

# **TRAFFICKING FOR FORCED LABOUR AND LABOUR EXPLOITATION IN SWEDEN: Examples from the Restaurant and the Berry Industries<sup>1</sup>**

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## **Summary**

Since the introduction of a new liberal labour immigration policy in 2008, several cases of abuse of migrant workers have tarnished the good international image of the Swedish Model of industrial relations. Using the examples of the restaurant and berry-picking industries, this report investigates practices of trafficking for forced labour and labour exploitation in Sweden. The report examines the migrants' working conditions as well as exploitative practices occurring in the context of the workers' recruitment, including the role of recruitment agencies, middlemen and employers. The data was collected through interviews, fieldwork, and media material and court judgments. Trafficking for forced labour is considered from a broad perspective, not only focusing on the legal definition of trafficking for forced labour but also on milder practices of labour exploitation that constitute the context in which trafficking can occur. The report identifies a number of challenges to the prevention of migrant labour exploitation and proposes recommendations to policymakers, employers and other societal actors. It argues that acknowledging the shortcomings of Sweden's new liberal labour immigration policy does not imply that it should be entirely rejected but rather that there is scope for its improvement.

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# 1. Introduction

The Swedish Model of industrial relations, characterized by a high level of self-regulation and cooperation between trade unions and employers' organisations, is world-renowned for its efficiency and emphasis on the protection of workers' rights. However, cases of exploitation of international migrant workers in Sweden have come to the forefront of both national and international media, tarnishing the positive image of Sweden's labour market. Just as in other advanced economies, the Swedish labour market seems to be increasingly polarized, with the labour migrants occupying the lower segments and working under poorer conditions than the native-born population.

In the wake of the new policy on labour immigration, which was launched in December 2008, an intensified debate has arisen in Sweden around the issue of labour exploitation of low-skilled migrant workers. The policy was introduced in order to increase the amount of labour immigration, which at that time was extremely low in Sweden, and is liberal in nature. First, it includes the right to work in Sweden for both low- and high-skilled workers, and second, it gives the workers the possibility to apply for a permanent residence permit in Sweden when the employment has lasted for four years.

Among the workers who have entered Sweden within the framework of the new policy, the situation of seasonal berry-pickers from Asian and East European countries, in particular, has been emphasized for the exploitative conditions faced by the workers (Wingborg 2011a; 2011b; 2012; Woolfson et al. 2011). Forms of abuse include the non-payment of wages or very low wages, excessive working days and various forms of coercion such as physical force and threats. The restaurant industry, which also employs a high number of low-skilled migrant workers, is characterized by similar working conditions of low wages and long working hours. Despite these trends, the issue of human trafficking for forced labour has received relatively little policy attention. Instead, the debate has been initiated around the policy on labour immigration, and possible ways to improve this.

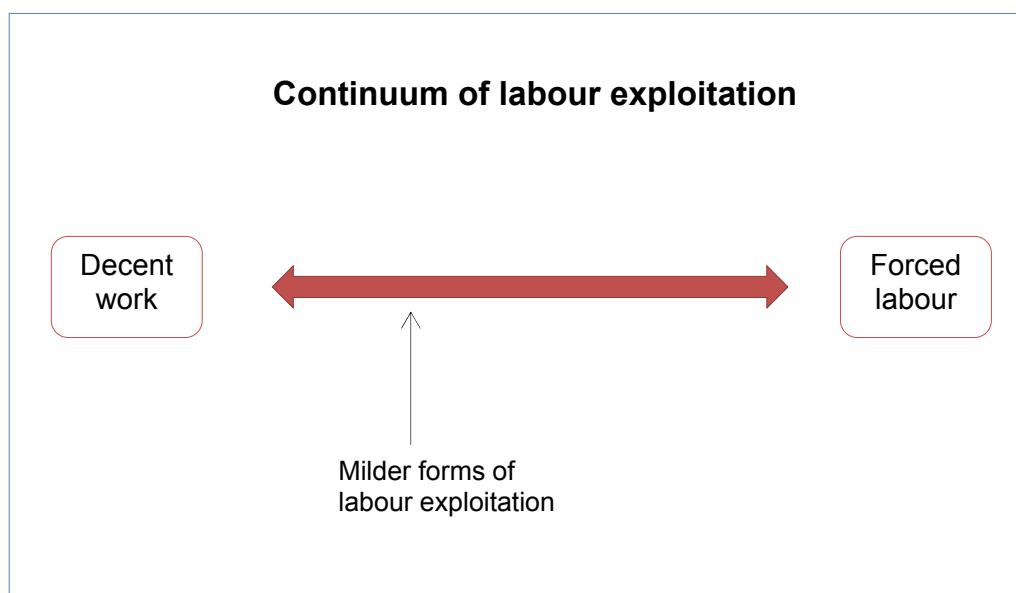
## 1.1 Aim and approach of the report

Increased knowledge about migrant labour exploitation is essential for developing effective prevention mechanisms. Using the cases of the restaurant and berry-picking industries, this study investigates practices of trafficking for forced labour and labour exploitation in Sweden. Particular attention is given to exploitative practices occurring in the context of the workers' recruitment and working conditions, looking at the role of recruitment agencies, middlemen and employers.

Trafficking for forced labour occurs in a broader context of exploitation of labour, often affecting migrant workers. In this report, trafficking for forced labour is considered from a broad perspective. The notion of labour exploitation is conceived as a continuum of situations and acts ranging from

less to more severe forms of exploitation, where forced labour is the most severe form of labour exploitation (Figure 1) (Andrees 2008).

**Figure 1.** Continuum of labour exploitation



Milder forms of exploitation can correspond to poor employment conditions, for instance long working hours or low wages. Based on this broad perspective, the study does not only focus on court cases of trafficking for forced labour but also on the different practices and mechanisms of labour exploitation that increase the risk that migrants find themselves in situations of trafficking. Thus the practices of exploitation discussed in the study do not necessarily constitute human trafficking as defined in the Swedish Penal Code. However, milder forms of exploitation are illustrative of a broader context of exploitation of migrant workers in Sweden, in which trafficking can occur. In addition, milder forms of exploitation can develop into more serious acts leading up to trafficking for forced labour.

Our analysis is inspired by the ILO indicators of trafficking for labour exploitation which are structured around six dimensions (ILO 2009):

- Deceptive recruitment or transportation;
- Coercive recruitment or transportation;
- Recruitment by abuse of vulnerability;
- Exploitative conditions at work;
- Coercion at destination;
- Abuse of vulnerability at destination.

According to the ILO, a certain combination of a number of these indicators can constitute trafficking for labour exploitation.<sup>3</sup>

It is worth making one clarification regarding the use of coercion in recruitment or employment situations. Coercive practices do not only suppose that the workers were forced to enter a labour situation. Measures that prevent workers from terminating their employment could also be considered as elements of forced labour, even if the workers had initially freely consented to enter the employment situation (ILO 2005; Phillips and Mieres 2011, 9).

The choice to focus on the restaurant and berry-picking industries stems from the fact that they employ a large share of non-EU workers who were granted a labour permit in Sweden. In addition, both sectors have recently been at the forefront of the media due to cases of migrant labour exploitation (Aftonbladet 2012a; New York Times 2010; Ruth 2012; the Economist 2012).

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<sup>3</sup> For more information on the ILO indicators and their recommended use, see ILO 2009.

## 2. Methodology

The data for this study was collected through interviews, fieldwork, and media material and court judgments. 22 interviews were conducted with a variety of actors, including representatives of Swedish governmental institutions, trade unions, employers' organisations, immigration lawyers, and an NGO. A number of persons whom we interviewed were identified through a National Expert Meeting on human trafficking for forced labour in Sweden, which was organised in Stockholm in November 2012 as part of the ADSTRINGO project.<sup>4</sup> The Meeting brought together, among others, representatives from the Swedish Migration Board, the Work Environment Authority, the Tax Authority, the National Police Board, the Border Police, the International Public Prosecution Office and the Hotel and Restaurant Workers' Union.

Regarding the restaurant industry we also took part in an interview study of Chinese restaurant workers in Sweden (Axelsson et al. forthcoming). We were also given access to an interview of a restaurant chef which was conducted in 2012 by the independent Swedish think tank Global Challenges in the context of a study of Swedish labour migration policy from the perspective of migrants from Iraq (Nordlund and Pelling 2012). In the case of the berry industry, interviews were conducted with two berry merchants. Additionally, information on the berry industry was drawn from previous research conducted within another research project,<sup>5</sup> consisting of fieldwork in Thailand and Sweden and interviews with berry companies, berry-pickers and other central actors in the berry industry. The fieldwork, which was carried out in 2011–2013, involved stays for 1–2 weeks in rural areas, three times in Sweden and two times in Thailand, where a broad range of actors were approached and where it was possible to get a picture of the daily life of the berry-pickers both in their home village in Thailand and in their seasonal work in Sweden.

The interviews with stakeholders, which were performed in direct relation to this report, were semi-structured, including some standard questions but also leaving room for more specific questions depending on the background of the person interviewed. Given our broad understanding of labour exploitation, the interviews did not only focus on trafficking for forced labour but rather on migrant labour exploitation more generally, including both milder and more severe forms of exploitation. The interview questions were built upon the research framework of the ADSTRINGO project, developed around the following themes:

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<sup>4</sup> The ADSTRINGO (Addressing trafficking in human beings for labour exploitation through improved partnerships, enhanced diagnostics and intensified organisational approaches) project, of which this study is a component, is a transnational project that focuses on trafficking for forced labour and labour exploitation in nine countries in the Baltic Sea region.

<sup>5</sup> The research project "Grapes of wrath"? Mobilities, global value chains and social effects on rural labour markets within the berry industry, Department of Human Geography, Stockholm University.

- The role/activity of the person interviewed in regard to labour immigration and migrant labour exploitation
- Practices of migrant labour exploitation and human trafficking (types, methods used, victims and the profile of the perpetrators)
- Process of the recruitment of the migrants (role of social networks, recruitment agencies and middlemen)
- Mechanisms to prevent migrant labour exploitation (role of employers, governmental institutions, policymakers ...)

The interviews conducted for the study were anonymous. The persons whom we interviewed are referred to by the name of the institution they work for. In the case of actors in the berry industry, we did not reveal the name of the companies but only the type of occupation (merchant, company owner or buyer).

The interviews with stakeholders took place between January and March 2013, mostly face-to-face and sometimes by telephone. They were audio recorded and then transcribed. In general, the persons we interviewed showed interest in the study, and were of the view that it would be a meaningful contribution to the prevention and addressing of migrant labour exploitation.

In addition, media material and court data were also analysed for the study.

### 3. Context and legislation

This chapter sets out the context of human trafficking for forced labour in Sweden. It begins with an outline of the existing legal and policy framework and the main actors involved in the combating of trafficking for forced labour, which represents the most severe form of labour exploitation on the continuum (Figure 1). In the second stage, it presents the Swedish labour immigration policy, which has been reformed in 2008 in the direction of more liberal and demand-driven immigration for non-EU citizens. The chapter finishes with a description of the restaurant and berry-picking industries in Sweden.

#### 3.1 Human trafficking for forced labour in the Swedish context

Until recently, the issue of human trafficking for forced labour has received relatively little attention in Swedish policy discourse. Instead, more emphasis has been put on the combating of trafficking for sexual exploitation, an issue for which Sweden has renowned expertise (Woolfson et al. 2011, 2). This is reflected by the fact that, to date, very few cases of trafficking for labour exploitation have reached the Swedish courts, with only one case leading to a conviction.

##### 3.1.1 Definition and legal framework

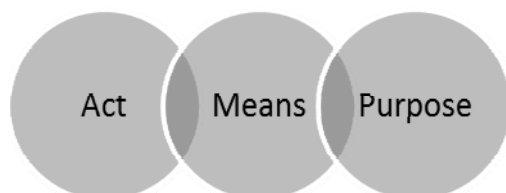
The first provision on trafficking in persons was incorporated in Swedish law in 2002 and concerned the prohibition of trafficking for sexual purposes. It was included in the Penal Code in chapter 4 on Crimes against liberty and peace (section 1a). In 2004, the law was amended to cover trafficking for purposes other than sexual exploitation, as well as trafficking within national borders. Trafficking for purposes other than sexual exploitation includes the exploitation of the victim for forced labour, for the removal of organs, in active military service or in a situation that places a person in distress.

The provision was based on the definition of human trafficking in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (adopted by the UN General Assembly in November 2000). According to the Swedish Penal Code (section 1a), a person commits the crime of trafficking when:

[he or she], by the use of unlawful coercion or deception, exploiting someone's vulnerable situation or by some other such improper means recruits, transports, accommodates, receives or implements some other such measure with a person, and thereby assumes control over the person, with the aim that the person should be exploited for sexual purposes, in war service or compulsory work or other such compulsory condition, for the removal of organs, or in another way in a situation that involves a distressful situation for the vulnerable person.

Trafficking thus consists of three basic elements: the first is the act of recruiting or transporting a person across borders or within a country; the second is the unfair means that are used to constrain the victims' freedom of choice and gain control over them, including coercion, deception or threat; and the third is that the purpose must be exploitation (Figure 2.).

**Figure 2.** The three elements of human trafficking



According to the Swedish legislation, each of these three elements must be present for a crime to be recognised as human trafficking. However, when the victims of trafficking are children that are under eighteen years old, the conditions for trafficking are fulfilled even if no unfair means have been used.

The penalties for human trafficking prescribed by the legislation range from two to ten years of imprisonment. Even in cases where suspects are acquitted of the crime of human trafficking, they are commonly convicted for fraud or assault (Ministry of Employment 2008).

### 3.1.2 Policy and background

Regarding policy documents, Sweden has had a **National Action Plan against Prostitution and Trafficking for the Purpose of Sexual Exploitation** for the period of 2008 to 2011. In 2008, an inter-ministerial working group chaired by the Ministry of Labour also published a **report and a draft Action Plan against trafficking for purposes other than sexual exploitation** (Ministry of Employment 2008). However, this Action Plan has not yet been approved and implemented by the government (CBSS 2013, 98–101).

A number of actors are active in the prevention and combating of human trafficking in Sweden. As part of the 2008–2010 National Action Plan, a **National Coordinator against Prostitution and Human Trafficking** was appointed in 2009 as part of the 2008–2010 National Action Plan. Based in the Stockholm County Administrative Board, the National Coordinator is responsible for coordinating the efforts of different agencies, including the sharing of information and the development of common strategies.<sup>6</sup> The mandate of the coordinator was previously limited to working against prostitution and trafficking in human beings for sexual exploitation, thereby

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<sup>6</sup> The National Coordinator also coordinates the National Methodology Support Team, a task force that includes specialized units at the police, the Social Services and the Prosecutor's Office (CBSS 2013, 100).



excluding trafficking for other purposes. (Ibid.) However, in 2013 the mandate was broadened in order to include all forms of THB.

The National Police Board has also appointed a **national rapporteur on trafficking in human beings** since 1998. The rapporteur's role consists of collecting and analysing information about the situation of human trafficking in Sweden and abroad, preparing annual reports on the results of counter-trafficking efforts, and organising training programs on trafficking for police officers, prosecutors and judges. The mandate of the national rapporteur was initially limited to trafficking for sexual exploitation, but has progressively been expanded to include trafficking for other purposes (Ibid.).

In Stockholm and other Swedish cities, the **Border Police** has been assigned the mandate to work on trafficking for purposes other than sexual exploitation (notably forced labour), while the regular police is responsible for cases of trafficking for sexual exploitation. All cases of human trafficking in Sweden are dealt with by the **International Public Prosecution Office Stockholm**.

Other stakeholders are indirectly involved in anti-trafficking efforts. The **Swedish Tax Agency** conducts inspections of workplaces for taxation-related matters and reports to the police on cases where trafficking for forced labour is suspected. Similarly, the **Work Environment Authority** carries out inspections on work places regarding the work environment and reports to the police about suspected cases of trafficking. However, they lack the mandate to review wage-related issues. The **Swedish Migration Board** also plays a proactive role in preventing trafficking for labour exploitation. In its role of issuing labour permits for non-EU nationals it conducts controls of employers seeking to employ migrant workers, which will be elaborated further below (Ibid.). Finally, **trade unions** have the formal mandate to examine work permit applications for non-EU citizens. For each application, the relevant trade union must express its opinion on whether the terms and conditions offered, notably the wages, are at least the same as in the collective agreement within the sector. However, its role is only consultative and is not determining for the decision of whether or not a permit is granted.

In recent years, the number of reports of suspected trafficking for forced labour in Sweden is rising, while the number of reports for sexual exploitation remains stable. In 2010, the police received 31 reports of trafficking for sexual purposes and 52 of trafficking for other purposes, including forced labour and the removal of organs. In 2011, the corresponding numbers were 35 and 63 (Table 1).

**Table 1.** Trafficking reports

	2010	2011
Trafficking for sexual exploitation	31	35
Trafficking for other purposes	52	63

Source: National Police Board 2012, 20.

Sectors that are particularly exposed to practices of migrant labour exploitation include the restaurant and service sector, agriculture and seasonal work, cleaning, and construction (National Police Board 2012, 21; Ministry of Employment 2009, 76–84).

However, despite the increase in reports there has only been one conviction for trafficking for forced labour since 2004, when the crime of human trafficking for purposes other than sexual exploitation was included in Swedish legislation (see Box 3 below). In this one case, from 2012, the perpetrators were convicted for trafficking berry-pickers from Bulgaria in 2009 and 2010 (Hudiksvalls District Court, 15 June 2012).

There have also been a number of convictions for trafficking for the purpose of begging and thievery. For instance, in 2008 four people were convicted for having forced a physically disabled Ukrainian man to beg in different European countries (National Police Board 2009: 13). In 2010 a woman was convicted in the lower court for forcing five Polish women to steal, but on appeal, in 2011, she was sentenced to prison for fraud.

In addition, there have been a number of prosecutions where the crime of human trafficking was not substantiated but which nonetheless led to alternative judgments, including fraud and extortion. As mentioned above, the crime of human trafficking requires the presence of three elements, the act, the means and the purpose (Figure 2). If one of these elements is missing, the crime is not considered as a trafficking crime in the legal sense. This was the case in a 2010 judgment that dealt with five domestic workers. The act and the means were substantiated, but it was not demonstrated that the employer's purpose was to exploit the victims for forced labour since it could not be proved that his intent had been to limit their freedom (National Police Board 2011). A 2011 case that did not lead to a conviction for human trafficking involved a Bulgarian woman who had recruited three berry-pickers from Bulgaria. She had confiscated their passports and had not given them any payment for their work. However, it was not proved that the woman had had the purpose to deceive the pickers and she was sentenced for assault (among others) (National Police Board 2012; Hudiksvalls District Court, 31 October 2011, judgment B 1834-11).

In another judgment, three British men had recruited two other British men to perform asphalt work in Sweden. In this case, the act and the purpose were substantiated, but not the unfair means. The difficulty was in proving that the victims had been misled regarding the wage and working conditions that they were supposed to work under in Sweden<sup>7</sup> (Woolfson et al. 2011, 5).

For the purpose of this report, it is crucial to emphasise that the low number of prosecutions and convictions for trafficking for forced labour does not necessarily signify the absence of this form of exploitation in Sweden. A large

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<sup>7</sup> Interestingly, the same case, involving the same perpetrators, resulted in a sentence of trafficking for forced labour in Norway (Jaeren district court 4 July 2008).

number of cases are never reported to the police and do not come to the knowledge of authorities. Victims may be reluctant to report cases of exploitation for fear of losing their job and residence permit. The fact that few cases have reached the Swedish courts may also be a result of the authorities' limited capacity to recognise cases of trafficking for forced labour (Ollus and Jokinen 2011, 17). Also, as we argue in this report, trafficking should be viewed on a gliding scale. Hence, even when it is not forced labour it can be a case of labour exploitation (Figure 1).

## **3.2 Swedish labour immigration policy**

### **3.2.1 The 2008 labour immigration policy reform**

Sweden has two distinct labour immigration regimes, one for citizens from within and one for citizens from outside the EU/EEA and Switzerland. Since 2006, EU citizens can enter the country as part of the free mobility agreement (Schengen) and seek a job during a three-month period. The labour migration policy for citizens from non-EU countries underwent a major reform in 2008, which has made it the most liberal policy among the OECD-countries (OECD 2011, 11). This is due to two main reasons. First, the Swedish policy does not impose any skills requirement or quotas restricting the number of permits issued. This differs from other countries where labour immigration is usually limited to higher skilled labour only. Second, the policy opens up the possibility of gaining permanent residence status after working two plus two years in Sweden (OECD 2011).

Before 2008, when the law was passed, the possibilities for labour immigration to Sweden were very restrictive, with the main channels of entry being migration for humanitarian grounds and family reunification. Work permits for foreign workers were granted only in cases where the Public Employment Service assessed labour market shortages that could not be covered by the workforce present in Sweden. As a result, labour immigration mainly consisted of short-term seasonal employment and immigration within some highly specialized occupations (Ibid., 57–59).

Spurred by a concern over demographic forecasts and labour shortage, a reform of the immigration regime was agreed between the centre-right government and the Green Party. The reform, which came into force on 15 December 2008, introduced a new demand-driven migration policy based on the employers' identification of the need to recruit workers from third countries rather than on the assessment of a national authority. The Swedish Migration Board may issue permits that are valid for up to two years. The permits are constrained to a specific employer during the first two years and to a specific occupation during the first four years. After two years, the workers can apply for an extension of the permit for another two-year period, on the condition that the employer agrees for a prolongation. After four years, they are eligible for permanent residence status in Sweden. Individuals who are made redundant or decide to

leave their employment have a three-month period during which to find new employment in the same sector provided that their permit is still valid (Government Bill 2007/08: 147, 28–32).

A number of conditions are attached to the recruitment of non-EU citizens. The terms of employment and salaries must be at least on the same level as the standards of the collective agreements or the prevailing practice within the profession or sector. Workers must be offered a minimum monthly pre-tax salary of 13,000 SEK (ca. 1,500 EUR). In addition, the position must be advertised at least ten days in the Swedish job bank (Platsjouren) and/or the European job mobility portal (EURES). Finally, work permit applications must include a statement by a trade union on the terms of employment offered. When these fulfil the union's requirements, it gives a positive recommendation to the Swedish Migration Board (Government Bill 2007/08: 147, 28–32). It is also worth stressing that migrant workers enjoy the same labour and employment rights as Swedish citizens.

Asylum-seekers have the right to work in Sweden during the period they are waiting for an answer on their application for asylum, provided that they have a certificate exempting them from the obligation to have a work permit (AT-UND) (Swedish Migration Board 2011b). Asylum-seekers who have been denied asylum may also apply for a work permit, provided that they have been working in Sweden during the last six months before the negative decision and that the application is submitted within two weeks after the decision (Swedish Migration Board 2011b).

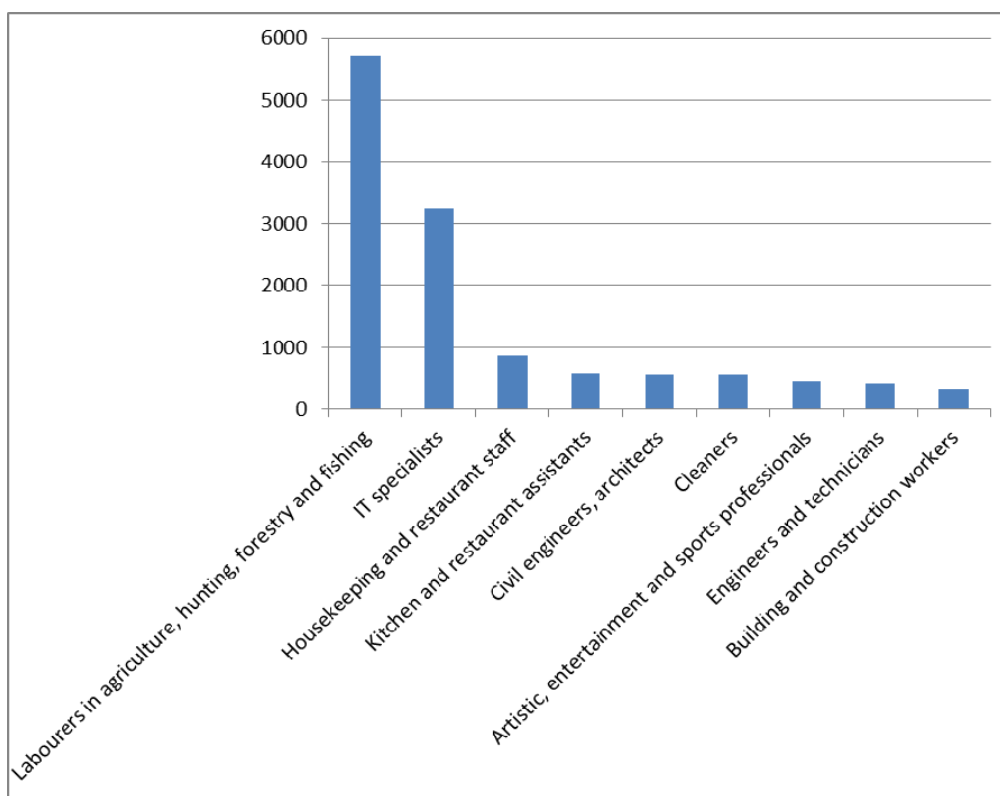
The evaluation of work permit applications can last between one and nine months, depending on whether all the required documents had been submitted.<sup>8</sup>

Since the new legislation entered into force in 2008, the Swedish Migration Board has issued 58,000 work permits to non-EU citizens. Agricultural work, which includes the berry business, is the industry employing the highest number of workers from outside the EU, followed by the IT industry and the hotel and restaurant sector (Figure 3). The workers' main countries of origin are Thailand, India and China (Figure 4).

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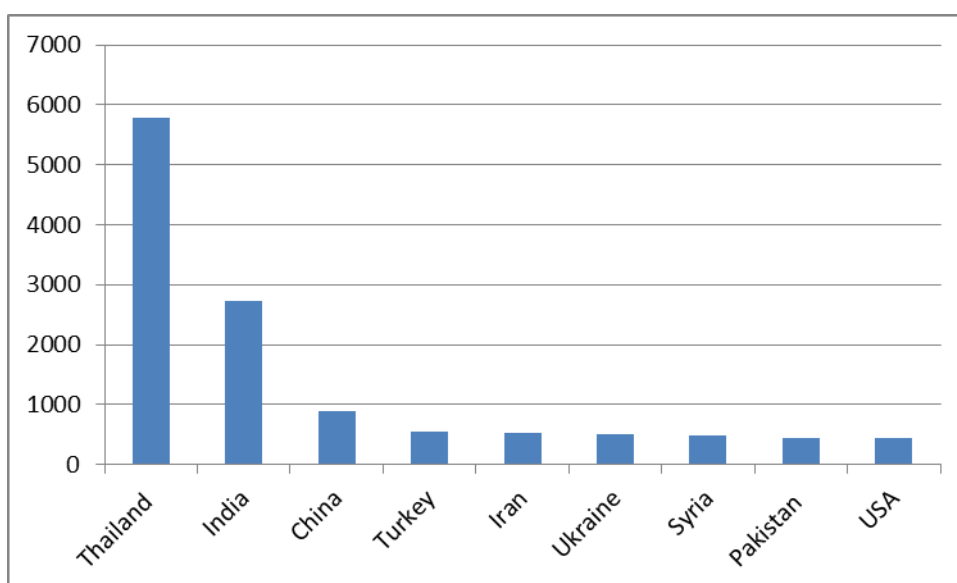
<sup>8</sup> The Swedish Migration Board introduced a certification system for companies hiring a minimum of 25 non-EU workers. The certification entails that the employer accepts the task of submitting a complete application to the Migration Board, which in exchange commits to reaching a decision within a short time frame (Swedish Migration Board 2013a).

**Figure 3.** Work permits granted in 2012 according to main professional groups.



Source: Migrationsverket 2013b.

**Figure 4.** Work permits granted in 2012 according to main countries of origin.



Source: Migrationsverket 2013b.

### 3.2.2 Stricter requirements in certain sectors

Soon after the new legislation was introduced, it appeared that the terms of employment and wage levels were frequently violated in certain sectors, in particular in the berry-picking industry. In 2011, in order to prevent cases of exploitation of migrant workers, the Swedish Migration Board introduced more stringent requirements for recruitment in the berry-picking industry.<sup>9</sup> On 16 January 2012, these additional requirements were extended to the following sectors, which were assessed to be subject to similar practices of labour exploitation: hotel and restaurant, cleaning, construction, agriculture and forestry, trade, automobile repair, service and staffing sectors. Employers in these sectors must prove that their company is able to pay a salary for at least three months by providing bank statements, previous and current income statements, and balance sheets. If the company has previously employed citizens from third countries it must also provide tax account statements for the preceding three months, showing whether the workers had received the salary that they had been promised. Finally, if the business is registered in a non-EU country and operates in Sweden, the employer must also register a branch in Sweden with the Swedish Companies Registration (Bolagsverket). This last requirement is intended to prevent cases where workers are abused in terms of salary or working conditions and the trade unions cannot assist them because their employers cannot be contacted. Such cases had previously occurred in the berry industry (Swedish Migration Board 2013c).

According to the Swedish Migration Board, these stricter requirements have been successful in identifying unscrupulous employers and preventing the exploitation of non-EU migrants in the Swedish labour market. They have resulted in a decrease both in the number of applications and in the number of work permits granted in the sectors affected by the new regulations (Swedish Migration Board 2013a). However, the mandate of the Swedish Migration Board is limited to investigating and checking the seriousness of employers in connection with the work permit application. It does not include conducting post-arrival checks to control whether employers fulfil the terms specified in the offer of employment. As will be further outlined below, this leaves room for various forms of abuse. The shortcomings of the labour immigration policy have been recognized by Swedish policy-makers and there is an ongoing political debate regarding possible amendments.

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<sup>9</sup> The introduction of the stricter requirements does not constitute a change in the legislation, but rather a change in the interpretation of the legislation, which was initiated by the Swedish Migration Board (Interview with the Swedish Migration Board).

### 3.3 Restaurant and berry sectors in Sweden

#### 3.3.1 The restaurant sector

The restaurant sector in Sweden employs a large number of labour migrants and other categories of foreign-born people. It is estimated that half of the companies within the hotel and restaurant industry are run by someone born in a foreign country (Swedish Agency for Economic and Regional Growth 2012: 4). In addition, a large share of the work permits for non-EU citizens were issued to workers in the restaurant sector (despite an unemployment rate of 9% in the sector). After agriculture, forestry and fisheries and the IT industry, the restaurant industry is the third sector where the highest number of labour permits for non-EU citizens is granted (Figure 2; Swedish Migration Board 2012; 2011a; 2010). The workers in the restaurant industry come mainly from Asia (China, Bangladesh, Thailand and Vietnam) as well as from the Middle East (Egypt, Turkey and Syria) (Tables 2 and 3). The labour force in the sector is rather young, mostly between 20 to 40 years, and predominantly male (Axelsson et al forthcoming; Interviews with the Hotel & Restaurant Workers' Union, the Work Environment Authority, and immigration lawyers).

**Table 2.** Work permits for the category 'kitchen and restaurant helpers'.

	2010	%	2011	%	2012	%
Turkey	101	18.5	160	20	100	17.5
Syria	71	13	95	12	69	12
Egypt	44	8	94	12	56	10
Iraq	70	13	82	10	55	9.5
Bangladesh	41	7.5	61	7.5	57	10
Others	219	40	308	38.5	233	41
Total	546	100	800	100	570	100

Source: Statistics from Swedish Migration Board.

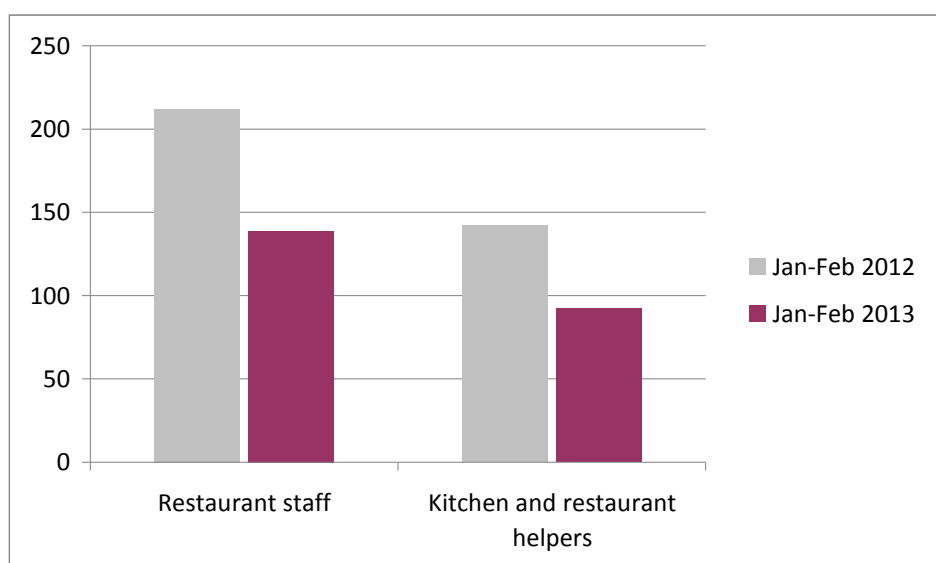
**Table 3.** Work permits for the category 'restaurant staff'.

	2010	%	2011	%	2012	%
China	291	28	305	23	231	27
Turkey	265	25	231	17	125	14.5
Syria	52	5	130	10	87	10
Thailand	74	7	93	7	57	6.5
Vietnam	55	5	92	7	44	5
Others	313	30	476	36	318	37
Total	1050	100	1327	100	862	100

Source: Statistics from Swedish Migration Board.

Between 2008 and 2012 the number of applications for non-EU citizens in the restaurant industry has been constantly rising (HRF 2012, 9). However, from the beginning of 2012, when stricter requirements were introduced to prevent abuses in a number of sectors including the restaurant industry, there has been a decrease both in the number of applications and in the number of permits issued. The permits issued in January and February 2013 for restaurant staff decreased by 34 % compared to the same period in 2012. For kitchen and restaurant helpers, the number of permits declined by 35 % (Figure 5).

**Figure 5.** Work permits issued: comparison January–February 2012 and 2013.



Source: Swedish Migration Board 2013d.

In addition, during the first eight months of 2012, the number of applications in the sector decreased by 40 %, out of which 60 % were issued. In total this implies a 35 % decrease between 2011 and 2012 (Interview with the Swedish Migration Board). This change can probably be attributed to the strengthening of the requirements that were mentioned earlier. Presumably, non-serious employers have been discouraged from hiring third country nationals and the applications for their potential employees have been rejected. Even so, this does not mean that all forms of exploitation of labour have been eradicated.

### 3.3.2 The berry industry

The Swedish wild berry industry has unique characteristics that distinguish it from other economic sectors. This section describes the functioning of the Swedish berry industry and the actors involved.

The wild berry industry is part of a global commodity chain that exports the raw material to producers with a global spread (Hedberg 2013). The wild berries have a high export value due to their expected health benefits, not the



least in Japan, which is one of the main markets for Swedish bilberries.<sup>10</sup> Other areas of use are for juices, jam and flavouring. Even though the global competition has hardened during the last ten years, Sweden is still a principal provider of wild berries to the world market and about 80 % of Swedish berries are exported. The yield varies considerably from year to year, but in good berry years, the Swedish forests are abundant with bilberries, cloudberry and lingonberries (Sw. lingon).

A prerequisite for the Swedish wild berry industry is the ‘Right of public access’ (Sw. *Allemansrätten*), which gives anyone the right to pick berries on private property.<sup>11</sup> During the 1980s–2000s, the industry has undergone a transition, with increasing globalization, competition and export volumes, and a subsequent shift of the workers from being mainly native-born, picking berries as a side income, to being almost completely internationalised. Today, these seasonal migrant workers arrive both from Thailand and from Eastern European countries. These two groups represent two separate legal systems, where the pickers that are EU citizens (unregulated workers) have the right to travel freely within the European Union to pick berries, whereas non-European pickers (regulated workers) need a work permit and travel within the framework of Swedish labour migration policy. According to interviews with berry companies these groups are similarly large in numbers, with about 5,000 each. One berry merchant estimates that in the future, the group of unregulated pickers will increase substantially due to economic hardships and increased competition over jobs in Europe.

Berry-pickers usually come from rural areas, often taking substantial loans to cover travel costs and fees to middlemen and recruitment agencies, in the hope that the income earned in Sweden will help improve their standard of living at home (Hedberg 2013). In recent years, both Swedish and international<sup>12</sup> media have abounded in stories about deceived and indebted berry-pickers who had been misled by unscrupulous actors in the industry. The various forms of abuse suffered by berry-pickers, many of which denote human trafficking, will be further discussed in upcoming sections.

The Swedish berry industry involves a range of different actors with specific roles, which to some extent depends on if the berry-picker is unregulated and of European origin or unregulated and of non-European origin: the berry-pickers; middlemen and recruitment agencies based in their home country; berry companies, and berry buyers and merchants<sup>13</sup> (Figure 6).

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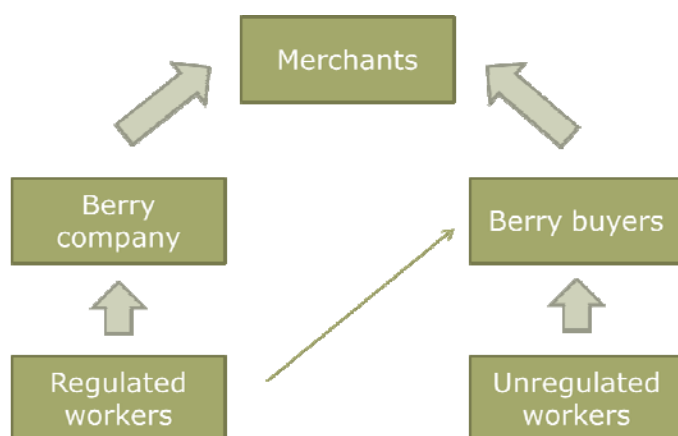
<sup>10</sup> Bilberries are also referred to as wild blueberries.

<sup>11</sup> The right does not extend to being in someone’s yard or close to a house.

<sup>12</sup> The international media that have covered the topic of the conditions of berry-pickers in Sweden include the New York Times (2010) and the Economist (2012) as well as the Thai media.

<sup>13</sup> It is worth noting that the non-European system is regularized, and hence is more visible and easy to map, whereas the European system is informal and hence there might be actors in the system who are invisible.

**Figure 6.** The two parallel groups of workers in the berry industry and the channels of sale to Swedish merchants.



Given the distinct labour migration regimes that apply to EU and non-EU citizens, it is important to separate these groups of workers. The non-European pickers are hence called ‘**regulated berry-pickers**’, and they arrive mainly from Thailand but at times also from other Asian countries. Pickers from this group require a work permit and a visa in order to work in Sweden and they are granted the rights stipulated by Swedish migration policy and Swedish labour and employment law.

**Table 4.** Work permits for the category ‘Agricultural, fishery and related labourers’.<sup>14</sup>

	2010	%	2011	%	2012	%
Thailand	3,184	70.6	2,497	88.5	5,502	96.4
China	414	9.2	32	1.1	0	0.0
Vietnam	359	8.0	0	0.0	0	0.0
Bangladesh	281	6.2	192	6.8	0	0.0
Others	270	6.0	100	3.5	206	3.6
Total	4,508	100	2,821	100	5,708	100

Source: Statistics from Swedish Migration Board 2011a; 2012; 2013b.

Regulated berry-pickers are usually employed by **Asian recruitment agencies**. Since 2011 these agencies are required to also register a branch in Sweden. This measure was taken after cases where berry-pickers employed by foreign-based agencies had been cheated and denied at least part of their salary.

<sup>14</sup> These figures also include other seasonal workers. However, according to information from the Swedish Migration Board, most seasonal workers are berry-pickers. This is confirmed by interviews with the Swedish Embassy in Bangkok, stating that the seasonal workers who travel from Thailand to Sweden work in the berry industry.

According to the Swedish Migration Board and the police, this measure, along with the introduction of a guaranteed minimum salary<sup>15</sup> for berry-pickers when the supply of berries is low, has considerably diminished the abuses suffered by Asian berry-pickers (Interviews with the Swedish Migration Board and the National Police Board).

The second group of berry-pickers comprises the so-called ‘**unregulated (or free) pickers**’ who are citizens of an EU country. Being EU citizens, they do not require a work permit or a visa in order to travel and work in Sweden, but they are also not protected by any of the regulations mentioned above. If their stay is shorter than three months they do not need to notify the Swedish Migration Board of the stay. For this reason, their numbers are unknown, but the berry industry estimates that they account for about 50 % of all berry-pickers in Sweden. In 2012, it was estimated that between 1,700 and 2,500 berry-pickers came from Bulgaria (Björklund 2012; interview with the National Police Board). The group of unregulated pickers also includes individuals who travel on their own with family and friends, for instance coming from the Baltic countries or from Poland, as well as a small group of so-called ‘tourist pickers’ consisting of relatives of Thai immigrants in rural Sweden. Officially, they are free to pick and sell berries up to a value of 12,500 SEK (ca. 1,400 EUR) without being taxed, beyond which taxation is supposed to be introduced. However, unregulated pickers usually escape paying tax, since the unregulated pickers are difficult to control<sup>16</sup> (Wingborg 2011a; 2011b; 2012; Interviews with the Tax Agency and an editor of a magazine on Romani issues).

Regulated berry-pickers usually sell their berries to **berry companies** (Sw. bärföretagare), who are the actors that invited them to and also host them in Sweden (Figure 6). Berry companies provide the workers with accommodation, food and cars, but they do not act as their formal employers. Instead, as mentioned above, Asian pickers are formally employed by Asia-based recruitment agencies. Unregulated berry-pickers, on the other hand sell the berries to **berry buyers** (Sw. bäruppköpare) who do not usually organise the stay of the berry-pickers in Sweden. However, the distinction between the berry companies and berry buyers is sometimes blurred. In some cases, berry buyers do play a role in arranging the stay of berry-pickers in Sweden. It does also sometimes happen that regulated berry-pickers sell berries to berry buyers for a higher price, which causes great suspicion among berry companies (Hedberg 2013).

Finally, berry companies and berry buyers sell the berries to **merchants** (Sw. grossister) who distribute them globally, mainly to extraction companies in

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<sup>15</sup> The guaranteed wage corresponds to the minimum wage and is stipulated in the collective agreement for staffing companies (Sw. Bemmaningsavtal) and amounts to SEK 18,495 per month (ca 2,100 EUR) (Wingborg 2012, 11).

<sup>16</sup> In addition, EU citizens are allowed to work tax-free in another EU country for up to three months.

Asia, but also to the European and the American market. The price of berries is set by the world market in a strict competition among global merchants and according to the year's availability of berries. There are two main Swedish merchants, but also a number of smaller actors, including merchants from Estonia and other East European countries (Hedberg 2013).

## 4. Recruitment of migrant workers

After having established the context of the Swedish restaurant and berry industries, we will now turn to the issue of the recruitment of migrant workers in those sectors.

Recruitment is the process of identifying a worker for employment. This chapter examines the process of recruitment of migrant workers in the restaurant industry and berry industry in Sweden, focusing on the different forms of labour exploitation that they involve. It gives an outline of three major recruitment mechanisms: through social networks, through recruitment agencies, and through middlemen. In the second stage, the chapter examines recruitment practices involving the use of deception, which have occurred in the restaurant and berry industries in Sweden.

### 4.1 Recruitment through social networks

Social networks, including family, friendship and acquaintances, play a large role in the recruitment of migrant workers in Sweden. Already established migrants usually maintain connections with their country of origin. In many cases, they assist relatives and friends back at home in establishing and finding employment in Sweden. Following the reform of labour immigration policy, the main requirement for non-EU citizens applying for a work permit is that an employer is willing to employ them. This means that employers with a foreign background in Sweden are able to hire relatives and acquaintances from their country of origin. Established migrants can also use their social network in Sweden in order to connect people in their country of origin with potential employers in Sweden (Nordlund and Pelling 2012, 32–33).

According to our data, recruitment through social networks is commonplace in the restaurant sector which is characterised by a large share of employers and workers with a foreign background. Although statistics are lacking, many informants agree that the majority of labour migrants from third countries are employed by restaurant owners with the same place of origin (Interviews with immigration lawyers, the Hotel & Restaurant Workers' Union, the National Police Board, and the Border Police).

Various forms of social contacts are used for the recruitment of staff in the restaurant industry. Restaurant owners may employ family members or acquaintances in their country of origin. They also receive suggestions of potential employees from their relatives in the homeland. Certain owners also ask their current employees to recommend new staff. A recent study of Chinese restaurants in Sweden reveals that personal contacts are a typical recruitment channel. Out of the 12 chefs interviewed in the study, seven found their employment through social networks: two were introduced to the employer through friends who were already in Sweden, four were introduced through a friend of their employer in China and one came through family reunification (Axelsson et al. forthcoming).

Social networks are a common practice among non-EU citizens because, contrary to EU nationals, they cannot come to Sweden in order to search for a job. They must receive a job offer from an employer in Sweden while they reside in their home country. Therefore, having contacts in Sweden is particularly important in order to access information on potential vacancies.

However, as mentioned earlier, a number of persons applying for a work permit have previously lived in Sweden, and therefore they may have developed their own social network in the country (Interview with an immigration lawyer). Most of them are asylum-seekers, whose request for asylum had been rejected.<sup>17</sup>

Hiring employees with the same ethnic origin may be motivated by a sense of trust as well as by practical considerations. As one of the persons we interviewed explains, “Employers know the employees’ background and culture. They know how they react. They speak the same language. The recruitment process is also considerably facilitated when one is assisted by contacts in the home country” (Interview with the Border Police). In ethnic restaurants, there is a particular incentive to employ co-nationals as the preparation of ethnic dishes requires specific cooking skills that persons in Sweden may lack.<sup>18</sup>

Hiring employees from one’s country of origin is often viewed as a benevolent act where employers give the opportunity to fellow nationals to migrate to Sweden and improve their living standards. However, recruitment through social networks also seems to involve various forms of abuse, such as the payment of fees in return for the offer of employment. Hence, recruitment through social networks is not only a means of helping co-ethnics coming to Sweden, but can also be a means of exploitation of workers while simultaneously earning an income in the process.

Social networks also play a role in the recruitment of berry-pickers. It seems that many berry-pickers come to work in Sweden upon the suggestion of relatives, friends or acquaintances who either reside in Sweden or have previously worked as berry-pickers themselves (Interviews with the editor of a magazine on Romani issues, and with the International Public Prosecution Office).

In Thailand, from which the bulk of the regulated workers originate, most berry-pickers come from the same district. This is the result of an initiative of a Thai woman who was residing in rural Sweden and was married to a Swedish man. She saw the berries as a good source of extra income for her family back in Thailand and, in 1989, she started inviting her family to pick berries during the summer. Within a few years the recruitment process had spread in the

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<sup>17</sup> Individuals who have been denied asylum may apply for a labour permit provided that they had worked for at least six months during the period their asylum request was being examined.

<sup>18</sup> On the other hand, this is only half the truth, since many restaurant workers have no skills in preparing ethnic dishes before they received the job offer or are not trained as chefs.

district. Villagers saw that it was possible to earn a substantial income from berry-picking in Sweden and followed their fellow nationals (Hedberg 2013).<sup>19</sup>

## 4.2 Use of recruitment agencies

Recruitment agencies based in the migrants' country of origin are used in the recruitment of regulated berry-pickers and, to some extent, of restaurant staff. In the case of the berry industry, the recruitment agencies are the formal employers of the workers, while in the restaurant industry they act as brokers, or intermediaries, connecting workers to employers in Sweden (Axelsson et al. forthcoming).

The use of recruitment agencies to recruit chefs and kitchen assistants is rather common among Chinese restaurant owners in Sweden. In recent years, recruitment agencies have grown into a flourishing business in China. They have shifted from being state-owned and institutionalized agencies to becoming privately-owned. In general, they are located in the coastal area of China, which is the most economically developed region (Ibid.).

Sweden has emerged as an important target market for Chinese recruitment agencies. Agencies have become aware of the new Swedish labour immigration policy that was introduced in 2008 and have seized the opportunities it involves. Representatives of one agency located in Shandong province, for instance, visited Sweden in 2011 and 2012 in order to promote their services among the association of Chinese entrepreneurs in Sweden, which mainly consists of restaurant owners. Other agencies publish job offers for chefs to work in Sweden on China International Labor Net, a website that advertises overseas jobs. The advertised positions usually require work experience as a chef and the worker to be between 22 and 45 years old. Sometimes positions are only addressed to men. In general, the services of recruitment agencies are used either by restaurant owners who have few social connections in China, and by workers who wish to migrate, but lack social contacts in Sweden (Ibid.).

Recruitment agencies usually charge the workers substantial fees. The amount of these fees depends on a variety of factors including the sending area in China, the country of destination, the type of work, and the expected levels of income. The chefs interviewed in the study by Axelsson et al. paid between RMB 30,000 and RMB 50,000 (which approximates the same amount in SEK, or EUR between ca. 3,500 and 5,700) to come to Sweden between 2007 and

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<sup>19</sup> At that time, the berry-pickers arrived to Sweden with a tourist visa, something which was changed to a work permit when the control of non-European berry-pickers was hardened. Today, the Swedish Embassy in Thailand is very strict about issuing tourist visa in the summer months to Thai people from the region (Interview with the Swedish Embassy in Thailand). However, according to some sources there are still workers coming to Sweden through this channel, particularly from one district. Mainly, however, the recruitment of berry-pickers goes through agencies, which nonetheless is connected to the initial system based on social networks.

2010. However, it is commonly noted that the fees have almost doubled during the last three years, sometimes amounting up to RMB 90,000 (ca. 10,500 EUR) (Axelsson et al. forthcoming).

Recruitment agencies are also used to employ Asian berry-pickers. This system was developed in 2007, when the tax regime applied to the berry industry was reformed, and berry-pickers who had earlier been picking berries tax-free became subject to taxation in Sweden. As a result, the pickers started being employed by recruitment agencies based in their home country, thereby avoiding paying taxes in Sweden (Wingborg 2011a). In Thailand, which is the main sending country for regulated berry-pickers, four recruitment agencies specialized in bringing berry-pickers to Sweden were established, based on close contacts with Swedish berry companies and merchants. Thai recruitment agencies are subject to criticism by trade unions, NGOs and researchers both in Thailand and Sweden due to their high recruitment fees. This criticism is shared by some merchants and berry companies in Sweden, who strongly criticize the high fees of the agencies, arguing that this system moves the responsibility away from the Swedish actors (NAT 2009; Wingborg 2011; Woolfson et al. 2011; Hedberg 2013).

#### **4.3 Recruitment through middlemen: trade in work permits**

The introduction of the new labour immigration policy, under which non-EU migrants can legally migrate to Sweden provided that they have received an offer of employment, seems to have prompted the emergence of independent ‘middlemen’ or ‘brokers’, whose activity consists in connecting non-EU citizens aspiring to immigrate to Sweden with potential employers and assisting them with the work permit application (Interviews with the Border Police, the National Police Board, the Hotel & Restaurant Workers’ Union and immigration lawyers).

These middlemen are independent of recruitment agencies and are mainly active in Sweden. They may consist of ordinary people who have a network of contacts both in Sweden and abroad and they seek to make profits through brokerage activities. There are also examples where lawyers have acted as exploitative middlemen (Box 1). However, it is essential to stress that certainly not all lawyers providing assistance in the area of labour immigration are unscrupulous middlemen. Many lawyers specialized in immigration law offer legal advice to both employers and employees with regards to the labour permit



application in exchange for a just and reasonable fee.<sup>20</sup> In contrast, exploitative middlemen charge high and unreasonable fees for their services (Ibid.).<sup>21</sup> Our research indicates that the ‘trade in work permits’ is a rather extensive phenomenon that occurs both in the restaurant and the berry industries.

**Box 1. A lawyer brokering work permits in Southern Stockholm**

In January 2013 the Border Police started investigating the case of a 45-year-old lawyer from southern Stockholm, who was suspected of fraud involving work permit applications in the restaurant sector. The Hotel & Restaurant Workers’ Union, which has the mandate to examine the offers of employment to non-EU workers in the restaurant sector, had been suspecting him of charging abusive fees for brokerage activities (Ekelund & Sköld 2013). Within two years, he had been involved in 1000 work permit applications to the Swedish Migration Board. Some of these applications seemed particularly suspicious. For instance, he had assisted a small hot dog kiosk to hire ten persons although it did not require more than three employees (Interview with the Hotel & Restaurant Workers’ Union). When questioned about this issue by a journalist of the Swedish newspaper Dagens Nyheter in 2010, the lawyer replied that it was not his responsibility to assess whether the number of work permit applications seems reasonable considering the size of the company (Nandorf & Petersson 2010).

It is reported that the suspected lawyer has charged between 20,000 and 30,000 SEK for each case (ca. 2,300–3,400 EUR). This implies that he would have earned a total income of 25 million SEK (ca. 2,9 million EUR) during the last three years. A 20-year-old man told the Swedish newspaper Aftonbladet that he had paid 30,000 SEK to get assistance to come to Sweden (Ekelund & Sköld 2013).

In the restaurant industry, it seems that the middlemen get in contact with restaurant owners in need of staff, proposing chefs or other restaurant workers ‘for sale’. A representative of the Hotel & Restaurant Workers’ Union describes the process:

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<sup>20</sup> In many sectors, notably in the restaurant industry, employers who wish to hire non-EU workers have themselves a foreign background. Therefore it is not uncommon that they solicit legal advice with respect to the labour permit application procedure. Similarly, prospective migrants often lack knowledge of the Swedish immigration system or the Swedish language and therefore request legal assistance. In addition, a large share of the persons applying for a work permit are already residing in Sweden for instance as asylum-seekers. Thus they may already be clients of a lawyer and choose to remain so for the duration of the processing of the work permit application. Interestingly, also many of the lawyers working with immigration law have themselves a foreign background. They can often communicate with their clients in their mother tongue, which is seen as an asset. Information on the existence of lawyers with a foreign background usually spreads by word of mouth among clients (Interviews with immigration lawyers).

<sup>21</sup> According to the Hotel and Restaurant Workers’ Union, there are two or three major middlemen who assist employers in hiring non-EU workers in the hospitality sector in the Stockholm region (HRF 2012, 11).

I believe that the middleman visits a restaurant and says ‘I know that you need people, I can arrange two cooks from China. I fix all the documents and the matters with the Migration Board and the trade union, and everything that needs to be done.’ Of course he gets paid for it (Interview with the Hotel & Restaurant Workers’ Union).

In addition, some employers charge the workers fees in exchange for an offer of employment, which allows the workers to obtain a work permit in Sweden.<sup>22</sup> Prices for an offer of employment are estimated to range from SEK 30,000–50,000 to up to SEK 100,000–300,000 (from ca. 3,400–5,700 to up to ca. 11,000–34,000 EUR) (Interview with the Hotel & Restaurant Workers’ Union, the National Police Board and the Border Police). Migrants frequently get indebted in order to repay these fees. When they cannot afford to pay in cash they may get a loan from their employer which they repay by working for less money (Ibid.). In other words, the employer withholds a part of the workers’ salary. In addition, it appears that some workers are required to cover themselves for the employer’s social contributions and insurance (Nordlund & Pelling 2012, 28; Kalla Fakta 2013). An Iraqi restaurant chef, who was changing employers and therefore applying for a new work permit, explains how his employer pressured him for payment:

I was shocked. My employer did not want to sign the offer of employment. He said that he does not usually sign offers of employment or contracts. He did not say it directly, but indirectly he made me understand that he wanted to be paid in exchange for the offer of employment. I told him that I wasn’t going to pay a penny and that if he wanted me to work for him we should sign. [...] Finally he signed, but only for one year (Interview by Global Challenges 2012).

According to the Hotel & Restaurant Workers’ Union, “buying a work permit is more common than we think, it happens rather often” (Interview with the Hotel & Restaurant Workers’ Union). The Swedish Trade Union Confederation (LO) argues that as many as half of the workers that have been granted a two-year permit since 2008 (in the sectors of its affiliates<sup>23</sup>), that is between 5,000 and 10,000 persons, have paid for it (Nandorf 2013). Other actors we interviewed, such as the police and the Swedish Migration Board, agree that fraud with work permits is a recurring phenomenon, but are more reluctant to estimate any figures.

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<sup>22</sup> It was also recently revealed that some former employees at the Swedish Migration Board in the city of Malmö are suspected of having sold residence permits (possibly including false offers of employment). A working group against corruption and bribery was set up in order to detect potential irregularities and prevent risks of external influence (Persson 2013; interview with an immigration lawyer).

<sup>23</sup> LO is the central organisation for 14 affiliates which organise workers within both the private and the public sectors.

### **Box 2. Trade in work permits by McDonald's managers**

In November 2012, it was revealed that two managers at McDonald's in Stockholm had sold work permits to non-EU citizens. The managers had charged Pakistani citizens about 150,000 SEK (ca. 17,000 EUR) for a job at McDonald's and thereby also a residence permit in Sweden. One of the suspected employers had worked at McDonald's for eleven years and had held managerial positions in many different restaurants (Aftonbladet 2012a; 2012b; Interview with the Border Police).

According to Håkan Ström, press officer at McDonald's, the two managers had acted on their own initiative. However, the phenomenon is likely to be more extensive. During the last two years, the Swedish Migration Board has examined 170 work permit applications for McDonald's, the majority of which concern individuals from Pakistan. In addition, the two managers suspected two other managers, who seem to have applied for a large number of permits for workers from Pakistan (Ekot 2012). The 24 Pakistani workers who had so far been granted a work permit were all employed by these four managers. Many were relatives, friends or acquaintances of the two managers. Some had also been recruited through a newspaper ad in Pakistan. Many of them lived in the same house, which was owned by one of the managers. According to Aftonbladet (2012a), 12 persons with Pakistani background were registered at that address in December 2010. The Pakistani workers received a monthly salary of SEK 18,000 (ca. 2,100 EUR), which was administered through McDonald's headquarters in Stockholm. However, they were forced to transfer large sums of money every month to the managers or one of their relatives in order to repay for their employment and accommodation.

The case of sold work permits at McDonalds was revealed through tips from other employees (Ekot 2012). The case was reported to the police and the two managers were suspended.

Recently, it has also appeared that a number of unscrupulous employers and middlemen charge migrants fees for a fictitious job. In such cases, the offer of employment seems legal on paper but it does not lead to a real work position for the migrant. However, the work permits obtained in that way can be a means for non-EU migrants to legally enter Sweden or the Schengen area. As a representative of the Hotel & Restaurant Workers' Union explains:

There are people who do not work where they are supposed to work. Have they come to Sweden? Have they disappeared? One can have one's suspicions, especially when it is a certain middleman who fixed their work permit. We believe that people pay quite a lot of money under the table to the middlemen. They buy their work permit to Sweden and then disappear in the Schengen area (Interview with the Hotel & Restaurant Workers' Union).

Such a case occurred in the summer of 2011, when about a hundred people came from Bangladesh with work visas to work as berry-pickers. Instead, some

of them were seen at the Stockholm Central Station entering a bus departing for Paris. One of them, interrogated by the Border Police, stated that he had paid 40,000 SEK (ca. 4,600 EUR) in order to obtain his work permit (Interview with the Swedish Migration Board, National Police Board and the Border Police).

The trade in work permits is described as a new form of abuse of the immigration system that differs from human smuggling. In this case, the persons travel legally with valid documents, whereas human smuggling supposes that they travel with false documents or without any documents at all. It follows that someone who assists a person to enter Sweden with valid documents cannot be prosecuted for human smuggling, even though he or she has charged large illegal fees in exchange for a work permit. One person we interviewed at the National Police Board describes this situation as a loophole in the Swedish legislation. Another person we interviewed at the Border Police agrees that the current situation lacks clarity and it is difficult for the police to intervene: “Is this fraud? Was the person deceived or did he/she voluntarily pay for their permit? It is difficult to determine what kind of crime this is” (Interviews with the National Police Board, the Border Police and immigration lawyer).

#### **4.4 Deceptive recruitment practices**

According to the ILO (2009), the strongest indicator of deceptive recruitment is the situation where the recruited person is deceived about the nature of the job, location or employer. Deception can also concern in respect of the conditions of work, the earnings or the content or legality of the work contract. Our research revealed cases of deceptive recruitment both in the restaurant and the berry industries in Sweden. This section focuses on deception regarding the existence of the job promised, while deception regarding earnings and working conditions will be examined later in the report.

In the restaurant industry, it appears that a share of non-EU migrants who are granted a labour permit in Sweden are deceived and do not get the position that they were promised (and which had been stated in the offer of employment submitted to the Swedish Migration Board). These migrants had usually paid a fee to unscrupulous employers and/or middlemen in order to obtain an offer of employment and thereby a work permit (Interview with the Hotel and Restaurant Workers’ Union and an immigration lawyer).

An immigration lawyer whom we interviewed argues that cases where people are deceived about the job they were promised are common in the restaurant, building and cleaning industries. He gave the example of 80 persons from Egypt who had paid between SEK 80,000 and SEK 100,000 (ca. 9,200–11,500 EUR) in cash to a middleman and who did not find the company that had supposedly hired them. According to this lawyer, some unscrupulous persons abuse the labour immigration system by creating “shell companies” with no activity only in order to apply for work permits for non-EU citizens.

Afterwards, the companies are declared bankrupt and the owners disappear (Interview with an immigration lawyer).<sup>24</sup>

In January 2013, the Hotel & Restaurant Workers' Union conducted an investigation of 20 working places in the Stockholm area. One restaurant in Stockholm had been granted work permits for twelve employees. However, none of them were present during the visit of representatives of the union. When the employer was asked where these persons were, he refused to give an answer. Two other working places had been granted work permits for four persons in total. However, no restaurants were found at the addresses stated in the applications to the Swedish Migration Board (Bengtson & Ojanne 2013).

Migrant workers may also be deceived regarding the legality of their employment. For instance, some find out that their employer avoids paying their social contribution and insurance. An Iraqi chef who was in that situation explains:

He [the employer] said that he paid my taxes but I never received any pay-slips. He gave me money in the hand instead of putting it in my bank account, saying that this is the way it is done. [...] This year when I received the tax declaration I discovered that he had not paid my taxes (Nordlund & Pelling 2012).

The chef reported the employer to the Tax Agency and was still waiting for a reply at the time of the interview. This is a particularly serious issue for the workers because, unless the right amount of taxes had been paid, they cannot receive their permanent residence permit after working in Sweden for four years.

Cases of deceptive recruitment also exist in the berry-picking industry. For the regulated berry-pickers from Thailand, deception does not seem to be the case in general. Mostly, the conditions of working in Sweden are well known, spread through social networks and over a long time in the villages. However, such cases do exist, as for instance the case of 156 Thai pickers who were left without a salary by the berry company Lomsjö Bär in 2010 (which is described in Box 4). Additionally, at the end of the first decade of the 2000s, the berry industry also invited workers from other Asian countries (Vietnam, China and Bangladesh). In these countries, information about the conditions was not widely known, which resulted in large-scale protests about the working conditions (Interviews with berry companies)

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<sup>24</sup> This practice was performed on a large scale by a well-known Swedish law firm. In 2011 it was revealed that the firm had assisted a Chinese middleman to establish "shell companies" and apply for work permits for about 200 Chinese citizens. The offers of employment were sold for SEK 25,000 (ca 2,900 EUR), a sum that was divided between the middleman and the law firm. In addition, the applicants had to pay SEK 27,000 per month for the employer's social security contributions for the fictional job (Fröberg 2011; Interview with National Police Board).

For the unregulated berry-pickers from Europe, however, who are considered as self-employed, many seem to have been deceived by unscrupulous middlemen who promise them high earnings and good working conditions, which do not correspond to the reality. As the National Police Board explains:

Berry-pickers are promised gold in the woods. They are promised that they will live in an apartment, that they won't have any problem to get food, that they will be paid 3 euros per box of berries and that there will be berries in abundance. [...] When they came, there were hardly any berries [he refers to the 2010 season which was particularly poor]. They had to sleep six persons together in a tent. They had to fetch water from a creek and collect food from a garbage container outside a supermarket (Interview with the National Police Board).

In the summer of 2012, a number of Romani berry-pickers were recruited by middlemen in Bulgaria who promised them high earnings and good working conditions.<sup>25</sup> On their arrival they were confronted with a different reality: it was too early and the berries were not yet ripe. The berry-pickers quickly found themselves in a desperate situation with neither money nor food. The middlemen who had recruited them had their own car and drove to Northern Sweden where the berries were already ripe, leaving the other workers behind. Those left behind confessed that they felt cheated (Interview with an editor of a magazine on Romani issues).

Persons who have been deceived about their employment find themselves in a precarious situation. Just as those who have lost or quit their job, they have three months to find new employment in the same sector, otherwise their residence permit is revoked (Government Bill 2007/08: 147, 28–32). While the migrants who are deceived by unscrupulous employers run the risk of being expelled, the employers and/or middlemen who deceive the workers are taking a significantly smaller risk. The most likely implication for employers is that they may not be able to employ other non-EU citizens in the future (Interview with the Border Police). They can also be sanctioned if they hire non-EU migrants without a work permit (Alien's Act Chapter 20, paragraph 5).<sup>26</sup> However, no sanction is foreseen in case the employers neglect to fulfil the terms of employment which were stated in the offer of employment and that serves as the basis for the decision taken by the Swedish Migration Board on

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<sup>25</sup> In this case, both the recruited berry-pickers and the middlemen who recruited them belonged to the Romani minority. However, they belonged to different Romani subgroups (Interviews with the editor of a magazine on Romani issues, and with the National Police Board).

<sup>26</sup> The Border Police and the Tax Agency, which conduct joint controls of working places, identified 95 persons working without a permit in 2011 and 61 persons in 2012 (Interview with the Border Police).

the granting of labour permits. The latter is not legally binding.<sup>27</sup> In the end, this means that a person who was deceived cannot use this document as proof against an abusive employer. In addition, employers who have hired non-European workers are also free to make them redundant at any time.

Moreover, the mandate of the Swedish Migration Board does not include conducting post-arrival checks to control whether employers fulfil the terms specified in the offer of employment. Thus there is no control of whether non-EU migrants are given the actual employment, or work under the conditions that were stated in their offer of employment. The lack of post-arrival controls was criticized by several of the persons we interviewed. In the words of a member of the Border Police:

The problem with this law [labour immigration policy] is that it overlooks the need for a follow-up. One gives a permit without controlling whether it is a just, functioning and well-conducted company. If a person gets a permit to work in Sweden, there should be a follow-up to ensure that they receive fair conditions. Otherwise there is a risk that persons are exploited or deceived. [...] At present, the police can only control a workplace if there is a suspicion of crime (Interview with the Border Police).

Without a doubt, many migrant workers are deceived about their job and working conditions in Sweden. However, interviews with berry-pickers and restaurant workers also reveal that a large share of them is actually aware that the position and conditions stated on the employment offer do not correspond to the reality. Even so, they are willing to accept lower standards and disadvantageous arrangements in order to be able to migrate to Sweden and thereby increase their income and quality of life (Hedberg forthcoming). This will be further discussed in the following chapters.

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<sup>27</sup> The reason why the offer of employment is not legally binding is because the legislator considered that employees should have the possibility of negotiating their salary and working conditions (upwards) (Interview with the Hotel & Restaurant Workers' Union). The non-binding character of the offers of employment is subject to substantial critique.

## 5. Coercive recruitment and employment practices

A forced labour situation implies that the worker is deprived of his or her freedom and is subject to various mechanisms of control. It is important to remember that cases of forced labour do not exclude that the worker has 'voluntarily' entered the employment arrangement. Any measure that prevents workers from terminating the employment and leaving the workplace can also constitute elements of forced labour, irrespective of their initial consent. Therefore, this section considers not only coercive practices in the recruitment process but also the mechanisms that prevent workers from leaving the workplace (ILO 2005; Phillips and Mieres 2011, 9; Jokinen et al. 2011). The use of force or violence is the strongest indicator of coercive recruitment. However, coercive recruitment can also involve other, more subtle, forms of coercion such as threats of violence against the victim or their family and threats of denunciation to authorities. The ILO (2009) also mentions the confiscation of documents, withholding of money and isolation, confinement or surveillance. All these elements indicate a form of control exercised by the perpetrator on the victim.

### **Box 3. Human trafficking for forced labour in the berry industry**

The only case that led to a conviction for human trafficking for forced labour in Sweden concerns the recruitment of berry-pickers from Bulgaria in the summers of 2009 and 2010 (Hudiksvalls District Court 15 June 2012).

The perpetrators were a married couple from Bulgaria, who belonged to the Romani minority. They had been coming to Sweden several summers to pick berries together with other family members. They had been in contact with a berry buyer from their previous stays in Sweden, to whom they had sold their berries before they started acting as middlemen.

The victims were also from Bulgaria. Most of them were Turkish Bulgarians or ethnic Bulgarians, and some possibly also were of a Romani background. All of them were quite poor and had a low education. They spoke neither Swedish nor English and most were illiterate.

Before the berry season of 2009, the couple travelled to different towns and villages in Bulgaria, recruiting six persons: two fathers with their sons and one couple. The agreement was that the perpetrators would take care of the travel arrangements (the group travelled in the couple's van), the accommodation and the food and that the income from berry-picking would be divided in half.

As soon as they had left Bulgaria, the perpetrators took the passports from the workers. They arrived at their destination on 16 July. They planned to reside in an old school which was owned by the berry buyer that the perpetrators had met during their previous times working in Sweden. 400 to 500 Bulgarian pickers were already living in the school, including siblings and children of the perpetrators.



Given the large number of pickers living in the school, the berry buyer who owned it asked the police to evacuate it. The pickers recruited by the perpetrators were thus forced to sleep in the perpetrators' van despite cold weather.

Each worker picked between 50 and 70 kilos of berries per day, which were sold for around SEK 10 per kilo (ca one EUR). The perpetrators sold the berries to the berry buyer and kept all the money. Only one of the six berry-pickers received some money.

Although it had been agreed that the perpetrators would provide food, the workers were forced to collect food from the garbage containers of a supermarket. The perpetrators threatened them on a daily basis, telling them that they were lazy, stupid and that they were going to kill them. They said that they would sell them to other Romas present in the woods, who would beat them and force them to steal copper or diesel. One woman was also threatened with prostitution. When two persons tried to escape, they were threatened by the perpetrator with a knife and one of them was hurt.

One of the fathers became very ill and he went to a hospital together with his son. When they got their passports back, they borrowed money from a relative and returned to Bulgaria. Before leaving, they explained the situation to the Swedish police but this did not lead to a police report.

The four remaining berry-pickers met a Bulgarian man living in Sweden, who helped them to get in contact with the police. The police asked the perpetrators to give the passports back and to give money to the victims so that they could return home. Once in Bulgaria, the victims reported the perpetrators to the Bulgarian police.

A similar scenario took place in the summer of 2010, when the couple recruited seven berry-pickers. The pickers were constantly controlled and threatened that something would happen to their relatives at home if they did not pick enough berries.

Just as in the previous year, the workers did not get paid for their work. At the first opportunity they escaped and eventually received assistance from Swedish authorities to return home.

The perpetrators were apprehended by the Swedish police in the summer of 2011. At that time they were back in Sweden but without having recruited any berry-picker from Bulgaria. Even so, some of their family members had recruited workers and were suspected of human trafficking for forced labour. The couple was arrested when they came to the court to testify in favour of their relatives. This was followed by a rather long investigation in which the events of 2009 and 2010 were examined. The international prosecutor in charge of the case travelled to Bulgaria, where another investigation was started after the victims had been reported to the police.

The plaintiffs were heard in a Bulgarian court, which was connected by video conference to the district Court in Sweden. (Interview with the International Public Prosecution Office)

In June 2012, the perpetrators were sentenced for the crime of trafficking to 10 months of prison, expulsion from Sweden and payment of damages to the victims.

The case described in Box 3 involves various elements of coercion, including the confiscation of documents, physical violence, withholding of money, threats, surveillance and isolation.<sup>28</sup>

One case of coercion against regulated berry-pickers involves surveillance and restrictions of the workers' freedom of mobility. Numerous stories told by berry-pickers tell how a berry company, which is respected by the Swedish authorities, locks the workers in overnight, without allowing them visits from their relatives residing in Sweden. They are not permitted to travel as far as they want, but instead they are monitored by GPS. One berry-picker even mentioned that the owner had watched the workers with helicopter. These restrictions are based on the owner's fear that the workers will sell berries to other berry buyers for a higher price, which they are not allowed to according to the work contract (Figure 6) (Hedberg forthcoming).

Practices of coercive recruitment also occur in the restaurant industry. The study of Chinese restaurants in Sweden by Axelsson et al. (forthcoming) reveals that Chinese chefs often are subject to various forms of control. In some cases, employers keep the mails sent to the workers by the Swedish authorities. This is made possible by the fact that the employees often live in a collective accommodation owned by the employer. One of the persons interviewed in the study stated that there have been cases where some Chinese employers confiscated the passport of their employees. Another said that his employer constantly surveyed his employees, not only at work but also during their free time. In addition, the employer disapproved of their talking to people outside the restaurant. In this case, the employer was clearly controlling the workers' moves by maintaining them socially isolated. Arguably, the long working hours imposed by many restaurant owners to newly arrived migrants also contribute to maintaining them in social isolation from the host society. With heavy work schedules, their social contacts in Sweden are limited to their colleagues at the restaurant, most of whom are newly-arrived migrants themselves. The lack of social contacts may prevent them from seeking other employment in case they are mistreated by their employer (Axelsson et al. forthcoming). Some chefs also said that they needed to work particularly hard and 'please the boss' if they wanted permission to have visits from family members from China. Finally, by arranging collective housing it is also

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<sup>28</sup> The camps were situated in the middle of the woods and the pickers had no access to a car or other transport, which significantly reduced their possibilities of escaping.

possible for employers to control their workers by keeping mail sent to the workers, for instance from Swedish authorities.

Another common form of coercion in Chinese restaurants is the threat of being fired from their job and thus be forced to return to China (Ibid.). For non-EU migrants, losing their job can result in the loss of their residence permit, since the latter is tied to their employment. More specifically, Swedish immigration policy requires that non-EU migrants remain with the same employer for a minimum of two years. If they change employer, which they must do within three months after their previous employment was terminated, they must apply for a new work permit. In order to receive the permanent residence permit, which is the goal for many workers, they also need the cooperation of the employer to renew the work permit for two additional years. It can hence be argued that Swedish immigration policy puts the migrants in a situation of dependency towards their employer, something which can be problematic if the said employer turns out to be abusive.

## 6. Exploitative working conditions

In this chapter, we examine exploitative practices at the work place focusing on migrants' earnings, working hours and living and living conditions.

### 6.1 Earnings

Our research on the restaurant and berry industries reveals several problems with regards to the earnings of migrant workers, including underpayment, delays in payment and the withholding of wages.

Regarding the restaurant industry, the Hotel & Restaurant Workers' Union is in charge of examining whether the wages proposed in the offers of employment to non-EU citizens are at least on the same level as the minimum wages according to the collective agreement for a given work category. When this is not the case, the union gives a negative opinion about the application to the Swedish Migration Board, which makes the decision on the issuing of work permits. However, it appears that the wages stated in the offers of employment seldom correspond to the wages that the workers actually receive. In many cases, migrants on labour visa are paid significantly less than the amount stated in the offer. A representative of the Hotel & Restaurant Workers' Union explains how suspicions arose in the union:

It happens that we say no [do not give a positive opinion on the employment offer] because the salary offered is too low. The minimum salary in the sector according to the collective agreement is SEK 20,000 (ca. 2,300 EUR). If they offer SEK 19,000 we say no. Then the employers say 'Ok let's increase the salary'. It can be an increase of hundreds of crowns per month. Usually when we try to negotiate a salary increase of 0.1 % in the collective agreement it is always a problem. But when we ask an increase of SEK 4000–5000 per month [ca. 460–570 EUR), it is not a problem. The first time this happened, we were glad. But when it happened for the tenth time we started getting suspicious. How can it be? Is it that they don't pay the proposed salary anyway? This is what we think happens. (Interview with the Hotel & Restaurant Workers' Union)

This issue came to the attention of the Swedish Migration Board when migrant workers, after two years of stay, started applying for an extension of their work visa. In order to grant an extension, the Swedish Migration Board controls the data from the Tax Agency which revealed the discrepancy between the wages on paper and the wages actually paid (Interview with the Swedish Migration Board).

In the spring of 2012 the Hotel & Restaurant Workers' Union (2012, 18) investigated 64 working places that had been granted work permits for non-EU

workers.<sup>29</sup> In 61 of the cases they found obvious errors in the payment of wages and compensations. In most cases, these errors consisted of low wages in relation to the working hours and unpaid compensation.

A study of Chinese restaurants in Sweden (Axelsson et al. forthcoming) also indicates that during their first employment, usually the first year in Sweden, most workers received wages that were lower than the minimum wage in their professional category. Low-skilled kitchen helpers earn particularly little. Some receive as little as SEK 5,000 (ca. 570 EUR) after tax when they first arrived in Sweden. More experienced chefs, on the other hand, received between SEK 13,000 and 15,000 (ca. 1,500–1,700 EUR)<sup>30</sup> The study also showed that the tax level is an unreliable guide to the wage actually received. The workers, in order to obtain a good tax record, usually agreed to pay higher taxes according to a higher level of wages than what would be called for on the basis of the wages that they had actually received. This would enable them to get permanent residence status.

In many cases, these lower salaries are a result of indebtedness arrangements between the employees and their employers. As discussed earlier, many migrant workers are charged fees in exchange for an offer of employment, and they work for little money in order to repay their debt. In addition, many employers also provide collective accommodation, food and transportation to their employees. In such cases, the workers may receive a fair salary, but they need to repay a part of it in cash to their employer in order to cover for the extra costs (Interview with the Border Police). Another overarching reason for accepting low salaries is that the workers want to receive a permanent residence permit in Sweden and are willing to accept bad working conditions in order to achieve it.

While some workers may be deceived about their prospective wages during the recruitment process, others are aware of the difference between the wages on paper and the actual wages. They are told that the amount stated on the documents submitted to the Swedish Migration Board is a requirement for a successful application, but it is not the real amount that they are going to be paid. Even so, they are willing to accept low salaries, at least at the beginning, because these are still higher than what they would have earned in their home country. In addition, they are expecting that their wages will increase over time, which is actually the case for most Chinese restaurant workers (Axelsson et al. forthcoming). Migrant workers are also aware that their competitive

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<sup>29</sup> The engagement of the Hotel & Restaurant Workers' Union with the issue of the working conditions of migrant labour stems from the union's interest in protecting the collective agreement applied in the sector (with salary dumping being a major concern). The union also seeks to bring policy attention to the problem of the exploitation of migrant workers (Interview with Hotel & Restaurant Workers' Union).

<sup>30</sup> It must be noted that on top of their salary, many workers are also offered collective accommodation, food and compensation for their travel expenses. When these amounts are added, their salary may approximate the minimum salary (Axelsson et al. forthcoming).

advantage in the labour market is to be ‘cheaper’ than the local labour force and that the employers’ main motivation for hiring them is to reduce their costs.

Besides underpayment, restaurant workers in Sweden also face delays in payment and even non-payment. For instance, a Chinese restaurant worker did not receive a salary for a period of three months, without any explanation. In another case, the owner of a restaurant that had economic difficulties stopped paying an employee in order to induce him to quit his job (Ibid.).

In the berry industry, the payment for berries is per kilo. Unregulated pickers from Europe are free movers selling berries to berry buyers. In principle, the berry buyers should keep sales lists with the personal information on the pickers and the amount of berries they have sold. However, such lists are not always kept and the transactions are largely unrecorded.<sup>31</sup> Consequently, the workers have no proof of how much money they are entitled to receive (Wingborg 2011b, 21; interviews with the Tax Authority and an editor of a magazine on Romani issues). In some cases, like in the case of the Bulgarian workers referred to in Box 3, the payment goes through the middlemen, who have recruited a group of pickers and act as its leader. It seems that middlemen often keep a significant share of the money, allegedly to cover the pickers’ transport and other expenses. In the case described in Box 3, the pickers did not get paid at all. The berry buyer was paying the middleman for the berries that were picked by the entire group, the transactions taking place in the buyer’s car, while the rest of the group waited outside. When questioned on that issue during the trial, the buyer justified this action by the fact that the other workers spoke neither Swedish nor English and that they could not count (Interview with the International Public Prosecution Office).

Regulated pickers from Asia are also paid per kilo. However, since 2011, they are entitled to a guaranteed salary irrespective of the amount of berries they have picked. If the pickers are employed by an Asian recruitment agency, which is the case for the vast majority of them, the guaranteed wage corresponds to the minimum wage that is stipulated in the collective agreement for staffing companies (Sw. Bemmaningsavtal), amounting to SEK 18,495 per month (ca. 2,100 EUR) (Wingborg 2012, 11). The guaranteed wage, which covers the costs of coming to Sweden, should prevent the pickers from returning home indebted in case of a poor berry season. Even so, as will be discussed in the section 7 on indebtedness, this safeguard seems to leave room for abuse.

In 2011, the average regulated picker earned, according to one berry company, around THB 75 000 (SEK 17 000 or ca. 2,000 EUR) for the season after paying back their debts. However, and partly depending on their level of experience, there is a large distribution between high and low income earners.

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<sup>31</sup> As mentioned earlier, anyone has the right to pick and sell berries up to the value of SEK 12,500 tax free (ca 1,400 EUR). Beyond that amount, the activity is in principle liable to taxation.

According to interviews with berry-pickers, some earned only just enough to cover their debts, whereas others earned up to THB 300,000 (SEK 67 000 or ca. 7,700 EUR). The pickers monitor the payment process by watching the weighing of berries in order to ensure that they receive appropriate earnings for the berries that they had picked. Usually, the sales lists are posted in the accommodation camps.

In the berry-picking industry, there was a notable case of withholding of wages (Box 4).

**Box 4. Thai berry-pickers left without salary by berry company Lomsjö Bär**

In August 2010, 156 farmers from northeast Thailand came to pick berries in Åsele, Sweden with the Swedish berry company Lomsjö Bär AB. They paid a recruitment fee of THB 80,000 (SEK 18 000 or ca. 2,100 EUR). (Wingborg 2011.)

They were supposed to work only 40 hours a week and were promised six days of holiday. In reality, however, their average working day was 15.5 hours. The berry-pickers were promised SEK 16,000 (ca. 1,800 EUR) as a guaranteed wage in Sweden, and thereafter their wage would be determined by the price per kilo. Also, they would receive a bonus if they worked Sundays. The wage would be paid at the end of each month. However, after the first month, they received only SEK 6,000 (ca. 700 EUR), but were promised the salary the following month. When this time had elapsed and they still had received no money, they initiated a protest march to the main centre of Åsele, which was widely reported in the Swedish media. However, the owner of Lomsjö Bär had by then left the country and disappeared with all the company's money. A majority of the workers, 117, returned to Thailand without any salary. 39 pickers, however, stayed in Sweden to protest against their situation, supported by the local population, Åsele municipality and the Swedish Municipal Workers' Union (Kommunal) (Wingborg 2011). The union succeeded in claiming that the wage guarantee should be valid and hence each worker received SEK 36,000 (ca. 4,200 EUR). The money was paid by the Swedish state, which paid SEK 5.8 million in total (ca. 670,000 EUR).<sup>32</sup>

In February 2013, the owner of Lomsjö Bär was caught in Thailand and arrested for employment fraud. For more than two years he had been hiding from the Swedish authorities, constantly changing his residence in order to avoid being caught (SVT 2013).

According to Junya Yimprasert (2010), the leader of the Migrant Workers' Union of Thailand, the case of Lomsjö Bär severely undermines the image of the Sweden as an upholder of human rights.

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<sup>32</sup> Unlike all other cases, in the case of Lomsjö Bär the employer was not a Thai recruitment agency, and instead the company had employed the workers directly. This was a 'lucky' circumstance for the workers, since this made the state responsible for the pay to workers.

## 6.2 Working hours

Regulations regarding working hours are specified in collective agreements and in the Working Hours Act. They aim to ensure that each worker receives sufficient daily rest and breaks. However, the working hours of migrant workers in both the restaurant and the berry industries commonly exceed the 40 hours per week that are equivalent to full-time employment.

According to the Work Environment Authority,<sup>33</sup> which conducts workplace inspections on work environment and safety issues, restaurant workers on a labour visa tend to work longer hours than other employees (Interview with the Work Environment Authority). The Hotel & Restaurant Workers' Union (2012, 19) draws similar conclusions. Out of the 64 restaurants investigated in 2012, only 36 had accessible working schedules and all of them included some form of violation of the regulations. For example, employees were registered to work a much higher number of hours than a full-time job requires, the daily shifts were too long and the rest periods between shifts were too short. The union came across one person who had worked 295 hours per month while he should have worked 173 hours in his full-time position. Besides long working hours, very short ones can also be problematic. Some employees, who were supposed to work full-time, were actually on 'standby shifts', which means that they could be called on short notice when they were needed at the restaurant. Some of them were supposed to be available to work in several restaurants.

A study of Chinese restaurants in Sweden also suggests that chefs work on average between 10 and 13 hours per day, six days per week. It seems that, before coming to Sweden, the chefs are orally informed that the working hours stated in their offer of employment will not correspond to the actual working hours (Axelsson et al. forthcoming). In addition, Chinese chefs in Sweden do not usually receive any annual leave, although some of them manage to negotiate unpaid leave with their employer (Ibid.).

As argued above, migrants on a work permit are, to some extent, dependent on their employer because their residence permit requires that they stay with the same employer for two years. This dependency situation seems to influence their working conditions in general and their working hours in particular. One Iraqi chef interviewed in a study by Global Challenges explains how his work load increased when he obtained a labour permit after having been denied asylum:

Before I got the work permit, the employer treated me as any other employee. I was working five days a week. I was free on red days [public holidays]. The working hours were by the rules. After I got the work permit

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<sup>33</sup> In 2012, the Work Environment Authority conducted an information campaign on the work environment and safety specifically addressed to the restaurant industry. They sent brochures and information material to 14,000 restaurants in Sweden and also launched a website with a video and information in twelve languages. It is worth noting that the Work Environment Authority lacks the mandate to review wage-related issues (Interview with Work Environment Authority).



I started working one or two hours extra every day. Red days, white days, I worked every day. And he started charging me with tasks that were not included in my job. Finally, I ended up in a situation where I worked for three people. My employer had a waiter whom he fired so I had to work as a cook, a kitchen assistant and a waiter (Nordlund & Pelling 2012).

In the berry industry, working hours are perhaps even more excessive. Regulated workers have the right to a 40 hour working week and to holidays, but in practice this is not followed. As exemplified in Box 4, it is not unusual that the workers work from early morning until late evenings, sometimes up to 17–18 hours a day, every day of the week. Impressions from fieldwork revealed that they worked even harder during days when it rained in order to keep warm (Hedberg forthcoming). This hard work can be explained by the fact that the berry-pickers are paid per kilo, and that they need to work as many hours as possible in order to increase the earnings they can bring home to their families. In interviews with berry-pickers, they tell that they even want to work as many hours as possible: “When one picks berries then one thinks that one has to earn money within three months”. No berry-picker in an interview had complained about working hours. In an anonymous survey, however, there were many berry-pickers who expressed concern about working too many hours (Hedberg forthcoming). The Swedish Municipal Workers’ Union (Kommunal) is aware of this situation, but says that it is difficult for the pickers to do otherwise:

What doesn’t work is the time. They pick as much as they can or as much as they can put up with. . . . If we then say ‘you cannot pick’ and demand that the employer keeps to this, and if not we punish them . . . Then they can go out in their free time and pick and offer it on the black market (Interview with the Swedish Municipal Workers’ Union).

In sum, it must be noted that the berry-pickers many times want to work long hours. They are in Sweden in order to earn money for their household and they want to bring home as much money as possible to invest in their farm, in improving their house and in the children’s’ higher education.

Even though the berry-pickers generally disagree that they work too many hours, most of them consider that the work is extremely hard. They particularly complain about walking long distances carrying heavy rice bags filled with berries. They also have to bend to pick the berries, which grow very low on the ground. It is generally agreed that it is an advantage for a berry-picker to be used to farm work in Thailand, and they compare the work in the Swedish woods to picking bamboo on the mountains in Thailand. However, as one berry-picker explains, with farming in Thailand they can relax more than when picking berries in Sweden (Interviews with berry-pickers).

### **6.3 Living conditions**

Migrant workers sometimes live in poor conditions. Restaurant workers often live in collective accommodation owned or rented by their employer, which are

regarded as part of their salary. The apartments are usually overcrowded and located in far-off areas. This contributes to the migrants' social isolation and dependency on the employer. Even so, many newly-arrived migrants are also satisfied with this arrangement, since they do not need to look for accommodation by themselves (Axelsson et al. forthcoming).

Poor accommodation standards are also a reality for berry-pickers, at least for the unregulated, European pickers. Some groups of workers reside in forest camps under poor sanitary conditions. In the summer of 2012, around a thousand pickers from Bulgaria camped in the woods between Uppsala and Söderhamn. Since they arrived before the berries had ripened, they soon found themselves without money or food. At the beginning, the camp also lacked running water, which was later provided by the municipality. The pickers also lacked adequate clothing for the rainy weather. Some persons provided the pickers with food and clothes, but the presence of the pickers also aroused discontent among the local population. Some local young people even threw stones at the pickers (Ruth 2012; Interview with an editor of a magazine on Romani issues).

In recent years, accommodation facilities for Asian pickers, which are provided by the berry companies that host them, have been monitored by the Environmental and Health Protection Committee of the municipalities and tend to be of good quality. According to fieldwork, Asian pickers usually reside in old schools or abandoned houses, which the berry companies have bought from the municipality. In other cases, they reside on the property of the berry company, or in housing owned by one of the Thai women who reside in Sweden (usually small cottages), or even in the private house of the owner.

## 7. Arrangements of indebtedness

Arrangements of indebtedness often characterize the work situation of migrants, both in the restaurant and the berry industry. As mentioned earlier, migrants are commonly charged high fees by employers or middlemen in exchange for an offer of employment or to cover the costs of transportation. These fees often take the form of a loan from the employer and are repaid in the form of lower wages. The resulting debt acts as a mechanism to 'bond' the worker with the employer or middleman. As one person interviewed at the Border Police explains:

During the four years it takes to become eligible for permanent residency, the workers are dependent on their employer. The employer can ask for SEK 100,000 [ca. 11,500 EUR] in exchange for a job. The person pays 10,000 at the beginning and works to repay the remaining 90,000 (Interview with the Border Police).

In addition, employers often take care of the accommodation, food and transportation of their employees, which represent extra costs that the employees need to repay. These costs further contribute to the indebtedness of the workers towards their employer. The workers and employers are thus connected in multiple ways, with the employers also playing the role of landlords and creditors. Arguably these multiple connections increase the workers dependency on their employer (Interviews with the Border Police and the Tax Agency).

For regulated Asian workers the interviews with berry-pickers, berry companies and other actors in the berry business reveal that, during the 2000s, there has been a successive increase in the fees paid by workers. First, there has been an increase in the fee paid to Swedish authorities, which occurred as a result of the transition of the workers from being unregulated, coming on tourist visas, to being regulated workers. The workers have to pay a substantially higher fee for the work permit than they did for the tourist visa. Second, the number of middlemen has increased in Thailand. They are paying fees to local and regional middlemen and to the recruitment agency, they have to take higher loans from the banks and, according to the Thai Labour Campaign (NAT 2009), they sometimes are paying under-the-table money to Thai authorities. This substantial increase in costs, which followed from the introduction of recruitment agencies, is directly paid by the individual worker.

Since 2011, non-EU pickers have, as mentioned above, the right to a guaranteed wage in case they do not manage to pick sufficient berries. This guaranteed wage is intended to protect the worker from returning home indebted. Since the implementation of the guarantee wage there has been no 'bad berry year', when workers have returned indebted. Hence, the right to the guaranteed wage has not yet been tested in a difficult year with a poor berry crop. According to the Swedish berry companies, so far only single individuals

who have become sick have not been able to pick enough berries, and they have then received the guaranteed wage.

However, interviews with berry-pickers reveal that in 2011 a group of seven workers were sent back to Thailand without receiving the guaranteed wage to which they were entitled. The pickers were accused of selling berries to berry buyers, instead of to the berry company that contracted them, because they had returned to the berry company with too low a yield (Figure 6). The owner punished them by sending them back to Thailand, which was before some of them had had the time to pick enough berries to cover the debt. Hence, these workers returned indebted despite their right to the guaranteed wage.

In addition, there are actors in the business who claim that the workers are signing double contracts, with the contract in Thailand stating that they will not receive the guaranteed wage (Interviews with berry-pickers and with berry companies).

Hence, the regulations still make it possible for the employers to cheat workers. According to one Swedish merchant, there is also the risk that the Swedish berry industry will go bankrupt in case the berry business has to face a year with few berries. Although the berry companies have formal bank guarantees, they would in practice not be able to pay the guaranteed wages and thus the workers would not be protected against indebtedness (Interview with a Swedish merchant).

## 8. Abuse of the vulnerability of migrants

Beside the use of deception or coercion, the abuse of a person's vulnerability also indicates exploitative labour practices. In the previous section, we argued that indebtedness makes the worker vulnerable to abuse by unscrupulous employers or middlemen. The vulnerability of migrants can also stem from the fact that they come from a very poor economic background, have a low level of education or are members of a minority group.

Migrant workers in the restaurant or berry industries in Sweden are escaping a poor economic situation in their home country. For many of them, working in an advanced economy such as Sweden is an opportunity to significantly improve their living conditions and those of their family. Additionally, with the introduction of the new labour immigration policy in 2008, Sweden has become an attractive destination due to the prospects of obtaining a permanent residence permit after four years of work in Sweden.

The victims in the only case that has resulted in a conviction for human trafficking for forced labour in Sweden (Box 3) had been living in conditions of extreme poverty in Bulgaria. The majority was unemployed and regarded berry-picking in Sweden as an opportunity to earn some money for food and electricity expenses. In addition, the victims had a low level of education. Many were illiterate and could not count – when asked, during the trial, about the amounts of berries they had picked their answers were highly approximate. They also had difficulties in expressing themselves in a clear manner and making themselves understood. According to the prosecutor interviewed for the study, it is no coincidence that the victims were illiterate and very poor:

We should not forget that the victims of human trafficking are also rather poorly educated people, who come from very poor conditions. Most of them were illiterate. Little is needed to scare an illiterate. They cannot read newspapers. They take the information they hear (Interview with the International Public Prosecution Office).

The lack of language skills in Swedish or English also contributes to the migrants' vulnerability. In the restaurant industry, many migrants depend on their employer for all the administrative procedures related to their residency and employment.

Stemming from the lack of language skills, migrants also lack knowledge of the Swedish society and their rights. As a representative of the Hotel & Restaurant workers' union puts it:

The problem is that the migrants often do not know how it is to live in Sweden, the Swedish standards, rules, agreements, culture, they do not speak the language. They come here and work under poor conditions and are exploited (Interview with the Hotel & Restaurant Workers' Union).

Finally, many of the berry-pickers coming from European countries belong to the Romani minority, which is subject to stigmatization and discrimination

both in their home country and abroad. This makes them particularly vulnerable and poor in their home country, which also makes them more prone to accept an uncertain offer from a middleman.

## 9. Challenges in the prevention of migrant labour exploitation

After having examined the various exploitative practices in the recruitment process and at the work place, this chapter discusses the main challenges in the prevention of migrant labour exploitation, i.e. the acceptance by migrants of exploitative situations, the lack of complaints by exploited workers, the difficulties in detecting and proving human trafficking for forced labour, the lack of accountability of economic actors and the lucrative character of human trafficking.

### 9.1 Lack of complaints from the migrants

A major challenge in addressing migrant labour exploitation is the fact that victims of labour exploitation seldom complain to the authorities or seek assistance (Jokinen et al. 2011, 126–129). This was stressed by persons we interviewed at the Police, the Work Environment Authority, the trade union and a Foundation against trafficking.<sup>34</sup> The lack of complaints from the victims of labour exploitation can be due to several reasons.

First, migrants often come from a country where the authorities and trade unions are commonly distrusted (Interviews with the Hotel & Restaurant Workers' Union and the Work Environment Authority). Second, the victims' unwillingness to report the perpetrators of exploitation is largely caused by the fear of losing their employment and, thereby, their right of residence in Sweden (Interviews with the Border Police, the International Public Prosecution Office, and the Hotel & Restaurant Workers' Union). As argued above, the fact that migrants on a labour visa must remain for a period of two years within the same industry in which they were recruited, unless they find a new job within three months, and since they need their employer's consent to continue their employment in order to receive a permanent residence permit, this puts them in a position of dependence towards their employer which leaves room for abuse by unscrupulous actors. It is also a strong disincentive to complain to the authorities. According to a representative of the Hotel & Restaurant Workers' Union, employers commonly threaten their employees with expulsion in case they contact or join the union:

They do not dare to contact us. It almost never happens. When we discover a case of abuse, the victim usually refuses to let us take action. They do not

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<sup>34</sup> While victims of labour exploitation rarely complain to the authorities, many of them consult lawyers in order to complain about their abusive employer. In general they are already clients of the lawyers, who may have assisted them with immigration procedures. Their degree of trust in their lawyer is probably related to the length of their collaboration and possibly also to the client-lawyer confidentiality. One immigration lawyer interviewed for the study is contacted around twice per month by old clients who seek help against their abusive employer (Interview with immigration lawyer).

want to join the union because they are afraid that if they speak with us they will lose their job and be forced to return to their home country (Interview with the Hotel & Restaurant Workers' Union).

Hence, the Hotel and Restaurant Union has no – or very few – members who are non-EU migrants on a work permit. The migrants' dependency position may also stem from the pressure to repay potential debts towards their employer or other persons.

A third explanation for the low number of complaints is the migrants' lack of knowledge about labour and employment law and regulations in Sweden, which may significantly differ from the situation in their home country.<sup>35</sup> Another reason could perhaps be their poor Swedish language skills. The language barrier, in itself, is an obstacle to communicating with the authorities.

Shame is another reason why the victims of labour exploitation, and even trafficking for forced labour, rarely complain to the authorities. While the majority of the victims of sexual exploitation are women, victims of labour exploitation are usually men. According to the National Police Board, the idea of seeking help could affect the pride of men to a larger extent than women (Interview with the National Police Board).

Additionally, the lack of complaints may also be due to the fact that the victims, at least in the berry industry which is seasonal work, are rather 'mobile'. They often choose to return to the home country after being subjected to deception or labour exploitation. In the case of the conviction for human trafficking involving berry-pickers from Bulgaria (Box 2), the victims were no longer in Sweden when the offenders were arrested. Therefore the trial took place through video conference: the victims were heard in a Bulgarian court, which was connected to the District Court in Sweden.

Finally, migrants may accept exploitative situations because they represent better alternatives to remaining in their home country. This point will be further developed in the next section.

Given the lack of complaints from the migrant workers, the few cases of labour exploitation that are reported to the authorities and trade unions are usually reported by other employees of the company who witness the abuses (Interviews with the Border Police and the Hotel and Restaurant Workers' Union).

## **9.2 Acceptance by migrants of exploitative situations**

Another major challenge to the prevention of migrant labour exploitation is the fact that migrants do not always question the exploitative recruitment processes and working conditions that they are subject to because these still represent a

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<sup>35</sup> In particular, migrant workers may be unaware of the Swedish model for industrial relations, where negotiations between trade unions and employers organisations play a key role. Hence, they are not aware about the importance of joining a trade union.



better alternative than staying in their home country (Jokinen et al. 2011, 126–129). Many labour migrants in Sweden come from a poor background. For them, working in Sweden represents a unique opportunity to improve the living standard for themselves and their families. For many Asian berry-pickers, for example, seasonal work in Sweden has become part of their livelihood strategy. They come year after year and combine berry-picking with their farming activity at home, which compared to other alternatives of labour abroad is perceived as a relatively sustainable household alternative (Hedberg 2013). Hence, even though they are exploited in Sweden, they do not perceive themselves in this way.

In addition, Sweden, with its relatively strong economy, is an attractive destination. So far, it has coped better with the economic crisis than most other European countries, which makes it an attractive destination for migrants.

Although migrating to Sweden may involve a large amount of hardships, including separation from relatives, indebtedness and difficult working conditions, many regard it as still being worthwhile. Therefore, many persons who are subject to labour exploitation and even forced labour do not consider themselves to be victims, nor do they consider the abusive employers or middlemen to be exploiters. On the contrary, they often see them as benevolent persons who give them much-needed help.

The fact that migrants seek the assistance of abusive middlemen, despite the high fees that they charge, suggests that there is a certain demand for the middlemen's 'services'. For instance, talking about the middleman who assisted him in coming to Sweden, a 20-year-old man says: "I paid him 30,000 SEK [ca. 3,400 EUR] to get help to come here; it would have been impossible to come otherwise" (Ekelund & Sköld 2013). When this middleman was investigated for fraud by the police (see Box 1), some of his old clients even consulted an immigration lawyer to ask for advice on what to say when they would be interrogated by the police regarding the middleman's activity. "They do not want to harm the lawyer who helped them come to Sweden" explains the other lawyer who refused to give them any advice or be involved in the matter (Interview with an immigration lawyer).

A researcher who studied Chinese restaurants in Sweden confirms that the workers often feel some gratitude towards their employers for giving them the opportunity to work in Sweden.<sup>36</sup> In addition, some employees also have a certain understanding of their employer's situation. They are aware that running a restaurant in Sweden involves significant costs and that the

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<sup>36</sup> According to the researcher, Chinese restaurant workers actually have some contradictory feelings. On the one hand, they are grateful to be given a job in Sweden and understand that the employers seek to reduce their costs. On the other, they feel that they are being exploited and hope to see their working conditions improve over time. They expect a higher reward for their hard work (Interview with researcher studying the working conditions of Chinese restaurant workers in Sweden).

competition is tough, which impacts on their earnings (Axelsson et al. forthcoming).

Not only the victims but also the exploitative employers and middlemen seem to consider their act of bringing/employing a migrant worker as benevolent. According to a Chinese chef, restaurant owners “think they are like gods” because they give their employees the opportunity to go abroad and earn more money than they would in China. Even the Bulgarian couple that was convicted in 2012 for the trafficking of Bulgarian berry-pickers (see Box 2) justified themselves in the following terms during the trial: “They [the victims] were so poor. We were sorry for them, that’s why we let them follow us” (Interview with the International Public Prosecution Office). If even the perpetrators of severe forms of exploitation have such a stance, it is likely that employers responsible for milder forms of labour exploitation also consider their acts to be ‘favours’ rather than offences.

In previous chapters we argued that, while many migrants are deceived regarding in their terms of employment, others are actually aware of the conditions that await them in Sweden. For instance, migrants on a work visa may know that they will not get the employment or conditions stated in their offer of employment. Even so, they are willing to accept low wages, long working hours and other disadvantageous conditions as long as they have the opportunity to come to Sweden.

### **9.3 Difficulties in detecting and proving human trafficking for forced labour**

As a result of the low number of complaints, it is difficult for the authorities to detect trafficking for forced labour (Jokinen et al. 2011, 119–125). The majority of cases of exploitation of migrant workers never actually come to the attention of the authorities. Without a doubt, if the victims agreed to cooperate, the number of prosecutions and convictions would certainly be significantly higher. For instance, none of the four cases of suspected human trafficking for forced labour in the Stockholm area in 2012 led to a conviction. They resulted in alternative judgments instead. Even so, according to a representative of the Border Police, which was in charge of those cases, they could have led to convictions if the victims of exploitation had agreed to cooperate with the police (Interview with the Border Police).

In addition, many of the experts interviewed for the study agreed that the police, prosecutors and judges in Sweden lack knowledge regarding trafficking for forced labour, as opposed to trafficking for sexual exploitation, for which Sweden has renowned expertise. The crime of trafficking for forced labour has only recently been introduced in the Swedish legislation and more experience is needed for the various actors involved to be able to recognise it (Interviews with the International Public Prosecution Office and National Police Board). Beside the lack of experience, the crime is also difficult to identify due to the

complexity of the concept of forced labour and the absence of a clear definition in the legislation.

Perhaps the major difficulty with the concept of forced labour relates to defining the boundary between a voluntary and a forced employment situation. The complexity lies in the coexistence of some form of coercion and voluntarily agreed employment arrangements. The prosecutor interviewed for the study raised this question:

There are many poor people who come and work in Sweden. They can conclude really bad [employment] deals and be exploited, but where is the limit between a really bad deal and human trafficking? This limit is difficult to identify (Interview with the International Public Prosecution Office).

She gave the example of a case of suspected human trafficking involving berry-pickers, where she could not demonstrate that the victims had been deceived. The court finally deemed it to be a bad “deal” rather than trafficking. A representative of the National Police Board discussed the issue in similar terms:

Where is the boundary regarding forced labour? Is it a civil rights matter that concerns the trade union and is dealt with in the labour court? Or is it a human trafficking crime, thus falling under the responsibility of the police? (Interview with the National Police Board).

In addition, human trafficking is rather difficult to prove in the courts due to the high standard of proof required in criminal procedure. As mentioned earlier, Swedish legislation requires the presence of three elements – the act, the means and the purpose – for a crime to qualify as trafficking. However, it is rather difficult to prove a purpose. The prosecutor interviewed for the study mentioned a case of suspected trafficking in the berry industry which did not lead to a conviction because it was not proved that the purpose of the offender had been to exploit the victims. As she explained, a purpose is an intention, a thought, and it is very difficult to prove that someone’s intention is to exploit another person (Interview with the International Public Prosecution Office). It is also difficult to demonstrate that threats had been used to limit a victim’s freedom because, contrary to physical violence, threats do not leave material traces. Coercion through the use of threats is sometimes described as an ‘invisible prison’ from which the person cannot escape (Interviews with the National Police Board and the International Public Prosecution Office).

According to those we interviewed at the Police, there is also a discrepancy between the view of the police and the courts regarding trafficking for forced labour. The courts would tend to compare the working conditions of the victims with the prevailing conditions in home country, arguing that they do not experience worse conditions in Sweden than those they had at home. This would, according to the police, contribute to the low number of convictions for trafficking for forced labour in Sweden (Interviews with the National Police

Board and the Border Police). This attitude of the courts may explain why the crime of human trafficking was discarded in a number of judgments.<sup>37</sup>

#### **9.4 Lack of accountability in the berry industry**

The last challenge that we identify, which particularly relates to the berry industry, regards the lack of accountability of different economic actors. There are a high number of actors involved in the industry (Figure 6.) and the question of who bears the responsibility for the pickers' working conditions remains largely unsolved. In the case of the unregulated workers, who travel 'freely', there are no employers at all, and in the case of the regulated workers the formal employer is the Asia-based recruitment agency. Both of these systems lead to a situation where the Swedish berry buyers or companies, as well as the merchants, cannot be held accountable for the pickers' situation.

As repeatedly argued by the Swedish NGO Swedwatch (Wingborg, 2011a; 2011b; 2012) a higher degree of the responsibility has to be taken by the berry industry, in particular by the merchants, who are the most powerful actors in the industry in Sweden and those who earn the highest amount of money.

One merchant interviewed for the study expressed a willingness to take more responsibility when it comes to the conditions of regulated workers. In this regard, he mentioned a recent initiative of a 'Round table', involving the two largest merchants and actors from the retailer side, aiming to establish a code of ethical conduct for the berry industry. He has also developed information material for the pickers, written in Thai. In order to avoid problems with the lack of reading skills on the side of the workers, the merchant intended to travel to Thailand before the following season and personally inform all berry-pickers who would work for him about their work conditions and rights.

When it comes to the responsibility towards the unregulated workers, however, the merchants see no problems connected to them in the first place. The two largest merchants in Sweden buy around 50–85 % of their berries from unregulated pickers. A smaller merchant buys berries only from unregulated workers. Economically, therefore, a large part of their income comes from unregulated workers. According to the merchants, these workers are 'free pickers', guest workers who travel on their own account, in need of money, selling berries to independent berry buyers. For this reason there would be no moral problem involved in buying their berries. One merchant argues that the important thing for him is to follow rules and regulations. He means that organised attempts to bring berry-pickers from Bulgaria and Romania are just rumours that have not been substantiated in the investigations that have been conducted so far. He also means that the berry-pickers have to assume their

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<sup>37</sup> A similar point was made in an article in the Swedish newspaper 'Dagens Nyheter' regarding court decisions on human trafficking for sexual exploitation. The article argues that victims with a poor background tend to be distrusted by the courts, which consider that they may lie in order to collect damages (Carlsson 2013).

own responsibility for the situation. Furthermore, the merchants mean that it is problematic to try to distinguish among workers depending on their country of origin, for instance buying berries from workers from all countries but Bulgaria, since this would constitute discrimination. Instead, one of the merchants consider that it is the authorities that are responsible for informing the workers regarding the Swedish berry industry and the precautions that they should take. The other merchant claims to have taken steps in order to prevent workers from being exploited, in that he has introduced a system with direct payment to the individual berry-picker instead of to a group leader. The problem, however, seems to be that the berry buyers do not always follow these guidelines.

Not only the merchants, but also the berry buyers and berry companies often take little responsibility for the rights of the workers. The interviewed berry companies do not consider there to be problems with the unequal power relations that exist between them and the workers on a daily basis. Some companies even argue that the workers are powerful, since they can talk to the media, or sell berries to other berry buyers, both practices that harm the business.

Lastly, berry buyers who mainly buy berries from unregulated pickers also take little responsibility for the pickers' working conditions and well-being. The situation can be particularly problematic when buyers buy berries from a group of pickers that includes a group leader acting as a middleman (as in the case explained in Box 2). Some buyers buy the berries from the group leader instead of paying each individual worker. This may result in some workers not receiving any payment for their work. Although we must assume that berry buyers are aware of abuses, they do not act upon this.<sup>38</sup>

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<sup>38</sup> According to the prosecutor in charge of the case which led to a conviction (see Box 2), the berry buyer was also liable for not having known that trafficking was occurring and not doing anything about it. Yet he could not be prosecuted because the Swedish legislation on human trafficking requires intent (Sw. direct uppståt) or the willingness to exploit someone, not indirect intent (Sw, indirect uppståt).

## 10. Summary and recommendations

### 10.1 Summary

Although Sweden is renowned for its high labour and employment standards and adherence to human and labour rights, migrant labour exploitation is a significant problem. Analysing cases from the restaurant and berry industries, this report explores various forms of labour exploitation and forced labour. A particular focus is put on exploitative practices emerging in the context of recruitment. The report also provides an overview of Swedish labour immigration policy and the legislative background of trafficking for forced labour in Sweden, and discusses the challenges in the prevention of migrant labour exploitation. It is based on interviews with authorities, trade unions, immigration lawyers, employers and migrant workers. Fieldwork, media material and court judgments are also used.

#### **Legislative and policy background**

The issue of trafficking for labour exploitation has received relatively little attention in Swedish policy discourse, where the emphasis instead has been on trafficking for sexual exploitation. Since the crime was introduced in the Swedish Penal Code in 2004, few cases of trafficking for labour exploitation have reached the Swedish courts, with only one case leading to a conviction.

In December 2008, Swedish labour migration policy underwent a major reform and shifted from being very restrictive to becoming one of the most liberal policies among the OECD countries. Within the framework of this new policy, any worker from outside the European Union who has been offered employment in Sweden can be granted a work permit, provided that a number of conditions are met. The assessment of the need to recruit labour from outside the EU is thus made by employers rather than by a public authority. In addition, the new policy does not impose any skills requirements or quotas. After four years, the labour migrant becomes eligible for permanent residency status. Since 2008, the Swedish Migration Board has issued 58.000 work permits to non-EU citizens, with a majority being employed within agriculture, the IT industry and the hotel and restaurant industry.

Following the introduction of the new policy, it appeared that a number of labour migrants had been exposed to low wages and poor working conditions. In order to assess the seriousness of employers and protect the workers against various forms of exploitation, the Swedish Migration Board introduced, in January 2012, stricter requirements for the granting of work permits in a number of sectors. This measure has most likely contributed to a decrease in the number of cases of abuse, but it has not eradicated the problem.

## **Recruitment practices and working conditions**

In this report, labour exploitation is conceived as a continuum, ranging from milder to more serious forms of exploitation, with trafficking for forced labour constituting the most severe form of exploitation. In addition, exploitative practices are considered both in the context of recruitment and at the workplace.

With regards to recruitment, it is a common practice that migrants in the restaurant and berry industries pay high fees to recruitment agencies and middlemen, which in some cases results in the migrants becoming indebted. In the restaurant industry, employers sometimes request a payment in exchange for an offer of employment, which is the basis for obtaining a work permit. Sometimes migrants fall victims to unscrupulous employers or middlemen, who charge them fees for fictitious jobs. These workers arrive in Sweden to find out that the company that supposedly hired them does not exist. One existing practice is the creation of “shell companies” for the purpose of applying for work permits which are then declared bankrupt. This ‘trade in work permits’ is described as a new form of abuse to the immigration system, because contrary to human smuggling, the person travels legally and with valid documents.

Migrant workers are also subject to various coercive practices in the context of their recruitment and/or at the workplace. Two main issues must be highlighted with regards to coercion. First, coercion does not necessarily involve the use of physical force. Usually, milder and more subtle methods are used to limit the freedom of individuals, such as the use of threats, isolation, surveillance and the confiscation of documents. Second, it appears that in the vast majority of cases coercion does not imply that the person was forced to enter an employment arrangement, but rather that they were prevented from exiting it. An acceptable work situation can thus deteriorate into forced labour.

Low wages and long working hours are the most common forms of migrant labour exploitation. According to Swedish labour immigration policy, the terms of employment offered must be in line with the collective agreements prevailing in the profession. However, the conditions stated in the offers of employment, on the basis of which the Swedish Migration Board assesses the work permit applications, seldom correspond to the conditions that the workers actually receive. In many cases, not least in the restaurant industry, they are paid significantly less and work longer hours. Many workers are required to repay part of their salary to their employer in order to cover potential recruitment fees. Some are even requested to pay the social contributions and insurance that are normally paid by the employer by themselves. However, since the offer of employment is not legally binding, migrant workers cannot use this document as proof against an abusive employer.

In the berry industry, regulated workers from Asia have been entitled, since 2011, to a guaranteed monthly wage, irrespective of the amount of berries they have picked. However, this safeguard may not entirely protect workers from indebtedness since it is believed that recruitment agencies sign double

contracts, with the contract in Thailand stating that they will not receive the guaranteed wage. A berry merchant also argues that, in case of a bad berry season, there is the risk that the whole industry goes bankrupt and that the berry companies will not, in practice, be able to pay the guaranteed wages. Unregulated pickers from the EU, who can 'freely' circulate within the union, are perhaps in an even more precarious situation since they do not have an employer and must bear all risks by themselves.

Our study suggests that certain migrants are deceived by unscrupulous employers or middlemen regarding the earnings, work and living conditions. In many cases, however, the migrants are aware that the conditions stated in the offer of employment are only intended to help the work permit application succeed and will not be met in reality.

A number of factors increase the likelihood of migrant labour exploitation. First, migrants often enter into debt in order to work in Sweden, which sets them in a situation of dependency towards their employer. In addition, many migrants are particularly vulnerable to exploitation because they come from a very poor economic background, they have a low level of education or they are members of a minority group that is discriminated against in the home country.

## **Challenges**

The report highlights a number of challenges in preventing and combating migrant labour exploitation.

A first challenge stems from Swedish labour immigration policy, according to which work permits for non-EU citizens are tied to the employers. That is, labour immigrants must remain with the same employer during the first two years, or find a new employer within three months, and in the same occupation during the first four years, or else they can be deported from Sweden. Arguably, this requirement places the employees in a situation of dependency towards their employer. Workers who are exploited by unscrupulous employers may be reluctant to complain for fear of losing their employment and thereby their right of residence in Sweden.

The second challenge stems from the fact that many migrants who are subject to exploitation do not always consider themselves to be victims. Working in Sweden often represents an opportunity to escape poor economic circumstances and improve the living standard of themselves and their families. Therefore, many labour immigrants are willing to accept poorer working conditions than those enjoyed by the local population.

A third challenge relates to the lack of experience in regard to trafficking for forced labour in Sweden. The police, prosecutors and judges in Sweden may fail to detect cases of forced labour due to a lack of knowledge about the crime. Additionally, the concept of forced labour is rather complex – the distinction between a voluntary and a forced employment situation is difficult to define – and the legislation lacks a clear definition.



The low number of convictions for trafficking for forced labour in Sweden may also be a result of the courts' tendency to compare the working conditions of the victims with the prevailing conditions in the home country, considering that they do not experience worse conditions in Sweden than those they had at home.

A fourth challenge, related to the berry industry, highlights the lack of accountability of the various economic actors involved. Unregulated workers from Europe are considered to be self-employed and 'free movers', and regulated workers from Asia are formally employed by Asian recruitment agencies, leading to a situation where the actors in Sweden – berry buyers and merchants – do not need to assume the full responsibility for the pickers' labour conditions.

## 10.2 Recommendations

This report has highlighted various forms of exploitation faced by migrant workers in the restaurant and berry industries in Sweden, ranging from milder to more serious forms. These constitute violations of the rights of workers, tarnishing the image of Sweden's supposedly well-functioning labour market. In the remaining part of the report, we propose a number of recommendations in order to prevent migrant labour exploitation and trafficking.

### Recommendations for policymakers

The exploitation of migrant workers in Sweden suggests a failure of the 2008 policy reform to guarantee decent working conditions for all. The stricter requirements introduced in January 2012 by the Swedish Migration Board have succeeded in reducing the cases of abuse but they have not eradicated the problem. At the same time it must be stressed that acknowledging the shortcomings of the new liberal labour immigration policy does not imply that it should be entirely rejected, but rather that it should be improved. What follows are some suggestions for doing so:

**Post-arrival controls** should be introduced to verify that the migrant worker receives adequate working conditions. At present, no authority has the mandate to conduct controls after the worker's arrival. In order for the police to control a workplace there must be a suspicion of crime. In addition, in order to prevent unscrupulous actors from deceiving migrants by hiring them for 'fictitious' jobs, it should be verified that the persons who are granted a work permit are actually working at the workplace which hired them.

Migrant workers should receive the salary and working conditions that they are entitled to. Therefore, the **offer of employment**, based on which the Swedish Migration Board assesses work permit applications, **should be legally binding**. More specifically, the terms of employment should be at least as good as those stated in the offer. Binding offers of employment give the possibility to

Swedish authorities to verify if the conditions that formed the basis for the work permit are actually applied in reality.

There should be **clear sanctions** for employers who do not follow the rules, which could have a dissuasive effect on all employers. For instance, they should pay a **fine and financial compensation** to the abused workers. At present, an employer who does not fulfil the terms of employment stated in the offer has little to lose, although they might not be able to hire non-EU workers in the future. In contrast, the workers risk losing their right of residence and the possibility of applying for an extension of their work permit (after two years) or for permanent residence (after four years).

Workers who lose or resign from their employment should be given a **longer grace period to find a new employment**. One possibility would be that the workers are allowed to stay during the entire period, or at least for six months, of their work permit. With the current regulation, they only have three months to find new employment in the same sector, or otherwise they lose their work permit and the right to reside in Sweden. The fear of losing their employment and residence permit prevents many migrants who are exposed to unacceptable working conditions from protesting against or reporting their employer.

Related to the previous point, the requirement to remain with a specific employer for a two year period and within a specific occupation for four years should be removed because it puts migrant workers in a situation of dependency towards their employer and makes them vulnerable to exploitation by unscrupulous actors. It also limits their freedom of choice and possibility to develop professionally.

Various studies (Axelsson et al. forthcoming; Nordlund & Pelling 2012, 19–20) suggest that migrant workers on a temporary residence permit are most exposed to low wages and excessive working hours, while their conditions seem to improve once they have obtained a permanent residence permit. Hence, **the shortening of the period for becoming eligible to apply for a permanent residence permit** is likely to have a positive effect on reducing migrant labour exploitation.<sup>39</sup> For instance, this period, which currently amounts to four years, could be reduced to two years.

Currently, non-EU migrants can only apply for work permits from their country of origin. Those who lack contacts with employers in Sweden often make use of middlemen who charge high fees for their services, leading to the indebtedness of the migrants. Arguably, this would not be the case if the migrants could **reside in Sweden for a limited period of time in order to look for a job**. This is already possible for EU citizens, who can come to

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<sup>39</sup> At the same time, however, it is also sometimes the case that the acquisition of a permanent residence permit results in a worsening of the migrants' conditions. For instance, some workers have lost their job after being granted a permanent residence permit because they could then demand better working conditions (Axelsson et al. forthcoming).

Sweden for a three-month period. It might be envisaged that this rule is extended to non-EU citizens, under certain circumstances.

One possible way to prevent unscrupulous middlemen from abusing migrant workers would be through a **certification system for recruitment agencies and middlemen**. Actors who have been proved to abuse or deceive migrants would have their certificate removed and would no longer be allowed to represent migrants in the process of applying for a work permit. Such a system should be developed in cooperation with the migrants' countries of origin, since a large share of recruitment agencies are based in those countries. Developing such a certification system is no easy task for several reasons. First, middlemen usually take payments cash-in-hand, which makes them difficult to control. There is also evidence that some Asian recruitment agencies sign double contacts with berry-pickers, stating different conditions than those required by the Swedish Migration Board.

All berry-pickers should enjoy good **accommodation** standards. The respective municipalities should monitor the living conditions provided by berry companies to regulated pickers. They should also ensure that unregulated pickers are living in adequate and healthy conditions. Municipalities should be able to apply for financial assistance at the national level.

The **information** provided to migrant workers about their labour rights and the functioning of the Swedish labour market should be improved. Information could be sent to prospective migrants by the Swedish Migration Board together with their work permit. Additionally, Swedish embassies abroad could play a more active role in the spreading of information. The Work Environment Authority should also continue its information campaigns towards migrant workers. It is very positive that both the restaurant (in 2012) and the agricultural and forestry sectors (in 2013) are or have been the targets of such campaigns. However, it is vital to realize that many workers have poor readings skills, and therefore information might better be passed on orally than in written brochures. Improved information presupposes that sufficient resources are allocated for that purpose.

It would also be advisable to **broaden the role of the Work Environment Authority**. At present, the authority conducts workplace inspections on work environment and safety issues but, unlike many of its counterparts in other countries, it lacks the mandate to review wage-related issues.

Additional **training and capacity building programs** on trafficking for forced labour are needed for police officers, prosecutors and judges.

There is scope to enhance the **cooperation between different governmental agencies** involved in the prevention and combating of trafficking for forced labour and migrant labour exploitation. Cooperation between governmental agencies and **civil society actors** such as NGOs and trade unions also needs to be further developed. The mandate of the National Coordinator against Trafficking should be expanded to all forms of trafficking (today it only covers trafficking for sexual exploitation).

Forced labour and migrant labour exploitation occur in a transnational setting, and are not limited to the boundaries of a particular state. Therefore, **international cooperation** is crucial for preventing and combating those crimes. This implies the sharing of information and experiences with governmental institutions and trade unions in the migrants' countries of origin, for instance in the form of round table discussions. Cooperation is also particularly important among EU countries that are part of the Schengen area, since the victims and perpetrators can freely move within the area.

### **Recommendations for employers and other economic actors**

Employers are key actors in the prevention of labour exploitation. In the berry-picking sector, there are no employers in Sweden – since regulated pickers are employed by Asian recruitment agencies and unregulated pickers are considered to be self-employed – but there are other economic actors involved: the merchants, the berry companies and the berry buyers.

Employers should follow the Swedish legislation and collective agreements on wages and working conditions.

When it comes to **wages**, employers should accurately report their payment of wages and social contributions. In the berry industry, it is crucial that berry buyers, who purchase berries from unregulated pickers from EU countries, should keep precise 'sales lists' for each picker. These '**sales lists**' should be closely monitored by the Swedish Tax Authority. It follows that berry buyers need to **pay each picker individually**, and that the delivery of berries should be checked against their passports to ensure that each picker receives the payment that he or she is entitled to (and avoid that a middleman or 'group leader' receives the money for several pickers and keeps it for himself or herself.) Merchants should also be required to transparently account for the amount of berries that they have bought and from which berry buyer.

**Working hours** tend to be excessive both in the restaurant and the berry industries. According to Swedish legislation, each restaurant should keep a record (Sw. personalliggare) with the working schedules of the employees. This record should always be available for consultation by the trade union, the Work Environment Authority and the Tax Agency. In the case of the berry industry, the situation is more complex because the workers come during a short period of time and are willing to work long hours in order to increase their earnings.

Large companies should take up the issue of migrants' working conditions in their corporate sector responsibility (CSR), notably by developing, and thereafter closely monitoring, a **code of ethical conduct**. For instance large restaurant chains could develop guidelines that are distributed to their different branches. A code of ethical conduct should also be developed in the berry industry by the various economic actors involved. According to our data, such a roundtable initiative is currently on-going among merchants in cooperation with the retail industry, which is a positive step. Even though the berry-pickers

have no employers in Sweden, the Swedish actors in the industry need to take responsibility for the working and living conditions of both regulated and unregulated berry-pickers. Merchants in particular should play an active role in ensuring decent working conditions for the pickers, since they are the most powerful actors and make the largest profits in the berry business.

Employers also have the **responsibility to inform** migrant workers about their rights as well as about safety requirements. In the berry industry, the berry companies that host regulated pickers should provide such information, in cooperation with the Asian recruitment agencies that employ them. Since 2011, the provision of information has become a requirement to hire pickers from outside the EU, which is a positive development. When it comes to informing unregulated pickers from Europe the situation is more complex, because they do not have an employer. However, berry buyers, who are in contact with the pickers, could play a more active role in providing them with information, including in their own language and in both oral and written form.

### **Recommendations for consumers and the civil society**

**Well-informed and aware consumers** can play a significant role in ensuring that the human and labour rights of migrants are respected. Consumers should be alert about (migrant) labour exploitation and should seek information about the products or services they purchase. Also, the retail industry can help consumers by providing easily detectable **certification standards** about social conditions of their products.

**Civil society actors, researchers and the media** need to keep **raising awareness** about the issue of migrant labour exploitation. Nonetheless, it is important that labour immigration is not subjected solely to a negative image, but that also its various positive aspects are highlighted, thereby reflecting the complexity of the issue.

**Trade unions** should play a key role in the prevention of migrant labour exploitation. The Swedish Municipal Workers' Union (Kommunal), which is responsible for berry-pickers, should strengthen its collaboration with labour unions in Thailand, which is a major source country of berry-pickers. Trade unions could also improve the information provided to the workers that they represent, including oral information.

**Immigration lawyers** should refuse to assist employers with labour permit applications if they do not show a serious commitment to following the regulations. They should also inform the prospective migrant if they suspect that an employer lacks seriousness.

### **Policy considerations regarding the berry-picking sector**

This report highlights a number of problems related to the fact that regulated berry-pickers from Asia are employed by Asian-based recruitment agencies, notably their high recruitment fees and the existence of 'double contracts'.

Therefore, a **less important role for recruitment agencies** would be desirable. However, if the pickers are directly employed by berry companies in Sweden, they would be subject to taxation in Sweden. A likely result would be that the berry companies would shift towards buying berries solely from unregulated pickers from the EU. The latter, as argued in this study, are particularly vulnerable since they pick berries as self-employed or so-called ‘free pickers’.

It could be envisaged that a **quota** be introduced on the number of berry-pickers who are allowed to enter Sweden each season. The high number of berry-pickers is a serious threat towards the financial security of berry-pickers who pick berries in Sweden.

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