

**JRF programme paper:
Forced labour**

Forced labour and UK immigration policy: status matters?

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This paper:

- investigates the links between immigration status and migrants' vulnerability to forced labour;
- explores how socio-legal status (specific rights to residence, work and social welfare) impacts on migrants' risk of forced labour, and;
- reviews UK immigration policy, to assess how far it may reduce or facilitate the use of forced labour.

The Joseph Rowntree Foundation (JRF) commissioned this paper as part of its programme on Forced labour, which seeks to highlight the extent of forced labour in the UK, support its victims and identify ways of eradicating it.

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Glossary and abbreviations

| | |
|----------------------------------|--|
| Accession state nationals | People from A8 and A2 countries |
| A2 | Accession 2 – the countries which joined the European Union in January 2007 (Bulgaria and Romania) |
| A8 | Accession 8 – the countries which joined the European Union in May 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) |
| ATMG | Anti-Trafficking Monitoring Group |
| AWC | Accession Worker Card |
| CPS | Crown Prosecution Service |
| EC | European Commission |
| ECHR | European Court of Human Rights |
| ECPAT | End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes |
| EEA | European Economic Area – European Union, plus Iceland, Liechtenstein and Norway |
| EU | European Union – Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom |
| GLA | Gangmasters Licensing Authority |
| HESA | Higher Education Statistics Agency |
| ICAR | Information Centre about Asylum and Refugees |
| ILO | International Labour Organization |
| IPPR | Institute for Public Policy Research |
| IPS | International Passenger Survey |
| JCWI | Joint Council for the Welfare of Immigrants |
| MRCF | Migrant and Refugee Communities Forum |
| MRN | Migrants' Rights Network |
| NRM | National Referral Mechanism – trafficked persons victim identification and support process |
| ODIHR | Office for Democratic Institutions and Human Rights |
| PAC | Public Accounts Committee |
| PBS | Points-Based System |
| PICUM | Platform for International Cooperation on Undocumented Migrants |
| SAWS | Seasonal Agricultural Workers Scheme |
| SBC | Sector Based Schemes |
| TCN | Third-Country Nationals – from outside the EU |

| | |
|-------------|---------------------------------|
| TUC | Trades Union Congress |
| UKBA | UK Border Agency |
| UN | United Nations |
| UWT | Undocumented Worker Transitions |
| WRS | Worker Registration Scheme |

Introduction

In a world characterised by global mobility and increasing economic and forced migration, the UK is home to a diverse range of migrant communities. Against this backdrop, this paper explores the role played by immigration status in promoting international migrants' vulnerability to forced labour. For the purposes of this report an international migrant is defined as a non-UK national who comes to live in the UK. Migrants include asylum seekers, refugees, European Union (EU) and non-EU migrants who come to the UK to work or study or for family reasons.

The continuing importance of nation states in defining the rules governing entry and residence to their territories often dictate that movement across international borders, for whatever purpose, has serious implications in respect of migrants' rights within a host country. The varied rights to residence, work and welfare that accrue to different types of migrants (dependent upon their particular immigration status) suggest that a stratified system of socio-legal entitlement exists within the general population of migrants resident in the UK. While it can be argued that a discussion of specific socio-legal categories of migrants is an artificial exercise, an exploration of the 'tiering of entitlement' that flows from socio-legal status remains relevant as it often limits the options available to migrants who are seeking to meet their basic needs (Bloch, 2000; Dwyer, 2005).

Migrants are one of the main groups affected by forced labour in the UK (Anderson and Rogaly, 2005; Craig, 2007). Many migrants work on the fringes of low-paid employment sectors under poor conditions. Under these circumstances, immigration policy and insecure immigration status can provide an environment conducive to exploitation by employers. The lack of, or highly conditional, access to legal work and/or welfare, may also be particularly important in rendering migrants who have few other choices susceptible to forced labour.

When defining forced labour Skrivankova (2010: p4) notes that the 'reality of forced labour is not a static one, but a continuum of experiences and situations... [and] a continuum should therefore be used to describe the complexity of the exploitative environments and concrete individual situations of workers'. Building on this approach, this paper explores how immigration status and immigration policy can operate as factors in making migrants vulnerable to the coercion and menace of penalty that defines forced labour. The importance of trafficking and its role in sustaining and promoting forced labour (van den Anker, 2009) has been recognised and is part of subsequent discussions. Nonetheless, this paper has a broader remit and considers how socio-legal status (the specific rights to residence, work and social welfare derived from a particular immigration status) and the compromised rights that it often entails, may be relevant in promoting forced labour among other groups of migrants who enter the UK by various routes. Five broad categories of migrants are therefore discussed:

- Asylum seekers and refugees, who enter the UK and make a claim for protection.
- Labour migrants, who legally enter the UK to take up paid work.
- Irregular migrants, some of whom enter the UK via smuggling or trafficking routes; however, it is important to note that the majority of irregular migrants legally enter the UK and fall into irregularity after overstaying or having their visa withdrawn by the authorities (Migration Work and MRN, 2009).
- Students who come to the UK for educational purposes and
- Joining family members who enter the country for marriage or family reunification.

These five broad categories have been chosen because they reflect the main routes through which migrants are able to enter the UK.

Section 1 of this paper outlines and discusses the UK, EU and international policy frameworks that relate to forced labour. Section 2 moves on to consider the important role of national and supra-national immigration policy in promoting and sustaining a 'hierarchy of vulnerability' (Gubbay, 1999) among migrants living in the UK. The differing socio-legal rights that accrue to differing groups of migrants as a result of immigration policy are then mapped. A short overview of relevant statistical sources also estimates the size of the UK migrant populations. In Section 3 the relative importance of socio-legal status in rendering different migrants susceptible to forced labour is considered, alongside other factors such as poverty that may be key in migratory decisions. Discussions here draw directly on new data generated in qualitative interviews with 18 key informants working in areas relevant to migration policy, forced labour or the welfare of migrants. The final section offers conclusions and suggests a number of potential ways forward for policy-makers and practitioners looking to reduce the prevalence of forced labour among migrant groups.

Forced labour and the policy context

Defining forced labour

The oldest and most routinely accepted definition of forced labour is the International Labour Organization's (ILO) Forced Labour Convention which 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 [*sic*] voluntarily' (ILO Convention No. 29, 1930). This understanding is developed in guidelines that identify six elements of forced labour:

- Threats of actual physical or sexual violence.
- Restriction of movement of the worker or confinement to a very limited area.
- Debt bondage, where the worker works to pay off debt. The employer may provide food and accommodation at such inflated prices that it is extremely difficult for the worker to escape the debt.
- Withholding wages or refusing to pay the worker.
- Retention of passports and identity documents.
- Threat of denunciation to the authorities (ILO, 2005).

It is important to understand forced labour as a process that may start with deception and move into more direct forms of coercion (Anderson and Rogaly, 2005). This idea is developed by Skrivankova (2010: p4) who suggests that 'there is a continuum of experiences ranging from decent work through minor and major labour law violations, to extreme exploitation in the form of forced labour'.

Forced labour situations can be complex and may exist in, and result from, a broad set of social, political and economic influences. In this paper we recognise this complexity but our particular task is to understand the relationship between immigration policy and vulnerability to forced labour as defined above. An insight into the policy framework concerned with forced labour and migration is an important initial task.

Forced labour in UK law

Forced labour has entered domestic UK law in a number of ways. Legislation which initially covered only trafficking for sexual purposes (Nationality, Immigration and Asylum Act 2002 and Criminal Offences Act 2003) was extended under Section 4 of the Immigration and Asylum (Treatment of Claimants, etc.) Act 2004 to cover trafficking for all forms of forced labour. However, where the trafficking element was not present or could not be proven it has been impossible to prosecute the forced-labour element. Following lobbying by Liberty, Anti-Slavery International and other organisations, this gap has been

closed and a new offence of slavery, servitude and forced or compulsory labour was introduced under Section 71 of the Coroners and Justice Act 2009. By March 2011 there had been 14 offences charged under Section 71 (Crown Prosecution Service)¹. This provision also responded to criticism of UK protections in two cases before the European Court of Human Rights (ECHR) where victims of forced labour had approached the police, but their forced labour was not investigated as a crime (*Kawogo vs. UK* and *CN vs. UK*).

Labour rights and regulation with regard to forced labour is the explicit topic of a linked JRF paper in this series (Balch, 2011, forthcoming), but it is worth noting here that there are several legal developments in recent years that are of relevance to efforts to reduce forced and exploitative labour practices. First, in terms of tightening the net around employers employing workers who do not have the right to work, the Immigration, Asylum and Nationality Act 2006 introduced penalties for those who employ illegal migrants. An unintended effect of this increased enforcement, however, may be to push those migrants whose rights to work are compromised by their immigration status further toward the margins and into more exploitative working arrangements.

Second, a range of UK law and policy has developed to protect the rights of workers and prevent workplace exploitation (including the National Minimum Wage and employment laws). In line with this focus on improving workers' workplace experiences is the recent Gangmasters (Licensing) Act 2005 that is of particular relevance to the situation of migrant workers. It led to the establishment of the Gangmasters Licensing Authority (GLA) that regulates the operation of labour suppliers in a limited number of sectors: agriculture; forestry; horticulture; shellfish gathering; and food and drink processing and packaging. The combination of a licensing regime and enforcement has improved conditions for workers in these sectors. In six of the seven most serious cases where a gangmaster licence has been revoked, the GLA found evidence of the ILO's indicators of forced labour (see www.gla.gov.uk). However, the limit of the GLA remit to just five sectors has been criticised. There is evidence that unscrupulous operators have simply moved into other sectors where there is less regulation and it is easier to exploit migrant workers (Scullion and Morris, 2009; Wilkinson, Craig and Gaus, 2009). Oxfam (2009) suggest that the GLA's reach should be extended to construction, social care and hospitality.

The devolved administrations

Recently trafficking has been given more attention in Scotland, Wales and Northern Ireland as the devolved administrations respond to their duties under the National Referral Mechanism (NRM) for victims of trafficking (ATMG, 2010). Immigration remains an issue reserved to the UK Parliament; so issues surrounding forced labour are only relevant to the devolved administrations in terms of victim support and protection. In Northern Ireland and Scotland responsibilities extend to policing and justice (ATMG, 2010). A number of recent

reports in Wales and Scotland focus on trafficking for sexual exploitation, but also provide some evidence of other types of forced labour among children and in the catering industry, cannabis production and domestic settings (Lebov, 2009; ATMG, 2010; ECPAT, 2010). Additionally, a recent study on forced labour in Northern Ireland identified problems of forced labour among migrants working in the fishing, mushroom and catering industries and also among Filipino and Romanian Roma migrants (Allamby *et al.*, 2011).

Forced labour in EU and international law

The UK is a signatory to the ILO Labour Convention No. 29 of 1930 on forced labour. Article 4 of the European Convention on Human Rights prohibits slavery, servitude and forced or compulsory labour and Article 3 which prohibits torture and inhuman or degrading treatment or punishment, may also be relevant in situations of forced labour. However, the UK has not ratified some elements of European and International law relevant to tackling forced labour. It has opted out of Directive (2009/52) which focuses on employer sanctions and could allow illegally staying third-country national migrants to recoup unpaid wages (currently employment contracts of migrants who are semi- or non-compliant are not enforceable (UWT, 2007), and Directive 2004/81 which grants residence permits for victims of trafficking (The AIRE Centre, interview).

Similarly, the UK has not ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) on equality of opportunity and treatment, and respecting the rights of migrants. These conventions would be significant in providing a framework for protecting the rights of all migrants, whether irregular or regular (Anderson and Rogaly, 2005). The UK has ratified the European Convention on Action against Trafficking in Human Beings 2005 and established a National Referral Mechanism (NRM) for identifying victims of trafficking as part of the implementation of the Convention. However, it has recently been suggested that the UK is not compliant with obligations of the convention (ATMG, 2010) and that the NRM is not operating to protect victims of trafficking (Lalani, 2011).

Table 1 illustrates some of the legislative apparatus that are particularly relevant to efforts to reduce the existence and extent of forced labour. The table is not intended to be exhaustive under each sub-heading, but rather illustrative of notable legislation in the UK and the EU.

Table 1. Overview of UK and EU legislation relevant to forced labour among migrant groups

| Instrument | Detail | Notes |
|--|--|--|
| HUMAN RIGHTS | | |
| European Convention on Human Rights (ECHR) | Article 4, Prohibition of slavery and forced labour Article 3, Prohibition of torture | Brought into domestic law in the Human Rights Act 1998. |
| IMMIGRATION | | |
| Nationality, Immigration and Asylum Act 2002 | Trafficking for prostitution made illegal | First legislation to make trafficking an offence. |
| Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 | Section 4, Trafficking people for exploitation | Covers all forced labour, not just prostitution. |
| European Convention on Action against Trafficking in Human Beings 2005 | Legal protection and minimum standards of care for victims of trafficking | Ratified by the UK December 2008, and measures put in place in 2009 (including the National Referral Mechanism (NRM) identification procedure to identify victims of trafficking). |
| Immigration, Asylum and Nationality Act 2006 | Civil penalty for employers who employ illegal migrants | Penalty is 2 years' imprisonment and a fine (up to £10,000 per worker). |
| EMPLOYMENT | | |
| Gangmasters (Licensing) Act 2004 | Legislated for establishment of the Gangmasters Licensing Authority | To address exploitation in work where gangmasters are used. Covers five sectors: agriculture, forestry, horticulture, shellfish gathering, and food processing and packaging. |
| CRIMINAL | | |
| Sexual Offences Act 2003 | Trafficking for all forms of sexual | Replaced offence of trafficking for prostitution in Nationality, |

| | | |
|--------------------------------|--|---------------------------------|
| | exploitation (not just prostitution) made illegal | Immigration and Asylum Act 2002 |
| Coroner's and Justice Act 2009 | Section 71, Slavery, servitude and forced or compulsory labour | Implemented 6 April 2010. |

Sources: Skrivankova, 2006: www.airecentre.org: www.antislavery.org: www.cps.gov.uk: www.gla.gov.uk: www.liberty-human-rights.org.uk: UKBA, 2010

Conclusions

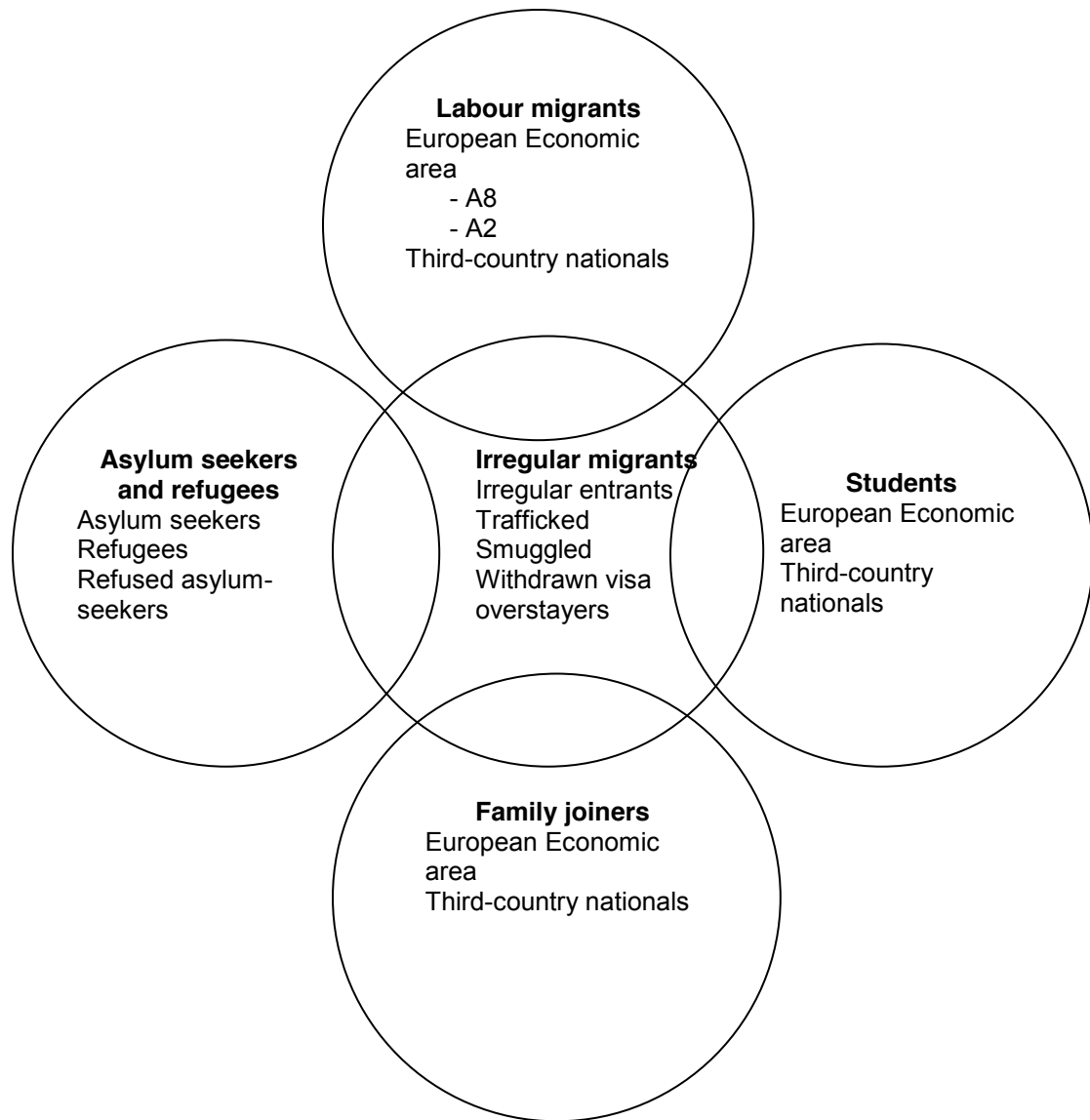
Table 1 sets out the main legal instruments designed to combat forced labour in the UK. A concern regarding forced labour is that it is a relatively new development within UK and EU policy which emerged initially to counter trafficking in relation to sexual exploitation. The wider remit of more recent legislation is a noteworthy development that signals an emerging awareness that contemporary forced labour occurs within wider sectors of the paid labour market. While legislation to prosecute those involved in trafficking and/or employing people under forced-labour conditions is to be welcomed, the role of restrictive immigration policy in helping to create an environment in which migrant groups are particularly susceptible to forced labour must be acknowledged.

Immigration policy, socio-legal status and the 'hierarchy of vulnerability'

This section discusses immigration policy and its impact on defining diverse rights to residence, work and welfare of different groups of migrants in the UK. For the purposes of this discussion we identify five broad categories of migrants: asylum seekers and refugees; labour migrants; irregular migrants; students; and family joiners. Within the five broad categories, certain sub-groups are identified that reflect the complex institutional and legal frameworks relevant to different migrants.

The overlapping sectors of the circles within Figure 1 indicate that changes in socio-legal status may occur over time, with migrants whose status changes often at particular risk of becoming irregular. Movement within, or between, each of the five categories and the noted sub-groups can also be triggered by changes in policy, process and/or personal circumstances. It would be wrong, however, to characterise the situation as one where migrants' individual agency and fluidity is able to prevail above and beyond the structured exclusion that has long been a feature of much UK immigration and asylum policy (Craig, 2007).

Figure 1. Categories and sub-groups of migrants



Mapping the socio-legal rights of different migrant groups

Table 2 offers a simplified summary of the key rights and entitlements of different migrant groups by socio-legal status. Table 5 (see Appendix 1) builds on this and outlines in more detail the various rights to residence, work and welfare that are available to different groups of migrants resident in the UK. The rules and regulations governing such rights are extremely complicated and open to interpretation and challenge in various courts and appropriate tribunals (Fitzpatrick *et al.*, 2011). It should not be read as a definitive statement of all the regulations that may apply in individual cases. Rather, the purpose is to map the

various rights that may, or may not, ensue for migrants who fit within the range of socio-legal categories highlighted. In many ways it serves to illustrate the ways that UK immigration policy limits the options and opportunities available to migrants depending upon their particular status. Immigration policy therefore plays a key role in increasing the vulnerability of migrants to forced labour when their basic rights are compromised or nonexistent. Much recent UK immigration and asylum legislation has consolidated a long established link between immigration status and the rights of migrants (Bloch, 2000; Cohen, 2002; Dwyer, 2010). This results in a situation whereby different sub-groups of migrant experience widely divergent rights, depending on their specific socio-legal status.

Table 2. Summary of socio-legal migrant groups and entitlements

| Right to work | No right to work (or highly limited) | | Right to work if registered | Right to work tied to employer or employment sector | Right to work | |
|--------------------------|--|-----------------------------|---|---|---|---|
| Welfare rights | Limited welfare | No recourse to public funds | If 12 months authorised work completed | No recourse to public funds | No recourse to public funds | Access benefits on the same basis as UK citizens |
| Socio-legal group | Asylum seeker (limited welfare and can apply to work if initial claim takes longer than 12 months) Refused asylum seeker (basic 'Section 4' support only if taking steps to leave UK) | Irregular migrant | A8 – if registered with WRS (until 30 April 2011). A2 if authorised, only in agriculture or food manufacturing unless self-employed. | Third-country national labour migrants (only in area specified on visa) | Third-country national family joiners Third-country national dependent Third-country national student (may work only up to 20 hours a week) | Refugee EEA national EEA family joiner EEA dependent EEA national student |

Under the broad category of asylum seekers and refugees, four distinct sub-groups can be identified, each enjoying a differing matrix of basic rights (see Table 5). Over two decades, successive Parliamentary Acts have systematically separated asylum seekers from mainstream welfare provisions and removed the right to work while their asylum claim is assessed. Policies which, at best, provide limited and highly conditional support for some, while simultaneously promoting the destitution of others – for example refused asylum seekers – have been influential in propelling increasing numbers into the shadow economy (Düvell and Jordan, 2002; Lewis, 2007) and possibly forced labour as they try to meet their basic needs (Dwyer and Brown, 2008; Burnett and Whyte, 2010).

Within the category of labour migrants, an initial key distinction needs to be made between those migrants who are nationals of the European Economic Area (EEA) and Third-Country Nationals (TCNs). The former group are able to reside, take up work and access welfare provisions on broadly the same terms as UK citizens, due to their EEA status (though A8 and A2 nationals have been subject to transitional arrangements limiting access to welfare, described below). In contrast, the opportunities available to TCNs (from countries beyond Europe) to come and settle and work in the UK are tightly controlled. Since 2008 TCNs have been subject to the tiered Points-Based System (PBS) with only very wealthy entrepreneurs or highly skilled migrants who fill specified gaps in the labour market likely to be granted entry visas. One notable exception is the Overseas Domestic Worker visa system under which migrant employers can apply to bring domestic staff with them to the UK to work for a limited period (Lalani, 2011). Under the Border, Citizenship and Immigration Act (2009), which critics have argued is more exclusive than the preceding immigration and citizenship legislation it replaced (JCWI, 2009), TCN labour migrants have no rights to access social assistance benefits or local authority housing. Thus, access to full welfare rights and permanent settlement is conditional on individuals proving economic self-sufficiency over a number of years. In April 2011 the Coalition Government introduced a cap on the number of TCN workers allowed into the UK. This will be reviewed annually and the Prime Minister has indicated a desire to reduce net inward migration to the UK from outside the EEA to 'tens of thousands' in future years (Cameron, 2011).

When considering the rights and entitlements of labour migrants, the transitional rules introduced following the expansion of the European Union (EU) mean it is necessary to move beyond the basic distinction between EEA and TCN migrant workers noted above. Under transitional rules the pre-existing EU 15 Member States are allowed to dictate the conditions under which A8 and A2 migrants access employment within their territories for up to seven years (Currie, 2008). The subsequent implementation by the UK Government of the Worker Registration Scheme (WRS) for A8 nationals and the Accession Worker Card (AWC) for A2 nationals compromised accession state nationals' rights to access public welfare in the UK. Following the economic downturn, rising levels of unemployment and a lack of eligibility to access social support have combined to

leave many A8/A2 migrants homeless and destitute (Homeless Link, 2006) and potentially susceptible to forced labour practices (Bowpitt *et al.*, 2010). It is hoped that the ending of transitional arrangements for A8 nationals on 30 April 2011 will improve access to basic welfare provision, though this remains to be seen.

Mirroring the situation faced by labour migrants, students of EEA origin and family members of EEA nationals are in a relatively privileged position compared to their TCN counterparts. TCNs routinely have no recourse to public welfare and must demonstrate that they have the funds to fully support themselves and any associated dependents before being granted entry. Importantly, TCNs joining family members who are financially dependent on the sponsorship of another family member and whose rights to reside in the UK derive from their relationship to a legally resident migrant (for example spouses, ascendant and descendant relatives), may be more vulnerable to forced labour within the domestic setting or if their family circumstances change.

Sometimes referred to as 'undocumented', irregular migrants can be broadly defined as people who enter or remain in a country without legal permission from the state (Valentine, 2010). Some enter the UK via smuggling or trafficking routes, with women who enter by such routes identified as particularly susceptible to forced labour in the sex industry or in domestic households (Taylor, 2009). Irregular entry is only one aspect for consideration as the majority of irregular migrants enter a state's territory legally and fall into irregularity after overstaying or having their visa withdrawn by the authorities (Migration Work and MRN, 2009). With few legal rights to residence, work or welfare, irregular migrants are likely to be the group most vulnerable to forced labour. Due to a lack of rights, many irregular migrants routinely find themselves working under highly exploitative conditions in the informal economy in order to meet their basic needs (CLANDESTINO, 2009; Finch and Cherti, 2011). Different sub-groups of irregular migrants are defined in Table 5. It should be noted, however, that all these sub-groups routinely lack basic rights.

Sizing the UK migrant population

As migrants are considered vulnerable to forced labour, it is useful to consider the size of the UK migrant population. Any attempt to accurately gauge the size of the migrant population is, however, hampered because there is currently no single system in place to measure the movement of people into or out of the UK. Available figures on the numbers of resident asylum seekers are often considered more accurate than most, due in part to the heavy surveillance of this group, but a number of caveats remain (ICAR, 2009). Since 2000, applications for asylum in the UK have decreased almost every year from a peak of 84,130 in 2002 to 25,930 in 2008. Combined annual Home Office figures show a total of 393,905 asylum applicants in the period 2001–2008 (ICAR, 2009). Sizing the numbers who remain in the UK following an asylum claim is also challenging, but cumulative figures indicate 52,970² were granted refugee status and 75,685 were

granted exceptional or discretionary leave to remain or humanitarian protection status in the same period (ICAR, 2009). There are no concrete figures on the number of refused asylum applicants that remain in the country following an unsuccessful claim. Home Office statistics for December 2009 record 11,655 refused asylum seekers receiving Section 4 support, double the number recorded in 2005 (Home Office, 2010). It has recently been stated by the Home Affairs Select Committee that 403,500 of 450,000 asylum claims (made before March 2007) have been concluded (Home Affairs Committee, 2011). It is not known how many individuals whose cases have been refused since 2007 remain in the UK (as refused asylum seekers) with no recourse to public funds or right to work, though their number appears to be increasing as the rate of refusal is higher than removals from the UK.

Blinder (2011b) provides summary data on non-EEA (third-country national) labour migration developed from number of sources. International Passenger Survey (IPS) estimates indicate that non-EEA labour migration rose from 19,000 in 1991 to a peak of 114,000 in 2004, before declining to 54,000 by 2009. A parallel decline is also apparent in data for work-related entry visas, which fell from 193,855 in 2005 to 113,920 in 2010 (Blinder, 2011b)³. Non-EEA migrants include overseas domestic workers, a group considered particularly at risk of exploitation and forced labour (Clark and Kumarappan, 2011; Lalani, 2011). Numbers of domestic workers applying to work in a private household have remained steady from 2003 to 2009; visas issued to overseas domestic workers ranged between 12,500 in 2006 and 10,100 in 2009 (UKBA, 2011).

Figures on non-UK nationals registering for National Insurance numbers show that – from 2004 to 2010 – 600,710 migrants from EU countries (excluding accession countries) registered for work, while in the same period 1,483,270 EU accession nationals registered for work (DWP, 2010). In 2008, the IPPR estimated that in excess of 1 million accession 8 workers had entered the UK, following the enlargement of the EU in 2004, but that around half had already left for new locations (IPPR, 2008). More limited numbers have come to the UK for work since Bulgaria and Romania joined the EU in 2007. Nonetheless, data shows that 2,250 Accession Worker Card (issued to A2 workers), 19,295 Registration Certificates (for A2 who are self-employed, students or self-sufficient) and 17,150 Seasonal Agricultural Workers Scheme (SAWS) permits were issued to A2 nationals in 2010 (Home Office, 2010). It should be noted that worker registration figures are an inaccurate measure of the resident population as they do not include accompanying family members, workers who fail to register or those who registered but have since left the UK.

Figures for family joiners entering the UK (which include child and adult dependants and spouses), are difficult to ascertain, however, visas issued to dependents provide a useful starting point. Home Office (2010) figures indicate that of the overall number of visas issued in 2009 (1,954,770) 14 per cent were issued to dependents (278,235). Grants of settlement figures, for persons subject

to immigration control who are allowed to remain in the UK indefinitely, are also useful. The settlement figures comprise persons granted settlement on arrival at ports, and persons initially admitted to the country subject to a time limit that is subsequently removed on application to the Home Office. It is difficult to compare data across time periods due to significant changes in immigration rules, but family formation and reunion grants of settlement⁴ rose by 31 per cent from 55,350 in 2008 to 72,240 in 2009 (Home Office, 2010). Between 2008 and 2009, grants of settlement to all spouses and dependants increased by 29 per cent from 102,785 to 132,985; accounting for 68 per cent of all settlement. This includes grants on the basis of family formation and reunion as well as grants to dependants of persons granted settlement at the same time as a primary migrant; for example, employment and asylum-related dependants.

Two data sets offer insights into the size of the international student population in the UK. First, Higher Education Statistics Agency (HESA) data shows that the total number of overseas students (including other EU) in UK Higher Education Institutions has risen year-on-year from 230,870 in 2000/01 to 405,805 in 2009/10. Second, the Home Office (2010) data shows that around 269,880 non-EU nationals were admitted to the UK in 2009 to study; an increase of 19 per cent on the previous year. Persons admitted under student visitor rules accounted for around 197,725 additional arrivals. When added together, these figures show a 25 per cent rise in the total number of non-EU nationals entering the UK to study. Since 2004 the total number of persons (including their dependants) admitted to the UK to study has increased by almost 60 per cent from 306,625 to 488,735 in 2009. The Government's proposed cap on TCN student numbers is likely to reduce this trend in the near future (Blinder, 2011a).

Due to the often-undocumented status of irregular migrants, accurate approximations on numbers are extremely hard to achieve. Gordon *et al.*, (2009) estimate a population of between 417,000–863,000 irregular residents – irregular migrants and their children – living in the UK in 2007. The most recent and extensive report on irregular migration also cites Gordon *et al.*'s central estimate of 618,000 as the most authoritative figure and suggests that irregular migrants make up around 1.1% of the UK population (Finch and Cherti, 2011). This discussion indicates the complexity of ascertaining the numbers of migrants resident in the UK at any one time. Nonetheless, some migrants within the five broad categories discussed here (asylum seekers and refugees, labour migrants, irregular migrants, students, and family joiners) are considered susceptible to forced labour in particular sets of circumstances.

Conclusions

The use of 'stratified rights' (Morris, 2002) has long been an integral part of the UK Government's attempt to 'manage migration' and a similar conclusion can be drawn in respect of EU policy. Some progress has been made since Tampere (1999) when the European Council declared its intention to develop a common

EU-wide asylum and migration policy and improve the rights of legally resident TCNs. Nonetheless, the full benefits of EU citizenship are effectively reserved for mobile EEA workers and it continues to deliver little of substance to TCN migrants whose limited rights largely remain subject to national law or bilateral agreements between nation states (Schuster and Solomos, 2002). Across the EU, stricter national migration regimes have closed legal rights to entry for work purposes for most poor or vulnerable people. In many cases, their only option is clandestine entry and work in the shadow economy which considerably enhances exposure to exploitative labour practices and further increases vulnerability to forced labour conditions (van den Anker, 2009). Simultaneously, the EU has primarily focused on enhancing external measures – for example, border controls, co-operation with non-EU nations, and sanctions on carriers – in order to stem the flow of irregular migrants from outside Europe (CLANDESTINO, 2009).

The emergence of EU law and policy has altered the institutional framework in which Member States operate. Aside from transitional arrangements for new accession countries, as a full member of the EU there is little that the UK Government can do to restrict the rights of EEA nationals who relocate to the UK. Nonetheless, individual states, such as the UK, are keen to keep as tight a grip on migration policy as possible (Dwyer, 2005). This is evidenced by the exclusive asylum policies of successive UK Governments, the restrictive transitional arrangements introduced by New Labour in response to the expansion of the EU and ongoing attempts by the Coalition Government to curtail the entry of TCNs.

Significant numbers of migrants have entered the UK by the routes discussed. UK national and supra-national EU policy combine to promote and structure a complex 'hierarchy of vulnerability' (Gubbay, 1999) in respect of the basic rights of international migrants in the UK. A central argument of this paper is that when policy operates to curtail or remove such rights it renders migrants susceptible to forced labour. Part three considers this argument more fully and explores the relative importance of socio-legal status alongside other factors which may place migrants in particular at risk of forced labour.

How much does status matter?

Vulnerability to forced labour is not restricted to migrants. Equally, not all migrants are susceptible to forced labour. The initial aim here is to explore why certain migrants appear to be vulnerable to forced-labour practices and to consider the particular role that immigration status may or may not play in enhancing their vulnerability. Having considered this specific issue, discussions move on to consider other aspects of the migration process that may render certain migrant groups at risk of extreme labour exploitation once they enter the UK.

Any understanding of vulnerability to forced labour among migrants resident in the UK needs to be linked to a broader discussion of the interplay between international migration and global inequality (Castles, 2003). The role of conditions that migrants experience before, during the process of, and after migration - 'global points of vulnerability' (Hynes, 2010) - are explored. This section presents new qualitative data generated from interviews with 18 key informants in agencies and organisations concerned with migration policy, combating forced labour or promoting the welfare of migrants⁶. The constrained choices associated with the compromised rights of different immigration statuses may contribute to rendering some migrants more vulnerable to exploitation and forced labour. Additionally, immigration status may itself be used by employers/exploiters as a tool of coercion.

The role of socio-legal status in the susceptibility of migrants to forced labour

In line with existing literature (Anderson and Rogaly, 2005; Skrivankova, 2006; Gordolan and Lalani, 2009; van den Anker, 2009) there was a general recognition among the key informants that socio-legal status played an important role in rendering certain migrants vulnerable to forced labour. Where migrants lack any legal rights to residence, work and/or welfare due to their particular status, highly exploitative work may be one of the few options open to them if they are to meet their basic needs. Irregular migrants and refused asylum seekers were, therefore, identified as particularly susceptible to forced labour:

People's immigration status can often leave them more vulnerable to forced labour. For example, people who are refused asylum seekers or are overstayers or someone without documents, because they have that kind of threat, they are not allowed to work legally and people can assert pressure on them by saying 'I'm going to tell the authorities, I'm going to tell them to remove you'.

KI17, Praxis

Socio-legal status may be particularly relevant for understanding the tools of coercion used by unscrupulous employers to impose conditions of forced labour. Immigration status may operate to reduce the bargaining power for the worker to negotiate terms and conditions of employment or to escape an exploitative working environment (Allamby *et al.*, 2011). In this way, immigration status in itself can be a key feature of the menace of penalty. Key informants identified the following groups as vulnerable to forced labour.

Table 3. Migrant groups identified by key informants as particularly susceptible to forced labour

| Group | Susceptibility issues |
|-------------------------------------|--|
| Trafficked persons | Brought into the UK for forced labour. May or may not have regular immigration status. |
| Migrant/diplomatic domestic workers | Visa tied to employer, isolation in domestic homes. |
| Irregular migrants | No right to work or recourse to public funds, no permission to remain, at risk of deportation if found. |
| Refused asylum seekers | No right to work or recourse to public funds, no permission to remain, at risk of deportation if found. May have experienced many years exclusion from the labour market as asylum seekers with no right to work. |
| Spouse visa holders | Visa tied to partner during two-year probationary period with no recourse to public funds. |
| A2, A2 self-employed and Roma | Freedom of movement and right to reside but with highly limited access to the labour market and compromised welfare rights. May breach rules by changing employment, or risk exploitation if registered self-employed. |
| A8 | WRS (ended 30 April 2011) created a sense of illegality for those who did not register or did not complete 12 months' continuous employment; those not completing WRS did not have access to welfare. |
| Students | Work restricted to 20 hours a week, so can easily breach rules; employers may put pressure on part-time employees to work more hours. |

The impact of socio-legal status reaches beyond migrants whose status is irregular. A number of the diverse groups identified by key informants in Table 3 have rights to residence, at least initially. While European accession state nationals may be thought to have a relatively strong position in relation to other groups of migrants, the restrictions placed on their access to the labour market leave some workers vulnerable to forced labour.

Issues for European accession state nationals

The vulnerability of accession state nationals (who as EU citizens enjoy initial rights to entry and residence for work purposes) comes about because of the seven year transitional rules which allowed the UK and other established Member States to set the conditions under which A8/A2 nationals accessed the labour market; rules which in turn restrict and undermined their access to welfare entitlements. As KI10 (ILO) noted, A8 and A2 migrants 'have de facto status' but this has not protected some from becoming vulnerable to forced labour. Furthermore, those accession state nationals who lack economic and social capital in their countries of origin may be particularly susceptible to exploitation at the hands of unscrupulous employers in the UK. For example, Roma migrants are considered vulnerable to trafficking and forced labour due to lack of documentation, social exclusion and high levels of unemployment in their countries of origin (ODIHR, 2006). Further, both the Worker Registration Scheme (WRS) and Accession Worker Card (AWC) in the UK create situations whereby those who are not registered, do not complete a 12-month registration period, switch employers or become unemployed cannot access welfare, creating a sense of having breached regulations:

It is not an offence to be an unregistered worker – but in our experience all the worker understands is 'I'm an illegal worker' ... Some people have been here a very long time and still haven't figured things out for themselves.

KI3, The AIRE Centre

Some A8 and A2 migrants who took up work in the lower echelons of the labour market, sometimes in the hidden economy, have subsequently become unemployed in the economic recession. A8 migrants unable to return home who are left without work or rights to welfare may face a choice between destitution or work in conditions conducive to forced labour (Bowpitt *et al.*, 2010). A2 nationals who have limited access to the labour market (in agriculture or food processing) are vulnerable to working 'illegally' without authorisation if they do not complete the 12-month registered work period or if they switch employers (UKBA, 2008). Just as 'visas linked to specific employers are key to creating a conducive environment for forced labour' (KI9 ILO) among TCNs, rules that make rights to welfare for unemployed accession country nationals conditional on special work registration requirements and a specified period of continuous work or type of employment are likely to have a similar effect.

Other aspects of UK policy also enhance unscrupulous employers' opportunities to engage in exploitative labour practices with A8/A2 migrants. For example, the WRS required migrants to hand over their documents to employers for registration. Restricted access to only two sectors of employment for A2 nationals has encouraged many to enter as self-employed without the protection of many employment rights, even if they are actually reliant on a single employer. The transitional arrangements established for accession country

nationals are so complex that migrants who have legal rights to work in the UK are often confused about what rights they actually have (van den Anker, 2009).

Complexity of socio-legal status and knowledge of rights

The complex array of differing rights that accrue to migrants depending on their socio-legal status is also important in establishing an environment of confusion and fear that helps to sustain forced labour:

If you are dealing with people who are not from this country, perhaps don't speak English, or not as a first language, what understanding do they have of their employment rights, and indeed of our migration system?

K12, TUC

This can create an environment that works to the advantage of those who wish to exploit migrants for financial gain. It serves to strengthen the power of unprincipled or criminal actors who facilitate entry, by legal or illegal means, and who then establish a climate of fear through intimidation and the threat or use of violence. Additionally, they are willing to exploit the limited knowledge of others (who are often co-nationals), to establish conditions that are conducive to forced labour:

[Socio-legal status] strengthens the role of [everyone] from unscrupulous labour agents to smugglers and traffickers and so on who take control over the whole employment situation and direct the vulnerable worker from one place to another without them having any control over their personal circumstances.

K18, Migrants' Rights Network

Several examples were cited by key informants to support this assertion. One situation involved an EU national who had been deceived about a catering job in Scotland. Having paid a fee to an 'agency' he received no wages, was kept in overcrowded accommodation and coerced into delivering and collecting bags of clothing for a sham charity run by a criminal gang of his fellow nationals (K113, human rights organisation). A migrant support officer (K11) also recounted the story of an A8 woman working in southern England and living in 'grim conditions' with 14 other people in a house provided by the employment agent who had recruited her. She invited environmental health officers to inspect the property. The landlord evicted her 'on the spot' and she subsequently received intimidating text messages, but refused to go to the police.

Lack of information and knowledge of rights and entitlements, and social isolation from the wider host society, seriously weaken the ability of migrant workers to challenge exploitative situations and can result in multiple dependence on an employer. As Anderson and Rogaly (2005: p43) note, 'the majority of migrant workers may be heavily dependent on personal networks, employers, agencies

and other third parties, not just for employment, but for food and shelter, access to health care, information about their rights and so on'. This reliance on a gangmaster or employer helps to establish an environment that creates the conditions conducive to forced labour as migrants may be reluctant to challenge or leave a job that would risk them becoming not only unemployed, but also homeless (Allamby *et al.*, 2011).

Forced labour in domestic settings

Forced labour in domestic settings includes diverse circumstances of migrant domestic workers, spouses and other dependents within families who may be either EEA or non-EEA migrants with a range of immigration statuses. Immigration regulations and socio-legal status also impact on the vulnerability of many migrants, particularly women who enter the UK to either live or work within domestic homes. The 'dissonance of power' that occurs when entry visas are tied to an employer (Skrivankova, 2010: p25) is particularly acute for migrant domestic workers who enter to work with a specified family in a private house. As one key informant highlights:

Vulnerability – a domestic worker is always going to be high up there because, well, some are literally locked away. They're in domestic houses, so there's no right of inspection. They are literally on their own... Current legislation gives them little protection.

KI2, TUC

Recent studies on migrant domestic workers by Kalayaan (Lalani, 2011) and the Working Lives Research Institute (Clark and Kumarappan, 2011) highlight how socio-legal status and the invisibility of this group combine to increase the possibility of forced labour. The policy context for these particular workers is that campaigning from Kalayaan and others was successful in 1998 when the government introduced the overseas domestic worker visa in recognition of abuse and exploitation of migrant workers entering the UK with their employers. This provision allowed migrant domestic workers the protection of UK employment law and enabled them to change employer as long as they continue to work in a private household (this provision has never included domestic workers in diplomatic households who are therefore often considered extremely vulnerable to forced labour). In June 2011, however, the Coalition Government proposed to abolish the overseas domestic worker visa and replace it with a six-month visa with no employment rights and no right to change employers. Kalayaan and others feel this retrograde step, if passed, will greatly increase the risk of exploitation and likelihood of trafficking (see Kalayaan's briefing on the proposals at <http://www.kalayaan.org.uk/documents/domestic%20worker%20visa%20brief%20July%202011.pdf>).

Additionally, women who enter the UK as family joiners may be at risk of domestic servitude:

We are picking up particular vulnerabilities for mainly women and girls – from certain communities and certain countries of the world – experiencing what we would classify as domestic servitude in their home country and then that is being imported across to the UK.

KI13 Human rights organisation

TCN spouse visa holders and other family joiners routinely have no access to public funds or housing and are dependent upon a family sponsor to meet their welfare needs. Spouses must complete a probationary two-year period before being eligible for leave to remain in the UK, during which time their status is tied to that of their partner. Cases of forced labour can include domestic servitude where insecure immigration status may be a key tool of coercion. A key informant (KI5) working to support migrant women who have suffered domestic abuse reported that their clients are predominately South Asian women, some of whom experience domestic servitude as part of ongoing domestic violence. They may be sent out to work and have their wages retained by their husband or family and tend to have no access to, or no control over, money. They are often isolated or even locked away, and if they go out, may be accompanied by family members so have few chances to meet others. As this key informant stated:

The abuse is linked to immigration issues because the abuser has complete control over them, because they can always say – ‘if you don’t do this we’re going to send you back. If you don’t do all the housework or give us all the money, we’ll send you back’.

KI5, Sojourner Project

The circumstances described above and the combination of coercion and the denial of freedom that occur may amount to forced labour, and once again a lack of rights linked to a particular socio-legal status are key to promoting this vulnerability.

Migration and ‘points of vulnerability’ to forced labour

Alongside the specific impact of socio-legal status once in the UK, it is necessary to consider other factors that may render migrants vulnerable to forced labour. Hynes (2010) has outlined multiple, clustering points of vulnerability in processes of trafficking of children and young people that are also relevant to understanding the connections between immigration and forced labour more broadly. Forced labour can be understood to occur as a result of a number of overlapping influences which include global inequalities, the circumstances of migrants before migration, their means of entry, restrictive immigration regimes, the environment of deterrence, mistrust and disbelief of migrants and the impact of neo-liberalism on labour markets in destination countries (Anderson and Rogaly, 2005;

Andrees, 2008; McKay *et al.*, 2009; Migration Work and MRN, 2009; Waite, 2009; Burnett and Whyte, 2010; Wills *et al.*, 2010).

Table 4 lists points of vulnerability identified by those we interviewed as contributing to certain migrants' susceptibility to forced labour.

Table 4. Points of vulnerability prior to and after migration

| Prior to arrival | After arrival |
|---|--|
| Poverty and debt Pressures to support family Low expectations of treatment at work Lack of or low levels of education Low social position Mode of recruitment into employment Mode of entry | Socio-legal status Lack of knowledge of rights Lack of access to information Isolation from society Multiple dependence on employer Loss of, or change in, employment Debt accrued in migration Pressures to remit 'Loss of face' in country of origin |

Points of vulnerability prior to arrival

Wider processes of migration can make some migrants particularly vulnerable to forced labour, compounding the role of socio-legal status. For instance, migrants may be vulnerable as a result of their weak social position in their country of origin. Added to this, increasingly strong immigration restrictions encourage risky migration strategies – individuals may consider routes or methods of migration they otherwise would not take. Dependency on and trust in family, friends and associates can lead to trafficking or exploitation on arrival. However, direct recruitment, where control over migration routes combines with subsequent exploitation, can occur in both informal and formal channels (Anderson and Rogaly, 2005). As one key informant highlights: 'you have to look at what happens before people enter ... how these people were recruited, independently of whether they then arrived legally or illegally' (KI10, ILO).

Poverty and debt in the country of origin often trigger migration: 'they really come from the poorest backgrounds you can imagine. So there is really a link between poverty and forced labour' KI10 (ILO). Once in the country of destination, the need to remit to support family left behind creates an imperative to work and earn money continuously, and also to avoid loss of work or removal from the UK if discovered breaching immigration conditions:

When they do have the opportunity to exit from contracts of employment or forced labour situations, they are not able to do so because of

uncertainties about their circumstances – the sheer need to have some sort of employment, to have some sort of an income keeps them there.

KI8, Migrants' Rights Network

These pressures are an important element in recognising that people often 'freely' take up work only to subsequently discover that they were deceived about the conditions and nature of the work and are not free to leave without repercussions (Skrivankova, 2010).

The restriction of earnings through poor treatment can also perpetuate a cycle of entrapment after arrival. Debts accrued by migrants owed to agents for arranging travel, entry, access to work or accommodation may further compound their poverty and increase the hold an employer has over them⁵. Low expectations of treatment at work formed in the country of origin may mean that migrant workers will 'put up with' what are effectively forced labour conditions under UK labour standards:

Most people from the EU come because they wish to make money and then go home and do something with it. If you don't treat them properly they can't go home – partly because they have not made the money they hoped and partly because they don't want to lose face... People may not realise at all that they are exploited because they are getting so much more money than they would get at home, even after what is being taken from them.

KI6, GLA

Conditions of overcrowding, long hours, poor wages, excessive wage deductions and maltreatment at the hands of the employer may be seen as preferable, and even advantageous, in comparison to labour market conditions in migrants' countries of origin.

Points of vulnerability after arrival

This paper has focused on the ways in which the compromised rights that emerge from the socio-legal status of different migrants enhance the vulnerability of migrants to exploitative employment or forced labour practices. It is also been important to note other factors that can contribute to vulnerability to forced labour after arrival: mode of entry, lack of knowledge of rights and entitlements, lack of access to information, social isolation, pressure to remit and debt accrued in migration. These can combine to weaken the position of a worker, providing leverage for the employer and an environment conducive to exploitation. In this way, vulnerability to forced labour may not be solely caused by the lack of rights that occur in relation to socio-legal status. Immigration status is an added vulnerability factor, but having regular status does not necessarily protect against forced labour. Migrants may be particularly disempowered in the workplace when a number of factors intersect; for example:

People who can't speak English very well. Anyone who is vulnerable because of a lack of bargaining power in the workplace. That could be your gender, your race, your language ... [Socio-legal status] can be an added vulnerability factor but just because someone has regular migration status does not mean that they are protected against being a victim of forced labour.

KI7, Human Rights Barrister

Because socio-legal status works to restrict or reduce the rights of certain categories of migrants, a reliance on illegal work, charity or the support of fellow migrants becomes the necessary norm (Bloch and Schuster, 2002; Dwyer and Brown, 2005). While there are many examples of those with little to give offering generous informal support to fellow migrants, as Gibney, (2000: p7) notes, 'the ties of ethnicity and nationality that so often serve to make survival without proper documentation possible can just as quickly turn into fetters that facilitate exploitation'. In such circumstances forced labour may become increasingly likely.

Conclusions

Socio-legal status plays an important role in limiting the options and opportunities available to migrants to meet their basic needs. Being new to the UK and from a different cultural background may also be factors that precipitate entry into forced labour and close down means of exiting from it. In addition, poverty and other imperatives to migrate may render migrants vulnerable to exploitation and more prepared to use 'risky' migration strategies. Migrants are therefore particularly susceptible to forced labour where constrained rights and entitlements in the host country combine with pre-existing vulnerabilities arising from the situation in their country of origin and/or how they enter the UK.

This section has illustrated how socio-legal status can operate to make particular groups of migrants vulnerable to forced labour. It is also important to recognise that a number of other factors create points of vulnerability prior to and post arrival, such that migrants with either irregular or regular immigration status can be susceptible to exploitation in forced labour. Forced labour often arises from the complex interaction of labour law and restrictive migration and welfare policy (van den Anker, 2009). However, a common feature that unites many vulnerable migrants who are susceptible to forced labour is that current immigration policy works to compromise their basic rights to residence, work and welfare to a greater or lesser extent.

Conclusions and recommendations

While recognising that other factors are important in understanding why the majority of those who are in forced labour conditions are migrants, this paper has highlighted the ways in which immigration policy in general, and socio-legal status in particular, render particular migrants susceptible to forced labour. It has set out the varied rights to residence, work and welfare that accrue to different types of migrant (dependent upon their particular immigration status), to show how a stratified system of socio-legal entitlement exists within the general population of migrants resident in the UK. This leads to a situation whereby immigration policy promotes and structures a complex 'hierarchy of vulnerability' (Gubbay, 1999) that limits the options of migrants looking to meet their basic needs. When avenues to legal work or welfare are blocked, there may even be a tendency among migrants to perceive a period of work under forced labour conditions as a necessary first step as they look to establish themselves in a new country (van den Anker, 2009).

Much of the available literature and many of the key informants we interviewed recognise the particular susceptibility of irregular migrants to forced labour. This paper has illustrated that it is not just irregular migrants who are at risk of forced labour. Migrants whose basic rights within a host country are conditional on specific rules related to their immigration status may also be especially vulnerable to forced-labour practices. This is regardless of whether they entered via the asylum system, the available work routes or for family reunification or study purposes. Any change in their circumstances may be used as a tool of coercion by exploitative employers.

All forms of constrained socio-legal status linked to immigration (from A2 restrictions on access to the labour market through to irregular TCN migrants trafficked without papers into the UK) render migrants more vulnerable to forced labour. Furthermore, the restrictive and complex workings of the UK immigration system are likely to push migrants into the hands of employment agents, smugglers and traffickers. This can create a situation where migrants, fearful of deportation and with limited understanding of their rights, are coerced or threatened into forced labour. This can be linked to the social isolation of migrants and coercive relationships in shared ethnicity or common nationality groups.

Looking to the future, Iceland, Turkey and the 'Western Balkans' (Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo) are currently negotiating to join the European Union. The registration and authorisation schemes introduced to manage the flow of workers from European countries joining the EU in 2004 and 2007 facilitated an environment conducive to exploitative and, in some cases, forced labour. In this regard, those who took part in our study welcomed the relaxation of the Worker Registration Scheme (WRS) for workers from A8 countries from

May 2011. However, the problems caused by such transitional arrangements look set to be repeated. The Coalition Government has already indicated its intention to put in place similar restrictions to limit labour market access and the welfare entitlements of any future accession state nationals (Cameron, 2011).

In response to recent criticisms about failure of the UKBA to ensure that migrant workers and students whose visas have expired have left the country (PAC, 2011), the Prime Minister has also made it clear that the number of TCNs allowed entry will be reduced in the near future, and reductions in student visa numbers as well as reforms to the system for family joiners are promised. At the same time the Coalition Government has indicated a desire to increase barriers to settlement or citizenship; a move likely to generate irregularity among migrants already in the UK.

Against this backdrop, it is highly likely that the stratified system of rights and entitlements that are a central part of UK immigration policy will remain. The political will to uncouple the link between immigration status and susceptibility to forced labour appears unlikely to materialise in the near future. At present, sanctions are mostly directed at immigrants, not employers. If exploitation is to be successfully challenged, this balance has to shift towards a focus on tackling forced labour and denial of labour rights regardless of the immigration status of the worker.

Tackling migrants' forced labour in the UK: some recommendations

A multi-layered approach to tackling forced labour that combines a focus on labour rights and regulation, criminal justice and human rights is necessary, as widely recognised. Those we interviewed discussed three key tools for tackling the link between immigration status and forced labour:

- Immigration policy solutions, such as temporary immigration status protection for victims escaping forced labour;
- Increased sanctioning of employers;
- Improving migrants' access to information and their ability to exercise rights.

Immigration policy solutions

1. Refocus immigration policy to make it easier for migrants to enter and legally work in the UK.

A more simplified and open approach that allows migrants to enter and work legally in the UK would help to meet employers' demand for labour and reduce the likelihood of certain migrants becoming susceptible to exploitative or forced labour practices. At present much immigration policy focuses on the twin goals of

limiting the numbers of migrants entering the UK and restricting the rights of those that are allowed to enter. The current complicated hierarchy of socio-legal entitlement that governs the rights to work and welfare of different groups of migrants pushes many of them into irregularity if they overstay or breach the terms of their visas.

2. A temporary immigration status or bridging visa should be introduced to protect those with irregular status from deportation to enable them to exit from forced labour.

Trafficking has often been interpreted in a narrow way in the UK. It has been widened to encompass labour exploitation more broadly in other EU countries; there is an indication that the UK government is now starting to recognise the scale of labour exploitation (HM Government, 2011). Individuals pursuing court proceedings can apply for temporary immigration status; however, this is currently not an efficient or simple form of protection for victims of forced labour, especially where a trafficking element is not present or easy to prove. Introducing a bridging visa for victims of forced labour could encourage more migrants to report forced labour cases and would undermine the role of socio-legal status in creating an environment conducive to forced labour, especially given the prominent role of threats relating to immigration status in coercion. For these reasons, a provision offering specific protection for victims of forced labour is required.

3. Reform of the National Referral Mechanism (NRM) for victims of trafficking could potentially offer more protection to victims of forced labour.

This would need to form part of a change in how the NRM is managed, as it currently may deter victims of trafficking from seeking help (ATMG, 2010). The continuing focus on tackling irregular immigration and movement across borders rather than focusing on reducing forced labour undermines the impact of anti-trafficking activities (Flynn, 2007).

Prosecuting and sanctioning employers in relation to immigration policy

4. All migrants, whether regular or irregular, should be enabled to pursue complaints against employers in an employment tribunal.

This would potentially allow migrants in forced-labour situations to pursue complaints for non-payment of wages and other forms of maltreatment. This strengthening of the position of migrants, by removing the 'doctrine of illegality' (Skrivankova, 2010), may encourage more migrants to report forced labour cases and take legal action. This is important not only for achieving justice for workers, but also to raise awareness among employers that they cannot act with impunity, and could therefore have a deterrent effect (Lalani, 2011). Increasing

sanctions could be achieved by the UK opting-in to the EC Directive 2009/52 on sanctions for employers of illegally resident third country nationals and ratifying the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the recent ILO Convention on Domestic Workers (2011). However, attention to employer sanctions must be combined with wider action to avoid encouraging discriminatory practices by employers.

5. Sufficient resources need to be made available to ensure that legal enforcement combines tackling exploitation, civil penalties and wider regulatory action. This must protect all workers' rights, not just certain groups according to immigration (or any other) status.

The new law against slavery, servitude and forced or compulsory labour introduced in Section 71 of the Coroner's and Justice Act 2009 will only become effective with sufficient enforcement, and combined with a broad-based approach to tackling exploitation. Training on forced labour and the new offence for the police and other authorities who may come into contact with potential victims (UKBA, social services, labour regulators, etc.) is critical for making enforcement effective. Existing legislation to protect health and safety and the National Minimum Wage could be more effectively used in a broad-based approach. The civil penalty regime that came into force (under the Immigration, Asylum and Nationality Act 2006), for example, rather than tackling exploitation as claimed by The Home Office, has actually advantaged exploitative employers and further disadvantaged vulnerable migrant workers through employers using the threat of raids/fines as a tool of coercion (e.g. the withholding of back pay)(MRN, 2008). Sanctioning of employers must be coupled with a broader strategy to address migrants' exploitation in the workplace.

Improving migrants' knowledge of rights and entitlements

6. Ensuring migrants have access to information on rights and entitlements from the moment they enter the UK (or even before, through information campaigns in countries of origin) must be coupled with building civil society and advocacy organisations to support migrant rights.

Supporting migrant and refugee community organisations is vital to the process of improving knowledge of rights and entitlements. In addition, the UK Home Office could make use of the visa-issuing process to ensure migrants are informed of their rights before coming to the UK. Such information campaigns would be vital to ensure any policy developments suggested above are effective.

Notes

1. Email correspondence with the Crown Prosecution Service, 16 March 2011.
2. This figure includes reconsidered cases.
3. Blinder (2011a; 2011b) highlights that there are discrepancies between different sources, dependent upon how 'migrant' is defined; for example, IPS data is based on those staying at least a year, while other data sources may include those who are here less than 12 months.
4. Persons granted settlement on the grounds of their relationship to another person already settled or a British citizen.
5. However, it has not been accepted by the ILO that the menace of penalty can be applied to broad economic need (Skrivankova, 2010).
6. 18 key informants working in areas relevant to migration policy, forced labour or the welfare of migrants within the UK took part in telephone interviews between January and March 2011. Interviews lasted approximately one hour and were analysed using Nvivo computer software package. Key informants selected their pseudonyms.

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Appendix 1

Table 5. Rights of Asylum seekers, migrants and students by category

CATEGORY: ASYLUM SEEKERS AND REFUGEES

| SUBGROUP DEFINITION/STATUS | RIGHT TO RESIDENCE | RIGHT TO WORK | WELFARE RIGHTS |
|--|---|---|---|
| Asylum seeker: a person who has applied for asylum and whose application has not yet been decided | Yes, whilst their application is considered and given due process | No (curtailed since July 2002) Can apply to UKBA for permission to work after if they have waited 12 months for an initial decision on their claim and the delay was not their fault | Basic accommodation and public welfare support (set at 70% of the social assistance level) under the UKBA asylum support system Must be destitute and willing to accept no-choice dispersal to a location specified by the UKBA to qualify |
| Humanitarian protection¹: a person whose case does not fit the refugee criteria but who is given permission to enter or remain in the UK because they need protection from harm by others | Yes Granted for 5 years in the first instance | Yes | Access welfare rights on the same basis as UK citizens |
| Discretionary leave: a person given permission to enter or remain in the UK who falls outside the Immigration Rules or whose asylum claim has been refused but who cannot be removed on grounds such as ill health or a potential breach of their human rights. | Yes Granted for up to 3 years in the first instance | Variable | Access welfare rights on the same basis as UK citizens |
| Refugee: a person who has received a positive decision on their asylum claim | Yes Since 2005 all refugees whose status is granted in the UK are given 5 years temporary leave to remain; previously they enjoyed indefinite leave to remain. | Yes | Access welfare rights on the same basis as UK citizens |
| Refused asylum seeker: a person whose asylum claim | No Expected to return to | No | Not generally entitled to support. UKBA support removed within |

| | | | |
|------------------|-------------------------|--|---|
| has been refused | their country of origin | | 21 days of refusal decision Basic shelter and support may be available in limited circumstances (e.g. unable to leave due to illness/disability, no viable route of return) under Section 4, Immigration and Asylum Act 1999 providing the person is taking all reasonable steps to leave the UK |
|------------------|-------------------------|--|---|

CATEGORY: LABOUR MIGRANTS

| SUBGROUP DEFINITION/STATUS | RIGHT TO RESIDENCE | RIGHT TO WORK | WELFARE RIGHTS |
|--|--|--|---|
| European Economic Area (EEA): Nationals: nationals of Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Ireland, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland. | Yes After 3 months ⁱⁱ provided they are a worker, self employed, a self sufficient person, jobseeker or a student (see below) | Yes A work permit is not required | Able to access welfare rights on the same basis as UK citizens |
| Accession 8 (A8) nationalsⁱⁱⁱ: nationals of 8 Member states who joined the EU in 2004 i.e. Czech Republic, Estonia, , Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. | Yes After 3 months provided they are a worker registered under the Workers Registration Scheme or self employed, a self sufficient person No right of residence as a Jobseeker | Yes subject to transitional arrangements Employees required to register with WRS within 1 month of starting work until they have completed 12 months continuous work If you become unemployed and have not completed 12 months registered work you no longer hold worker status (to 30 April 2011) | Once 12 months authorised work has been completed able to access rights on the same basis as UK citizens Those legally working under the WRS scheme are entitled to claim appropriate in work benefits before completion of 12 month period –e.g. Child Benefit, Family Tax Credit, Housing Benefit For others who are not legally working most benefits will be unavailable due to the ‘right to reside’ test. |
| Accession 2 (A2) nationals: nationals from the two members states that joined the EU in 2007 i.e. Bulgaria and Romania | Yes After 3 months provided they are a Worker registered under the Accession Workers | Yes subject to transitional arrangements Employees are required to apply for | Once 12 months’ authorised work has been completed able to access rights on the same basis as UK citizens Those legally working under |

| | | | |
|--|---|--|--|
| | <p>Card (AWC) Scheme, self employed, a self sufficient person, or a student</p> <p>No right to residence as a jobseeker</p> | <p>and hold an Accession Workers Card^{iv} until they have completed 3 months continuous work</p> <p>Employers required to apply for a work permit (to 31 December 2013)</p> <p>If you become unemployed and have not completed 12 months authorised work you no longer hold worker status</p> | <p>the AWC scheme are entitled to claim appropriate in work benefits before completion of 12 month period – e.g. Child Benefit, Family Tax Credit, Housing Benefit</p> <p>For others who are not legally working most benefits will be unavailable due to the 'right to reside' test</p> |
| <p>Third-country nationals: Labour migrants whose country of origin lies outside the EEA states</p> | <p>Those seeking to enter the UK for work purposes must apply for an appropriate visa. Work visa will only be issued if Third country nationals:</p> <p>a) pass assessment under the tiered Point-Based System and fit in to: Tier 1: highly skilled workers Tier 2: skilled workers Tier 5: youth mobility/temporary workers</p> <p>b) are sponsored by an employer (Tier 2 and 5)</p> <p>c) the annual government imposed cap on visa numbers within a tier has not been exceeded</p> | <p>Can only work in the employment specified in their entry visa</p> | <p>No</p> <p>Routinely third-country nationals have to show they and their dependents can be adequately maintained without 'recourse to public funds'</p> |

CATEGORY: IRREGULAR MIGRANTS

| SUB GROUP DEFINITION/ STATUS | RIGHT TO RESIDENCE | RIGHT TO WORK | WELFARE RIGHTS |
|---|--------------------|---------------|--|
| <p>Irregular entrants: those who have entered avoiding border controls or on false documents</p> | No | No | No. All irregular migrants are routinely barred from accessing social security benefits and services |
| <p>Trafficked migrants: involves recruiting and moving a person by</p> | No | No | No |

| | | | |
|---|--------------|----|----|
| force, deception, abuse of power or an individual's vulnerability for exploitative purposes Council of Europe convention on action against trafficking 2005 | | | |
| Smuggled migrants: people who have paid an agent to smuggle them across international borders undetected, an element of choice rather than coercion | No | No | No |
| Overstayers: those who have entered on a valid visa but remain after the period permitted on their visa has expired and have not applied for extended leave to remain. | No No | No | No |
| Withdrawn visa holders: individuals who have had their visa withdrawn following a breach of their visa conditions | No | No | No |

CATEGORIES; STUDENTS AND FAMILY JOINERS

| SUBGROUP DEFINITION/ STATUS | RIGHT TO RESIDENCE | RIGHT TO WORK | WELFARE RIGHTS |
|-----------------------------|---|--|--|
| Students | <p>EEA nationals: Yes Provided they have comprehensive sickness insurance and provide assurance at the start of their studies that they or their families will not become a burden on the social assistance system during their residence</p> <p>Third-country nationals: Yes with an appropriate visa under Tier 4. Those studying for more than 6 months must show they or their official sponsor is covering all their fees and maintenance costs.</p> | <p>Yes</p> <p>Yes for up to 50% of their time. Must spend half their time studying</p> <p>Students at public sector FE colleges are allowed to work for 10 hours per week and students at university for 20 hours per week</p> | <p>Yes</p> <p>No. Must be able to meet the costs of course and accommodation and maintain self and any family members in the UK without 'recourse to public funds'</p> |

| | | | |
|-----------------------|---|--|--|
| Family joiners | EEA nationals who are family members: Yes. | Yes | Yes |
| | Third-country nationals who are dependants of an EEA national: Yes. | Yes | No. Routinely third country nationals have to show they and their dependents can be adequately maintained without 'recourse to public funds' |
| | Third-country nationals who are family dependants of other third country nationals: Yes | Yes | |
| | Third-country nationals who are family dependants of students on courses lasting 12 months or more: Yes | Yes. Provided permission to be in the UK is for 12 months plus and partners course is at degree/ foundation degree level | No |

Notes in table

ⁱ Humanitarian protection and discretionary leave replaced exceptional leave to remain (ELR) from 1 April 2003.

ⁱⁱ All nationals of EEA member states enjoy the right to enter the UK and share an initial right to reside for a 3-month period provided they do not become an unreasonable burden on the social assistance system during this time.

ⁱⁱⁱ The transitional arrangements for A8 nationals cease to apply from 1 May 2011 and for A2 nationals 1 May 2014. From these dates nationals of A8 and A2 Member State will enjoy the same rights as EEA migrants.

^{iv} A number of exemptions apply to the Accession Workers Card requirement e.g. those registered properly with an employer under the Seasonal Agricultural Workers scheme are exempt.