex than it appears: a smaller number of trafficked victims is not necessarily the preferred option if it results in more street prostitutes, for example, or if the women who are trafficked receive less protection overall.

V. Conclusions

The spheres of domestic, labor, and sex exploitation are complex. The wrongdoers who perpetrate a cluster of criminal offenses, many of them significant human-rights violations, represent the greatest threat to security and public confidence. But these individuals are only the tip of the iceberg: a diverse set of actors, including consumers and workers, benefits from exploitation.

While nonmigrants are also susceptible to exploitation, there is an association between immigration status and exploitation. Some migrants are exploited through control over their immigration status (when their

63 Ibid.

64 BBC News, "Plans to Change NI Prostitution and Trafficking Laws," BBC News, August 21, 2012, www.bbc.co.uk/news/uk-north-ireland-19328666.

65 Ibid.

66 Richard H. J. M. Staring, "Human Trafficking in the Netherlands: Trends and Recent Developments," *International Law, Computers and Technology* 26, no.1 (2012): 59–72, <http://dx.doi.org/10.1080/13600869.2012.646797>.

67 Gustafsson, *A Study of the Operational Strategies and Organisational Structures of Traffickers*.



exploiters have the power to threaten deportation or nonrenewal of visas), some because of economic factors (e.g., desperation to work), and others because of social factors (e.g., poor language and social capital).

Increased awareness of domestic servitude, forced labor, and forced sexual exploitation in recent years has led to a concerted, international effort to tackle and criminalize trafficking. But the anti-trafficking framework masks some important nuances, including the absence of clear divisions between smuggling and trafficking or between consensual and coerced labor. This risks imposing an arbitrary line between trafficked and severely exploited labor, and thus failing to tackle the enablers and protect the victims who fall on the wrong side of it.

Reducing the market for organized immigration crime is a critical aim for governments. This report has suggested that the goals of reducing illegal immigration and mitigating the scope for “bad actors” to operate are not always coterminous. Temporary work schemes that seek to persuade employers to hire legally may be abused by bad actors. By contrast, measures to tackle exploitation (like increased industry regulation) can inadvertently push some employers further underground. Tackling bad actors may also, in some cases, require the suspension of immigration enforcement targets, for example, by preventing workplace raids from being used to arrest unauthorized workers, and by providing generous routes to legalization for trafficking victims. Policymakers must be aware that well-intentioned policies and regulations may have perverse outcomes in this complex and clandestine arena.

For more on MPI's Transatlantic Council on Migration, please visit:
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