

**Focus on Labour Exploitation (FLEX) Submission to the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children**

**Subject: Early identification of victims and potential victims of trafficking in persons, and identification of indicators of vulnerabilities to trafficking in the context of mixed migration flows.**

25 January 2018

**Summary**

Focus on Labour Exploitation (FLEX) welcomes the opportunity to contribute to the Special Rapporteur on Trafficking in Persons, Especially Women and Children's report to the Human Rights Council on early identification of victims and potential victims of trafficking in persons, and identification of indicators of vulnerabilities to trafficking in the context of mixed migration flows.

FLEX is a United Kingdom (UK) -based charity that works to end human trafficking for labour exploitation, both in the UK and worldwide. To achieve this, FLEX conducts research and policy advocacy that aims to prevent labour abuses, protect the rights of trafficked persons and promote best practice responses to human trafficking for labour exploitation.

In the UK, FLEX has conducted research on a range of issues relevant to the current inquiry, including the importance of labour inspection for combatting labour exploitation;<sup>1</sup> improving identification and support of victims of trafficking in the European Union (EU);<sup>2</sup> and the impact of migration status, labour market structures, and immigration control measures on vulnerability to exploitation.<sup>3</sup>

FLEX works to ensure that the enforcement of labour rights forms a key part of the national and international responses to trafficking for labour exploitation. We believe labour standards and their enforcement are a central component of an effective anti-trafficking response. FLEX therefore highlights the importance of labour inspection as a means of preventing labour abuses from developing into severe labour exploitation, and as a way of identifying potential victims of trafficking.

In this submission, drawing from a 2017 inspection report from the UK Independent Chief Inspector of Borders, FLEX notes the difficulties associated with identifying potential victims of trafficking at border crossings. Recognising these challenges, FLEX emphasises the crucial

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<sup>1</sup> FLEX. 2015. Combatting labour exploitation through labour inspection. Available at <http://www.labourexploitation.org/sites/default/files/publications/Flex%20Labour%20Inspection%20Blueprint.pdf>

<sup>2</sup> FLEX, Fairwork and ADPARE. 2016. *Improving the identification and support of victims of trafficking for labour exploitation in the EU*. Available at <http://www.labourexploitation.org/sites/default/files/publications/PROACT%20Policy%20Paper.pdf>

<sup>3</sup> FLEX. 2017. Risky business: Tackling exploitation in the UK labour market. Available at [http://www.labourexploitation.org/sites/default/files/publications/Risky%20Business\\_Tackling%20Exploitation%20in%20the%20UK%20Labour%20Market.pdf](http://www.labourexploitation.org/sites/default/files/publications/Risky%20Business_Tackling%20Exploitation%20in%20the%20UK%20Labour%20Market.pdf)

importance of labour inspections in reducing vulnerability to exploitation and identifying potential victims of trafficking, particularly in sectors where the use of recruitment agencies/labour providers is high. FLEX therefore highlights the Gangmasters and Labour Abuse Authority's (GLAA's) licensing and inspection scheme for labour providers as an example of good practice for Member States.

Please note that though FLEX is global in its outlook, this submission relates solely to the UK.

**Box 1. Summary of recommendations:**

- 1. Make labour inspection a central element of anti-trafficking responses:** Many States see border control playing a major part in identifying victims of trafficking, despite the significant associated challenges. Labour inspection is not only a means of preventing labour abuses from developing into severe exploitation, but also identifying and helping those potential victims who are unlikely to be identified at border crossings.
- 2. Monitor and enforce labour standards through licensing and pro-active inspection of recruitment agencies:** The use of labour intermediaries (gangmasters, recruitment agencies, umbrella organizations) has been identified as increasing the risk of workers being exploited. An effective licencing and inspection framework that addresses this risk is crucial for preventing trafficking for labour exploitation and identifying potential victims.
- 3. Create a level playing field through licensing and pro-active inspections:** A licensing and inspection framework that links to forced labour indicators is key to ensuring that there is a level playing field for businesses. It prevents rogue operators from undercutting those who play by the rules.
- 4. Ensure labour market-wide oversight of labour standards:** Labour inspection that covers all labour sectors prevents unscrupulous businesses from shifting to sectors with the lightest regulations. Licensing and inspection frameworks such as the one operated by the GLAA should be applied across the board rather than limited to a few sectors.
- 5. License recruitment agencies in countries of origin and destination:** Licensing labour providers in both countries of origin and destination can help ensure that abuses that have occurred at one end of the labour supply chain do not lead to situations of exploitation at the other end. Extra-territorial licensing can also help ensure that compliant labour providers are not undercut by those operating outside the licensing country. The country of destination labour inspectorate should work together with labour authorities in origin countries to monitor and enforce licensing standards throughout the labour supply chain.
- 6. Adopt an intelligence-led approach to inspection and enforcement:** The sharing of intelligence and expertise between the labour inspectorate and authorities such as the health and safety executive, the tax office, and others, can help identify cases of

trafficking for labour exploitation. Steps should be taken to ensure joint working, especially with law enforcement, does not undermine workers' trust in labour inspectors (see below).

- 7. Maintain a firewall between immigration control and labour inspection:** Confusion between immigration control and labour inspection is one of the biggest barriers to the identification of trafficking for labour exploitation. Not only are potential victims fearful of coming forwards, but inspectors may fail to spot indicators of modern slavery. In order to effectively identify trafficking, there must be a strict firewall between immigration control and labour inspection.

### **Difficulties in identifying victims at the border in the UK**

Many States see border control playing a major part in the identification of victims of human trafficking. The UK Modern Slavery Strategy recognises Border Force as the “lead for targeting and disrupting traffickers and identifying potential victims at the border”. Yet, identifying victims through border controls is often challenging. In 2015, 3,266 referrals were made to the National Referral Mechanism (NRM). Only 18 (or 0.6 per cent) of these were made by Border Force (the corresponding figures for 2014 and 2013 were 14, or 0.6 per cent, and 6, or 0.3 per cent, respectively).<sup>4</sup>

A 2017 inspection report on Border Force's identification and treatment of potential victims of modern slavery found that most victims seek to pass through border controls unnoticed, either due to fear of their traffickers, or of uniformed officials, or because they do not recognise themselves as victims. Consequently, adults who are identified by Border Force as potential victims often refuse their consent to being referred to the National Referral Mechanism for modern slavery victims (NRM). Another factor limiting border officials' capacity to identify potential victims is the pressure to keep queues at airports and other ports of entry moving. In addition, the increased use of electronic passport gates at airports means that many passengers do not come into direct contact with border officials. The same is true for car controls, where circumstances and environment make it impractical for officers to interact substantively with every passenger.<sup>5</sup>

The inspection report also noted that stereotypes about victims of trafficking mean there is a risk that adults, European Economic Area (EEA) nationals, and individuals with adverse immigration or criminal backgrounds are less likely to be considered potential victims.

The main recommendation from the investigation was that Border Force needs to collect and maintain a better evidence base from which to learn and improve:

*The priority must be to improve the collection, recording and analysis of data, in order to inform operational activity and the training and development needs of*

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<sup>4</sup> Independent Chief Inspector of Borders and Immigration. 2017. An inspection of Border Force's identification and treatment of potential victims of modern slavery.

<sup>5</sup> Ibid.

*staff, and to ensure that Border Force is delivering what the Modern Slavery Act and Modern Slavery Strategy require of it.<sup>6</sup>*

Identifying potential victims of trafficking at borders is also difficult because people may not end up in situations of trafficking until after they have entered their country of destination. This is particularly the case in Europe, where European Economic Area (EEA) nationals have a right to live and work in other EU countries without a permit or visa. Statistics from Europol show that 70 per cent of victims of trafficking registered in the EU are EU citizens.<sup>7</sup> In the UK, National Crime Agency (NCA) statistics from 2014 show that, where nationality was recorded, 82 per cent of potential victims of trafficking for labour exploitation were EEA nationals.<sup>8</sup> The third most frequently recorded country of origin for potential victims of trafficking in the UK in 2014 was the UK, at nine per cent (the first and second most frequent were Romania at 14 per cent and Albania at ten per cent respectively).<sup>9</sup> The prevalence of EEA and UK nationals among potential victims of trafficking in the UK demonstrate the importance of seeking to identify victims through other means than through border controls.

### **Labour inspection as victim identification**

FLEX has long argued that enforcement of labour standards is a central principle for an effective anti-trafficking response. The monitoring and enforcement of basic labour rights across the labour market ensures that employment standards are upheld, infringements are properly punished, and the demand for cheap and exploitative labour is diminished. While most anti-trafficking responses are focused on the ‘high-end’ of organised criminal exploitation, the reality is that exploitation occurs on a spectrum that links minor labour rights abuses with severe labour exploitation.

For this reason, labour inspection and enforcement that identifies and investigates early abuses is key to preventing labour exploitation for forced labour. As the International Labour Organisation (ILO) has stated, “labour inspectors in particular are well placed to provide early warnings” of exploitation.<sup>10</sup> Identifying abuses such as poor working conditions, systemic underpayment of wages, and excessive wage deductions means that labour inspectors are able to act early to remedy abuses before they deteriorate into more severe labour exploitation.

The role of labour inspection and enforcement in ending human trafficking and forced labour has been recognised and strengthened through the adoption of the ILO’s Forced Labour Protocol in 2016. Article 2 of the Protocol sets out the measures for prevention of

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<sup>6</sup> Ibid.

<sup>7</sup> EUROPOL. 2016. Situation report: Trafficking in human beings in the EU. [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/situational\\_report\\_trafficking\\_in\\_human\\_beings-europol.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/situational_report_trafficking_in_human_beings-europol.pdf)

<sup>8</sup> National Crime Agency (NCA). 2015. NCA strategic assessment: The nature and scale of human trafficking in 2014. London: NCA <http://www.nationalcrimeagency.gov.uk/publications/656-nca-strategic-assessment-the-nature-and-scale-of-human-trafficking-in-2014/file>

<sup>9</sup> Ibid.

<sup>10</sup> ILO. 2010. Labour inspection in Europe: Undeclared work, migration, trafficking. Available at [http://www.ilo.org/labadmin/info/pubs/WCMS\\_120319/lang--en/index.htm](http://www.ilo.org/labadmin/info/pubs/WCMS_120319/lang--en/index.htm)

forced labour, which crucially includes ensuring that labour laws are enforced and that they cover all workers in all sectors of the economy (i.e. including migrant workers) and strengthening labour inspection services.

In addition to preventing trafficking for labour exploitation, labour inspection is crucial for identifying potential victims of trafficking. Proactive inspection is seen as particularly critical to the detection and prevention of human trafficking as by nature these crimes are largely hidden. Trafficked persons face a number of barriers to reporting abusive or exploitative conditions to authorities, including threats from exploiters, insecure status, language barriers, fear of criminalisation, and lack of understanding of the system, and are therefore less likely to contact authorities. Proactive inspections are needed to reach such workers.

In its 2016 report concerning the UK's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, the Group of Experts on Action against Trafficking in Human Beings (GRETA) underlined "the significant role of workplace inspections, including on health and safety, compliance with labour standards and revenue laws, in deterring instances of human trafficking for forced labour and identifying possible victims of [trafficking in human beings]."<sup>11</sup> They recommended that UK authorities take measures to 'strengthen the capacity and remit of the relevant inspectorates' to 'enable proactive identification and referral of cases of human trafficking for labour exploitation.'<sup>12</sup>

In interviews conducted by FLEX, trafficked persons have shared a strong desire for official intervention in workplaces to offer guidance, assistance and support:

*I would like people to talk to my employer about how much they pay, how much holiday they're giving, how much time we're working for them [...] Because otherwise we don't tell anyone, we are scared because we are foreign [...] I wish someone talks to them who has a responsibility'*

*- Trafficked person's testimony<sup>13</sup>*

However proactive inspection is only effective when labour inspectors first work to build trust with workers and create an environment that facilitates good intelligence gathering and opportunities to report, regardless of immigration status."<sup>14</sup>

### **Impact of labour intermediaries on risk of exploitation**

Labour inspection as a means of preventing and identifying cases of trafficking for labour exploitation is particularly important in sectors where the use of agency and subcontracted labour is common. The use of labour intermediaries has been identified by multiple sources

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<sup>11</sup> GRETA. 2016. Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom: Second Evaluation Round. Available at <https://rm.coe.int/16806abdc>

<sup>12</sup> Ibid. p.28

<sup>13</sup> FLEX Interview in December 2014 for Pro-Act Project. 2015. Pro-Active Identification and Support in the Netherlands, the UK and Romania

<sup>14</sup> FLEX. 2015. Combatting labour exploitation through labour inspection. Available at <http://www.labourexploitation.org/sites/default/files/publications/Flex%20Labour%20Inspection%20Blueprint.pdf>

as increasing the risk of workers being exploited.<sup>15</sup> In FLEX's research, the increased use of agency workers has been shown to weaken resilience to exploitation in a number of ways, including: weakened union representation; increase in insecure or precarious work; confusion about employment status and rights; and lack of accountability for abuses. The heightened risk for exploitation should be met with an increased focus on the monitoring of outsourcing practices and the agencies operating in this market.

Countries have responded to the need to monitor labour providers' compliance with labour standards in different ways. In Poland and the Netherlands, the responsibility for agency inspection has been integrated into the remit of the main labour inspectorate, while Ireland and Belgium operate licensing systems for employment agencies. The UK has a sector-based approach to this issue: employment agencies in the agriculture/horticulture sector are licensed by the GLAA, while agencies in other industries are registered with the Employment Agency Standards Inspectorate. Of these two methods, licensing is much more rigorous than registration (see box 2 for a definition of licensing). It is the GLAA's licensing system that is highlighted in this submission as an example of good practice.

**Box 2. Licensing of labour providers**

Licensing is one of the ways in which governments can regulate labour recruitment and placement agencies. Under a licensing system, private labour recruiters and employment agencies must request a license from a government body. The license is only granted if certain conditions are met, such as documented proof of financial capability, compliance with tax and VAT regulations, and respect for health and safety and employment standards. A license is generally renewed as long as conditions are still met; otherwise it can be withdrawn. Licensing implies that the government establishes special administrative procedures to regularly inspect agencies, measure compliance and imposes sanctions in the case of non-compliance. In some countries, certain types of agencies are required to have a license while others may come under a general registration scheme.<sup>16</sup>

**An example of good practice: The UK Gangmasters and Labour Abuse Authority (GLAA)**

The GLAA is a non-departmental public body that regulates companies or individuals who provide workers into agriculture, horticulture, and shellfish gathering – and any associated processing and packaging – through its licencing scheme. The GLAA's mission is to 'prevent, detect and investigate worker exploitation across the entire economy'<sup>17</sup>. It carries out inspections to ensure labour providers are compliant with licensing standards, which cover health and safety, accommodation, pay, transport and training. Tax, National Insurance and VAT regulations must also be met. Operating without a licence is a criminal offence carrying

<sup>15</sup> Joseph Rowntree Foundation. 2014. Forced labour in the United Kingdom. Available at <http://www.gla.gov.uk/media/1584/jrf-forced-labour-in-the-uk.pdf>; European Agency for Fundamental Rights. 2015. Severe labour exploitation: workers moving within or into the European Union – States' obligations and victims' rights.

<sup>16</sup> Andrees, B., Nasri, A., and Swiniarski, P. 2015. Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_377813.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_377813.pdf)

<sup>17</sup> See [www.gla.gov.uk](http://www.gla.gov.uk)

a prison sentence of up to ten years. Using an unlicensed labour provider is also a criminal offence.

**Box 3. GLAA's expanded remit**

The Immigration Act 2016 significantly expanded the GLAA's remit. Whereas previously its work was limited to licencing and monitoring labour providers in the farming and food processing sectors, the expanded GLAA is now tasked with investigating and tackling labour exploitation offences throughout the UK labour market, covering all types of worker regardless of sector and whether they are temporary, directly, or self-employed.<sup>18</sup> The issues the GLAA covers have expanded to include serious labour market abuse offences, such as failure to pay National Minimum Wage, breaches of the Employment Agency Standards Act, and forced labour and human trafficking cases that previously would have been passed to the police.

Labour Abuse Prevention Officers (LAPOs) were established to deal with these new GLAA work areas. LAPOs have police-style powers that allow them to investigate modern slavery where it relates to labour abuse and other labour market offences; arrest suspects; enter premises where they have a reasonable belief that labour market offences are being committed; search and seize evidence of breaches of labour market regulations.<sup>19</sup>

The GLAA's new powers have been welcomed, although the Government is yet to provide adequate funding to permit a full expansion of the GLAA functions across the UK labour market, and have to date only provided a moderate increase to permit their new police-style powers. This submission focuses on the GLAA's licensing scheme rather than its newly expanded powers.

There are a number of features that make the GLAA licensing scheme stand out as an example of good practice. Firstly, through the pro-active inspections carried out as part of its licensing scheme, the GLAA has made measurable advances in deterring instances of human trafficking for forced labour and in the early identification of potential victims of trafficking.

There are currently close to 1,000 labour providers licensed by the GLAA, covering an estimated 465,000 workers. At the end of the 2015-16 reporting period, 996 licences were in existence, with 142 new licences granted, 9 refused, and 14 revoked (mainly due to the use of exploitative practices). The action taken by the GLAA to revoke or refuse licences resulted in 2,598 workers being supported out of situations of exploitation and prevented

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<sup>18</sup> GLAA. 2016. Powers and remit to change at GLA. Available at <http://www.gla.gov.uk/whats-new/press-release-archive/16516-powers-and-remit-to-change-at-gla/>

<sup>19</sup> Metcalf, D. 2017. United Kingdom Labour Market Enforcement Strategy: Introductory Report | April 2016-31 March 2017. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/629872/labour-market-enforcement-strategy-introductory-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629872/labour-market-enforcement-strategy-introductory-report.pdf)



others from becoming exploited.<sup>20</sup> All the displaced workers were found alternative accommodation and employment, reducing the risk of re-exploitation.<sup>21</sup>

Licensing inspections during the same period led to over GBP 82,000 being returned to 2,326 workers for non-payment of wages. The inspection process identified that a further GBP 1.4 million is owed to workers for matters including unpaid wages, holiday pay or excessive transport charges. Due to the changes brought about by the Immigration Act 2016, the GLAA now has the remit to tackle the recovery of this money (see box 3 above).

Secondly, the GLAA's licensing scheme is unique in its requirement that all foreign employment agencies engaged with British businesses must also be licensed with the GLAA. Recognising the large number of EEA workers recruited into the sectors it regulates, the GLAA has imposed this extra-territoriality aspect to its licensing to prevent exploitative practices across supply chains.<sup>22</sup> To enforce its licences abroad, the GLAA has actively sent enforcement officers to countries of origin to conduct training exercises and to support local authorities in applying labour laws in situations where workers are recruited by overseas employment agencies.<sup>23</sup> For example, in 2009 the Bulgarian Chief Labour Inspector and the GLA (as the GLAA was called at the time) signed an agreement declaring that the two state institutions will work closely together when inspecting and regulating labour companies that provide Bulgarian seasonal workers to the United Kingdom. The agreement followed incidents in 2008, which involved violations of legislation by Bulgarian intermediary companies and by Bulgarian and British employers.<sup>24</sup>

Thirdly, the GLAA takes an intelligence-led approach towards monitoring and enforcement. The GLAA liaises with other relevant regulatory bodies in the UK, including the tax and minimum wage enforcement body, the police, the fire service, the National Crime Agency (NCA), and the Health and Safety Executive. Compiled intelligence is used to prioritise certain labour providers for inspections. If an agency has not paid its taxes or has been reported for a violation of workplace safety, this is used by the GLAA as an indicator that the agency is at risk of breaking their licensing agreement.<sup>25</sup> In 2016-17, 1,428 intelligence

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<sup>20</sup> The GLAA only made 26 referrals to the National Referral Mechanism (NRM) in 2015-16. This relatively low figure can be attributed to the GLAA not having the remit to fully investigate criminal aspects of forced labour and human trafficking cases until May 2017. Such cases would regularly be passed to the police, who would make the referrals to the NRM.

<sup>21</sup> GLAA. 2016. Gangmasters Licensing Authority: Annual report and accounts. Available at <http://www.gla.gov.uk/media/2834/gla-annual-report-and-accounts-2015-16-pdf.pdf>

<sup>22</sup> Andrees, B. Nasri, A. Swiniarski, P. 2015. Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_377813.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_377813.pdf)

<sup>23</sup> Maroukis, T. 2016. Open Democracy. 'The UK Gangmasters Licensing Agency: A model to be followed and how to undermine it'. Available at <https://www.opendemocracy.net/beyondslavery/pt/thanos-maroukis/uk-gangmasters-licensing-agency-model-to-be-followed-and-how-to-underm>

<sup>24</sup> ILO. 2012. Good practices in labour inspection: the rural sector with special attention to agriculture. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/instructionalmaterial/wcms\\_183022.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/instructionalmaterial/wcms_183022.pdf)

<sup>25</sup> Andrees, B. Nasri, A. Swiniarski, P. 2015. Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_377813.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_377813.pdf)



referrals were made between the GLAA and its partners,<sup>26</sup> and in 2015-16, 54 joint operations were carried out, leading to the identification of 36 organised crime gangs suspected of involvement in labour exploitation, modern slavery and trafficking in human beings.<sup>27</sup>

Fourthly, the GLAA's licensing and inspection framework helps create a 'level playing field' that ensures parity between labour providers and reduces the risk of exploitation for workers. By enforcing the same standards for all businesses, the GLAA prevents rogue businesses from undercutting legitimate labour providers through tax evasion, worker exploitation or both.

### **Recognized best practice example**

The GLAA's licencing scheme has continuously been cited as an example of best practice for preventing labour exploitation, both at the national and international level (see box 4). In addition to the examples below, the International Labour Organization (ILO) includes the GLAA licensing system in its good practices database for fair recruitment<sup>28</sup>; as an example of good practice in its 2012 publication *Good practices in labour inspection: The rural sector with special attention to agriculture*<sup>29</sup>; and again in its 2015 report *Regulating labour recruitment to prevent human trafficking and to foster fair migration*.<sup>30</sup>

#### **Box 4. Internationally recognised example of good practice**

**International Labour Organization (ILO):** "The GLA is widely acknowledged to have, thus far, adopted a number of innovative approaches to monitoring and enforcement. Firstly, [...] the GLA imposed an extra-territorial aspect to [its] licensing conditions. This has led to a number of cross-border contacts and initiatives with regulatory authorities in those countries. Secondly, the GLA enshrined eight key standards into a licensing Code of Practice. [...] Thirdly, the GLA takes an 'intelligence-led' approach towards monitoring and enforcement."<sup>31</sup>

**Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA):** "The setting up of the Gangmasters Licensing Authority (GLA) [...] is an example of good practice, [...] its scope of competence could be further extended to other sectors such as hospitality (including catering companies and hotels) and construction."

<sup>26</sup> Metcalf, D. 2017. Stopping exploitation of labour: Enforcing regulatory standards to boost compliance [presentation]. Department of Economics Knoop Lecture. University of Sheffield.

<sup>27</sup> GLAA. 2016. Gangmasters Licensing Authority: Annual report and accounts. Available at <http://www.gla.gov.uk/media/2834/gla-annual-report-and-accounts-2015-16-pdf.pdf>

<sup>28</sup> ILO. 2015. The Gangmasters (Licensing) Act 2004. Available at [http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p\\_lang=en&p\\_practice\\_id=51](http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=51)

<sup>29</sup> ILO. 2012. Good practices in labour inspection: the rural sector with special attention to agriculture. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/instructionalmaterial/wcms\\_183022.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/instructionalmaterial/wcms_183022.pdf)

<sup>30</sup> Andrees, B. Nasri, A. Swiniarski, P. 2015. Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_377813.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_377813.pdf)

<sup>31</sup> Ibid.

**Organization for Security and Co-operation in Europe:** “The “Gangmasters Licensing Authority” [...] provides an example of an effective framework against exploitation and abuse. The framework’s mutually reinforcing regulation, inspection and enforcement powers give it muscle and credibility”.<sup>32</sup>

**International Organization for Migration:** “Another positive example shared was that of the UK Gangmasters Licensing Authority, which has developed an ‘intelligence-led’ approach to inspecting licensed [private recruitment agencies] [...] Specially trained monitoring officers liaise with the other enforcement bodies in the UK - for instance, the tax and minimum wage enforcement body - to draw together intelligence about recruitment businesses. This intelligence is used to target PRAs for inspections which are suspected of non-compliance, and to not waste resources on those PRAs, which, the evidence suggests, are most likely to comply with regulation. The UK’s priority is to identify PRAs which are likely to be engaged in forced labour and trafficking.”<sup>33</sup>

The success of the GLAA in protecting vulnerable workers from exploitation aligns with some of the prominent thinking on the role of labour inspection and enforcement to prevent labour exploitation. Notably the International Labour Conference revisited and updated the Forced Labour Convention of 1930 by adopting a new Protocol to the Forced Labour Convention in 2014 for which labour inspection was a key focus. The Protocol states unequivocally that: measures for the prevention of forced or compulsory labour shall include....

(c) *undertaking efforts to ensure that:*

- (i) *the coverage and enforcement of legislation relevant to the prevention of forced or compulsory labour, including labour law as appropriate, apply to all workers and all sectors of the economy; and*
- (ii) *labour inspection services and other services responsible for the implementation of this legislation are strengthened.*<sup>34</sup>

The approach adopted by the GLAA also meets with a number of what labour market oversight expert David Weil considers to be core components for ‘strategic enforcement’: firstly, a strong mapping of the terrain to identify the key problem areas; secondly, joint working with ‘key third parties’ such as migrant worker support centres and trade unions – something that was integral to the GLA’s initial structure with its representative Board and which the GLAA has sought to replicate through its recently established liaison groups; and finally, using complaints to ‘help achieve broader regulatory priorities rather than being forced into a purely reactive role’ – as solidified in the GLAA’s license standards.

<sup>32</sup> OSCE. 2014. Not for sale - Joining forces against trafficking in human beings.

<http://www.osce.org/secretariat/115755?download=true>

<sup>33</sup> IOM. 2015. Recruitment monitoring and migrant welfare assistance – what works?. Available at [https://www.iom.int/sites/default/files/migrated\\_files/What-We-Do/docs/Recruitment-Monitoring-Book.pdf](https://www.iom.int/sites/default/files/migrated_files/What-We-Do/docs/Recruitment-Monitoring-Book.pdf)

<sup>34</sup> International Protocol P029 of 2014 to the Convention Concerning Forced or Compulsory Labour (the Forced Labour Convention of 1930)

## **Expanding the GLAA licensing system**

As noted above, the licensing system operated by the GLAA in the agriculture, horticulture, shellfish gathering and associated processing and packaging sectors has been widely regarded as effective in monitoring labour providers to these sectors and detecting cases of exploitation. Many experts in the field of human trafficking have consequently called for the GLAA's licensing powers to be extended into sectors beyond food processing, agriculture, horticulture and shellfish gathering.<sup>35</sup>

While there are fewer 'gangmasters' in other sectors, other labour providers still operate as intermediaries in the labour supply chain, including employment agencies, recruitment agencies, and umbrella companies. Where these intermediaries operate, there is greater complexity and a diffusion of responsibility in the employer-employee relationship, and greater scope for exploitation to occur. Extending this system to cover all such labour providers across the labour market, would ensure thorough and consistent monitoring of these agencies against employment standards and create a level playing field for businesses to prevent undercutting by unscrupulous operators.

GLAA licensing forms a critical component of its proactive response to preventing risk of exploitation in the labour market and identifying potential victims of trafficking. FLEX recommends the GLAA's licensing system as an example of good practice for Member States, and strongly advocates the expansion of the current licensing system to other sectors, on a gradual, informed and adequately resourced basis. Future licensing should follow the model set out by David Weil: mapping; joint working; and establishing regulatory priorities.

## **Challenges**

Despite being an example of good practice, a number of challenges remain to be addressed within the GLAA licensing system. Firstly, though the GLAA's cooperation with law enforcement has recognisable benefits, it can also have negative impacts on workers' willingness to trust the GLAA.<sup>36</sup> This is especially true for workers with irregular immigration statuses. FLEX, along with a number of other NGOs, have long been calling for a firewall between labour inspection and immigration enforcement in the UK and globally.

The Special Rapporteur on the Human Rights of Migrants, François Crépeau, detailed the reasons for the importance for such a firewall in 2014:

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<sup>35</sup> GRETA. 2012. Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom. Available at [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/greta\\_report\\_united\\_kingdom\\_2012\\_en\\_0.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/greta_report_united_kingdom_2012_en_0.pdf); United States Department of State. 2016. Trafficking in Persons Report. Available at <https://www.state.gov/documents/organization/258876.pdf>; FLEX. 2013. Preventing Trafficking For Labour Exploitation. Working Paper 01; Centre for Social Justice. 2013. It Happens Here; and Migration Advisory Committee. 2014. Migrants in Low Skilled Work.

<sup>36</sup> Maroukis, T. 2016. Open Democracy. 'The UK Gangmasters Licensing Agency: A model to be followed and how to undermine it'. Available at <https://www.opendemocracy.net/beyondslavery/pt/thanos-maroukis/uk-gangmasters-licensing-agency-model-to-be-followed-and-how-to-underm>

## FOCUS ON LABOUR EXPLOITATION

*A migrant who is either irregular and fears detection and deportation, or who has a precarious legal status and fears losing his/her job and subsequently becoming irregular, will be very reluctant to report workplace violations to labour inspectors, unless there is a “firewall” in place which prevents labour inspectors from communicating information about potentially irregular migrants to immigration enforcement.<sup>37</sup>*

The GLAA’s expanded remit to cover labour abuses in the whole UK labour market is a promising acknowledgement of the need for pro-active labour inspections. However, it is crucial that the GLAA is provided with sufficient resources to effectively and efficiently carry out its new role. To date, the UK government is yet to provide adequate funding to permit a full expansion of the GLAA’s functions. National and international recommendations calling for the GLAA’s licensing scheme to be applied to other sectors, such as construction, cleaning and care work, also need to be heeded.

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<sup>37</sup> UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Labour exploitation of migrants, 2014, p.16. Available at <http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>