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Anti- Corruption to Fight Human Trafficking Labour Exploitation in the Spanish Agricultural Sector



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EXECUTIVE SUMMARY

While human trafficking for labour exploitation represents one of the major challenges currently faced by Europe, it appears that corruption issues are still the central cause at the origins of this violation of human rights. Spain represents a concrete example of this scheme: considering its complex legal framework in the matter and the levels of perceived corruption, labour exploitation in the country, and particularly in the agricultural sector, demonstrates the interconnection between labour exploitation, human trafficking and corruption.

It is true that, because of the ‘transnational culture of corruption’ (IOM 2017: 1), as well as of the complexity of the systems of global supply chain, impunity prevails and finding legal or political tools to fight it remains particularly complex. Yet, there is an ongoing interest and discussion from businesses and civil society related to mandatory human rights and environmental due diligence (especially with the recent proposal of the European Union Commission for adopting a Directive on Corporate Sustainability Due Diligence). Increased attention to corporate’s responsibility in this crime, but also to corruption issues as such, was given. However, more efforts need to be done as responsibilities remain solely on states, business sectors also must be held to account. And more importantly, the corruption prism must be taken into account in the fight against human trafficking for labour exploitation.

By analysing the case of Spain, this paper aims at stressing the interrelatedness between human trafficking and corruption, in revealing the extent to which adopting an anti-corruption perspective by states and private companies can be a critical factor to prevent and fight labour exploitation. This research finally proposes recommendations to improve the overall domestic system and make the fight into human trafficking more efficient.

INTRODUCTION

Behind the phenomenon of trafficking in human beings for labour exploitation, lies the ‘transnational culture of corruption’ (IOM 2017: 1). The hidden nature of this crime allowed for its spread in the formal and informal economy (GRETA 2020: 3), making it particularly difficult for governments to address it adequately: despite the adoption of international and national legislations, as well as corporate social responsibility charters at company level, efforts provided did not prevent or significantly decrease human trafficking.

Even more problematic is the complexity of the capitalist business sector, within which, among others, globalisation, industrial relocation, sub-contraction of suppliers and the large number of actors involved in the global supply chains easily render invisible the conduct of such a violation of human rights (LeBaron, Howard, Thibos & Kyritsis 2018: 16).

Consequently, countries that show a weaker rule of law and that do not provide enough efforts to fight human trafficking are ‘also those who tend to have high levels of perceived corruption’ (OECD 2016: 35). It indeed seems quite obvious that corruption offers a fertile ground to traffickers since it facilitates the execution of the crime, while ensuring total impunity thus imposing a double sentence to the victims of human trafficking (OECD 2016: 36). In addition, human trafficking for labour exploitation also establishes grounds for other related economic crimes, such as fraud or money laundering, penalising all the more companies playing fair (EUROPOL n.d.).

In Europe too, human trafficking for labour exploitation represents a significant challenge (Jagland 2019: 1). Spain represents a concrete example of the interconnection between labour exploitation, human trafficking and corruption: its complex legal framework in the matter, its prominent agricultural sector in need of

seasonal workers and the low trust of Spanish citizens on its public institutions represent three relevant parameters for this study. Although the country took steps to address corruption, which persistently ranks as a most pressing concern for society (GRECO 2019: 4), many gaps remain.

For instance, the last overall reform of the Spanish Criminal Code consolidated a new amendment to the principle of corporate criminal liability of corporate bodies (article 31 bis Criminal Code).¹ Even the apparent link between the offences, the definition of trafficking in human beings for labour exploitation is not precise enough (article 177 bis) and the forms of labour exploitation cannot be equated with offences against the rights of workers (articles 311 and 312.2) (López Rodríguez & Arrieta Idiakez 2019: 22).

Thus, from a legal perspective, the current legislation does effectively detect, address and prosecute human trafficking for labour exploitation. Yet, tackling human trafficking for labour exploitation is becoming more than urgent. However, we may benefit from the ongoing debates on business and human rights to critically approach the link between corruption and human rights. In fact, ‘corruption and business and human rights form part of the same package of responsible business conduct’ (UNHRC 2020). The developing mechanisms, non-binding UN level guiding principles (e.g. UN Guiding Principles on Business and Human Rights); and EU level (e.g. European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability), with preparation of a directive on mandatory human rights due diligence could represent a good starting point to finally adopt an approach that tackle both corruption and trafficking.

¹ Since 2017, corporate criminal liability arises from offences such as trafficking on human beings (art 177 bis), fraud (arts 248 to 251 bis), obstruction of law enforcement (arts 257 to 258 ter), corruption in business (art 286 bis), offences against the rights of foreign workers (art 318 bis) crimes related to the treasury (arts 307, 307 bis, 307 ter and 310 bis), among others (Global Compliance News 2021).

PROBLEM AND RATIONALE FOR ACTION

Despite the limited resources linking both labour exploitation and corruption in Spain, several studies point at the use of human trafficking for labour exploitation in the Spanish agricultural sector occurs on large scale (Accem 2006: 17). The Global Slavery Index 2018 estimated a number of 105,000 victims of modern slavery in Spain (GSI 2018: 93), considering modern slavery the most extreme form of labour exploitation. Human trafficking for labour exploitation is the second most common type of exploitation in Spain, after sexual exploitation (GRETA 2018: 7). Despite its varied pattern, common features were identified (Lickfett Sirseloudi, Rusev, Raets, Urio, Kojouharov & Nicolae 2019: 375).

Most of the victims of labour trafficking identified in Spain are men coming from Eastern Europe (Romania and Bulgaria), Latin America or Sub-Saharan Africa (Accem 2006: 72). Some of them are recruited in their origin countries, some in the destination country as result of the migration process (e.g. as a result of the failure of the national migrant integration policies) (Correa da Silva & Cingolani 2020: 5). Victims are recruited through formal (e.g. work agency, newspaper advert or travel agency) or informal job offers (e.g. through direct contact with an intermediary, relatives or friends). In the agricultural sector, 'the process consists in offering work to harvest or pick agricultural products for the season, agreeing on the wage plus room and board, without any intention of actually paying them' (Lickfett Sirseloudi, Rusev, Raets, Urio, Kojouharov & Nicolae 2019: 379).

Behind forced workers tends to be an organisation linked to primary activities (e.g. agriculture or construction) or intermediaries providing workers to producers (Allain, Crane, LeBaron & Behbahani 2013: 26). Intermediaries can be temporary work agencies, cooperatives, recruitment agencies, payroll agencies, gang-masters or labour providers.

Taking advantage of the cultural differences, workers develop a dependency relationship with the trafficker/intermediary. As a result, there is no need for a complex hierarchical structure (Accem 2006: 79) and using threats, use of force

or coercion is usually not necessary. Instead, 'servitude, seizure of documents, intimidation and constant threat' are used to limit the victim's freedom (Correa da Silva & Cingolani 2020: 5).

In analysing the cycle of human trafficking, opportunities for corruption can be found in the trafficking chain, criminal justice chain or support and protection chain (UNODC 2011: 7). The supply chains are where perpetrators link with other business actors (Allain, Crane, LeBaron & Behbahani 2013: 39). These chains can be relatively short or large, including subcontracting production activities and different players (Allain, Crane, LeBaron & Behbahani 2013: 41).

In the Spanish agricultural sector, the phase where an employer, temporary work agency or cooperative establishes contact with an intermediary to obtain workers is one of the main critical points of the supply chain. This can be considered a risk point in the supply chain because it is when legitimate and illegitimate business intersects and, facilitated by corrupt actors, exploitation and human trafficking may take place (Kojouharov, Rusev, Eelmaa, Markina, Jokinen, Kavasa & Stabina 2019: 7). Forced labour appear to be among low value-added activities, as seasonal labour for planting and harvesting or cleaners responsible for disinfecting slaughterhouse (Allain, Crane, LeBaron & Behbahani 2013: 42). The corrupt actors involved in this chain can be from the public (e.g. labour inspectorates, police officers or border control authorities) or the private sector (e.g. transport agencies, travel agencies or financial institutions). Their corrupt acts can involve ignoring, tolerating, participating in and organising trafficking and exploitation (UNODC 2011: 7).

As described, it becomes evident that one of the main points of action to prevent human trafficking is to develop an appropriate international, regional and national legal framework, which includes effective human rights due diligence and anti-corruption measures to prevent labour exploitation and trafficking, among other human rights violations that occur all along the supply chain.

In this case, it becomes particularly urgent for Spanish companies involved in the agricultural sector to actively assess the human rights

risks, and to implement responsible business practices to respect, protect and fulfil the human rights of all the actors involved (Business & Human Rights Resource Centre (2021) 2).

EXISTING POLICY OPTIONS/ SCENARIOS

Prevent and counter human trafficking

Spain began amending its criminal code only in 2009 to align its legal framework with the international standards and obligations (CITCO 2021: 16).² In February 2019, the National Strategy against Organized Crime and Serious Crime (2019-2023) was approved, identifying the fight against human trafficking as one of the main priorities to tackle (GRETA 2018:57.). One of the lines of actions identified was the elaboration of the National Strategy Plan against Human Trafficking and Human Exploitation 2021-2023 (PENTRA). The aim of PENTRA is approaching the criminal phenomena from a multidisciplinary perspective, involving public institutions as well as the third sector (La Moncloa 2022).

Following the recommendations of GRETA and the United States State Department, PENTRA presents five central priorities, which translated into several lines of actions and measures. The priorities are the following:

1. detection and prevention of trafficking in human beings,
2. identification, referral, protection, assistance and recovery of victims of trafficking in human beings,
3. crime prosecution,
4. cooperation and coordination, and
5. improvement of knowledge. Moreover, the

PENTRA establishes a monitoring methodology, coordinated by the State Secretariat for Security of the Ministry of the Interior, and the creation of a permanent working group.

The permanent working group, integrated by representatives of different state institutions and ministries, and coordinated by the Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO), will present a mid-term and final report and will consider the ‘possibility of establishing monitoring indicators for each of the lines of action described above, in consultation with specialized civil society organizations and bodies’ (PENTRA 2022: 43).

PENTRA’s lines of action and measures are broad: some could have a great impact, but without any specific actions or monitoring indicators, it is difficult to evaluate its implementation. This is for example the case of the measure 1.2.D,³ which consists of promoting information and providing training to different actors in the private sector in order to raise awareness and increase their involvement, but that is not translated in any specific action.

Another challenge is the lack of measures including the role of corruption in facilitating human trafficking. Considering the importance of the black market in labour exploitation, measures as 3.2.C⁴ should be complemented with other measures.

Prevent and eradicate labour trafficking from the business or supply chains

As mentioned before, forced labour in Spain is either approached from a labour rights perspective, centred in the ‘principle of voluntary activity’ (e.g. article 35 Spanish Constitution and articles 1.1 and 4.1 Royal Legislative Decree

² According to the United Nations Protocol to Prevent, Suppress and Suppress Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), the Council of Europe Convention on Action against Trafficking in Human Beings (2005) and the European Parliament’s Directive 2011/36/EU on preventing and combating trafficking in human beings and the protection of victims (2011).

³ Measure 1.2.D ‘Promote information and training of private sector staff in the most relevant areas of activity in the field of trafficking in persons, promoting awareness and their involvement in its detection’ (CITCO 2022: 34).

⁴ Measure 3.2.C ‘Intensify financial investigations aimed at neutralizing the economic capacity of criminal networks or groups involved in the human trafficking and exploitation of human beings’ (CITCO 2022: 32).

2/2012) or from an anti-trafficking perspective (e.g. article 177 bis Criminal Code and article 59 Ley Organica 4/2000). In fact, the Spanish legal system does not define forced labour as an independent crime, but as one of the purposes of human trafficking.

To reinforce the protection framework for victims of labour exploitation, Spain notably developed the Protocol Framework on Certain Actions Concerning Unaccompanied Foreign Minors; Instruction 6/2016 Secretary of State for Security from Ministry of the Interior; Strategic Plan of the Labour and Social Security Inspectorate 2021, 2022 and 2023; and the National Strategy against Organised Crime and Serious Crime (2019-2023).

In December 2021 the Council of Ministers agreed on the approval of the National Action Plan against Forced Labour: Compulsory labour relations and other forced human activities (2021-2024). This plan focuses on the protection of victims, criminalising forced labour and adopting measures aimed at better understanding their profile of the victims and improving the protection, prevention and detection of the crime (Iberley 2021). The implementation and effects of the plan will need to be assessed in the future.

Promote corporate social responsibility and business and human rights

Even though there are differences between corporate social responsibility and human rights, Spain has presented several measures aimed at making companies comply with their obligation of respecting human rights (Avery 2006: 1).

In 2008, the State Council for Corporate Social Responsibility (CERSE) was created by the Spanish government. This is an advisory body, composed of 57 representatives from different companies, unions and governmental and public institutions aimed at guiding and supporting the government in the design of corporate social responsibility policies. In 2014, the Spanish Corporate Social Responsibility Strategy (2014-2020) was approved by the Council of Ministers. The strategy was aimed at establishing, through

60 measures, a common framework for corporate social responsibility. The strategy has a business-centred top-down approach and did not present concrete actions. As an example, the fight against corruption was considered a priority but no specific actions were presented (EERSC 2014: 39). In July 2017, the Spanish government approved the National Action Plan on Business and Human Rights. This action plan responded to the recommendations of the non-binding United Nations Guiding Principles on Business and Human Rights and EU obligations and presented a compilation of measures and actions to approach social corporate liability. The main problem is that the plan was never executed, and a new action plan was not presented (OBRSC 2018).

On 23 February 2022, the European Commission adopted a proposal for a Directive on corporate sustainability due diligence (European Commission 2022). A few hours later, the Ministry of Social Rights and Agenda 2030 of the Government of Spain launched a public consultation for the Draft Bill on the Protection of Human Rights, Sustainability and Due Diligence in the Transnational Business Activities of Spanish Companies (OBRSC 2022). The results of these processes are still to be seen; however, Spain is taking steps towards a corporate due diligence law on human rights and environmental issues.

Prevent and detect situations where corruption facilitates human trafficking

Spain did not develop specific 'legal, regulatory, and practical measures [...] to prevent and detect situations of corruption that facilitate human trafficking' (GRETA 2018: 50). Corruption is prosecuted towards the provisions of the Spanish Criminal Code. In fact, article 177bis of the Criminal Code considers corruption an aggravating factor in cases of trafficking in persons in 'which the perpetrator carries out the acts taking advantage of their condition of authority, officer or public official' (GRETA 2018: 50).

Moreover, in 2018 there was no knowledge of any conviction 'handed down over the last four years for corruption associated with the crime

of trafficking in human beings, nor of any conviction of a public official for participating in a crime of human trafficking’ (GRETA 2018: 50).

RECOMMENDATIONS

Each company is different and needs to find its approach to prevent and address labour exploitation (ILO 2015: 115). However, businesses need to make sure they have taken enough measures against human rights abuse in their activities or supply chains and put in place remediation mechanisms for victims. The business sector should have an active role in countering labour exploitation and should do the following:

1. Companies should conduct ‘worker-centric human rights due diligence with strong stakeholder engagement’ (Business & Human Rights Research Centre 2022: 19). Workers should be involved in the due diligence processes (risk assessment, design, implementation, and monitoring processes) (Business & Human Rights Research Centre 2022: 19).
2. Businesses should incorporate human rights into anti-corruption procedures and promote a corporate integrity culture (UNHRC 2020: 15). To do so, companies should make sure that corruption and human rights risks are considered and monitored in the business activities.
3. Business should map its supply chain beyond the first tier. Companies should be transparent and provide information about the location of the production facilities, suppliers, subcontractors and workforce (GRETA :2020: 29). The findings should be used to raise awareness and improve the business practice, ensuring decent work, the right of freedom of association and collective bargaining of workers (Business & Human Rights Research Centre 2022: 19).
4. Companies should evaluate the potential risks of workers (e.g. risks associated with some materials, regions or specific groups of workers) and the impacts of business operations (consequences for the environment and people living or working in the area). Relevant stakeholders and workers should be involved in the risk assessment processes.
5. Companies should be engaged with local and global trade unions to support collective bargaining and freedom of association in the supply chains (Business & Human Rights Research Centre 2022: 21).
6. The business sector should extend its compromise and influence into the legislative and policy-making process (Business & Human Rights Research Centre 2022: 21). The business sector should cooperate with other relevant stakeholders to make sure that realistic laws and policies are set in place to prevent corruption and respect human rights. (UNHRC 2020).

Added to this, the Spanish authorities and government needs to protect people against human rights abuse by third parties and actively fight against human trafficking for labour exploitation. To do so the Spanish government should do the following:

1. The Spanish government, helped by inter-governmental and non-governmental organisations and academia, should increase its efforts in researching the phenomena of human trafficking for labour exploitation. Currently, different information can be found about corruption, business and human rights, and human trafficking, however, there is an urgent need to establish connections between them. Only after identifying the scale of labour trafficking in Spain, will the state be able to fulfil its legal obligations and standards.
2. Human rights violations, such as labour exploitation or labour trafficking, should be clearly defined and criminalised at the national level. The Spanish state should provide a ‘clear, detailed and comprehensive’ (GRETA 2020: 6), definition of what constitutes human trafficking, including all types of exploitation, and create laws to criminalise it. The state should also specify what constitutes labour exploitation and make sure that the definition provided is consistent with labour law (GRETA 2020: 6).
3. The state should be able to develop the best practices, methods and strategies to combat human trafficking for labour exploitation. During the policy design, implementation and evaluation processes the government

must engage stakeholders and rights holders (Business & Human Rights Research Centre 2022: 11). This should enable Spain to put in practice sustainable, coherent and workers-centred policies (Business & Human Rights Research Centre 2022: 19).

4. National action plans should be a 'powerful forward-looking instrument' able to transform policy into practice (UNHRC 2020: 9). The Spanish government should impulse the creation of a realistic national strategies and action plans to combat labour exploitation and trafficking, including coherent objectives, real measures and objectively verifiable indicators. The existence of a monitoring and evaluation mechanism, led by a multidisciplinary working group, should be compulsory when approving a National Action Plan. No action plans should be approved without guaranteeing their continuity after their period of validity and its compatibility with other strategies and action plans. The national policies need to present realistic and sustainable cooperation measures, this must include joint investigations, inspections and visits to at-risk sectors where human trafficking for labour exploitation might happen. Besides, cooperation shall be governed by a National Referral Mechanisms (GRETA 2020: 12).
5. Spain should promote policy reform. In this policy reform:
 - The state needs to lead by example and approach business and human rights from a workers-centred perspective, focusing on the implementation of effective measures aimed at improving working conditions (Business & Human Rights Research Centre 2022: 19). Furthermore, the government should 'introduce non-negotiable minimum standards' (Business & Human Rights Research Centre 2022: 4) to push business and employers to protect workers and fulfil corporate due diligence (Business & Human Rights Research Centre 2022: 10).
 - The state should make sure that all government-owned organisations avoid encouraging demand related to human trafficking in the context of their purchase of services and goods (GRETA 2020: 16). The government should promote traceability and supply chain transparency through compulsory risk assessments of the supply chains of goods and products the government use (GRETA 2020: 16), create a publicly available list or database with the high-risks products, sectors and countries (Business & Human Rights Research Centre 2022: 1) and establish mechanisms 'to reward good practices when companies disclose information related to trafficking and put safeguards in place' (GRETA 2020: 17).
 - States should improve and monitor labour standards in at-risks sectors and, consequently, take action against exploitation. This process needs to be led by workers including local stakeholders and labour rights experts (Business & Human Rights Research Centre 2022: 13). Special attention should be paid to the situation of subcontractors, private employers and recruitment agencies in order to detect fraudulent practices (payment of recruiting fees, non-payment of minimum wage and social insurance contribution, not respecting basic working conditions etc. (GRETA 2020: 12).
 - The government should strengthen the labour inspection system, increase the number of professionals and provide them with the necessary resources (GRETA 2020: 12). Moreover, they need to be trained to have better knowledge about human trafficking for labour exploitation and its related crimes. The competences of labour inspectorates need to be expanded, considering cooperation, coordination and joint inspections as the base of their mandate (GRETA 2020: 12). The inspections need to be workers-centred and human-rights based.
 - To reduce the opportunities for corruption, the Spanish government should consider measures as a reform of beneficial ownership disclosure, reform of the public procurement (reconsider codes of conduct for suppliers, digitalise public procurement process etc.) and establish integrity pacts (UNHRC 2020: 12).
 - The state should adopt legislation to promote responsible purchasing practices, engage with local and global trade unions to support freedom of association and collective

bargaining in supply chains and enter into joint labour rights agreements with unions which apply to their supply chains (Business & Human Rights Research Centre 2022: 13).

- The state should establish worker-oriented grievance mechanisms to ensure workers have access to remedy. Ideally workers should be included in the design and perform of such grievance mechanisms (Business & Human Rights Research Centre 2022: 14).
6. The Spanish government should ask companies and employers to demonstrate commitments to ethical standards and human rights. Hence, the application of a responsible business conduct should include anti-corruption and anti-trafficking measures (UNHRC 2022: 9).
- Transparency in supply chains should be promoted. States could conduct or require independent supply chain audits and workplace monitoring, to ensure companies are held accountable in case of any human rights abuse (through prosecution and sanctions).
 - There should be mechanisms to reward good practices. This should happen ‘when companies disclose information related to trafficking and put safeguards in place, such as awarding contracts and export credits, leveraging their purchasing power with their suppliers’ (GRETA 2020: 17). For example, creating ‘good performance lists’ exposing the name of companies that had actively involved in preventing and countering human trafficking (OSCE 2018: 38).

urgent need to research the phenomena in order to develop effective measures to prevent and combat labour exploitation. Policy makers and companies need to involve all the relevant stakeholders and right holders, including workers.

CONCLUSION

Legal, regulatory and practical measures making businesses respect, protect and fulfil human rights can be found in Spain, but few of them are effective when it comes to preventing and combating human trafficking for labour exploitation.

There is a lack of updated knowledge about the phenomena of labour trafficking in Spain and its link with other crimes is poorly researched. The role of corruption in facilitating human trafficking is not considered when approaching the topic and consequently, both phenomena are treated separately. There is an

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