EUROPEAN INSTITUTE FOR
CRIME PREVENTION AND CONTROL,
AFFILIATED WITH THE UNITED NATIONS

Natalia Ollus

FROM FORCED FLEXIBILITY TO FORCED LABOUR: THE EXPLOITATION OF MIGRANT WORKERS IN FINLAND

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FROM FORCED FLEXIBILITY TO FORCED LABOUR: THE EXPLOITATION OF MIGRANT WORKERS IN FINLAND

Natalia Ollus

ACADEMIC DISSERTATION

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ABSTRACT

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NATALIA OLLUS: From Forced Flexibility to Forced Labour: The Exploitation of Migrant Workers in Finland

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This research focuses on the exploitation of migrant workers and trafficking in human beings for the purpose of forced labour in Finland. This thesis consists of a summary and four original articles. The theoretical framework is twofold. First, in order to contextualise the situation of migrant workers, the research addresses changes that globalisation has brought to the economy and the labour markets. Second, the research approaches the exploitation of migrant workers through the framework of corporate crime in order to explore why such crimes remain under-enforced.

The overall research question that the four articles aims at answering is how trafficking in human beings for the purpose of forced labour and the exploitation of migrant workers is understood and recognised by the international community in international treaties, the State and control authorities, and how it is experienced by migrant workers themselves who are working in Finland. The data include international treaty documents, Finnish Government policy documents, interviews with representatives of crime control authorities, employers and trade unions in Finland, as well as interviews with exploited migrant workers. The data was analysed qualitatively.

The research finds that the exploitation of migrant workers is structural within the framework of dual labour markets and the current economic and political framework. Exploitation is legitimised through the existing precarious and poor labour practices that disadvantageously affect migrant workers. This includes disadvantageous yet legal contractual practices that exploit the vulnerabilities of migrant workers. Exploitation is also made structural through a lack of adequate control and sanctions against those who exploit them. Exploitation is not adequately recognized and addressed by (crime) control authorities, partly resulting from complex and overlapping criminal provisions. The research suggests that the notions of the continuum and cumulation of exploitation could assist in conceptualising the dimensions of exploitation. Finally, the research proposes that the categorisation of 'exploitative crimes and harms of the employer' should be used within the framework of corporate crime research to expand the scope of corporate crimes to incorporate comprehensive infringements by employers of the rights of individual workers.

Keywords: corporate crime, exploitation, globalization, human trafficking, migration, working life

TIIVISTELMÄ

TURUN YLIOPISTO
Oikeustieteellinen tiedekunta

NATALIA OLLUS: Joustavuudesta pakkotyöhön: ulkomaisen työvoiman hyväksikäyttö Suomessa

Väitöskirja, 211 sivua (sis. 4 alkuperäisjulkaisua)
Oikeussosiologia ja kriminologia
Lokakuu 2016

- -

Tämä tutkimus käsittelee ulkomaisen työvoiman hyväksikäyttöä ja työperäistä ihmiskauppaa Suomessa. Väitöstutkimus koostuu yhteenvedosta sekä neljästä alkuperäisartikkelista. Tutkimuksen teoreettinen viitekehys koostuu kahdesta näkökulmasta: toisaalta tarkastelen ulkomaisen työvoiman hyväksikäyttöä globalisaation aiheuttamien talouden ja työmarkkinoiden muutosten kautta, toisaalta lähestyn ulkomaisen työvoiman hyväksikäyttöä yhteisörikollisuutta (corporate crime) käsittelevän tutkimuskirjallisuuden kautta. Tutkimuksen tavoitteena on ymmärtää miksi ulkomaisen työvoiman hyväksikäyttö on jäänyt vähemmälle huomiolle.

Alkuperäisartikkelit vastaavat laajaan tutkimuskysymykseen: miten työperäinen ihmiskauppa ja ulkomaisen työvoiman hyväksikäyttö on ymmärretty ja tunnistettu kansainvälisen yhteisön ja kansainvälisten sopimusten puitteissa, Suomen valtion taholta ja (rikos)kontrolliviranomaisten osalta. Lisäksi tutkimus tarkastelee miten hyväksikäytetyt maahanmuuttajat itse ymmärtävät kokemansa hyväksikäytön. Tutkimuksen aineisto koostuu kansainvälisistä sopimusteksteistä, valtiollisista ohjelmista, asiantuntijahaastatteluista kontrolliviranomaisten, työnantajien ja ammattiliittojen edustajien kanssa sekä haastatteluista hyväksikäytettyjen maahanmuuttajien kanssa. Aineisto on analysoitu laadullisesti.

Tutkimuksen mukaan ulkomaisen työvoiman hyväksikäyttö on rakenteellista kaksien työmarkkinoiden sekä nykyisten taloudellisten ja poliittisten kehysten puitteissa. Hyväksikäyttö muuttuu legitiimiksi huonojen työolojen takia. Huomiota pitää siksi kiinnittää niihin yhteiskunnan rakenteisiin, kuten laillisiin mutta epäedullisiin sopimuskäytäntöihin, jotka edistävät työvoiman hyväksikäyttöä. Hyväksikäyttö mahdollistuu myös koska työvoiman hyväksikäyttöä ei tarpeeksi kontrolloida ja sanktioida. Kontrolliviranomaiset eivät riittävästi tunnista ja puutu hyväksikäyttöön, johtuen osittain rikosnimikkeiden monimutkaisuudesta ja päällekkäisyydestä. Tutkimus ehdottaa, että hyväksikäytön ulottuvuuksien ymmärtämiseksi tulisi kiinnittää huomiota hyväksikäytön jatkuvuuteen, monimuotoisuuteen ja kokonaisvaltaisuuteen. Lopuksi tutkimus ehdottaa, että käsitettä ’työnantajan hyväksikäyttörikokset ja rikkeet’ voitaisiin käyttää yhteisörikollisuuden tutkimuksessa hahmottamaan työnantajien työntekijöihin kohdistamat kokonaisvaltaiset oikeuksien loukkaukset.

Asiasanat: globalisaatio, hyväksikäyttö, ihmiskauppa, maahanmuutto, työelämä, yhteisörikos

Contents

Abstract **3**

Tiivistelmä **4**

List of original publications **9**

Foreword **10**

1. Introduction **13**

1.1 The focus of the study 13
1.2 Previous research on trafficking and exploitation 17
1.3 Key concepts used in this study 20

2. The Finnish legislative framework concerning exploitation **25**

2.1 The provision on extortionate work discrimination 25
2.2 The provision on trafficking in human beings 27
2.3 The distinctions between exploitation, trafficking and forced labour 30
2.4 The protection of victims of trafficking 35

3. Theoretical framework **40**

3.1 Understanding the exploitation of migrant workers in the context of changes in the labour market 40
3.1.1 The neoliberal turn 40
3.1.2 The changes in the labour markets 43
3.1.3 Migrants at work in the dual labour market 45
3.1.4 Migration into Finland 47
3.2 Understanding the exploitation of migrant labour as corporate crime 49
3.2.1 The concept of corporate crime 49
3.2.2 The exploitation of migrant workers as corporate crime 52
3.2.3 Problems in controlling corporate crime 54
3.2.4 Victims of corporate crime and the notions of victimhood 56

4. The research process **60**

4.1 The research questions 60
4.2 Data and methods 61
4.3 Ethical aspects and limitations of the research 68

5. Results: Summaries of the four sub-studies 70

5.1 The relevance of historical definitions (Sub-study 1) 70

5.2 Migrant labour and exploitation in governmental policies (Sub-study 2) 72

5.3 The problems of control in Finland (Sub-study 3) 74

5.4 Experiences of exploitation in the cleaning industry (Sub-study 4) 75

6. Discussion 77

6.1 Forms of exploitation and corporate crime 77

6.2 The structural nature of exploitation 78

6.3 Towards a recognition of forced labour 81

6.4 Responding to exploitation 85

7. Conclusions: The 'exploitative crimes of the employer' 88

References 90

Annex 1: Documents analysed in Sub-study 1 110

Annex 2. Documents analysed in Sub-study 2 and division of work 113

List of original publications

I. Ollus, Natalia (2015). Regulating forced labour and combating human trafficking: the relevance of historical definitions in a contemporary perspective. Crime, Law and Social Change, 63(5), 221-246.

II. Ollus, Natalia and Alvesalo-Kuusi, Anne (2012). From cherry-picking to control: migrant labour and its exploitation in Finnish governmental policies. Nordisk Tidsskrift for Kriminalvidenskab, 3/2012, 375-398.

III. Alvesalo-Kuusi, Anne, Jokinen, Anniina and Ollus, Natalia (2014). The Exploitation of Migrant Labour and the Problems of Control in Finland. In Van Aerschot, Paul and Daenzer, Patricia (eds.) The Integration and Protection of Immigrants. Canadian and Scandinavian Critiques. Farnham & Burlington: Ashgate, pp. 121-138.

IV. Ollus, Natalia (2016). Forced Flexibility and Exploitation: Experiences of Migrant Workers in the Cleaning Industry. Nordic Journal of Working Life Studies, 6(1), 25-45.

Foreword

I first came into contact with the phenomenon of human trafficking in 1999, when I was working for a non-governmental organisation and travelling in the Nordic and Baltic countries to assess the capacity of local civil society actors to assist victims of trafficking. At the time, trafficking as a concept was rather unknown, and the international definition of human trafficking was still being negotiated at the United Nations. However, the organisations working on the ground in the Baltic countries, in particular, had encountered and supported women who had been sexually exploited abroad. I remember that some of the NGOs also mentioned having been contacted by men who had been exploited at work abroad, but the question of labour exploitation was not at the forefront of the anti-trafficking efforts at the time. I continued with the topic of trafficking while working with the United Nations in Southern Africa, training police and border guards, and supporting legislative drafters in addressing human trafficking. When I returned to HEUNI after several years overseas, I started toying with the idea of writing a doctoral dissertation, but I could not come up with a topic that I found interesting enough to merit such a major effort. In 2011 we at HEUNI were just about to launch our first major report on labour trafficking and the exploitation of migrant workers in the Baltic Sea region and I had become passionately interested in the topic. In my annual performance appraisal at work, my boss at the time, Kauko Aromaa, suggested to me that I do a PhD on this issue since it was something that I was interested in, and which I already knew a lot about. I thus embarked on a process which has taught me many things not only about trafficking and academic research, but also about myself.

I would firstly like to thank my supervisors, Professor Anne Alvesalo-Kuusi and Senior Lecturer Heini Kainulainen for their support, collegiality and friendship. Thank you, Anne, for your guidance even when my texts all seemed like a mess, for the fruitful collaboration in writing our joint articles and for the great Lokalahti seminars. Heini, your feedback is straightforward and sometimes bordering to the brutal, but always justified, fair and constructive. I very much appreciate your friendship, knowledge and optimism. I would not have been able to finish this work without your encouragement.

I also want to extend my sincerest thanks to the pre-examiners of this work, Associate Professor Steven Bittle and Professor Elina Pirjatanniemi, for their valuable comments and positive feedback. Professor Pirjatanniemi also deserves very special thanks for agreeing to act as the opponent in the public defence of my thesis.

All my colleagues at HEUNI also deserve many thanks for their support and understanding. In particular I want to thank Director Matti Joutsen for allowing me to work on the thesis during office hours, for his unfailing support and encouragement, and for editing my English. Special thanks also goes to Aili Pääkkönen for the layout of this manuscript, and to Anni Lietonen for preparing the graphs.

My sincere thanks also to everyone who has commented on my work, in particular Anniina Jokinen (thank you for the collaboration!), Päivi Honkatukia (thank you also for the Sunday morning runs!), Venla Roth, Liisa Lähteenmäki, Johanna Niemi (thanks for the great Ruovesi seminar!), Steve Tombs, and Joel Quirk as well as my fellow PhD students in Turku, Anna Heinonen, Maija Helminen, Emma Holkeri and Susanna Lundell. A special thanks also to Riikka Puttonen at UNODC for letting me go through your archive.

A very special thanks goes to Elsa Saarikkomäki, my PhD buddy and comrade in arms. I truly do not think I would have been able to write and finalise this summary without you. You have tirelessly read and re-read my writings, and provided comments and suggestions for improvement, and seen clarity in my thoughts when I have failed to do so myself. Thank you for your friendship and the many working lunches. I sincerely believe that the 'peer pressure and support' method we developed over the course of the past year has something to it!

Thanks also to the Turku University Foundation, the Faculty of Law at the University of Turku and the Scandinavian Research Council for Criminology for financially supporting my research and related travel.

I want to extend my thanks also to the persons interviewed in this research, in particular the migrant workers. I hope that this research can help shed light on some of the wrongs experienced by these persons, and the lack of adequate control of such wrongs, so as to prevent further exploitation of the most vulnerable of workers.

My parents deserve many thanks for providing me with the curiosity and enthusiasm to explore new things, and for their unfailing support and practical help. Finally, my greatest and sincerest thanks go to my husband Fred. You have always believed in me, encouraged me in my endeavours, and waited patiently for me to do whatever I need to do. I am ever thankful for your love and support. During this PhD research process, we became parents. Our son is the greatest of gifts I have received. I hope this research may contribute to making the world a better place for him and future generations.

Helsinki, 22 October 2016

Natalia Ollus

1. Introduction

1.1 The focus of the study

> *'He didn't pay us the full salary. […] We were working for six euros per hour. It was only later that we learned that the minimum wage here is eight euros. We didn't have fixed working hours. We cleaned restaurants, houses. He could wake us up at three o'clock in the morning and say: "You need to go to some place and do some work". There was no transport, so sometimes he took us there by car, or somebody else did. […] It was different. Sometimes four hours. Sometimes fifteen. One day we were working for twenty-one hours. […] We had days off very rarely. We were very tired, of course. We did some work at nights, too.' (Interviewed migrant worker in Finland, 2013)*

This study focuses on the exploitation of migrant workers and trafficking in human beings for the purpose of forced labour in Finland. Forced labour is defined as one of the forms of exploitation under the crime of human trafficking in the Finnish Criminal Code (chapter 25, sections 3 and 3a). Human trafficking typically refers to situations where vulnerable persons are deceived into exploitation. The concept of human trafficking often evokes images of young women being deceived or lured by criminals or 'traffickers' and taken from one country to another only to end up in sexual slavery. Both in the world at large as well as in Europe, the majority of the cases of trafficking that come to the attention of the authorities are indeed for the purpose of sexual exploitation (UNODC 2014a; Eurostat 2015). The share of identified victims of labour exploitation, however, seems to be increasing (UNODC 2014a). Much of the research on human trafficking has looked at sexual exploitation, while trafficking for the purpose of forced labour has received less attention (Goździak and Bump 2008; Lee 2011, 38). My research aims at widening the focus from the notions of trafficking as mainly involving forms of sexual exploitation. My research is instead focused on trafficking for the purpose of forced labour in our contemporary society. I am in particular interested in how trafficking takes place in the context of the exploitation of migrant workers in the labour market. My research further highlights that more serious forms of exploitation, such as trafficking, are born out of the overall misuse and exploitation of migrant workers. I also scrutinise the problems (crime) control authorities have in recognizing, addressing and controlling trafficking and exploitation.

Initially, this research stemmed from my realisation some years ago that although there were at the time no court judgments and only a few investigations of cases of trafficking in human beings for the purpose of forced labour in Finland, this did not mean that the phenomenon did not exist in our society. The phenomenon of hidden criminality, of course, is not a new observation but rather reflects a basic criminological truth (see Anttila and Törnudd 1983; Laitinen and Aromaa 1993). When I started this research, there was an increasing awareness that a number of migrant workers in Finland are being misused at work, working long hours for poor pay, and their freedom was being controlled by their employers in various ways. I became interested in understanding why it is so

difficult to define, investigate, control and understand exploitation and trafficking. I was also interested in why so few cases were investigated and prosecuted, and why so few cases lead to a conviction. In the process of the research I became particularly interested in the definition of forced labour, since this definition seemed to lie at the core of these difficulties.

The definition of forced labour is almost 100 years old. The definition was developed in a completely different social and historical setting and for a very different purpose (Quirk 2011, 104-105). The 1930 ILO Convention on Forced Labour does not offer much guidance regarding how forced labour should be interpreted today in the context of trafficking in human beings. My research thus initially started from the idea of uncovering the definition of forced labour and placing it into the context of trafficking in human beings in today's world, especially in the context of exploitation of migrant workers. I had also learned that the police, prosecutors and judges in Finland did not always understand even serious instances of exploitation of migrant workers as trafficking in human beings for the purpose of forced labour, even when, in my opinion, the elements of trafficking were evident. I therefore wanted to understand where the difficulties of recognition and interpretation came from, and whether the definition of forced labour and trafficking should perhaps be amended or re-interpreted. I was and continue to be interested in the application of the definition, starting from the development of international legislation to the development and interpretation of Finnish legislation in national courts of law.

Instead of focusing on how the crime of trafficking in human beings, particularly for forced labour, was introduced as a criminal provision in Finland, and how the Finnish legislator argued around the definition of forced labour in the background documents to the criminalization, or how the definition has been applied by Finnish courts, I decided to apply a broader perspective to the issue of studying the control of the crime of trafficking. I decided to look at the overall situation of exploitation of migrant workers and trafficking in human beings for the purpose of forced labour within this broader context. I became interested in how the exploitation of migrant workers manifests itself, how criminal justice practitioners, specifically the police, address and make sense of the exploitation, and how the exploitation is recognised or not recognised by the State in its policies. This is related to my realisation that although forms of human trafficking have been common throughout human history (Picarelli 2007; Bravo 2009), exploitation and forced labour in contemporary European societies are today closely linked to the major changes and shifts in the economy and the labour markets (Lewis et al 2014). As such, trafficking and the exploitation of migrant workers are not isolated phenomena, but are born out of the changes in the economy, society and the labour markets. These changes have profound effects *both* on the emergence of forms of exploitation *and* on how they are addressed by the State and its crime control system.

The definition of forced labour lies at the core of my research, since much of the debate on what constitutes labour trafficking is related to how we understand the elements of forced labour (Gallagher 2010). Although I address problems in the

interpretation of law, I do this through the analysis of my empirical data, which include international conventions and national Government programmes, as well as interviews with the police, other practitioners, employers and trade union representatives, and exploited migrant workers themselves. My study therefore does not attempt to provide detailed normative guidance on how the law should be applied, although I do take a stance on how the definition of both trafficking and forced labour should be interpreted.

My research moves from the general to the more particular in outlining enforcement and the understanding of trafficking and exploitation. Trafficking is related to the tensions, disjunctures and inequities in globalisation and the differential freedom of movement of people in different parts of the world (Lee 2011, 6). Thus, the exploitation experienced by migrant workers has to be placed in the larger context of globalisation and migration.[1] Previous research has argued that less serious forms of exploitation and violations of labour protection standards can be a breeding ground for more serious acts and thus a precursor to human trafficking (David 2010). In my research I use the concept of exploitation of migrant labour as the larger context within which trafficking for the purpose of forced labour takes place. (The concepts are outlined in more detail in chapter 1.3.) My research thus covers both trafficking and exploitation and sees them as being linked to one another through a continuum (see chapter 1.3). I see that exploitation of migrant workers is not the result only of individual acts of 'bad employers' (Anderson 2010) but also a result of political, social and economic priorities and policies that contribute to making some people more vulnerable than others. Similarly, such policies also influence how and on what the State focuses its control efforts. Therefore, in order to understand the control and (under)enforcement of exploitation and trafficking, it is important to understand the current economic and social context in which exploitation takes place. This contextualisation also assists in understanding why it is so difficult to interpret and grasp the elements of forced labour in contemporary society.

My research has two central starting points. The first is that I understand exploitation and trafficking as a consequence of developments and changes in the economy, the labour markets as well as society at large (Waite et al 2015). As a result of these changes, work has become more insecure, temporary and flexible, and this affects in particular low-skilled and low-paid sectors where many migrants work (Standing 2011; FRA 2015). The changes in the labour market have led to a situation where the lack of bargaining power of the most vulnerable (migrant) workers is misused for economic benefit (Könönen 2012a; Sams and Sorjanen 2015). The second starting point for my research is that I argue that the phenomenon of exploitation of migrant workers and trafficking for the purpose of forced labour should be understood through the theoretical

[1] Immigration regimes obviously greatly influence migration. However, the issue of migration regimes in creating forms of precarity and vulnerability among migrants in Finland has been left outside the scope of this study. It has been researched in detail for instance by Himanen and Könönen (2010), and Könönen (2011; 2012a; 2012b; 2014a; 2014b). See also Anderson (2010) and Lewis et al (2014).

framework of corporate crime. Such a perspective has apparently not been used in researching human trafficking. Corporate crimes are illegal and harmful acts committed by officers and employees of corporations in order to promote corporate (and personal) interests (Friedrichs 2010, 7). Consequently I see that the exploitation of migrant workers – and ultimately trafficking – is a form of intentional misuse by the employer of (migrant) employees for the purpose of financial gain. Such exploitation has been recognised by the Finnish legislator as a crime. However, as this research shows, the application and interpretation of the existing legislation is not unproblematic. Criminal justice practitioners and agents themselves play a key role in constructing acts as crimes and in determining whether they should be enforced or not (Lacey 1994, 13). In order to understand the practices of the criminal justice system, it is necessary to address trafficking and exploitation through several layers.

In order to provide such a multi-layered approach, this article-based thesis consists of four academic articles and this summary. The overall research question that the four articles aims at answering is *how trafficking in human beings for the purpose of forced labour and the exploitation of migrant workers is understood and recognised by the international community in international treaties, the State (Finland), and control authorities (in Finland), and how it is experienced by migrant workers themselves (who are working in Finland).* I have looked at the international level in order to understand how forced labour and trafficking in human beings were defined internationally and why they became the focus of control (Sub-study 1). Secondly, I have looked at Finland to see how the State has recognised the problem of exploitation of migrant labour, and how the control of this phenomenon has been framed by the State in various governmental policies (Sub-study 2). Thirdly, I have taken one step further, and have looked at the problems criminal justice practitioners and other control authorities have in addressing the crimes of exploitation of migrant workers and trafficking for the purpose of forced labour (Sub-study 3). Finally, I have given my attention to the migrant workers themselves and have looked at their experiences of exploitation in the cleaning industry in Finland, as well as the views of employers and trade union representatives (Sub-study 4).

This summary of my four research articles seeks to provide new insights into the exploitation of migrant workers and labour trafficking and into how this phenomenon should be addressed. This summary aims at broadening and deepening the analysis presented in the four sub-studies. I am doing this through two specific theoretical frameworks: firstly through outlining the changes that have occurred in the economy and labour markets especially since the second half of the 20th century, and secondly, through the criminological literature on corporate crime. These two frameworks have been addressed also in the sub-studies but the overall aim of this summary is to revisit my main findings through these two discussions and to present some further findings and conclusions. This summary therefore aims at answering two overall research questions. *How can the exploitation of migrant workers and trafficking in persons for the purpose of forced labour be understood as deriving from current economic and labour-market practices that enable such exploitation? How can the framework of*

corporate crime help to understand the lack of adequate enforcement directed at such exploitation?

My research aims in particular at filling a gap in the research on trafficking in human beings by looking at forced labour. It also broadens the trafficking literature by placing trafficking within the context of exploitation of migrant workers. My research also aims at bringing new insights into the literature on corporate crime by introducing trafficking for forced labour and exploitation of migrant workers into its framework. The study is placed within the framework of the sociology of law and criminology. The sociology of law studies law from the perspective of the social sciences (Alvesalo and Ervasti 2006, 6-7). This study is in particular interested in *law in action* as opposed to *law on the books*, that is, how laws are interpreted and understood (ibid., 5). The definition of criminology by Edwin Sutherland (1924, 3, in Carrabine 2015, 92) as studying 'the process of making laws, of breaking laws, and of reacting towards the breaking of laws' also applies to this research. This research can furthermore be placed within the tradition of critical socio-legal studies, especially in view of how it approaches the question of corporate crime (Bittle 2012, 40; Tombs and Whyte 2007). This research also addresses the sociology of work, more specifically the study of societal changes that have affected labour markets and working life (Julkunen 2008, 15).

In what follows, I will firstly provide a context for the topic of my study, the exploitation of migrant workers and trafficking, and explain the key concepts used. In the next chapter (chapter 2), I will outline the legal framework concerning exploitation of migrant workers and human trafficking. This is followed by the two main theoretical frameworks for this study: an overview of how globalisation and related forces have changed the nature of work (chapter 3.1), and how exploitation can be understood through the literature on corporate crime (chapter 3.2) and how these two frameworks are linked to the exploitation of migrant workers in Finland. Following that, I will outline the research methodology and data (chapter 4). Chapter 5 will present a summary of the four sub-studies. Chapter 6 will elaborate on the main findings and the last chapter will provide some final conclusions.

1.2 Previous research on trafficking and exploitation

The focus of this research is on the situation of migrant labour especially in the low-paid, low-status sectors of the labour market. This research looks in particular into situations where migrant workers are being misused at work and where the working conditions do not meet the minimum standard. Although this research exclusively focuses on migrant workers, many of the poor conditions of work also affect other precarious and vulnerable workers (Tanskanen 2012; Lähteenmäki 2013). In the following, I will provide an overview of research on both trafficking and exploitation.

While trafficking in human beings has been extensively researched in many parts of the world (Goździak and Bump 2008), trafficking research in Finland is still

relatively limited. Research on human trafficking in the Finnish context has largely focused on sexual exploitation.[2] Research into the international and national legal framework by Roth (2007; 2010a) has been instrumental in developing the understanding of the distinction between trafficking and procuring in Finnish legislation. Also Kimpimäki (2009), in her doctoral thesis in law, has looked at the legislative differences between trafficking and procuring. Lehti and Aromaa (2002), Viuhko and Jokinen (2009) and Viuhko (2010) have focused especially on the involvement of organised crime in the context of human trafficking for the purpose of sexual exploitation. More recently, Viuhko (2013) has analysed the restricted agency of trafficking victims in view of control imposed on them by perpetrators.

With regard to research specifically on trafficking in human beings for the purpose of forced labour in Finland, I together with my colleagues have conducted policy-oriented research at the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI). Jokinen et al (2011a; 2011b)[3] describe trafficking for forced labour in the Finnish context, including recruitment, forms of exploitation, victim identification, criminal investigation, and prevention. The research also looks at the definition of trafficking for the purpose of forced labour and the distinction between trafficking and extortionate work discrimination. A follow-up report (Ollus and Jokinen 2013; Jokinen and Ollus 2014)[4] analyses exploitative recruitment and labour exploitation in two specific sectors: cleaning and restaurant work. The report concludes that many migrants are unaware of their rights and do not know where to find help, and thus awareness-raising among migrant workers themselves is important in order to prevent exploitation (ibid.). Sams and Sorjanen (2015) studied severe forms of labour exploitation under the auspices of an EU-wide study by the European Union Agency for Fundamental Rights. They found that it is the same factors that both make victims vulnerable to exploitation and prevent them from getting help. Roth (2010b) has analysed the definition of trafficking for the purpose of forced labour in view of one specific case and argues that the focus should be placed on a comprehensive assessment of the situation of the victims: the conditions of work as well as the victim's possibilities of spending free time outside work (ibid., 287). Also Kaikkonen (2015, 50) raises similar points: there is a need to understand situations of forced labour in their entirety and see the subtle elements that make the victim submit to forced labour (see also Jokinen et al 2011a; 2011b). Soukola (2009) has suggested that criminal justice practitioners should make use of concrete indicators in order to clarify the elements of forced labour. There are also some

[2] This overview focuses solely on the context of human trafficking, and thus studies looking at prostitution per se have been left out. There are, however, other studies on prostitution and the sex trade in Finland. See Jyrkinen 2005; Kontula 2008; Skaffari 2010.

[3] The report was published in both Finnish (Jokinen et al 2011a) and English (Jokinen et al 2011b). Thus, both reports will be referred to in this text.

[4] Also this report was published in Finnish (Jokinen and Ollus 2014) and English (Ollus and Jokinen 2013).

master's theses that have raised important points vis-à-vis the legal definition (Kaikkonen 2008), prosecutors' understanding of the crime of trafficking (Mattila 2014), and challenges the police face in investigating labour trafficking in Finland (Henriksson 2013). The National Rapporteur on Human Trafficking in Finland has published annual reports on the situation of human trafficking in Finland 2010-2014, which provide important analysis, guidance and an overview for instance of current forms of trafficking, court judgments and legislative needs (Vähemmistövaltuutettu 2010; 2011; 2012; 2013; 2014). In addition to these reports, studies and theses, there is little academic research focusing on labour exploitation and trafficking in Finland.

Also in the other Nordic countries, trafficking for the purpose of labour exploitation has not been the object of much academic research. The extensive doctoral thesis of Stoyanova (2015) is an exception. Stoyanova analyses the relationship between trafficking, slavery, servitude and forced labour in light of international treaties. She argues that there is terminological confusion with regard to the use of the terms, and that slavery, servitude and forced labour are sufficient concepts to capture and reflect the abuses against migrant workers in the European context (ibid.). In Norway, Jahnsen (2014) has shown that much of the national efforts against trafficking have focused on sexual exploitation at the expense of labour exploitation. In addition, practitioners find the concept of forced labour problematic, victim assistance measures are not directed at male victims (of labour exploitation), and trafficking is difficult to place in the overall category of crimes of the labour market (ibid.). In Denmark various reports shed light on trafficking in the context of au pairs and the cleaning sector (Korsby 2010; 2011), in horticulture (Lisborg 2011) and forced labour overall (Lisborg 2012). Similar studies have been carried out in Sweden (Vogiazides and Hedberg 2013) and Estonia (Kask and Markina 2011; Soo and Markina 2013). Trafficking for the purpose of forced labour and overall exploitation of migrant workers have been studied especially in the United Kingdom (Allamby et al 2011; Geddes et al 2013; Anti-Slavery International 2006) and in the Netherlands (Smit 2011). Rijken (2011) provides an overview of trafficking in human beings for labour exploitation and existing legislation in Austria, Romania, Serbia, Spain and the Netherlands. The European Union Agency for Fundamental Rights recently carried out an EU-wide study of severe forms of labour exploitation (FRA 2015). The study found that forms of exploitation are widespread in Europe. A compilation by Waite et al (2015) outlines vulnerability, precariousness and exploitation in the labour market in different parts of the world. The authors conclude that it is not just a small group of workers who experience exploitation, but that hundreds of millions of workers are affected (ibid., 9).

There is some research on forms of precarious work and the related poor position of migrant workers in Finland. Könönen (Himanen and Könönen 2010; Könönen 2011; 2012a; 2012b; 2014a; 2014b) argues that the conditionality of both rights and residence in Finland affect and restrict the bargaining power of migrants in the Finnish labour market, making their situation particularly precarious. The migrants' lives are temporary in many respects, and their work and position in working life are characterised by flexibility. They are thus doubly precarious:

both with regard to their legal position in Finland and with regard to their work. Research on migrant care workers in Finland (Laurén and Wrede 2010; Nieminen 2010; Näre 2012) shows that despite their education and higher position in the labour market, many of the migrant care workers endure more discrimination and poorer working conditions than their Finnish colleagues. Kontula (2010a; 2010b) argues that many migrant workers are both physically and legally isolated from the rest of Finnish society. Based on her ethnographic research among migrant construction workers at the Olkiluoto nuclear power plant, she highlights the structural racism that the workers endure in Finland. They are expected to pay taxes and provide cheap labour, but they are excluded from the services of the welfare state. (Ibid.) Kontula also highlights that the control of economic crime in Finland is excessively focused on large-scale economic crimes at the expense of the exploited migrant workers, whose experiences of exploitation and possible outstanding salaries are not dealt with (2010b, 121). Eskola and Alvesalo (2010) similarly show that economic crime control in Finland has not adequately looked at the exploitation of migrant workers, even when a specific investigative police unit was tasked with this responsibility (see also Sub-study 3). My research thus aims at filling a gap in highlighting exploitation of migrant workers.

1.3 Key concepts used in this study

The terms 'migrant' and 'worker' may have different and non-substitutable definitions: migrants may be either 'foreign born' or 'foreign nationals', while workers may have many different employment rights or statuses (Ruhs and Anderson, 2010, 13-14). In this study I use the term *migrant worker* to mean any foreign national who has travelled to another country for purposes of work. In the case of Finland, this includes both EU citizens as well as so-called third country nationals, that is, persons from outside of the European Union. Migrant workers can be residing in a country legally or illegally, that is, they may have a legitimate work or other residence permit, or they may lack a permit either because they entered the country illegally in the first place, or because their permit has expired (Makkonen and Koskenniemi 2013). I use the term *migrant labour* to refer collectively to the group of foreign workers. The use of these terms is not unproblematic, since they put together a heterogeneous group under one term. I am aware of the risks of creating boundaries and categories where very different people with different backgrounds and futures are placed into one group (Wrede 2010, 13). However, since the exploitation of migrant workers is still a relatively new topic of study, I have decided to approach this issue from a general perspective in order to highlight the existence of the phenomenon of exploitation of migrant workers without going into the divisions and sub-divisions within this larger group. This is also one of the reasons why in my research I have not disaggregated the experiences of migrant workers by gender, ethnicity, age or socio-economic status. I am well aware of the fact that the experiences of individuals differ based on their personal characteristics and backgrounds, and this is obviously something that needs to be studied in more detail in the future. Although I see that migrant workers in many respects are

characterised by vulnerability (see Waite et al 2015), I also wish to emphasise that migrant workers of course also possess agency (Gomberg-Muñoz 2010).

By *exploitation of migrant workers* and *exploitation of migrant labour* I mean any form of misuse of, or illegal acts taking place in the context of work, against persons of foreign origin who are working in another country. This is the broad and overall term I use in this research to refer to all forms of exploitation that migrant workers encounter in the labour market. I include both less serious and more serious acts in what I call exploitation. For instance, less serious forms of misuse of migrant workers could include paying migrant workers a marginally lower salary than Finnish workers. In legal terms, the various forms of exploitation of migrant workers could, in terms of increasing severity, be defined as work discrimination (Criminal Code 47:3), usury (Criminal Code 36:3), extortionate work discrimination (Criminal Code 47:3a), or aggravated usury (Criminal Code 36:7). The legal definitions and the legislative framework of this study are outlined in detail in chapter 2.

Exploitation is based on an abuse of the migrant's economic vulnerability and overall powerlessness. The exploitation by employers can take many forms, but can include (Jokinen et al 2011a; 2011b; see also ILO 2005):

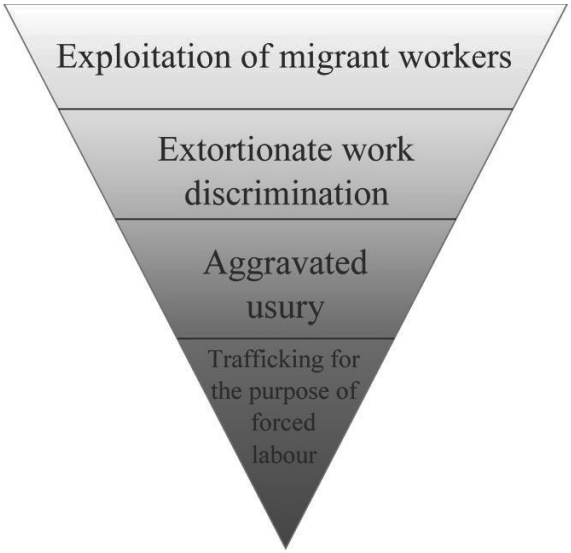
1. Physical or sexual violence or threats of violence.
2. Restriction of movement based on long working hours, no means of transport, a lack of language skills, and no contacts outside work.
3. Withholding wages or refusing to pay the salary, as well as underpayment, and requesting the worker to pay back part of the salary. Such exploitation is compounded if the worker is indebted already prior to commencing the work.
4. Threat of denunciation to the authorities, threatening with dismissal or not extending the employment contract.
5. Taking the employee's passport and/or identity documents.
6. Manipulation of employment contracts, such as having two separate contracts.
7. Poor living conditions, including high rents, several workers sharing the same room, living and working in the same premises, and a dependency on the employer for accommodation.

More serious forms of exploitation might include deceit, the use of force or threats against workers in order to ensure their compliance. Such exploitation may amount to *trafficking in human beings/trafficking in persons*. Trafficking is often referred to as a process since the internationally agreed-upon definition of trafficking includes an act (for instance recruitment, transportation or harbouring), a means (for instance deceiving the victim about the conditions of work, or abusing the victim's specific dependency or vulnerability, or threatening the person), and a purpose of exploitation (for instance forced labour) (UNODC 2008, 2-3). This study focuses in particular on *trafficking for*

the purpose of forced labour, which I also refer to as *labour trafficking*. Trafficking is also a legal concept, which has been defined as a crime both in international law (see chapter 2.2) as well as in the Finnish Criminal Code (25:3, 25:3a). Forced labour is one of the forms of exploitation under the crime of trafficking. Forced labour is, however, also a phenomenon in its own right and has been defined in the 1930 ILO Forced Labour Convention, but not in national law in Finland (see Sub-study 1).

I include both the broad concept of the exploitation of migrant workers as well as the legal concept of trafficking for the purpose of forced labour in my research. As explained above, I use the broad term 'exploitation of migrant workers' to refer to a variety of forms of exploitation. This term thus incorporates also the various legal categories under which forms of exploitation can be placed (see figure 1, and also chapter 2).

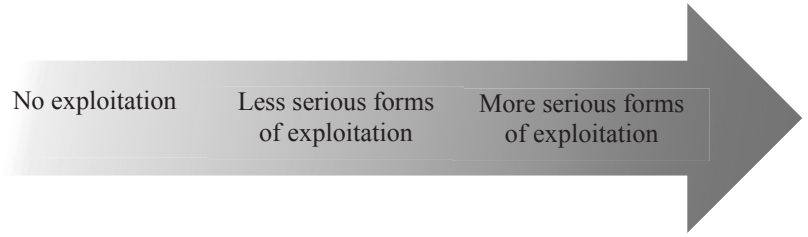
Figure 1. The hierarchy between the main legal concepts used in this study



As explained above, one of the original reasons for me to undertake this research was an attempt to link the exploitation of migrant workers with human trafficking. The link between these two is not necessarily easy to conceptualise in practical terms, although the legislative framework makes a hierarchical distinction (Soukola 2009). Both in legal and practical terms the distinction is difficult to establish (see chapter 2 and Sub-study 1). There is no clear definition of coercion and exploitation in international documents and this makes it difficult to draw lines between severe exploitation, forced labour and trafficking (van der Anker 2006, 167). In real situations of exploitation, the different forms of coercion may in fact overlap and fluctuate (Andrees 2008). A helpful tool in

understanding the exploitation of migrant workers is therefore the idea of the *continuum of exploitation* (Long 2004; Kelly 2007; Andrees 2008; Brennan 2010; Jokinen et al 2011a; 2011b). The continuum can be conceptualized as placing decent work,[5] where the labour conditions are upheld and respected, at one end, and serious forms of exploitation at the other (Skrivankova 2010; Lisborg 2012). The continuum can also be understood as a continuum ranging from less serious forms of exploitation to more serious forms (see Jokinen et al 2011a; 2011b; Sub-studies 1 and 4). Here I have decided to conceptualize it as a continuum ranging from good conditions to bad conditions (see Viuhko et al 2016; Skrivankova 2010; Lisborg 2012). The continuum of exploitation can be used to define the experiences of migrant workers as part of a larger context, rather than as single, isolated incidents (see figure 2).

Figure 2. The continuum of exploitation (Viuhko et al 2016, 50)



Elements of the legal regime can be placed along the continuum in order to assist with the identification of forms and manifestations of exploitation (UNODC 2015, 23). The continuum thus shines light on both the extreme and the more mundane experiences of forced labour that characterise the lives of many international migrants (Lewis et al 2014, 16). Forms of exploitation can be placed along this continuum in order to visualize that exploitation is not necessarily linear, but can change in severity and intensity over time. Kelly (1988) shows that sexual violence can be addressed through a continuum of both extent and range. Similarly, the forms of exploitation of migrant workers can be seen as a continuum and a cumulation and escalation of acts. As isolated acts they might not seem serious, but when combined in extent and range they form a more comprehensive picture of exploitation (see Sub-study 4). Lewis et al

[5] The concept of 'decent work' stems from a report by the ILO Director-General in 1999, in which he notes that 'the primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity' (ILO 1999, 3). In his report, decent work is seen as the convergence of the promotion of rights at work, employment, social protection, and social dialogue (ibid.). The concept has been criticised for being too broad and general (e.g. Burchell et al 2014). The idea of decent work is now included within the 2030 Agenda for Sustainable Development, more precisely in Sustainable Development Goal 8, which also incorporates the protection of migrant workers as well as precarious workers (SDG 8.8). However, how to actually achieve decent work for migrants remains a complex problem. The socially unequal conditions of migrant work in today's economic reality in combination with existing restrictive migration and employment regimes mean that 'decent' migrant work may remain a distant ideal.

(2014, 3) see that the continuum is built on 'unfreedom'. When the 'unfreedom' is severe enough, it amounts to human trafficking. The continuum is a conceptual and explanatory tool that I have used in my research (see especially Sub-studies 1 and 4), and which helps uncover the links and overlaps between trafficking and exploitation.

In my research I also refer to *control authorities*. By this I mean not only criminal justice personnel such as the police, border guards, prosecutors or judges, but also labour inspectors. All of these authorities are tasked with controlling and addressing the exploitation of migrant workers.

2. The Finnish legislative framework concerning exploitation

2.1 The provision on extortionate work discrimination

The nationally highly publicised case of the 'Chinese stoneworkers' at the beginning of the new millennium brought the working conditions of migrant workers in Finland to the attention of the public and the legislator alike. As has been outlined in two court judgments (Hämeenlinna District Court, 30 June 2004; Turku Court of Appeal, 13 June 2005), between the years 2001 and 2003 a group of 12 Chinese men worked in Finland as stone workers for a Finnish company. The men worked up to 14 hours per day in poor, unheated facilities and in the winter the workers suffered from cold conditions. They lived in an industrial hall, and spent most of their time at work. The men spoke only Chinese, and had no contacts outside work. During their two years in Finland, each of the workers earned a total of about 10,000 euro when their salary should, according to the collective agreement, have been about 1,800 euro per month. The case was uncovered when the Finnish Construction Trade Union started looking into the situation of the workers. In the end, the Finnish company was found guilty of work discrimination and a working hours offence, and was ordered to pay the outstanding salaries plus compensation to the workers. (Hämeenlinna District Court, 30 June 2004; Turku Court of Appeal, 13 June 2005; see also media sources on the case: MOT 28 October 2002; Hämeen Sanomat 9 December 2005; Helsingin Sanomat 18 June 2006.)

Following from this case in particular, the Finnish legislator was awakened to the need to improve the situation of migrant workers in Finnish working life (HE 151/2003 vp, 10; Autio and Karjala 2012, 193). Legislative changes were introduced in 2004 and nationality was included as an additional discrimination ground in the crime of work discrimination. A completely new provision, extortionate work discrimination, was also introduced.[6] The background documents to the amendment of the Criminal Code argue that these additions

[6] The exploitation of migrant workers is criminalised in Finland also through several other provisions. Chapter 47 of the Criminal Code deals with labour offences, and criminalises a variety of offences of the employer against the employee. In addition to the crime of extortionate work discrimination, the work safety offence (1 §), the working hours offence (2 §), work discrimination (3 §), the employment agency offence (6 §), and the unauthorized use of foreign labour (6 a §) are particularly relevant provisions with regard to exploitation of migrant workers. Chapter 36 further criminalizes usury (6 §) and aggravated usury (7 §), provisions which can also be used in the case of exploitation of migrant workers. There are also a variety of criminalizations outside the Criminal Code that can be used in situations of exploitation of migrant labour. Relevant provisions include the crime of violation of occupational safety and health (Occupational Safety and Health Act 8 63 §), neglecting to arrange occupational health care services (Occupational Health Care Act 5 23 §), violation of the working hours regulations (Working Hours Act 8 42 §) and neglecting the duty (of the employer) concerning the investigation of an accident (Employment Accidents Insurance Act 6 55§). The Aliens Act also includes relevant provisions, including the violation of the Aliens Act by the immigrant (Aliens Act 12 185 §) and by the employer (Aliens Act 12 186 §).

could prevent the discrimination of foreigners in working life, and thus increase equal treatment (HE 151/2003 vp, 10). In addition, the provision on extortionate work discrimination is aimed at protecting the weaker party from being exploited (ibid.). Extortionate work discrimination is not an aggravated form of work discrimination. Instead, it is a special circumstance of work discrimination (ibid., 10-11).

> 'If in the work discrimination an applicant for a job or an employee is placed in a considerably inferior position through the use of the job applicant's or the employee's economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance, the perpetrator shall, unless a more severe penalty is provided for the act elsewhere in the law, be sentenced for extortionate work discrimination to a fine or to imprisonment for at most two years.' (Criminal Code 47:3a (302/2004))

The grounds for discrimination are the same as for the crime of work discrimination and include race, national or ethnic origin, nationality, colour, language, sex, age, family status, sexual preference or state of health, religion, political opinion, political or industrial activity or a comparable circumstance (Criminal Code 47:3). The crime of extortionate work discrimination requires that the discrimination places the employee in a considerably inferior position compared to other workers (HE 151/2003 vp, 11). This position could be achieved through using the worker's economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance (ibid.). This considerably inferior position could manifest itself as considerably lower salaries or inappropriate working hours (ibid.). The number of crimes of extortionate work discrimination recorded by the police has increased manifold since the provision was introduced in 2004. According to data from the National Bureau of Investigation, the number of crimes of extortionate work discrimination recorded by the police increased steadily from 2 in 2004 to 45 in 2009 (National Bureau of Investigation 2016). Between 2010 and 2014 the number of cases recorded fluctuated between 30 and 40, and in 2015 there were 18 recorded cases (ibid.). The number of persons convicted for extortionate work discrimination has fluctuated: in 2004, 2005, and 2007 there were no convictions, and in 2009 12 persons were convicted for extortionate work discrimination and in 2012, 8 persons were convicted (Tilastokeskus 2015a). For most years, the number of convicted persons has fluctuated between 3 and 5 (ibid.).

The criminalization of extortionate work discrimination is in many respects a unique piece of legislation, at least in a European context. Few other European countries have specifically criminalised the exploitation of migrant workers as a form of work discrimination (FRA 2015, 38). The crime of extortionate work discrimination is a labour and discrimination offence. When looking at the description of the Chinese stone workers case provided above, however, it is noteworthy that they were more than merely discriminated against at work. Their freedom was restricted to a certain extent, and they had very little contacts outside of work. It has been argued that the case of the Chinese stone workers

would have fulfilled at least the crime of extortionate work discrimination, if not also of human trafficking, had the provisions been in existence at the time (Vähemmistövaltuutettu 2010, 137).

The crime of aggravated usury (Criminal Code 36:7) falls hierarchically between the provision on extortionate work discrimination and trafficking (HE 151/2003, 17). The provision could thus be used in situations that are more serious than extortionate work discrimination, but less serious than human trafficking. Scholars, however, argue that if a case of extortionate work discrimination is assessed as a case of aggravated usury, it could instead be human trafficking (Nuutila and Melander 2008, 1278; Kaikkonen 2008, 74).

2.2 The provision on trafficking in human beings

As is the case with the crime of extortionate work discrimination, the crime of trafficking in human beings was introduced into the Finnish Criminal Code in 2004. The criminalisation followed major international developments: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime was adopted by the United Nations in 2000, and entered into force in 2003.[7] The Trafficking Protocol provides the first definition of the term 'trafficking' in international law, and this is one of its main achievements (Gallagher 2015). Trafficking in persons, however, is not a new phenomenon. Trafficking had earlier been the subject of international concern and international treaties mainly as a question of sexual exploitation, prostitution and (women's) human rights (Gallagher 2001; Roth 2010a; Morcom and Schloenhardt 2011; Gallagher 2010; see also Sub-study 1). Trafficking is closely related also to slavery, servitude and forms of human bondage, but the relationship between these phenomena is the subject of much debate (Quirk 2011; Stoyanova 2015).

The Trafficking Protocol – and consequently much of the anti-trafficking discourse – defines trafficking primarily as a question of transnational organised crime and illegal immigration (see Lee 2011; Roth 2010a), although it also includes provisions on victim protection and support. The Trafficking Protocol is widely ratified[8] and has laid the base for the current recognition, regulation and enforcement of trafficking in human beings in most parts of the world. The contents and elements of what constitutes trafficking are under constant discussion, and for instance the means of trafficking, the role of consent, and the forms of exploitation have been the focus of additional debate (UNODC 2012; UNODC 2014b; UNODC 2015). There are also several other relevant treaties that govern trafficking in human beings at the European level. The Council of

[7] https://www.unodc.org/unodc/treaties/CTOC/

[8] As of 22 October 2016 it had 117 signatories and 170 State Parties (see https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&clang=_en)

Europe Convention on Action against Trafficking in Human Beings of 2005 is more comprehensive than the Trafficking Protocol as it includes more detailed provisions on victim support and assistance, but it follows the definition of trafficking of the Trafficking Protocol. Also the European Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings and the subsequent Directive 2011/36/EU of the European Parliament and of the Council of April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, reflect the definition of trafficking of the Trafficking Protocol.[9]

Finland criminalised trafficking in human beings and aggravated trafficking in line with the UN Trafficking Protocol and the EU Framework Decision. The original provision came into force in 2004 (9 July 2004/650) and was amended in 2015 (19 December 2014/1177). The trafficking crime consists of three elements: the means, the act and the purpose, which all have to be present for the trafficking crime to be fulfilled (HE 34/2004vp, 93). The crime of trafficking does not have to entail movement over borders, nor involve organised criminal groups (ibid.). Chapter 25 of the Criminal Code (sections 3 and 3 a) defines trafficking in human beings as follows:

> 'Section 3 - Trafficking in human beings (19 December 2014/1177)
>
> A person who
>
> 1. by abusing the dependent status or vulnerable state of another person or by coercing another person,
> 2. by deceiving another person or by abusing a mistake made by that person,
> 3. by paying remuneration to a person who has control over another person, or
> 4. by accepting such remuneration
>
> takes control over another person, recruits, transfers, transports, receives or harbours another person for purposes of sexual abuse referred to in chapter 20, section 9, subsection 1, paragraph 1, or comparable sexual abuse, forced labour or other demeaning circumstances or removal of bodily organs or tissues shall be sentenced for trafficking in human beings to imprisonment for a minimum of four months and a maximum of six years.
>
> A person who takes control over another person under 18 years of age or recruits, transfers, transports, receives or harbours that person for the purposes mentioned in subsection 1 shall be sentenced for

[9] See Roth 2010a; Gallagher 2010; Stoyanova 2015; also Autio and Karjala 2012 for a discussion on the various international treaties on trafficking. There are also a number of other regional treaties in other parts of the world, for instance in Asia, Africa and the Americas (see Gallagher 2010 for a comprehensive overview).

trafficking in human beings even if none of the means referred to in subsection 1(1–4) have been used.

An attempt shall be punished.' [10]

The number of recorded crimes of trafficking has fluctuated in recent years from 2 cases in 2005 to 11 cases in 2010 (National Bureau of Investigation 2016). Between 2011 and 2015 the number of recorded cases of trafficking has fluctuated from 24 in 2010, to 18 in 2013 and to 24 in 2015 (ibid.). The number of recorded cases of aggravated trafficking has annually been between 1 and 6 (ibid.). In 2012, 6 persons were convicted for trafficking, and in 2013, 3 persons were convicted (Tilastokeskus 2015a). In 2006, 7 persons were convicted for aggravated trafficking, 5 persons in 2008, and 1 person per year between 2011 and 2013 (ibid.). It is not possible to establish the share of cases of labour trafficking from the criminal justice data, but figures from the official system of assistance to victims of trafficking indicate that the share of labour trafficking victims among new admissions into the system of assistance was around 60% annually until 2012, when the share dropped to 32% in 2013, and 22% in 2014 and again increasing to 52% in 2015 (Joutseno VOK 2016).

The low number of trafficking crimes coming to the attention of the police between 2004 and 2010 was probably due to the novelty of the criminal provision and the resulting lack of understanding of the elements of the crime, a lack of awareness of the existence of the crime of trafficking overall, and a resulting lack of recognition of cases. The low level of identification of cases can specifically be related to the overlap between the crime of trafficking and extortionate work discrimination, as well as trafficking and procuring (Vähemmistövaltuutettu 2010, 103-104; see also Sub-study 3). The increase in cases of trafficking recorded by the police in 2011-2012 as compared to previous years has not been researched. The increase is probably related to several factors at both the national and the international levels. One is the fact that the Ombudsman for Minorities (presently the Non-Discrimination Ombudsman)

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[10] Aggravated trafficking is defined as follows:
'If, in trafficking in human beings,
1. violence, threats or deceitfulness is used instead of or in addition to the means referred to in section 3,
2. grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is inflicted on another person intentionally or through gross negligence,
3. the offence has been committed against a child below the age of eighteen years or against a person whose capacity to defend himself or herself has been substantially diminished, or
4. the offence has been committed within the framework of an organized criminal group referred to in Chapter 6, section 5, subsection 2 (564/2015)
and the offence is aggravated also when considered as whole, the offender shall be sentenced for aggravated trafficking in human beings to imprisonment for at least two years and at most ten years.
Also a person who enslaves or keeps another person in servitude, transports or trades in slaves shall be sentenced for aggravated trafficking in human beings if the act is aggravated when assessed as whole.
An attempt is punishable.'
(Section 3(a) - Aggravated trafficking in human beings (650/2004)).

was appointed the National Rapporteur on Trafficking in Human Beings at the end of 2008. In her first report to Parliament in June 2010, the National Rapporteur made several recommendations for improved victim identification and investigation of trafficking (Vähemmistövaltuutettu 2010). In addition, the first study to highlight the phenomenon of labour trafficking in Finland was published in 2011 (Jokinen et al 2011a; 2011b). Preceding this, there had also been an increase in both national and European discussions on trafficking, including the publication of the second national plan of action on trafficking (Sisäasiainministeriö 2008), the entry into force of the Council of Europe Convention on Trafficking in 2008, and the on-going discussions at the European Union in preparation for the 2011 Directive on Trafficking (O'Neill 2011).

2.3 The distinctions between exploitation, trafficking and forced labour

The legal elements of the crime of trafficking are complex (see Jokinen et al 2011a, 32-42; 2011b, 34-37) and I will therefore not dwell here on all of the elements of the definition. However, I will raise two particular aspects of the definition, which are of relevance for how the exploitation of migrant workers is conceptualised as trafficking or as extortionate work discrimination: the dependent status and insecure state of another person, as well as the purpose of forced labour. The dependent status and insecure state of the victim of trafficking have been outlined in the background documents to the law as well as by the National Rapporteur on Trafficking (see Table 1).

Table 1. The elements of dependent status and insecure state of the trafficking offence

Dependent status	**Insecure state**
family circumstances or personal relationships	young age
employment relationship	serious illness
being a tenant	substance dependency
debt	serious illness or substance dependency of a close family member
residence in an institution	difficult economic situation
a drug addict's dependency on the drug dealer/provider	homelessness
threat of denouncing an illegally residing victim to the authorities	psychological state
retention of travel documents	handicap
exploiting the dependent status of a close family member	previous traumatic experiences, e.g. previous sexual exploitation or prostitution
	status of being a foreigner or a refugee

Sources: HE 34/2004, 93-94; Vähemmistövaltuutettu 2010, 123.

Migrant workers who are exploited at work often experience many of the conditions of dependency outlined above. Many migrant workers are employed by someone related to them or whom they know from before; they often live in premises owned or managed by the employer; they are often indebted before arriving in Finland; and the employer might take the worker's passport (often claiming that he/she is just 'keeping it safe'). (Jokinen et al 2011a, 82-86; 107-113; 134-138; see also Sub-study 3.) In terms of the insecurities that migrant workers experience, it often comes down to their difficult economic situation, and their being foreigners (ibid.). As foreigners they might not speak any language with which they could communicate outside work, and they might not have any contacts outside their work in the first place. The exploitation of migrant workers is based precisely on the abuse of these vulnerabilities and dependencies, but the exploitation may be of different severity. However, in legal terms there is a difficulty in determining whether the dependency and vulnerability gives rise to a situation amounting to trafficking or to extortionate work discrimination. This is because the trafficking provision partly overlaps with the provision on extortionate work discrimination, especially with regard to the elements of dependent status and insecure state. As noted above, also migrant workers who might not endure any exploitation as such, may still experience elements of dependency and insecurity. Prosecutors interviewed by Mattila (2014, 60) noted that it is difficult to assess what kind of real-life chain of events causes such dependency and insecurity to the extent that it fulfils the elements of trafficking.

Legal scholars have also emphasised that extortionate work discrimination resembles trafficking if the employee performs the work in inhumane conditions or without regard for work safety (Nuutila and Melander, 2008 p. 1279). An important point is that the division between the two provisions remains unclear and difficult for criminal justice practitioners to interpret (Roth 2010b; Jokinen et al 2011a; 2011b).[11] This difficulty has also been noted by international bodies. The Group of Experts on Action against Trafficking in Human Beings (GRETA), monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, has emphasised in its country report on Finland that just like the distinction between trafficking and pimping has been made clearer in the Finnish Criminal Code, also the distinction between trafficking for the purpose of labour exploitation and extortionate work discrimination should be made clearer (Council of Europe 2015, 51).

One of the problems of interpretation arises from the lack of a definition of forced labour as a form of exploitation in the crime of trafficking in human beings (Soukola 2009; Roth 2010b; Vähemmistövaltuutettu 2010; Jokinen et al

[11] It is noteworthy that the crime of extortionate work discrimination is only referred to once in the background documents to the original trafficking provision (HE 34/2004, vp, 9). The background documents to the provision on the crime of extortionate work discrimination make no reference to the crime of trafficking (HE 151/2003 vp). This indicates that the two provisions were developed largely independently of one another. It also reflects that most of the attention with regard to the trafficking crime was at the time on the issue of sexual exploitation.

2011a; 2011b; Kaikkonen 2015; see also Sub-study 1). Forced labour is not defined in Finnish law, but is defined in the 1930 ILO Convention on Forced Labour (Art. 2):

> 'Forced or compulsory labour shall mean all work or service, which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.'

ILO has also taken note of the ambiguity of the definition of forced labour, and has provided guidance to clarify the meaning of the definition (ILO 2005; ILO 2007; ILO 2009a; ILO 2009b; ILO 2012). In particular, the ILO has listed six elements – or indicators – that point to a forced labour situation: physical or sexual violence; restriction of movement of the worker; debt bondage or bonded labour; the withholding of wages or refusing to pay the worker at all; the retention of passports and identity documents, and the threat of denunciation to the authorities (ILO 2005, 20-21). It is noteworthy that many of these elements overlap with the means of the crime of trafficking, most notably the dependent status and insecure state (Jokinen et al 2011a, 190-191). This might be one explanation for why it has been so difficult to prove a case of trafficking in court (ibid.).

The court judgment acquitting the defendants in the first case of labour trafficking that was dealt with by a court in Finland in 2007 emphasised that forced labour requires some level of force or obligation, and when such elements are lacking, it cannot be seen to fulfil the elements of trafficking for the purpose of forced labour (Vantaa District Court, 13 July 2007, 11). The court held that the employee was not forced to work, and disregarded the threats by the employers against the employee by considering these unrelated to his employment (Roth 2010b, 284-285). Much has happened in Finland since this first court judgment and the need to define forced labour has been the focus of much discussion. The report by the Steering Group for the Plan of Action against Trafficking in Human Beings of 2011 gave recommendations for the development of the legislation on human trafficking, including clarification of the distinction between extortionate work discrimination and trafficking, as well as the possible need for clarification of the definition of forced labour (Sisäasiainministeriö 2011). This became one of the aims of the working group of the Ministry of Justice which prepared a proposal for legislative amendments concerning trafficking (Oikeusministeriö 2012). The working group, however, decided not to include a specific provision that would define the term 'forced labour', since in line with the principle of legality the definition would have to be clearly formulated and exact, which would turn out to be problematic (ibid., 74). The working group instead suggested amending the definition of trafficking so that the emphasis would be on placing someone in 'demeaning circumstances, such as forced labour', instead of 'forced labour or other demeaning circumstances' (ibid., 75). This suggestion was not included in the Government proposal of 2014 (HE 103/2014 vp). The Government proposal outlines that since Finnish courts of law had by then already convicted several defendants of trafficking for the purpose of forced labour and case-law was thus being formed,

changing the provision could have unexpected outcomes (ibid., 37-38). In addition, the concept of forced labour does not require the fulfilment of demeaning circumstances. Thus an amendment of the law as suggested by the ministerial working group might lead to a narrower interpretation of forced labour, which was contrary to the aims of the working group. (Ibid.) The term 'forced labour' therefore remains undefined in the Finnish Criminal Code. Also the overlap between extortionate work discrimination and trafficking remains unclarified.

In the interim, Finnish courts seem to have taken on board the guidance provided by the ILO on the concrete elements of forced labour (ILO 2005; 2009b). The importance of these indicators as a tool for criminal justice practitioners in identifying the elements of forced labour has been emphasised by practitioners and researchers alike (for instance Soukola 2009, 282; Vähemmistövaltuutettu 2010, 144; Jokinen et al 2011a; 2011b; Kaikkonen 2015). In the first conviction for trafficking for forced labour in 2012 concerning a Vietnamese woman and her husband, working in a nail salon in Helsinki, the court accordingly used the ILO indicators in arguing that the exploitation amounted to forced labour (Helsinki District Court, 30 March 2012). The court emphasised that the victim was in a foreign country and could speak neither Finnish nor English. She was pregnant and depended on the apartment offered by the perpetrators, and she had no relatives or support persons in Finland. She was also indebted when arriving in the country, and had no money. The court held that she could not leave the situation and had no real alternative but to continue working, and that the situation thus amounted to forced labour (Helsinki District Court, 30 March 2012).

Similar argumentation has been made in subsequent court judgments on trafficking for forced labour. The decision by the Turku Court of Appeal (30 September 2013) concerning Vietnamese restaurant workers is particularly relevant, since the court emphasised the overall situation of the workers.

> Their freedom of movement was restricted by their long working hours which meant that they had little free time, and by the fact that they lived in an apartment organised by their employer where they performed household work during their free time. The employer had requested that they avoid meeting any countrymen or Finns. Because of their long working days, they could not participate in language courses. Due to their situation, they had no opportunities for becoming integrated into Finnish society. In addition, the workers were indebted already when arriving in Finland and because of the fear of losing face, they felt obliged to pay off the debt before terminating their employment. They were also in a situation of gratitude to the employers for having provided them the opportunity to work in Finland. Although the workers had come to Finland voluntarily, the court held that their initial consent had been achieved using deceit about the working hours and their possibility of having free time. They had also been deceived about the working conditions becoming better over time. Because of these factors, the court held that the situation amounted to forced labour, and the employer was

> sentenced for human trafficking. (Turku Court of Appeal, 30 September 2013.)

Similar argumentation can be seen in a court judgment of 2016 concerning an Indian chef at a pizza restaurant in Vantaa (Vantaa District Court, 20 April 2016; the case has been appealed).

> In this judgment, the court found that there was no doubt that the Indian man was held in a situation of forced labour in accordance with the provision on trafficking. He had been deceived about the conditions of work, and had been placed in a situation of debt bondage. He worked very long hours, and the employer and his accomplices restricted his freedom of movement and his possibility of spending free time and having a social life. His passport was taken away, and he did not have access to his bank account, thus working in effect without pay. (Vantaa District Court, 20 April 2016.)

Recent case law demonstrates that there is an increasing understanding of the concrete elements of forced labour among criminal justice practitioners in Finland. As outlined above, the definition has been the subject of much national debate. The Government proposal of 2014 (HE 103/2014 vp, 36) on amending the Criminal Code with regard to the crime of trafficking provides an overview of what should be considered forced labour, much in line with the indicators on forced labour developed by the ILO (ILO 2005).

> 'Forced labour is a permanent state where the employees do not possess regular means of refusing tasks or terminating the performance of such tasks; and where this is maintained through threats against the person, his/her health, or sexual self-determination or some other threat (for instance a threat to "denounce" the employee to the authorities); controlling the freedom of movement of the employee; a debt between the employer and the employee; or removing the employee's passport or other identity documentation. In addition, it is typical that there is no remuneration for the work or the salary is essentially below the regular wage for such work. It is necessary to note that it might be human trafficking also in situations where the employee does not necessarily consider him/herself exploited. Such situations of labour trafficking may be at hand especially in situations when the victim is a foreigner and does not, for instance, know Finnish legislation or the rights of workers.' (HE 103/2014 vp, 36, author's translation.)

This explanation of the concept of forced labour in the context of trafficking clearly broadens the understanding of forced labour from a focus on force to including also subtler elements of control, and a focus on the totality of the situation of the victim. In this respect, it can be noted that much has happened since I started working on this research. Many of the views I have raised in my research (see Sub-studies 1 and 3; also Jokinen et al 2011a; 2011b) have now at least to some extent been discussed at the governmental level (HE 103/2014 vp). There thus seems to be a broader understanding of various forms of exploitation, but the question remains whether criminal justice and control authorities overall share this interpretation.

2.4 The protection of victims of trafficking

The definition of forced labour as well as the distinction between trafficking and other crimes are important because of the specific status of victims of trafficking. The definition is crucial in order to determine who is formally considered a victim of trafficking, and who is thus entitled to State-sponsored assistance and protection (see Roth 2010a). Of course, most trafficking victims are 'unseen' and hidden (Di Nicola 2007, 53), meaning that identified victims only form a minority of all victimised persons. Victims of trafficking are entitled to specific forms of support and assistance. Based on the obligations outlined in international treaties on trafficking – the UN Protocol, the Council of Europe Convention and the EU Directive – States have to provide assistance and support to victims of this crime. The provisions concerning victim assistance and protection of the UN Trafficking Protocol are rather weak and mostly optional whereas the Council of Europe Convention can be considered a human rights instrument with strong victim assistance and protection obligations (Roth 2010a, 93; 114). Assistance to victims of human trafficking is obligatory under the Council of Europe Convention but discretionary under the UN Protocol, but protection of victims is obligatory under both (ibid., 116). The EU Directive furthermore obliges Member States to provide unconditional assistance and protection. However, the linking of assistance and protection to cooperation with national criminal justice agencies is nonetheless prevalent in many countries (United Nations 2011a, 46).

In 2006 Finland has complied with the international obligations by establishing an official system of assistance to victims of trafficking, under the auspices of the Ministry of the Interior (Migri 2015). Persons can be taken into the official system of assistance if, based on the circumstances, it can be deemed that the person is a victim of trafficking and in need of assistance (section 35 of the Act on the Reception of Persons Seeking International Protection 746/2011, amended 388/2015). Victims seeking assistance have to be presented to the system of assistance and a multidisciplinary expert group evaluates the application (sections 34-35 of the Act on the Reception of Persons Seeking International Protection). The system is supposed to function with a low threshold but assistance is only granted to those who are defined as victims of trafficking in line with the Act on the Reception of Persons Seeking International Protection. Between the years 2006 and 2015 a total of 342 victims of trafficking were taken into the system of assistance: 167 victims of labour exploitation and 140 victims of sexual exploitation (Yhdenvertaisuusvaltuutettu 2016).[12] The National Rapporteur on Trafficking has, however, paid attention to the fact that not all presumed victims are granted assistance. Only 61% of victims of labour trafficking (and 70% of victims of sexual exploitation) were accepted into the system between 2006 and August 2014 (Vähemmistövaltuutettu 2014, 36). The

[12] According to recent statistics from the system of assistance to victims of human trafficking, 100 adults and 11 accompanying children as well as 11 unaccompanied minors have been taken into the system in the year 2016 (until 13 October 2016). Almost two-thirds of the new persons taken into the system are asylum seekers. (Tafari 2016.)

National Rapporteur finds this figure surprisingly low and consequently encourages the system of assistance to pay more attention to the indicators of trafficking and the needs of the victims (ibid.). It can therefore be discussed whether the threshold into the system is as low as it could be.

In practice victims are removed from the system if and when the criminal justice process is terminated on the grounds that the police does not find evidence of a trafficking crime, the prosecutor drops the charges or if there is an acquittal in court (section 38f of the Act on the Reception of Persons Seeking International Protection 746/2011, amended 388/2015). The National Rapporteur on Trafficking has noted that making the assistance to victims in any way conditional upon a criminal justice process is in contravention of international obligations as well as EU law (Vähemmistövaltuutettu 2014, 36). The tendency that victims have to be shown to deserve assistance and protection – that is, to prove that they are victims of trafficking rather than victims of some other crime and to agree to cooperate with the criminal justice system in order to receive support – is not in line with the human rights-based approach to human trafficking (Roth 2016, 24; Gallagher 2010, 298-299).

The interpretation by practitioners of the definition of trafficking is thus of great relevance for victims of trafficking in determining whether they can access assistance to which they should be entitled. It is, of course, only a small share of all victims of crime overall who receive assistance and who are dealt with by the criminal justice system (see Honkatukia 2011a). The definition of victims and their right to receive assistance therefore has similarities to the process of defining who is granted asylum or the status of refugee, and determining who has the right to protection in line with fundamental and human rights (Pirjatanniemi 2014). The interpretation of who is a victim is also of relevance for the broader principle of the State's responsibilities to protect persons from becoming victims or from further victimisation. In line with a basic principle of international law, every internationally wrongful act entails the responsibility of the State, giving rise to an obligation of reparation (Gallaher 2010, 219). Since most acts of trafficking are perpetrated by private individuals (rather than by representatives of the State), international law recognises that there are circumstances where the State can be held responsible also for the acts of private individuals. Under the standards of due diligence, 'a State is obliged to exercise a measure of care in preventing and responding to the acts of private entities that interfere with established rights' (Gallagher 2010, 241). The principle also applies to situations where there have already been violations of international law, but the State failed to make the situation better for the victim (ibid., 241-242). In situations of trafficking, the State can rarely prevent the acts of private individuals, and therefore the source of responsibility is the failure of the State to prevent or respond to such acts (ibid., 274).

Although Piotrowicz (2012; see also Stoyanova 2015) points out that trafficking is a crime rather than a human rights violation, he finds that the failure of the State to respond may amount to a violation of its human rights obligations both with regard to the measures it takes to regulate criminal acts with regard to

trafficking, to punish the perpetrators and to assist victims and potential victims, and also with regard to the acts of representatives of the State (such as the police) (Piotrowicz 2012, 201). States have the obligation not only to ensure sufficient legislation, investigation and prosecution, but also to observe their duty to protect, promote, facilitate, and fulfil applicable human rights, as described in the context of the human trafficking legal regime (Pati 2014, 141).

These obligations have been weighed in judgments of the European Court of Human Rights, in particular in the cases of Siliadin v. France, Rantsev v. Cyprus and Russia, and L.E. vs. Greece. These have highlighted violations of the European Convention on Human Rights especially with regard to Article 4 on the prohibition of slavery and forced labour. The Court has held that compliance with Article 4 of the Convention cannot be limited only to direct actions by States (European Court of Human Rights 2014). Therefore the Court sees that States have so-called positive obligations. This means that in order to effectively penalise and prosecute those guilty of slavery and forced labour, States must ensure that they have an appropriate legislative and administrative framework, take certain operational measures (e.g. to protect victims), and investigate violations of individuals' rights under Article 4 (ibid., 13-15).

> In the case of Siliadin v. France, the European Court of Human Rights for the first time considered a case of trafficking. Siliadin was a Togolese female minor, working for seven years as an undocumented domestic servant in a household in Paris. The court ruled that France had violated the positive obligations of Article 4 of the Convention by failing to ensure legislation that could provide practical and effective protection to the victim (European Court of Human Rights 2005). In the case of Rantsev v. Cyprus and Russia concerning the trafficking to and the death of a young Russian woman in Cyprus, the Court found that Cyprus had violated its positive obligations arising under Article 4 of the Convention by failing to put in place an appropriate legal and administrative framework to combat trafficking; in addition, the police had failed to protect the victim from trafficking (European Court of Human Rights 2010; European Court of Human Rights 2016; see also Pati 2014). Furthermore, Russia had failed to investigate the recruitment of the victim, while Cyprus had failed to investigate the death of the victim (ibid.). In the case of L.E. v. Greece, a Nigerian woman had been identified as a victim of trafficking in Greece, but had to wait nine months before being granted official status as a victim (European Court of Human Rights, 2016). The court found that there were shortcomings in the inquiry and investigation of the case, and delays and failings in the administrative and judicial proceedings (ibid.).

The rulings of the European Court of Human Rights have been significant both in rendering concrete the responsibilities of States under the principle of due diligence, as well as in outlining the elements of forced labour. An additional framework to consider when discussing the protection of exploited migrant workers, in particular, would be the international framework on migrant workers, especially the International Convention on the Protection of the Rights

of All Migrant Workers and Members of their Families (Gallagher 2010, 168-177). The Convention extends fundamental human rights to all migrant workers and their families, regardless of their status and could thus complement the trafficking framework (ibid., 170). However, the Convention fails to take into consideration the increasingly complex environment of international migration (ibid., 173). In addition, the Convention remains poorly ratified and politically weak, and most of the 48 State Parties can be found in Africa, South America and Asia.[13] The protection of exploited migrant workers who are not quite victims of trafficking therefore still remains inadequate. The recent ILO Protocol of 2014 to the Forced Labour Convention obliges the parties to provide protection, rehabilitation, support and assistance for all victims of forced or compulsory labour (Art. 3). It also requires a range of preventive measures from its parties, including due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour (Art. 2e). The ILO Protocol also links forced labour with trafficking. There is some amount of optimism that this instrument could bring with it 'real progress' in preventing forced labour and assisting victims of labour exploitation (Frey and Fletcher 2015). Such optimism may, however, be premature, at least in the Finnish context.

The ratification of the ILO Protocol is currently under debate in the Finnish Parliament (HE 69/2016 vp). The Government proposal for the ratification of the ILO Protocol notes that no legislative amendments are needed. The proposal argues that human trafficking and forced labour related to human trafficking are already comprehensively regulated in Finland, in addition to which Finland has ratified several international conventions against human trafficking and implemented EU obligations in this regard (ibid., 5). The Government proposal seems, in effect, to equate forced labour with trafficking. It follows that the proposal also considers that the current system of assistance to victims of human trafficking is sufficient to also cover victims of forced labour (ibid.). However, it is important to note that the ILO Protocol includes also situations of forced labour that are not human trafficking. Because the Finnish system of assistance to victims of trafficking is so closely tied to the definition of human trafficking and to the outcome of the criminal justice process, it is far from evident that all victims of severe labour exploitation are, in fact, granted access to the official system of assistance to victims of trafficking. The high burden of proof in relation to human trafficking means that the crime of human trafficking is difficult to establish. If the protective obligations of the ILO Protocol are to be implemented in an inclusive manner, there is therefore a need to expand the scope of the current system of assistance to more broadly incorporate also victims of forced labour. In practice, this would mean that the system of assistance should be expanded to include also victims of severe labour violations; in effect, those defined as victims of extortionate work

[13] Status as of 22 October 2016, see https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-13&chapter=4&clang=_en

discrimination. The Employment and Equality Committee of the Finnish Parliament in its report on the consideration of the government proposal notes that the proposal is unclear when it comes to the use of terms (TyVM 5/2016 vp). The Committee therefore suggests that the ILO Protocol be ratified but demands that the government follow up on whether there exists forced labour similar to human trafficking or serious labour exploitation where the victims do not receive adequate protection because the crime does not fulfil the elements of the trafficking offence (ibid.). At the time of writing, the ratification process is still pending.

3. Theoretical framework

3.1 Understanding the exploitation of migrant workers in the context of changes in the labour market

3.1.1 The neoliberal turn

In the previous chapter I focused largely on victims of trafficking. Next, I will move to the broader context in which the exploitation of migrant workers takes place. In order to understand the contemporary manifestations of exploitation of migrant workers, it is necessary to briefly outline how labour relations in the industrialised world have changed. Exploitation and trafficking are not isolated phenomena, but are closely related to developments and changes in the economy, the labour markets as well as society at large (Waite et al 2015). In short, globalisation combined with an opening of markets and economies have greatly affected the way businesses – and also States – operate around the world (Väyrynen 1999). Nation-states are increasingly part of the global exchange between countries.[14] Increased global competition has led to production being moved to cheaper locations and other forms of cost-cutting such as outsourcing of work and services (Gray 2004). As a result, the workforce is expected to be ever more flexible. These changes have had profound effects on the nature of work, especially at the lower end of the labour market (Standing 2011). It is precisely in these sectors where many migrant workers can be found. It is also in these low-skilled and low-paid sectors – such as agriculture and fishery, construction, textile work, service work, including accommodation, cleaning and catering, domestic work and care work – that forms of exploitation and even trafficking in human beings have been uncovered in recent years in European countries (Eurostat 2015; FRA 2015). This section will outline in brief some elements of the changes in the labour markets in order to provide the context for the exploitation of migrant workers and trafficking in contemporary Finland. I will first present some of the global economic and social developments in the Western world before moving to the Finnish context.

The birth of modern industrial capitalism was a lengthy historical process, which was dependent on the emergence of a strong nation state and predictable legislation (Heiskala and Virtanen 2011, 50). Karl Polanyi called the breakthrough of capitalism the ‘great transformation’ in which the three premises of production – labour, land and capital – became the basis for modern economic thinking and for the market economy (ibid., 16.) The industrial revolution, the move to a market economy (the great transformation in Polanyi’s terms), and the rise of the nation state created the basis for our current political reality (ibid., 46-47.) Following the ravages of the Second World War, the rebuilding of Europe resulted in a long period of economic growth. There was

[14] Wolf (1982), however, argues that globalisation is not a recent development, but that it was a reality already long before the Western world ‘discovered’ the rest of the world in the 15th century. Although it may not be a new phenomenon, modern technologies enable a significantly faster exchange between countries than ever before.

mass production, mass labour and mass consumption and an era of economic growth and success: rising living standards, full-time employment and job security, free collective bargaining and strong trade unions, as well as government interventions and Keynesian macro-policies (Beck 2000, 68-69).[15] During this era also the public sector and the State grew significantly in the Western world, creating what we today understand as the Western welfare state (Heiskala 2006, 15-17).

The economic growth came to a halt at the end of the 1960s (Julkunen 2008, 81). Industrial production was no longer able to produce growth to the same extent as before. The oil crises of the 1970s further increased the costs of industrial production (ibid.). At the same time, unionisation and collective bargaining meant that wages, overall purchasing power and social security kept increasing (Julkunen 2008, 81-82). This resulted in a structural crisis and a crisis of Keynesianism: a combination of high inflation as well as increased unemployment and a slowing down of economic growth (ibid.). The crisis paved the way for a major shift in societal power relations and economic paradigms at the end of the 1970s and the beginning of the 1980s. Around the same time in the 1970s, a widespread (socialist) movement emerged that sought reforms and increased State intervention (Harvey 2005, 15-16). Harvey (2005) argues that this posed a political and economic threat to the ruling upper classes, especially in the UK and the US (ibid.). Harvey claims that this formed the backdrop for the spread of a neoliberal turn: a means of restoring the power of the economic elites (ibid., 19).

While the meaning, role, extent and impact of neoliberalism on the economies and policies in different parts of the world continue to be discussed (for instance Patomäki 2007; Walby 2009; Boas and Gans-Morse 2009; Thorsen 2010), it can be seen as one explanation for the move towards free markets, free trade and sharp reductions in the State's regulatory and welfare roles (Antonio and Bonanno 2000, 41). It is also important to note that there is a difference between the theory of neoliberalism and the actual pragmatics of neoliberalisation (Harvey 2005, 21). Consequently, here I shall focus on the latter. Despite the contentions about neoliberalisation and although few countries can be defined as fully 'neoliberal' per se, Harvey argues that the neoliberal turn has taken place in many countries through partial developments: 'the introduction of greater flexibility into labour markets here, a deregulation of financial operations and embrace of monetarism there, a move towards privatization of state-owned sectors somewhere else' (ibid., 87). These are relevant also for understanding the topic of my research, and it is the effects of these changes on the labour markets that are of interest here. In concrete terms the neoliberal turn has meant that the obstacles to the free movement of capital have been removed, thus opening up worldwide economic globalisation (Heiskala 2006, 22). This has also been coupled with both deregulation and re-regulation of markets (Tombs and

[15] Keynesianism refers to an economic model with state spending, monetary regulation, and economic 'fine-tuning' as integral elements (Antonio and Bonanno 2000, 36).

Whyte 2015). Of course, the opening up of markets took place at around the same time as structural changes in both industries and the service sector occurred, and major global technological advances emerged (Julkunen 2001, 43). Neoliberalism could thus be understood as a label for new free-market models in a globalised world where the alternatives to the free market have waned or disappeared (Boas and Ganse-Morse 2009, 157).

Finland felt the effects of globalization in a particularly harsh way during the early 1990s. The Finnish economy plunged into a major recession as a result of two main developments – the dual effects of globalization – namely the opening up of the financial markets and the fall of the Soviet Union (Väyrynen 1999, 17). Julkunen (2001, 65; 53) sees that there was also a third effect of globalization, namely the introduction of neoliberal constitutionalism as a fiscal policy that is controlled by global and regional mechanisms of governance. The recession of the 1990s, its fiscal and social policies and effects on Finnish society have been discussed in detail elsewhere (see Väyrynen 1999; Kiander 2001; Julkunen 2001; Julkunen 2003; Kantola 2002; Kantola 2015). What is crucial to understand from the perspective of this study is that the recession has had major effects on the Finnish labour markets in the form of continued high unemployment and an increase in the instability and selectivity of the labour markets (Julkunen 2001, 64; Suikkanen et al 2001).

Finland joined the European Union in 1995. Membership was important for economic reasons but also as a manifestation of security and identity, of belonging in the West (Julkunen 2001, 123). The Union's policies of integration on the one hand and free movement of capital and labour on the other have shaped also Finnish political and economic policies (ibid.). Overall, since the recession of the 1990s, social and economic policies in Finland have become more market-oriented and the welfare state has been downsized (Julkunen 2001; Jutila 2011; Riihinen 2011; Kantola 2015). It seems that the changes in economic and social policies in Finland have taken place through small and creeping yet incremental changes rather than through major ideological shifts (Julkunen 2003). Riihinen (2011) outlines six major factors that have changed Finnish society in recent history. These are the rapidly ageing population, increased income inequality, the diversification of society (for instance changing family structures and increased immigration), the weakening of corporatism (that is, of collective bargaining and tripartite agreement), the spread of neoliberal values, and the disappearance of the idea(l) of full employment (ibid.).

The global financial crisis in 2008 also affected Finland. As was the case in other Western countries, Finland adopted a Keynesian approach with a focus on stimulation of the economy rather than cutting social benefits or increasing taxation (Hiilamo 2011, 46). However, as government debt has increased, financial policies have started to focus increasingly on how to curb lending, and how to counteract the effects of the ageing population (ibid.; see also Sub-study 2). The effects of the 2008 crisis seem to have reached Finland in a slow yet cumulative way. The current economic outlook in Finland is bleak and government debt has grown six years in a row (Suomen Pankki 2015).

Unemployment is at about 9%, although the downward spiral of increasing unemployment seems to have slowed down (ibid.). The current Government has accordingly embarked on a strict fiscal policy and a cutting of government expenditures (Valtioneuvoston kanslia 2015).

3.1.2 The changes in the labour markets

Beck (2000) sees that the societal changes of the late 20th century can be understood as a shift from the first to the second modernity where the global economic and social changes are producing a 'political economy of insecurity' (see also Suikkanen et al 2001). In this new era of insecurity also employment relations are becoming deregulated and more flexible (Beck 2000, 3). Such insecurities have changed and continue to fundamentally change the nature of paid labour and the idea of full-time, permanent employment (Beck 2000; Sennett 1998; Suikkanen et al 2001; Siltala 2004; Julkunen 2008). Instead, risks are being redistributed away from the state and the economy towards the individual. As a result, jobs are becoming short-term and easily terminable. (Beck 2000, 3.)

In Finland the shift from stable, full-time employment to new forms of insecurity in the labour markets can be placed within the changes that took place as a result of the recession of the 1990s (Julkunen 2001; Suikkanen et al 2001; Siltala 2004). The recession resulted in economic growth benefitting the owners rather than salaried employees, and in forms of work disappearing especially from the lower levels of employment (Siltala 2004, 122-124). As productivity and profitability have been redefined also in Finland, jobs have disappeared, work has moved to cheaper locations, and there has been an increase in involuntary short-term and temporary forms of employment (Lähteenmäki 2013, 18). The shift has, however, been more complex than a simple 'worsening' of working life: if we compare the current temporary and insecure forms of employment to the permanent and secure forms of employment just 30 years ago, working life indeed seems to have become worse (ibid., 17; also Siltala 2004). If we look further back, however, work is in many respects now substantively better than before (Julkunen 2008). What characterises modern working life is that some work and some elements of work are much better than ever before: work is safer, more diverse, more rewarding, more independent, giving the employee increased freedom and responsibilities (Julkunen 2008; Sennett 1998; see also Snider 2003, 54). At the same time, however, most work is simultaneously also more insecure, temporary, flexible and mobile (ibid.).

Many researchers argue that it is the results of the neoliberal turn – privatization, liberalisation and deregulation – that have together undermined labour rights through a change towards increasingly flexible employment relations, non-standard working hours and relocation of production to low labour-cost countries (Gray 2004; Standing 2011; Stone 2005; Scholte 2005; Kalleberg 2009; Boltanski and Chiapello 2005). Flexibilisation creates a divide between 'good' and 'bad' jobs (Gray 2004, 133). As a result of these developments, certain work is becoming increasingly precarious and employers replace permanent jobs with

short-term jobs, temporary contracts, agency workers, part-time contracts, subcontractors and involuntary self-employment (Wilson and Ebert 2013; Lähteenmäki 2013, 20; Kautonen et al 2009). These changes are in particular affecting jobs at the lower end of the labour market, and migrant workers increasingly fill such jobs, also in Finland (Forsander 2013).

The construction of insecure employment is perhaps most evident in so-called temporary agency work. Lähteenmäki (2013) argues that employers and the media in Finland have in recent years created a discourse where temporary labour is constructed as a viable labour market alternative. This discourse disregards the insecurities tied to temporary work and instead sees the temporary worker as someone who is flexible, adaptable and grateful for this kind of employment, despite the workers' lack of job satisfaction, autonomy and work security. For many temporary workers the flexible forms of work become a form of subtle exploitation, which the employees get used to and accept. (Ibid.) Their poor position is also related to the lack of sufficient regulation and the hegemonic position of employers (Tanskanen 2012). It is not only temporary agency workers who experience in concrete terms the move from a stable employment regime to more insecure forms of work. Other 'new' forms of work include self-employment as an ideal (Kautonen et al 2009; self-employment might also entail forced and bogus self-employment, see Jorens 2008) and the use of precarious contractual practices, such as zero hours contracts (see Lambert 2008; Lever and Milbourne 2015; Sub-study 4).

Suikkanen et al (2001, 171) argue that Finnish working life and the welfare society were built around the unspoken agreements of solidarity and permanent and full-time employment, as well as on the rules, responsibilities and rights that have governed the relationships between generations and between the sexes. The major changes that the Finnish labour market underwent in the 1990s reflect a larger change in society, and also a change in how the individual is tied to society (ibid.). There is therefore no return to the previous era of full-term employment, nor is there a return to a society based on the social structure of the unspoken agreements (ibid.). In practice this means that the 'old' forms of agreement and social organisation have to be replaced with something else. At the same time, 'normal' and permanent employment is shifting and workers have to adapt to new circumstances, and be active and flexible (ibid., 178).

The new globalised environment has meant that there is an on-going hegemonic battle over the definition of the practices and rules of both working life and social security in Finland (Suoranta and Anttila 2010, 8). This is especially evident in how the striving towards 'national competitiveness' has eroded the traditional symmetry between the labour market parties, that is, between trade unions and employers (Kettunen 2010; 2012). Kettunen (2010) argues that as a result, the employee is no longer seen as the weaker party in an employment relationship and the employer is no longer representing its own interests, but rather the interests of the 'economy' as a whole (ibid., 46-47). Ylhäinen (2015) describes a similar process. While labour law has traditionally protected the rights of workers from employers' use of power, Ylhäinen argues that there is now – at

least in the Finnish context – a rival discourse that represents the employer as the 'victim' of insecure economic and business conditions. In this discourse the employer is no longer in a position of power in the traditional meaning of labour law. At the same time the employee is no longer an object in need of protection, but should instead be seen as an autonomous, responsible subject (Ylhäinen 2015). Sennett (1998, 59) emphasises that a labour regime that sees employees and employers as more or less equals disproportionately affects those who are the most vulnerable, who lack power and especially bargaining power. He further argues that the new freedom in work is deceptive because the tolerance towards accepting fragmentation in the nature of work is very different for those lower down the flexible regime (ibid., 62-63).

In an increasing globalised world this perceived shift of power is particularly difficult for the trade union movement, which has traditionally protected workers by restricting their internal competition (Kettunen 2010, 49). The trade union movement thus has difficulties in protecting their membership from weakened labour rights, especially as work is moving to cheaper locations, and in acting as a counterpart to the hegemony of the employers when their own membership and political power is decreasing (Kettunen 2010; Helander and Nylund 2012). Finland has traditionally had a high level of unionization. Finnish working life has in many respects been very homogenous and migrant workers have only very recently become the focus of the interest of Finnish trade unions (Alho 2012; Ristikari 2012). Migrant workers present an additional challenge as trade unions in Finland continue to struggle with the question of global worker solidarity and whose interests they should represent in protecting the (Finnish) workforce (ibid.).

3.1.3 Migrants at work in the dual labour market

The dual labour market hypothesis of Michael Piore is based on the notion that the labour market is divided into a primary and a secondary sector, with migrants found in the second sector (Piore 1979, 35). The primary sector is based on permanent employment, where the workers enjoy many rights, while the secondary sector is characterized by uncertainty and poor working conditions (Forsander 2002). Migrants are willing to accept 'jobs that, because of the low social status, the insecure income, and the lack of opportunities for advancement, native workers reject' (Piore 1979, 81). Piore was focusing especially on temporary migrants from underdeveloped rural areas. When developing the theory almost 40 years ago, Piore further saw that the low-level jobs in which the migrants would be employed in the country of destination would, in terms of status, be more valuable for the migrant than for the local population, thus explaining why they would be willing to undertake such jobs (Piore 1979, 57-58). This 'dual frame of reference' can still be seen, and is applicable not only to the lowest level of the workforce. Bach (2010, 102) shows that at least in the UK, it applies also to skilled migrant workers in health care, who increasingly fill up positions that are perhaps not low-paid, but low-status, with few opportunities for advancement. Laurén and Wrede (2010) similarly show that in

Finland, migrants working as practical nurses have difficulties advancing within the workplace.

Piore (1979) argues that it is the demand rather than the supply which both generates labour migration and keeps migrants in the secondary sector. Employers develop specific demand and preference for migrant workers who are perceived to possess the types of characteristics employers seek (Anderson and Ruhs 2010, 33). Vulnerability is one of these characteristics (ibid.), which is one of the reasons why migrant workers may be more willing to work on terms that the native population may not accept. Castles (2015) sees that the differentiation of labour is based specifically on the combination of economic vulnerability and ethnic or racial prejudice. Migrant workers obviously represent a heterogeneous group, as do the positions in which they work (see Myrskylä and Pyykkönen 2014; Kyhä 2011). For the purposes of this research, Piore's division of the labour market provides a useful framework in which the exploitation of migrant workers can be understood as taking place in particular in the secondary sector.

Piore's theory still seems valid although it has been criticized for being too simplistic. For instance, Piore did not foresee 'the number of layers of groups in the secondary labour market, nor the frequency of their replacement' (MacKenzie and Forde 2009, 155). The dual labour-market model also does not fully reflect the multiplicity of the current labour markets (Forsander 2013) and does not include the role of the grey economy in influencing the labour markets (Forsander 2002). Könönen (2012a, 197) criticizes the theory on the basis that the same migrant worker might at the same time be occupied in both legitimate, permanent employment, as well as illegal, undeclared work.

The structural changes in the labour markets have also translated into increased deregulation. Stone (2005) finds that globalization threatens labour by diminishing labour's bargaining power, as businesses relocate to countries with lower labour standards. It also diminishes the level of domestic labour-protective regulations through a 'race-to-the-bottom' of labour standards. It furthermore encourages regulatory competition through lower labour standards to attract businesses, by pitting labour organisations against one another and through the deterioration of labour's political power. (Ibid., 9-11.) Although based on an assessment of the US labour market, Stone's claim regarding deregulation seems valid to some extent also in a European context. There is a paradox in that deregulation and increased labour mobility may have in fact lead to the creation of more jobs per se, but these jobs are mostly in the low-paid labour intensive sectors (MacKenzie and Forde 2009, 156). At the same time, these jobs may have become marginally better thanks to regulative constraints, such as the introduction of the minimum wage (ibid.). Migrant workers are thus both the subject of regulation and the means of downplaying the impact of regulation. However, the weak regulatory context (for instance the possibility for workers to 'voluntarily' waive their working hours rights) 'enshrines a serialized exploitation of vulnerable workers within the labour market' (ibid.). The on-going interplay of increasingly deregulated labour markets is characterised by the demands of employers for low-cost 'flexible' labour and highly restrictive

immigration and asylum policies that variously structure, compromise and/or remove basic rights to residence, work and welfare for all but the most prosperous of migrants (Lewis et al 2014, 15). The insecurity and precariousness of the most vulnerable migrant workers is thus both a function and a symptom of the way the labour markets are structured (Whyte 2009, 66). The labour migrants epitomise 'hyper-flexibility': available when required, undemanding when not (Anderson 2010, 300). At worst, the hyper-flexible employment practices and working conditions make migrant workers invisible both socially and spatially for the rest of society (Lever and Milbourne 2015).

3.1.4 Migration into Finland

The labour migration patterns to Finland differ somewhat from most other European countries. After the Second World War, the reconstruction of Europe increased the demand for labour in Central and Northern Europe (Forsander 2002, 16). During this 'first migration wave' governments introduced guest worker schemes to meet the demand for temporary labour (ibid.). The guest worker schemes were in place until the mid-1970s and by then, many of the workers remained in the countries (ibid.). The guest worker schemes were terminated in the 1970s as a result of the recession, and labour migration from poorer countries became the subject of more control (Hansen 2010, 92; Albrecht 2002, 12; Castles 2015). At the same time, however, the number of refugees and asylum seekers increased in Europe. This 'second migration wave' brought increasing numbers of refugees and asylum seekers into Europe during the 1970s and 1980s (Forsander 2002, 16-17; Castles 2015). With the increasing numbers of immigrants, many of them bringing their families and establishing themselves in the host country, there was an awakening to the need to integrate the immigrants into society in order to prevent their marginalisation (Forsander 2002, 18-19). The arguments and discussions around immigration were no longer based purely on economics, but also on ethnicity and culture (ibid.).

The 'first migration wave' did not really concern Finland, as Finland remained a country of emigration rather than migration until the 1980s (Forsander 2002, 20; Jaakkola 2009). The Finnish industry could not incorporate all of the available national labour, and vast numbers of Finnish workers migrated to Sweden during the 1960s and 1970s to serve the growing industry there (ibid.). The first Chilean and Vietnamese refugees arrived during the 1970s but it was only in the late 1980s that the number of immigrants, mostly asylum seekers and refugees, began to increase significantly in Finland (Jaakkola 2009). At the end of the 1990s, a discussion on the need for migrant labour commenced in Finland as the economy started recovering from the recession (Forsander 2002). The end of the Cold War, the shift in the international order and membership in the European Union changed Finland's position and foreign policies (Salmio 2000). This in turn affected Finland's immigration and refugee policies. The Finnish refugee and immigration policy lacked clear rules, aims and comprehensive planning until 1997, when the first Government migration programme was approved (ibid.). Simultaneously the issue of immigration became framed as a

question of threats to internal security, and measures became more controlling (Salmio 2000).[16] Forsander (2002) shows that legislation and government practices effectively protected Finland from immigration, but when Finland joined the EU, policies changed and immigration increased (see also Sub-study 2).

When the Baltic countries joined the EU in 2004, Finland introduced a two-year transition period, during which the immigration of workers from the new EU Member States was limited. There was a fear that Estonian workers would move to Finland *en masse*, although this did not materialise in the scale some had feared (Kyntäjä 2008, 208-209). Because Finland became a country of immigration rather late (compared to other European countries), jobs in the industrial sector had already diminished when migrants started arriving in the country (Forsander 2002, 37). Migrant workers in Finland thus work mainly within the service sector (ibid.) as well as in construction. The specialisation and fragmentation of construction work have resulted in work being increasingly split up and sold to subcontractors (Forsander 2008, 335). The number of migrant workers within these subcontracting chains (including as 'posted' workers from other EU countries such as Poland and the Baltic states) has increased manifold in recent years (ibid.; Lillie and Greer 2007).

In both absolute numbers and in proportion to the population, Finland has a much lower number of migrants than its Nordic neighbours Sweden, Norway and Denmark (Helminen 2015). At the end of 2014, there were a total of 220,000 persons with a foreign nationality residing in Finland (Tilastokeskus 2015b). Of these, the majority were Estonians, followed by Russians, Swedes, Chinese, Somalis, Thai and Iraqis (ibid.). The number of migrant workers in Finland is difficult to assess, since information is not collected systematically and is dispersed among different registries (Ruotsalainen 2009). EU-citizens working in Finland who are permanently residing in their home country do not require a work permit, and are therefore not registered. It has been assessed that in 2012 about 30,000 Estonians and 6,500 Poles with a permanent residence in their home country worked in Finland (Krzywacki 2013). Those migrant workers who need a work permit are granted one by the migration board, which assesses their right to employment.[17] The largest groups of workers receiving work permits in 2014 were Ukrainians, Russians and Filipinos in terms of nationalities, and horticulture, restaurants and catering, agriculture and cleaning work in terms of the most common sectors of work (Euroopan muuttoliikeverkosto 2015, 9). These sectors also largely correspond to the industries where cases of exploitation of migrant workers have been uncovered (Jokinen et al 2011a; 2011b; Sams and Sorjanen 2015).

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[16] Starting in 2008, there has been a change in the discourse on migration and immigration. This has been attributed to the rise of the (True) Finns party in the local elections in the fall of 2008 and the European parliamentary elections in the spring of 2009 (Simola 2010; Keskinen 2009).

[17] As opposed to providing a permit without such an assessment, for instance for highly skilled expert positions such as IT-specialists.

3.2 Understanding the exploitation of migrant labour as corporate crime

3.2.1 The concept of corporate crime

Next I will move to the second theoretical framework of this study. I approach the exploitation of migrant workers through the framework of *corporate crime*. Such a view of the exploitation of migrant workers can shed light on why such crimes remain under-enforced. In order to establish the link between the exploitation of migrant workers and corporate crime, it is necessary to consider definitional issues. The concept of corporate crime stems from the concept of 'white collar crime', which was first established and defined by the sociologist Edwin Sutherland in 1939 and further elaborated upon in his subsequent work (Sutherland 1940; Friedrichs 2010, 2-5). Sutherland states that 'white collar crime may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation' (Sutherland 1983, 7). Sutherland's definition has been criticised for being both unclear and unserviceable (Nelken 2007, 738) but Sutherland demonstrated that corporate crime was widespread in contemporary national and transnational corporations (Sutherland 1983; Box 1983, 18). However, the definition and classification of white-collar crime and corporate crime have been – and continue to be – the source of much discussion and dispute (for an overview of the discussions, see Slapper and Tombs 1999, 3-19; Snider 2003, 52; Nelken 2007, 738-741; Friedrichs 2010, 2-33; 60-95; Bittle 2012, 43-46; Friedrichs 2015).

Acknowledging that white-collar crime does not have a single meaning or definition, Friedrichs (2010, 7-8) typologises white-collar crime based on: the context in which the illegal activity it occurs; the status or position of the offender; the primary victims; the principal form of harm; and the legal classification. He then includes a variety of activities that have a close generic relationship to white-collar crime, including corporate crime, occupational crime, governmental crime, state-corporate crime, and enterprise crime (ibid., 7). Friedrichs defines corporate crimes as 'illegal and harmful acts committed by officers and employees of corporations to promote corporate (and personal) interests' (ibid.). He further categorises corporate crime based on its primary victims, the nature of the harmful activity, the scope of the corporate entity, and the type of product or service involved (ibid., 64).

In Friedrichs' typology, then, the exploitation of migrant workers could be seen both as 'corporate violence against workers' (in the form of unsafe working conditions) and as 'crimes against employees' (in the form of economic exploitation of employees, and unfair labour practices) (ibid., 73-77; 83-84). However, based on Friedrichs' typology, exploitation of migrant workers could also be seen as a form of 'occupational crime' (when small businesses for instance do not pay employment taxes or other obligatory fees, thus harming both the State and the individual worker) (Friedrichs 2010, 97). It could also be conceptualized as a form of 'governmental crime' in the form of state negligence (of not adequately protecting migrant workers from exploitation), a state-corporate crime (if the exploitation is seen to stem from the interactions of

corporations and governments), or as a crime of globalization (as the effects of globalization disproportionately affect those who are most vulnerable) (Friedrichs 2010, 140-141; 159; 162-165; Kramer et al 2002).

Another way of categorising corporate crimes is to see them as 'financial crimes' on the one hand, where the primary victims are the financial markets, competitors or consumers, and as 'social crimes' on the other, where the victims are the general public and employees (Snider 2000, 172). Slapper and Tombs (1999, 43-47) provide examples of both financial and social crimes: financial crimes include tax evasion, illegal dealing in shares, bribery and illegal accounting, while social crimes include the illegal sale of unsafe food or goods, false labelling, fraudulent testing of goods, as well as the range of environmental crimes such as illegal emissions and waste dumping. In addition, social crimes in the context of employment relations include discrimination, violations against wage laws, violations against the right to organise and violations against occupational health and safety regulations (ibid., 45). Social crimes can also be denoted as 'corporate violence' in line with Friedrichs' definition that sees corporate violence as a subset of corporate crime that is targeted against the public, against consumers, and against workers (Friedrichs 2010, 65). Safety crimes, that is, occupational safety and health violations, are thus one form of social crimes, but they can also be seen as crimes of (corporate) violence (Tombs and Whyte 2007).

The various categories of conceptualising corporate crime are partly overlapping and illustrate the difficulty of providing a clear typology of a complex phenomenon. Building from these categories, the exploitation of migrant workers can be understood as a form of corporate crime committed by the employer against an employee that includes many layers of social crimes. These include various forms of economic misuse, unfair labour practices and underpayment of wages, as well as forms of corporate violence, such as violations of occupational health and safety regulations. Often the exploitation of migrant workers is coupled with economic crimes against the markets (for instance in the form of unfair competition) as well as economic crimes against the State (such as tax evasion and not paying mandatory employers' fees), but my main focus here is on crimes against migrant workers themselves.

I will not attempt to provide my own definition of corporate crime, but will instead rely on the comprehensive definition by Pearce and Tombs (1998, 107-110), who define corporate crime as

> 'illegal acts or omissions, punishable by the state under administrative, civil or criminal law which are the result of deliberate decision making or culpable negligence within a legitimate formal organisation. These acts or omissions are based on legitimate, formal, business organisations, made in accordance with the normative goals, standard operating procedures, and/or cultural norms of the organization, and are intended to benefit the corporation itself.'

This definition focuses on acts that are described by law, and it incorporates acts of both omission and commission, thus avoiding the need to determine a guilty mind (Bittle 2012, 45). What is furthermore important is that this definition

emphasises that corporate crimes take place within legitimate, formal businesses. In fact, corporate crimes are widespread and pervasive, and take place within almost every area of economic activity, and amongst corporations and organisations of all sizes (Slapper and Tombs 1999, 50). The exploitation of migrant workers as a form of corporate crime can thus be conceptualised as acts that are clearly related to, and stemming from, the practices and functions of the organisation within which migrants work.

I will next briefly return to Sutherland and his impact on the definition of crime in general. Traditional and contemporary criminological research has largely focused on conventional crimes, the crimes of the poor and powerless, and crime as an individualistic problem rather than on crimes by corporations and the powerful (Sutherland 1983, 3-10; Bittle 2012, 40-43; Alvesalo 2003a, 10-11; Friedrichs 2015). Snider (2000, 184) highlights that representatives of businesses who commit business crimes are often not considered 'real' criminals and their crimes not 'real' crimes compared to traditional crimes. This was also one of Sutherland's key points. Already in the 1940s Sutherland criticised the focus on poverty as an explanation for crime and argued that also crimes by corporations should be seen as 'real crimes', and that such crimes are in fact far more common and harmful than so-called traditional crime (Sutherland 1940; 1983). Sutherland drew attention in particular to the illegal acts committed by privileged business executives and corporations (crime 'in the suites') as opposed to the prevailing emphasis on the petty thefts, assaults and drug habits of impoverished young men (crime 'in the streets') (Sutherland 1940; Snider 2003, 51; Apel and Paternoster 2009, 16). It is noteworthy that corporate crime discussions still remain underrepresented in the criminological literature compared to discussions of street crimes and other conventional crimes (Lynch et al 2004; Tombs and Whyte 2003).

Sutherland included within his definition of white-collar crime many acts that were not criminalised by criminal law. He conceptualised the acts of white-collar crime as 'distributed along a continuum in which the *mala in se* are at one extreme and *mala prohibita* at the other' (Sutherland 1945, 139). Sutherland thus emphasised that the legalistic definition of crime as acts that are considered inherently wrong and therefore evil (mala in se) and acts that are considered as crimes because they have been defined as such in criminal law (mala prohibita) is in effect a social product and construction (Sutherland 1945; see Barak 1998, 23-25). Sutherland's approach was criticised by Paul Tappan, who argued for a purely legalistic perspective to crime. In his view, only crimes that were defined as such by criminal law should be considered as crimes. Tappan therefore regarded many of the acts which Sutherland considered as criminal as being 'within the framework of the norms of ordinary business practice' (Tappan 1947, 99).

Tappan's narrow view has rightly been criticised, as such an approach to corporate crime would prevent a number of corporate harms from being addressed (Friedrichs 2015; see Slapper and Tombs 1999 for a more thorough discussion on the Sutherland-Tappan debate). The Sutherland-Tappan debate

illustrates how laws and what is considered crime are inherently social, historical and ideological constructs (Rafter 1990; Friedrichs 2015; Bittle 2012, 41). The understanding and definition of 'crime' evolves within the complex, globalised world and can therefore not be defined in only one way (Friedrichs 2015, 47). Hillyard and Tombs argue that the concept of crime in fact maintains existing power relations and therefore ignores the crimes of the powerful (Hillyard and Tombs 2004, 18). To address this, they suggest an approach based on social harms instead of on crimes. They argue that because the category of 'crime' excludes so many serious harms, a more comprehensive categorisation of 'harms' would better grasp the dimensions (physical, financial, emotional, psychological), effects and consequences of crime/harms (ibid.).

Crime becomes socially constructed through many layers of interpretation, and this has significance for what is perceived as a crime, what is defined as criminal in criminal law, what comes to the attention of the criminal justice system, and how the criminal justice system deals with it (Lacey 1994). A constructionist perspective of crime sees it as being constructed not only through law and legal definitions, but also through powerful and competing interests (Henry 2009). There are no objective definitions of crime, since all definitions of crime are 'value-laden and biased to some degree' (Barak 1998, 21). Similarly, criminal law categories are ideologically constructed since they are not 'a fair reflection of those behaviours objectively causing us collectively the most avoidable suffering' but instead 'creative constructs designed to criminalize only some victimizing behaviours, usually those more frequently committed by the relatively powerless, and to exclude others, usually those frequently committed by the powerful against subordinates' (Box 1983, 7). Crime is a social construct also because whether or not people commit crime is dependent on the existing social conditions and because criminal justice approaches are influenced by current social, political and economic conditions (Lacey 1994, 21; 27).

3.2.2 The exploitation of migrant workers as corporate crime

Corporate crimes are intrinsically linked to the current economic setting (see chapter 3.1). Capitalism itself and the current economic paradigm create numerous harms, for instance harms produced during the production and distribution of goods and services (Tombs and Hillyard 2004, 44). Corporate crimes are primarily committed because they are profitable (Snider 2003, 65). Corporate crimes can be conceptualized as a way for the corporation to externalize some of the actual costs of production while the benefits go to those who own and control production (Slapper and Tombs 1999, 83). The exploitation of migrant workers is profitable mainly because workers are paid (too) little or nothing for (too) long working hours, thus making additional profit (compared to competing enterprises where workers are paid a proper wage) in the production of goods and services. The exploitation is thus built around the goal of cutting costs and maximising profit through underpayment of wages and benefits.

Glasbeek (2002a, 130) argues that limited liability corporations 'by their very nature, without malice towards any particular victim, will engage in criminal behaviour' in their endeavour to maximise profit within the capitalist market. Law has enabled (limited liability) corporations to be constructed in such a way that owners (share-holders) and those in charge (senior managers) are not held accountable for the corporation's deviant or harmful behaviour because of their limited liability (ibid.). Referring in particular to large corporations, Glasbeek goes further and argues that the 'corporation is legally constructed so as to become a site of irresponsibility, and thereby, criminogenic' (ibid., 142). He refers in particular to large transnational and multinational corporations that endanger both humans and the environment in their profit-seeking endeavours. Such 'criminogenic' actions are possible because in the current economic framework, governments can exert less political control over economies and corporations, and governments in fact try not to impose additional regulation or 'burdens' on corporations (see Tombs and Hillyard 2004, 39). At the same time, corporations need the state to reproduce – through regulation – the social conditions necessary for corporations to success and thrive (Tombs and Whyte 2009, 110). Because states and governments see corporations as important sources of growth, they are reluctant to address corporate wrongdoings in the first place. Glasbeek argues that while law pretends to be neutral it actually gives corporations special treatment (Glasbeek 2002b). This also results in the law being applied differentially to different types of corporations. It is easier to equate the actions and intentions of the shareholders of small companies who are at the same time also directors and workers in the company, than to do the same for directors in large diffuse corporate vehicles (ibid.). This seems evident also in the Finnish context where it is the owners of small, often family-run businesses that have been prosecuted and convicted for exploitation of migrant workers.

The 'corporate criminal' who exploits migrant workers is perhaps not the typical corporate criminal operating behind the corporate criminal veil in a 'criminogenic' limited liability company (see Glasbeek 2002a; Tombs and Whyte 2015). Nonetheless, the exploitation is intentional and often part of the business-strategy of the employer. From a corporate crime perspective, the 'corporate criminal' exploiting migrant workers is indeed acting to benefit the corporation in accordance with the goals, operating procedures, and cultural norms of the organization (Pearce and Tombs 1998). Instead of focusing on individual acts by single 'bad' employers (see Anderson 2010), the corporate crime perspective helps to conceptualise the crimes as made up by the organisation's structure, its culture, its unquestioned assumptions and its very modus operandi (Tombs and Whyte 2007, 3). Addressing the exploitation of migrant workers through the concept of corporate crime helps us to see the structural nature of such crimes by moving beyond 'narrow, individualistic notions of corporate harm and wrongdoing' (Bittle 2012, 45).

Tombs and Hillyard argue that the harms of capitalism cannot be explained by a focus on individual acts or omissions, since the 'vast majority of harms are structurally determined' (Tombs and Hillyard 2004, 53). Corporate crimes can

therefore be seen to be structurally determined because of a lack of sufficient regulation and attention to the harms of capitalism (ibid.; Glasbeek 2002a). The structural approach to corporate crimes shines light on the exploitation of migrant workers also as a form of negligence by the state. As such, the exploitation of migrant workers can be conceptualised as a form of state-corporate crime because of the failure of the State to enforce provisions that regulate and address exploitation (see Friedrichs 2010, 159-160). In addition, it could also incorporate 'crimes of globalization' in the sense that globalisation and the spread of neoliberalism has disproportionately benefited the wealthy and powerful with effects on both societies and labour markets (Friedrichs 2010, 162-166). The exploitation of migrant workers can thus be understood as the result of political and regulatory structural practices that allow it to happen, together with a lack of enforcement in cases of corporate structural misconduct against employees.

3.2.3 Problems in controlling corporate crime

Corporate crimes existed long before the category of corporate crime did, especially since the laws regulating corporate behaviour emerged in a piecemeal manner over time (Burns 2015, 158). As already noted above, the definition of what constitutes crimes and harms is under constant debate.[18] Political, economic and societal factors influence both what is criminalised as well as what is controlled. This is a crucial element in understanding how and whether the exploitation of migrant workers is regulated and controlled.

Western societies – Finland included – are built around the need to ensure free competition and the profitability of the private sector, and therefore it is in the interest of States to attract capital rather than hinder its flow into the country. This is one of the reasons why States are reluctant to pass and enforce laws that penalize corporations, since passing and enforcing such laws endanger the accumulation of capital (Snider 1991, 215). This also explains why some corporate crime and harms often occur with the permission of governments (Tombs and Whyte 2015). The permission is not necessarily explicit but is a question of how harms are conceptualised, criminalised and addressed. Occupational health and safety crimes are examples of crimes that law enforcement and criminal justice practitioners often see as less important than 'conventional' crimes despite existing legislation (Alvesalo and Whyte 2007; Tombs and Whyte 2007; Bittle and Snider 2015). With regard to the exploitation of (migrant) workers in Finland, a similar tension arises from the fact that although the State in principle has criminalised the exploitation of migrant workers by legislating against it, in practice, the oversight of such transgressions is limited, as is shown in this research (see also Eskola and Alvesalo 2010).

[18] The way crimes are denoted is also significant. The fact that the crime of extortionate work discrimination is conceptualised as a form of *discrimination* rather than a form of *exploitation* also has implications for how such situations are understood and addressed.

Instead of speaking of the 'regulation' or 'social control' that criminal justice deals with in a simple instrumental manner, Lacey speaks of criminal justice as a 'social ordering practice' (Lacey 1994, 28). This view emphasises that criminal justice has both instrumental and symbolic features and that individual actors within the criminal justice system as well as existing structures and practices influence criminal justice (ibid., 30-31). This view also recognises that the power of criminal justice is politically justified, constructed and exercised (ibid., 33). In the context of corporate crime, then, it becomes evident that political priorities, economic factors and ideology influence the definition, regulation and control of corporate crime. Following Lacey, control requires a recognition of what is (to be) controlled, legislation, and policing or actions by other control actors (for instance labour inspectors).

Regulation of corporate crimes is similarly a form of 'social order maintenance', and therefore regulation produces and reproduces corporate harm, and prevents it from being recognised, processed and identified as a crime (Tombs and Whyte 2015, 156). Most forms of corporate and organisational crime are indeed relatively decriminalised (Slapper and Tombs 1999, 86). This is shown for instance by the fact that criminal law defines only some types of avoidable killing as murder and excludes, for example, deaths resulting from acts of negligence, or from a reluctance to maintain appropriate safety standards or from ensuring that goods and products are safe for consumers and the environment (Box 1983, 9; Tombs and Whyte 2007). Corporate crimes tend to be separated from criminal law, and if indeed treated under criminal law, are still often not viewed as 'real' crimes (Tombs and Whyte 2015, 134). The few corporate crimes that meet the headlines tend to be extreme cases, thus distorting the systemic and widespread incidence of corporate offending and diverting attention from the scale and nature of routine, everyday harm (ibid., 36-37). Much of the regulation of corporate crime is carried out by actors outside of the criminal justice system, for instance labour inspectors in the case of the exploitation of migrant workers. Because corporations and states exist in a symbiotic relationship (Tombs and Whyte 2015), the regulation of corporate crime by the state is similarly a dialectical process (Snider 1991). States avoid regulation because they are dependent on businesses and the capital they generate. Snider argues that therefore the state does not provide enforcement at the level required by its own legislation (Snider 1991, 211). Instead, it provides enforcement at a level the target can live with (ibid.).

One of the reasons for the lack of attention is that the regulation of corporate crime is characterised by tensions and divergent political and financial interests. The study of corporate wrongdoings may be against the interests of powerful political and economic elites, and thus the regulation and enforcement of such crimes may weaken or disappear based on various knowledge claims by such elites (Snider 2000). Existing social and political conditions influence the work of criminal justice practitioners, creating a complex interplay between the criminal justice organisations and the overall societal priorities in which they work (Alvesalo 2003a, 72-73). For the study of corporate crime and harms in general, and the exploitation of migrant workers as a form of corporate crime in

particular, the understanding of control of crime as a 'social ordering practice' helps to outline why it is difficult for criminal justice and other control agents to define, grasp and address the exploitation of migrant workers. Economic and political factors shape legislation and the world-views of criminal justice agents and influence their possibilities and willingness for effective enforcement (Tombs and Whyte 2007, 164; Alvesalo 2003b). As government actors, the police – as agents of control – are influenced by current political priorities (Alvesalo and Tombs 2001), and so are labour inspectors and other regulatory agencies. The prioritisation or de-prioritisation of corporate crime is dependent on the development and enforcement of legislation. Similarly, corporate crime as an object of study can 'disappear' through decriminalisation, deregulation, and through downsizing enforcement capacity (Snider 2000, 172). The lack of enforcement of corporate misconduct addressed at employees can therefore be seen as a reflection of political, economic and social priorities.

3.2.4 Victims of corporate crime and the notions of victimhood

Conventional criminological research has tended to focus on interpersonal crimes and individual victim-offender relationships at the expense of the organisational and structural aspects of victimisation (Croall 2001, 36). The study of victimisation has been relatively neglected also within research on corporate crime (ibid.), although there is some research on abuses by corporations (Croall 2001; Lynch and Stretesky 2001; Tombs and Whyte 2007; Bittle 2012). Some of the reasons for this neglect include the difficulty of recognising many corporate crimes as 'crimes', the fact that they are not recorded as crimes, and the subsequent consequence that there is little available data on corporate crime and its victims (Whyte 2007, 449-451). Croall presents a useful overview of the areas of everyday life in which individuals are indeed victimised by corporate crimes (Croall 2001). These include the home, the local neighbourhood, the workplace, the marketplace, transport and travel, health and welfare, and leisure (ibid., 41). Victimisation may be financial or physical, or affect the victim's quality of life (ibid.). Following Croall's categorisation, exploited (migrant) workers can be considered to be victimised financially in the form of poor wages and wage manipulation; physically in the form of disregard for safety regulations at work as well as possible threats of violence by the employer; and in the context of their quality of life in the forms of poor working conditions, control, intimidation and harassment at work.

Whyte highlights that just like male violence against women needs to be analysed in the context of gendered power relations, also corporate crime should be seen within relationships of unequal power (Whyte 2007, 454). Such inequality is perhaps at its most visible in the context of employment relations, where the employee is by default subordinate to the employer (see Ylhäinen 2015; also chapter 3.1.2). Migrant workers tend to possess an even more subordinate position than other groups of workers due to their precarious position both in the labour market and in the immigration regime (Lewis et al 2014; Piore 1979; Könönen 2012a; 2012b). Because of their subordinate

economic position in the workplace, casualised, unskilled workers – such as immigrant workers – are at higher risk of becoming victims of forms of corporate crime at work (Whyte 2007, 455).

Corporate crime typically does not victimise equally because it is precisely those who are already the most vulnerable who are also the most victimised (Tombs and Whyte 2015, 53; 205; Croall 2001, 48). This is an important notion in the context of the exploitation of migrant workers since it is those least capable of resisting harm or avoiding victimisation that are the most likely to be victimised (see Croall 2001, 48). In criminology, vulnerability can be defined as the level of risk and the level of harm posed to certain groups or individuals, with those most at risk and least capable of coping with harm being the most vulnerable (Green 2007, 92). Vulnerability can be created both through personal characteristics and through experiencing certain crimes (Honkatukia 2011b). Such personal characteristics include for instance gender, age, social status, race and ethnicity (Green 2007). Vulnerability is not a clear-cut categorisation, but is bound to the circumstances in which the person exists (ibid., 213). The vulnerabilities of migrant workers are related for instance to their immigration status and lack of contacts, education, skills, and bargaining power (Abbasian and Hellgren 2012; Forsander 2013). As such, the exploitation of migrant workers is based specifically on the possibility of utilizing the workers' vulnerable position for financial benefit. Victimisation through corporate crime thus has structural dimensions (Croall 2001, 48) as vulnerability to corporate crime is both determined and reinforced by asymmetrical relations of production, distribution and consumption (Whyte 2007, 457).

A common statement in corporate crime research is the assertion that most victims of corporate crime do not know that they are victims (Box 1983, 17) because the harms are often less direct and diffuse and there is more distance between the offender and the victim than in conventional crimes (Croall 2001, 37; Slapper and Tombs 1999, 97). The victims either are unaware of what has happened to them or they view their 'misfortune' as an accident and 'no one's fault' (Box 1983, 17; also Tombs and Whyte 2007). This is true in particular of those corporate crimes where it is difficult to ascertain that the harm results from corporate activity, such as environmental pollution and food poisoning (Whyte 2007 450). However, it also applies to situations of exploitation of migrant workers. Many exploited migrants do not consider themselves as victims, and even if they do, they do not seek help (Jokinen et al 2011a; 2011b). This has to do with their lack of awareness of their rights and being content with wages and working conditions that are considered poor in the country in which they work (Roth 2010a, 293), or with their dependence on the job for economic, migratory, or family reasons (Brunovskis and Surtees 2012). In many ways it is therefore their vulnerabilities which effectively prevent them both from considering themselves as victims and from seeking help.

In order to understand how victims of labour exploitation are understood and recognized, it is useful to pay attention also to the notions of victimhood in the context of human trafficking. Lee (2011, 20-35) highlights that human

trafficking can be understood through six overlapping and partly contradictory approaches, namely as a form of slavery, as an example of the globalisation of crime, as a problem of transnational organised crime, as synonymous with prostitution, as a migration problem, and as a human rights challenge. Of these, it is the twin conceptions of transnational organised crime and illegal immigration that have dominated the contemporary language of human trafficking (ibid., 35; see also Sub-studies 1 and 2; chapter 2.4). This is largely related to the law enforcement perspective of the UN Trafficking Protocol, which has greatly influenced the development of national anti-trafficking legislation, also in Finland. The law enforcement and security perspective of the UN Trafficking Protocol and the effects it has had on the conceptualisation of trafficking has been criticised (Gallagher 2001; Abramson 2003; Bruch 2004; Roth 2010a). The criticism has focused in particular on how migrants' and victims' rights become limited when States aim to protect their borders against perceived criminal groups and illegal immigration, which are seen to be closely related to human trafficking (Aradau 2008; Lee 2011).

The law enforcement and security perspective emphasises the link between human trafficking and organised crime (see Sub-study 2). While organised crime is no doubt involved in (some) human trafficking, its role, methods and extent of involvement are the subject of much debate (Lee 2011, 87-93).[19] According to the National Bureau of Investigation, there are links between organised criminal groups and the use of undeclared foreign workers for instance in the construction and cleaning sectors in Finland (Keskusrikospoliisi 2012), but the extent of such involvement is unclear. The organised crime framework is, however, often used as a justification for new forms of national and transnational governance (Lee 2011, 91), that is, to impose new means of control both nationally and internationally (see Sub-study 2). In this law enforcement and security framework, the control of crime becomes linked to the control of migration. This is precisely what the European Union has emphasised with its policies that link immigration and crime control (Albrecht 2002, 2; Ruhs 2013, 30). The coupling of migration and crime creates a specific dynamic of social exclusion, especially affecting the global underclass (Aas 2011, 337). It is from this 'underclass' that many of the exploited migrants come. By linking migration and crime, the law enforcement and security perspective constructs migrants as *a* risk to the sovereignty of the State although many of the migrants are, at the same time, *at* risk of becoming victims of exploitation (Lee 2011, 60). The law enforcement and security framework reaffirms the rights of states to restrict the rights of migrants while marginalising the migrants' human rights and labour concerns (Bruch 2004). This backdrop is relevant for the purposes of this research because it has two consequences for how the victimization of exploited migrants is recognized and addressed. Firstly, addressing trafficking as a

[19] See Shelley 2010 for an outline of trafficking and organised crime. The organisation of trafficking is, however, more complex than being organised only by transnational organised crime groups; much trafficking instead seems to be organised by smaller operations, often based on personal and family relationships (see Surtees 2014, 23).

question primarily of law enforcement and security creates a division between labour migrants and victims of trafficking (O'Connell Davidson 2010; Aradau 2004), thus affecting the possibilities of victims of labour exploitation to access assistance and help. Secondly, this constructs trafficking victims as exceptional victims, who are utterly passive, entirely pure, and extremely vulnerable (Chapkis 2003, 930).

As already noted above (see also chapter 2.4), one of the contentions in the current discussion on human trafficking is the issue of who is deemed to be a victim. Following Nils Christie's classic criminological concept of the 'ideal victim' (Christie 1986), the division between ideal victims and 'mere' migrants has been much discussed in the literature on human trafficking (Aradau 2004; van der Anker 2006; Haynes 2007; 2009; Hoyle et al 2011; Lee 2011; Viuhko 2013). 'Ideal victims' of trafficking would thus be those who have been victims of extreme exploitation, are 'innocent' of their own exploitation, and agree to participate in criminal proceedings (O'Connell Davidson 2010; Bravo 2009). The 'ideal' or symbolic victim thus helps to construct not only an idea of 'typical' trafficking victims, but it also constructs how the criminal justice system should respond to crime (see Whyte 2007, 448). Migrant workers who have often migrated 'willingly' and knowingly only to end up in exploitation do not easily fit within this notion of 'ideal' victims. The myth of 'trafficked persons' versus 'economic migrants' and the assumption that being one precludes being the other, obscure the true nature of the exploitation of migrants (Haynes 2009, 47-48). Exploited migrant workers who are severely exploited but not considered victims of trafficking therefore risk being left without assistance and support. This is problematic from a human rights-based approach to human trafficking (Roth 2016, 24; Gallagher 2010, 298-299).

This focus on a 'stereotypical' notion of victimhood (Jokinen et al 2011a; 2011b) has many shortcomings. It firstly disregards that the distinctions between less and more serious forms of exploitation are very difficult, and that less and more serious forms of exploitation overlap in both severity and extent within the continuum of exploitation (Long 2004; Kelly 2007; Andrees 2008; Skrivankova 2010; Brennan 2010; Jokinen et al 2011a; 2011b; Lisborg 2012; Viuhko et al 2016; see chapter 1.3). Secondly, such a focus also shunts to the side the fact that that much of the exploitation of migrant workers – also serious exploitation that might amount to trafficking – is not extreme and rare but is a rather everyday occurrence within the dualised labour markets (Brennan 2010, 140). Finally, it overlooks that one can both have a will to improve one's life and still be exploited and thus be a victim of trafficking (Haynes 2007, 353; see also Rassam 2005; Viuhko 2013). Agency and exploitation are not mutually exclusive (Haynes 2009) even though the stereotypical idea of victimhood easily makes such a distinction.

4. The research process

4.1 The research questions

This summary aims at broadening and deepening the analysis presented in my four sub-studies through the theoretical frameworks of changes in the economy and labour markets on the one hand, and the criminological literature on corporate crime on the other. The summary therefore has its own, more general research questions: *How can the exploitation of migrant workers and trafficking in persons for the purpose of forced labour be understood as deriving from current economic and labour-market practices that enable such exploitation? How can the framework of corporate crime help to understand the lack of adequate enforcement directed at such exploitation?* This study examines the exploitation of migrant workers through several layers and through the use of a variety of data sources. My research is based on qualitative data that includes intergovernmental and governmental documents as well as interviews with representatives of the authorities and with migrant workers themselves. These different sources of data shine light on the phenomenon of exploitation of migrant workers from four different angles. These angles are the international level, the governmental level, the level of control authorities, and finally, the level of migrant workers themselves. Drawing from the four research articles, this study seeks to answer one overall research question: *How is trafficking in human beings for the purpose of forced labour and the exploitation of migrant workers understood and recognised by the international community in international treaties, by the State (Finland) in its governmental policies, and by control authorities (in Finland), and how it is experienced by migrant workers themselves (who are working in Finland)?* In addition to this overall question, the four sub-studies seek to answer four specific research questions, outlined below.

Research question of Sub-study 1: *How did the regulation and definition of forced labour and trafficking in human beings for the purpose of forced labour evolve in four international treaties (1930-2014), and are these definitions still relevant in today's world?*

In my first article, I look at how the concept of trafficking in persons for the purpose of forced labour was regulated and defined in four international treaties between the years 1930 and 2014. These treaties are the 1930 ILO Convention on Forced Labour, the 1957 ILO Abolition of Forced Labour Convention, the 2000 UN Trafficking Protocol, and the 2014 ILO Protocol on Forced Labour. The Sub-study is based on an analysis of key documents relating to the negotiations on these four treaties. The analysis focuses in particular on how the need to regulate forced labour and human trafficking was framed and argued in these four treaties and on how trafficking for the purpose of forced labour could be conceptualised in today's society.

Research question of Sub-study 2: *How is the exploitation of migrant workers and trafficking in human beings recognised in Finnish government programmes as well as governmental labour market, immigration and crime policies (1995-2012)?*

The second article focuses on the way the exploitation of migrant labour was portrayed in Finnish governmental policy documents during the years 1995-2012. In particular, the analysis aims at uncovering how the exploitation of migrant workers was portrayed in these documents, and when and how it was defined as a problem and eventually, as a crime. The analysis also looks at how the exploitation of migrant labour, economic crime, and trafficking in human beings for the purpose of forced labour emerged and merged in the government programmes and policies.

Research question of Sub-study 3: *What are the problems faced by control authorities in interpreting and understanding the definition of trafficking for forced labour, and in controlling the exploitation of migrant workers in Finland?*

My third article looks at the phenomenon of exploitation of migrant labour and trafficking in persons for the purpose of forced labour as crimes that are insufficiently investigated and prosecuted in Finland. The Sub-study is based on an analysis of expert interviews, with a focus on interviews with representatives of control authorities (the police, border guards, prosecutors and labour inspectors). The analysis looks in particular at how the authorities understand, recognise and deal with the exploitation of migrant workers.

Research question of Sub-study 4: *What kinds of labour market practices make migrant workers vulnerable to exploitation in the cleaning industry in Finland, and thus, ultimately to exploitation that may amount to trafficking in human beings?*

The fourth article focuses on the exploitation of migrant workers in the cleaning industry in Finland. The article is based on an analysis of interviews with migrant workers with experiences of labour exploitation in Finland as well as representatives of employers and trade unions. The analysis looks in particular at how the need for flexibility in today's labour market affects migrant workers in the cleaning industry and what kind of labour market practices make migrant workers vulnerable to exploitation.

4.2 Data and methods

All of the four sub-studies are based on qualitative data and materials. Table 2 presents an overview of the data and methods used.

Table 2. Data, materials and methods

Research question	Title of Sub-study	Data source	N	Method of analysis	Rationale for the use of this data
Research question 1: How did the regulation and definition of forced labour and trafficking in human beings for the purpose of forced labour evolve in four international treaties (1930-2014), and are these definitions still relevant in today's world? (Sub-study 1)	*Regulating forced labour and combating human trafficking: the relevance of historical definitions in a contemporary perspective*	Selected official documents from the negotiations on the 1930 and 1957 Forced Labour Conventions, the 2000 UN Trafficking Protocol and the 2014 ILO Forced Labour Protocol. The materials include the treaty texts, meeting reports, reports from working groups, and explanatory reports.	10 key documents, 1200 pages	Qualitative thematic analysis	The view of the international community through international treaties
Research question 2: How is the exploitation of migrant workers and trafficking in human beings recognised in Finnish government programmes as well as governmental labour market, immigration and crime policies (1995-2014)?	*From cherry-picking to control: migrant labour and its exploitation in Finnish governmental policies*	Finnish governmental policy documents during the years 1995-2012. The materials include government programmes on economic crime, crime prevention, migration policy, labour policy and trafficking in human beings.	25 government documents, 1000 pages	Qualitative thematic analysis	The views of the State through government documents
Research question 3: What are the problems faced by control authorities in interpreting and understanding the definition of trafficking for forced labour, and in controlling the exploitation of migrant workers in Finland?	*The exploitation of migrant labour and the problems of control in Finland*	19 expert interviews: the focus of the analysis is on 7 interviews with representatives of control authorities (the police, border guards, prosecutors and labour inspectors).	Focus on 7 interviews with control authorities	Qualitative thematic analysis	The position and views of control authorities in Finland
Research question 4: What kinds of labour market practices make migrant workers vulnerable to exploitation in the cleaning industry in Finland, and thus, ultimately to exploitation that may amount to trafficking in human beings?	*Forced flexibility and exploitation: experiences of migrant workers in the cleaning industry*	21 interviews: 10 migrant workers with experiences of labour exploitation, 4 representatives of employers, and 7 representatives of labour unions.	Focus on 10 interviews with migrant workers	Qualitative thematic analysis	Giving voice to exploited workers themselves

Data used in Sub-study 1: International treaties

One of the reasons for me to undertake this entire research was my interest in how the definition of forced labour came about, and how it became included as one of the forms of exploitation in trafficking in human beings in the definition of trafficking. I firstly started looking into what international treaties and

supporting documents there were pertaining to the adoption of the 1930 ILO Convention on Forced Labour and the 1957 ILO Abolition of Forced Labour Convention. All documentation concerning the treaties by the ILO are freely available online at the electronic database of the International Labour Organisation from which I downloaded all relevant documents.[20] The elaboration of the Convention on Forced Labour is closely related to the development of the 1926 Slavery Convention (Miers 2003), and thus I firstly also looked at some of the documentation by the League of Nations but then decided to limit my data. I was interested in the inter-governmental discussions in preparation of the two conventions on forced labour, and thus looked in particular at the discussions at the International Labour Conference[21] in 1929, 1930, 1955, 1956 and 1957. Trafficking in human beings became the focus of a specific international treaty in 2000 when the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime was adopted. In order to analyse how forced labour became included within the crime of trafficking, I therefore focused on the official records of the negotiations of the Protocol, the so-called *travaux préparatoires* (UNODC 2006). I also looked at various documentation from the years 1999-2000 pertaining to the negotiations on the UN Trafficking Protocol. [22] While I was working on the Sub-study, the ILO in 2014 adopted a new Protocol to the Forced Labour Convention, which included a linkage between forced labour and trafficking. I therefore also decided to include this new ILO Protocol into my analysis.

The data for the first Sub-study includes ten documents, amounting to approximately 1200 pages (see Annex 1). In addition, a range of other documents was used as additional background materials for the analysis. A list of the analysed documents and main additional materials is presented in Annex 1. I read each of the ten documents thoroughly and noted down all sections that had to do with the definition of forced labour. As I was interested in how forced

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[20] http://www.ilo.org/inform/online-information-resources/lang--en/index.htm

[21] The International Labour Conference is an annual conference that brings together representatives of governments, workers and employers of the ILO Member States to establish and adopt international labour standards and to discuss important social and labour questions. See: http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/international-labour-conference/lang--en/index.htm

[22] I also visited the United Nations Office on Drugs and Crime in Vienna in April 2012. During my visit I interviewed two key persons involved in the negotiations of the UN Trafficking Protocol. One represented the UNODC Secretariat, and the other represented Argentina. The Argentinian representative was particularly active in the UN Trafficking Protocol negotiations. In the end, however, I did not use the interviews in my analysis. While in Vienna I also went through the conference room papers and documentation kept by the UNODC stemming from the negotiations of the UN Trafficking Protocol in 1999 and 2000. The documents were kept in the office of one staff member of the UNODC. I made copies of key documents and used them as background materials in my analysis. I also had access to some of the meeting memoranda prepared by the Finnish Ministry of Foreign Affairs in 1999 and 2000, outlining the process of negotiations of the UN Trafficking Protocol. These were also used as background materials in the analysis.

labour became defined and regulated, I focused on how the member states (of the ILO and the UN respectively) as well as other parties to the negotiations argued for the need to define, regulate and address forced labour. Based on a constructionist approach (Niemi-Kiesiläinen et al 2006), I see that the texts relating to the four analysed treaties describe the construction of forced labour as an international concern. My analysis therefore identified certain (historical) notions of how forced labour became defined. In my analysis I aimed at placing the documents in their specific historical context, and understanding their meaning in relation to this context (see Hyrkkänen 2002, 202-203).

Data used in Sub-study 2: Government programmes and policy documents

The second article focuses on how Finnish Government programmes and policy documents address the issue of the exploitation of migrant labour during the years 1995 to 2012. The article is co-authored with Professor Anne Alvesalo-Kuusi. The article stemmed from our interest in studying how and whether the exploitation of migrant labour was portrayed in Government programmes and policies, and when and how it was defined as a problem and eventually, as a crime. We were also interested in exploring the linkages to economic crime control priorities and to the prevention of human trafficking. We decided to start from the year 1995 because Finland had joined the European Union from 1 January of that year, and there was a new Government that began its work in April that same year. Finland was also in the process of recovering from a deep economic recession. We decided to include only documents that had been commissioned and approved by the Government, and were part of the overall government policies at the time. Many ministerial-level programmatic documents were thus left outside of the scope of the analysis.[23] Since the exploitation of migrant labour is such a specific topic, a variety of Government documents relating to economic crime, migration, labour, and trafficking in human beings was selected. We included 25 documents in total, amounting to 1000 pages of text. A list of the analysed documents is presented in Annex 2. The documents can be divided into six main categories: overall government programmes outlining the priorities of the government at the time; economic crime programmes; crime prevention programmes; migration policy programmes; labour policy programmes; and programmes to prevent trafficking in human beings.

Our aim was to understand how the issues of exploitation of migrant labour, economic crime, and trafficking in human beings for the purpose of forced labour emerged and merged in the government programmes and policies. We wanted to see how the exploitation of migrant labour was portrayed; how the

[23] For example, the Finnish National Workplace Development Programmes of 1996-2010 were not used because we did not consider them policy guidance documents, but rather as an initiative to fund workplace-initiated projects and research. On the other hand, the programme on criminal policy 2007-2011 by the Ministry of Justice was included as it was considered relevant in reviewing the government's approach to crime prevention.

exploitation of migrant labour was linked to economic crime; how migrants were portrayed and perceived; and how these perceptions changed over the years.

We first read through all the documents closely and prepared summaries of the main points relating to our research questions. In addition to reading the documents we used search words to ensure that no important sections of the documents had been overlooked. The search words included for example economic crime, crime, grey economy, dark/grey labour, migrant/immigrant, migrant labour/foreign worker, (human) trafficking, extortionate work discrimination, illegal entry, and posted worker. I was responsible for analysing roughly 60% of the documents, for writing the sections contextualising the paper, and the initial structure of the paper. I was also responsible for drafting half of the empirical section of the paper. The division of work is outlined in detail in Annex 2.

After reading the documents we prepared a summary of the documents in chronological order. Following this we reviewed the themes that emerged from the documents and grouped the main points from each document thematically. This thematic grouping forms the basis of our analysis. The analysis of the data revealed several themes relating to migration and the control of migrant labour, which formed the structure for the presented results.

Data used in Sub-study 3: Interviews with control authorities

The third Sub-study focuses on how representatives of control authorities recognise, address, investigate and prosecute the phenomenon of exploitation of migrant labour and trafficking in persons for the purpose of forced labour in Finland. The article is co-authored with Professor Anne Alvesalo-Kuusi and Anniina Jokinen.[24] We were interested in both showing the links between exploitation and trafficking, and in discussing the problems of controlling the exploitation of migrant workers in Finland. The data was drawn from an earlier research project scrutinising labour trafficking in Finland.[25] The full data set includes interviews with 19 experts[26] but the Sub-study focused on seven respondents: two police officers, one border guard officer, two prosecutors and

[24] Initially the intention was to prepare two separate articles for the same book: one by Jokinen and Ollus on the exploitation of migrant workers and the link to human trafficking, and one by Professor Alvesalo-Kuusi on the police investigation of safety crimes and the crimes involving the unauthorised use of foreign labour. Due to the similarities of the two topics, we decided to combine our articles into one.

[25] I was the project manager of this EU-funded project (FLEX) in 2010-2011, and one of the co-authors of the research reports published in 2011 under the auspices of the project (Jokinen et al 2011a; 2011b).

[26] The full data includes a total of 15 interviews with 19 respondents (there were several respondents present in some interviews), including representatives of the police, the border guard, the prosecution service, the labour inspectorate, the immigration service, trade unions, employers, victim support agencies, the Evangelic-Lutheran church, a private litigation company, and two employees.

two labour inspectors. Each of the respondents received information on the project beforehand and their written consent was received prior to the interview. The interviews were conducted in Finnish, and were recorded and transcribed.

The data had been coded into ATLAS.TI for the purposes of the previous research project and we used this coding also for the purposes of the Sub-study. In the Sub-study we were interested in particular in the ideological and structural obstacles which the police and other officials point to in investigating the exploitation of migrant workers. Our thematic analysis (regarding thematic analysis, see Eskola and Suoranta 1998, 175-182) focused on the problems of control: how the control authorities made sense of the phenomenon and explained their actions and inactions. In the Sub-study, I was responsible in particular for the introduction and contextualisation, including the statistics and the legal framework. I also contributed to the empirical analysis and co-authored the conclusions.

Data used in Sub-study 4: Interviews with migrant workers, employers and trade union representatives

While the three previous articles deal with the issue of the exploitation of migrant labour from a more external perspective, the fourth Sub-study gives voice to the exploited migrant workers themselves as well as to employers and trade union representatives. The Sub-study focuses on forms of exploitation in the cleaning industry in Finland, and on labour market practices that enable such exploitation. The data used in the article was drawn from a research project on the exploitation of migrant labour and trafficking in the cleaning and restaurant sectors in Finland.[27] Within the framework of this previous project, a total of 10 interviews with 11 migrant workers were carried out. The recording of one of the interviews failed and for the purpose of my Sub-study, I therefore selected 9 interviews (with a total of 10 interviewees as there were two interviewees present in one of the interviews). Two of the interviewed migrant workers were of African origin while eight were of Estonian, Estonian/Russian or Russian origin. I conducted one of the two interviews myself with the migrant workers of African origin, while my colleague made the other one. Both interviews were conducted in English, which the interviewees spoke fluently. Anna Markina, our Estonian research partner, conducted the interviews with migrant workers of Estonian and Russian origin, as she is fluent in both Estonian and Russian. The rationale for this was that previous experience has shown that using interpreters in interviews that cover sensitive topics can be problematic, and that important cultural aspects, such as non-verbal communication, may be lost when using interpreters (Jokinen et al 2011a, 59; Kapborg and Berterö 2002; Zimmerman and Watts 2003, 14).

[27] I was the project manager of this EU-funded project (ADSTRINGO) in 2012-2013, and the co-author of the research report published under the auspices of the project in 2013. The report was published in English (Ollus and Jokinen 2013) and in Finnish (Jokinen and Ollus 2014).

The migrant workers were reached through trade unions (in particular the trade union for the service sector, the Service Union United), the labour inspectorate, a nongovernmental organization, and the official system of assistance for victims of trafficking in Finland. Some of the interviewees were EU citizens while some were so-called third-country nationals. They all had a legal right or a permit (work permit, student permit) to stay in the country at the time they worked in the cleaning industry in Finland. All respondents received written and oral information on the project, and their consent was requested before the interview. The interviews were recorded and transcribed and an Estonian translation company translated the interviews from Estonian and Russian into English.

In addition to interviews with migrant workers themselves, the research project referred to above included 21 expert interviews with 26 experts.[28] Out of these, I selected nine interviews that dealt with the cleaning sector for my analysis. The reason for including these respondents was that I also wanted to present views that could complement or perhaps contradict the views of the interviewed workers. These nine interviews include four representatives of cleaning industry employers, seven representatives of labour unions (seven persons interviewed in four interviews: one interview was a group interview with four persons present), and one interview with a migrant service provider (with two persons present in the interview). Of these nine interviews, I conducted six either alone or together with my colleague. Each of the respondents received information on the project beforehand and their oral consent was received prior to the interview. The interviews were conducted in Finnish, and were recorded and transcribed. I have translated the selected interview sections into English.

The issues covered in both the migrant worker and expert interviews were much broader than what has been addressed in my article. In my analysis I was interested in particular in how certain labour market practices enable or facilitate the exploitation of migrant workers. I focused my analysis on the migrant workers' experiences in the cleaning industry, and on how the employers and trade unions spoke of the use of migrant workers. While giving voice in particular to the migrant workers, I also wanted to include the views of employers and trade unions in order to scrutinise tensions in the labour market vis-à-vis the use and abuse of migrant workers. I had already before gone through all the interviews when the data was coded for the purposes of the previous project. For the purposes of the Sub-study, I carefully read through the full interview transcripts anew and grouped together themes that arose from the interviews. A thematic analysis of the interviews (see Eskola and Suoranta 1998, 175-182) brought forward key points, which formed the basis for my analysis. I

[28] The experts represent employers, trade unions, permit and inspection authorities (the labour inspectorate, the immigration service, and the alcohol inspectorate), the police and border guards, as well as migrant service providers (one municipal migrant information centre, the church, and one asylum centre).

limited the analysis to specific labour market practices that I deemed exploitative (zero hours contracts, subcontracting, and forms of exploitative flexibility).

4.3 Ethical aspects and limitations of the research

Research on human trafficking involves particular ethical issues. The data used in the fourth Sub-study includes interviews with exploited migrant workers, of whom at least two had also formally been identified as victims (or possible victims) of human trafficking. Although informed consent was requested from each of the respondents, and each of the respondents was assured that he/she could withdraw from the interview at any time, I recognize that research interviews may carry a risk of re-traumatizing persons who have experienced difficult events (see Zimmermann and Watts 2003, 23-24). We tried to avoid possible re-traumatization through a careful planning of the interview questions, the possibility of withdrawing from the interview at any time, and ensuring that the respondents had access to support mechanisms after the interviews. The respondents identified as victims of trafficking were already within the remit of support services at the time of the interview, and had access also to emotional support, thus reducing the effects of possible re-traumatization. Since all the interviewed migrant workers had stopped working in the exploitative conditions by the time of the interview and had been offered some form of help, their safety was not considered to be at risk at the time of the interview. (See Andrees and van der Linden 2005 on safety aspects in interviewing migrant workers.)

The anonymity of all interviewed experts and migrants alike was guaranteed and hence any references to facts or places that could identify the respondent have been removed from the text. The interview transcripts have also been kept so that no outsiders can access them.

One of the limitations of this research is that it does not emphasise nor analyse the gendered nature of exploitation of migrant workers. Of the ten migrant workers interviewed in the fourth Sub-study the majority were women (eight women and two men). In my analysis I did not look at the overlap between labour exploitation and sexual exploitation. The gendered nature of exploitation and of experiences of sexual violence was not included as specific questions to interviewees. Labour exploitation can have gendered implications for instance in the context of domestic work and care work (Anderson 2007; Näre 2012). One of the interviewed migrant workers mentioned that she had experienced sexual harassment and sexual exploitation at work, but I did not analyse this in more detail, as it was only one of the respondents who brought this up. Gender, together with race, age and social status are related to risks of becoming victimised by different forms of corporate crime (Croall 2001; Whyte 2007). The relative precariousness of women and the gendered segregation of work may also result in forms of feminisation of labour exploitation (see Whyte 2009). Similarly, however, men's experiences of migration and masculinity, and men as victims of human trafficking remain marginalized in many respects (Surtees 2008; Donaldson and Howson 2009; Rosenberg 2010; Smiragina 2015). The

gendered nature of labour exploitation – both concerning women and men – is clearly an important additional area of research.

Another limitation of the study is that it does not emphasise the role of immigration controls and immigration status in making migrant workers vulnerable to different forms of abuse (see Bravo 2009). The impact of immigration policies on documented and undocumented migrants in Finland has been studied in detail by others (Himanen and Könönen 2010; Könönen 2011; 2012a; 2012b; 2014a). All of the migrant workers interviewed in this research had a legal residence in Finland at the time of the interview and thus their immigration status was not highlighted. However, some of the interviewed experts in both Sub-studies 3 and 4 did emphasise the general links between immigration controls, residence status and exploitation. It is generally agreed that undocumented workers may be at highest risk of exploitation (Bloch and McKay 2015; Lewis et al 2013). There are estimates that that the recent increase in asylum-seekers in Finland will lead to an increase in the number of undocumented, 'paperless' migrants when many of those who are not granted asylum remain in the country (Laitinen et al 2016, 157-158). This may create categories of workers who are even more vulnerable and 'hyper-precarious' than before (see Lewis et al 2013; Lewis et al 2014). Further research on the impact of asylum practices in creating undocumented migrants, and on undocumented migrants in the labour market is therefore urgently needed.

5. Results: Summaries of the four sub-studies

Next I will present the summaries of the main findings of the four sub-studies. I will address the overall research question of how exploitation and trafficking are understood at the levels of the international community, the Finnish State, the control authorities in Finland, and migrant workers themselves. The summary of each of the four sub-studies thus contributes to the overall research aim, but also answers the specific research questions as outlined in the previous chapter. However, since my overall summary of my research also aims at providing new insights into the exploitation of migrant workers and labour trafficking through the frameworks of the changes in the labour markets and of corporate crime, I will next reflect also on the findings through these frames of reference.

5.1 The relevance of historical definitions (Sub-study 1)

The first Sub-study aims at scrutinising the evolution of the concept of forced labour in the context of four international treaties. The study was born in the finding that the definition of forced labour in the context of trafficking in persons and the exploitation of migrant workers is difficult for crime control authorities to interpret and apply (Jokinen et al 2011a; 2011b). The 1930 ILO Convention on Forced Labour provides the only comprehensive international definition of forced labour. This definition was included in the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, which in turn provides the first international and broad definition of trafficking in human beings. The definition of forced labour has in addition been discussed within the framework of the 1957 ILO Abolition of Forced Labour Convention and the 2014 ILO Protocol to the Forced Labour Convention. Based on an analysis of these four treaties and documents relating to their negotiations, the Sub-study finds that forced labour initially referred to a different phenomenon than today, and therefore the interpretation of forced labour needs to be broadened in order to account for the contemporary setting in which trafficking for forced labour occurs. Forced labour should therefore be seen to exist in the context of the overall exploitation of migrant workers, and within the framework of segmented labour markets.

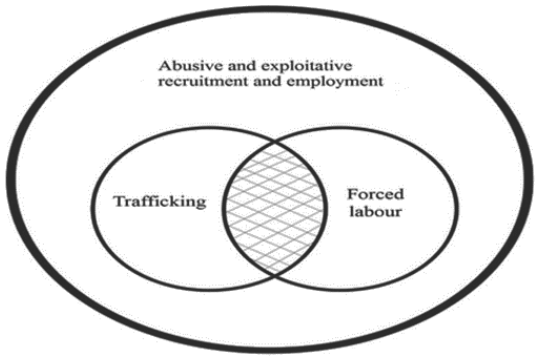
The analysis of the 1930 ILO Convention on Forced Labour shows that the rationale for prohibiting forced labour and the context in which the treaty emerged were utterly different from the context of labour trafficking today. The 1930 ILO Convention was focused on regulating and curbing exploitative labour practices against indigenous people in the colonies, especially by colonial powers and local chiefs. The colonial powers also had national interests in regulating forced labour in order to protect the industrial labour force from the competition of the unorganised colonial workforce. The definition of forced labour in the 1930 ILO Convention focuses on the non-voluntary nature of work, and on the use of penalties in exacting labour. The Sub-study finds that situations where a person cannot quit working were not included in the original definition, although this was discussed during the elaboration of the convention.

The Sub-study further finds that although the 1957 ILO Abolition of Forced Labour Convention was also born in a specific historical setting, namely the concentration camps of the Second World War and the human rights abuses in the Eastern Bloc (see Kott 2012), the negotiations on the Convention included many aspects that can assist in a contemporary interpretation of the definition of forced labour. Although the definition of forced labour remained unaltered, the analysed documents refer to several aspects of dependency that are useful for understanding the elements of 'force' in forced labour. These include the lack of possibilities to quit working and non-payment of wages.

Towards the end of the 20th century, the issue of organised crime became an international concern (Shelley 1995; Gallagher 2001), and with it, trafficking in human beings, especially of women and children, became regulated as a form of organised crime in the 2000 UN Trafficking Protocol. The Sub-study finds that the focus of trafficking was broadened during the negotiations for the new UN Protocol to include trafficking not only for the purpose of sexual exploitation, but also for forced labour. The documents pertaining to the negotiations of the Trafficking Protocol indicate that there was an emphasis on amending the definition of forced labour to include force or coercion as a means of exacting forced labour from an individual. Again, however, the original definition of forced labour remained intact and the relationship between trafficking and forced labour undefined. The Sub-study also finds that in the discussions pertaining to the UN Trafficking Protocol, there was a focus on presenting human trafficking as a serious crime and security concern. This has far-reaching implications for how victims of trafficking are identified and treated, and for the distinction between victims and unwanted migrants (see Aradau 2008; Lee 2011).

The Sub-study argues that a rigid interpretation of the 1930 definition of forced labour is not useful in understanding contemporary forms of labour exploitation, at least in today's European migratory and labour market perspectives. Despite the recent 2014 ILO Protocol to the Forced Labour Convention, the relationship between the definitions of trafficking and forced labour remains unclear. The study argues that trafficking and forced labour are not the same phenomenon. Instead, they are partly overlapping, so that trafficking may exist without forced labour, and vice versa. Both exist within the broader category of exploitation (see Figure 3).

Figure 3. Trafficking in human beings, forced labour and the exploitation of (migrant) labour (Jokinen and Ollus 2013, 13; Sorrentino and Jokinen 2014, 8)



With regard to the interpretation and application of the definition of forced labour, the article concludes by emphasising that already in the negotiations in 1930, there was an understanding of the circumstances of the work as defining forced labour. Since most labour migrants migrate willingly and voluntarily, it is the totality of the circumstances in which they find themselves that should be seen to define their situation as forced labour. The Sub-study finds that a stereotypical and rigid interpretation of the 1930 definition of forced labour is therefore not useful. Instead, a broad interpretation of trafficking in human beings for the purpose of forced labour is needed, one that places the lack of alternatives, rights, agency and difficulty in leaving one's employment at the centre of the understanding of what constitutes trafficking for the purpose of forced labour.

5.2 Migrant labour and exploitation in governmental policies (Sub-study 2)

The second Sub-study focuses on the way the exploitation of migrant labour was portrayed in Finnish governmental policy documents during the years 1995-2012. The article finds that during these years, government policies both promoted the need for migrant labour on the one hand, and the prevention of economic crime on the other. The article argues that migrant labour is the subject of several levels of control, starting from the control of immigration to the control of the status of immigrants in the country. This control primarily serves to protect and secure the conditions of the Finnish labour market and ultimately the state. The Sub-study finds that exploitation of migrant workers is rarely addressed in the analysed government documents, and subsequently exploited migrant workers are not considered as victims of crime in tackling economic crime. Using the categorisation of corporate crime (Slapper and Tombs 1999), the Sub-study argues that there is a need to move away from understanding

labour violations solely in the framework of financial and fiscal harms to the State, and instead to see labour exploitation as a crime violating also individuals.

The findings of the Sub-study indicate that the analysed government documents promote migrant labour as a solution to the problems stemming from the rapidly aging population. Throughout the period of study, the focus in various government documents is on a perceived demand for skilled and wanted migrants, and on attracting such migrants to Finland. The analysis of the documents also shows a distinction between migrants entering illegally and those coming legally. Those coming through illegal means are portrayed in the documents as a threat relating to organised crime and also to trafficking in human beings. The unwanted elements of migration are therefore to be managed through mechanisms of control, especially at the borders. The Sub-study also shows that the government documents do recognise the exploitation of migrant workers, but the exploitation is largely portrayed as a question of financial crimes against the State in the form of tax evasion, and hindering fair competition and the free functioning of markets. The solution given in the government documents to the exploitation is again increased control, not only of immigration itself, but also of labour conditions. The documents do, however, also show some recognition of the harms to individual workers, but the government documents do not construct exploited migrant workers explicitly as victims of crime. In the analysed documents, migrants are defined as victims mostly as the objects of racist crimes. Trafficking in persons is the exception: trafficking victims are described in the documents as victims of a serious offence, and thus entitled to state-sanctioned support and protection. However, trafficking is also presented in the documents as being related in particular to illegal migration and organised crime, and thus as something to be controlled. The analysed documents also highlight the perceived threats posed by migration in the form of illegal entry, organised crime and trafficking, and ultimately radicalization and terrorism.

The analysis finds that the government documents emphasise the need for skilled migrant workers. The Sub-study finds that there is an awakening to the problems of the dualised or bifurcated labour markets, but the response is increased control: increased control of entry into the country, control of migrants' existence and work in Finland, and control of the labour markets. However, the Sub-study concludes that all of this control does not necessarily translate into protection for exploited migrant workers. The analysis of the governmental documents shows that political priorities shape the priorities of criminal justice agents, and therefore also influence the possibilities and willingness for effective enforcement (Tombs and Whyte 2007). Control authorities act in the context of different social forces (Snider 1991) and of contradicting policies, aims and priorities. The exploitation of migrant workers is a complex phenomenon, and from a control perspective, the exploited migrant worker is not foremost constructed as a victim of crime. Instead, the focus of crime control as portrayed in the analysed documents is on crimes against the State, such as economic crimes, as well as on organised crime and illegal entry. The Sub-study argues that in order to address the exploitation of migrant workers both on the structural

as well as the personal level, there is a need to move away from constructing the exploitation of migrant workers as a crime against the State, and to see the exploitation as a crime violating also individuals, as well as to see the exploited migrant workers as victims of crime.

5.3 The problems of control in Finland (Sub-study 3)

The third Sub-study presents the phenomenon of exploitation of migrant labour and trafficking in persons for the purpose of forced labour as crimes that are insufficiently investigated and prosecuted in Finland. Although there is legislation criminalising both exploitation (in the form of extortionate work discrimination) and trafficking, and the number of cases coming to the attention of the criminal justice system is increasing, the Sub-study argues that criminal justice authorities do not sufficiently respond to these crimes. Based on an analysis of interviews of control authorities, the Sub-study argues that violations against migrant workers do not easily fit a doctrine that largely focuses on 'conventional crimes' such as robberies, theft and interpersonal violence, and in the case of corporate crimes, on financial crimes.

The Sub-study highlights several reasons why the response of the criminal justice system to the exploitation of migrant workers is insufficient. Firstly, the investigation of cases of exploitation of migrant labour may focus on labour violations, economic offences or violent crime. As the responsibilities for investigation are unclear and there is a lack of specialisation, the crimes of exploitation of migrant labour become no-one's responsibility. The police also show a disinterest in the investigation of exploitation of migrant labour, since the crimes are considered less important and less interesting than other crimes, such as for instance economic crimes. This translates into an unwillingness to investigate cases of exploitation of migrant workers, but is also a reflection of how the police prioritise certain crimes over others.

Secondly, the Sub-study shows that control authorities have problems constructing incidents of exploitation of migrant labour as crimes. This means that elements of trafficking or of exploitation of migrant workers are not properly identified in cases that come to the attention of the police. Both the police and to some extent also prosecutors find the criminal provisions on trafficking and extortionate work discrimination difficult to apply. Control authorities find especially the boundaries between these two forms of crime to be difficult to determine. The Sub-study therefore suggests that control authorities have limited knowledge of the law and how it should be applied in cases involving the exploitation of migrant workers. The authorities also did not find the crime of exploitation motivating or worth investigating. The Sub-study indicates that there is also a conscious down-playing of these crimes, which plays out as a lack of interest in investigating and in specialising in the investigation of exploitation of migrant workers.

The Sub-study further finds that the lenient sanctions especially for the crime of extortionate work discrimination seem to affect the motivation of control

authorities to investigate and prosecute these crimes. The findings suggest that criminal justice agents seem to share a common ideology, according to which the stricter the punishments and the more serious the crime, the worthier such cases are of investigation. The Sub-study also finds that there is a problem of control authorities de-legitimising exploited migrant workers based on the fact that they do not have demands against their employers. Many victims of exploitation and even of trafficking do not necessarily consider themselves victims of crime, or even that they have been discriminated against at work. This seems to affect how seriously the police and also prosecutors treat the crimes of exploitation and trafficking.

The Sub-study concludes that the control of the crimes of exploitation of migrant labour – and ultimately of trafficking for the purpose of forced labour – are highly political and ideological questions of what is prioritised, and what should be controlled. The Sub-study suggests that to control the crimes against migrant workers may jeopardize the effective functioning of capitalism since both employers and consumers benefit from cheap labour. Punitive enforcement of such crimes may not be a feasible option in a neoliberal ideology of de-regulation and privatisation. Economic, ideological and political factors influence what crimes are enforced. Crimes that fall outside traditional inter-personal crimes may require a significant shift in how the police conceptualise their role. The fact that most of the investigated cases of exploitation of migrant labour have targeted employers and employees of the same ethnic groups may further indicate that control authorities only address certain forms of threats to the social order.

5.4 Experiences of exploitation in the cleaning industry (Sub-study 4)

The fourth Sub-study focuses on the exploitation of migrant workers in the cleaning industry in Finland. The cleaning industry is an example of a sector that has been affected by globalization and the expansion of neoliberal ideals. Through an analysis of interviews with migrant workers who have had experiences of labour exploitation in Finland, as well as with representatives of employers and trade unions, the article looks at some of the effects of the structural changes upon employees in the cleaning industry. The focus is especially on how the need for flexibility in today's labour market affects migrant workers in the cleaning industry and what kinds of labour market practices make migrant workers vulnerable to exploitation. The Sub-study argues that it is precisely the demand for flexibility that exploits the vulnerable position of migrant workers who have few other options than to agree to work on poor terms.

The study emphasises flexibility, vulnerability and exploitation as defining the experiences of migrant workers in the cleaning industry in Finland. The Sub-study has three main findings. Firstly, the employers' demand for extreme employee flexibility exploits the vulnerable position of migrant workers, because migrant workers have limited options other than to agree to working on

poor and exploitative terms. There are serious downsides to flexibility although especially employers consider flexibility in the labour market to be a necessity. The study finds that migrant workers end up in situations of *forced flexibility* where their lack of options becomes masked as flexibility: a willingness to take any job on any terms. Because the demand for flexibility has become enshrined as a structure of the labour market, the subsequent exploitation of migrant workers has consequently become a structural practice. The most serious forms of exploitation of migrant labour – trafficking in human beings for the purpose of forced labour – is therefore directly linked to the results of the changes in the labour market.

Secondly, the study shows that certain fully legal labour market practices place migrant workers in particularly vulnerable and exploitative situations. Zero hour contracts and subcontracting chains are practices that disproportionately affect those who already are the most vulnerable and precarious in the labour market. As such, modern forms of forced labour are created through the practices of the market. The exploitation of migrant labour is therefore not (solely) an act of individual 'bad employers' (Anderson 2010), but a structural practice that is directly related to the changes in the labour market. The exploitation of migrant labour – and eventually trafficking for the purpose of forced labour – is hence not a question of single, isolated acts, but a structural problem related both to labour market and immigration practices.

Finally, the Sub-study finds that the employment situation of migrant workers embodies a paradox because the workers fear losing the job in which they are exploited. If the workers complain about the working conditions or the salary, they risk losing their employment, or they are placed in a less advantageous position compared to those workers who work without complaint. Because of the power imbalance between the migrant workers and their employers, also the less serious forms of exploitation form part of a larger continuum of exploitation, which may ultimately lead to situations of trafficking and forced labour. Therefore, the single actions of 'bad employers' who intentionally exploit migrant workers cannot be treated as isolated phenomena. If addressed in isolation, the individual acts of exploitation that migrant workers have experienced do not point to any larger problem. However, when placed along the continuum and in the context of a cumulation of exploitation, they describe a trend. The study concludes that in the context of the continuum, the personal experiences of exploitation that migrant workers have experienced can be seen to reflect a structural practice and a larger societal problem of exploitation.

6. Discussion

6.1 Forms of exploitation and corporate crime

This research approaches labour trafficking and the exploitation of migrant workers through the theoretical framework of corporate crime (Slapper and Tombs 1999; Snider 2000; Nelken 2007; Friedrichs 2010; Bittle 2012; Friedrichs 2015). It seems that this framework has not previously been used in researching human trafficking, although it has been used in the study of violations of the rights of migrant workers (Burnett and Whyte 2010). Much of the research on trafficking, including in Finland, has until recently focused on sexual exploitation, while labour exploitation by employers has received less attention (Goździak and Bump 2008; Lee 2011; Viuhko and Jokinen 2009; Roth 2010a). My research looks at labour trafficking and the exploitation of migrant workers as a form of corporate crime committed by the employer against an employee.

The exploitation that migrant workers experience in Finland has been documented elsewhere in more detail (Jokinen et al 2011a; 2011b; Ollus and Jokinen 2013; Jokinen and Ollus 2014; Sams and Sorjanen 2015; see also Sub-study 3). It includes, for instance, concrete acts by the employer that range from the underpayment of wages and salary discrimination, a demand for long working hours that effectively restrict the workers from enjoying free time, restricting the worker from having contacts outside work, placing the worker in poor accommodation and living conditions, to taking the worker's passport or documents, and threats against the workers or his/her family. It also includes abusing the worker's vulnerabilities, such as his or her lack of language skills, contacts or knowledge about rights, or the manipulation of contractual practices (such as having double contracts). The employer (or a representative of the employer) might also have deceived the worker regarding the conditions of work, or demand high fees for recruitment and travel, thus placing the worker in a situation of debt. Many of the forms of exploitation are thus intentional acts by the employer committed for financial benefit. The employer in such cases can thus be defined as a kind of 'corporate criminal' and the acts defined as forms of social crimes and corporate violence (Snider 2000; Friedrichs 2010).

However, as shown in my research, much of the exploitation is facilitated and enabled also by existing social, political and economic structures, policies and practices (see Sub-studies 2 and 4). In concrete terms my research has highlighted the lack of adequate connection in governmental migration and employment policies with economic crime control and anti-trafficking policies (Sub-study 2). Because of this lack of connection, the exploitation of migrant workers is not addressed as an issue that in fact intersects these different policies. Consequently, the State's responses to the exploitation are not comprehensive enough (see Sub-study 2). In addition, my research shows that many of the fully legal practices in the labour market that demand flexibility from workers, such as zero hours contracts and long subcontracting chains, play out in disadvantageous ways for many migrant workers (Sub-study 4). Such contractual practices are in most respects not considered criminal, but they can

still be harmful and exploitative from the perspective of the migrant workers themselves. Such practices therefore again highlight how the definition of certain acts as crimes is socially constructed through powerful and competing interests (Henry 2009). The practices are also an indication of the larger shift in the labour markets towards increasingly flexible employment relations and non-standard working hours (Gray 2004; Standing 2011; Stone 2005; Scholte 2005; Kalleberg 2009; Boltanski and Chiapello 2005). The lack of adequate emphasis placed on such exploitative practices shines light on the complex interrelationship between the state and corporations in both producing and controlling harms (Tombs and Hillyard 2004, 43). The exploitation of migrant workers could therefore also be conceptualised as a form of state-corporate crime that occurs when institutions of political governance pursue goals in cooperation with institutions of economic production and distribution (Kramer et al 2002).

Consequently, I argue that the exploitation of migrant workers, which ultimately may result in human trafficking, should be categorised as a specific form of corporate crime. I suggest that the term 'exploitative crimes and harms of the employer' could be used to describe the exploitation of migrant workers. This term would also incorporate the two dimensions of corporate crime: both social crimes as well as corporate violence and state-corporate crime.

6.2 The structural nature of exploitation

One of the leading ideas in this research has been Anderson's remark that the 'situation of low-waged precarious workers must be analysed not only in the context of abusive employers, but within the labour markets within which they work' (Anderson 2010, 313) and that the focus should not be on 'bad employers' but on how the labour markets and also immigration controls categorise workers (ibid., 312). As I argue in this research (see especially Sub-study 4), exploitation should not be seen only as acts of those single 'bad employers', but instead as a question of societal and labour market structures that enable exploitation combined with a lack of adequate recognition and control of exploitation. The few corporate crimes that make the headlines tend to be extreme cases, thus distorting the systemic and widespread incidence of corporate offending (Tombs and Whyte 2015, 36). A similar focus on extreme or 'stereotypical' cases of exploitation emphasises trafficking at the expense of the larger problem of exploitation (see Shamir 2012; Jokinen et al 2011a; 2011b). There is instead a need to focus on the scale and nature of routine, everyday harm (Tombs and Whyte 2015) with regard to the exploitation of migrant workers.

The premise of this research is that the exploitation of migrant workers is closely linked to the results and effects of globalisation and neoliberal policies on the economy and the labour markets. Tombs and Hillyard (2004, 53) argue that 'the vast majority of harms are structurally determined following the dictates of the neo-liberal paradigm'. They see that globalisation and the economic concentration of power mean that governments can exert less political control over both economies and corporations (ibid., 37-39). My research emphasises that the consequences of globalisation and the neoliberal turn play out as

dualisation of the labour markets (Piore 1979), as flexibilisation (Gray 2004) and insecuritisation (Beck 2000) of work. My research argues that many migrant workers are forced to be extremely flexible and to take jobs on poor terms due to a lack of other alternatives (see Sub-study 4). At the same time, the demand for employee flexibility has become a self-evident feature, and thus a structure of the labour market, in particular in low-level service-sector jobs. Such 'forced flexibility' is a result of the changes in the labour market that have created a situation where the disadvantageous position of migrant workers in particular is (ab)used for financial benefit.

What this study has also emphasised is that governmental policies fail to acknowledge the exploitation of migrant workers in particular. The exploitation is recognised at the level of criminal law, but the different policies approach the problem in a piecemeal manner (see Sub-study 2). Since the completion of Sub-study 2, the previous Government issued a new immigration strategy (Sisäasiainministeriö 2013), and the current Government has likewise included immigration within its Government programme (Valtioneuvoston kanslia 2015). Both emphasise much the same elements as previous governmental programmes: the negative ratio between the working population and those outside the workforce and the subsequent need for skilled migrant workers; the threat of illegal entry and human trafficking and the need to protect victims of trafficking; and the risk of exploitation of migrant workers and the need to inform them about their rights in Finland (Sisäasiainministeriö 2013; Valtioneuvoston kanslia 2015). The links between governmental practices and labour market and economic structures as enabling, facilitating, or contributing to the precarious situation of migrant workers, remain unaddressed.

Like other studies (Burnett and Whyte 2010; Brennan 2010, 140; Waite et al 2015), also this research highlights that the experiences of many exploited workers are those of mundane, normalised exploitation in the everyday labour practices at work sites where migrants work. The migrant cleaning workers in my research testified about fully legal, yet exploitative contractual practices that demand excessive or 'forced' flexibility from the workers, including subcontracting and zero hour contracts (Sub-study 4). The exploitation of migrant workers thus becomes structural within the framework of the dual labour markets and the current economic and political framework. I argue that exploitation becomes structural, meaning that it becomes legitimised through the existing precarious and poor labour practices that disadvantageously affect migrant workers (see also Könönen 2012a), but also through a lack of adequate control and sanctions against those who exploit migrant workers. At the same time, however, the threshold between normalised yet exploitative labour market practices and clear breaches of the law becomes fluid and diffuse. This brings us back to the very basic notion: what is considered a crime is in effect a social construct (Lacey 1994) and even though something is not explicitly criminalised, it might still be exploitative.

In the current economic framework in Finland, these notions are as important as ever. To solve the poor economic situation in the country, the Government has

presented the labour market parties with a 'social contract' aimed at reducing unit labour costs by at least 5% (Valtioneuvoston kanslia 2015, 14). Labour market parties spent over a year negotiating the elements of this contract before finding a fragile, tentative agreement.[29] In line with the Government programme, the Government had threatened it would unilaterally impose its own labour reforms, including cuts to salaries and benefits, were the parties not to find agreement. The negotiations regarding one of the central themes of the social contract, the question of increasing wage flexibility and local agreement of wages in the workplace, continue. Local agreement of wages and employment terms are hailed as a necessity especially by the employers' side while employee representatives emphasise that legislative changes are needed in order to safeguard the equal bargaining position of workers and employers.[30] Some claim that the concern regarding the worsening of labour conditions as a result of local bargaining is exaggerated, since such a scenario would not be in the interest of employers (Kauhanen 2015). Positive examples of local bargaining can be found in many countries (Sippola 2012), but from the perspective of my research, it is important to ensure adequate safeguards in order to avoid negative effects of local agreement on those who have the least bargaining power in the workplace.

The current economic discourse highlights a major paradox in the role of the state in regulating the exploitation of migrant workers. On the one hand, the state has put in place a legislative framework that addresses exploitation and that provides some support to victims of severe exploitation. One the other hand, the state is embracing and implementing economic and political measures – both in terms of labour and immigration regimes – that create, and exacerbate, the conditions that lead to exploitation. This contradiction of policies implies that the state is either unable or unwilling to fully regulate and control the exploitation of migrant workers in Finland.

A recent development is the growing global discussion on the roles and responsibilities of businesses themselves in preventing exploitation and trafficking (Dryhurst 2012-2013; OSCE 2014; Jägers and Rijken 2014; Sorrentino and Jokinen 2014; Ollus and Lietonen 2016). The 2011 UN Guiding Principles on Business and Human Rights require businesses to exercise due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights (United Nations 2011b, principle 15). Also the 2014 ILO Protocol on Forced Labour requires States to support due diligence in both the public and private sector in order to prevent and respond to risks of forced or compulsory labour (Article 2e). Some countries, such as the United States, have prohibited exploitation within governmental supply chains (Verité 2015), while others such as the United Kingdom have issued statutory guidance on how to prevent 'modern slavery' in supply chains and organisations (Home Office 2015). These are all important developments for addressing the demand for

[29] http://yle.fi/uutiset/government_accepts_social_contract/8715226

[30] http://ek.fi/ajankohtaista/tiedotteet/2015/12/08/paikalliseen-sopimiseen-tarvitaan-rohkeita-linjauksia/; https://www.sak.fi/tyoelama/sakn-kannat/paikallinen-sopiminen

exploitation and the roles of businesses therein. In order to be of real benefit, there is a need for increased corporate commitment to ending the global exploitation of human and natural resources as well as enhanced state action to hold corporations to account for violations (Bittle and Snider 2013, 189). Self-regulation cannot function without adequate oversight, enforcement and sanctions by states (see Dryhurst 2012-2013; Jägers and Rijken 2014). This is in particular the case with large multi-national and transnational corporations that operate through global supply chains. In this respect it can be argued that the current national and international legislative framework is inadequate and uncertain, and that more effective regulation is needed to control globally fragmented production chains (Salminen 2016).

6.3 Towards a recognition of forced labour

The harms of corporate crime are often less direct and diffuse than those of conventional crimes because there is usually more distance between the offender and the victim than in conventional crimes (Croall 2001, 37; Slapper and Tombs 1999, 97). At the same time, the study of victimisation has largely been neglected within the literature on corporate crime (Croall 2001). My research argues that the relationship between exploiter and exploited is in many instances both direct and personal. This is why my research aims at bringing a victim perspective to the understanding of exploitation as a form of corporate crime.

Just as with much of corporate crime, my research indicates that because of the structural nature of exploitation, the 'exploitative crimes and harms of the employer' are difficult to understand as crimes in the first place, and that there is a lack of adequate control of such transgressions in the second (see Slapper and Tombs 1999; Tombs and Whyte 2007; Tombs and Whyte 2015). The continuing struggles over the definition of crime and the lack of focus on the crimes of the powerful (Friedrichs 2015; Barak 2015) are testimony to the fact that much of corporate crime is still considered marginal compared to conventional crimes. In 2004 the Finnish legislator explicitly criminalised both extortionate work discrimination and human trafficking, but the criminal provisions remain difficult to conceptualise and interpret, especially with regard to the distinction between more and less serious forms of exploitation. My study finds that criminal justice practitioners, especially the police and also prosecutors (see Sub-study 3), consider the distinction between trafficking and extortionate work discrimination challenging. In addition, the criminal provision of trafficking is considered complex and difficult especially in relation to the notion of forced labour (Sub-study 3). I am therefore suggesting the use of two conceptual tools to assist in the distinction between the crimes, as well as in the interpretation of the definition of forced labour.

Addressing trafficking for forced labour within the framework of the overall exploitation of migrant labour in the context of the labour market and labour relations helps move the focus away from only the extreme cases of exploitation (Shamir 2012, 110; Jokinen et al 2011a; 2011b). It also shows that the trafficked person is an individual who is exploited in a market context and that the

exploitation is not an exceptional and distinct crime, but one in a range of labour market practices (Shamir 2012, 106-107). Such an approach to trafficking thus helps to deepen the 'understanding of how power is wielded among employees, employers, contractors, recruiters, and other actors operating in a globalized economy' and how it relates to human exploitation for profit (Chuang 2014, 649). This approach is important also because it moves the focus away from addressing trafficking as a question of organised crime and border security, and instead moves the focus towards a larger context of migrants in an unequal global economy (see Lewis et al 2013; 2014).

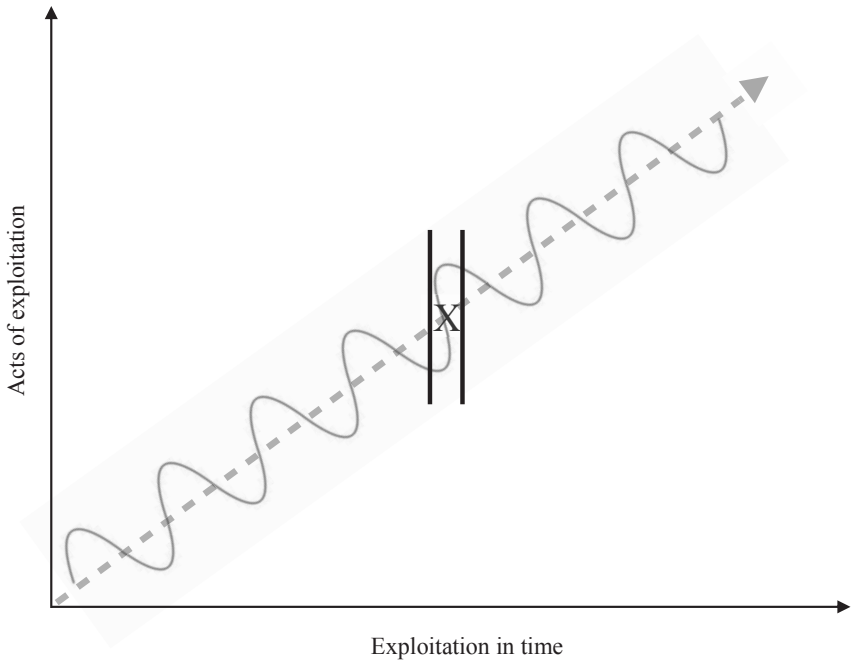
My research (Sub-studies 3 and 4) highlights that the forms of exploitation that migrant workers experience range from infringements on working hours and underpayment of salaries to more serious and comprehensive forms of exploitation. The notion of the continuum (Long 2004; Kelly 2007; Andrees 2008; Skrivankova 2010; Brennan 2010; Jokinen et al 2011a; 2011b) and the idea that exploitation may take place in a cumulative manner are useful in conceptualizing the evolving nature of exploitation (see Sub-study 4). Exploitation is rarely just a single act that happens once. Instead, the exploitation often continues and escalates over time. I therefore argue that the exploitation of migrant workers presents many similarities to forms of violence against women. Research on violence against women has indicated that violence in intimate partner relations takes many forms: it can be one-off or continuous, but in many instances the violence escalates over time (Piispa 2002; Johnson 2006; Johnson et al 2008).

The continuum and cumulation of exploitation of migrant workers present characteristics that are similar to forms of violence against women. Kelly (1988) argues that sexual violence against women can be conceptualised as a continuum of acts combined with an unequal power structure between men and women. In Kelly's view, the continuum includes both 'routine' use of aggression and more serious forms of violence. Similarly, the different forms of exploitation that migrant workers experience can range from 'routine' and minor forms of exploitation to severe and serious exploitation that includes violence and threats (see Jokinen et al 2011a; 2011b). Just like in violence against women, the exploitation may also accumulate and become worse over time.

In Figure 4, I illustrate the continuum and cumulation of exploitation. The undulating arrow shows how the exploitation is not linear, but fluctuates. However, in many cases the exploitation does become worse, and thus the direction of the arrow is often upwards, reflecting an increase. The figure also illustrates that when a case of exploitation is uncovered for instance by representatives of the control authorities (the 'x' in the figure), they often only see single, individual acts of exploitation. This means that they might miss out on the continuum of acts, and on the cumulative context in which the acts occur. From the perspective of investigating cases of exploitation, it is of importance to uncover also the past acts of exploitation, and to understand the dynamic and often increasing manifestations of exploitation. This is relevant for understanding the experiences of migrant workers: in order to uncover the extent

of exploitation over time, and the range of forms of exploitation, it is necessary to see beyond single acts.

Figure 4. The continuum and cumulation of exploitation



Just as in situations of violence against women, a power imbalance exists also between migrant workers and their employers (see Kelly 1988; Whyte 2007; Ylhäinen 2015). The imbalance is a result not only of the traditional employer-employee relationship but also of the vulnerabilities of the migrant workers and their dependency on the employer. As my research indicates, migrant workers are in many ways dependent on their employers for subsistence, accommodation and the right to remain in the country (see also Könönen 2014b). This means that it is difficult for the workers in practice to leave their abusive employment situation, even if they in theory could leave. This is very similar to many situations of intimate partner violence against women, where it is difficult for women to leave their abusive partner because of their economic and emotional dependency, their fear of the perpetrator, their lack of realistic alternatives, shame, and a fear that their experiences will not be taken seriously by representatives of law enforcement even if they would seek help (see Johnson et al 2008; Heiskanen and Piispa 1998; Honkatukia 2011a). There is in many respects too much to lose both for victims of domestic violence and for victims of labour exploitation for the victims to be able to cut free from the exploitative context. Of course, not all exploitation (nor domestic violence) follows a linear,

accumulating and escalating trajectory but it is useful to understand that especially the more serious cases of exploitation seem to present such characteristics.

With regard to the definition of forced labour and in line with the continuum presented above, my research argues that a narrow interpretation of what constitutes forced labour will result in an emphasis on only the extreme forms of exploitation. This has been the case in Finland in respect of trafficking for the purpose of sexual exploitation (Roth 2010a), and to some extent also in respect of labour trafficking (Jokinen et al 2011a; 2011b). I argue that the definition of forced labour in the context of trafficking and exploitation should be interpreted in a way that pays attention to the full range of exploitation against migrant workers in line with the continuum and cumulation of exploitation. The emphasis should not be on force or violence, but on the subtle forms of control and dependency (see also Jokinen et al 2011a; 2011b). The interpretation of forced labour should instead look at the overall circumstances and the lack of alternatives to quit working, the lack of awareness of rights and contacts outside work, as well as debt and the real economic possibilities that the worker has to pursue other alternatives. However, the overlap between the crime of trafficking and the crime of extortionate work discrimination still remains a challenge. As has been highlighted by GRETA, the group of experts monitoring the implementation of the Council of Europe Convention on Trafficking in the country report on Finland, the distinction between trafficking for the purpose of labour exploitation and extortionate work discrimination should be clearer in Finnish legislation (Council of Europe 2015, 51). Although I in principle find the current criminal law provisions sufficient, this distinction could be clarified so that extortionate work discrimination would clearly refer to situations of underpayment and poor working conditions, while more serious manifestations of comprehensive exploitation would be defined as trafficking. Such a clarification could also help establish that trafficking is a violent crime while extortionate work discrimination is a labour offence.

As discussed above (see 2.4) the ratification of the ILO Protocol of 2014 to the Forced Labour Convention has raised the discussion whether the system of assistance to victims of trafficking in Finland also covers victims of forced labour. Because of the lack of a comprehensive definition of forced labour and the difficulties in differentiating between trafficking and extortionate work discrimination, I am suggesting that until the distinction between the two provisions is clarified, the current system of assistance to victims of trafficking be expanded to cover also victims of extortionate work discrimination. This would resolve some of the difficulties of determining what amount of exploitation and suffering is sufficient to merit government-supported assistance to victims of labour exploitation. A broader practical interpretation of forced labour would thus ensure that more victims of exploitation are defined as victims of trafficking, and thus entitled to assistance and support (see Roth 2010a).

All exploitation is of course not trafficking and I am aware that there are inherent risks when the interpretation of what should constitute trafficking is broadened

too much (Chuang 2014; Gallagher 2015). While we should avoid 'exploitation creep' (Chuang 2014), that is, an exaggerated broadening of the definition of exploitation, my research indicates that there is still not sufficient enforcement either of exploitation in general or of trafficking in particular. This shows that the definition is still interpreted in a rather narrow sense, rather than ensuring that all those who are victims of trafficking are indeed defined as such. The broader interpretation would thus help to ensure that the rights of victims could be better secured. As argued above, however, there is also a need to ensure rights and some level of protection also to those victims of less serious forms of labour exploitation (see also Shamir 2012).

6.4 Responding to exploitation

Lacey (1994, 30-31) argues that individual actors within the criminal justice system as well as existing structures and practices influence criminal justice. These 'social ordering practices' (ibid., 28) of law enforcement officers in particular have great effects on how and whether enforcement is directed at the exploitation of migrant workers. My research finds that the exploitation of migrant workers and the resulting trafficking is not adequately recognized and addressed by (crime) control authorities (see Sub-studies 2 and 3). This is related first to the continuing lack of attention paid to and low prioritization of preventing and addressing exploitation at the governmental level. Second, the laws concerning exploitation are complex and there are difficulties in the practical interpretation of the law. Third, there is still also a failure among control authorities to identify cases of exploitation and as such, police representatives have difficulties in conceptualizing the exploitation of migrant workers as a crime. As described above, this easily leads to a situation where even serious forms of exploitation of migrant workers are not adequately recognised and only the most extreme forms of exploitation are seen to fulfil the crime of trafficking for the purpose of forced labour. Fourth, the fact that many victims are reluctant to come forward, and some do not even consider themselves as victims, makes police investigations challenging. Fifth, because of the many complexities surrounding exploitation, the investigation of these crimes is often a lesser priority than the investigation of more 'conventional' crimes. How should these complexities be addressed? In the following, I propose some possible solutions.

My research shows that law enforcement often addresses the exploitation of migrant workers either within the framework of economic crime control, or within the framework of investigating violent crimes (see also Alvesalo 2003b; Alvesalo and Jauhiainen 2006; Eskola and Alvesalo 2010). The investigative traditions and practices among economic crime units and violent crime units differ, and the police construct these two types of crimes in different ways (Alvesalo 2003b). The exploitation of migrant workers includes elements of both economic and violent crimes. The exploitation of migrant workers often includes forms of control in addition to economic abuses against the workers, and economic crimes against the State. Such crimes thus challenge the notion that corporate crimes are not personal and direct (Friedrichs 2010; Croall 2001). In

Finland, the investigation of labour exploitation is organized differently in different police districts: in some districts the economic crime unit investigates such crimes, while in other districts the violent crime unit carries out the investigation. Regardless of differences in investigative traditions and practices between these different units, the crimes of exploitation should be addressed in a comprehensive manner. The investigation and control of exploitation of migrant workers should also not rely on the interest or expertise of individual officers. The crimes relate not only to the economic abuses and the subsequent economic crimes against the State and the exploited individual, but also to the violations and the infringements of the rights of the workers. The conceptualisation of the exploitation in a comprehensive manner rather than as a dichotomy of either economic crimes or violent crimes is thus important. A practical solution to the problems of police investigation would be the establishment of a special investigative unit, focusing on the crime of human trafficking and offences related to trafficking. The National Rapporteur on Human Trafficking recommended this already in her 2010 report (Vähemmistövaltuutettu 2010; see also Jokinen et al 2011a, 199). Consequently, the Employment and Equality Committee of the Finnish Parliament, in its report on the consideration of the 2010 report of the National Rapporteur, has called on the police to establish a national, specialized unit for the investigation of the crime of human trafficking and related offences (TyVM 13/2010 vp). The police are hesitant towards establishing a specialized unit because all officers should be equally capable of identifying and investigating human trafficking crimes (ibid.). As my research shows, however, the effective investigation of the complex crime of human trafficking would best be met by specialized police officers.

In addition, this research finds that there is a problem of control authorities de-legitimising exploited migrant workers if they do not consider themselves as victims and subsequently do not contact the authorities and have no demands against their employers (Sub-study 3). If addressed through the continuum and with a recognition of the power imbalance (Kelly 1988; Ylhäinen 2015) between workers and employers, the lack of demands can be understood as one of the consequences of the exploitation and of the migrants' poor and precarious situation overall. Their situation is precarious for instance because of a lack of language skills, a lack of contacts and social networks, being in a situation of debt and economic dependency, and because the workers fear losing their right to reside in the country if they complain or denounce their employer to the authorities. These are all factors that make it difficult to stand up against the employer.

This research (Sub-studies 3 and 4) also finds that it seems that it is employers and employees of the same ethnic groups that are the targets of control efforts. Also recent court judgments on human trafficking point to a tendency where it is in particular ethnic restaurants where human trafficking has been uncovered. This can be understood as an indication that control is selective and only addresses certain threats to the social order (Lacey 1994), meaning that it is certain types of employers and businesses that are the targets of control (see also Eskola and Alvesalo 2010). The legal structure of the limited liability

corporation protects those in positions of power in particular in large corporations (Glasbeek 2002b; Tombs and Whyte 2015). This may explain why it is so difficult to hold those in charge of larger corporations accountable for transgressions such as the exploitation of migrant workers. It might also well be that exploitation by employers of Finnish origin is not the target of control to the same extent as exploitation by other employers, or that native employers are able to 'disguise' exploitation so that it is more difficult to detect. The exploitation of migrant workers is also an indication of the specific vulnerabilities of migrant workers that enable their exploitation in the first place: their lack of awareness of rights and alternatives. At the same time, it is also an indication of a certain business model that is built around exploitation for financial gain. However, the relationship between the exploiter and the exploited is often complex and there are elements of gratitude and a prior imbalance of power involved. Such exploitation is therefore also a manifestation of the complex interplay between migration and ethnic networks. So-called ethnic niches, that is, sectors where certain businesses are in the hands of certain ethnic groups, can be a pathway to both economic incorporation and to exploitation (Morales 2006; Urinboyev 2016). Research shows that Estonians in Finland often wish to work for other Estonians since this is seen to provide an easier entry into the Finnish labour market; however, this may also increase their risk of being exploited (Soo and Markina 2013). Control authorities consequently need to be aware of these complexities.

With regard to the crime of trafficking, the process of defining who is a victim of trafficking and who is not is consequential for the individual exploited migrants, as it determines how they are treated by the State in the criminal process. In line with international obligations, victims of trafficking are entitled to more rights and assistance than victims of 'mere' exploitation. The distinction between 'real' victims of trafficking versus 'economic migrants' (see chapter 2.4 and 4.4; Chou 2008; Roth 2010a; Haynes 2009) is too simplistic and fails to acknowledge the structural nature of exploitation as well as the difficulties of distinguishing between different forms of exploitation. In addition, while laws make the distinction between trafficking and less serious forms of exploitation, it is crucial to recognise that victims of both feel the same shame, pain, dislocation, lack of freedom, anger and humiliation (Haynes 2009, 23).

I have argued above that control authorities need to understand the continuous and cumulative nature of exploitation as a conceptual tool. This tool places an understanding of the experiences of the victim at the centre. In order to be able to uncover the victim's experiences, especially the inter-personal elements of exploitation, control authorities need to gain the victim's trust and show respect for the victim's rights. Because the criminal justice process is not only an instrument for solving conflicts, but also reflects on our understandings of justice (Pirjatanniemi 2008, 623) and trust in justice (Kainulainen and Saarikkomäki 2014), the role of control authorities is paramount. The actions of control authorities are important not only for the individual exploited workers, but also symbolically, in order for exploitation to be considered 'real' crimes that are taken seriously.

7. Conclusions: The 'exploitative crimes of the employer'

This research has brought the theoretical framework of corporate crime (Slapper and Tombs 1999; Snider 2000; Nelken 2007; Friedrichs 2010; Bittle 2012; Friedrichs 2015) into research on exploitation and trafficking. I conceptualise the exploitation of migrant workers as a form of corporate crime committed by the employer against an employee. Such crimes include economic misuses and under/non-payment of wages, as well as social crimes and corporate violence in the form of exploitative and unfair labour practices as well as unsafe working conditions (see Friedrichs 2010; Snider 2000; Slapper and Tombs 1999). I argue, however, that the exploitation of migrant workers, which ultimately may result in human trafficking, should be categorised as a specific form of corporate crime. I call this 'exploitative crimes and harms of the employer'.

From a corporate crime perspective, the crimes of employers exploiting migrant workers can be conceptualised mainly as a form of social crimes that include both economic misuses as well as violations of occupational safety and health (Snider 2000). However, when the exploitation becomes more comprehensive and serious and goes beyond mere underpayment of salaries, for instance when employees are demanded excessive working hours thus limiting their free time, and when there are threats against the employees if they do not comply with the employer's demands, the crimes of employers go beyond these two categorisations. The categorisation of 'exploitative crimes and harms of the employer' would thus expand the scope of corporate crimes to include the exploitation of employees by their employers not only as crimes of economic misuse or workplace safety crimes, but also as comprehensive infringements of the rights of individual workers. The exploitative crimes and harms of the employers would thus also include forms of exploitation and abuse that are direct and inter-personal. Much of the discussion on corporate crime and corporate violence fails to pay attention to the victims of crime, as such crimes are often conceptualised as indirect and non-personal (Friedrichs 2010, 65; Croall 2001). The concept would thus more clearly acknowledge that the exploitative practices of employers target specific victims: (migrant) employees. Also, by including the element of harms into the concept, the category would recognise the complex nature of victimisation and the fact that victimisation affects people of different social class, gender, ethnicity and age differently (Hillyard and Tombs 2004, 18-19).

While this concept would recognise that exploitation of migrant workers can be inter-personal and direct, it would also recognise the more structural dimensions of exploitation and the fact that much of corporate crime is structurally determined due to the current neoliberal economic paradigm (see Tombs and Hillyard 2004, 53). Thus the concept would also encompass exploitation of migrant workers as a manifestation of state-corporate crime (Friedrichs 2010, 159-160), that is, crimes that result from the lack of adequate enforcement of the provisions prohibiting exploitation and insufficient regulation of the factors and

conditions that enable such exploitation. While recognising the structural nature of exploitation, the concept would also recognise that many perpetrators of employee exploitation can be conceptualised as 'corporate criminals' that exploit others for financial gain.

The prevention of the exploitative crimes of the employer requires sufficient control and enforcement, that the transgressions are considered 'real' crimes, and also extending protection to the most vulnerable in the labour market. However, the effective enforcement of exploitation of migrant workers might threaten the structures of the economy that are built around dualisation, flexibilisation and inequality within the labour markets. The question therefore remains whether sufficient enforcement can and will be achieved. At the same time, the institutionalisation and normalisation of inequality and exploitation cannot simply be accepted. Researching the exploitation of migrant workers therefore seems as important and acute as ever, in many ways. The serious global migration situation and the increasing numbers of asylum-seekers in Europe will create challenges for the prevention of exploitation as many migrants will be willing to take – and are desperate for – any work. In addition, the on-going economic crisis in Finland is having many effects on the labour markets overall. The current political discussions on how to improve the Finnish economy seem to be focusing especially on how to make labour cheaper and more flexible. While many of the reforms are important and necessary, there is a risk of a deeper dualisation of the labour markets, and a further legitimisation of the structural nature of exploitation of vulnerable workers

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Annex 2. Documents analysed in Sub-study 2 and division of work

Table 3. Analysed documents

Document	Analysed by	Length (pages)	Abbreviation
Government programme: Lipponen I, 13 April 1995 – 15 April 1999	NO	18	GP 1995
Government's action plan to combat economic crime and the grey economy 1996-1999	AAK	7	EC 1996
Resolution for a Government Programme on Migration and Refugee Policy 1997	NO	27	MIG 1997
National Crime Prevention Programme 1998 (Ministry of Justice)	AAK	49	CP 1998
Government's action plan to reduce economic crime and the grey economy 1999-2001	AAK	9	EC 1999
Government programme: Lipponen II (15 April 1999 – 17April 2003)	NO	24	GP 1999
Government's action plan to reduce economic crime and the grey economy 2002-2005	AAK	8	EC 2002
Government programme: Jäätteenmäki (17 April 2003 – 24 June 2003) and Vanhanen I (24 June 2003 – 19April 2007) (in Finnish)	NO	56	GP 2003
The Employment Policy Programme 2003-2007	NO	14	EMP 2003
A Safer Community — Internal Security Programme 2004–2007	AAK	133	ISP 2004
National action plan against human trafficking 2005	NO	95	HUM 2005
Government's action plan to reduce economic crime and the grey economy 2006 – 2009	AAK	11	EC 2006
Government Migration Policy Programme 2006*	NO	43	MIG 2006
Government programme: Vanhanen II (19 April 2007 – 22 June 2010)	NO	82	GP 2007
The Policy Programme for Employment, Entrepreneurship and Worklife 2007-2011*	NO	12	EMP 2007
Programme on criminal policy 2007-2011	AAK	39	CP 2007
Safety First — Internal Security Programme 2008–2011*	AAK	57	ISP 2008
National Plan of Action against Trafficking in Human Beings 2008*	NO	44	HUM 2008
Action plan for labour migration 2009 (Ministry of the Interior)	NO	44	LMIG 2009
Government's action plan to reduce economic crime and the grey economy 2010-2011	AAK	6	EC 2010
Government programme: Kiviniemi (22 June 2010 - 22 June 2011)	NO	5	GP 2010
Government programme: Katainen (22 June 2011-)*	NO	158	GP 2011
Government's boosted action plan to combat economic crime and the grey economy	AAK	10	EC 2012
Government Resolution for Securing a Well-Functioning Labour Market and Labour Supply of 31 May 2012 (part of the Strategic Programme for Structural Change and Well-Functioning Labour Market 2012-2015)*	NO	13	LAB 2012
A Safer Tomorrow - Internal Security Programme 2012*	AAK	62	ISP 2012
NO total 635 pages: overall responsibility for the preparation of the article; government programmes, migration policy programmes, labour policy programmes, and programmes to prevent trafficking in human beings.		635 pages	
AAK total 391 pages: economic crime policy programmes and the crime prevention programmes.		391 pages	

NO= Natalia Ollus, AAK= Anne Alvesalo-Kuusi

* denotes documents in English

The length of the documents may be inaccurate, because some of the documents were only available on websites (such as the government programmes 1995-1999 and 1999-2003). The page numbers indicate the length of the documents as reviewed by us. In some cases, annexes have been left out of the analysis.

When referring to the documents we use abbreviations as listed in Table 3. In those cases where no official English translation was available, the authors translated the selected citations.

Original publications

I.

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Regulating forced labour and combating human trafficking: the relevance of historical definitions in a contemporary perspective

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Abstract Forced labour has been regulated since 1930 on the basis of the ILO Convention on Forced Labour, and since 1957 on the basis of the ILO Abolition of Forced Labour Convention. In 2000 forced labour was included as one form of exploitation covered by the UN Trafficking Protocol, which situated trafficking into a context of transnational organised crime. In 2014 the ILO adopted a Protocol on Forced Labour, making a link between trafficking and forced labour. The aim of this article is to explore how forced labour came to be regulated and defined in these four treaties. The 1930 ILO Convention came about in a specific historical and political context, yet the 1930 definition remains in use even though the interpretation of forced labour, particularly as it relates to trafficking, has changed. This article focuses on the issue of trafficking for the purpose of forced labour within the context of migration and labour exploitation, and discusses the relevance of historical definitions of forced labour in the current discourse that sees human trafficking mainly as a security threat. It argues that a rigid interpretation of forced labour is not always useful in understanding forms of labour exploitation, at least in a contemporary European migratory perspective. The article calls for a broad interpretation of forced labour, which takes into account also subtle forms of control and coercion.

Introduction

During the past decade, the phenomenon of trafficking in human beings has been the subject of increased attention internationally, regionally and nationally, and has been the focus of a growing body of research in social sciences and law. A large part of the research on trafficking in persons has focused on trafficking for sexual exploitation.

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Research on trafficking for labour exploitation, i.e., for the purpose of forced labour, has received less attention [17].[1] Trafficking in women for sexual exploitation accounts for the majority of cases detected globally, but the number of reported cases of trafficking in both men and women for the purpose of forced labour has increased in recent years [43, 84, 85]. The vast majority of all victims of trafficking identified in the European Union are female (80 %) while the majority of victims of labour exploitation in Europe are male (77 % in 2010) ([12]: 10). Recent data shows that while trafficking for sexual exploitation remains predominant in Europe, there has been a clear increase in cases of trafficking for labour exploitation [11].[2]

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (henceforth the Trafficking Protocol) of 2000, provides the first internationally agreed-upon overarching definition of trafficking in human beings. The Trafficking Protocol is the first comprehensive international treaty on trafficking and was developed with a criminal justice perspective, although it aims at a comprehensive approach towards trafficking.[3] There has been some criticism against the criminal justice focus of the treaty,[4] but as Gallagher points out "there is no way the international community would have a definition and an international treaty on trafficking if this issue had stayed within the realms of the human rights system" ([14]: 4).

The Trafficking Protocol incorporates a broad definition of trafficking in human beings.[5] Until the development of the Protocol, the term "trafficking" had primarily been associated with sexual exploitation and prostitution [58]. The Trafficking Protocol, by including "forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs", broadened the understanding and agreement of what constitutes trafficking. The only comprehensive international definition of forced labour, in turn, stems from the 1930 ILO Convention on Forced Labour.[6] The 1930 Convention was drafted for a specific purpose in a certain historical setting. The

[1] The distinction between the different forms of exploitation is not necessarily clear-cut, for instance when a victim of labour exploitation is exploited also sexually. An additional subject of debate is whether sexual exploitation or forced prostitution should be regarded as a form of forced labour. For the purposes of this paper, trafficking for the purpose of forced labour excludes forms of sexual exploitation and prostitution although it is recognized that sexual exploitation may feature in situations of forced labour, and that coerced prostitution may be defined as forced labour. For a discussion of different views on prostitution, see e.g., [68]: 20–37; [54]; [64].

[2] In several European countries there has been a rising trend in trafficking for labour exploitation and growing awareness of this phenomenon, as is also indicated by increasing research into the topic (e.g., [3, 10, 15, 55, 59, 60, 65, 71, 76, 77, 87, 63]).

[3] The so-called 3 P's of prevention, protection and prosecution, with partnerships added later on as a fourth P.

[4] Haynes argues that the original intent of the Trafficking Protocol was to protect and prioritise victims, but it mutated into one on crime prevention, with a focus on the exploiter ([19]: 42). Howard and Lalani see that the Protocol frames trafficking as a "problem of boundaries and state sovereignty, in spite of the human rights content of the Protocol itself" ([21]: 9).

[5] "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (Art. 3a).

[6] The term "forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (Art. 2.1).

concept was incorporated into the definition of trafficking in human beings and today remains the only internationally agreed-upon definition of forced labour.

In the context of trafficking in human beings, a definition of forced labour that is almost 100 years old is being applied, a definition that had been developed for a different purpose in a different historical context. Trafficking in human beings and forced labour can both be seen as historical and social constructs. In previous research on trafficking for forced labour, legal practitioners have testified that the definition of forced labour is difficult to grasp and apply in cases of trafficking related to the exploitation of migrant workers (see [46, 47]; see also [34]). This article aims to understand how the original definition of forced labour arose and whether the historical definition is still relevant today or whether it needs to be reinterpreted. It also aims to uncover how the regulation and definition of forced labour have evolved over the years in view of the contemporary discourse that sees human trafficking mainly as a security threat. The article further aims to explore whether the earlier definitions, which emphasise force and control, are relevant to contemporary situations of trafficking in a globalised world characterised by (mass) labour migration. This article therefore focuses on the issue of trafficking for the purpose of forced labour within the context of international labour migration. It does not attempt to provide a new definition of forced labour, nor does this article attempt to provide concrete guidelines for practitioners on exactly how forced labour and trafficking should be understood in the context of migration and labour exploitation.

This article analyses how the need to regulate forced labour was framed and argued, first in the 1930 ILO Convention, and then in the 1957 ILO Abolition of Forced Labour Convention. This is followed by an analysis of the need to regulate and define trafficking in human beings in the 2000 Trafficking Protocol. In addition, the recent ILO Protocol of 2014 to the Forced Labour Convention is included in the analysis to provide a recent overview of how ILO has attempted to merge the notions of trafficking and forced labour. How was forced labour and the need to control or regulate it contextualised in 1930, 1957 and in 2000? How was forced labour defined? What do these very different contexts mean for the possibilities for a universal definition? The focus of this article is on the 1930 and 1957 Forced Labour Conventions and the 2000 Trafficking Protocol. In order to explore these core questions, key documents relating to the negotiations on the 1930 and 1957 ILO Forced Labour Conventions, as well as the negotiations on the 2000 Trafficking Protocol and the 2014 ILO Forced Labour Protocol, are analysed.[7]

The analysis seeks to uncover certain historical discourses in the documents. The analysis builds on a constructionist approach that sees trafficking and forced labour as products of societal discussions and social realities (e.g., [70]). In this sense, the analysed documents are seen as historical representations of ideas and ideologies, which can be analysed through their contextualisation. The texts have been read as giving an account of the emergence of an understanding of forced labour and

[7] The analysis only focuses on the discussion on the definition of the terms, and thus does not cover an analysis of the complete treaties. The materials consist of selected official documents from the negotiations on the 1930 and 1957 Forced Labour Conventions and the 2000 Trafficking Protocol as well as the 2014 ILO Forced Labour Protocol. The materials include e.g., the treaty texts, meeting reports, reports from working groups, and explanatory reports. The main materials total about 1200 pages. All documents are available online at the ILO and UNODC websites.

trafficking for forced labour, and the discourses that were used in regulating these two phenomena. Key themes and important arguments have been selected from the texts and form the basis for the presented results.

Labour migration and trafficking

This article focuses on trafficking in human beings for the purpose of forced labour within the context of migration and labour exploitation. In a contemporary European setting, trafficking for forced labour can be seen to take place largely in the context of migration. Trafficking is thus also closely related to globalisation and its consequences although it is important to note that not all trafficking or forced labour is international in nature, or related to migration.[8] The number of international migrants in the world has grown over recent years and is expected to increase even more in the near future [42]. The labour force is rapidly growing in less developed countries while the demand for migrant labour is likely to increase in the developed world (ibid.). As the population especially in Europe continues to age, the need for immigrant workers is expected to increase. Irregular migrants are recruited for the jobs for which native workers are unavailable. Migrants are vulnerable and cheap, and they lack rights and benefits ([20]: 157).

In an era of neoliberal globalisation, migration and labour questions can be seen as two sides of the same coin, with a global oversupply of labour being exploited and even "superexploited" by capitalist development [88]. A connection exists between the growth of trafficking, increased trade liberalisation and contradictory state barriers to the transnational movement of labour in the global economy ([6]: 551). Trade liberalisation and restrictive immigration policies create a disequilibrium which, combined with labour market failures, stimulates migration flows, with trafficking embedded within this disequilibrium and these market failures (ibid.: 549). The factors that trigger migration are the same factors that push victims into human trafficking ([19]: 10).

The increase in irregular migration into the EU is at least partly the result of labour market demand for cheap and flexible labour. Subcontracting, temporary work and the casualization of labour move work further from the formal to the informal economy. At the same time, there is political pressure to close the external borders to unwanted migrants. This leads to an on-going separation of immigrants into two: those who are needed and wanted, and those who are considered risky and thus not welcome (see e.g., [2, 8, 18, 19]). Trafficking and exploitation can therefore be seen as the consequences of migration pressures in a world of closed borders ([56]: 174).

However, restrictive immigration policies do not seem to constrain the flow of immigrants; instead, they serve to facilitate the exploitation of the migrant and would-be migrant ([6]: 598). The more vulnerable the migrant, the more risk there is for exploitation and, ultimately, for human trafficking ([4]: 11). Illegal migration

[8] There are of course also numerous other manifestations of contemporary forced labour and trafficking. In-country trafficking accounts for 34 % of trafficking flows world-wide ([85]: 8). Globally most victims of forced labour are exploited in the location where they usually live, indicating that movement can be an important vulnerability factor for certain groups of workers, but not for others ([36]: 17).

patterns and restrictive immigration policies increase the likelihood that migrants will fall victim to trafficking [56]. A moderate increase in legal migration opportunities is unlikely to reduce trafficking (ibid.: 186). Bravo argues for a liberalisation not only of capital and products but also of humanity, since the failure to liberalise creates vulnerability to exploitation especially among labour migrants, who when attempting to cross state-created barriers, become vulnerable to traffickers ([6]: 550; see also [69] for a discussion on migration and rights).

An additional contention is caused by the fact that many victims of trafficking have migrated voluntarily. This voluntary nature of the migration may place the blame on the migrant while at the same time legitimising the migrant's exclusion from assistance or victimhood (see [52]: 69). Victims of trafficking may therefore be excluded from the position of "ideal" victims in a traditional criminological sense (see [9]; also [52, 66, 68], 238–239). Furthermore, the "modern slavery" discourse portrays only some as deserving victims and others as undeserving of rights and freedoms [61]. The division between "deserving victims" and illegal or unwanted migrants becomes increasingly blurred because of the expansion in labour migration. Victims of trafficking are deprived of political agency, since with agency they would become risky beings: they would become migrants [5]. The migrant may thus be regarded both as *a* risk (to the State) and being *at* risk (of exploitation) ([52]: 60). From a victim-centred perspective, therefore, exploited migrant workers (be they defined as victims of trafficking for forced labour or "merely" as victims of labour exploitation) are vulnerable bodies deprived of their own political agency and thus the target of humanitarian interventions and pity, but as migrants, trafficked persons are considered a risk and a threat to the security and integrity of states [5, 62].

This dichotomy of the vulnerability of the victim on the one hand, and the threat to the integrity of the state on the other, colours much of the current discussion on trafficking (see e.g., [8, 19, 68, 62]). This is particularly the case concerning trafficking for forced labour and labour exploitation, which – at least in a European (mass) migration setting – take place right at the centre of global labour migration. Shamir argues that the individualistic, victim-centred approach, which treats trafficking as an exceptional crime, fails to deal with the specific conditions that render workers vulnerable to exploitation ([72]: 80). Instead of seeing trafficking as the exception, it should be seen as one manifestation of the exploitation of (migrant) labour in a world where migrants lack agency and rights. In this sense, then, trafficking is no longer a question only of the vulnerable falling prey to unscrupulous (sex) traffickers but a complex question of globalisation, migration, agency and rights. The distinction between "real victims" and "economic migrants", however, fails to acknowledge that all trafficking is a by-product of labour and migration (see [19]: 50). The current understanding of what exactly constitutes labour trafficking – or trafficking for the purpose of forced labour – is coloured by rather rigid definitions and stereotypical images, which in the current interpretation fail to take into account the complex situation of the abused migrant worker and much of the context in which exploitation occurs: trafficking for forced labour taking place in the context of the general exploitation of migrant workers. Hence, the poorer the working conditions of the most vulnerable, the greater the risks of and opportunities for serious forms of exploitation. A historical analysis of the emergence of the concepts of forced labour and trafficking can assist with the current challenges of interpretation and implementation. In doing so, it is important to place the definitions in the relevant social and political contexts in which the definitions emerged.

The regulation of forced labour in 1930

From slavery to forced labour

Both conceptually and historically, the regulation of forced labour is closely related to the abolition of slavery. The 1926 Slavery Convention was the first international treaty against slavery and the slave trade and includes a provision also on the prevention of compulsory or forced labour (Art. 5).[9] In preparing the Convention, the issue of forced labour was considered particularly difficult and controversial, since forced labour was practiced in many colonies [57].

When colonial powers formally ceased to use slaves, slavery was largely replaced by other coercive labour practices. Forced and coercive forms of labour were widespread in the colonies even after the formal abolition of slavery, with forced labour justified as a "regrettable necessity" by colonial officials ([66]: 103). Colonial administrations continued to use forced labourers e.g., for the growing of cash crops, in railway construction, in porterage, and during times of conflict, while in other circumstances so-called communal labour was used by local chiefs and rulers to carry out public works for the common benefit ([57]: 135-40; [22, 66]). At the time, forced labour had already been regulated to some extent[10] but the existing regulation was not considered sufficient. ILO established an expert commission in 1926 to study the question of forced labour. The Committee of Experts on Native Labour was first tasked to consider "what exact aspects of native labour" should be covered by the regulation ([16]: 623). Some years later the ILO decided to take up the issue of forced labour with the aim of coming up with principles underlying its regulation ([22]: 4). This illustrates where the focus of the efforts lay at the time: in regulating the (ab)use of native labour in the colonies and in allowing for some exceptions.

Protecting the rights of the "native peoples" while enabling their continued abuse

The discussions between States preceding the 1930 Convention show that forced labour was justified largely through its *economic value*, although the value of the work was mostly falling into the hands of those exacting the labour rather than those performing it ([22]: 239–40). At the same time, forced labour was considered by some to be *economically wasteful* compared to free and voluntary labour and the *quality of labour* performed under compulsion was considered poor ([22]: 239–43).

[9] A supplementary convention on slavery was adopted in 1956, which broadened the understanding of slavery from more traditional notions of slavery to include also analogous practices and institutions, such as debt-bondage and serfdom ([66]: 151–2). The prohibition of slavery also became a key feature of international human rights law (Art. 4 of the 1948 Universal Declaration on Human Rights and Art. 8 of the 1966 International Covenant on Civil and Political Rights).

[10] Already the founding document of the League of Nations (the Covenant of the League of Nations), although not prohibiting forced labour, called on its Members to secure and maintain fair and humane conditions of labour for men, women, and children (Art. 23). Forced labour was, however, explicitly prohibited in areas still under colonial rule (the so-called Mandates B and C) "except for essential public works and services" and then only for adequate remuneration (Covenant of the League of Nations; [22, 57, 79]). The Slavery Convention of 1926 outlined additional important principles regarding the use of forced labour.

The discussions also show many undercurrents of *colonialism and patronising views* at play. For instance, the use of forced labour was rationalised by some through its perceived educational value on the "primitive mentality" of the people in the colonies ([22]: 236). Forced labour was also framed in patronizing terms as a question of "the working conditions of subject peoples who are under the administration of races alien to themselves" ([22]: 1). Several arguments, however, also highlight the negative social and societal effects of forced labour. Compulsory work was considered to have *degenerating effects on those subjected to it* ([22]: 236), since compulsion in itself was considered humiliating. Forced labour was also considered to be a channel for demoralising and negative effects on the native populations ([22]: 234–5).

The ILO Convention of 1930 was drawn up largely as a response to *protect the rights of indigenous peoples and to curb the use of exploitative labour practices* for the benefit of the colonies and local chiefs. As Miers has pointed out, following the Slavery Convention the idea was accepted that infringements by a government of the rights of its own citizens should be matters of international concern, although some colonial governments opposed such restrictions ([57]: 116; see also [66]: 105). France, Portugal, Belgium and Italy were concerned that the Convention would allow the ILO to interfere in colonial labour policies and consequently watered down the text ([57]: 141–3). In this sense the Convention can be considered to be flawed, and portrays how national political interests influence the emergence and development of international treaties.

Security and protecting labour markets

The time was also ripe for the development of general standards of human rights in the workplace. The extension of such rights was not wholly altruistic on behalf of the colonising and developed countries: the regulation of forced labour was also considered a *security issue*. The documentation from the second discussion on forced labour highlights the emergence of the extension of rights to "an increasing class of workers who are practically untouched by the international labour Conventions it has hitherto adopted, and whose conditions of labour frequently involve such injustice, hardship and deprivation that they will increasingly tend to produce unrest so great the peace and harmony of the world may be imperilled" ([23]: VI). The regulation thus aimed also at protecting the workers of the industrialised world from the competition of the unorganised colonial workforce (see [57]: 146–8). There were *national interests* at stake with colonial powers wanting on the one hand to benefit from the continued (ab)use of native labour, and on the other hand to protect their own labour markets.

Coming to agreement on the definition of forced labour

The 1930 Convention did not criminalise forced labour. It only suppressed the use of forced labour, while regulating certain accepted forms of forced labour. The Convention also provides guidance on the circumstances under which forced labour can be exacted,[11] but it does not outline exactly what constitutes unaccepted forms of forced

[11] Compulsory military service; normal civic obligations; prison work; work in cases of emergency; and minor communal services that are considered part of normal civic obligations (Art. 2.2).

labour,[12] and what to do about them (other than suppress them as soon as possible[13]).

The 1930 Convention defines forced or compulsory labour[14] as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (Art. 2.1). The definition consists of three parts: 1) work or service, 2) menace of any penalty, and 3) lack of a voluntary offer.

During the discussions, some Governments suggested the deletion of the words "under the menace of any penalty for its non-performance" from the suggested definition, but the Committee of Experts on Native Labour considered this to be an essential part of the definition of forced labour ([23]: 136). The discussions highlight the circumstances in which an individual does not offer himself (or herself)[15] voluntarily for labour, and in this way how the labour can be characterizing as forced or compulsory. However, from a legal perspective, it was argued that it is the legal sanction for the non-performance of labour which distinguishes forced or compulsory labour from voluntary labour ([23]: 136–7). Thus, if there is no legal sanction for the non-performance of the labour, it is either voluntary or it is exacted illegally under circumstances which would probably constitute an offence which would be punishable in any case (ibid.).

It is interesting to note that the penalty referred to in the definition was argued not to mean only punishments ordered by legal bodies. The term "penalty" was not to be interpreted in a strict sense to mean punishment inflicted only by a court of justice. The Committee on Forced Labour[16] noted that *any penalty or punishment inflicted by any person or body* was meant by the use of the word "penalty" ([24]: 11).

The concept of a lack of a voluntary offer on the part of the worker raised debate. During the elaborations of the Convention it was noted that a worker may enter voluntarily into a contract, only to realize that he (or she) was mistaken about the nature and conditions of the work or that he (or she) was deceived by the recruiter. There were suggestions to include not only the non-voluntary character of the work into the definition, but also recognition of situations in which a worker *cannot withdraw himself (or herself) from the work voluntarily* ([24]: 10). The fear was that much forced labour would otherwise escape from the scope of the Convention. The final definition of forced labour did not include explicit references to such situations.

The analysis of the discussions during the development of the 1930 Convention on forced labour reveal the historical dimension of the definition. On one hand, it was in the interest of (some) colonial powers to continue (ab)using native labour in the colonies. On the other hand, the rights of the "native peoples" were to be protected from exploitation, while at the same time safeguarding the rights of workers in the

[12] Private forced labour, however, is not allowed: the Convention prohibits all forced or compulsory labour for the benefit of private individuals, companies or associations (Art. 4).

[13] The ILO Forced Labour Protocol of 2014 notes that the transitional period during which forced labour could be applied in line with the 1930 Convention has expired.

[14] At the time it was agreed that forced labour and compulsory labour would not be separated, as already the Slavery Convention used both terms ([23]: 134).

[15] The original texts only refer to men but for the purposes of this article both genders have been included.

[16] The Committee on Forced Labour was established to discuss the Report on Forced Labour which had been prepared by the ILO with the assistance of the Committee of Experts on Native Labour ([24]: 3).

developed world. The definition of forced labour focuses on the non-voluntary nature of work, and the use of penalties in exacting the labour, whereas the situations where a person cannot quit working were not included in the definition. While the definition of forced labour can be considered relevant still today, it needs to be reinterpreted in a contemporary social and historical context, where forced labour is no longer a state-sponsored (colonial) activity, but mainly a form of exploitation by private actors.

The 1957 abolition of forced labour convention

Forced labour as a political concern

Forced labour was raised anew within the framework of the United Nations in 1947 by the American Federation of Labor when it accused the Soviet Union of arbitrarily sentencing dissidents and others to forced labour camps ([57]: 320). The Federation called upon the UN to conduct a comprehensive survey on the extent of forced labour and to adopt a revised Convention to eliminate forced labour ([25]: 3). However, the aim was not purely to denounce forced labour itself, but to oppose the economic and social model of the Eastern Bloc, most notably the Soviet Union, and to condemn the human rights abuses in these countries [51]. In addition to the Cold War and its division of countries into two blocs, the discussions were coloured by the memory of the Nazi concentration camps. Forced labour became framed also as a human rights issue thanks to human rights and anti-slavery organisations, which argued that economic and social inequalities as well as ethnic differences reinforce force labour (ibid.). The social and political context in which the ILO Convention of 1957 was developed was thus largely influenced by the memories of the Second World War and the Cold War but also by the rising human rights discourse.

Prohibiting forced labour as a means of political coercion

The UN survey on the extent of forced labour showed that a system of forced labour as a means of political coercion existed in certain countries. People were found to have been sentenced to forced labour for political or ideological opinions, especially if they opposed or were suspected of opposing the established political order ([25]: 7). Furthermore, forced labour was also found to concern not only so-called indigenous workers, but also those of "fully self-governing countries", especially in the form of *coercive methods of recruiting, heavy penalties for breaches of contracts of employment and restrictions on freedom of employment and movement*, all relating to what was defined as the promotion of the country's economic progress ([25]: 9).

There were discussions on the need for a new convention on forced labour, since it was argued that forced labour practices had emerged that were "not foreseen when the Forced Labour Convention of 1930 was framed", particularly forced labour as a means of political coercion or for economic purposes ([25]: 16). The discussions concerning the Convention show that the *revision of the definition* of forced labour lay at the core of the new Convention. The discussion on exactly how the definition of forced labour

should be revised reveals several interesting positions by States. Some argued that despite changed historical circumstances, the original definition should remain intact ([26]: 14) while others suggested several new elements in order to clearly outline what constituted prohibited forms of forced labour. From a contemporary perspective, it is noteworthy that India suggested the prohibition of "traffic in human beings and beggar and other similar forms of forced labour" ([26]: 4), although this was not included in the final text.

Economic dependence of employees and discrimination

The issue of duress arising from the *economic dependence of employees on their employers* was also raised in the discussions ([26]: 15). The most comprehensive proposal was tabled by the USSR, itself being at the centre of the controversy around the use of forced labour as a means of political coercion and punishment. The discussions show that the USSR wanted a comprehensive and radical instrument, which would abolish all existing forms of forced labour anywhere ([27]: 4). The USSR consequently suggested a wholly new definition of forced labour, which would include the exaction of work also based on "personal and economic dependence of the worker on the employer" ([26]: 17). The USSR also wanted to clearly define what exactly constitutes forced labour, and despite obvious political motivations in presenting the arguments, many of the points raised are important today. The USSR argued that work is forced labour when there is use of economic dependence, including debt bondage and other servitude; when the worker is paid so poorly or rarely that the worker has no "genuine possibility of *ceasing to work for an employer at any time*",[17] and where the worker is *discriminated* against in "recruitment, working conditions or trade union activity on grounds of race, sex, nationality, religion or trade union membership" and as a result of the *discrimination* is able to access only certain occupations (ibid.).

The USSR proposal was included in the draft version of the convention as a sixth form of prohibited forced labour: forced labour as a consequence of how the worker is paid, e.g., by *deferring or postponing payment* and thereby depriving the worker of a genuine possibility of terminating the employment, or where work is exacted from the worker in the form of bondage for debts or through systems of peonage ([27]: 13). Some States but most notably employers' representatives opposed the inclusion of deferring payment, and it was deleted after a vote. The discussions show that the majority of states considered payments to be part of industrial relations rather than an element of forced labour, with some arguing that this approach had "nothing whatsoever to do with forced labour" and instead only attempted to provide a completely new definition of forced labour ([27]: 19–22).

The 1957 ILO Abolition of Forced Labour Convention in the end defines the following prohibited means of forced labour: as a means of political coercion, as a method of mobilising and using labour for purposes of economic development, as a means of labour discipline, as a punishment for having participated in strikes, and as a means of racial, social, national or religious discrimination (art. 1).

[17] Author's emphasis.

The lack of a voluntary offer

The issue of what constitutes a "voluntary offer" raised considerable debate. Some countries argued that any service which is not offered in a "completely voluntary manner" should count as forced labour, and that the individual should have *the right to stop working at any time*, while other suggested including situations where the voluntary offer is motivated by fear ([26]: 13–15). Other countries suggested the deletion of the reference to a person offering himself "voluntarily", since a person under threats of penalty is unable to exercise his own will (ibid.: 15). None of these arguments were included in the final text.

The 1957 Convention emerged in a very specific historical and social setting: the need to address the gross violations that took place in the context of World War II concentration camps, the Cold War and Soviet labour camps. The Convention did not revise the 1930 definition of forced labour but included additional forms of forced labour. The discussions on the economic dependence of the worker on the employer and the lack of possibility to cease working and non-payment of wages are still relevant for a contemporary understanding of forced labour and trafficking. Although the context of forced labour is different today, the 1957 Convention paved the way for an understanding of the more subtle forms of control used in forced labour.

The 2000 UN protocol on trafficking in human beings

Towards the regulation of trafficking in human beings

The social and political context in which the 2000 UN Protocol on Trafficking in Human Beings came about was on one hand coloured by a discussion on the harms of sexual exploitation and prostitution lasting well over a decade, and on the other, on the perceived threat of increasing organised crime at the end of the 20th century. Trafficking was first discussed at the turn of the 19th century in the wake of the rise of the modern human rights movement, with a focus on the sexual exploitation and prostitution of white women and children [7]. The concept of so-called white slavery (or white slave traffic) emerged from claims that there was extensive coercion of (British) girls and women into prostitution abroad, where innocent white women fell into the hands of dark men ([53]: 113). As such, the phenomenon was viewed in highly xenophobic and parochial terms ([49]: 127). The discussion was also largely centred around the abolition of prostitution. The prohibition of (white) slave traffic did not take into consideration other aspects of trafficking, such as trafficking for the purposes of forced labour and keeping otherwise voluntary workers in slavery-like conditions [7]. The suppression of the white slave traffic became the focus of some early international treaties.[18] The emergence of the modern human rights movement around the middle of the 20th century and the following evolution of the women's human rights community

[18] These include the 1904 International Agreement for the Suppression of the White Slave Traffic, the 1910 International Convention for the Suppression of the White Slave Trade, the 1921 International Convention for the Suppression of the Traffic in Women and Children, the 1933 International Convention for the Suppression of the Traffic in Women of the Full Age, and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

brought trafficking in human beings anew to international attention ([7]: 6–7). Concern over trafficking re-emerged in the wake of the growing global movement for women's human rights in the 1970s (ibid.: 11).[19]

Crime became a global concern already in the interwar period. The speculation regarding the "worldwide crime wave" centred on the perceived negative effect of the First World War on crime rates, increased migration, and unemployment [50]. The perceived threats posed by trafficking in drugs and women helped place (transnational) crime high on the international public agenda (ibid.). Knepper argues that the "narrative of traffickers and terrorists that would guide international efforts for decades to come" was established already at the time of the League of Nations ([50]: 169). Towards the end of the century the geopolitical situation caused by the collapse of the socialist world, the development of technological advances, and related growth in international business and communications all contributed to making transnational organised crime a "threat to the world order" ([73]: 463). This was the backdrop for the development of the United Nations Convention against Transnational Organized Crime,[20] which was the "first serious attempt by the international community to invoke the weapon of international law in its battle against transnational organized crime" ([13]: 976). Through its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Convention for the first time also defined trafficking in human beings as a crime and a security concern, thus expanding the earlier prostitution-focused and human rights approaches to human trafficking. In addition, also the related issue of illegal migration and the fear of smuggling of migrants coloured the discussion of trafficking.[21]

From a focus on sex, women and children to a broader understanding of trafficking

The negotiations show that there were several interests involved in defining what elements of trafficking to include. In the first session of the ad hoc Committee, Argentina presented a proposal focusing on trafficking in women and children, but

[19] The first exclusive treaty on women's human rights, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), included the suppression of "all forms of traffic in women and exploitation of the prostitution of women" (Art. 6). The reference to *all* forms of trafficking has been interpreted to also include forced labour ([14]: 65). The Convention on the Rights of the Child (CRC) of 1989 is the only contemporary international human rights treaty in addition to CEDAW that refers explicitly to trafficking (ibid.). The CRC covers trafficking in children for any purposes or forms (Art. 35).

[20] The World Ministerial Conference on Organized Crime was held in Naples in November 1994. Trafficking in human beings for the purposes of both sexual and labour exploitation was raised in the general debate. While the focus was still on sexual exploitation and minors, coerced labour was also mentioned ([80]: paragraph 33). One of the recommendations of the conference was the initiation of a process to develop an international instrument against organized transnational crime (ibid.). As a parallel process, Argentina had been pushing for the inclusion of trafficking in minors into the negotiations on an additional protocol to the Convention on the Rights of the Child in Geneva, but was dissatisfied with the slow progress. Argentina succeeded in raising the issue also in Vienna, and the annual session of the United Nations Commission on Crime Prevention and Criminal Justice in Vienna discussed a proposal for a separate Convention on the issue of trafficking in minors [81]. The Argentine proposal was eventually merged with other proposals to include trafficking in women. The United Nations General Assembly established an ad hoc Committee in 1998 with the aim of drafting a Convention against transnational organised crime, including an instrument addressing trafficking in women and children [82].

[21] The parallel UN Protocol on Smuggling of Migrants focuses on strengthening border measures and enforcement for the prevention of smuggling of migrants.

the United States suggested that the instrument should be broader, including "trafficking in persons for the *purpose of forced labour*, prostitution or other sexual exploitation" ([83]: 331, author's emphasis). The US also emphasised the specific protection of women and children *as victims of organized crime* (ibid.). Almost all participating countries preferred this broader scope, but with special attention given to women and children as originally envisioned at the outset of the negotiations (ibid.: 322).

The United States was at the time in the process of developing its own national legislation on trafficking, which was more strongly focusing on labour exploitation than sexual exploitation. Several high-profile cases of recruitment and severe exploitation of migrant workers in street peddling and sweatshop labour had been uncovered in the late 1990s, revealing serious deficiencies in anti-trafficking laws in the US ([48]: 38-40). The negotiations show that also other participants, such as the ILO, suggested the inclusion of forced labour and other forms of exploitation ([83]: 334). It is worth noting that the understanding of trafficking was broadened to incorporate a crime affecting not only women and girls, but also men and boys.

Emphasis on force, coercion and organised crime[22]

The documents from the negotiations of the Protocol show that considerable time was spent during the negotiations *trying to define the terms used*, especially "sexual exploitation" and "forced labour". A number of countries supported a broad definition of both terms so as to ensure that the Protocol would cover all forms of exploitation ([83]: 333, footnote 5). Based on a US suggestion – much in line with the 1930 ILO definition – a first draft was prepared, outlining that forced labour "shall mean all work or service extracted from any person under the threat [or][,][23] use of force [or coercion] and for which the person does not offer herself or himself with free and informed consent" (ibid.: 340).[24] The US suggestion did not include the 1930 use of "menace of a penalty" but instead included *force or coercion*. During the discussions, many countries preferred the word "coercion" over "force", which they felt was broader, while others wanted to exclude the word "coercion".

At a later stage of the negotiations, a working group of the Committee provided an alternative definition of forced labour (ibid.: 342).[25] Also this definition emphasised the use of force or coercion. The suggested definition focused not on the voluntary offer, but instead outlined the elements of the menace of a penalty through the very concrete notions of *force or threat of force, coercion*, fraud, debt and debt-bondage and misrepresentation (deceit), leading to a situation where the person believes that he or

[22] This section only focuses on the definition of trafficking for the purpose of forced labour. The scope and definition of trafficking for sexual exploitation were the subjects of lengthy negotiations (see e.g., [14, 68]).

[23] In the documentation, brackets were used by the UN Secretariat to identify language that had been questioned by one or more of the negotiators, and that thus required further consideration.

[24] The same exceptions as in the 1930 ILO Convention (prison labour, military service, emergencies, normal civic obligations and minor communal services) were initially included in the definition.

[25] 'Forced labour' shall mean labour or services obtained through force or the threat of force, or the use of coercion, or through any scheme or artifice to defraud, including one where the status or condition results from a debt or contract made by that person and the value of the labour or services as reasonably assessed is not applied towards the liquidation of the debt or the fulfilment of the contract (i.e., debt bondage), or by any means or plan or pattern, including but not limited to false and fraudulent pretences and misrepresentations, such that the person reasonably believes that he or she has no alternative but to perform the service ([83]: 342).

she *does not have any alternative but to work or perform the required service*. In the end, however, the detailed definitions of the forms of exploitation were left out of the Protocol.

Delegations also discussed whether there should be additional exceptions to the term "forced labour" besides those listed in the ILO 1930 Convention in view of trafficking for *forced labour being linked to the activities of organised criminal groups* ([83]: 240, footnote 8). In the end it was decided that it would be up to the national legislation of each State Party to decide on the exceptions (ibid.). The issue of *consent* raised considerable debate during the negotiations.[26] In brief, the discussions focused on whether or not the victim's initial consent should be considered irrelevant (see [83]: 344, footnote 26). In the end, it was agreed that the consent of the victim of trafficking to the intended exploitation is irrelevant when any of the defined means have been used (Art. 3b).

Although forced labour was in the end not redefined during the negotiations for the Trafficking Protocol, many participants emphasised the use of force or coercion in defining trafficking for the purpose of forced labour. It is clear that the context in which forced labour was discussed was very different from that of 1930 and 1957. Forced labour was considered a consequence of trafficking, taking place within the context of the threat of transnational organised crime and the protection of borders from these criminal elements, as well as from unwanted migrants.

The ILO protocol of 2014 to the forced labour convention

Awakening to the link between forced labour and trafficking

Over the years it became evident that the Forced Labour Convention of 1930 was created in a specific historical setting and purposes and that there was an explicit need to incorporate trafficking for labour exploitation into the understanding of forced labour. In 2012 the International Labour Conference decided to analyse whether there was a need to complement the ILO's forced labour conventions to address prevention, victim protection and compensation as well as human trafficking for labour exploitation [37]. An expert meeting was organized in early 2013 to provide recommendations in this regard. The meeting found gaps in prevention, protection and remedies concerning victims of forced labour and a need to clarify the relationship between trafficking and forced labour [39]. It suggested that a Protocol and a Recommendation to support it be drawn up to enhance the work to address trafficking for labour exploitation (ibid.).

Before the negotiations for the Trafficking Protocol, trafficking was of marginal interest to the ILO, presumably because of the earlier limited focus of trafficking as only involving sex work ([72]: 127). However, the ILO had pondered the linkages between trafficking and forced labour since the adoption of the Trafficking Protocol. In 2001 the Committee of Experts of the ILO[27] made note of the then new Trafficking

[26] See e.g., [14, 68] for a detailed account of the issues relating to consent.

[27] The ILO Committee of Experts was set up in 1926 to examine the growing number of government reports on ratified conventions. It is composed of 20 eminent jurists appointed by the ILO Governing Body for three-year terms. The Committee's role is to provide an impartial and technical evaluation of the state of application of international labour standards. (http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang–it/index.htm).

Protocol and its definition of trafficking. The Committee was concerned that so few countries had so far raised the issue of trafficking in their reports relating to the implementation of the Forced Labour Convention. The Committee at the time saw trafficking – and presumably thus also trafficking for the purpose of forced labour – as linked to organized crime ([29]: 28, paragraphs 76–77). The ILO Global Report of the same year asked whether trafficking should be seen as a form of illegal migration, and saw labour trafficking as a "contemporary form of debt bondage" ([30]: 48, paragraphs 145 and 148). Thus, during the first years of the new millennium, the ILO largely framed trafficking as a crime and a problem of (illegal) migration.

The second ILO Global Report on forced labour and trafficking in 2005 makes more detailed and explicit observations on trafficking for forced labour, and suggests that both trafficking and forced labour should be criminalized as separate offences ([31]: 7, paragraphs 22–23). Instead of presenting trafficking as an organize crime issue, it frames trafficking as a labour market problem. The report sees forced labour in the context of trafficking as "one of the most blatant failures of labour markets, and even of global governance, to address the needs of arguably the most vulnerable and least protected human beings in the world today" (ibid.: 63, paragraph 289). As a phenomenon, trafficking was becoming firmer incorporated within the remit of the work of the ILO.

Trafficking as subordinate to forced labour

In 2007 the ILO Committee of Experts made a major positioning of the Trafficking Protocol and Convention No. 29 by stating that trafficking is included in the definition of forced labour. The Committee found it "clear that trafficking in persons for the purpose of exploitation *is encompassed by the definition of forced or compulsory labour*" ([33]: 41, paragraph 77 (author's emphasis); reiterated e.g., in [37]: 30, paragraph 299; [39]: 4, paragraph 17). Thus trafficking, or rather trafficking and the consequent exploitation of the trafficked persons, is considered by the ILO to be subordinate to forced labour.

The new binding Protocol to the Forced Labour Convention was adopted in 2014 by the ILO and includes prevention, protection, remedies and sanctions against perpetrators. Countries are also expected to prepare national action plans to better address forced labour. The Protocol on Forced Labour notes that the context and forms of forced labour have changed but it does not redefine forced labour. Instead it reaffirms the original definition of forced labour (Art 1.3). The original language for the Protocol on Forced Labour suggested by the ILO[28] did not include such a confirmation; instead, the text was added during the negotiations. The employer's representative (who served as vice-chairperson)[29] was very active in the negotiations and proposed the amendment of the suggested text to confirm the definition of the 1930 Convention on Forced Labour in order to clarify that the definition of forced labour covered trafficking in persons by ([40]: 36–37, paragraph 329).[30] There was also a discussion on whether the

[28] "The measures referred to in this Article shall include specific action against trafficking in persons for the purposes of labour or sexual exploitation."

[29] The ILO has a tripartite structure with government, employer, and worker representatives participating in deliberations and negotiations.

[30] "Confirming the definition of forced or compulsory labour contained in Convention No. 29, the measures referred to in this Article shall include specific action against trafficking in persons for the purposes of forced or compulsory labour."

Protocol on Forced Labour should define trafficking since it is not explicitly mentioned in Convention No. 29, but this was left undefined.

It is interesting to note that the employer's representative strongly argued for an understanding that trafficking is covered in the 1930 definition of forced labour. He referred to a "*general misperception* that the definition of forced labour in Convention No. 29 did not encompass human trafficking" (ibid.: paragraph 338, author's emphasis) and explained that the definition from 1930 was still valid and included trafficking in persons (ibid.: paragraph 350) although he later clarified that it was "trafficking which led to forced labour" that fell within the scope of Convention No. 29 (ibid.: paragraph 352). In the end, the employer representative's proposal was adopted with slight amendments.[31] The discussion on the definition and on the link between trafficking and forced labour confirms that there still exists confusion regarding the current interpretation of forced labour and the link between trafficking and contemporary forms of forced labour, especially in a context coloured by labour migration.

Discussion: how to understand forced labour today in the context of trafficking in a globalised world

Based on the negotiations on the four treaties discussed above, three main themes emerge: the relevance of historical definitions to contemporary exploitation of migrant labour and the need to reinterpret the definition of forced labour; a securitised discourse of trafficking and its influence on the understanding of the rights of exploited migrant workers; and the discussion on whether direct force and coercion are relevant in defining forced labour and trafficking or whether more subtle forms of control should be considered sufficient.

The relevance of historical definitions to contemporary exploitation of migrant labour

The analysis of the documents relating to the 1930 ILO Convention point to a specific historical context and political aims as the basis for regulating and defining forced labour. Despite discussions both during the elaborations of the 1957 ILO Convention and the 2000 Trafficking Protocol, the 1930 definition of forced labour remains in use. Even so, it seems that the understanding of the phenomenon of forced labour has changed over the course of the past century, as has the interpretation of forced labour, particularly as it relates to trafficking.

It is evident that the original aim of regulating forced labour in 1930 stemmed from an attempt to outline the accepted and allowed elements of forced labour: the exceptions and the circumstances under which it could still be exacted especially in the colonies. The 1930 definition and understanding is therefore not wholly applicable to contemporary situations of trafficking, which are intertwined with questions of migration and exploitation of (migrant) labour in an increasingly globalised world. The

[31] "The definition of forced or compulsory labour contained in the Convention is reaffirmed, and therefore the measures referred to in this Protocol shall include specific action against trafficking in persons for the purposes of forced or compulsory labour."

historical discussions also indicate that political interests and compromise are central to international treaties and their negotiations. The 1930 negotiations show the interests of the colonial powers in keeping forms of forced labour available. The 1957 negotiations, although influenced by the human rights discourse (see [51]), were reduced primarily to preventing forced labour as a means of political coercion. In 2000, the emphasis was on sexual exploitation and organised crime, and the exploitation of labour was of lesser political concern.

In the negotiations on the 2000 UN Trafficking Protocol, trafficking in persons was framed as a question of organised crime, with a focus on sexual exploitation of women. Forced labour was not initially included in the idea of trafficking, but was introduced into the negotiations by the US. The US had its own interests in addressing labour exploitation of migrant workers. This broadened the understanding of trafficking; otherwise we might still have an instrument on sex trafficking only, rather than a more comprehensive definition of trafficking. Despite this broad scope one may argue that until recently, most of the attention to trafficking has been placed on sexual exploitation of women rather than on forced labour or labour trafficking, which also affect men.

Both the definition of trafficking and the definition of forced labour include the element of a means to achieve exploitation. The 1930 Convention refers to "the menace of penalty" while the Trafficking Protocol lists threats, force, coercion, abduction, fraud, deception, the abuse of power or position of vulnerability or the giving or receiving of payments or benefits. The end point of exploitation is also common to both definitions. However, the differentiating element of the trafficking definition (as compared to that of forced labour) is the *act* of trafficking, defined as "recruitment, transportation, transfer, harbouring or receipt of persons" (Art. 3a). Since the Trafficking Protocol was developed within the framework of the Convention against Transnational Organized Crime, the definition presupposes that these acts are carried out by organized criminal groups. This has led to the impression that trafficking – with organized criminal groups as perpetrators – is strongly interlinked especially to illegal migration. However, this article argues that trafficking for forced labour does not necessary entail organized crime involvement, nor is it necessarily related to *illegal* entry and *illegal* migration.

The above analysis of the background documents to the treaties shows that, in responding to trafficking in human beings and forced labour, the international community did not regard them as one and the same phenomenon. The response to trafficking in the late 1990s centred on the transnational crime element, and forced labour was included as an outcome or intention of the trafficking. In view of how the treaties were developed, forced labour cannot be seen as the overarching category under which trafficking emerged, despite the ILO's view that trafficking is encompassed by the definition of forced or compulsory labour [33] and that "the definition of forced labour covers most forms of trafficking" ([34]: 9–11).[32] Since the UN Protocol definition of trafficking sees forced labour as one form of exploitation in the crime of trafficking, forced labour could instead be seen as subordinate to (labour) trafficking.

It is evident that the two phenomena are indeed closely related and partly overlapping rather than encompassing one or the other. The means by which a person is placed in a situation of trafficking (e.g., threats, force, deception, abuse of a position of vulnerability) and the means by which forced labour is exacted "under the menace of

[32] With trafficking for the purpose of organ removal being the exception ([41]: 4).

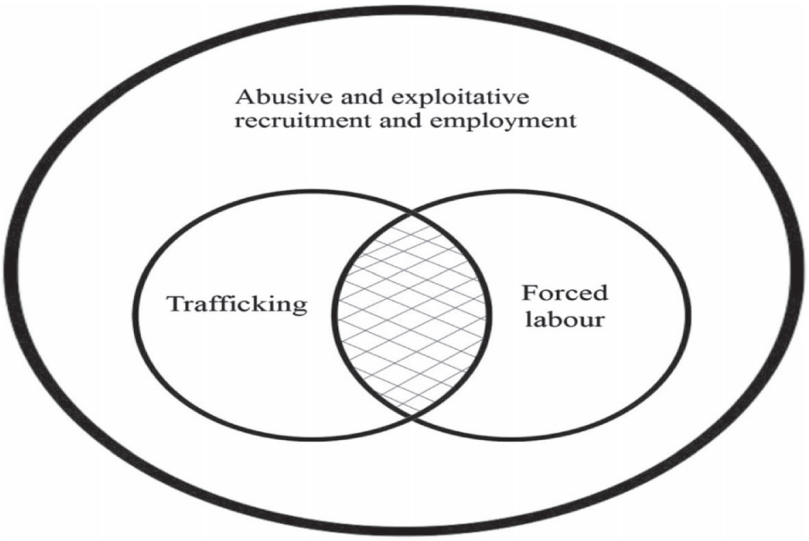

Fig. 1 Trafficking in human beings, forced labour and the exploitation of (migrant) labour (From [45]: 13)

penalty" (e.g., threats, coercion, using the person's dependency)[33] are partly the same. However, forced labour may exist without trafficking, and similarly trafficking may exist without forced labour. Both exist within a broader category of exploitation. The overall context of both labour trafficking and forced labour in a contemporary European perspective should therefore be defined as the exploitation of (mainly migrant) labour (Fig. 1).

In the context of abusive and exploitative recruitment and employment situations, the worst forms of abuse may fulfil the crime of trafficking for forced labour. It is therefore imperative to see trafficking for the purpose of forced labour as both a crime and labour concern and to engage both law enforcement as well as labour actors (such as labour inspectors and trade unions) in the fight against (labour) trafficking.

The criminalizing and securitising discourse: forced labour and trafficking as security concerns

In the negotiations on forced labour preceding the 1930 ILO Convention, forced labour was partly framed as a security issue: if (some) rights were not extended to the colonial labour force, there was a fear of global unrest that would unsettle the "peace and harmony" of the world. At the same time, the aim of the regulation of forced labour was to allow for the continuation of exploitation of the labour of the 'native peoples' in the colonies, so as to support the economic development of the colonising countries. The negotiations on the 1930 Convention thus reveal protectionist goals, i.e., protecting the Western labour markets from the unorganised colonial workforce. The same protectionism is evident in the current rhetoric that sees migrant workers as a threat to

[33] In 1979 the ILO Committee of Experts reaffirmed that the penalty does not need to be in the form of penal sanctions, but might also take the form of a loss of rights or privileges ([28]: 19 paragraph 21). In 2005, the ILO elaborated on the meaning of extracting labour "under the menace of a penalty", and listed six elements that point to a forced labour situation. These include physical or sexual violence, restriction of movement of the worker, debt bondage or bonded labour, withholding wages or refusing to pay the worker at all, retention of passports and identity documents, and threat of denunciation to the authorities ([32]: 20–1).

domestic labour markets and workers (e.g., [19, 74, 62]). Efforts to control migrant labour – and trafficking for forced labour – are thus based both on concerns for national security and on a fear of lower wages for Western labourers ([6]: 573–4). The prevention of the exploitation of (migrant) workers can therefore be seen to be only secondary to the interest of supporting the economy and protecting national workers against external competition ([19]: 38). While workers were initially to be protected from state-initiated forced labour, today the vast majority of perpetrators are private individuals and businesses.[34] The context of the exploitation has evolved, and also incorporates a migration dimension.

In the 1957 negotiations, forced labour was defined also as a means of discrimination. In the current understanding of forced labour in a trafficking context in a European setting most of the exploited workers are immigrants. As such, there is indeed an undercurrent of discrimination at play: they are discriminated against as immigrants in a society of closed borders, and discriminated against in terms of violations of their labour rights. Forced labour as a means of discrimination thus entails the intentional exploitation of the labour of certain groups of people.

The context of transnational organised crime and the protection of borders from perceived criminal elements and unwanted migrants framed the development of the Trafficking Protocol. This has strongly influenced the current securitised discourse that portrays trafficking as part of a broader security continuum, involving illegal migration, drug trafficking, terrorism, and organised crime (see [5]).[35] This also affects the way migrant labour is perceived and treated. In today's world, migrant workers become the focus of many contestations: they are on one hand wanted and needed, but on the other hand they are also a threat and a risk on many levels. The focus of the 2000 UN Trafficking Protocol on organised crime embodies this paradox: it emphasises the protection of (some) victims, while at the same time enhances the protection by States of their borders from unwanted migrants and organised crime. In the face of closing the borders to "crimmigrants" (see [1]), it becomes increasingly difficult to distinguish between "deserving" victims and "mere" exploited migrants. Haynes argues that the myth of "trafficked persons" versus "economic migrants" and the assumption that being one precludes being the other, obscures the true nature of the exploitation of migrants ([19]: 47–8). In reality, exploitation and trafficking are two sides of the same coin, taking place in the same context, with the only differences being in the degree of exploitation and in the definition.

Force and coercion or more subtle forms of control?

The definition of both forced labour and trafficking includes elements of consent or voluntariness. Already in the 1930 negotiations there were proposals to include elements that outline situations where a worker cannot withdraw himself or herself from the work ([24]: 10).[36] Unfortunately the idea that forced labour would include situations

[34] Ninety percent of the forced labourers are exploited in the private economy, by individuals or enterprises ([36]: 13).

[35] For a further discussion on trafficking in persons and the theory of securitisation, see e.g., [44].

[36] In later reports by the ILO Committee of Experts, it has been noted that one cannot offer oneself voluntarily under threat, and the constraints to a voluntary offer may result also from an employer's practice, e.g., where migrant workers are induced by deceit, false promises and retention of identity documents or forced to remain at the disposal of an employer ([33]: 20, paragraphs 38–39).

where the worker cannot stop working at his (or her) own will was excluded from the original definition. The fact that this was discussed already then shows a recognition of a more flexible interpretation that takes into consideration the circumstances of the work as defining forced labour, and not only the initial agreement to undertake the work or the penalties imposed on the worker. This is crucial for the contemporary understanding of forced labour: most migrants migrate willingly and voluntarily and it is the circumstances in which they find themselves in the destination country that define their situation as forced labour.

Both trafficked persons and migrant workers are individuals with the intention and strong will to change their life trajectories. What happens is that their goals are exploited and transformed into a coercive situation ([19]: 19). The voluntary offer to work or the consent to travel is irrelevant if the conditions in which the person consented or offered himself or herself are born out of desperation, and the conditions of the work in which the person ends up are exploitative. Forced labour should therefore not be defined on the basis of the worker's or victim's wish, will or consent to work, but on the basis of the forms and contract under which the labour is actually performed. The focus should be on the overall conditions that prevent the worker from leaving the exploitative conditions of employment.

Although the 2000 Trafficking Protocol negotiations emphasised force and coercion as defining forced labour, direct coercion is not necessary. Trafficking for forced labour does not necessarily need to include direct force or coercion but may instead include subtle forms of control such as salary discrimination, threats, psychological pressure, long working hours, control of the use of money, retention of passports, debt due to high recruitment and travel costs, and poor accommodation (see [46, 47, 71]). This keeps the workers in a position of vulnerability and dependency on the employer, actively preventing them from leaving their employment or seeking help. The USSR proposal in the negotiation of the 1957 Convention to include the effect of non-payment of wages show a recognition of the circumstances under which workers see no alternative but to continue working. The non-payment of wages is an effective means of hindering the worker from leaving the employment. The ILO has more recently argued that the menace or penalty imposed on the worker and the forms of coercion involved in situations where the worker is unable to freely choose to work can indeed be subtle. These more subtle forms of control and coercion include e.g., psychological threats, financial penalties, such as the non-payment of wages, and forms of deception ([32]: 5–6, paragraphs 14–15). According to the ILO, the payment of wages under the minimum level combined with exploitation of the worker's vulnerability also falls under the 1930 definition of forced labour ([33]: 72, paragraph 134). The 1930 definition of forced labour thus allows for a broad interpretation, just as the Trafficking Protocol allows for a broad understanding of the elements of vulnerability and dependency (or abuse of power). The implementation of the provision of trafficking for forced labour is therefore a question of will: who do we want to extend the right to be defined as a victim of trafficking for forced labour?

Moving away from a stereotypical notion of trafficking for forced labour

Sometimes it may be counterproductive to apply a trafficking perspective to instances of labour exploitation (see [78, 86]) due to the rigid interpretation of forced labour and

the focus on only some as deserving victims of trafficking. This article has highlighted that the definition of forced labour which was elaborated in 1930 is still used, despite the fact that it was developed in different circumstances, and despite the fact that it was not aimed at addressing the issues it is used to address today. Practitioners refer to the 1930 definition in the context of labour trafficking and find it difficult to interpret today. The analysis of the "evolution" of the definition of trafficking for forced labour indicates that the original 1930 definition cannot be interpreted too strictly in contemporary settings. Stereotypical images of forced labour and an inability to see the totality of the situation of the exploited migrants have hindered the identification of trafficking for forced labour [46, 47]. The understanding of trafficking for forced labour through stereotypical images of extreme exploitation may hinder the defining of serious forms of exploitation that (migrant) workers encounter in contemporary Europe as trafficking for forced labour (ibid.).

The current focus on identifying and assisting only the most extreme cases of exploitation further results in the normalisation of the harsh realities of exploitation experienced by exploited workers ([72]: 103). From a labour perspective, the difference between exploitation and trafficking is a matter of degree and not of kind. All forms of labour entail human commodification, and forced labour and trafficking are only its most extreme manifestations (ibid.: 110). However, situations of forced labour in contemporary contexts are easily considered as binary values: either a situation amounts to forced labour or it is not forced labour, with nothing in between ([75]: 16). In reality, however, situations of exploitation may be of different severity, and they may evolve and change over time. Labour exploitation can be conceptualized as existing along a continuum, with clear-cut forced labour cases at one end of the spectrum and more subtle forms of exploitation and coercion at the other end ([4]: 39).[37] All exploitation is not trafficking for forced labour. This should not, however, prevent us from identifying the different forms of abuse that take place along the continuum of exploitation.[38]

Legislation makes a distinction between trafficking and "mere" exploitation, although victims of both wrongs feel the same shame, pain, dislocation, lack of freedom, anger and humiliation ([19]: 23). From the worker's or victim's perspective, then, the experience is similar. Victims of both wrongs need to be extended the same rights, regardless of how their experience is defined in legal terms. From a victim's perspective, it is the degree of vulnerability and chance that leads from migration to trafficking and labour exploitation ([19]: 10). In order to combat both, we must empower those who are vulnerable to both forms of exploitation (ibid.).

What seems to be lacking from the prevailing approach to trafficking for forced labour is a rights-based approach. A labour paradigm that addresses the exploited workers' weak bargaining power, substandard working conditions and lack of workers' rights could help ([72]: 106). Exploited workers largely lack possibilities to improve their conditions while at work or to actively change their own situation. Protective employment laws, the elimination of practices that bind workers to specific employers,

[37] The continuum can also be visualized as a continuum of ideal conditions versus exploitation, with decent work at one end, and forced labour at the other [75]. Such a continuum portrays free will and voluntary labour at one end, and coercion and force at the other [59].

[38] In order to identify forced labour, it is important to see the totality of the situation of the exploited worker. Often only separate indicators of exploitation are seen. In identifying the different forms of abuse, concrete indicators that in detail outline the elements of exploitation may be helpful (see [32, 35, 38]).

and the prevention of contracts built on insurmountable debt could enhance migrant workers' agency and access to rights. (ibid.: 84; see also [19].)

However, there are several structural barriers to extending rights to migrant workers. Rights are costly and do not fit in the current economic neoliberal doctrine, where migrant workers who are in a precarious position give their labour but receive nothing in return ([18]: 98–9). If trafficking for forced labour is seen as a consequence of globalisation where trade liberalisation and restrictive immigration regimes together with a range of labour market practices lead to exploitation of the most vulnerable, trafficking for forced labour ceases to be seen as an exceptional situation but rather as the result of current policies (see [6, 72]: 107). What is needed is a new focus on the agency of the exploited migrant worker, one that understands that agency and exploitation are not mutually exclusive [19, 67]. One can be both an active agent making decisions, and a victim of trafficking for forced labour.

Labour migration is not likely to diminish in scale in the future. We therefore need to be able to acknowledge victims of all forms of labour exploitation, and provide protection to all in need, be they "ideal" victims or "less ideal" victims. Noting the fluidity of exploitation, a rigid interpretation of the definition of forced labour is not always useful in defining contemporary forms of trafficking for labour exploitation. Instead, a broad interpretation of forced labour is needed, one that places the lack of alternatives, rights, agency and difficulty in leaving one's employment at the centre of the understanding of what constitutes trafficking for the purpose of forced labour.

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II.

Ollus, Natalia and Alvesalo-Kuusi, Anne (2012). From cherry-picking to control: migrant labour and its exploitation in Finnish governmental policies. Nordisk Tidsskrift for Kriminalvidenskab, 3/2012, 375-398.

From cherry-picking to control: migrant labour and its exploitation in Finnish governmental policies

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Abstract

This paper examines the way in which the exploitation of migrant labour was portrayed in Finnish governmental policy documents during the years 1995-2012. The analysis shows that the promotion of migrant labour and the prevention of economic crime were both central themes of government policy during the period under scrutiny. Migrant labour, especially when skilled, was portrayed in government policies as a solution to the aging population and the demand for labour. Increased migration was also seen to involve certain risks and unwanted elements, though it was believed that these could be managed through control measures targeting unwanted immigration. The regulation of economic crime and the misuse of migrant labour were mainly addressed in the framework of problems related to tax revenue, fair competition and market function. The analysis shows that migrant labour is the subject of several levels of control, but that this control primarily serves to protect and secure the conditions of the Finnish labour market and ultimately the state. The harms and wrongdoings inflicted on individual workers were hardly addressed and the migrant workers themselves were not specified as objects for protection, i.e., as potential victims, in the tackling of economic crime. The paper argues that there is a need to move away from understanding labour violations solely in the framework of financial and fiscal harms, and to see labour exploitation as a crime that also violates the individual.

1. Introduction

The number of migrant workers in Finland has increased in recent years, although exact statistics are lacking (Hirvonen 2012). Simultaneously, the incidents of various types of exploitation of migrant workers have increased. Previous research has identified the restaurant, construction and agriculture sectors as venues where serious cases of exploitation of migrant workers have taken place. The known perpetrators are both Finnish citizens as well as people with a foreign background. The exploitation of migrant workers is multifaceted, ranging from salary discrimination and poor working conditions to isolation, threats and in rare cases even violence. At the worst, the exploitation experienced by migrant workers in

Finland amounts to trafficking for forced labour. (Jokinen et al 2011a; Jokinen et al 2011b.)

Many of the cases of exploitation of migrant labour brought to justice have concerned small-scale family businesses, where the exploiter and the exploited are part of the same ethnic group, and in some cases, even relatives or acquainted with each other. There have however, recently been media accounts of cases brought to the attention of criminal justice actors of exploitation of migrant workers in organised industries, such as the plastic and metal industries.

There is a lack of available information on the extent of the incidents, but qualitative studies, reports to labour unions, and the findings regarding the problems of control indicate that the vast majority of cases do not come to the attention of the criminal justice agents. If they come, many of them are not investigated or are considered under a more lenient crime title than would be possible. Cases may also be dealt with as financial crime, where the victim is the state or another corporation. (See Jokinen et al 2011a; Jokinen et al 2011b; Alvesalo-Kuusi et al forthcoming.)

However, there are indications of a recent shift in focus with the police increasingly investigating cases of serious exploitation. In 2006 the police and the Finnish border guard recorded 11 offences of extortionate work discrimination,[3] 2 offences of trafficking in human beings, and 4 offences of aggravated trafficking in human beings.[4] In 2011 the figures had increased substantially: 37 cases of extortionate work discrimination were recorded, 28 cases of trafficking in human beings, and 7 cases of aggravated trafficking in human beings. (Oikeusministeriö 2012, 37.) Until 2009 there were only a handful of persons annually sentenced for extortionate work discrimination. In 2009, 12 persons were sentenced and in 2010, 4 persons were sentenced for extortionate work discrimination (Statistics Finland 2006-2011). The first conviction for trafficking for forced labour in Finland were passed only in March 2012. To date, a total of 4 persons have been sentenced for trafficking for forced labour by Finnish courts of law.[5]

Regulating economic crime has been one of the priorities of crime control in Finland. Since 1996, the Finnish government has launched six action plans against economic crime and the grey economy. But crimes against migrant workers, and work offences in general, have played a minimal role in the context of economic crime enforcement. This reflects the conventional wisdom within criminology, to the effect that in the rare instances that regulation and enforcement does proceed against business offences then this tends to encompass "economic" as opposed to "social" offending. An elaborating example on the priority of economic harms over social harms can be seen in what happened in a special police

unit, the so called Illegal Migrant Labour Unit (IMLU). During its existence (2004-2008), only a fraction of the cases investigated by the unit involved crimes where the victim was a migrant worker. In other words, despite the specific aim of the unit, the IMLU neglected to investigate infractions by employers against migrant employees, and instead concentrated its investigative energies on crimes against the state (tax-evasion) or crimes against other companies (fraud). (Eskola & Alvesalo 2010.)

The underenforcement of crimes against migrant labour is not due to the lack of legislative tools: the Finnish criminal law includes several crime titles, where violations against migrant labour, or labour in general, are sanctioned.[6] But the enforcement of the law does not always follow its codification. The Finnish actors of the criminal justice system have had difficulties in constructing the crimes, in identifying the victims and they have been somewhat reluctant to recognise the exploitation of migrant labour as a legitimate target of police intervention. In addition, the investigation of such matters is not clearly allocated to specific police units, an ambiguity created by the organisation of policing ensuring that they are "nobody's property" (Jokinen et al 2011a; Jokinen et al 2011b; Eskola & Alvesalo 2010; Alvesalo-Kuusi et al forthcoming). Criminal justice agencies do not simply follow the letter of the law, but enjoy a large measure of discretion within the law. The police, through their activities, have their role in defining who may and may not be criminalised; the practice of policing itself contributes to developing common-sense assumptions about what and who are the legitimate objects of crime control. (Lacey 1994; Alvesalo & Whyte 2007; Loftus 2009.)

The underenforcement of corporate crime in general results from a combination of a general lack of political priority given to regulation, and of the dominant ideological assumptions that underpin the regulation of business. Macro economic and political factors may play an important role in shaping the criminal justice agents world-views and influence the possibilities and willingness for effective enforcement (Tombs & Whyte 2007, 164.) The level and intensity of state commitment can be decisive in shaping collective perceptions of crime and shared understandings of the risks of and harms caused by criminal behaviour (Barak 1994). Police as government agents are trusted with the enforcement and therefore influenced by political priorities (Alvesalo & Tombs 2001).

The regulation of exploitation of migrant labour in Finland takes place in the context of the ideological and political framework of labour market, immigration and crime policies as well as in a historical continuum where especially EU policies influence actions taken. In this paper we will look empirically at how migration, migrants and the exploitation of migrant workers are portrayed in govern-

mental policy documents during the years 1995-2012. The empirical data was derived from an analysis of key governmental documents from these years (see the list of references).[7]

We look at how the issues of exploitation of migrant labour, economic crime, and trafficking in human beings for the purpose of forced labour emerged and merged in the government programmes and policies. We outline how the migrant (workers) were perceived in general; how the exploitation of migrant labour was portrayed; how the exploitation of migrant labour was linked to economic crime; how migrants were perceived as criminals and as victims, and; how and if these perceptions have changed over the years.

Our starting point is that the actions and inactions of the police and other control authorities, and state regulation in general, can only be comprehended within a broad recognition of social forces. These forces need to be identified and their dialectical relationships traced and understood. (see e.g. Snider 1991). Before presenting the results of our analysis, we present a short history of the development of Finnish migration policy. We also discuss how the exploitation of migrant labour can be understood as corporate crime and how this conceptualisation and analysis thereof could help understand the current underenforcement of these incidents.

2. Exploitation of migrant labour at the nexus of movement and control

The Finnish refugee and immigration policy lacked clear rules, aims and comprehensive planning until 1997, when the first Government programme on migration was approved. Simultaneously, stemming from the shifts in the international order, the issue of immigration became framed as a question of threats to internal security, and measures became more controlling, especially concerning asylum seekers. (Salmio 2000.)

The representatives of employers were already in the 1970's raising concerns about the potential lack of labour in Finland.[8] At the time, the arguments mostly focused on the need to attract emigrated Finnish citizens back to the motherland. The recession of the 1970's terminated this discussion. The need for foreign labour was raised again at the turn of the 1980's and 1990's, but again the plans were put to a halt due to the recession in the early 1990's. (Forsander 2002, 20-21.) The recession also changed Finnish labour markets with the status of less valued jobs decreasing and income disparities increasing, and unstable jobs becoming more common (Salmenhaara 2008). The approach towards migration does not come about in isolation, but is tied to developments in the international community. Finland's immigration policies and related regulation have for the

last 20 years been strongly influenced by international obligations – especially by the European Union – rather than internal needs or pressure (Forsander 2002; Forsander et al 2004.)

Proactive labour migration was introduced in Finland as a government policy in 2006, and migrant labour was considered the solution to the labour demand. Critical voices against migration in general (especially regarding the costs relating to asylum seekers and refugees) did exist also in the past (Salo 2005), but the local elections in 2008 politicised the issue of migration to a level that had not been experienced before (Simola 2010; Keskinen 2009). In recent years the discussion has focused especially on *managing* migration (Vuokrikuru 2012). Labour migration by default inherently is full of contradictions and encompasses people with different backgrounds and reasons for their migration and is thus difficult to manage and control (c.f. Himanen & Könönen 2010, 96-97).

The number of international migrants in the world has grown over recent years and is expected yet to increase in the near future as the labour force is rapidly growing in less developed countries (IOM 2010). The ageing population and the increasing dependency ratio in the developed world simultaneously create an increased need for migrant workers in Europe and also in Finland (see e.g. European Migration Network 2011; Liukko 2010). The need for labour migration is a rhetoric, promoted by the EU (e.g. Hansen 2010, 91). While measures have been undertaken to promote certain forms of labour migration, other measures have been implemented to protect the external borders from unwanted migrants. The increase in irregular migration into the European Union is a result of labour market demand for cheap and flexible labour, and this labour, provided by irregular migrants, has become a structural necessity (Hansen 2010, 90). In connection to this, there also seems to be an idea of a causal link between immigration and the perceived threats posed by crime, deviance and conflict related to uncontrolled immigration (see Albrecht 2002). The European Union's efforts to develop a common immigration policy illustrate both aspects: legal immigration is to be promoted, but should be based on an assessment of needs in the EU labour markets, while illegal immigration is to be prevented, with zero-tolerance for trafficking in human beings (European Commission 2008; 2011). The control measures however have been criticised for having had little effect, leading to the conclusion that perhaps it is the means of management, rather than the phenomenon of migration itself, which is the main problem (Forsander et al 2004, 81). All in all it is evident that EU policies help separate migrants into wanted immigrants and immigrants considered unwelcome (Albrecht 2002; Chou 2008; Hansen 2010; Hud-

son 2007). This division may also affect the way the police and other control authorities act.

Although the EU aims at restricting illegal entry, EU policies in fact enable increased irregular migration, much at the cost the migrants themselves (Hansen 2010). The ambiguity regarding the role and status of the migrant worker is closely connected also to the ongoing discussion regarding migrant labour in Europe, where the migrants are regarded both *a* risk and *at* risk (see Aradau 2004). Within the Finnish criminal justice system the former seems to be emphasised over the latter; migrants are rather constructed as suspects than victims (Alvesalo et al forthcoming).[9]

Migrants have become at risk particularly as a result of the segregation of work and labour markets. Neo-liberalism and economic deregulation have lead to an informalisation of the economy also in countries with formerly highly regulated labour markets. Subcontracting, temporary work and the casualization of labour move work from the formal to the informal economy. (Castles 2012, 13-14.) The more difficult it is for migrants to obtain legal work and legal (work or residence) permits, the more likely it is that they turn to illegal employment and criminality, thus confirming the prejudices against them (Enzensberger 2003).

The exploitation of migrant labour falls under the criminological category of corporate crime. Corporate crimes are illegal acts or omissions, which are the result of deliberate decision making or culpable negligence within a legitimate formal organisation, most commonly limited liability companies. The exploitation of migrant labour consists of economic misuse, unfair labour practices and violent corporate illegalities, such as unsafe working conditions. Criminological literature includes interesting analyses on the underlying factors behind the invisibility of corporate crime, on why and how it is not treated as crime. Corporate crime in general is excluded from criminal policy and enforcement by a range of mutually re-enforcing political, ideological and structural factors.

Certain forms of corporate crime, most notably financial crimes and serious fraud in particular, have been more likely to be subject to demands for effective regulation than health and safety and environmental crimes, for example (Slapper & Tombs 1999, 87). Snider (2000, 172) has differentiated "financial crimes" from "social crimes" in that the former victimises the financial markets, competitors and consumers and in the latter, the primary victims are employees and the general public. It has been argued that the reason for the interest in financial crimes is that they, unlike social crimes, threaten the effective functioning of capitalism (Punch 1996, 39; Levi 1993, 79). In turn, to define social crimes, e.g.

crimes of the employers against (migrant) employees as targets of official crime policies may jeopardize the effective functioning of capitalism.

At the same time however, the current economic order – supported by deliberate economic policies – is creating an increased demand for cheap and flexible labour and this very labour is increasingly provided by migrants, contributing to an increasing segregation of labour markets (see e.g. Hansen 2010; Castles 2012). The segregation in turn, may promote exploitation of (migrant) labour as well as the growth of the grey economy. Crime control policies, regulation and the actions (and inactions) of the police thus exist in a crossfire of contradicting aims and priorities.

In many EU countries the cheap and flexible labour provided by irregular migrants has become a structural necessity (Hansen 2010) and it may well be that the regulation of the use – not to mention misuse – of such labour is not raised high on the political agenda. According to Snider (2000, 171), states compete over global capital by offering the highest corporate subsidies, the lowest taxes and costs of labour and the weakest level of corporate crime regulation. When left to its own devices, the state will not provide enforcement at the level required by its own legislation and that it will settle into providing a level of enforcement the target can live with (Snider 1991, 211). The underenforcement of corporate crime results from a combination of a general lack of political priority given to regulation, and of the dominant ideological assumptions that underpin the regulation of business. Under neo-liberal conditions of de-regulation and privatisation, punitive enforcement is not perceived as a feasible option. Macro economic and political factors may play an important role in shaping the criminal justice agents worldviews and influence the possibilities and willingness for effective enforcement (Tombs & Whyte 2007, 164.)

We will next turn to presenting the results of the analysis of Finnish Government documents to show how the of exploitation of migrant labour, economic crime, and trafficking in human beings for the purpose of forced labour emerged and merged in the government programmes and policies over the period of 1995-2012.

3. Exploitation of migrant labour and the grey economy in Government documents 1995-2012

3.1. Picking cherries and strengthening the skills matrix of the population

The government documents, especially at the beginning of the period under scrutiny, portrayed migrant labour as a solution to the threat posed by the (perceived) labour shortage in Finland. In light of the rather uncoordinated and restrictive mi-

gration policy of the past, the first Finnish government programme on migration and refugees of 1997 introduced the idea of regulated but wanted migration. In a controlled manner, Finland was to cherry-pick the positive aspects of globalisation, consequent migration as well as Finland's new membership in the European Union. "*Finland shall purposefully utilise the positive aspects of this development while minimizing its negative effects as far as possible"* (MIG 1997, 1). Skilled and exceptionally competent migrants were to be favoured, with work permits to be issued mainly for "*professional labour and for work that requires skills*" (MIG 1997, 10). In addition, temporary and seasonal migration was also to be enhanced through exchange of internships, for example (MIG 1997, 11).

The idea of migrant labour as a solution to Finland's future adverse population structure was further emphasised at the turn of the millennium. Together with a focus on economic growth, the challenges caused by the aging population were key features of the government programmes on both sides of the millennium. Contrary to the previous programme, the government foresaw that an active, comprehensive and consistent immigration policy was to solve the problems of gaps in skills and labour demand. In 2003, the government in its programme called for measures to enhance the labour supply, through *"preparing to receive also foreign labour"* in the future (GP 2003, 9). The demographic development was seen lead to "*a completely new situation*", which could only be resolved through increased labour migration. *"When the dependency ration so presumes, the government will promote a policy of labour migration"* (ibid., 22).

A shift in the approach towards migrant labour can be traced during this period: the government was increasingly promoting an active migration policy (MIG 2006) to support a positive employment development and a stable economic policy (EMP 2003/2006). At the same time, the idea of "cherry-picking" skilled labour to fill gaps among the population was still present. *"The immigration of foreign employees and their family members shall be promoted to safeguard the availability of a skilled workforce and strengthen the skills matrix of the population"* and *"immigrants can help ease the shortage of labour, widen the skill-base and make innovations"* (MIG 2006, 2; 4). Although the programme for the first time introduced active immigration efforts as a solution, the cherry-picking also included an element of control: only certain migrants were wanted. Control of who was to be allowed to come to Finland was to be achieved e.g. through cooperation with countries of departure (MIG 2006, 5).

Towards the end of the period under scrutiny, the reduction in the active labour force due to the aging population was already considered a reality, and not just a future threat. Labour migration was to be consciously increased to fill gaps

in skills and supply (GP 2007, 11) and foreign labour was portrayed as a *commodity* that could easily be acquired (EMP 2007, 4). The government prepared a specific action plan on labour migration in 2009. The action plan indeed portrayed labour migration as a solution to many problems in Finland, but there was also clearly a much deeper recognition of the necessity to consider all consequences of labour migration. The action plan maintained that more foreign workers are needed in the future especially in the service, social and health sectors, but that it was impossible to know the real need (LMIG 2009, 12-13). This idea of needs-based migration was emphasised also in the latest government programme from 2011. The vision of the current government is that fiscal sustainability will be improved through increased productivity, higher birth rates, and *"more work-based immigration based on a genuine demand for labour"* (GP 2011).

Integration of migrants, particularly asylum seekers and refugees, was officially introduced in the 1997 migration policy as a solution to ensuring that migrants or refugees incorporate into Finnish society with equal rights and responsibilities compared to other citizens. The migration programme mentioned that a law on asylum seekers and the integration of migrants was to be prepared. (MIG 1997.)[10] Most of the integration measures however focused on asylum seekers and refugees. The need to incorporate also labour migrants into society was raised in the immigration programme of 2006, which noted that immigrants should not be considered "*merely an instrument for solving a problem*" (MIG 2006, 4). The programme highlighted the need for integration support not only for refugees and asylum seekers, but also for labour migrants and their families, including information on rights and responsibilities, working life and the rules of play, housing, education and training and factors needed to cope in everyday life (MIG 2006, 18-21).

3.2. Illegal versus legal migrants and control as a fix-it all

As described above, the government documents called for skilled and competent migrant workers, but not all migrants were seen to fulfil the categories of desired and wanted migrants. Throughout the time period under scrutiny, there is juxtaposition in the documents between illegal and legal migrants. There is a clear distinction to be seen where certain migrants are wanted, while others, especially illegal immigrants, pose a threat. This is furthermore in the documents framed in the context of an external threat. Illegal migration is additionally portrayed as a phenomenon linked to organised crime, lead by or connected to international crime groups or foreign crime organisations.

As a new member state of the EU in the mid-nineties, Finland wanted to promote openness, human rights and also the free movement of citizens. But at the same time, there was a perceived need to prevent the threats caused by transnational organised crime and illegal immigration related to this increased movement. (MIG 1997, 1; 8.) Few concrete measures on how to prevent unwanted movements were suggested in the migration policy document apart of international cooperation and clear visa regulations.

The increasing number of foreign people in Finland, especially due to deficiencies in border control, was portrayed as a threat to security in the Internal security programme 2004-2007. In the section addressing border control, the focus was on scrutinizing the problems and prevention of undocumented individuals or the misuse of asylum and refugee regulations as well as false marriages (ISP 2004).

Trafficking in human beings became a (government) concern in the early 2000's. The first national action plan against human trafficking of 2005 portrayed an increasing threat: illegal entry to and through Finland was seen to be on the rise with serious and organised crime increasingly involved. Internationally networked criminal organisations were considered efficient and well-coordinated, and this would lead to more potential victims who end up in prostitution or working for construction companies that use illegal labour (HUM 2005, 30). The plan seemed to mostly be concerned with risks related specifically to *illegal* foreign labour. "*Through active labour protection measures the risk sectors in relation to illegal foreign labour, unjust treatment or discrimination will be monitored"* (HUM 2005, 15). Accordingly, the first Government Migration Policy Programme 2006 made a strong link between "*illegal employment of foreigners and organised operations in the informal economy",* including tax evasion, and violation of minimum working conditions (MIG 2006, 39).

Trafficking in human beings can also take place in the context of fully legal employment. The Internal security programme of 2008 made this point: while paperless victims were considered the most vulnerable, not all victims are paperless, and also those with working-permits may become victims. Trafficking is thus not always connected to smuggling of people or illegal immigration. (ISP 2008, 48.) This is an important realisation, and unlike the other documents, the focus was moved away from organised crime and illegal employment.

However, the prevention of illegal entry and the related threat posed by organised crime seems to be a continuous thread in the programmes. The Government programme in 2007 emphasised that legal immigration was to be increased and illegal immigration and trafficking in human beings prevented (ibid., 22). Also

the internal security programme pointed out how the amount of organised crime has increased. Crime lead from "elsewhere", including illegal immigration was defined as a threat and organised crime was defined as a key actor in the field of economic crime and traditional crimes against enterprises (ISP 2008, 11; 34). Also*, "[i]llegal immigration into the European Union has continued apace and is increasingly connected to international organised crime, such as human smuggling and human trafficking"* (ISP 2008, 13; 50). However, the programme stated that the enlargement of the EU has not increased the volume of human smuggling, illegal entry, or transit traffic through Finland, since *"Finland is traditionally not an attractive final destination for illegal immigrants"* (ISP 2008, 49; 51).

While migrant labour is in the documents presented as a solution to a threat to Finnish society – aging population, lack of labour – it is a solution that potentially itself also poses a threat to society – through the undermining of overall labour conditions – unless it is properly monitored and controlled. A common theme in several programmes is the improvement of the monitoring of labour conditions and terms, including those of migrant labour and posted workers (GP 2003, 22; EMP 2003). The control measures included the establishment of the special police unit (IMLU) (ISP 2004; HUM 2005). The role of labour inspectors in controlling the conditions of migrant labour was mentioned in several programmes (HUM 2005; MIG 2006; HUM 2008). It is however only in the most recent government programme that the Government stated that the role of labour inspectors was actually to be strengthened (GP 2011, 15; 66).

The documents also emphasise that control is not only to be implemented by authorities. In terms of human trafficking, labour organisations should be made sensitive to notice the possibility of human trafficking (HUM 2005, 11). More raids were called for especially in risky sectors such as the restaurant and cleaning sectors, where human trafficking cases easily remain univestigated (ibid. 53). Trafficking was to be prevented effectively through increasing control by authorities and by making users responsible, such as employers (HUM 2005, 13; 45).

3.3. Linking the exploitation of migrant labour to economic crime and the grey economy

The documents portray migration as involving certain risks, which can be managed through control measures. The documents frame migration often in the context of an external threat and portray it as a phenomenon linked to organised crime, lead by or connected to international crime groups or foreign crime organisations. The realization of control measures in the framework of economic crime emerged gradually in the new millennium.

Since 1996, the Finnish government has launched action plans against economic crime and the grey economy (EC action plans). In all of the six EC action plans, emphasis is laid onto financial crimes i.e. economic crimes against the state (tax-evasion) or crimes against other companies (fraud). The chief arguments for control measures throughout all EC action plans are those to protect the markets, ensure fair competition, promote honest business and secure the state's incomes. The recognition of social crimes, where the objects of protection are employees, consumers and the general public, are in a marginal position. However, the second half of the time period under scrutiny (1995-2011) witnessed some recognition of social crimes and the exploitation of migrant labour in the context of economic crime and grey economy.

The first Government programme (GP 1995) under scrutiny promised that Finland would participate in the development of EU norms to improve labour and social protection, and that Finnish labour conditions would be applied to work carried out by foreigners in Finland. However, the first governmental EC action plan (EC 1996) had no reference to crimes against employees in general and migrant labour was not included with reference to crime or the grey economy. The second (EC 1999) and third (EC 2002) EC action plans recognised crimes against employees in the appendixes of the plans. The project lists of the action plans included some measures, e.g. a comprehensive debriefing on safety and environmental crimes and their control mechanisms. It was also mentioned that the health and safety officials, in their regulatory work, would more actively take economic crime into account. Hence, there was some recognition of crimes against employees in the context of economic crime but exploitation of migrant labour was not addressed.

Despite the minimal role of migrant labour in the EC action plans, recognition of the role of migrant labour in the context of economic crime and the grey economy could be found in other governmental documents in beginning the millennium. The Government programme of 2003 linked the grey economy with labour policy. As in previous government programmes, the prevention of economic crimes and the grey economy were also included as a priority under the heading of legal policy and safety of citizens. As was required in the programme, a working group was established (Ulteva 2), addressing subcontracting, temporary and agency work.[11] In 2004, the Internal security programme (ISP 2004) raised economic crimes, together with violent crime and drug offences, as one of the main crime categories. Tax-evasion, crimes of the debtor and book-keeping crimes were named as the most relevant economic crimes. One of the ten measures against *economic crime* suggested in the programme was to control the terms of

work of foreign labour more effectively. It was stated that the use of migrant labour had increased and lead to a partial bifurcation in the labour market, especially in agency work (ISP 2004, 42)

Coming into the new millennium, economic growth and employment were again the key priorities of the government. The prevention of the grey economy had become more prominent, especially as economic criminals were portrayed as more professional and organised. From 2005 onwards a common thread in the documents was the connecting of organised crime, internationalisation, and the increase in economic crime. In the programme on criminal policy for the years 2007-2011, globalisation and the free movement of capital and labour were anticipated to cause challenges. It was also predicted that crimes in the working life and environmental crimes would get more attention in the future (CP 2007, 15). Migrant labour was recognised as having an impact on economic crime control: "*the expanding use of grey and foreign labour has affected the working environment of the officials significantly"*. (EC 2010, 2)

The documents addressing migration policy and human trafficking also connected migration with the grey economy. The documents make strong links between illegal employment of foreigners and organised operations in the informal economy, including tax evasion, and violation of minimum working conditions. The first national action plan against human trafficking (HUM 2005) saw the expansion of organised criminal activities as a threat, and predicted that the victims of labour-related trafficking were expected to enter the *"dark labour market"* (HUM 2005, 30). The plan also links the grey economy to posted workers (HUM 2005, 15, 53-55).

The problems related to posted or agency work, were raised in many of the documents since 2005. Hand in hand with these precarious forms of employment, tax issues regarding the use of foreign work were addressed. The documents handled agency work and posted workers particularly in the framework of tax revenue, not addressing the harms and wrongdoings inflicted on individual workers.[12] In the Government Programme 2007-2010, the prevention of the grey economy was mentioned in conjunction with taxation policy but it was not explicitly included under the section dealing with legal policy (GP 2007, 14). The following government prioritised several concrete measures, including the enhancement of the obligation for posted workers to pay taxes (GP 2010, 4). In line with this, the proposals referring to foreign labour in the economic crime action plan concentrated on tax-issues and on the possibilities to control the employers' compliance with the minimum standards of employment and labour law in the use of foreign agency work. The use of agency work was predicted to raise into daylight new

forms of crimes (EC 2010). The latest EC action plan made proposals to broaden officials' rights to access information. It emphasised how "*the obligations and rights concerning taxation should be the same for all employees living in Finland"* (EC 2011, 6).

The prevention of the grey economy is one of the key priorities of the sitting Government (GP 2011, 15). This Government programme, for the first time, includes a separate section on the prevention of the grey economy. Economic crime and the grey economy are portrayed as major threats to society: the volume has increased and it has become more international and organised. The rationale behind this enhanced focus is the fact that the government debt burden could be reduced through increased funds received through taxes and social fees (GP 2011, 7; 15). The introduction of the obligatory tax number for each employee at construction sites is also mentioned, as is the intention of the Government to assess the functioning of existing regulation of migrant labour (GP 2011, 16). Compared to all other documents, the latest Internal Security programme also opens a new approach to address grey economy by handling it in also the context of safety at work. The documents emphasises the vulnerability of the grey labour force and also makes reference to the HEUNI research[13] on the exploitation of migrant labour. (ISP 2012, 8)

3.4. Migrants as criminals and eventually as victims of crime

Even though the second half of the time period under scrutiny witnessed some recognition of social crimes and the exploitation of migrant labour in the context of economic crime and grey economy, and some recognition of migrants as victims of unfair labour market practises or economic misuse, it is interesting that migrant workers are seldom framed as *victims* of economic *crime*. The emphasised harms caused by the unwanted phenomena, i.e. misuse of foreign labour, are those inflected upon the state or fair competition. The chief arguments for control measures and actions against economic crime are those to protect the markets, ensure fair competition, promote honest business and secure the state's incomes.

Individuals in general, and migrants in particular, are seldom raised as the object of protection, as victims, in tackling economic crime. When discussing *crime* problems and victims of *crime*, focus is often laid on other issues, such as migrants as criminals, transnational and organised crime and racist crimes, but not on foreigners or migrants as victims of economic crime.

The first national general crime prevention programme (CP 1998) lacked reference to economic crime in general, and migrants as victims of labour exploita-

tion were not mentioned. The main point of view regarding migrants was to prevent the criminality committed by migrants by minimizing their risks of social exclusion. It was emphasised, for example, that it is important to improve the possibilities of employment of vulnerable groups such as ethnic minorities (CP 1998, 22). The prevention of racist crime was also seen as important (CP 1998, 18). Six years later, the internal security programme (ISP 2004) saw advanced integration as a way to prevent racist crime on the one hand, and crimes committed by immigrants on the other (ISP 2004, 26). An indirect reference was made to migrants as victims of economic crime, as it was mentioned that the crime title extortionate work discrimination had been added to the Penal Code.

In 2005 the action plan against human trafficking portrayed labour trafficking taking place mostly in the so called dark labour sector (HUM 2005, 30). The plan noted that indications of exploitation of labour have been noticed in restaurants managed by *foreign persons* and on construction sites. The foreign origin of exploitation was present also in that Finland was considered a transit and destination country for hundreds of victims of both sexual exploitation and for the exploitation of labour (25).

The two national action plans to prevent trafficking in human beings established the right of victims of trafficking to receive state-sanctioned support and assistance. Both documents contained specific sections on the organisation, funding and principles of assistance to this group of victims (HUM 2005; HUM 2008).[14] The government programme of 2007 mentioned that non-governmental organisations that engage in outreach and counselling to victims of human trafficking would receive governmental funding (GP 2007, 22). The most recent government programme highlighted the need to protect victims and enhance their protection under the law and also suggested that services to immigrants and victims of trafficking should be improved (GP 2011, 26; 51).

In the general programme on criminal policy for the years 2007-2011, it was predicted that the amount and forms of crimes committed by foreigners would increase, and this would cause racist reactions. Similar concerns on racism were brought forward in the internal security programme in 2008. *"An increasing number of socially excluded people may, in the worst case, lead to a toughening of attitudes towards ethnic minorities and even to an emergence of isolated sub-cultures, both among the majority population and among ethnic minorities. So far, apparently no such sub-cultures have emerged in Finland. However, developments abroad have shown that the social exclusion and deprivation of ethnic minorities may lead before long to problems with major repercussions for society as a whole* "(ISP 2008, 9). This programme raised a new threat regarding immi-

gration: the section of terrorism highlighted that radicalization and terrorism may develop amongst immigrants. These threats were also raised in the latest Government programme in 2011.

The internal security programme of 2008 emphasised integration and included its own section on improving the safety of immigrants and ethnic minorities. This included measures such as access to security services and also measures against identifying and reacting against racist crime. (ISP 2008) The latest Government programme also states that it will work "*purposefully against racism and discrimination*" (GP 2011, 3). Accordingly, the latest programme for internal security (ISP 2012) raised racist crime as its own theme in the threat assessment. Interestingly, safety at work, labour exploitation or human trafficking are not addressed in the section on improving safety of immigrants (ISP 2012, 26; 29).

4. Conclusions and discussion

The analysed government documents show that the promotion of migrant labour was a central theme of government policies during the period under scrutiny. Skilled, mobile labour was to be hand-picked to solve national gaps in skills and the labour supply. Beginning from the early 2000's, the promotion of labour migration was presented as a solution to the threat posed by the aging population, the perceived decrease of active labour force and thus a future adverse economic development. Migrant labour would help Finland grow and prosper and efforts were to promote easy entry of wanted and needed migrants.

At the same time, the freer movement was anticipated to attract illegal elements, including illegal immigration and organised crime. Migration was portrayed as involving certain risks, which could however be managed through control measures, especially at the borders, so as to promote the wanted migrants, while excluding the unwanted migrants. This approach towards migration did not come about in isolation, but has been influenced by international obligations rather than solely internal needs or pressures (Forsander 2002).[15]

In addition to controlling the external borders, the documents also picture another level of control, that of controlling the terms and conditions of work of foreign labour. The documents show a growing realisation that migrants may be subject to labour conditions that do not fulfil Finnish standards, and this in turn, may undermine the labour market in the country, thus posing a threat to Finnish workers (Alho 2010; Simola 2010; see Engblom 2010 for a similar discussion in Sweden). The government documents also imply that ultimately this is leading to a bifurcation of the labour market. Migrant labour is pictured as a solution to a

threat to Finnish society, but as a solution that potentially also poses a threat to society unless properly monitored, managed and controlled.

The documents illustrate several levels of control, including the migrants' entry into the country, the migrants' existence and work in Finland, and the labour market itself. The various levels of control of migrant labour all serve to protect and secure the conditions of the Finnish labour market and ultimately the state. What seems to be lacking is a simultaneous awakening to the idea that the dual labour conditions in particular also mean that migrant labourers are themselves the targets of misuse and even exploitation. Furthermore few, if any, of the documents seem to consider labour migrants as individuals who may or may not wish to remain in the country, and who may want to become part of the society they work in. As Hansen (2010, 98-99) has pointed out, substantial rights are costly and fit badly in the current economic neoliberal doctrine, giving rise to the precarious and rightless position of migrant workers where they give their labour but receive nothing in return. Incidentally, the need for integration measures for labour migrants is raised only towards the end of the period under scrutiny.

In the second half of the time period under scrutiny there emerged some awareness of the exploitation of migrant labour in the context of economic crime and grey economy. But as has been pointed out by Slapper & Tombs (1999, 87), regulation and enforcement tends to encompass "economic" as opposed to "social" offending. In the overall picture social crimes had a marginal role in the policy documents. Furthermore, economic crime in general and also the misuse of migrant labour were overwhelmingly addressed in the framework of problems related to tax revenue, fair competition and the functioning of the markets. Even though there was some recognition of migrants as victims of unfair labour market practises or economic misuse, the harms and wrongdoings inflicted on individual workers were hardly addressed, and migrants were seldom constructed as victims of economic crime. Migrant or foreign labour was lumped together and implicitly constructed as a commodity, which should be used in ways that does not cause harms to the Finnish labour-markets, Finland's tax revenue or Finnish companies.

Individuals in general, and migrants in particular, are seldom raised as the object of protection, as victims, in tackling economic crime. The victims of inappropriate use of migrant labour are the Finnish society and the markets. When discussing *crime* problems and victims of *crime*, focus is laid on other issues, migrants as criminals, transnational and organised crime and racist crimes, but not on foreigners or migrants as victims of economic crime. If victimhood was discussed in the Government documents, it was often emphasised that the exploitation of migrants is often transnational, organised, lead from abroad or happens in

the "dark", informal sector. "Honest" Finnish companies as possible perpetrators of exploitation were not mentioned in the documents.

The documents addressing human trafficking formed a clear exception to how victimhood is understood. Trafficking in human beings was in these documents portrayed as a serious crime, with the subjects of this crime entitled to state-sanctioned support and assistance. In the documents trafficking was initially linked to illegal migration and organised crime, and thus, to unwanted migration. This linkage constructs trafficking victims as a consequence of illegal or unwanted immigration rather than as solely a category of victims of crime. Lee (2011, 60) points out that victims of trafficking are seen as both victims and as irregular migrants, at the same time being both at risk themselves and risky to the state, and thus to be "rescued" through state interventions, all taking place in an immigration control framework. The identification of victimisation among exploited migrant workers – and ultimately trafficking for forced labour – is complex and raises questions of who is to receive (the rights of) victimhood.

Overall, the documents portrayed migrants both *a* risk and *at* risk (see Aradau 2004). They are a risk as both importing organised crime and also as committing street crime. They are also a risk as a potentially socially excluded group, which in turn may lead to more criminal sub-cultures and even terrorism. Racist crimes are raised as a major risk with which migrants are confronted. But in some way becoming a victim of racist crime is, in some of the documents, seen as a consequence of the migrant populations' social exclusion and deprivation. This reasoning implicitly blames the victim: if you do not integrate or get employment, you may be subjected to racism and other problems with major repercussions for society as a whole.

Our previous research has revealed that even thought there exits a structural readiness in terms of legislation to tackle exploitation, the Finnish actors of the criminal justice system, specifically the police and prosecutors, have had difficulties in constructing the crimes and in identifying the victims. They have been lacking the conceptual readiness and an understanding to recognise the exploitation of migrant labour as a legitimate target of police intervention. (Jokinen et al. 2011a; Jokinen et al 2011b; Alvesalo et al, forthcoming.) Even the special police unit (IMLU) especially established to investigate illegal migrant labour neglected to investigate infractions by employers against migrant employees, and instead concentrated its investigative energies on crimes against the state (tax-evasion) or crimes against other companies (fraud). (Eskola & Alvesalo 2010.)

Our analysis of governmental documents may offer some explanations to our previous findings. Policies laid down by governmental programmes and the por-

trayals of problems constructed in them, may play an important role in shaping the world-views of criminal justice agents and influence the possibilities and willingness for effective enforcement (Tombs & Whyte 2007, 164.) Furthermore, the current economic order – supported by deliberate economic policies – is creating an increased demand for cheap and flexible labour, which is increasingly provided by migrants (Hansen 2010; Castles 2012). This in turn, is contributing to an increasing segregation of labour markets, which promotes both the exploitation of migrant labour in particular as well as the growth of the grey economy in general.

Control authorities, such as the police, act in the context of contradicting policies, aims and priorities. Political priorities as well as international obligations affect the development of enforcement, legislation, and ultimately concrete enforcement. Exploitation of migrant labour is a multifaceted phenomenon: while the migrant worker may end up in an exploitative labour situation largely as a result of structural reasons, from a control policy perspective the migrant worker embodies several threats to society. As such, he/she is not primarily constructed as a *victim* of a crime.

In order to address the exploitation of migrant workers both on the structural as well as the personal level, there is a need to move away from constructing labour violations solely as crimes against the state, and see labour exploitation as a crime violating also individuals. The recent increase in cases of exploitation coming to the attention of control authorities as well as the increasing recognition of the vulnerabilities of especially precarious migrant workers, will hopefully lead to the understanding of these infractions as crimes also against individuals.

Notes

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3. The offence of extortionate work discrimination was introduced into the Penal Code in 2004 in order to tackle the grey economy and the misuse of migrant workers.
4. The figures include both trafficking for sexual exploitation as well as trafficking for forced labour.
5. Helsinki District Court 30.3.2012; Pirkanmaa District Court 29.6.2012.

6. The provisions of chapter 47 of the Penal Code dealing with labour offences are the most relevant, including the work safety offence (1 §), the working hours offence (2 §), work discrimination (3 §), extortionate work discrimination (3 a §), the employment agency offence (6 §), and the unauthorised use of foreign labour (6 a §). Chapter 25 of the Penal Code includes the crime of trafficking in human beings, including for the purpose of forced labour.
7. We only included documents that had been commissioned and approved by the Government, and were part of the overall government policies at the time. Many ministerial-level programmatic documents were thus left outside of the scope of this analysis. The documents can be divided into six main categories: overall government programmes outlining the priorities of the government at the time; economic crime programmes; crime prevention programmes; migration policy programmes; labour policy programmes, and; programmes to prevent trafficking in human beings. We first read through all the documents (close reading) and prepared summaries of the main points relating to our research questions. We then prepared a summary of the documents in chronological order. After this, we reviewed the themes that emerged from the documents and grouped the main points from each document thematically. This thematic grouping forms the basis of our analysis. When referring to the documents we use abbreviations (see references).
8. Several authors have argued that the high share of women among the Finnish labour force impacted the labour supply and reduced the need for recruiting labour from other countries (see e.g. Salmenhaara 2008; Forsander et al 2004).
9. A similar situations seems to exist in the other Nordic countries. See Øien and Sønsterudbråten (2011) for a discussion on how current policies in Norway contribute to placing (irregular) migrants on the boundary between legality and illegality.
10. The first act on the integration of migrants and asylum seekers was passed in 1999 (439/1999) and was replaced by the act on the promotion of integration, passed in 2011 (1386/2010).
11. Ulteva 1 (the predecessor of Ulteva 2) was established by the Ministry of Labour in 2001 to meet the demands of the European Union. Its task was to examine the needs to intensify the surveillance of labour law obligations when foreign labour is used.
12. The EC action plan of 2006 made reference to the work of the Ulteva 2 group, which was to prepare the Act on the Contractor's Obligations and Liability when Work is Contracted Out, a law regulating situations where Finnish or migrant temporary agency workers or subcontracting are used. The main aim of the law was specifically to prevent grey economy and to secure fair competition.
13. Jokinen et al 2011a; Jokinen et al 2011b.
14. A national system of assistance for victims of human trafficking was established in 2006. The system is coordinated by one state reception centre for asylum seekers. The assistance is based on an amendment of the act concerning the integration of immigrants and the reception of asylum seekers (1269/2006). An inter-ministerial working group is currently discussing the need for a separate law addressing support to victims of human trafficking, with the law proposal to be finalised by the end of 2013.
15. The government policies under the period of scrutiny reflect developments in the international community (primarily the European Union but also the United Nations) in that they address border security and transnational organised crime in particular.

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Alvesalo-Kuusi, Anne, Jokinen, Anniina and Ollus, Natalia (2014). The Exploitation of Migrant Labour and the Problems of Control in Finland. In Van Aerschot, Paul and Daenzer, Patricia (eds.). The Integration and Protection of Immigrants. Canadian and Scandinavian Critiques. Farnham & Burlington: Ashage, pp. 121-138.

Chapter 8
The Exploitation of Migrant Labour and the Problems of Control in Finland

Anne Alvesalo-Kuusi, Anniina Jokinen and Natalia Ollus

Introduction

The number of migrant workers in Finland has increased in recent years (von Herzen-Oosi et al., 2009: 27−31). At the same time more incidents of various types of exploitation of migrant workers have occurred. The exploitation of migrant workers may be understood to form a continuum in which forced labour and trafficking in human beings represent the most aggravated exploitation, while more subtle forms of coercion represent less serious exploitation (Andrees, 2008: 39). Even though the Finnish legislator has taken action against the exploitation of migrant work through various criminalizations, and even though there has been some increase in the amount of cases dealt with by the criminal justice system (see Table 8.1), it seems clear that the number of cases of exploitation of migrant labour is abundant. Many of the cases, however, never come to the attention of the authorities or are not identified as crimes by these actors.

The phenomena of 'exploitation of migrant labour' can be conceptualized using the criminological category of corporate crime. With 'corporate crime' we refer here to crimes committed either by a corporation, or by individuals acting on behalf of a corporation or other business entity. Corporate crimes are illegal acts or omissions, punishable by the state under administrative, civil or criminal law, which are the result of deliberate decision-making or culpable negligence within a legitimate formal organization. These acts or omissions take place within legitimate, formal, business organizations. Corporate crime comprises several types of illegalities: corporate fraud, tax evasion, crimes against consumers, and environmental crimes, for example. One of the many sub-categories of corporate crimes are violations against employees, including unsafe working conditions, economic misuse and unfair labour practices. 'Corporate violence' is a subset of all corporate crimes that cause physical injury to workers, the general public or the environment. Hence the exploitation of migrant labour consists of both economic and violent corporate illegalities.

In critical criminology, and in debates on social harm, it has been pointed out how the category of 'crime' excludes many serious harms such as the social, physical and financial harms caused by employers against employees. These harms may be excluded from policies and academic research. They may also be left out of the criminal law all together, or they may be criminalized, but the law may not be enforced (Tombs and Hillyard, 2004).

This chapter reports on recent research findings regarding the exploitation of migrant labour in Finland and on problems of control relating to this phenomenon.[1] It begins with a description of how the exploitation of migrant workers is defined as a crime in Finnish law, followed by an overview of the number of such crime titles handled by the criminal justice system. After that some empirical findings of recent research are described. Under scrutiny are, on the one hand, the different forms of exploitation that migrant workers have encountered in Finland and, on the other, the problems of control and lack thereof.

The chapter concludes with a discussion of how and why the exploitation of migrant labour is excluded from mainstream criminal justice discourses and enforcement. It discusses how the exploitation of migrant labour can be understood as corporate crime and how this conceptualization and analyses thereof could help understand the under-enforcement of these incidents. Moreover, there are some observations on how

1 The findings in this chapter are largely based on a study conducted by HEUNI in 2010 on trafficking for forced labour and exploitation of migrant workers in Finland (Jokinen et al., 2011a and 2011b).

the exploitation of migrant workers in Finland takes place in the context of the ideological and political framework of the labour market and immigration policy.

The Legal Framework

The Finnish legislator has expressed its disapproval of procedures that violate migrant workers' rights by including several crime titles in the Penal Code. However, the relevant offences are spread out in different provisions and it is therefore difficult to grasp the legislation in its entirety.

Chapter 47 of the Penal Code (Labour Offences) includes various crimes of the employer against the employee. Many of these are crucial in the control of the exploitation of migrant labour, such as the work safety offence (1 §), the working hours offence (2 §), work discrimination (3 §), extortionate work discrimination (3 a §), the employment agency offence (6 §), and the unauthorized use of foreign labour (6 a §). In addition, chapter 25 of the Penal Code includes the crime of trafficking in human beings, including for the purpose of forced labour (3 §, 3 a §). Chapter 36 criminalizes usury (6 §) and aggravated usury (7 §).

Furthermore, there are various crime labels outside the Penal Code that may also apply to situations of exploitation of migrant labour. These include the crime of violation of occupational safety and health (Occupational Safety and Health Act 8 63 §), neglecting to arrange occupational health care services (Occupational Health Care Act 5 23 §), violation of the working hours regulations (Working Hours Act 8 42 §) and neglecting the duty (of the employer) concerning the investigation of an accident (Employment Accidents Insurance Act 6 55§). Furthermore, the Aliens Act includes provisions on the violation of the Aliens Act by the immigrant (Aliens Act 12 185 §) and by the employer (Aliens Act 12 186 §).

Cases of exploitation of migrant labour are often dealt with under the label of the offence of *extortionate work discrimination*. It was introduced into the Penal Code in 2004 after a highly publicized case of exploitation of Chinese stone workers. The crime title reads as follows:

> If in the work discrimination an applicant for a job or an employee is placed in a considerably inferior position through the use of the job applicant's or the employee's economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance, the perpetrator shall, unless a more severe penalty is provided for the act elsewhere in the law, be sentenced for extortionate work discrimination to a fine or to imprisonment for at most two years.

The crime of extortionate work discrimination includes the same grounds for discrimination as the crime of work discrimination (Penal Code 47 3 §). These include race, national or ethnic origin, nationality, colour, language, sex, age, family status, sexual preference or state of health, religion, political opinion, political or industrial activity or a comparable circumstance (Penal Code 47 3 §). The crime of extortionate work discrimination is to be applied to situations where the position and the lack of awareness or knowledge of a foreigner have been exploited in setting the conditions of work (Government Bill no. 151/2003, 1).

The crime of extortionate work discrimination is usually applied in situations where a migrant worker receives a salary below the minimum wage and where the conditions of work are generally poor. At worst, extortionate work discrimination resembles trafficking if the employee performs the work in inhumane conditions or without regard for work safety (NBI, 2011; Nuutila and Melander, 2008: 1279). While extortionate work discrimination is considered a special circumstance of work discrimination (Government Bill no. 151/2003), in practice features of trafficking have been present in cases that have subsequently been adjudged by Finnish courts of law as extortionate work discrimination or work discrimination (Jokinen et al., 2011a). The crime title Trafficking in human beings (Penal Code 25 3 §) reads as follows:

> A person who
>
> 1. by abusing the dependent status or insecure state of another person,
>
> 2. by deceiving another person or by abusing the error of that person,

> 3. by paying remuneration to a person who has control over another person or
>
> 4. by accepting such remuneration takes control over another person, recruits,
>
> transfers, transports, receives or harbours another person for purposes of sexual abuse referred to in chapter 20(9)(1)(1) or comparable sexual abuse, forced labour or other demeaning circumstances or removal of bodily organs or tissues for financial gain shall be sentenced for trafficking in human beings to imprisonment for a minimum of four months and a maximum of six years.
>
> A person who takes control over another person under 18 years of age or
>
> recruits, transfers, transports, receives or harbours that person for the purposes mentioned in subsection 1 shall be sentenced for trafficking in human beings even if none of the means referred to in subsection 1(1 – 4) have been used.
>
> An attempt shall be punished.

In practice, the distinction between work discrimination, extortionate work discrimination and trafficking in human beings is not easy. In order to constitute human trafficking, the work-related exploitation must be defined as forced labour. However, there is no explicit definition of forced labour in Finnish law or legal practice (Soukola, 2009).

The crime of unauthorized use of foreign labour (Penal Code 47 6 a §) is defined as follows:

> 1. An employer or a representative thereof who hires or employs a foreigner not in possession of the residence work permit or otherwise a permit to work in Finland shall be sentenced for unauthorized use of foreign labour to a fine or to imprisonment for at most one year.
>
> 2. Also a contractor or subcontractor or orderer of work or a representative thereof who neglects to ensure that the foreign employees in the contract or subcontract work that it has awarded a foreign company or the foreign employees placed at its disposal by a foreign company as contracted labour have a residence work permit or other permit to work in Finland, shall be sentenced for unauthorized use of foreign labour.

The crime entitled Employer's violation of the Aliens Act (Alien's Act 12 186 §) is defined as follows:

> 1. An employer or his or her representative who: 1) deliberately or through negligence employs an alien who does not have the right to gainful employment; 2) deliberately or through gross negligence gives false or misleading information to the authorities on the alien's terms of employment or duties and the requirements of these duties; or 3) deliberately or through gross negligence fails to fulfil the obligation provided in section 73(3), shall be sentenced for employer's violation of the Aliens Act to a fine, unless a more severe punishment for the act is provided elsewhere in the law.
>
> 2. Allocation of liability between an employer and a contractor is determined under section 74. Provisions on the allocation of liability between an employer and his or her representative are laid down in Chapter 47, section 7 of the Penal Code.

The penalty for most labour offences is fines or imprisonment according to the Penal Code. In addition there is a sanction entitled corporate fine. The prerequisites for corporate liability are (Penal Code 9 2§):

> 1. A corporation may be sentenced to a corporate fine if a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence have not been observed in the operations of the corporation.

> 2. A corporate fine may be imposed even if the offender cannot be identified or otherwise is not punished. However, no corporate fine shall be imposed for a complainant offence which is not reported by the injured party so as to have charges brought, unless there is a very important public interest for the bringing of charges.

The connection between offender and corporation is defined in 3 §:

> 1. The offence is deemed to have been committed in the operations of corporation if the perpetrator has acted on the behalf or for the benefit of the corporation, and belongs to its management or is in a service or employment relationship with it or has acted on assignment by a representative of the corporation.
>
> 2. The corporation does not have the right to compensation from the offender for a corporate fine that it has paid, unless such liability is based on statutes on corporations and foundations.

Under Finnish law, only individuals – not corporations – can be prosecuted as offenders, apparently because the formulation of a viable notion of corporate fault proved impossible in the legislative process. But the law does have a degree of flexibility: even if corporations cannot be deemed to have a 'guilty mind', criminal sanctions can be imposed on them even where no individual offender is found. In other words, if a crime is committed in the framework of a corporation, while it may not be possible to find the corporation guilty of a crime, it is possible to impose a fine on it. The corporate fine can be imposed in the case of work safety offences and for the crime of human trafficking. It can not be used for any other of the labour offences. A corporate fine is imposed as a lump sum. The corporate fine is at least 850 euros and at most 850,000 euros (Penal Code chapter 9).

In Finland, although the Occupational Safety and Health Administration (OSHA) has a duty to regulate safety, health and working conditions, the primary responsibility for *criminal* investigation rests with the police. The police are responsible for crime prevention and investigation (Criminal Investigation Act 2 §). If there is reason to believe that a crime has taken place the police have to conduct an investigation.

In the Occupational Safety and Health Inspectorates of the Regional State Administrative Agencies, there are a total of nine labour inspectors specialized in monitoring the use of migrant labour. The monitoring is based on three laws: the Aliens Act, the Posted Workers Act, and the Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces Act. When making an inspection, the migrant labour inspector checks the following issues: the basis of the worker's right of employment, the recording and storage of information concerning foreign workers, and whether the necessary information is provided to the appointed representative of the workers, the failure of which the inspector is obliged to report to the police (Linna, 2006: 15–18).

In addition to this, the inspector checks whether the migrant worker has been made sufficiently aware of his/her tasks, whether the minimum conditions of his/her employment are fulfilled and whether the working conditions are acceptable. The inspector also examines whether the occupational health services have been organized adequately, whether there is an acceptable record of working hours and the accident insurance is covered as regulated (Linna, 2006). The labour inspectorate is obliged to report the matter to the police, if there is sufficient reason to suspect that any of the following have taken place: a violation of the Aliens Act (185 §); an employer's violation of the Aliens Act (186 §); unauthorized use of migrant labour (Penal Code 47 6 a §); work discrimination (Penal Code 47 3 §), or a case of extortionate work discrimination (Penal Code 47 3 a §). The crime of trafficking in human beings is currently not included in the crimes that the labour inspectorate is obliged to report on.

Exploitation of Migrant Labour in the Criminal Justice System

The number of cases of extortionate work discrimination and other crimes relating to the exploitation of migrant workers, investigated by the police and subsequently handled in courts, has increased over the past years (see Tables 8.1 and 8.2).

Table 8.1 Crimes investigated by the police and the border guard authority, number of suspected persons 2004–10

	2004	2005	2006	2007	2008	2009	2010	Total
Trafficking in human beings	–	6	5	–	4	6	12	33
Aggravated trafficking in human beings	–	–	3	–	5	5	2	15
Extortionate work discrimination	33	11	16	14	8	10	22	74
Unauthorized use of foreign labour	13	10	18	11	5	15	10	82
Employer's violation of the Aliens Act	66	10	36	30	30	44	47	203
Total	**22**	**27**	**78**	**55**	**52**	**80**	**93**	**407**

Source: Poliisin tulostietojärjestelmä (2011).

The number of convictions is significantly lower than the number of cases reported to or investigated by the police. So far nine cases of trafficking for forced labour have been dealt with by criminal courts in Finland. In the first four cases (in 2007–11) the charges of trafficking were dismissed. The first conviction for trafficking for forced labour was passed in March 2012 (Helsinki District Court 30.3.2012).

Table 8.2 Persons sentenced for extortionate work discrimination and other related offences in 2005–9

	2005	2006	2007	2008	2009	Total
Trafficking in human beings	–	–	–	–	–	0
Aggravated trafficking in human beings	–	7	–	5	–	12
Extortionate work discrimination	–	4	–	3	12	19
Unauthorized use of foreign labour	17	5	2	3	1	28
Employer's violation of the Aliens Act	5	21	18	23	39	106
Total	**22**	**37**	**20**	**34**	**52**	**165**

Source: Statistics Finland (2006, 2007, 2008, 2009, 2010).

As regards the sentences given for crimes relating to the exploitation of migrant workers, four persons have been sentenced to a conditional sentence for the crime of extortionate work discrimination (one person in 2006 and three persons in 2009). The average given conditional sentences vary between three and seven months. The most common sentence given for extortionate work discrimination is a fine (three in 2006, three in 2008 and nine in 2009). The average given day fines range from 47 to 77 day fines (the amount of the day fine is calculated from the person's net income). Seven persons were convicted to an unconditional sentence for aggravated trafficking in human beings in 2006 and five persons in 2008, with the average annual sentences varying between 41 and 43 months. The sentences given for the crimes of unauthorized use of foreign labour and the employer's violation of the Aliens Act include only fines. The average fine varies annually between 16 to 33 day fines for the unauthorized use of foreign labour and between 8 and 15 for an employer's violation of the Aliens Act (Statistics Finland, 2011).

What is also of interest is that the amount of imputed sentences in courts varies between different types of crimes. The percentage of imputed crimes for all crimes was 6.1 per cent in 2009. The percentage is, however, much higher in crimes of labour exploitation (calculated as an average over the years 2005–9): in unauthorized use of foreign labour the rate was 26 per cent, in extortionate work discrimination 17 per cent, and in trafficking in human beings 14.3 per cent (Statistics Finland website, 2011).

The number of cases dealt with by criminal justice actors remains surprisingly low when compared to the numerous cases of exploitation that trade unions, labour inspectors and NGOs have encountered on a daily basis (Jokinen et al., 2011b). Unfortunately, there is little systematically collected and presented information on these cases.

In 2010, the five labour inspectors who belong to the Regional State Administrative Agency in Southern Finland and who are specialized in monitoring the use of migrant labour in Southern Finland performed 461 inspections (Ulti-tiimin raportti, 2010). The Regional State Administrative Agency in Western and Central Finland carried out 103 inspections of migrant labour in 2010 (Regional State Administrative Agency in Western and Central Finland, 2011). Based on the annual reports of the labour inspectors in the Uusimaa province in Southern Finland, there has been a significant increase in the number of such inspections in recent years, especially concerning the construction sector (see Table 8.3).

Table 8.3 Planned and completed inspections by the labour inspectors of the Regional State Administrative Agency in Southern Finland specialized in monitoring the use of migrant labour

	2005	2006	2007	2008	2009	2010
Planned inspections	71	300	320	360	405	450
Completed inspections	157	305	329	334	398	461
– construction sector	44	37	61	132	167	262
– restaurant sector	58	148	n/a	53	98	92
– transport sector	8	9	15	18	8	24
– cleaning sector	16	27	16	18	12	19
– metal industry	7	23	20	19	26	19

Source: Ulti-tiimin raportti (2008, 2009, 2010).

Out of the 461 inspections carried out by the Regional State Administrative Agency in Southern Finland in 2010, 14 cases were reported to the police.[2] In total, 11 cases of employer's violation of the Aliens Act, five cases of unauthorized use of foreign labour, two cases of work discrimination and three cases of extortionate work discrimination were reported to the police in 2010 (Regional State Administrative Agency in Southern Finland, 2011). In the Western and Central part of the country the Regional State Administrative Agency reported nine cases of employer's violation of the Aliens Act, six cases of unauthorized use of foreign labour, one case of work discrimination and three cases of extortionate work discrimination to the police in 2010 (Regional State Administrative Agency in Western and Central Finland, 2011). It seems that, in practice, only a fraction of suspected crimes are reported to the police. In 2008, for example, the labour inspectors in Southern Finland observed that over half of the inspected companies in the restaurant sector had neglected to arrange occupational health care services for the migrant workers. The salaries of posted workers were under the minimum standards in 64 per cent of all inspected companies (Ulti-tiimin raportti, 2009).

2 The labour inspectors may use several crime titles in reporting one case and thus the figures do not add up.

The statistics of the official state-run system of assistance for victims of trafficking give an indication of the number of serious cases. Out of the total number of victims seeking help through this system, up to three-quarters have been victims of labour exploitation (Joutseno reception centre, 2010). The system offers assistance also to victims of crimes resembling human trafficking, such as extortionate work discrimination.

Table 8.4 Adult victims in the official system of assistance for victims of trafficking 2006–10

	Suggested to the system	Accepted into the system	Negative decision	Removed/exited from the system
2006	6	6	–	1
2007	2	2	–	6
2008	13	13	–	–
2009	41	17	24***	10
2010	52*	44**	5	9
Total	**114**	**82**	**29**	**26**

Note: * Five clients suggested to the system in year 2009 received a decision in 2011 (3 positive, 2 negative decisions). ** Two clients who received a negative decision in 2009 received a new decision in 2010, with which they were accepted into the system. The decisions are included in the figures. *** Two clients who received a negative decision in 2009 received a new decision in 2010, with which they were accepted into the system. The decisions are included in the figures.

Source: Ihmiskaupan vastaisen toimintasuunnitelman ohjausryhmä (2011: 16).

It is evident from the scant data that there is a lack of available information on the extent of the problem of exploitation of migrant workers. The exploitation of migrant workers is a typical form of hidden criminality where the cases that come to the attention of authorities and other actors only represent the tip of the iceberg (Di Nicola, 2007). Victims of exploitation are often reluctant to seek help, or not able to do so, and even if they contact authorities, the authorities may not recognize that they are victims of exploitation (Jokinen et al., 2011a, 2011b). These issues will be discussed in more detail later on in this chapter.

Next, we will present an overview of the forms of exploitation that migrant workers have encountered in Finland. In doing so, we rely on a framework of exploitative practices identified by the International Labour Organisation (ILO, 2005). Labour exploitation rarely consists of just one act, but often is made up of cumulative situations of different types of abuse. The more elements of exploitation are present, and the more restrictions there are on the worker, the more serious the exploitation is. A worker who has been deceived, exploited and coerced may even be a victim of trafficking for forced labour (ILO, 2009).

Forms of Exploitation

Recent research confirms that migrant workers are indeed exploited in the Finnish labour market.[3] The most recent study conducted by HEUNI (Jokinen et al., 2011a, 2011b)[4] shows that migrant workers experience many forms of exploitation, with the most serious cases of exploitation amounting to trafficking in human beings. The study used a variety of sources of information, including expert and victim interviews, court judgements and pre-trial investigation materials, as well as media material from different newspapers, magazines and TV. In using a very broad approach the research aimed at covering both cases that have come to the attention of the criminal justice system as well as cases that have not been reported to the police. Many of the cases mentioned by the interviewed victim support persons had thus not been reported to the police. However, the data also includes detailed information of cases that had gone through the criminal justice system. In four specific cases the court judgements and pre-trial investigation files by the police were studied in detail: the case of the Chinese restaurant in Savonlinna,[5] the case of the Vietnamese restaurant in Pietarsaari,[6] the case of the Thai garden workers in the Vaasa region[7] and the case of the Indian market vendor.[8] In addition, less detailed analysis of the case of the Chinese stone workers[9] and 13 additional cases of extortionate work discrimination was also carried out (see Jokinen et al., 2011a, 2011b for more details on the research methodology).

In the study, the most serious cases of exploitation were found to take place in the restaurant, construction and agriculture (especially horticulture) sectors. The victims come from different parts of the world: from Asia, Eastern Europe and Finland's neighbouring areas. Their education level varies, but their objective is to work abroad to earn more money. The perpetrators are both Finns and people with a foreign background (Jokinen et al., 2011a, 2011b). Many of the cases concern small-scale family businesses, where the exploiter and the exploited are part of the same ethnic group, and in some cases, even relatives or acquainted with each other. The crimes that these perpetrators have been guilty of were highly personalized crimes, targeted at persons they know.

The study shows that the recruitment of migrant workers can be divided roughly into two categories: recruitment via recruitment agencies, and a more small-scale recruitment that takes place via family, relatives or acquaintances. Many instances where migrant workers have had to pay high and illegal recruitment fees to recruitment agencies in their home countries in exchange for finding a job in Finland were identified. By paying large fees the migrant workers already accrue debt before arriving in Finland, which then makes them more dependent on their employer in Finland. With regard to work permits, most migrant workers covered in the study had proper permits and their documents were largely in order. They may, however, not be aware of their right to change employers or know about the terms of employment with which their employer has agreed to comply. People may be willing to work in bad conditions just so that they can renew their work permit and keep their job.

Salary discrimination in its different forms is, according to the study, the most common method of exploiting migrant workers. For example, the workers who often work during the evenings and weekends, and considerably more than the standard 40 hours a week, are not paid any of the mandatory compensations for

3 Kontula (2010) carried out ethnographic research at the Olkiluoto nuclear power construction site among migrant construction workers. According to her, the migrant workers are victims of structural discrimination and their rights are violated. Another study shows that migrant workers performing temporary work in Finland have worse terms and conditions of employment than Finnish workers (von Herzen-Oosi et al., 2009). Alho (2008) argues that an ethnic underclass is forming within private service sectors, such as in ethnic restaurants, where non-unionized migrant workers are employed under poor conditions (Alho, 2008). Also the Finnish National Rapporteur on human trafficking noted that migrant workers in the construction, restaurant, cleaning and agricultural sectors face many different forms of exploitation. However, identification of cases is lacking and the essential elements of the trafficking offence are rarely applied even if there might be grounds for it (Vähemmistövaltuutettu, 2010: 133−46).

4 HEUNI means the European Institute for Crime Prevention and Control, affiliated with the United Nations.

5 Savonlinna District Court 20.2.2009.

6 Österbotten District Court 30.4.2010.

7 Vaasa District Court 29.2.2009.

8 Vantaa District Court 13.7.2007.

9 Hämeenlinna District Court 30.6.2004; Turku Appeal Court 13.6.2005.

evening, night, Saturday and Sunday work, or overtime compensation, vacation money or daily subsistence allowances. Moreover, the exploited workers' basic hourly wages may be very low. Working hours are often not recorded correctly in the working time records or no such mandatory records are kept in the first place. The study uncovered cases where the employer controlled the workers' finances by taking away their ATM cards or Internet banking codes or by demanding that the workers pay back some of their salary in cash (Jokinen et al., 2011a, 2011b).

In addition, *deficiencies exist in the occupational health and work safety coverage* of exploited migrant workers. They lack mandatory insurance, they may have to work even when sick and the safety protocols in their working environments may be insufficient, especially in the construction sector. Accidents in the workplace are rarely reported to anyone. Employees may also be *severely in debt*. This is often related to high recruitment fees paid by the migrant workers to private recruitment agencies in their home countries. Some exploited workers need to borrow money to pay for their air tickets and other travel costs and different deductions for accommodation, food and travel and pay advances may lead to situations where the worker is indebted to the employer. The risk of re-victimization is clearly high in the case of persons who find themselves in a vicious circle of debt (Jokinen et al., 2011a, 2011b).

Examples of *threats and control* against migrant workers were also uncovered in the study. While direct physical violence seems quite rare, many migrant workers and their families are *threatened and pressured directly or indirectly*. Victims are threatened with denunciation to the police or work permit authorities, or with being returned to their home country with termination of employment. Applying psychological pressure is also common. The study found no cases of workers being locked up in their workplaces and thus no severe instances of restriction of their freedom of movement were uncovered. Instead, employers use other more subtle means *of control to restrict the free movement of their workers*. Employers also minimize the length of employees' free time by demanding very long working hours and discourage them from learning Finnish or meeting peers, in practice isolating them from Finnish society. The workers' accommodation is of varied quality – from relatively normal accommodation, to sheds, barracks or tents. The housing is usually provided either by the employer or the recruitment agency and in order to maximize the profit made the rent is usually high compared to standard rents in Finland. The study also revealed some examples where employers have taken away the workers' passports or identity documents using different excuses. This is a serious form of infringement on the worker's freedom (Jokinen et al., 2011a, 2011b).

Next we will address the problems and challenges concerning control by the authorities within the context of the exploitation described above.

Problems of Control

In Finland, although the occupational safety and health (OSH) administration has a duty to supervise working conditions, the *police* hold the primary responsibility for *criminal* investigation. If there is reason to believe that a crime has taken place the police have to conduct an investigation. The role of the police in the process of criminalizing the exploitation of migrant labour is important in a practical sense, since after all, the police are – or are supposed to be – the key agency involved in the prevention and detection of crime. In a symbolic or ideological sense the effective involvement of the police, that is, the realization that these crimes belong to the police and the criminal justice system, can provide public affirmation to the crucial message that exploitation of migrant labour is a *real* crime and should be taken seriously.

Criminal investigations regarding cases of exploitation of migrant workers are challenging for many reasons. Some of the obstacles to effective policing and prosecution are pragmatic while others are structural

or ideological. These obstacles are intertwined and mutually reinforcing. Some of the pragmatic and practical obstacles include the current backlog of the criminal justice system, causing delays in the criminal justice process, cultural and language difficulties (for example the use of interpreters is slow and expensive) and problems relating to the collection of evidence. In the following, we present empirical data on some of the ideological and structural obstacles, which police and other officials[10] pointed to in the interviews conducted for the HEUNI research.[11]

The Responsibility of No One

Before a criminal investigation can be initiated, the case must be assigned to a specified unit or police officer. However, in the case of exploitation of migrant labour, it is not obvious which person or unit is going to be responsible for the investigation of the case due to the fact that it depends on how the case is defined in the first place: is it a labour protection offence, an economic crime or a violent crime? The investigation of crimes of the employer against the employee are thus 'anybody's property', an ambiguity created by the organization of policing that ensures that they are often 'nobody's property' (Alvesalo and Whyte, 2007).

For example, the economic crime and property crime unit of the Helsinki police department investigates cases that are initiated with the labels of extortionate work discrimination and other labour offences, while the violent crimes unit investigates cases that are labelled as human trafficking. However, the distinction is not entirely clear, since the label of a given case may be changed during the investigation, as well as during the deliberations of the prosecution. The units specializing in different types of crime of course have expertise in different issues and themes, and this may steer the investigations in certain directions from the very beginning. An interviewed victim service provider, for instance, expressed concern that the unit for economic and property crime investigated instances of exploitation of migrant workers since the unit did not seem to give high priority to these sorts of crimes. In a small police department, the case may in practice be assigned to the police officer who happens to be on shift when the crime is reported (Alvesalo and Jauhiainen, 2006: 29−30). This is common practice with regard to work-related crimes in general, since there are very few police officers who are specialized in the investigation of such offences. The investigation of safety crimes is not valued by the police and is not seen as 'real' police work (Alvesalo and Jauhiainen, 2006).

The bulk of exploitation cases are investigated by the local police, but the case may be transferred to the National Bureau of Investigation (NBI) if it is in some way special (such as significantly large or complex), or if it is linked to international or organized crime. During the years 2004–8 there was a special unit in the NBI with the specific aim of tackling the exploitation of migrant labour (MLU). The prevention of the exploitation of migrant labour was the central argument in the founding and financing of the unit. Research by Eskola and Alvesalo (2010) shows that during its existence, only a fraction of the cases investigated by the unit involved crimes where the victim was a migrant worker. In other words, despite the specific aim of the unit, the MLU neglected to investigate infractions by employers against migrant employees, and instead concentrated its investigative energies on crimes against the state (tax evasion) or crimes against other companies (fraud) (Eskola and Alvesalo, 2010). The MLU no longer exists: it was assimilated into another unit, the so called Real-time Investigation Unit, during an organizational change of the NBI in 2008. The closure of the unit caused a heated dispute in parliament over the issue of and responsibility for the shutdown of the MLU. To this day, the unit has not been revived. In sum, even though a specialized unit was established to investigate crimes against migrant labour, those cases remained in the margin of police scrutiny.

10 Representatives of various control authorities were interviewed, including two police officers, one border guard officer, two prosecutors and two labour inspectors. All in all 19 expert interviews were carried out (see Jokinen et al., 2011a, 2011b).

11 The problems of investigating the exploitation of migrant workers are examined in the context of so-called work-related crimes – we connect these findings with previous research on the investigation of safety crimes (for example, Alvesalo and Jauhiainen, 2006).

Problems in Constructing the Incidents as Crimes

Many interviewees talked quite openly about how some authorities had difficulties conceptualizing incidents of exploitation of migrant labour as crimes. This was due to, on the one hand, the difficult crime labels and limited knowledge of the law. On the other hand, exploitation of migrant labour was not perceived by the authorities as particularly motivating or worth the effort to investigate.

Some interviewed experts suggested that the police do not have sufficient expertise, know-how and experience to investigate cases related to the exploitation of migrant labour and trafficking for forced labour. Issues related to crime labels render cases cumbersome and expensive to investigate as the crime labels of extortionate work discrimination and human trafficking are rather new and so far rarely used. The interviewed experts noted that the police is either not at all familiar with these crime labels, or feels that they are difficult to apply. The interviewed police officers, however, claimed to be familiar with the law but acknowledged that the boundaries between the crime labels are difficult.

Cases involving the exploitation of migrant workers are not among the most highly prioritized crimes to be investigated. Similar observations were made in a study concerning the policing of safety crimes. Their investigation is not held in high regard by police officers, and they were not regarded as 'real crime' (Alvesalo and Jauhiainen, 2006). Labour offences overall seem to be of lesser interest to police officers and are not seen in the context of possible widespread exploitation of (migrant) labour.

In the interviews it was pointed out that these cases often seemed too petty to report to the police, and that the police were not keen on investigating them. A trade union representative, for instance, maintained that there is no point in reporting every single case of exploitation to the police, as there is no chance that the police will have the time or the energy to deal with all of them:

> The police have more than 2,000 economic crime investigations in their queue, and it takes about a year to investigate each case. That's a queue of 2,000 years. Of course they've got more than one investigator, but it's anyway futile to take these little things to them. (Trade union representative)

Interviewed prosecutors explained that the labour offences included in the Penal Code are particularly difficult to interpret from the prosecutors' perspective, and that

> any work-related crime label, well, gives cold sweat to most prosecutors … and my bet is, that the police have the same problem … that they puke in their lap if they get a work-related crime. It's a sort of a trophy [says with irony] which is given to beginners, to the most clueless ones, they get them.

There seems to be a vicious circle in the downplaying of work-related crime: the agents in the criminal justice system do not believe in each others' capability or willingness to cope with these cases and, as a consequence of this pessimism, work-related crimes do not proceed in the system.

Insufficient Punishments

The inability to take the exploitation of migrant labour seriously is also connected to the fact that the punishment level of these crimes is low. The court statistics show that fairly few cases come to court, even though there has been an increase in recent years regarding the number of extortionate work discrimination cases (see Table 8.2). It was revealed in the expert interviews that the lenient sentences for work-related crimes decrease the motivation of both crime investigation staff and prosecutors to investigate and to prosecute such cases. For example, for extortionate work discrimination, a person may be sentenced to a maximum of two years' imprisonment, but in practice, such cases are punished with fines. For example, the owner of a restaurant in Vantaa was sentenced for extortionate work discrimination of a Pakistani man to 70 day fines at 6 euros each (equal to 420 euros) (Vantaa District Court 10.7.2009). The most severe punishment for extortionate work discrimination in our data was found in the case of the Chinese restaurant in Savonlinna. In this case, the couple who owned the restaurant was sentenced to nine months' conditional imprisonment and a five-

year business ban. An interviewed crime investigation authority pointed out that: 'The crime investigation authority only looks at the maximum punishment [maximum two years' imprisonment], and that's a cold fact.'

The importance of the expected punishment as a motivating factor was also articulated by prosecutors:

> I1: I have been doing some [work-related crime cases], and it's just this frustration, that I am sitting for two days in court, and if there is any sentence at all then it's something like ten day fines, so …
>
> I2: Yeah.
>
> I1: One has the feeling that it's a waste of time for a learned person. It's not very gratifying. In the narcotics unit, it's so much more fun, as …
>
> I2: The prison door really swings …

Authorities feel that it does not make sense to spend too many resources and too much time on investigating a case in which even the maximum punishment is just two years, and where the defendant is likely to get off with a small fine. In sum, there seems to be an ideology shared among actors in the criminal justice system: the stricter the punishment, the more serious crime, and thus the more worthy to investigate.

Another problem raised by the interviewed prosecutors is the fact that extortionate work discrimination (or any other labour offence with the exception of work safety offence) is not included among the crimes for which a corporate fine can be given. According to the Penal Code, a corporation, foundation or other legal entity in whose operations an offence has been committed may on the request of the public prosecutor be sentenced to a corporate fine. Usually corporate fines are given for various economic crimes or for the violation of work safety rules.

> You cannot give a corporate fine for extortionate work discrimination, which I think is an incomprehensible loophole in the legislation, the size of a cow. Specifically this is economic criminality. I don't understand why you can sentence someone to a corporate fine for inside trading but not for extortionate work discrimination. (Prosecutor)

The possibility to use the corporate fine as a sanction for various types of exploitation of migrant workers could have a deterrent effect on employers. Currently the sentenced fines for extortionate work discrimination, for example, are extremely low. As a result, the economic gain from having exploited the work of migrant workers is higher than the fine, i.e. the criminal penalty. In effect this means that it is profitable for the employer to exploit the workers, not least because of the problems of control described above.[12]

Problems of Constructing and Identifying Victims

The authorities may have pragmatic or legal problems in victim identification. Victim identification may be hampered by the unclear distinction between crime categories. Interviewing victims may be difficult, as language and cultural barriers hinder communication. Victims of labour exploitation rarely report their circumstances to outsiders or themselves contact support agencies or the authorities. Only few of the control authorities are in personal contact with potential victims. Victims may also not wish to talk about their experiences because they do not dare to do so for various reasons (fear, distrust, trauma, etc.), or because they do not consider themselves to be victims in the first place.

The authorities also tend to de-legitimize victims on the basis of their presumed consent or passivity. As was found by Alvesalo and Jauhianen (2006) in cases of safety crimes, also in these cases the contributory role, guilt or the passivity of the victim was referred to in one way or another. In many cases the victims – exploited workers – do not have any demands against their employers because of fear, lack of knowledge, lack of access to legal assistance, etc. The victims may also be quite satisfied with the (sub-standard) wages they

12 The employer may of course also be ordered by the court to pay the workers their unpaid salaries.

are being paid, as their incomes are in any case likely to be much higher than in their home country. A labour inspection and permit authority told that:

> What I have sometimes noticed in dealing with the police, and then sometimes in these court verdicts, is that they both reflect this attitude that if this victim doesn't him/herself think he/she has been discriminated against, then there is no discrimination.

According to the law, the employee is protected by minimum terms, thus rendering these regulations binding, which means that making agreements to the detriment of the worker even with his/her own consent is unlawful (Työ- ja elinkeinoministeriö, 2001: 2). In practice, work discrimination offences are subject to public prosecution, and prosecution of such offences does not require the consent of the plaintiff. However, interviewed experts indicated that the police do not investigate cases at all, or at least do not investigate with the appropriate vigour, if the victim does not have any demands. According to an interviewed crime investigation authority representative, the situation has however improved over the last few years:

> There has been some improvement; I think that they are investigated anyway. There's been clear improvement, as you saw right there, the prosecutor has also gone through the same thing, that when he is being reminded often enough that it's not a complainant offence and must be investigated, then that's how it goes, and they start to investigate them. And there has been an improvement, so that some cases have been initiated, but it's still a fact that they still are often not investigated.

A good example of how the satisfaction of the victims may impact even on the court verdict is the 2008 case of a pizzeria in Helsinki. In this case, the foreign owner of the pizzeria was charged with extortionate work discrimination as he had paid three of his employees wages that were below the collective agreement, and had failed to pay additional compensations to which they were entitled. The court judgement stated that the employees and the employer were of the same nationality, and were friends, and that they had agreed together that the employees would help the defendant get the business started. The employees emphasized that they were in no way dependent on their employer, but that the arrangements were agreed upon together. The court decided that because of this there was no evidence of extortionate work discrimination. The court handed down this decision despite the fact that the judgement makes reference to the statement of the district labour protection authority that emphasizes that from the perspective of the core elements of work discrimination it is irrelevant whether the workers themselves think that they have been discriminated against, and whether being in an unequal position is caused by a discriminatory purpose or not (Helsinki District Court 13.10.2008).

Because the crimes of labour exploitation are often hidden from the public view, the active role of the victim is essential in identifying and investigating such crimes. However, victims of labour exploitation do not necessarily perceive themselves as victims and may not seek help. Victims of labour exploitation do not demand help due to many reasons: they do not know that they are in fact discriminated against and that their rights have been violated (if they have no knowledge of the overall labour standards and minimum wage); they are afraid of the consequences if they report their situation to outsiders; they do not know how to seek help, and; they may not have the capacity and energy to seek help (if they work long hours and live in a remote area). It is therefore important to understand why exploited migrant workers may continue working despite the poor conditions (see Jokinen et al., 2011a, 2011b) and why it is unreasonable to expect active engagement from them.

Ideologies and Politics behind Under-Enforcement

The findings presented in the sections above show on the one hand that the exploitation of migrant labour is a phenomenon that exists in Finland. There is a lack of available information on the extent of the incidents, but qualitative studies, reports made to labour unions, and the findings regarding the problems of control indicate that the vast majority of cases do not come to the attention of the criminal justice agents. If they do come, many of them are not investigated, are investigated under a more lenient crime title than would be possible,

or the investigation is focused on financial crime, where the victim is the state or another corporation. Many of the cases brought to justice have concerned small-scale family businesses, where the exploiter and the exploited are part of the same ethnic group, and in some cases, even relatives or acquainted with each other. The agents of the criminal justice system have difficulties in constructing the crimes, in identifying the victims and they are somewhat reluctant to recognize the exploitation of migrant labour as a legitimate target of police intervention. Moreover, the investigation of such matters is not clearly allocated to specific police units, an ambiguity created by the organization of policing ensuring that they are 'nobody's property'.

Nevertheless, Finnish law includes crime titles, where the object of protection is migrant labour. The enforcement of the law does not always follow its codification. Criminal justice agencies do not simply follow the letter of the law, but enjoy a large measure of discretion within the law. The police, through their activities, define who may and may not be incriminated; the practice of policing itself contributes to developing common-sense assumptions about what and who are the legitimate objects of crime control. The level and intensity of state commitment, and the resources invested in law enforcement, can be decisive in shaping collective perceptions of crime and shared understandings of the risks of and harms caused by criminal behaviour (Barak, 1994).

It is unfruitful to limit our analysis to the level where the criminal justice agents function. It is necessary to scrutinize the factors behind under-enforcement: how and why the exploitation of migrant labour is excluded from mainstream criminal justice discourses and enforcement. The exploitation of migrant labour usually belongs to the criminological category of corporate crime. Corporate crimes, as defined earlier, are illegal acts or omissions, which are the result of deliberate decision-making or culpable negligence within a legitimate formal organization, most commonly limited liability companies. The exploitation of migrant labour consists of economic misuse, unfair labour practices and violent corporate illegalities, such as unsafe working conditions. In criminological literature we can find interesting analyses of the underlying factors behind the invisibility of corporate crime, on why and how it is not treated as crime. Corporate crime in general is excluded from criminal policy and enforcement by a range of mutually reinforcing political, ideological and structural factors.

It has long been accepted that criminal policies and crime control concentrate almost entirely upon the crimes committed by the relatively powerless. In short, the function of crime control has been to 'recapture the streets from criminals and to make them safe for the rest of us' (Barak, 1998: 283). The political rhetoric of crime, law and order seldom includes corporate crime (Slapper and Tombs, 1999: 86), even if there is ample evidence that the range of illegalities encompassed within these rubrics entail far greater social, physical and economic costs than all forms of 'conventional' crime (Pearce and Snider, 1995: 3). The so-called 'conventional criminals' and offences such as robberies, theft and interpersonal violence are the focus of politics and criminal policies. Furthermore, criminal doctrine is infused with specific ideas reflecting a traditional approach to crime. Concepts and structures such as criminal liability as a system of personal accountability, and crimes as incidents that happen at a certain time in a certain place are perpetuated not only in the common images of what 'crime' is, but also in criminal doctrine.

Certain forms of corporate crime, most notably financial crimes and serious fraud in particular, have been more likely to be subject to demands for effective regulation than health and safety and environmental crimes, for example (Slapper and Tombs, 1999: 87). Snider (2000: 172) has differentiated 'financial crimes' from 'social crimes' in that the former victimizes the financial markets, competitors and consumers and, in the latter, the primary victims are employees and the general public. It has been argued that the reason for the interest in financial crimes is that they, unlike social crimes, threaten the effective functioning of capitalism (Levi, 1993: 79; Punch, 1996: 39). To *police* social crimes, again, for example, crimes of the employers against (migrant) employees, may jeopardize the effective functioning of capitalism. In many EU countries the cheap and flexible labour provided by irregular migrants has become a structural necessity (Hansen, 2010) and it may well be that the regulation of the use of such labour is not raised high on the political agenda. According to Snider (2000: 171), states compete for global capital by offering the highest corporate subsidies, the lowest taxes and costs of labour and the weakest level of corporate crime regulation. When left to its own devices, the state will not provide enforcement at the level required by its own legislation and will settle for providing a level of enforcement the target can live with (Snider, 1991: 211). The under-enforcement of corporate crime results from a combination of a general lack of political priority given to regulation, and of

the dominant ideological assumptions that underpin the regulation of business. Under neo-liberal conditions of de-regulation and privatization, punitive enforcement is not perceived as a feasible option. Macroeconomic and political factors may play an important role in shaping the criminal justice agents' world-views and influence their willingness and possibilities for effective enforcement (Tombs and Whyte, 2007: 164).

At the same time, however, it is important to note that the exploitation of migrant workers in Finland takes place in the context of the ideological and political framework of both labour market and immigration policy and politics. The actions and inactions of police and other control authorities have to be understood within this framework. The number of international migrants in the world has grown over recent years and is expected to increase further in the near future as the labour force is rapidly growing in less developed countries (IOM, 2010). The ageing population and the increasing dependency ratio in the developed world simultaneously create an increased need for migrant workers in Europe and also in Finland (see, for example, European Migration Network, 2011; Liukko, 2010). While measures have been taken to promote certain forms of labour migration, other measures have been implemented to protect the external borders from unwanted migrants. This ongoing separation of needed and wanted immigrants versus immigrants considered unwelcome (Albrecht, 2002; Chou, 2008; Hansen, 2010) may also affect the way the police and other control authorities act.

Economic, political and ideological factors and the invisibility of corporate crime manifest themselves in the structures and practices of policing, the primary level of constructing incidents as crimes. An important structural element of effective enforcement is that there are resources as well as enough and qualified personnel, to conduct the investigation. The distribution of resources to different areas of policing is influenced by perceptions of what is 'crime'. The struggle for resources between organizational sectors is inevitable and it makes sense to assume that resources are allocated using the perceived importance of social problems (Benson and Cullen, 1998: 181). The traditional perception of 'crime' is detectable also in the organization of policing. The units or squads and the areas of responsibilities within the police are often divided on the basis of the logic inherent in criminal legislation, either using the concepts of 'legal goods' or traditional crimes, such as property offences, violent crime, robbery, drugs or homicide. Therefore in local police forces in particular, where this division is often used, it may be left unclear whose responsibility it is to investigate corporate crimes. The premises and ideas infused in criminal doctrine, the 'ideology' of law and perceptions of 'the crime problem' influence also the level of implementation, the practices of constructing the crime, that is, fitting harmful business activities within the categories of crime (Alvesalo, 2003a, 2003b).

According to Lee, a category becomes 'police property' when the dominant powers of society leave the social control of that category to the police. They are usually low-status, powerless groups whom the dominant majority perceive as problematic (Reiner, 2000: 92). Police, to paraphrase Neocleous (2003), tend to use the law as one of a range of resources they draw upon to deal with *disorder*, rather than as a set of rules that are rigidly followed and enforced. But it is a particular type of disorder that the police are required to respond to, a type of disorder that corresponds to the maintenance of the social order and therefore to the general principles that underpin the criminal law. The disorders the police are most concerned with are instances of disorder between individuals. On a day-to-day basis the crimes that constitute the core of police work are theft of property committed by individuals and interpersonal violence. This suggests that expecting the police to deal with crimes that fall beyond the realm of the 'interpersonal' may involve a significant shift, not least in the capacity of individual officers to conceptualize the legitimacy of their role.

The way that police officers themselves are institutionalized into a particular 'sense of order' has a pivotal bearing upon how they approach police work; in this context how they approach the exploitation of migrant labour reported to them. As was found in the data, in many of the cases brought to court, the offender was a migrant and the investigated crimes were highly personalized crimes, targeted at persons they know, and often members of the same ethnic group. Possibly crimes committed by migrants, 'others', are more easily perceived as a threat to the social order than crimes committed by domestic entrepreneurs who are not seen as typical criminals. A victim of a labour crime may not be understood or be constructed as a typical victim of a crime deserving attention and sympathy (cf. Whyte, 2007). The ambiguity regarding the role and status of the migrant worker is closely connected also to the ongoing discussion regarding migrant labour in Europe, where migrants are considered to be both *a* risk and *at* risk (see Aradau, 2004). Within the criminal justice system the former seems to be emphasized at the expense of the latter; migrants are rather constructed as suspects than victims.

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IV.

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Forced Flexibility and Exploitation: Experiences of Migrant Workers in the Cleaning Industry

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ABSTRACT

Globalization has resulted in structural changes in the labor markets over the last decades. These changes have weakened some of the economic and social dimensions of work. At the same time, migration and especially labor migration have increased on the global level. This article looks at the situation of migrant workers in the cleaning industry in Finland. It is based on interviews with migrant workers who have experienced labor exploitation in the cleaning industry, representatives of cleaning industry employers, and representatives of labor unions. The primary aim is to give voice to the migrant workers themselves and to analyze how they experience their work and their position in working life. The findings suggest that there is a risk that migrant workers in the cleaning sector experience various forms of exploitation. This article argues that the demand and need for (employee) flexibility may turn into forced flexibility that exploits the powerless and vulnerable migrant workers who have few other options than to agree to work on poor terms. The article suggests that the structural reasons that make the exploitation of migrant labor possible should be identified and addressed in order to prevent misuse of any workers, especially migrants.

KEY WORDS

Cleaning work / exploitation / globalization / human trafficking / migration.

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Introduction

The cleaning industry is one example of a labor sector where the conditions of work have been particularly affected by forces of globalization and what may be defined as the effects of neoliberal policies (Bernstein 1986; Herod and Aguiar 2006). The demands for cost-effectiveness have led to increased competition, outsourcing, and subcontracting. As a result, work in the cleaning industry has changed from mostly permanent employment to increasingly flexible and temporary jobs. Flexible staffing arrangements are generally used by employers to minimize costs (Houseman 2001). Many of the effects of globalization seem to be less positive for those actually doing the work, the cleaners (Ryan and Herod 2006; Seifert and Messing 2006). Cleaning is inherently a form of low-skilled and low-paid employment (Öhrling 2014; Tarkkonen 2010). As a result a high share of those who work as cleaners today are migrants, whose possibilities

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of accessing other jobs are limited due to their lack of language skills and contacts, their immigration status, and, in some cases, their lack of education (Abbasian and Hellgren 2012; Könönen 2012). Many migrant workers are multiply disadvantaged in the labor market also in Finland (Forsander 2013). This may make them particularly vulnerable to the negative effects of the structural changes in the labor market. With increased competition, some employers will attempt to cut costs through infringement of the rights of workers. It is evident that those who are the most powerless will be the most severely affected by such transgressions of labor rights and standards.

This article focuses on the experiences of migrant workers within the cleaning industry in Finland. The article draws on interviews with migrant workers, and interviews with representatives of employers and the trade union for the service sector. Although different actors have been interviewed, this article gives voice in particular to the migrant workers themselves. When talking about their experiences of working as cleaners in Finland, the migrant workers gave accounts of hard work on poor terms and also of exploitation and misuse. The employers, on the other hand, spoke of having no choice but to submit to the fierce competition in the sector, while trade unions criticized the employers for exploiting the most vulnerable and powerless of workers.

It is evident that the structural changes in the cleaning industry—such as increased competition, the disappearance of permanent jobs, privatization, and segmentation—play out in different ways for employers vis-à-vis employees. Building on an analysis of the interviews with migrant employees, trade unions, and some employers, this article seeks to answer two specific questions: How do migrant workers experience their working conditions in the cleaning industry in Finland? What kinds of labor market practices make migrant workers vulnerable to exploitation in the cleaning industry? In seeking an answer to these questions, this article discusses the experiences of migrant workers from their point of view. The central concepts in this article are flexibility, vulnerability, and exploitation. The article links exploitation with globalization and structural changes in the labor market, which have led to a situation where the demand for flexibility on behalf of the workers disproportionately affects the most powerless. These workers are often migrants with few other options than to accept work on disadvantageous terms. This article further shows that various misuses of migrant workers are related to more serious forms of exploitation, including, at worst, trafficking in human beings. Although all exploitation is of course not equivalent to trafficking, the difference between 'mere' exploitation and trafficking is fluid.

Labor market policies and labor market changes

The Finnish labor market is characterized by a tripartite bargaining structure, bringing together government, trade unions, and employers' organizations. There is no general minimum wage in Finland. Instead, the sector-specific agreements determine the minimum wage for each sector. The collective agreements apply also to unorganized workers, including migrant workers. The tripartite structure and industrial relations in general have been closely connected to the welfare state (Kettunen 2012). However, over the last 30 years the nature of work also in Finland has started to change, with increased competition and more demands for flexibility, with migrant workers becoming increasingly excluded from the labor and social policies of the welfare state (Lillie and Greer

2007). At the same time, numerous research show that since the 1990s, the welfare state in Finland and its social programs have been weakened, thus creating more inequality in society (Jutila 2011; Kantola 2015; Riihinen 2011).

Economies and societies around the world have been affected by what can be defined as globalization and the expansion of neoliberal idea(l)s. Whether neoliberalism as such is directly applicable to the Nordic countries and Finland can be discussed, although Patomäki (2007) argues that neoliberalism entered Finland already with the opening of the financial markets in the 1980s. In his view, when the recession hit Finland in the early 1990s, neoliberalism was already a leading ideology (ibid., p. 55). Although a full neoliberal transformation of European welfare states has not (yet) taken place, the welfare state, also in Finland, has undergone many market-based reforms (Julkunen 2003, pp. 183–184). A major paradigmatic shift took place in the 1990s when Finland assumed the Washington consensus and, through justifications based on economic equilibrium, made significant cuts to its public sector (Böckerman and Kiander 2006; Riihinen 2011, pp. 126–127). Whether these developments were the result of neoliberalism per se is yet to be analyzed, but there has been a clear change of course of social policies in Finland since the 1990s (Riihinen 2011, p. 127).

These changes have affected the labor markets and thus the economic and social dimensions of work. The effects of globalization include intensified competition between companies as well as between countries. Stone argues that as a result of globalization, both businesses and states engage in actions that weaken labor rights (Stone 2005). Ylhäinen (2015) claims that while labor law has traditionally protected the rights of workers from employers' use of power, there is now—at least in the Finnish context—a rival discourse that represents the employer as the 'victim' of insecure economic and business conditions. Employers are seen to be at the mercy of fluctuating conditions beyond their control, and are therefore not wielding power in the way traditional labor law assumes. Ylhäinen finds that the employee, in turn, is seen as an autonomous, responsible subject instead of as an object in need of protection (ibid.). Such changes reflect a symbolic order of power, where the economy is given precedence before the rights of people (ibid.). Beck argues that labor market flexibility is the new political mantra that transfers risk from the state and the economy to the individual, with jobs becoming short term and easily terminable as a result (Beck 2000, p. 3; see Lambert 2008). It is evident that all of the consequences of increased labor flexibility have not only been positive, especially for those at the periphery of the labor market. The readiness to accept fragmentation in the nature of work is very different for those lower down the flexible regime (Sennett 1998, pp. 62–63).

The vulnerabilities of migrant workers

Finland has a relatively small share of migrants overall, and thus migrants form a relatively small share of the labor force. In 2014, there were a total of 144,000 foreign-born workers in Finland, making up 6% of the total labor force (Sutela 2015). While migrants represent a diverse group of people, there were proportionately more migrants working as cleaners and domestic workers (23% of all cleaners were migrants in 2014), followed by assisting positions in restaurants and catering (18%) compared to their share of the total working population (ibid.). Migrants are more often than

Finnish-born workers working in temporary or part-time positions, and working atypical hours (ibid.). Also agency work is more common among foreign-born workers as is underemployment, that is, not having as much work as one would wish (ibid.). Migrant workers in Finland thus find themselves at the nexus of the segmentation and dualization of the labor market. Although the dual labor-market model (Piore 1979) may no longer fully reflect the multiplicity of the current labor markets, the division of the labor market is still valid in Finland (Forsander 2013), as recent statistics also show (Sutela 2015). Employment relations differentiate workers through various practices such as subcontracting, temporary employment, and casual employment, but also through a division based on personal traits such as gender, race, or ethnicity (Castles 2011; Lillie and Greer 2007).

Vulnerability is created both through belonging to a certain group and through circumstances (Honkatukia 2011). Vulnerability can increase over time, and is therefore not a clear-cut categorization, but instead forms a continuum and is bound to circumstances (ibid.). It is not just the migrant workers' immigration status and the lack of contacts and language skills (Abbasian and Hellgren 2012) that create vulnerability, but also the labor market and societal structures in which the migrant workers live and work. Gray argues that migrants tend to get the worst casual jobs because they are the most disadvantaged workers with the least bargaining power, and thus they get the jobs that are disproportionally part-time and temporary, and where wages increase more slowly than in other jobs (2004, p. 122). The position of migrant workers in the labor market is affected by both personal and structural factors. Both types of factors may make workers vulnerable. As immigrants, with for example a lack of skills (language, education) and lack of contacts and resources, migrant workers are disadvantaged in the labor market (Forsander 2013). In addition, structural inequalities, such as racialization and social stigmatization (Gomberg-Muñoz 2010), increase migrant workers' vulnerabilities, making them doubly stigmatized.

Cleaning work in Finland

In 2011, the over 6,000 cleaning companies in Finland employed almost 60,000 persons (Verohallinto (Tax Administration) 2013, p. 2). Although most of the companies (70%) are small one-person enterprises, the large shareholder companies account for 85% of the total turnover in the sector (ibid.). The cleaning industry offers one of the most common entry-level jobs for migrants coming to Finland (ibid.). According to recent statistics, almost 40% of all workers in the cleaning industry in the greater Helsinki region are migrants (Myrskylä and Pyykkönen 2015). According to statistics by the Service Union United (SUU), almost half of the workers in the cleaning industry have an atypical contract (personal communication with a representative of the SUU, 14 December 2015). The number of part-time cleaning workers increased by one-fifth between 2013 and 2014 (ibid.).[1]

The cleaning industry is one example of the labor market that has undergone specific structural changes as a result of globalization (Herod and Aguiar 2006). Such changes have been ongoing already since the 1980s (Bernstein 1986). These changes have led to increased competition and demands for flexibility. The increasing employment precariousness among cleaning workers has been affected precisely by practices of outsourcing,

work intensification, the privatization of government services, and deregulation (Ryan and Herod 2006). Because cleaning work cannot be exported to countries with cheaper labor costs, it has instead become outsourced to specialized cleaning companies. Paradoxically, the move toward specialization and 'professionalization' (Herod and Aguiar 2006; Verohallinto (Tax Administration) 2013) does not translate into an increase in the status of cleaning work. Cleaning work has on the one hand become more technical and thus work can be carried out more efficiently, but on the other hand there is less time allocated to performing the same work as before, placing increased strain on the workers (Tarkkonen 2010).

The cleaning industry is a crowded field, with many firms competing for the same bids, creating competition through price-setting, rather than through quality of service (Abbasian and Hellgren 2012). In a Finnish study of the cleaning industry, cleaning companies themselves were critical of the fact that the price is given too much weight when selecting bids (Lith 2012). When employers and clients alike seek the best deals, the workers bear the consequences. The lowest bid often wins tenders, resulting in poor quality cleaning services and also bad wages and working conditions for cleaners (Abbasian and Hellgren 2012). Employers evade responsibility for the results of the competition by placing the blame on those who buy the cleaning service, while the representatives of the employees place the blame on the greed of the companies (Ollus and Jokinen 2013). All in all, this creates the possibility for transgressions and misuse of labor in the cleaning industry.

Exploitation of migrant labor and labor trafficking

The *exploitation of migrant workers/labor* refers to any form of misuse of or illegal acts against persons of foreign origin who are working in Finland. Both less serious and more serious acts are included within the term 'exploitation.' For instance, less serious forms of misuse of migrant workers could include paying migrant workers a marginally lower salary than Finnish workers. The crime of *extortionate work discrimination* (Criminal Code 47(3)) refers to situations where migrant workers are exploited, for example, based on their economically difficult situation, their dependence on the employer, or their lack of understanding of their rights in Finland. More serious forms of exploitation might include the use of force or threats against workers in order to ensure their compliance. In legal terms, more serious forms of exploitation of migrant workers may constitute the crime of *trafficking in human beings* (Criminal Code 25(3), 25(3a)). For example, a situation where someone abuses a victim's vulnerabilities, and imposes control over the victim, thus forcing this person to continue working, may be deemed an act of trafficking. It does not necessarily have to entail any movement over borders, or involve any organized criminal groups.

The elements of the crime of extortionate work discrimination partly overlap with the criminal provision on trafficking in human beings. Legal scholars have emphasized that extortionate work discrimination resembles human trafficking if the employee performs the work in inhumane conditions or without regard for work safety (Nuutila and Melander 2008, p. 1279). In practice, the distinction between the two provisions remains unclear and difficult for criminal justice practitioners to interpret (Roth 2010). Previous research shows that situations of exploitation

of migrant labor in Finland, including in the cleaning industry, display features of human trafficking for forced labor, but it is difficult to identify trafficking (Jokinen et al. 2011; Ollus and Jokinen 2013; Roth 2010; Sams and Sorjanen 2015). The difference between less and more serious forms of exploitation, such as trafficking, is therefore not clear-cut.

The exploitation of migrant workers can be visualized as a continuum, ranging from less severe acts and situations all the way to very serious acts, such as forced labor and trafficking (Andrees 2008; David 2010). The worst forms of exploitation can be seen to fulfill the elements of human trafficking (Jokinen et al. 2011). Trafficking in human beings for the purpose of labor exploitation therefore can be understood to take place in the context of overall exploitation of migrant labor. While not all migrants working in the cleaning industry are victims of exploitation or trafficking, it is important to pay attention to labor market practices and structures that enable such exploitation. The exploitation of migrant workers takes place within the regular dynamics of the labor market, and in mainstream economic sectors (Andrees 2008). The exploitation of migrant labor is not an isolated phenomenon. Instead, it is closely linked to the segmentation, casualization, and deregulation of labor markets.

The phenomenon of exploitation of migrant labor and labor trafficking has been increasingly researched in recent years, and the forms of exploitation in the European context are rather well documented. The exploitation seems to involve certain similar traits despite it taking place in different geographical locations. Migrant workers have, for example, experienced excessive and irregular working hours, underpayment of wages, nonpayment of compensation for overtime or weekend work, control and isolation, poor living conditions, the charging of illegal recruitment or other fees, deception regarding the contracts, terms of employment, and work permits, abuse of their lack of awareness of rights and alternatives, threats of dismissal and deportation, and even the threat or use of direct violence, including sexual violence (Allamby et al. 2011; Andrees 2008; Anti-Slavery International 2006; Clark 2013; FRA 2015; Geddes et al. 2013; Jokinen et al. 2011; Lisborg 2012; Ollus and Jokinen 2013; Potter and Hamilton 2014; Smit 2011). A recent EU-wide study of severe labor exploitation identified several risk factors contributing to the exploitation of migrant workers. In addition to legal and institutional factors, there are risks relating to the workers' personal situations, to the workplace, and also to conscious actions of employers (FRA 2015).

In discussing the prevention of exploitation of migrant labor, the focus is readily on the employers who exploit the workers. However, the exploitation is not just related to the acts of isolated (criminal) employers but is concentrated in particular industries because of the competitive conditions and structures that shape employment in these industries (Scott et al. 2012). Anderson criticizes the focus on 'bad employers' at the expense of the role of the state in illegalizing workers: attention should instead be paid to how the labor markets and immigration controls illegalize some groups and legalize other groups in particular ways (2010, p. 312). The situation of low-waged precarious workers must be analyzed not only in the context of abusive employers, but also in the context of the labor markets within which they work (ibid, p. 313). To understand the exploitation of migrant workers, one should therefore attempt to uncover the structures that enable such exploitation.

Aims, data, and methods

This article draws from a research project on the exploitation of migrant labor and trafficking in the cleaning and restaurant sectors in Finland and interviews with various professionals and exploited migrant workers (Ollus and Jokinen 2013). The data consist of interviews with ten migrant workers who had experienced labor exploitation in the cleaning industry, four representatives of cleaning industry employers, seven representatives of labor unions, and one migrant service provider. The interviews were coded and analyzed thematically.[2] The interviewed migrant workers include eight women from Estonia and Russia and two men from Africa.[3] All of the interviewed migrant workers had experienced some form of exploitation in the cleaning industry, and a couple of the respondents had been supported by the official system of assistance to victims of trafficking. The exploitation experienced by the workers differed in both length and severity, but all the workers defined their own experiences as exploitative and abusive. The migrant workers had worked for both small and large cleaning companies.

The purpose of the data was to include different voices (employers, employees, authorities, trade unions). This article aims to fill a gap in research by shedding light on how the structural reasons that underpin the exploitation of migrant workers are constructed and seen by the diverse actors involved, but most importantly by the workers themselves.[4] The interviewed migrant workers give voice to how they experienced the work in the cleaning industry and what kind of exploitation they have experienced. My aim is to link the personal accounts and experiences to the larger context, that is, the practices and structures of the labor market. In doing so, I also aim to link their experiences to the larger contexts of power, ideology, and history (see Young 2011). When combined with the account of the employers and other actors in the labor market, tensions in the labor market can be uncovered, and thus the structures that make the exploitation of migrant workers possible can be analyzed.

Forced flexibility: when labor market flexibility becomes an avenue for exploitation

Employers acknowledge that there is a problem relating to the available workforce especially for cleaning jobs. The labor force is divided into largely unavailable Finnish workers versus available migrant workers. In practical terms, as is indicated by the interviewed employers and workers alike, cleaning companies want a large pool of flexible labor available at certain, limited hours, for example, early in the morning before stores and offices open, or at night after they close. However, uneven demand and the unattractive working hours (and tasks) limit the number of people able and willing to take these few hours of work.

> This way we would get also national labor, if Finns could be offered eight-hour days. There would also be more readiness [to take such jobs]. In terms of our benefit system, if you're offered 2–3 hours, it's perhaps not worth your while to take the job, but if you're offered eight hours, then there would a completely different willingness to work. (Employer's representative 2)

Both the low salary level and the demand for flexibility have reduced the number of Finnish workers in the cleaning industry (Könönen 2011). Migrant workers seem to increasingly fill this need. The employers' representative cited above also placed some of the blame on the Finnish benefit system. The typical Finnish worker is portrayed as disinterested and even lazy (see Ollus and Jokinen 2013; Könönen 2011), while migrant workers are deemed reliable, flexible, and hard-working. The tension between the views of the employers and the views of the migrant workers is evident in the way that the workers spoke about how their employment in the cleaning industry stemmed from their lack of alternatives, rather than from an active choice (see also Ritari 2013, p. 15).

> My boss looked at that paper for a long time and then looked at me. I asked what was the matter. 'You are from a university!' I said, that I was. He asked what I had studied. I said business management. He looked at me with big eyes. (Laughs). But this is how it is. (Migrant worker 2)

> Interviewer: Why a cleaner? Didn't you want more…?
> –Because of language. You may have graduated from a university, but it's very hard to start there [in Finland]. Many have been teachers and some have even had their own companies; there you still start as a cleaner. (Migrant worker 1)

The interviewed migrant workers embody the result of the dualization of the labor market (Piore 1979), where migrant workers end up in the secondary labor market regardless of their skills or educational background. The migrant workers interviewed seemed to be resigned to the fact that cleaning work is the job they will get, despite their education or aspirations for better employment. That highly educated persons end up in low-skilled work is in stark contrast to the governmental migration and labor policies, which emphasize the need for skilled migrant workers filling professional positions (Ollus and Alvesalo-Kuusi 2012). From the perspective of the migrant workers, the situation is paradoxical. On the one hand, they need any work they can get, but on the other hand, many of the existing labor market practices are disadvantageous, especially for those workers who lack other options. One of the interviewed migrant workers highlights that the demand for flexibility cleverly disguises the migrant workers' position.

> Flexibility is not a good word. They call it flexibility, but they are just exploiting the situation. Those people accept it not because they are flexible, it's because they don't have a choice. (Migrant worker 9)

Sassen-Koob points out that migrants are not necessarily cheaper than low-wage national workers, but that it is their powerlessness that makes them profitable (Sassen-Koob 1981, p. 72). Several of the interviewed workers spoke about employers giving them impossibly large areas to clean and too little time to finish the work, as employers knew that they would not complain. In a capitalist economy, the workers will bear a disproportionate share of the cost of economic flux and uncertainty (Piore 1979). The flip side of flexibility is insecurity (Kalleberg 2003), and migrant workers are likely to bear the heaviest burden of this flux and uncertainty. As the interviewed worker points out above, the migrant workers offer their flexible labor due to a lack of other options.

Flexibility therefore becomes *forced flexibility* that builds upon migrant workers' vulnerable position and lack of bargaining power.

Placing the burden on the migrant worker: labor market practices that make exploitation possible

It is important to emphasize that most of the employers in the cleaning sector are legitimate, organized, and follow the collective agreements that are in force. However, the interviewed workers had experiences of working for both organized and unorganized employers. Problems seem more common among unorganized employers, as also interviewed employers' representatives were eager to point out. Many of the problems in the cleaning industry come down to misuse relating to work contracts and payment of salaries. There are also common and legal practices that are used, which on their own are fully acceptable and legal, but when combined with the lack of negotiating position of migrant workers create a basis for misuse. Instead of offering long-term contracts and regular employment, many cleaning companies—also the large, organized ones—use agency workers or other forms of temporary work (Könönen and Himanen 2011). This article highlights in particular two examples: so-called zero hour contracts and long subcontracting chains.[5]

A 'zero hour contract' refers to a contract by which the employee agrees to work from zero hours per week to a maximum of 37.5 or 40 hours per week. In practice this translates into a 'called to work contract,' where the worker may work full-time one week and not at all the next week. In 2015, Statistics Finland for the first time collected data on zero hour contracts, and found that 4% of all employees in Finland had such a contract in 2014 (Statistics Finland 2015; the data do not disaggregate information on migrant workers specifically). Such contracts are most common among the youngest workers (ibid.). A study of temporary agency workers found that 16% of temporary agency workers had a zero hour contract (Huotari and Pitkänen 2013). Contractually zero hour contracts are useful for employers who need a large pool of flexible workers at certain hours, and they are similarly useful for employees who need part-time, flexible work (e.g., students). An employee on a zero hour contract is called to work when needed and the employer only pays for work actually carried out. One employer's representative who was interviewed acknowledged that zero hour contracts may be disadvantageous to workers, but claimed that employees are themselves responsible for what kind of contracts they accept.

> Isn't it already a bit stupid of the worker to start to work under such a zero hour contract? I wouldn't dare [to do it] myself if I had a contract like that. I would say that it [the contract] needs to read something else, but can they [the migrant workers] demand this—that's another question. I don't think it's a problem that such contracts are offered—it's more of a problem if it's not explained what it means. Everyone has the right to decide whether or not they accept such an uncertain contract. If you are not told [about the terms], that's very bad. But you must be told that there are weeks with no hours. Are you going to manage? Calculate and think. (Employer's representative 2)

Although the employer's representative cited above acknowledged that migrant workers may not be properly informed about the contents and consequences of such contracts,

there seems to be a disregard for the structural factors and powerless position that put workers in a situation where they have no choice but to agree to a disadvantageous contract. As this quote illustrates, the employee is expected to be an active agent, who makes an informed decision when accepting an uncertain contract with possibly poor conditions and too few hours of work (see Ylhäinen 2015). This view disregards the fact that many of the migrant workers cannot challenge their working conditions.[6] The choice is between employment on poor terms and the possibility of no employment at all. The interviewed migrant workers do cleaning work because they have few other alternatives (see Korsby 2011; Könönen and Himanen 2011, pp. 114–116). Zero hour contracts are hailed by (some) employers and also some workers for their flexibility (Kalleberg 2003; Ojala 2011), but there has been increasing criticism of the conditions of the contracts, which place workers in constant readiness without a guarantee that there actually will be some work. Not all employers find zero hour contracts useful (Lambert 2008), which shows that also within the cleaning industry there are tensions and divergent views regarding the normalized but problematic contractual practices in the sector. One interviewed employer's representative explicitly stated that zero hour contracts are a form of exploitation, based on the insecure and irregular situation they place workers in, and therefore such contracts should not be used. Interviewed trade union representatives highlighted the vicious circle of such contracts: they fulfill an uneven demand for labor that stems from the competition and cost-cutting in the cleaning industry. Trade unions have accordingly engaged in a recent campaign to ban the use of zero hour contracts. A proposal to ban zero hour contracts is currently before Parliament.[7]

There are pros and cons to the zero hour contract, but what is evident is that at worst, the flexibility of the contractual practice can turn into insecurity, instability, and inequality (Lambert 2008). It also may create a negative tie between the employee and the employer, where the full responsibility and consequences of the flexibility are placed on the employee (Davies 2013).

> That's precisely the most concrete problem; you either get no hours or if you do, they are given on poor terms. Just like this one guy told me this morning that he had been told to show up at work tomorrow. He has no choice, or of course he always has choices, but it would mean that then there's no need to show up at work at all. (Trade union representative 4)

Another potentially exploitative practice is the use of subcontractors. Wills sees subcontracted employment as a 'particularly effective way for employers to cut costs, shed responsibility, increase flexibility, and disempower the workforce' (2009, p. 444). The competition in the cleaning industry has also led to a situation where some companies that win tenders subcontract some of the work to other cleaning companies. Long subcontracting chains make possible the creation of situations of misuse or downright exploitation of (migrant) labor. As the interviewed migrant service provider explained, the subcontracting chains mean that less and less money trickle down the chain, combined with more and more work for the workers.

There are clear indications that at worst, workers will carry the burden of the cost-cutting that the long subcontracting chain entails. This would not be a problem if the workers were in a position where they could demand their rights, or refuse to work. The dependence on their job for subsistence and in many cases for their right to stay in

the country makes it difficult for them to object. The migrant workers at the end of the subcontracting chain are far from those in power of the 'relationships of subcontracted capitalism' (Wills 2009). Although subcontracting has been a common practice in the cleaning industry for more than 30 years (Bernstein 1986), Koessl sees subcontracting as part of a new employment paradigm that polarizes workers into core and periphery, especially as the cleaners are deprived of any influence over their conditions of work (2012). There is therefore a direct link between subcontracting as a business practice and the precarious situation of migrant cleaning workers (ibid.).

> It was so that she [the boss] did subcontracting for a Finn. The Finn got work from the city. The Finn's part was only to take a call from the city and then to call the next person. He did not do any work himself, he checked whether there was money. [...] At the same time you cannot accept an infinite amount of work if you have five to six women. They are not robots who can work 24/7. And then people started to wear out. The summer was terribly hot. Then you are always somewhere inside. You are sweating from morning to evening, you are tired. You do a thorough cleanup job. You are in all that dust. It's hot. And if you ask for a day off, then she [the boss] says, 'Are you joking, get back to work.' (Migrant worker 3)

Neither zero hour contracts nor subcontracting chains would be a problem in a labor market where employers abide by the collective agreement and uphold the rights of workers. However, when they are used as a mechanism for demanding labor and reducing rights, it becomes a question of misuse and exploitation. As such, they become practices of the labor market that contribute to the intentional abuse of the labor (especially) of migrant workers.

There are various efforts to counteract the negative effects of long subcontracting chains. The Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006) obliges the contractor to check that the documentation of the subcontractor fulfills certain requirements. However, this only concerns the first level of a subcontracting chain. The contractor is therefore not responsible for problems in subsequent subcontracts. The current law was criticized by one of the interviewed trade union representatives, who wished that the law would cover the whole subcontracting chain. One of the interviewed cleaning company representatives also pointed out the practical problems of oversight:

> We often had situations where our foreman found completely unknown people working for us even though we demanded the lists of workers and we had all this guidance for oversight. (Employers' representative 1)

These problems caused this cleaning company to abandon the use of subcontractors altogether. The Real Estate Employers' organization has introduced mandatory identity cards with personal tax numbers for all employees of its member companies as an additional measure to tackle the problem of undeclared work.[8]

Several of the interviewed trade union representatives complained about their lack of deterrents and sanctions against exploitative employers. The unions in Finland have, for example, called for the right to press charges on behalf of exploited or discriminated workers (PAM 2015). Unions are also currently in the process of establishing a joint low-threshold information center for migrant workers (this will be the first of its

kind in Finland). The SUU and other unions in Finland have, however, been slow to introduce specific immigrant-focused inclusive strategies (Alho 2008; 2012). Unions in Finland still struggle with the questions of solidarity, whose interests they should represent, and who are to be included (Alho 2012; Ristikari 2012). The SUU, which is the main union for cleaning workers, is now placing an increased focus on migrant labor. Currently about 5% of its members have a migrant background, and the share is growing (PAM 2015). Finland has a high unionization level, but the rate of union membership among migrants and ethnic minorities in Finland is below average (Ristikari 2012, p. 95). According to a study of migrant members of the SUU, only 28% of the respondents had used any of the services offered by the union (Ritari 2013, p. 22). Although exact data are not available, the majority of those who visit the local SUU office in Helsinki with questions concerning their working conditions are migrant workers (personal communication with a representative of the SUU, 14 December 2015).

The paradox of exploitation: the fear of losing the exploitative employment

The employment situation of the migrant workers embodies a paradox: the workers fear losing the job in which they are exploited. Several of the migrant workers interviewed said that if they complain about the working conditions or the salary, they risk losing their employment, or they are placed in a less advantageous position compared to those workers who work without complaint.

> They told me if I continue kicking back and saying hey I will not do this, I will not do that, then I will not have any extra hours. […] There are people, those who don't complain about their status, of course they give them more. (Migrant worker 9)

> In the long run you see that a person is using you and I could not say anything because then I did not get any work. It was ties like that. (Migrant worker 3)

The lack of options and of bargaining power creates a negative tie between the employee and employer. It has been argued above that there are practices in the current labor market that create conditions for misuse of vulnerable workers, but the experiences of the migrant workers also confirm that there are indeed also employers who intentionally and systematically exploit their (migrant) labor. However, the actions of these employers have to be seen in the context of the migrant workers' more vulnerable position (compared to nationals of the country), as well as in the context of the labor market and its existing controls (or the lack thereof). The vulnerability of migrant workers consists of powerlessness combined with the consequent possibility of using them for undesirable jobs and of exercising considerable control over them (Sassen-Koob 1981). The interviewed migrant workers spoke about various means that employers use to exploit them, including not paying salaries on time to outright threats and direct use of violence. The underpayment of wages is a very common means of keeping migrant workers under the control of the employer (FRA 2015; Jokinen et al. 2011).

> If you don't come [to work when the employer demands it at very short notice] he might threaten you like 'if don't come today you will lose your job.' On Saturdays or on Sundays

> he pays a flat rate, not like one and half or times two [as stipulated by the collective agreement]. (Migrant worker 10)

These migrant workers talk about intentional and ongoing practices that increase both the uncertainty and insecurity of the workers. While individual transgressions may not be serious, it is the cumulation of the acts (underpayment of wages, problems with working hours and working areas, lack of possibilities of influencing one's work, etc.) that creates a continuum of acts that may amount to exploitation. A couple of the interviewed workers had experienced more serious forms of exploitation that transgress into trafficking. The exploitation experienced by these workers was serious enough to warrant assistance by the official system of assistance to victims of trafficking.[9] The exploitation included, for example, being paid very little for their work, working very long hours, living in expensive, overcrowded, and uncomfortable accommodation, often organized by the employer, and being threatened by the employer. While none of the forms of exploitation may on its own seem very serious, it is the totality of the situation, the isolation and the feeling that they have no other alternatives but to submit, that keeps the workers under the control of the employer.

> I was paid very little. It was something like 140–200 Euros per month. It is clear that they underpaid, deceived. I even do not know how it can be called life. Just survival. … Plus, there were no friends, no acquaintances. (Migrant worker 6)

> [A representative of the employer] would tell me all the time: 'Don't even try! They will grind you into the dust! You won't even remember your name! Don't even try! He is very powerful!' (Migrant worker 7)

Many of the problematic and exploitative working conditions that migrant workers are facing stem from their dependence on employment to ensure their right to stay in the country. The work permit and the desire to gain permanent residence status is a powerful lever to use against a person who wants to remain in the country. Although most of the interviewed migrant workers had a right to reside in the country, the residence permit forms part of the structures that enable exploitation of migrant workers. Some of the interviewed migrant workers had their residence tied to having employment (those from non-EU countries as well as noncitizens from Estonia). They were therefore ready to endure difficult working conditions and were afraid to complain, since they feared losing their job and thus their right to remain in the country (see Könönen 2012).[10]

> Many of these [problems] are related to the authorities and their way of treating the populations, which then are trapping people in difficult situations. We have not been talking only about employers mistreating people, but the system mistreating people. Sometimes they work together, the system and the abusing employers. (Migrant service provider)

As has been pointed out elsewhere (Anderson 2010; Könönen 2012) migration regimes themselves create situations that expose and exploit the most vulnerable. Exploited migrant workers are therefore exposed not only to abusive employers, but also to abusive employers in combination with labor market practices and an immigration regime that make it possible for exploitation to happen.

Conclusions: Forced flexibility and the cumulation of exploitation

Based on interviews with migrant workers, employers, and trade union representatives in the cleaning industry in Finland, this article has examined the negative effects of recent changes in the labor markets. Globalization with the related increased competition between countries and companies, outsourcing, and demands for greater flexibility have led to major changes in the nature of work. These changes have affected the workforce and especially those who are the most vulnerable and have the least options and alternatives: migrant workers. The cleaning industry is one example of a labor market where the conditions of work have been particularly influenced by forces of globalization and what may be defined as neoliberal policies.

This article has three main findings. Firstly, the demand for labor flexibility exploits the vulnerable position of migrant workers, because they have limited options other than to agree to working on poor and exploitative terms. There are serious downsides to flexibility although especially employers consider flexibility in the labor market a necessity. I argue that migrant workers end up in situations of *forced flexibility* where their lack of options becomes masked as flexibility: a willingness to take any job on any terms. Forced flexibility is based on the migrant workers' lack of bargaining power and is therefore one-sided. It places the burden and risk on the employee, while giving the options and decision-making power to the employer. Flexibility may be a necessity and useful for some groups of workers. In a labor market that upholds basic rights and standards, the drawbacks of flexibility should be borne by both parties and it should not be used as a means of exploitation (Gray 2004).

Secondly, the article has pointed to exploitation that stems from a change in the type of contractual practices in the cleaning industry. Zero hour contracts and subcontracting chains are examples of contractual practices that are approved and upheld by the State. As long as employees are in a position to choose whether they undertake work under such terms, these contractual practices are not problematic. However, when they are used as a means of placing the risk of flexibility on the employee, or as a means of demanding work, they become forms of misuse. Such practices therefore become structures of the labor market that contribute to the intentional abuse of the labor of (especially) migrant workers. Because migrants are among the chief victims of the weakened welfare state and deregulated labor markets (Castles 2011; Lillie and Greer 2007), it is clear that migrant workers are also disproportionately affected by the negative effects of structural changes in the labor markets.

Zero hour contracts and subcontracting schemes may be accepted and normalized practices in the labor market, but at the same time they disproportionately affect those who already are the most vulnerable. While it can be questioned whether the misuses of migrant labor are just the transgressions of individual, isolated 'bad employers' (Anderson 2010), research shows that misuse and exploitation do take place especially in employment situations that can be described as precarious and poor (Standing 2011). It is not the entry of migrants into the labor market that creates low-paid, unattractive jobs. Instead, migrant workers tend to end up in employment positions that are already poor and where there is need for labor (Könönen 2012). I argue that the exploitation of migrant labor is not (solely) an act of individual 'bad employers,' but a structural practice that is directly related to the changes that have taken place in the labor market. As such, the exploitation of migrant labor is not a question of single,

isolated acts, but a structural problem related to both labor market and immigration practices.

The mismatch between the existing labor standards and the actual practices of cleaning companies as experienced by the interviewed migrant workers is an example of the new discourses in the labor market as highlighted also by Ylhäinen (2015). Although perhaps not 'neoliberal' as such, there are visible and gradual changes in Finnish labor market practices that allow for a 'flexibilization' of contracts and employment practices (Julkunen 2008). The traditional tripartite structure of agreement in the Finnish labor market is being challenged as a result of the economic recession and the rigidity of the bargaining structure (OECD 2016). At the time of writing, representatives of employers and trade unions had negotiated for almost a year in an effort to reach agreement on a 'social contract' aimed at cutting labor costs in an effort to improve the Finnish economy. Should the parties not find agreement, the Government might unilaterally impose its own labor reforms, including cuts to salaries and benefits, thus intervening in areas that have traditionally been dealt with under the tripartite structure.[11]

Thirdly, the article has shown that the employment situation of the migrant workers embodies a paradox because the workers fear losing the job in which they are exploited. If the workers complain about the working conditions or the salary, they risk losing their employment, or they are placed in a less advantageous position compared to those workers who work without complaint. The cumulative use of coercion in the exploitation of migrant workers is difficult to ascertain because many of the forms of coercion take place at the same time, as a chain of events, starting with deception, followed by wage manipulation, threats of denunciation, and direct violence (Andrees 2008, p. 22). Speaking of a continuum of exploitation (Andrees 2008; Kelly 2007; Long 2004; Skrivankova 2010) helps to conceptualize the experiences of migrant workers not as individual, isolated incidents, but as part of a larger context. A parallel can be drawn to the phenomenon of sexual violence against women. Kelly argues that sexual violence can be seen as a continuum, where the power structure between men and women plays out through 'routine' use of aggression against women as well as through more serious, non-routine forms of male violence against women (Kelly 1988). I argue that the experiences of migrant workers can similarly be described as 'routine' maltreatment by the employer. Because of the power imbalance between the migrant workers and their employers, also the less serious forms of exploitation form part of a larger continuum of both extent and range (see Kelly 1988, p. 75). Therefore, the single actions of 'bad employers' who intentionally exploit migrant workers cannot be treated as isolated phenomena. Instead, they point to a more structural problem having to do with the migrants' position in the labor market. If addressed in isolation, the individual acts of exploitation that migrant workers have experienced do not point to any larger problem. However, when placed along the continuum and in the context of a cumulation of exploitation, they describe a trend. In the context of the continuum, the personal experiences of exploitation that migrant workers have experienced can be seen to reflect a structural practice. As such, the personal experiences of individuals become part of a larger societal problem of exploitation (see Young 2011).

This article has showed that migrant workers in the cleaning industry do experience exploitation. The findings are similar to other studies that have looked at the precariousness of migrant workers in Finland (e.g., Könönen 2012; Könönen and Himanen 2011; Sams and Sorjanen 2015). This article argues that there exists a link between less and

more serious forms of exploitation. Although the experience of all of the interviewed migrant workers may not constitute human trafficking, their experiences can be placed along the same continuum. Some of the interviewed migrant workers had experienced serious exploitation that could be defined as trafficking. Their experiences were not hugely different from that of other workers, and took place in a similar context as the exploitation of the other workers. What I have attempted to show is that labor market practices that utilize the lack of bargaining power of the most vulnerable workers may facilitate exploitation that eventually leads to forced labor and human trafficking. Exploitation of migrant workers—at least in the Finnish cleaning industry, and with the sample of interviewed migrant workers presented here—is directly linked to the results of major changes in the labor market. As such, modern forms of forced labor arise from existing practices in the (neoliberal) labor market.

There seems to be a tolerance for abuse of (migrant) workers when States, business, and consumers all benefit from cheap goods and services. It is this tolerance that allows exploitation of migrant workers, and ultimately trafficking for forced labor, to continue. The recent EU-wide study of severe forms of labor exploitation in the European Union found that at the macro level, it is the large global economic disparities combined with increasing global mobility that drive people to move from one country to another to find work (FRA 2015). Many migrant workers reason that any work is better than no work, especially when their salary is better than in the country they come from, despite the exploitation that they endure. Even highly regulated labor markets have trouble preventing exploitation of migrant labor and the undercutting of working conditions, and less regulated labor markets will be even less likely to do so (Refslund 2014). Exploitation and trafficking can therefore only truly be prevented by diminishing inequalities both globally and locally. In the interim, we need to make visible and address the practices and structures in our labor market that exploit the vulnerabilities of migrant workers. The number of people migrating for work or other purposes is not going to decrease in the near future, as is also shown by the recent refugee crisis in Europe. We therefore need to ensure decent labor conditions for all, including for those who are the most vulnerable.

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End Notes

[1] The data include migrant workers, but do not disaggregate based on whether a person has a migrant background or not. According to the Service Union United, atypical contracts are presumed to be more common among migrant workers, but there is no research on the prevalence of such contracts (personal communication).

[2] The interviews were conducted in 2013 as part of a research component in a EU-funded project, and therefore the topics covered in the interviews were broader than the themes covered in this article. All of the migrants had contacted some form of service provider (a trade union, the labor inspectorate, or a nongovernmental organization) or had received help from the official system of assistance to victims of trafficking in Finland. The interviewed workers represent a specific group of workers, that is, those who had sought and received help. This may be one of the major weaknesses of the data: it does not include those who did not seek help, but who might potentially be the most vulnerable and most exploited.

[3] Some of the migrant workers were EU citizens while others were so-called third country nationals. All of the workers had a legal permit or other legal grounds for staying in the country at the time they worked in the cleaning industry in Finland. For the purposes of this article, the workers have not been divided or compared on the basis of their background or immigration status. Even though labor exploitation and sexual exploitation may overlap, and exploitation therefore may have gendered implications (see UNODC 2014 for recent global trends), the gender of the interviewees is not emphasized in this article. One of the interviewees spoke about her experiences of sexual harassment and sexual exploitation at work, but the gendered nature of exploitation was not included as a specific question to interviewees. This is clearly an area where further research is needed.

[4] Although several trade union representatives were interviewed, this article does not analyze in detail the views and roles of trade unions vis-à-vis immigration. This has instead been discussed in a number of other studies (e.g., Alho 2008; 2012; Kyntäjä 2011; Ristikari 2012).

[5] There are many other problematic practices that are not covered here, including the use of posted labor or forced self-employment.

[6] It is important to highlight that the migrant workers are not solely vulnerable and without means of resistance. At the time of the interview, the interviewed workers were no longer exploited at work and had all sought and/or received assistance, thus showing that they had eventually stood up to the employers (albeit losing their job as a result).

[7] See yle.fi/uutiset/citizens_initiative_opposing_zero-hour_contracts_to_go_before_mps/7977791.

[8] See http://www.kiinteistotyonantajat.fi/tietoaliitosta/eettisetohjeet/. Such personal identity cards are mandatory by law (1231/2011) in the construction sector.

[9] The official system of assistance is managed by the Ministry of Interior, see http://www.humantrafficking.fi/in_english.

[10] In Finland a work permit is granted for one year initially, followed by four years. In order to receive the first permit, the person must first find work, and then apply for the permit. The extension permit is dependent on whether the migrant worker earns enough to cover a certain minimum threshold, and whether certain terms of employment are met. Most work permits are sector-specific rather than tied to a specific employer.

[11] See http://yle.fi/uutiset/government_accepts_social_contract/8715226; http://yle.fi/uutiset/pm_sipila_puts_labour_legislation_on_ice/8638429; www.eurofound.europa.eu/observatories/eurwork/articles/labour-market-industrial-relations-business/finland-new-government-challenges-tradition-of-tripartite-consensus.

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