

## Forced Labour in Sweden? The Case of Migrant Berry Pickers

A Report to the *Council of Baltic Sea States* Task Force on Trafficking in Human Beings: Forced Labour Exploitation and Counter Trafficking in the Baltic Sea Region

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### Summary:

The legal transposition in Sweden of international law on forced labour is analysed and important weaknesses in the implementation and application of such law are identified. These deficiencies are illustrated by the treatment and means of redress available to foreign berry pickers who annually gather wild berries in the forests of Sweden. A case study of the recruitment and employment of Thai berry pickers is presented, exemplifying serious deficiencies in labour protection both in terms of legal recourse and regulation through the labour market. As a result groups of berry pickers have been subject to various illegal forms of detriment amounting to evidence of forced labour. A number of policy recommendations are made for strengthening the legal and labour market regulatory framework to enable effective control of forced labour in this sector of work in Sweden.

**Keywords:** Forced labour, Sweden, migrants, berry pickers

### 1. Introduction<sup>4</sup>

Sweden provides one of the best functioning labour markets in Europe with strong trade unions able to regulate terms and conditions jointly with employers with only minimal recourse to legal supports for orderly industrial relations. Yet this labour market appears to be challenged in unexpected ways, not least due to the unanticipated emergence of forced labour which appears to be difficult for traditional labour market actors to regulate, and equally, just as concerning, for the criminal justice system to respond to through available legal sanctions.

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<sup>4</sup> The authors wish to thank the Joseph Rowntree Foundation, UK, for permission to publish this extended version of a commissioned national report on Sweden, part of a forthcoming nine country study, 'Responses to Forced Labour in the European Union' conducted by the Working Lives Research Institute, London Metropolitan University.

Paradoxically, Sweden is a country which prides itself on its adherence to human and labour rights. It is signatory to major international conventions of the ILO and other international bodies which seek to promote the furtherance of so-called decent work. Sweden has an impressive record not only in defending human rights internationally, but also with respect to strict anti-trafficking laws, and to domestic laws on prostitution. Despite this however the issue of forced labour *per se* as against trafficking in human beings for purposes of sexual exploitation has received little attention either in legislative or policy discourses, at least until recently. A recent report into human trafficking for purposes of labour exploitation in Sweden notes:

Swedish authorities have, so far, been unable to address the problem of human trafficking for labour exploitation purposes. Since the authorities and the general public's understanding of the problem of human trafficking is shaped by the notion of sex and prostitution, exploitation of workers in human trafficking is not recognized. Swedish authorities are aware of cases of human trafficking for labor exploitation purposes but do not recognize them as such, because of a too limited perspective.<sup>5</sup>

In part, this is because the claims of a superior Swedish working environment have been uncontested, and indeed, these claims have had some basis in reality in terms of a 'Swedish model' of labour relations which promotes employee rights and collective bargaining, and is supported by high levels of trade union membership among the general population.

Thus, in the broad continuum from decent work to the extremes of forced labour, Sweden as a country has generally been considered to be at the positive end of the continuum in terms of the protection of employee rights in the workplace. More recently, documented cases have emerged in media of labour abuse in terms of non-payment of wages or payment of extremely low wages suggesting that such complacency may no longer be warranted. By separating forced labour from the more specific question of human trafficking we can identify its specificity - that is to say labour performed physical and/or psychological coercion or the threat of such coercive means together with economic compulsion used to impose extreme forms of labour discipline on workers.<sup>6</sup> The unanticipated emergence of 'unfree labour' performed under conditions of hyper-exploitation in Sweden raises issues in terms of the appropriate legal, policy and labour market responses.<sup>7</sup>

The article proceeds as follows: First, we review the existing legislative framework regarding forced labour in Sweden and recent case law concerning forced labour. Second, we illustrate some of the deficiencies in the application of this legal framework through a case study of seasonal migrant berry pickers. Third, we detail the resistance by the berry pickers themselves to their plight, the actions of the trade unions and other of parties which exemplify the limitations

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<sup>5</sup> Kegö, W. and Leijonmarck, E. (2010). *Slavarbete i vår tid Utnyttjande av estnisk och lettisk arbetskraft i Sverige*, Stockholm: Institute for Security and Development Policy, p.29.

<sup>6</sup> Anderson, B. and Rogaly, B. (2005). *Forced labour and migration to the UK*, TUC/COMPAS, London; Andrees, B. (2008) *Forced labour and trafficking in Europe: how people are trapped in, live through and come out*, ILO, Geneva; Skrivankova, K. (2010). *Between decent work and forced labour: examining the continuum of exploitation*, Joseph Rowntree Foundation, York. [www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf](http://www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf).

<sup>7</sup> Miles, R. (1987). *Capitalism and Unfree Labour: Anomaly or Necessity?* London, Tavistock.

of currently available redress. Fourth, we review the consequential changes in the regulatory regime initiated by the Swedish authorities in order to prevent similar abuses occurring in the future. Finally, we offer a number of specific policy recommendations arising from the case study.

## 2. Forced labour in the legislative framework

The only explicit prohibition of slavery and forced labour in Sweden is Article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which since 1995 is incorporated into Swedish law.<sup>8</sup> The terms are not defined in the article but have been clarified by the European Court of Human Rights (ECtHR). 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 him- or herself voluntarily*.<sup>9</sup> If the state or a municipality violates the provisions they can be required to pay damages. This obligation is based on the (1972:207) Swedish Act on Damages and on case law from the Supreme Court.<sup>10</sup> It is however not possible to extend this obligation to pay damages for violating the European Convention to private entities.<sup>11</sup> In order to make effective the prohibition of slavery and forced labour in the European Convention there must be corresponding provisions in Swedish law imposing effective sanctions. Provisions supposed to fill this aim are assembled in the Penal code (SFS 1962:700). Their content and adequacy will be touched upon shortly.

Further, the Instrument of Government (*Regeringsformen*, SFS 1974:152), in its chapter on Fundamental Rights and Freedoms, includes article 2.8 which has been considered to include a protection against forced labour.<sup>12</sup> According to article 2.8 every citizen in relation to the community *shall be protected against being deprived of his or her liberty*. According to the preparatory work of the Instrument of Government, this includes a protection against enforced official duties.<sup>13</sup> This provision is applicable in the relationship between the public and the individual but says nothing about the use of forced labour between private entities.

The Penal Code<sup>14</sup> however includes more general provisions which are considered to be applicable to cases of slavery and forced labour.<sup>15</sup> The currently applicable provisions mentioned

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<sup>8</sup> SFS 1994:1219, Government bill 1993/94:117, Inkorporering av Europakonventionen och andra fri- och rättighetsfrågor, *Regeringskansliet* (Government Offices in Sweden) [www.manskligarattigheter.gov.se/extra/pod/?id=15&module\\_instance=2&action=pod\\_show&navid=15](http://www.manskligarattigheter.gov.se/extra/pod/?id=15&module_instance=2&action=pod_show&navid=15).

<sup>9</sup> *ECtHR* Siliadin v France, Judgment 26 July 2005, p.116. [www.coe.int/t/dghl/monitoring/trafficking/docs/echr/SILIADIN\\_v\\_FR.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/docs/echr/SILIADIN_v_FR.pdf)

<sup>10</sup> NJA 2005 p. 462, and NJA p. 295, Judgments from the Supreme Court.

<sup>11</sup> NJA 2007 p. 747. Judgment from the Supreme Court.

<sup>12</sup> Swedish report to the ILO, 1987, on the application of ILO Convention No. 29 on Forced Labour.

<sup>13</sup> Government Bill 1973:90, p. 242-243.

<sup>14</sup> Swedish Penal Code, Ds 1999:36, Ministry of Justice. [www.sweden.gov.se/content/1/c6/02/77/77/cb79a8a3.pdf](http://www.sweden.gov.se/content/1/c6/02/77/77/cb79a8a3.pdf). Parts of the code have been revised since 1999.

in this context are the ones on kidnapping (4:1 PC), unlawful deprivation of liberty (4:2 PC), unlawful coercion (4:4 PC) and unlawful threat (4.5 PC). Another penal provision applicable in this context is article 9:5 of the Penal Code on usury. If someone is hiring someone and fails to pay compensation or pays a sum which is clearly less than what is common, it is suggested that the offender can be convicted for usury. Other applicable penal provisions in this context can be found in the Tax Law, the Aliens Act and the Act on Occupational Safety and Health.

In the late 1990s the international community started to search common ways to combat the threat posed by international organised crime and as a result of this discussion, adopted international conventions prohibiting trafficking in human beings.<sup>16</sup> A specific protocol on trafficking in persons was adopted in 2000 to supplement the UN Convention against Transnational crime: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.<sup>17</sup> The EU in 2002 adopted a Council Framework Decision on Trafficking (2002/629/JHA).<sup>18</sup>

In the 1990s, the Swedish government, in parallel with the international efforts, began to consider provisions against trafficking for sexual purposes. It was clear that the existing legal framework was not adequate.<sup>19</sup> The first provision entered into force 2002 and was incorporated in the same chapter in the Penal Code as the ones mentioned above i.e. in chapter 4 on Crimes against liberty and peace, article 4:1a (SFS 2002:436). A few years later in 2005, the prohibition was expanded in order to fulfil obligations stemming from the UN-protocol and the EU Framework Decision. Trafficking in order to exploit persons for forced labour was therefore included into the prohibition (SFS 2005:90). However no definition and only a vague explanation of what is to be considered as forced labour is included in the legislative preparatory work. The decisive factor seems to be that the victim is prevented from freely deciding over his or her doings.<sup>20</sup> It is however stated that the terms in the UN and EU legislation which are supposed to be implemented through the new provision shall have the same meaning as they have in the international law on human rights.<sup>21</sup> In 2010 the Swedish provision on trafficking in

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<sup>15</sup> Danelius, H. (1981). *Human Rights in Sweden*, Swedish Institute, Lund, Sweden, p.20; A publication from the Ministry Publication Series in 2008 was even more unclear regarding the applicable provisions, Ds 2008:7 *Människohandel för arbetskraftsexploatering*, p. 40 ff.

<sup>16</sup> Jokinen, A. Ollus, N. and Aromaa, K. (eds.) (2011). *Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia*, European Institute for Crime Prevention and Control, Helsinki, Finland p.17.

<sup>17</sup> UN Convention against Transnational crime: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.  
[www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%20traff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf).

<sup>18</sup> *Council Framework Decision of 19 July 2002 on combating trafficking in human beings*, Official Journal L 203, 01/08/2002 P, 001-004. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0629:EN:HTML>.

<sup>19</sup> Government Bill 2001/02:124, *Straffansvaret för människohandel*, Government Bill 2003/04:111, *Ett utvidgat straffansvar för människohandel*, p. 30 and p. 32.

<sup>20</sup> Government Bill 2003/2004:111, p. 66.

<sup>21</sup> *Ibid*, p. 45.

human beings was further revised in order to clarify and make the crime description more appropriate.<sup>22</sup>

The crime trafficking in human beings constitutes three basic elements, the first is the “trade” such as recruiting or transporting a person from one country to another or within a country, the second is the “unfair means” used to make the person subject her- or himself to the “trade”, and the third is that the purpose of the trade must be exploitation.<sup>23</sup> For child victims below the age of 18 the crime trafficking is fulfilled even if no unfair means have been used.

The crime trafficking of human beings in the Swedish context is more directed towards the violation of the victim’s freedom than on the planned exploitation as such.<sup>24</sup> That is partly illustrated by two judgments dealing with trafficking for forced labour exploitation by two Swedish district courts in the summer 2010. The first decided case was about five domestic workers/au pairs. Their employer was prosecuted for trafficking for forced labour exploitation.<sup>25</sup> In this case the two first elements of the crime were substantiated. The last question was to decide whether there was intent to exploit them through forced labour. The decisive criterion for this last element was to establish whether the intent was to limit the victims’ freedom through preventing them from freely deciding over their doings. That was not substantiated. The level of the wages and the working conditions was not given any decisive role in the outcome. The focus was on to what extent their freedom was limited.

This second case was about three British men recruited by two other British men to perform asphalt work in Sweden.<sup>26</sup> The two recruiting men were prosecuted for trafficking for the purpose of labour exploitation. The wages and working conditions were very poor. In this case the first element, “the trade” in the crime description was substantiated. The case fell on the second element. The question was whether the recruited men were misled regarding the wage and working conditions they would work under in Sweden which was not proved. In that case unfair means would have been used. The Court stated that it is evident that few people would accept working under the conditions relevant in this case. But that does not mean that they have been “intentionally misled” as claimed by the prosecutor.

These two court cases illustrate the subordinate role the level of the wage and working conditions play when trafficking for forced labour purposes is dealt with. The second case seems to indicate that it would be possible to offer extremely poor working conditions under quite aggravating circumstances without being responsible for using unfair means. And the first case illustrates the focus on the liberty aspect when deciding if there is any forced labour purpose.

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<sup>22</sup> Government Bill 2009/10:152 *Förstärkt straffrättsligt skydd mot människohandel* p. 1. SFS 2010:371.

<sup>23</sup> *Ibid*, p. 14 and 20-21 and Government Bill 2003/4:111 p 26.

<sup>24</sup> Government Bill 2003/2004:111, p. 54.

<sup>25</sup> Solna Tingsrätt, Mål nr B 421-08, dom 2010-06-17 - Judgment from Solna district court.

<sup>26</sup> Malmö Tingsrätt Mål B 3573-10 dom 2010-07-02 - Judgment from Malmö district court.

Especially the first case illustrates the role of the definition of forced labour in the trafficking context. According to the international human rights framework on forced labour, as mentioned, the definition in the European Convention and in ILO Convention No 29 is – 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.

It is the elements *penalty* and *involuntarily* that are decisive and from an ILO perspective it is clear that a penalty can take many different forms like the non-payment of wages and threats to denounce victims to the police or immigration authorities.<sup>27</sup> As regards the freedom of choice many aspects can come into play, but one important thing is that initial consent may be considered irrelevant when deception or fraud has been used to obtain it.<sup>28</sup>

One ILO indicator supposed to help actors identifying victims of forced labour is *restriction of freedom of movement* in line with the Swedish legislation. Others are withholding of wages or non payment of wages and manufacture of debts. All of these indicators may not always be an element of forced labour but they shall be read as signals to investigate further.<sup>29</sup> It is obvious that the elements of forced labour are difficult to transpose to a trafficking situation. They must in some way be merged with the other trafficking elements.

The ILO and EU Commission have also formulated some indicators for identifying victims of trafficking for forced labour purposes. One of the indicators of exploitation is working conditions. Excessive working days or hours are considered to be a strong indicator and low or no salary and very bad working conditions, medium strong indicators. Indicators of deceptive recruitment are deception about conditions or work and about wages/earnings.<sup>30</sup> An example in the appended explanation to the last indicator is deception concerning the amount that the individual is paid and of excessive deductions of wages for food and lodgings.<sup>31</sup>

It is clear that the quite extensive material the ILO has developed in order to help Member States finding effective ways to combat forced labour and trafficking in human beings

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<sup>27</sup> ILO Report of the Director-general. *A Global Alliance Against Forced Labour, Global Report under the follow up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference 93<sup>rd</sup> Session 2005, Report I(B), ILO 2005, p.5.

[www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_081882.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081882.pdf).

<sup>28</sup> ILO Report of the Director-general, *The cost of coercion, Global Report under the follow up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference 98<sup>th</sup> Session 2009, Report I(B), p.6.

[www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_106230.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_106230.pdf).

<sup>29</sup> Andrees, B. (2008). *Forced labour and Human trafficking, Handbook for labour inspectors*, Geneva, ILO p 18.

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_097835.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_097835.pdf).

<sup>30</sup> ILO and EU Commission (2009). *Indicators of trafficking of adults for labour exploitation*.

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_105884.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105884.pdf).

<sup>31</sup> ILO and EU Commission (2009). *Explanations of indicators for trafficking for labour exploitation*.

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_105035.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105035.pdf).

should be used by the Swedish authorities. It seems that this material can help the judiciary to interpret the Swedish legislation in an effective way and the prosecutors and the police to find arguments for investigating a case further. It is also clear that the situation of the berry pickers dealt with here includes many of the characteristics which the ILO would call indicators for trafficking for labour exploitation.

Another aspect to be further discussed is if the other provisions in chapter four in the Penal Code would adequately deal with forced labour situations which do not contain any other trafficking elements. It seems quite unsatisfactory that it is a real challenge to understand how the provisions in the Penal Code would adequately fit a forced labour case. It is questionable whether article 4 of the European Convention could be adequately applied and sanctioned in Swedish law. So far, Sweden has not been known as a country with a recent tradition of practices resembling forced labour. And probably therefore the ILO has not been interested in scrutinizing the Swedish legislation on forced labour. But that can change and it would be reasonable to provide a safeguard that adequate legislation is in place to prevent an unwelcome development. A way forward could be to follow the ILO advice and “given the broad potential scope of the concept of forced labour...., specify specific offences, which – individually or in a cumulative manner – add up to a criminal offence of forced labour.”<sup>32</sup>

One thing which is clear from this overview is that exploitation in itself does not seem to be a decisive factor when establishing whether forced labour or trafficking for forced labour purposes has occurred in Sweden. As long as the exploitation has not deprived the worker of freedom in a profound sense or has been adhered to voluntarily, the penal offences have not been of any use, even if exploitation is supposed to be an indicator of those crimes.

At that point, if no other offence is committed, the dispute radically changes character and develops into a purely labour exploitation case. The responsibility for protecting the victims and ensuring that the perpetrators are held accountable then leaves the police and prosecutors and is taken over mainly by the trade unions. It seems that it is at this point that the Swedish labour law in general comes into play, if not a civil law dispute is run in parallel.

A complicating factor from this perspective is that Swedish law does not include any provisions on minimum wage. Nor can the state extend the scope of a collective agreement through statutory regulations to include firms not formally bound by the agreement, which is common in many countries to protect wages, in particular in low-pay sectors.<sup>33</sup> It is up to the labour market parties to settle the wage level in collective agreements. Therefore it is of tremendous importance that collective agreements are concluded for vulnerable groups like berry pickers. For parties not covered by a collective agreement the room for action is quite wide. A term can however be unfair and it is possible to use Article 36 on unfair contract terms in the

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<sup>32</sup> ILO (2005). *Human Trafficking and Forced Labour Exploitation, Guidelines for Legislation and Law Enforcement*, p.18.  
[www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_081999.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081999.pdf).

<sup>33</sup> Schulten, T. (2006) ‘Statutory and collectively agreed minimum wages in Europe – an international overview’, in Schulten, T., Bispinck, R. and Schäfer, C. (eds.) *Minimum Wages in Europe*, ETUC-REHS, Brussels, pp. 1-24.

(1915:218) Act of Contracts in order to set aside or adjust a contract.<sup>34</sup> Also, according to the Wage Guarantee Act (1992:497) the state is liable for the payment of an employee's claim against an employer who has been put into bankruptcy in Sweden, in another Nordic country or in another country within the EU. It is however unclear whether a victim of forced labour can enter into an employment contract with an employer. The poor working conditions in general for a victim of forced labour or labour exploitation are further likely to violate Swedish labour law. A precondition for that is of course that the victim is fulfilling the criteria for being an employee. Relevant acts are the (1982:80) Employment Protection Act, (1982:673) the (1977:480) Working Hours Act, the (1977:480) Annual Leave Act and the (1977:1160) Work Environment Act. For violations of the first three acts the worker can apply for damages in court. Violations of the Work Environment Act can either generate penal sanctions or damages depending on the character of the violation.

The cases on trafficking for forced labour exploitation purposes that have so far reached the Swedish courts are very few. Therefore it is, beside the comments raised above, rather difficult to evaluate the adequacy of the legal framework. There are however a number of clarifications that need to be made and our case study is offered in the hope that it reveals both the encroaching boundaries of forced labour upon decent work and the problems that are entailed in its rectification.

### 3. Case study of berry pickers

Every summer from July to October, the forests of northern Scandinavia fill with various kinds of wild berries, blueberries, cloudberries and lingonberries (the latter often referred to as 'the red gold of the forest'). Some 30,000 tons are collected each year: cloudberries being gathered in late July; blueberries, in August and lingonberries in September. For Swedes, wild berries form an essential garnish to many of their favourite national dishes including the famed Swedish meatballs. However, today these berries are usually imported. The berries in northern Sweden are, thanks to the famous 'midnight sun', much prized by the pharmaceutical industry for their anti-oxidant properties and for their pigmentation qualities by the cosmetic industry. The long hours of exposure to the sun every day make the berries develop substances not to be found in berries grown further south. In other words, they are too valuable to be eaten, and instead bought by medical and cosmetic companies. As such, the demand for berries remains high.

In Sweden, thanks to *allemansrätten*<sup>35</sup>, that is, the legal right of access to open country, or the "right to roam" law, anyone is free to pick berries wherever they find them. The right to roam and the practice of berry picking as a way of supplementing income (non-taxed) by selling the fruits in markets was a long-standing historical tradition in rural Sweden. Other than for recreation or family consumption however, few Swedes today would consider this kind of

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<sup>34</sup> AD 1986 nr 78 and AD 1982 nr 142 - Labour Court Judgments. Källström, K. and Malmberg, J. (2006) *Anställningsförhållandet*, Iustus Förlag, Uppsala, p. 183.

<sup>35</sup> Swedish Environmental Protection Agency, (nd). The right of public access. [www.naturvardsverket.se/en/In-English/Start/Enjoying-nature/The-right-of-public-access/](http://www.naturvardsverket.se/en/In-English/Start/Enjoying-nature/The-right-of-public-access/).



seasonal employment as a worthwhile occupation, even on an occasional basis. For one thing, the pay is extremely low, the quotas set for gathering are high and the financial rewards as measured by the weight and quality of berries gathered are well below what would be regarded by a Swedish employee as an acceptable minimum.

As a result, each year since the turn of the millennium hundreds, sometimes even thousands of foreign migrant workers have flown to Sweden to participate in the commercialised harvesting of berries, an arduous and low paid occupation, involving long hours of painstaking work with only the simplest of gathering ‘scoops’ at their disposal, in often dank mosquito-ridden forests. Workers arriving in Sweden come not only from parts of the former socialist world such as the Baltic states, Russia and Poland, but even more often from Far East countries such as Thailand, Bangladesh, China and Vietnam. Sometimes, the pickers have to wake as early as 2am in order to travel up to several hundred kilometres to reach a berry forest before other groups, and they may not return to their living quarters until after 9pm. Often living quarters for migrant berry pickers comprises overcrowded communal dormitories in vacant schools situated in rural villages where they also have to prepare their own food, often which they bring with them from their home countries. And yet, despite the meagre pay and poor working and living conditions, for migrants berry picking in Sweden offers the prospect of lucrative earnings (or at least it is so presented by unscrupulous recruiting agents) and a chance to leverage themselves out of a life of grinding rural poverty. Many arrive in family groups or as groups of friends.

Thus, rice farmers from Thailand’s poorer north-eastern provinces of Chaiyaphum, Khon Kaen and Udon Thani, for example, who have planted their crop in the early summer can travel to Sweden for a three month berry picking season, and then return to harvest their own crop in the autumn. The cost of travel to and of accommodation in Sweden, as well as transport and food for their sojourn can amount to 100,000 baht (approximately of 2,300 euros). Many borrow from money lenders of various kinds in order to finance the trip, even mortgaging their land with the agents to take out loans to pay for their travel. If a day labourer earns just over 100 euros per month in Thailand working every day of the month, or approximately 1,200 euros per year, then prospective berry pickers will pay double this sum just for the opportunity to work in Sweden for a few months. The rewards, potentially at least, are enticing, perhaps sufficient to buy a new tractor or extricate a family from burdensome debt. All this remains true, despite the reported abuse of their compatriots and predecessors and the increase in costs of travel to Sweden from Thailand, as well as the fact that finding wild berries has become more difficult in recent years while the price paid per kilogram for picking had been reduced. Indeed, a growing influx of pickers had made the work harder as competition increased.<sup>36</sup> Blueberries and wild raspberries fetched about two to three euros a kilogramme. But it was claimed that most agents deducted about one euro per kilo from the sale without notifying the pickers.<sup>37</sup> Yet, in the best case,

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<sup>36</sup> *Bangkok Post*, ‘Pickers Reap the Fruits of their Labour’, 20 June 2010. [www.bangkokpost.com/news/local/39057/pickers-reap-the-fruits-of-their-labour](http://www.bangkokpost.com/news/local/39057/pickers-reap-the-fruits-of-their-labour); *Västerbottennytt* (Swedish regional TV), 9 August 2010. [svtplay.se/v/2101292/dramat\\_fortsatter\\_kring\\_de\\_kinesiska\\_barplockarna](http://svtplay.se/v/2101292/dramat_fortsatter_kring_de_kinesiska_barplockarna) (about workers from China); *Länstidningen, Östersund*, 21 August 2010. [ltz.se/nyheter/bracke/1.2267341-33-plockare-trans-i-ett-gammalt-hus-utan-varme](http://ltz.se/nyheter/bracke/1.2267341-33-plockare-trans-i-ett-gammalt-hus-utan-varme) (about pickers from Bangladesh).

migrants could return home with the as much as 4-6,000 euros saved for the three months work, a sum that more than matched the equivalent average annual salary of 3,000 euros.

And so, from the other side of the world some eight thousand kilometres away, some of the poorest workers on the planet, arrive annually in one of the richest countries in the industrialised world where ordered industrial relations provide a model for other nations to envy. It is a transnational and circular migration on an epic scale. Yet barely noticed, at least until recently, this migration has now become a contentious and deeply embarrassing stain on hitherto seemingly enviable Swedish employment relations in which employees are treated with respect, have enforceable rights and redress through strong and alert trade unions.

According to at least one account, many Thai berry pickers for example are persuaded to go to Sweden by Thai women married to Swedish nationals and often enter Sweden with three month tourist visas thereby hoping to avoid taxation obligations to the Swedish authorities. As such, they are not required to sign an official labour contract. This abuse of tourist visas was supposed to have been regulated by the Swedish government from 2007 by restricting the number of tourist visas issued and by granting a number of Swedish and Thai 'food and beverage' companies licenses to import berry pickers for the season.<sup>38</sup> Hence, the government has the right and possibility to control the number of people that may arrive in the same municipality each year. According to two of our informants from the Swedish Municipal Workers' Union (*Kommunal*), however, the government has this far taken very little real responsibility for how many workers there are. In the words of one union official "the State dumps the whole problem on our lap; too many pickers arrive in each area, and when they realize that the only rule is 'no berries – no money' they come to us, and we'll have to solve what should be the government's problem."<sup>39</sup>

From 2007 to 2010 it has been estimated that the number of Thai and other foreign pickers who arrived in Scandinavia via such companies with formal employment contracts was approximately a total of 23,000 and a further 7,000 as 'tourists', although these numbers may be rather high and are difficult to verify. Of this number, only a few hundred were experienced pickers and the rest are newcomers. Until 2009 many such migrants visited Sweden, but without utilising the intermediaries of recruitment agencies, relying more on informal networks based on Thai women married to Swedish men. Indeed, many had fond memories of regular visits which also included time off for recreation in order to visit tourist attractions as well as the opportunity to earn decent wages. In 2009 however this picture began to change and those who returned from Sweden relayed the poor earnings received and the mounting problems of debt incurred as a

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<sup>37</sup> *Bangkok Post*, 'Berry picking jobs not pick of the bunch', 20 January 2010. [www.bangkokpost.com/news/local/30357/berrypicking-jobs-not-pick-of-the-bunch](http://www.bangkokpost.com/news/local/30357/berrypicking-jobs-not-pick-of-the-bunch); *Länstidningen, Östersund*, 19 August 2010. [ltz.se/nyheter/bracke/1.2260676-barplockarna-kan-vara-lurade](http://ltz.se/nyheter/bracke/1.2260676-barplockarna-kan-vara-lurade).

<sup>38</sup> Yimprasert, J. (2010) A report on the ongoing struggle of Thai berry pickers in Sweden. (corrected version 9) December. [www.scribd.com/doc/45065606/A-report-on-The-on-going-struggle-of-Thai-berrypickers-in-Sweden](http://www.scribd.com/doc/45065606/A-report-on-The-on-going-struggle-of-Thai-berrypickers-in-Sweden).

<sup>39</sup> Interview with *Kommunal*'s ombudsman for posted workers matters in Gothenburg, 28 March 2011 (citation) and with local/regional ombudsmen in Åsele, the county of Västerbotten 14 & 15 April 2011.

result of their migration venture or “fiasco” as it was termed.<sup>40</sup> As a result, some 1,300 pickers had lodged complaints to the Thai Ministry of Labour complaining that they had been cheated by the Thai recruiting agents and companies. Such was the level of indebtedness that the economic survival of whole villages from which groups of up to forty inhabitants had travelled to Sweden was now in jeopardy. In October 2009, some 400 pickers marched through the centre of Bangkok to the Swedish embassy to air these grievances and met with the Swedish ambassador who assured them that the embassy was in contact with the Thai authorities on this matter: “We are interested in as good experience as possible, that you are treated with respect and with dignity.”<sup>41</sup>

To achieve this end, the Swedish authorities began to introduce more stringent regulations for the forthcoming 2010 season, especially with regard to minimum wages and conditions regardless of whether or not companies had signed collective agreements with the trade union. On paper these looked like considerable guarantees of fair working conditions: to obtain a work permit, the salary must be no less than 13,000 kronor (1,400 euros) per month, and the employment conditions must be equal to those of the Swedish Collective Labour Agreement (or what is normal in the profession or trade). If employed by a company with operations in Sweden, the Collective Labour Agreement is the Swedish Municipal Workers’ Union agreement with the Federation of Swedish Forest and Agricultural Employers. The agreed minimum wage under this agreement is 16,372 kronor (1,700 euros) per month (for the period 1 June 2009 – 31 May 2010). If employed on an hourly basis, the agreement also contains information about the minimum hourly wage. If employed by a foreign company with no operations in Sweden, such as a temporary staffing agency, the temporary staffing agreement is valid. Under that agreement, the minimum wage is 17,730 kronor per month (1,900 euros). This applies regardless of whether or not the foreign temporary staffing agency has signed a collective agreement.<sup>42</sup> In terms of work environment and hours of work the Work Environment Authority was explicit: entitlement to 11 consecutive hours free from work in a 24-hour period as daily rest. The ordinary working hours must not exceed 40 hours a week. If it becomes necessary, working hours may be 40 hours a week on average during a four-week period. Normally, the working day should be 8 hours a day although under certain circumstances, a maximum of 48 hours over a 4-week period or 50 hours during one calendar month may be worked. The overtime may not exceed 200 hours during one calendar year. In fact, the regulation of working hours was not very popular among the pickers; they wanted to work as much as possible to benefit from the piece-rate system, and they had nothing to do during their leisure time anyway.

The Work Environment Authority has the primary regulatory authority in the monitoring of the terms and conditions of migrant berry pickers (and all other employees in Sweden). In 2010 it issued notice of new rules affecting berry pickers in Sweden which advised of the right of its

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<sup>40</sup> Network against Trafficking and Exploitation of Migrant Workers (NAT) (2009). *The 2009 Blueberry Fiasco in Sweden*. <http://vimeo.com/12489782>.

<sup>41</sup> Ibid.

<sup>42</sup> Swedish Work Environment Authority 2010. [www.av.se/dokument/inenglish/broschures/adi\\_653Eng.pdf](http://www.av.se/dokument/inenglish/broschures/adi_653Eng.pdf).

inspectors to “visit various facilities and check that employers follow the rules” and of their “power to stop certain activities from being carried out.” Berry pickers whose employer was regarded in breach of the regulations, were invited to “contact the Swedish Work Environment Authority”. Equally, the workers were advised “You can also contact the Municipal Workers’ Union who have regional health and safety officers whose task it is to make sure that the working environment is safe.”<sup>43</sup> Yet despite this formidable array of powers it appeared that they were insufficient to contain the re-appearance of abuses which had accompanied previous years.

#### 4. Resistance

In 2010, it was estimated that some 4,000 Asian workers in total arrived in Sweden, less than the normal number and later than usual. Prior to the 2010 season berry picking was equated with other seasonal jobs, which meant that the pickers had to be guaranteed a contract with a specified salary and working conditions, in order for a work permit to be granted. Yet, in spite of the new measures detailed above and previous complaints, the summer of 2010 was to produce a scandal that reached the international proportions and cast the Swedish authorities in a less than flattering light.<sup>44</sup> What made the year 2010 not just a run-of-the-mill story of labour abuse of vulnerable migrants was that this year, faced with a poor harvest and the near certainty of even greater impoverishment as a result of debts owed to agents and moneylenders, migrant berry picking workers decided to take matters into their own hands. After just a week in Sweden, in early August 2010, faced with the appalling prospect of their near-certain financial ruin, 170 Chinese berry pickers began a 15 kilometre overnight protest march on foot from Långsjöby to Storuman the nearest community in remote Southern Lapland some 160 kilometres from the Arctic Circle, carrying hand-drawn placards with ‘SOS’ and ‘Help’ messages. Local social services personnel claimed they were unable to assist the berry pickers due to lack of language facilities, although the municipality provided overnight accommodation in a sports hall.<sup>45</sup> One week later, and a further to the south, Vietnamese berry pickers marched with protest banners through Nordmaling, a small town of less than eight hundred persons on Sweden’s North East coast.

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<sup>43</sup> Swedish Work Environment Authority, Information for foreign berry pickers Engelska/English – New rules are in effect for foreign berry pickers. 2010. [www.av.se/dokument/inenglish/broschures/adi\\_653Eng.pdf](http://www.av.se/dokument/inenglish/broschures/adi_653Eng.pdf).

<sup>44</sup> OECD (2010). Insights Debate the issues, August 25. [oecdinsights.org/2010/08/25/a-berrybad-summer/](http://oecdinsights.org/2010/08/25/a-berrybad-summer/); *The New York Times*, 7 September 2010 ‘Migrant Berry Pickers Complain of Conditions in Sweden’, [www.nytimes.com/2010/09/08/business/global/08sweden.html](http://www.nytimes.com/2010/09/08/business/global/08sweden.html); *Dagens Nyheter* 21 September 2010, ‘Bärplockarna har sårat den svenska stoltheten’ (‘Berry pickers have hurt Swedish pride’). [www.dn.se/nyheter/varlden/the-new-york-times-barplockarna-harsarat-den-svenska-stoltheten](http://www.dn.se/nyheter/varlden/the-new-york-times-barplockarna-harsarat-den-svenska-stoltheten).

<sup>45</sup> *Västerbottens-kuriren*, ‘Upprorsstämning bland kinesiska bärplockare i Långsjöby’ 5-6 August 2010. [www.vk.se/Article.jsp?article=367688](http://www.vk.se/Article.jsp?article=367688); *LOTidningen*, ‘Bärplockare avtalar bort garantilön’ 5 August 2010. <http://lotidningen.se/2010/08/05/barplockare-avtalar-bort-garantilon/>; *The Swedish Wire*, 6 August 2010, ‘Chinese berry pickers protest in Sweden.’ [www.swedishwire.com/politics/5657-chinese-berry-pickers-protest-in-sweden](http://www.swedishwire.com/politics/5657-chinese-berry-pickers-protest-in-sweden).

The previous year, Vietnamese berry pickers claimed they were promised that they would be able to pick 60 and 120 kilograms of berries a day.<sup>46</sup> In reality, workers claimed they were lucky if they could manage 10 kg to 30 kg. Most of them had not fully understood that ‘picking berries’ meant searching for them in difficult terrain, but rather thought they should ‘harvest’ berries, cultivated more like a strawberry bed.<sup>47</sup> The following year, 2010, although a minimum wage had been promised guaranteeing them a monthly wage of at least 16,372 kronor (1,745 euros), this sum had to be met with production quotas and was hardly enough to cover the costs of their journey to Sweden and the travel and accommodation costs once they had arrived. Some 70 Vietnamese pickers decided on more direct action to draw attention to their low wages. The Vietnamese pickers locked up their supervisors, an action which resulted in the local police being called to establish order and protect the supervisors a couple of whom appear to have been beaten up. Most of the Vietnamese pickers were in debt to their recruiting agents for more than a year’s salary. It seemed that direct action at least had the effect of bringing the grievances of the berry pickers to public attention through the national and ultimately international media.<sup>48</sup>

One of the most important cases, and also one where trade unions made the greatest difference, concerns the activities of a company, Lomsjö Bär AB, in southern Lapland. The recruitment advertisement for Lomsjö Bär AB, a ‘food and beverage’ joint-stock company owned to 80 per cent by a Finnish national named Ari Hallikainen is to be found on the *SwedishJob.com* website which carries job vacancy adverts for ‘foreign professionals’ in Sweden:

Lomsjö Bär AB is a Swedish company that deals with berrys (sic!), such as lingonberry, blueberry and cloudberry. Lomsjö Bär AB is in need of berry pickers during aug - sept. As a berry picker you will be situated in the forest surrounding Åsele, Sweden.

The advert dates from 2008, and offers remuneration at a ‘fixed price’ – ‘depending on the amount of berries collected. One day salary is about 800 SK (85 EUR)’.<sup>49</sup> In Thai currency the prospect of equivalent to over 3,500 baht per day was a powerful incentive.

This is the information that was sent out to presumptive berry pickers abroad. Unlike most other firms in the business, Lomsjö Bär AB claimed that it did not use any employment agencies or other ‘go-between’ firms, but addressed presumptive employees directly in their home countries. The company also sent introductory DVDs to the most important country, Thailand, which showed that the job was not just simple harvesting but a back-breaking

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<sup>46</sup> *Västerbottens Folkblad* ‘Missnöjda bärplockare återvänder hem’, 14 August 2009, [www.folkbladet.nu/152671/2009/08/14/missnojda-barplockare-atervander-hem](http://www.folkbladet.nu/152671/2009/08/14/missnojda-barplockare-atervander-hem).

<sup>47</sup> Interview, Kommunal ombudsmen, 28 March, 13, 14 & 15 April 2011.

<sup>48</sup> *The Swedish Wire*, ‘Angry berry pickers lock up bosses in Sweden’ 10 August 2010. [www.swedishwire.com/politics/5696-angry-berry-pickers-lock-up-bosses-in-sweden](http://www.swedishwire.com/politics/5696-angry-berry-pickers-lock-up-bosses-in-sweden); *Svenska Dagbladet*, 13 August 2010. [www.svd.se/nyheter/inrikes/fyra-barplockare-haktade\\_5131123.svd](http://www.svd.se/nyheter/inrikes/fyra-barplockare-haktade_5131123.svd); *TV4 Nyheterna*, 13 August 2010. [www.nyheterna.se/1.1744264/2010/08/13/fyra\\_barplockare\\_begars\\_haktade](http://www.nyheterna.se/1.1744264/2010/08/13/fyra_barplockare_begars_haktade).

<sup>49</sup> Lomsjö Bär AB. <http://swedishjob.com/jobb/barplockare+berry+picker/>.

‘adventure’ in a dank mosquito-ridden forest. The remuneration, however, would make it all worthwhile and as the workers themselves proclaimed, they were not afraid of hard work. In the Spring of 2010, a recruiting agent in Thailand advertised over local radio in the province of Chaiyapum for pickers for Lomsjö Bär AB. Those who wished to sign a work contract and pay a recruitment fee were told that the fee was 75,000 baht (1,722 euros) of which the ‘first payment’ as a deposit was 25,000 baht (590 euros). The remaining sum of 50,000 baht (1,146 euros) would be advanced to them by the company and deducted from their earnings in Sweden. The total sum was equivalent to about one year of income for a small farmer. Some 280 persons applied, the agent reportedly collecting about 7 million baht (more than 160,000 euros). Visas were obtained and in early July the agent informed the recruits that the ‘second payment’ of between 2,300 baht and 3,000 baht was due. A total of 162 Thai pickers were employed during the summer and autumn of 2010. The company also employed many Bulgarians, but not at the actual site.<sup>50</sup>

In mid-July, the recruits were informed that Lomsjö Bär would not be able to advance the remaining part of the recruiting fee of 50,000 baht. Only 156 recruits were able to find the additional money, mainly by borrowing from relatives or money lenders at interest rates of between 3% and 7% per month. One picker reportedly paid 20% per month and the remaining 124 recruits had to forgo their work opportunity. The agent refused to return funds to this group of recruits, claiming to have spent more than half the money on visa arrangements and they duly filed a complaint with the local labour office. The agent then proposed returning about one third of the first and second payments, some 10,340 baht of the up to 28,000 baht that he had received from each recruit and some twenty individuals accepted this offer while another 104 refused. The complaint against the agent is ongoing in Thailand but the individual concerned has now disappeared.<sup>51</sup>

Lomsjö Bär AB was supposed to be a ‘good’ example in a poorly run industry, and an exception with fair conditions for the workers. To underline its serious intentions, Lomsjö Bär AB had also bought machinery for processing of the berries, largely for the medicine industry. Yet it was soon revealed that the introductory DVDs the workers had seen in Thailand had downplayed the hardships, despite the impression created of not seeking to hide the problems. That 2010 was a rather bad year for harvesting berries was not foreseeable when the DVDs were produced, but as some pickers explained to a Thai-speaking trade unionist from *Kommunal*, they had the impression that access to the fruits would be much easier than it turned out to be; they would have to climb hills, not mountains, in the search for berries. Nor had they thought they would see living bears just a few hundred metres away; an experience that however did not stop them from going out in the forest again the very next day after that shocking experience.<sup>52</sup>

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<sup>50</sup> Interviews with Kommunal regional/local ombudsmen, 28 March, 13, 14 & 15 April 2010; Yimprasert (2010).

<sup>51</sup> *Västerbottens-Kuriren*, 30 September 2010, [www.vk.se/Article.jsp?article=381713](http://www.vk.se/Article.jsp?article=381713); *TV4 Nyheterna, Region Umeå*, 1 October 2010, [www.nyheterna.se/1.1839948](http://www.nyheterna.se/1.1839948).

<sup>52</sup> Interview with Kommunal’s ombudsman for Åsele, 14 April 2010.

Yet, everything was, in the words of the local trade union ombudsman who came to be the main link between the berry pickers and the authorities, “quiet and calm” until one evening in late September when she saw the pickers on the TV news. They claimed that they had not been paid for their full work during August, and felt unsure they would receive anything for September either. Both these statements showed to be true. What had happened was that Ari Hallikainen, the main owner of Lomsjö Bär AB, had withdrawn all monies from the company account, a sum reportedly in the region of 4 million kronor (about 400,000 euros) and went into hiding leaving 162 Thai berry pickers unpaid for most of their work that season. The prosecutor in the district court in Lycksele, in the northern county of Västerbotten, initially concluded that there was no victim of a crime, and processed the case as one of “gross misconduct” against a creditor.<sup>53</sup>

Here, it should be noticed that the individual work contracts already were weak from a Swedish perspective. A picker was guaranteed a minimum wage of 16,372 kronor per month for a 40-hour working week, but to achieve more than the minimum wage, required gathering more than 10 kilos of wild berries for every day of their working week, something that under the circumstances was practically impossible. An average picker managed to pick around 3 kg per day. In other words, the Lomsjö Bär contract had no value and even less meaning, since, according to the terms of the contract, there was no guarantee that a berry picker could earn enough money to not go home in debt. The Thai trade union *Migrant Workers Union Thailand*, which handles many legal cases for berry pickers in Europe, argued that the dishonest methods employed to recruit Thai berry pickers could well be compared to trafficking according to Thai law; agencies and individual agents give promises of remuneration much higher than possible in reality, since they only mention the gross salary and say nothing of the deductions for food, lodging, travel within Sweden, etc.<sup>54</sup> Lomsjö Bär too made many promises. It guaranteed (verbally) that pickers would receive a *net* income of not less than 50,000 baht, that Sunday picking would provide a cash bonus etc. It played along a well-worn path in labour trafficking; yet it transpired that it had no money and no intention of keeping its promises.

By the end of August, the Lomsjö Bär pickers had been paid 6,000 kronor after which date they received nothing. When on their 25 September pay-day the pickers did not receive any wages, either their out-standing wages from August, or their wages for the whole of September, they decided to march through the streets of Åsele. Their protest was widely publicised in the Swedish media. It was this rally the local unionist mentioned above saw, and it was thus also the trigger that made the trade union, *Kommunal* engage in the case. At this same time, it further transpired that the main owner of Lomsjö Bär, Ari Hallikainen, had emptied the company bank account and left Sweden.

*Kommunal* now decided to use a two-step strategy. The first step was to get members among the 162 Thai workers. Already, at a first contact in spring 2010, Ari Hallikainen had made clear for *Kommunal* that he did not accept any collective agreement for the workers he

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<sup>53</sup> Ibid.; Åsele Municipality’s homepage, 16-17 December 2010, [www.118100.se/foretag/66108717/asele-kommun](http://www.118100.se/foretag/66108717/asele-kommun); A thorough overview of and links to the media coverage of the case is available at the news site *Nytt24*, [www.nytt24.se/a/m%C3%A5nga-b%C3%A4rplockare-trots-sk%C3%A4rpta-krav](http://www.nytt24.se/a/m%C3%A5nga-b%C3%A4rplockare-trots-sk%C3%A4rpta-krav).

<sup>54</sup> Thai Labour Campaign (2010). ‘The Stories of 39 Isan Berries Pickers in Sweden’. [www.youtube.com/watch?v=T5POTxIhNpo&feature=player\\_embedded#at=17](http://www.youtube.com/watch?v=T5POTxIhNpo&feature=player_embedded#at=17).

would employ. *Kommunal* accepted this, since the individual contracts seemed to guarantee fair wages anyway. Yet, to now be able to represent the Thai berry pickers, *Kommunal* had to find at least one or two among them who were willing to be members of the union; if so, it would then be possible to – indirectly – represent all 162 pickers as we shall see below. The problem was, of course, that the Thai workers had neither the money nor the willingness to spend money to become union members. Yet there was a clause in *Kommunal*'s statutes that allowed workers less than 26 years old to three months free membership without any fee. By that means *Kommunal* got three persons to become members and thus the union was able to represent them in court.<sup>55</sup>

The legal process was however delayed. During the whole proceedings *Kommunal* had a cooperative relationship with the local municipality of Åsele. It also received help from the Thai embassy. Five representatives flew from Stockholm to ensure the pickers' rights and arrange for their air fare and transportation back home to Thailand. But the Thai workers themselves were not too pleased with the embassy's involvement. The conflicts between the so-called red and yellow shirts earlier 2010 had divided the country, and many berry pickers coming from areas of strong red shirt support, saw the embassy representatives as representatives for the yellow shirts. In the event, 117 people took the opportunity to return to Thailand, though empty-handed, in the first week of October. Among those were two of the newly recruited *Kommunal* members. The union thus had to get the power of attorney for them from Thailand, which they eventually achieved, but only after a time consuming search for the two 'members'.<sup>56</sup>

*Kommunal* now had the right to represent three of the Thai berry pickers and accordingly had the legal rights to take action against Lomsjö Bär AB. But to meet all the Thai workers' claims for compensation, *Kommunal* had to proceed to a second step, which was to file a bankruptcy petition against Lomsjö Bär AB. If the company went into liquidation, all workers who had claims would automatically be covered by the so-called governmental salary guarantee, that is, the Swedish state would compensate them for the loss of earnings. This was also what happened. In December 2010, the official receiver found that most of the workers had the right to reimbursement, though only for their basic salary, not for overtime etc. *Kommunal* made clear that it would have difficulty in taking the case further, and the workers accepted the offer.<sup>57</sup>

Finally, Lomsjö Bär AB has disappeared from the scene, but there will be new berry pickers from Thailand this summer. A Finnish entrepreneur has already bought an old residential school building in Åsele with room for 280 pickers. This time the entrepreneur knows that everything he does will be thoroughly scrutinized by municipality officials, *Kommunal* and not the least, media. This however is no guarantee for decent standards; the whole industry exists in a grey zone not very open to scrutiny. Both Swedish authorities and trade unions were criticized in Thailand for accepting 'slave-like' contracts, which, also however, is both understandable and accurate.

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<sup>55</sup> Ibid.; Interviews with *Kommunal* ombudsmen, 14 & 15 April; Åsele Kommun homepage (undated) [www.asele.se/default.asp?oewCmd=3&id=52280&archiveid=1826&pageid=36988&path=25159](http://www.asele.se/default.asp?oewCmd=3&id=52280&archiveid=1826&pageid=36988&path=25159).

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.



While the trade unions have been the object of much criticism in the media for their seeming inability to protect foreign berry pickers from the grossest exploitation, somewhat less attention has focused on the failure of the employers to effectively self-regulate their own industry, with the exception of flagrantly criminal actions such as that of Lomsjö Bär AB. On the 24 May 2011, the Swedish Forestberry Association (SBIF, Skogsbärbranschens intresseförening) was dissolved as an entity. The Forestberry Association was originally founded on the 28th November 2000 in Umeå, a major northern town in a prime berry picking region. The key objective of the association had been, in its own words, ‘to provide information about the wild berry trade in Sweden and also influence public opinion concerning this trade.’<sup>58</sup> At its peak, the association had some fifty affiliated companies working within the industry, freezing and processing wild forest berries. The most burning issue for the association in the last few years has been the berry pickers taxation issue (the specific obligations to the Swedish tax authority, *Skatteverket*). The main reason for the decision to discontinue the organization was that it no longer was guaranteed any influence on the number of berry pickers per year Sweden should accept. With no say on this important issue, there were not enough issues that united the affiliated firms, according to the former chair Ivan Harnesk in an interview with the regional TV Swedish news.<sup>59</sup> He did not however venture to say anything about the future for the industry, due to the uncertainties now confronting it following the Swedish Migration Board’s decision to tighten up the legally binding rules for companies in the industry.

## 5. The new regulatory regime

Prior to the berry picking season of 2011 in order to deal with problems arising from the previous year, the Swedish Migration Board (*Migrationsverket*) established new more rigorous work permit requirements to ensure the basic salary of the foreign berry pickers and that the workers received sufficient information about the job and Swedish regulations. “It is not acceptable that people come to Sweden for work and then become exploited. An individual's right to reasonable conditions must prevail over any special interests”, said Jonas Lindgren, Head of Division at the Swedish Migration Board.<sup>60</sup> The main intention was to ensure that berry pickers would be offered a wage and other conditions of employment on a par with Swedish collective agreements. The Migration Board established clear prior requirements to be fulfilled in issuing work permits: The berry picker had to have a valid passport and be able to support him/herself from this work. The employer had advertised the position in Sweden and the EU for at least ten days (new recruitments). The employer should offer conditions of employment on a par with Swedish collective agreements or whatever is customary within the occupation or industry. The work must be on such a scale that the worker could earn at least 13,000 kronor (approx 1,400 euros) per month. The employer must prove that the berry picker had received

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<sup>58</sup> Swedish Forestberry Association (nd). [www.sbif.org/index-temp.asp?id=14](http://www.sbif.org/index-temp.asp?id=14).

<sup>59</sup> Swedish TV, Västerbotten, 14 May 2011. [svt.se/2.33919/1.2434610/barbranschen\\_lagger\\_ner\\_organisation](http://svt.se/2.33919/1.2434610/barbranschen_lagger_ner_organisation).

<sup>60</sup> Swedish Migration Board, ‘Stricter regulations for the 2011 berry picking season’ 11 April 2011. [www.migrationsverket.se/info/3866.html](http://www.migrationsverket.se/info/3866.html).

sufficient information about the type of work he/she would carry out, public rights and traffic safety regulations. The employer must also prove that they could pay the salary stated in the offer of employment even if the harvest is poor and if the worker cannot pick a minimum amount. An employer who had previously hired berry pickers, must prove that he/she had paid their wages from the year before by producing wage slips.<sup>61</sup> In cases where the picker is to be employed by a foreign company, the company must have a subsidiary registered in Sweden. The subsidiary has to guarantee the conditions of employment that applied in the formal offer of employment.

Regulatory interventions of this nature may be regarded as both welcome and somewhat overdue in view of the successive difficulties surrounding the employment conditions and remuneration of these workers. Whether they are sufficient in scope, can be effectively enforced and address the underlying problems that have hitherto made the Swedish authorities unable to counteract labour exploitation appearing to amount to forced labour conditions remains to be seen. However, remaining open is the question of the effective policing and enforcement of criminal sanctions in an industry that increasingly retreats to the forest shadows.

In sum, the Swedish case study shows that the Swedish model of industrial relations has certain perhaps surprising weaknesses, especially when it comes to protecting the rights of a transnational migrant workforce in the face of attempts to exploit them in a condition of essentially forced labour. The regulatory and judicial authorities seem to have been slow to react to what has been an ongoing problem, involving both deception in recruitment and the defrauding of workers' wages by illegal deductions (two key criteria in international labour standards). The problem became a matter of public concern in 2010, because of a flagrant episode of wage theft and because the workers themselves undertook unprecedented public protest actions against their conditions of employment. Redress was uneven, although within limits the trade unions offered legal and material support. Some, but not all local authorities where the migrants were located, also provided material support. In particular, the local supermarkets in affected communities offered food, while concerned groups of citizens and charitable organisations provided assistance. As Lars Riberth, deputy school rector in Bräcke in the county of Jämtland put it, he was tired of seeing how the (Bangladeshi) berry pickers were in distress and started a local collection: "This is a form of modern slavery" said Riberth. Yet the exploitative conditions suffered to these migrants in one of the best organised labour markets in the European Union, raises a troubling and only incompletely answered question; if Sweden cannot prevent such extreme forms of labour abuse occurring within its own highly regulated labour market, either by legal proscription or by the countervailing actions of an active civil society and trade union movement, what possibilities exist to prevent the drift towards toward forced labour for vulnerable migrant workers elsewhere in the European space?

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<sup>61</sup> Swedish Migration Board, 'Employing Berry Pickers', 11 April 2011. [www.migrationsverket.se/info/2106\\_en.html](http://www.migrationsverket.se/info/2106_en.html).

## 6. Policy implications

The larger question also remains of how to address the complex set of socio-economic determinants in which workers are 'locked into' a transnational chain of exploitation. The imposition of structures of indebtedness vulnerability through the operations of labour intermediaries, agent recruitment fees, excessive deductions for food, transport and lodgings, and the imposition of unrealisable work output quotas in a location distant from the workers' country of origin, poses huge problems in terms of access to channels and means of redress. Breaking this chain at any point, for example, by the 'victims' themselves seeking remedies, at the same time heightens the risk that there will be retaliation against those who seek trade union or regulatory authority support or raise complaints in the courts. The burden of risk is therefore profoundly unevenly and *coercively* distributed upon the labour migrants themselves in terms of the scale of immediate liabilities they incur, both during the duration of their work abroad and in future ongoing financial liabilities on their return.

Viewed with the prism of contemporary globalisation that seeks to recruit and exploit the lowest cost labour within transnational networks that reach across continents, it may be that the problem is not resolvable in the Sweden, or even European context. However, it is imperative that we consider what are the appropriate means by which such forms of abuse can be curtailed if not altogether eradicated. While Sweden has an appointed national *rapporteur* on trafficking in human beings who is a senior serving police officer, the focus has been almost exclusively on trafficking of human being for purposes of sexual exploitation, rather than on labour exploitation. Thus, in the first instance, while not all those enmeshed in forced labour have been trafficked, the training of law enforcement officers has to be sensitive to forced labour as a *transnational process* rather than an easily identifiable 'steady state'. Police officers also need to be made aware of the legal powers which are at their disposal to prosecute those perpetrate what is a serious crime and is designated as such in Swedish law. A new EU directive on preventing and combating trafficking in human beings and protecting its victims contains some very important new provisions ensuring that persons, units or services responsible for investigating or prosecuting the offences of trafficking in human beings are trained accordingly (art 9.3) and that that effective investigative tools, such as those which are used in organised crime are available (art 9.4). Besides, member states are enjoined to promote regular training for officials including front-line police officers, likely to come into contact with victims or potential victims of trafficking in human beings, aimed at enabling officials to identify and deal with victims and potential victims of trafficking in human beings (art 18.3).<sup>62</sup> It will be important to monitor the effectiveness of this directive, in particular as it impinges on forced labour.

Second, the relevant enforcement and social services agencies at local and national level within Sweden should adopt a concerted inter-departmental co-ordinated approach to preventing the exploitation of migrant workers for forced labour, by a close and detailed monitoring of their wages and working conditions. In May 2011 a meeting of authorities concerned with the berry pickers agreed to strengthen their common efforts to prevent labour abuses. The Work Environment Authority is responsible only for monitoring the enforcement of the Work

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<sup>62</sup> EU directive 2011/36/EU, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. [eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF).

Environment Act and the Working Hours Act, but within these limitations it now seeks to strengthen its efforts and take a more active responsibility regarding informing the berry pickers of their employment and working conditions according to the existing laws and collective agreements. The authority is also committed to visiting the berry pickers and inspecting their health and safety situation in the field. However, their monitoring function is limited to occupational safety and health and working time issues. In turn, therefore a significant strengthening of the surveillance remit and investigative resources available to the authority may be required, or perhaps the creation of a new specialist labour inspection body along with enhanced competences, powers of investigation and referral to the labour courts and/or the criminal justice system where appropriate.

Third, at an international level, national governments involved must co-operate to ensure that the recruitment processes of workers in countries of origin does not at the same time reproduce the structures of indebtedness vulnerability that have previously occurred, in the first instance, by controlling the activities of unscrupulous recruiting agents and preventing the issuing of irregular or misleading employment contracts in the countries of origin and/or destination. Where deception or fraud is employed in the recruitment process, these activities must be identified and subject to due process.

Fourth, both employers and trade unions in countries of origin and of destination must find ways in which this transnational labour market can be brought within norms of decent work and corporate social responsibility. With regard to employers, this entails not merely ensuring the fair labour practices of recruitment agencies and immediate employers, but the responsibility of end-of-chain food producers and the cosmetics industry in guaranteeing exploitation-free products to the consumer. For employees, at a minimum the industries involved should ensure the creation of opportunities for the exercise of rights to labour organisation and collective representation for migrant workers. The Thai Migrant Workers Union has done much to promote these rights for those working abroad. In Sweden, there is also the possibility of trade unions defending such workers' conditions. *Kommunal* is actively monitoring the permit permission-granting of labour contracts in co-operation with the Migration Board. It is a designated co-actor in the permit-issuing procedures with the opportunity to comment on the terms of employment offered and whether the agreement is above or below collective agreements for wages and conditions.<sup>63</sup> However, the problem of ensuring decent work cannot simply be laid at the door of the Swedish trade union movement and is an issue of defending migrant workers' rights globally.

Thus, lastly, Sweden as a concerned country has an opportunity to demonstrate best practice by raising the question of global governance of migrant workers' rights internationally. This implies that those migrant workers who have been victimized as a result of their involuntary involvement in forced labour must be given the financial means to extricate themselves from the liabilities incurred and the opportunity to re-establish their livelihoods on the basis of sustainable economic development in their countries of origin.

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<sup>63</sup> Swedish Migration Board, *Anställningserbjudande/Offer of Employment*.  
[www.migrationsverket.se/download/18.56e4f4801246221d25680002455/anst\\_erbj\\_232011\\_sv.pdf](http://www.migrationsverket.se/download/18.56e4f4801246221d25680002455/anst_erbj_232011_sv.pdf).