

# **Social Fieldwork Research (FRANET)**

## **Severe forms of Labour Exploitation**

### **Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States**

**Malta, 2014**

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## Categories of interviewees:

Nine categories of experts working in the context of labour exploitation took part in the interviews and focus groups:

M – Monitoring bodies (such as labour inspectorates, health and safety bodies)

P – Police and law enforcement bodies

S – Victim support organisations

J – Judges and prosecutors

L – Lawyers

R – Recruitment and employment agencies

W – Workers' organisations, trade unions

E – Employers' organisations

N – National policy experts at Member State level.

FG – Focus Group

Throughout this report, references to these groups as 'M', 'P' etc. are to be understood as referring to the above-named 9 categories.

Where [M(X)] appears, this denotes the group from which the referenced interviewee came, in addition to the number of interviewees from that group referenced (for example, if a statement is supported by references to three interviewees from the M group, two from the S group and one from the J group, the reference will read '[M(3); S(2); J(1)]'. Likewise, if a statement is supported by statements from interviewees who participated in focus groups (in the following example, a lawyer), the reference will read '[FG(L)]'.

For data protection reasons, no names of interviewees have been mentioned.

# 1. The Methodological approach

This section outlines the methodological framework used to gather the primary data regarding severe and criminal forms of labour exploitation of migrant workers in Malta. The fieldwork utilised three different forms of data collection: 20 face-to-face interviews, one focus group and six descriptive case studies.

## Face-to-face interviews

Twenty face-to-face semi-structured interviews with experts from various professional groups were carried out between 26 February 2014 and 5 June 2014. The interview method was the main tool of data collection. All 20 participants have direct grassroots contact with the labour market and/or with migrant victims of labour exploitation.

All interviews have been successfully recorded, except for one where the participant refused to be recorded, but allowed note taking. The working language of the interviews varied. Most of the interviews took place in the Maltese language (15 participants), others preferred to use the English language (five participants). Each interview was planned to last around 60 minutes but most of the interviews took some more time, even up to 90 minutes. The duration varied between 47 minutes and 95 minutes.

All interviews (and the focus group session) were facilitated by the same interviewer. During the interviews the researcher jotted down a few very important field key notes and expanded them in the form of a research diary immediately after each session. In some interviews the interviewer was assisted by a research assistant who used to take certain key points which would help for the transcription phase later on. The research assistant's role was passive during the interviews. All interviews were fully transcribed within a week of the session.

Each of the research participants was initially contacted both informally (via a telephone call) and formally (via an official e-mail) to participate in the research study. There were no particular difficulties in the recruitment of the participants. Annex 2, Table 1 shows that 13 of the 20 participants were males, whilst seven were females. The group with the highest number of participants was the Victim Support Services (six participants). Three participants represented the Monitoring Group. Two other participants represented each of the Police, Lawyers, Judges and the Employers expert groups. One interview with representatives of R, N and W professional groups was carried out.

Before each interview the participants were provided with a very short booklet on what is the European Union Agency for Fundamental Rights (FRA) and a detailed information note on the study. An appointment letter was sent by email.

Sixteen of the interviews were carried out in the office of the participants. Three other interviews were conducted in a public place (café or retreat house) and one interview was carried out in the home of the participant. Each interview started off with a brief overview of the key research objectives of the study and a brief discussion on the key terms of the research: definition of severe and criminal forms of labour exploitation, the identity of a victim and the definition of a migrant worker. Each participant signed a consent form showing their acceptance to participate in the interview or focus group.

Due to the nature of their day-to-day work, two participants (from the N and P groups) focused their answers on the human trafficking side of labour exploitation.

## **Focus Group**

One focus group discussion was held towards the end of the fieldwork phase with five members of four different professional groups. All participants had participated earlier in the face-to-face interview phase. This helped the researcher in focusing the discussion immediately. The focus group was originally intended to comprise of seven members. Three males and two females from four different professional groups eventually participated (Annex 2, Table 2) because two female members of the S and R groups did not make it to the session due to valid reasons. The focus group was fully recorded and took 93 minutes of discussion.

The focus group session was divided into eight main parts as per FRA guidelines. Part six was largely dictated by the provisional findings of the face-to-face interviews phase. This part raised certain contentious issues from the interviews which to some extent have caused divergent views among professionals. Such issues were related to:

- Who is responsible for addressing severe and criminal forms of labour exploitation? Is it the Police; is it the Department of Industrial and Employment Relations (DIER), or both?
- How are the police dealing with labour exploitation? Is it pro-active enough? Is there a lack of interest?
- What is the approach being taken by the police officials in cases of illegally staying migrant workers employed in poor conditions?
- How effective is the civil justice system for compensation purposes? Is it ineffective, burdensome, dependent on one's financial situation? Is it easily accessible? Or is it effective, but too bureaucratic?
- Can complaints be lodged through third parties?
- To what extent do labour interventions by the authorities serve the interest of the migrants? Is it true that more emphasis is put on the interest of the Maltese nationals? Is it true that such interventions are not being done in the context of labour exploitation? Or perhaps, is it true that migrants are reluctant to report or collaborate? Is it true that employers are treated in a soft way and migrants are perceived as irregularly staying migrants rather than as victims?
- Is the educational level a risk factor to labour exploitation? Some argue that the educational level is a major risk factor. Others state otherwise, given that most migrant workers do have a good educational level.

Even if at times some members were more active than the others, the focus group session proved to be a very effective way of corroborating the key findings of the interviews' phase.

## **Case Study reviews**

Five descriptive case studies were collated towards the end of the data collection (towards the end of June). All five case studies reflect the key findings of the study and represent different sectors of the economy. The cases studies were gathered from four different experts representing three professional groups (S, W and M). The cases describe both victims who have succeeded in accessing justice and victims who have not. Two particular cases describe the exploitation of more than one worker.

## **Methodological Challenges**

There were particular methodological challenges throughout the fieldwork phase:

- The first interview (S group) had to be stopped half-way through due to an unexpected commitment of the participant. Yet, the second part was successfully completed within two days;
  - Three of the participants (M, N & R groups) were unexpectedly accompanied by other colleagues during the interviews. However, this did not affect the flow of the interview since these members were not really active in the interview except for the occasional valid comments;
  - One interview (P group) was held in a rather noisy environment; however this did not affect the coherence and/or flow of the interview or the audio-recording;
  - One participant refused to be recorded, but allowed note-taking;
  - Two members of the focus group did not make it to the session. Both participants informed the key researcher of their absence prior to the interview;
- One participant (of the S Group) who was particularly chosen to represent the Filipino migrant workers in Malta found it difficult to articulate and elaborate the answers in the English Language.

## 2. The Legal framework

### The legislative background of Human Trafficking, Child Labour and Forced Labour

The Criminal Code, in Article 248A (1) prohibits the trafficking of a person of age for the purpose of exploitation in the production of goods or provision of services.

*“Whosoever, by any means mentioned in sub article (2), traffics a person of age for the purpose of exploiting that person in:*

- *in the production of goods or provision of services; or*
- *slavery or practices similar to slavery; or*
- *servitude or forced labour; or*
- *activities associated with begging; or*
- *any other unlawful activities.”<sup>1</sup>*

For the purposes of this sub article, exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.

The means referred to in sub article (1) are the following: violence or threats, including abduction; deceit or fraud; misuse of authority, influence or pressure; the giving or receiving of payments or benefits to achieve the consent of the person having control over another person; abuse of power or of a position of vulnerability.<sup>2</sup> On conviction, a person is liable to punishment of imprisonment from four to 12 years. The consent of a victim of trafficking to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in sub-article (2) has been used.

On the trafficking of persons of age for the purpose of exploitation in prostitution, Article 248B states that whosoever, by any means traffics a person of age for the purpose of exploiting that person in prostitution or in pornographic performances or in the production of pornographic material or other forms of sexual exploitation shall, on conviction, be liable to the punishment laid down in article 248A (1).<sup>3</sup> Articles 248C and 248D prohibit the trafficking of persons of age for the removal of any organ of the body and of minors for any of the purposes mentioned in 248 A above respectively.<sup>4</sup>

The Constitution of Malta states that no person shall be required to perform forced labour.<sup>5</sup>

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<sup>1</sup> Malta, Criminal Code (*Kodiċi Kriminali*), 10 June 1854 and subsequent amendments, Article 248A (1), available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>. (All hyperlinks were accessed on 11 July 2014).

<sup>2</sup> "Position of vulnerability" means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

<sup>3</sup> Malta, Criminal Code (*Kodiċi Kriminali*), 10 June 1854 and subsequent amendments, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>.

<sup>4</sup> Malta, Criminal Code (*Kodiċi Kriminali*), 10 June 1854 and subsequent amendments, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>.

<sup>5</sup> Malta, Constitution of Malta (*Kostituzzjoni ta' Malta*), 21 September 1964, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566>.

On child labour, the Criminal Code, Article 248 DB lays down that whosoever shall practice or engage in child labour for any of the purposes mentioned in Article 248A shall, on conviction, be liable to the punishment established under article 248D. For the purposes of this article child labour shall include the coercion of a person under age into forced or compulsory labour for any purpose whatsoever including the forced or compulsory recruitment of minors to take part in armed conflict.<sup>6</sup>

The Young Persons (Employment) Regulations<sup>7</sup> seeks to protect young workers in employment. Young Persons include children (minors)<sup>8</sup> who have not yet attained the age of 16 and those between 16 and 18, known as adolescents.<sup>9</sup> Protection is higher where it concerns children in employment. The regulations prohibit work by children, establish minimum employment age, regulate work by adolescents and ensure that employers guarantee that young people have working conditions which suit their age and are protected against economic exploitation and against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education. Any employer contravening, or parents aiding the employer to contravene the Regulation shall be guilty of an offence and liable to a fine (*multa*).<sup>10</sup>

The White Slave Traffic (Suppression) Ordinance prohibits any person from compelling by means of violence or threats, or inducing by deceit any person to leave Malta or to come to Malta for the purposes of prostitution. Article 3 stipulates a higher punishment for the inducement of a person under the age of 21. Article 5 lays down that any person who detains a person against his will, in any brothel, is liable to imprisonment.<sup>11</sup>

## EU Employers Sanction Directive

The Subsidiary Legislation 217.14 *Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations* transposes the provisions of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals.

The term "*particularly exploitative working conditions*" is defined as working conditions, including those resulting from gender bias or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends human dignity.<sup>12</sup>

Regulation 7(c), (d) and (e) mirrors 9(1)(c), (d) and (e) of the Directive 2009/52/EC of the European Parliament and of the Council as it lists that the offence of employing any illegally staying third-country nationals is aggravated when:

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<sup>6</sup> Malta, Criminal Code (*Kodiċi Kriminali*), 10 June 1854 and subsequent amendments, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>.

<sup>7</sup> Malta, Young Persons (Employment) Regulations, 5 April 2004, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11226>.

<sup>8</sup> 'Child' means any young person, of either sex, who is under 16 years of age, or any other age which may from time to time be established as the school leaving age by virtue of the Education Act.

<sup>9</sup> 'Adolescent' means any young person who has reached 16 years of age, or any other age which may from time to time be established as the school leaving age by virtue of the Education Act, but is less than 18 years of age

<sup>10</sup> a monetary penalty.

<sup>11</sup> Malta, The White Slave Traffic (Suppression) Ordinance (*Ordinanza dwar il-Qirda tal-Kummerċ fil-Prostituzzjoni*), 1 August 1930, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8614&l=1>.

<sup>12</sup> Malta, House of Representatives (2011), Subsidiary Legislation 217.14, Legal Notice 432 of 2011, Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11772&l=1>.

7(c) the infringement is accompanied by particularly exploitative working conditions;

7(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence of traffic of persons, uses work or services exacted from an illegally staying third-country national with the knowledge that he is a victim of trafficking of persons; and

7(e) the infringement relates to the illegal employment of a minor.

### **Employment Law Overview<sup>13</sup>**

The right of all citizens to work and the state's role in promoting the conditions to make this right effective is enshrined in the Maltese Constitution, which upholds the basic principles of workers' rights, including inter alia the maximum number of daily working hours, a weekly rest day, holidays with pay, the establishment of a minimum working age, gender equality, professional and vocational training for workers, contributory social insurance and the provision of the means of subsistence for those unable to work. The most prominent legislative sources include the Constitution of Malta, the Employment and Industrial Relations Act (EIRA), the Employment Commission Act, the Employment and Training Services Act and EU Regulations and Directives.

The EIRA lays down the minimum rights of employees. It also enables Wages Councils to lay down, through subsidiary legislation, minimum conditions regulating employment in various specific categories.

Maltese labour law is essentially based on the contractual agreement entered into between employer and employee, provided that the statutory conditions of employment are respected. Thus, whereas certain conditions of employment are strictly regulated as a matter of law, other conditions are left entirely up to the parties to agree upon, as long as these are also considered to be objectively reasonable. Where the minimum conditions of employment are established by law or regulation, only those provisions that are more favourable to the employee are considered as being legally valid and enforceable.

If the period of employment exceeds one month and the employee's working hours exceed eight hours per week, the employer is bound to give the employee within eight working days from the commencement of employment, either (i) a written contract of employment, or (ii) a written statement of minimum conditions, which must be furnished to the employee. Such information is expected to include such basic things as the normal rates of pay, overtime rates, hours of work, place of work and leave entitlement. Wages should be paid at regular intervals not exceeding four weeks in arrears. Different periods of pay can be agreed in a collective agreement.<sup>14</sup>

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<sup>13</sup> The Overview on Employment Law in Malta was directly cited from A. J Zammit and Magri Demajo, D. (2009) *Employment Law Overview Malta* by Zammit & Associates Advocates, available at: <http://csb-advocates.com/malta-law/employment/overview>.

<sup>14</sup> A. J Zammit and Magri Demajo, D. (2009) *Employment Law Overview Malta* by Zammit & Associates Advocates, available at: <http://csb-advocates.com/malta-law/employment/overview>.

## The Employment of Foreign Workers in Malta

### Union Citizens

Since Malta's accession to the European Union (EU) and the implementation of the Free Movement of European Nationals and their Family Members Order<sup>15</sup> in terms of the European Union Act, which Order implements inter alia the provisions of Directive 2004/38/EC, a Union citizen may enter, remain and reside in Malta, seek and take up employment or self-employment in Malta and enjoy equal treatment with Maltese nationals and such right shall, subject to certain requirements, be applicable to family members accompanying or joining the Union citizen, including those family members who are not nationals of a Member State.<sup>16</sup>

A European Union citizen and their family members accompanying or joining them may reside and move freely within Malta on the same conditions as Maltese nationals for a period of three months without conditions or any formalities, which period is extendable to a six-month period in the case of a person who provides evidence of genuinely seeking employment and who has a genuine prospect of securing employment by the end of the said six month period.

The procedure for the issuance of an employment licence for a European Union (EU) citizen is relatively straightforward. Applications for an employment licence may be made directly by the applicant and must be countersigned by a director or a person holding a senior managerial position in the establishment where the EU citizen or the spouse or dependant of such citizen is to be employed, and submitted to the Employment and Training Corporation (ETC) which is the public agency in Malta on employment service set up in terms of the Employment and Training Services Act.<sup>17</sup> On submitting the application, the applicant will be provided with a provisional employment licence which entitles the employee to start work immediately. Such a provisional employment licence is valid for 30 days from the date of submission of the application and until such time as another licence is issued in respect of the same employee in terms of the Free Movement of European Nationals and their Family Members Order following verification by the ETC of the information provided by the applicant. It is noteworthy to mention that the 30 day time-frame has been established by the ETC merely as an internal deadline within the agency in order to ensure that the licence is issued within the said period, meaning that if another licence is not issued by the ETC within 30 days, the provisional employment licence remains valid until such time as another licence is issued. The employment licence is valid for a maximum period of one year and must be renewed if employment continues after the expiration date.

It is worth mentioning that in spite of the right of free movement granted to EU nationals in terms of the Free Movement of European Nationals and their Family Members Order, Malta has retained the work permit system as described above to, amongst other things: provide a safeguard on the right of any foreign national to work in Malta. Consequently Malta may be able to withhold work permits in the case of a threat or a disruption in its labour market which is of an urgent and exceptional nature.

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<sup>15</sup> Malta, Free Movement Of European Union Nationals And Their Family Members Order (*Ordni tal-2007 dwar il-Moviment Liberu ta' Cittadini ta' l-Unjoni Ewropea u tal-Membri tal-Familji tagħhom*), 20 July 2007, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11755&l=1>.

<sup>16</sup> Malta, Free Movement Of European Union Nationals And Their Family Members Order, 20 July 2007, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11755&l=1>.

<sup>17</sup> Malta, Employment and Training Services Act (*Att dwar is-Servizzi ta' Impieg u Taħriġ*), 7 August 1990 and subsequent amendments, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8814>.

## Third Country Nationals

The entry into Malta and the employment of third country nationals other than spouses or family members of an EU citizen are regulated by the Immigration Act.<sup>18</sup> Third country nationals may be permitted to enter Malta for a visit, the duration of which must not exceed three months provided that they, amongst other things (i) hold a valid passport (ii) hold a valid visa and (iii) submit, before entry into Malta, documents substantiating the purpose of the planned visit.

As in the case of an EU citizen, a third country national may not exercise any profession or occupation or hold any appointment without the appropriate employment licence. However, in respect of third country nationals, a high degree of discretion is granted to the Principal Immigration Officer in Malta to determine whether or not to grant an employment licence. Moreover, the application<sup>19</sup> must necessarily be submitted to the ETC at least three months before the third country national is due to start work by the prospective employer and not by the proposed employee, and it must be signed by a director or a person holding a senior management position in the establishment concerned.

The employment licence in respect of a third country national is valid for a period of one year and if the proposed employee's services are required beyond the said period an application for the extension of their employment licence must be submitted three months before it is due to expire.

A third country national in possession of an employment licence shall also acquire a Maltese residence permit for the period in respect of which the employment licence is issued, which permit must therefore also be renewed on an annual basis. The residence permit is in the form of a sticker affixed in the holder's passport.

A third country national who has resided legally and continuously in Malta for a period of five years<sup>20</sup> shall be granted a long-term resident status by the Director of Citizenship and Expatriate Affairs subject to the provision of the required documentation and provided the prescribed conditions are met.<sup>21</sup> The long-term resident status shall be evidenced by a

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<sup>18</sup> Malta, Immigration Act (*Att Dwar l-Immigrazzjoni*), 21 September 1970 and subsequent amendments, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722>.

<sup>19</sup> The application for an employment licence - together with payment of the relevant fee - must be supported by the following documents:

- Detailed Curriculum Vitae, clearly indicating education, work experience and previous employers in;
- Copies of any employment references, certificates and/or any other qualifications that the applicant may have;
- Authenticated copy of the applicant's passport;
- One passport-type photograph;
- If the proposed employee is in Malta, a copy of their entry visa;
- A certificate of good conduct issued by the authorities in the applicant's country of residence certifying that applicant has had no criminal convictions in that country;
- The completion of a job description information document by the prospective employer pertaining to the following:
  - the company's activities;
  - the nature of the position to be occupied by the employee;
  - the employee's duties;
  - working conditions;
  - Evidence of the efforts made by the company to employ Maltese or EEA/Swiss Citizens.

<sup>20</sup> In calculating the period of five years a temporary absence from Malta shall not interrupt such period and shall be taken into account in the compilation of the period when the periods of absence are shorter than six consecutive months and do not exceed the total of ten months within the five year period.

<sup>21</sup> The Director of Citizenship and Expatriate Affairs may refuse to grant an application for long-term resident status made by a third country national on grounds of public policy or public security.

residence permit with the words “long-term resident – EC” entered thereon by the Director of Citizenship and Expatriate Affairs.

### 3. Labour exploitation and the institutional setting

This section highlights the institutional mechanisms that are tasked with monitoring compliance aimed at preventing labour exploitation, and/or providing assistance to potential victims of labour exploitation. It focuses primarily on the work of the Malta Police Force, the labour inspectorates and state-funded Victim Support entities.<sup>22</sup>

#### Law Enforcement Agencies

##### Police Immigration Office

The role of the police immigration office is to control the island's points of entry, which include checks aimed at suppressing illegal immigration, preventing illegal entry of foreigners and detection of false documents. The police carry out functions related to monitoring, inspections, protection measures, investigations, criminal justice and referrals to other monitoring bodies and NGOs. In addition, it ensures that employment is carried out legally and with a work permit. Through the introduction of the *Employer Sanctions Directive* (which has been transposed in the National Immigration Act Chapter 217) the responsibilities have been increased for the Police Immigration Office. In effect, other stakeholders have been involved such as the DIER and the ETC. The *Employer Sanctions Directive* dictates that the police are obliged to inform the worker they come in contact with about their rights. In cases of labour exploitation the police would first and foremost establish the facts/evidence and getting witnesses for the allegation. The police would usually interview the potential victim and ask them for any witnesses to back their arguments. Very often the other employees would not be willing to witness against their employer. In cases where there is enough evidence, the police would proceed to court. Otherwise, the police would try "to find a practical solution at the end of the day, perhaps the immigrant gets what his/her is due" [P(1)].

In cases of migrant workers alleging that they are being exploited but working irregularly, as per the Employers Sanctions Directive the Police would ask the Citizenship department to issue a temporary residence permit, which helps the person to feel safer and helps the police in its investigation.

According to the fieldwork research, the promotion of the rights of the workers is one of the duties of the police. This is done through (i) networking with other relevant bodies and agencies (ii) and providing information among the general public including the work sites.

The police can verify, ask and/or investigate any case either on its own or with the other concerned entities. It checks or observes potential victims of labour exploitation and/or their potential offenders. The police interview the migrant worker personally, particularly those who are willing to testify in court. In cases where the victims fear their employer or are suspicious of the police process, other entities play a role since the police are expected to proceed in court as long as a criminal act is taking place. The police are equipped to look for circumstantial evidence in order to proceed on a case. The primary duty of the police is to protect the potential victims through other third-party entities. At times such potential victims are put in safe environments and shelters through other third-party entities such as the Appoġ Agency (*Aġenzija Appoġ*).

Police inspections are carried out in work places at any time of the day and also in private homes. The police would be able to investigate and inspect in private homes after being

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<sup>22</sup> The role of non-Governmental Victim Support organisations is explained at a later stage in the report.

given authorisation through a warrant. Evidence would be collected to prove a potential victim, in order to request the warrant to investigate, look for evidence and arrest. However, in cases of phone calls alerting about certain particular issues, the police can go and investigate immediately.

It is the duty of the Police to inform the victims of their rights. However, one P group respondent admitted that “we are still a step backwards” . The police are not in a position to provide such information on their own. There is the need for other bodies to play a role namely the ETC and the DIER. The interviewee stated that protection of migrants depends on the severity and nature of the case. In certain cases the Immigration office within the police force refers to the Vice Squad.

### **Police Vice-Squad**

The Vice Squad within the Malta Police Force focuses on issues of vice and domestic violence. It investigates cases of paedophilia, missing persons, sexual offences, illegal gambling and trafficking of human beings for exploitation purposes, including prostitution. It investigates and prosecutes cases of alleged human trafficking within the context of sex exploitation within the labour market. The police vice-squad are nowadays making use of a set of indicators and *Standard Operations Procedures* set by the human trafficking task force. Furthermore the police makes use of internal guiding questions in cases of alleged cases of exploitation. There are organised and structured forms of cooperation with other institutions in the form of a National Referral Mechanism (NRM) for human trafficking in the context of labour exploitation. Such mechanism includes a list of organisations (for example the ETC and the Visa Unit) to refer to in the context of human trafficking issues within the context of labour exploitation.

### **Labour Inspectorates**

This section groups together the organisations that carry out labour inspections. There are five main organisations namely the DIER, the ETC, the Occupational Health and Safety Authority (OHSA), the National Commission for the Promotion of Equality (NCPE) and trade unions. This report looks into the labour inspectorates carried out by the first three entities, which entities are primarily active in terms of labour exploitation inspections.

### **The Department of Industrial and Employment Relations (DIER)**

The DIER’s mandate is to monitor that labour/employment laws are being respected in an employer-employee relationship. It (i) establishes standard conditions of employment and ensures that employment conditions are those established by law, (ii) investigates cases of irregularities and allegations and asks the employer to settle them accordingly, (iii) investigates allegations of employees whose job has been terminated and have not been given their due salary and/or not given the proper termination sheets and/or not given the due money on pending vacation leave etc. and, (iv) lodges legal disputes in the law courts against employers who fail to settle the irregularities.

The Inspectorate Section, within the Enforcement Branch, is responsible for monitoring conditions of employment and processing complaints of employees. It carries out on-site inspections to monitor and investigate the conditions of work. In the investigation of a case the inspectors have every right to look into all the documentation, including those of the employer (subject to confidentiality standards). The inspectors are also expected to speak to the employees and ask for information related to conditions of work. Action will then be taken accordingly. In case of irregularity, the department acts in order to settle the said alleged irregularities. One interviewee claimed that the department offers initial support and information to migrants claiming an allegation of abuse/exploitation. Inspections are usually

carried out regularly between Mondays and Fridays during normal working hours (8:00-17:00). However, there are cases in which the Department carries out inspections during the evening according to the required needs of the establishment. Inspections are carried out in every sector of work. Inspections are not exclusively carried out in sectors which are more prone to labour exploitation. Nevertheless, in such sectors where it is more likely to find labour exploitation, inspections are carried out more often. In the cleaning, security and carers' sectors inspections are intensified further.

Inspections, according to an M group expert, take place also in private homes. The respondent claimed that such inspections are more sensitive; however, as long as the household is an employer, the department is authorised to carry out an inspection.

The DIER also takes the initiative to strengthen industrial relations and contacts with the relevant employment stakeholders via a formal letter – for example with respect to the immigration issue, the department asks the organisations to highlight any difficulties that they might encounter and gives information sessions on their services. The DIER cooperates with non-governmental organisations such as Jesuit Refugee Service, the Emigrants' Commission; and governmental entities such as the Agency for the Welfare of Asylum Seekers (AWAS). The department also attends fora, seminars, TV and Radio programmes dealing with any employment related issues including migration issues.

### **The Employment and Training Corporation (ETC)**

The ETC's Law Compliance Unit ensures compliance with the Employment and Training Services Act and identifies abuses of social security regulations. This unit carries out workplace inspections as per the *Employment Sanctions Directive* and monitors the legality of employment; that is, it ensures that all workers, including migrant workers, are registered with the Employment and Training Corporation. Third Country Nationals should have an ETC-issued work permit. The Law Compliance Unit sends inspectors to carry out checks on employers to confirm whether the persons employed are legally doing so. This procedure applies both to Maltese and non-Maltese nationals. In case a report is made on TCNs working illegally, an inspection is carried out jointly with the Police.

The Employment licences unit's role, on the other hand, is to issue employment licences according to the conditions as stipulated by the employment procedures. When the ETC is notified (usually by the police) of any irregularity taking place, its role is to decide whether to revoke the employment licence or black-list the employer. Such cases are nonetheless not very frequent. Over the past year, a maximum of two cases were investigated. Typically, cases of people not being paid adequately or denied their wages or where the employers are not following the employment regulations, are channelled to the DIER, rather than the ETC.

When the ETC issues a licence to the employer, the ETC explains clearly that the employer must give the conditions of work to the migrant worker according to the Employment and Industrial Relations Act. The ETC, however, is not responsible to enforce the said Act. Yet, if it is made certain that an employer is paying less than the minimum wage or not paying tax, the ETC would inform him and refuse to renew/issue the employment license.

An M group respondent stated that the ETC does promote the rights of the workers in general and migrant workers in particular. On each and every application, checklist, guidelines and other material, the employment licence states very clearly that conditions that apply for national workers also apply for migrant workers. The respondent stated that whenever a new application is accepted or an employment licence is renewed the employer is advised to comply with the legal framework; for example to pay fairly and not less than the stipulated minimum wage. Otherwise the employer is advised that the licence cannot be issued or renewed.

In cases of labour exploitation, the ETC refers to other monitoring bodies in cases of suspect employment practices. In cases where ETC is notified of a worker experiencing labour exploitation, the department refers to the police, the DIER and any other relevant entity. A respondent [R(1)] stated that in cases of suspected employers who may or may not be paying adequate wages, the ETC takes a more meticulous approach (including more and more checks) in issuing the licence in order to prevent labour exploitation. The respondent referred to cases of massage parlours, which according to the respondent are becoming very common. The respondent defined such occupations as “a bit of a dodgy occupation in the sense that there is a fine line between masseurs and the possibility of prostitution”. The respondent stated that if an employer requests to employ two new workers, the ETC is authorised to ask for a profit and loss account to check the profits and the wages of the employees. The ETC therefore has the authorisation to evaluate in a detailed manner before it issues any employment licence.

The employment licence unit within the ETC does not have any specific checklist to assess labour exploitation and/or to identify victims of labour-related exploitation. However, the respondent [R(1)] mentioned that they were currently participating in a project funded by the EU Integration Fund to create an awareness booklet<sup>23</sup> with the necessary information for migrants living in Malta – including information on health, residency, equal treatment and obligations of the employer and the employee derived from the Employment and Industrial Relations Act.

### **The Occupational Health and Safety Authority**

The role of the OHSA is to ensure that the expected levels of occupational health and safety protection at work are maintained. It carries out investigations on matters concerning occupational health and safety. The goal of the organisation is “working with others to ensure healthier and safer work place in Malta” [M(1)].

Each and every worker, irrespective of nationality, residency or employment status, is entitled to a safe and healthy work place. A respondent [M(1)] stated that the authority is not interested in whether the workers are regular or not, or whether they have a work permit or not. The remit is about occupational health and safety standards.

With respect to migrant workers the OHSA web portal<sup>24</sup> refers to a *European Report on Migrant Workers*:

*“International migration has contributed to growth and prosperity in both host and source countries. Migrants provide a valuable source of semi-skilled and unskilled labour to many industrialising countries and provide a source of highly skilled labour to advanced countries, thereby assisting the latter in maintaining economic competitiveness, according to the ILO. The rate of growth of the world's migrant population more than doubled between the 1960s and the 1990s, reaching 2.6 percent in 1985-1990, and it is forecast that this trend will most likely accelerate in the 21st Century. The term “migrant workers” covers a wide range of people with different reasons for migration and varying skills levels. Not all such workers are “at risk” regarding their safety and health at work, but there*

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<sup>23</sup> Employment and Training Corporation, Living and Working Conditions in Malta, available at: <http://etc.gov.mt/Resources/file/EURES%20Living%20and%20Working%20in%20Malta%202010.pdf>.

<sup>24</sup> <http://ohsa.org.mt/Home.aspx>.

*are three occupational safety and health (OHS) issues relating to migrant workers that give concern.”<sup>25</sup>*

These issues are: The high employment rates of migrant workers in high risk sectors, language and cultural barriers to communication and training in occupational health and safety, and the fact that migrant workers often work a lot of overtime and/or are in poor health and thus are more prone to occupational injuries and diseases.

The OHSA learns about cases of exploitation of workers through the public. The most common type of source is through telephone calls. One M group respondent claimed that the authority itself conducts sector-by-sector on-site spot checks. The authority chooses sectors of the economy, for instance manufacturing (factories) and plans unexpected spot checks in areas where such factories are concentrated. Furthermore, the OHSA also conducts regular campaigns in different sectors of the economy. The respondent mentioned the current ‘Slips, Trips and Falls’ campaign in food restaurants.

The respondent said that inspections can be done at any employment site, and declared that inspections are done during normal working hours - that is typically between 08:00 and 17:00. No inspections take place during the night. The respondent states that the law does not authorise the authority to carry out inspection in private homes. Furthermore, the M group expert concluded that it is very difficult to verify a case of exploitation in terms of occupational health and safety in a private household.

A respondent [M(1)] stated that there is good cooperation with other state entities, particularly with the DIER, the ETC, the police stations and the police Mobile Squad.

### **Anti-trafficking action in Malta**

According to the *Support Tool for Service Providers on Trafficking in Human Beings and Standard Operating Procedures on Identification and Referral of (potential) Victims of Trafficking*, “cases of human trafficking encountered in Malta so far involved sexual exploitation of adult women, with victims being mainly eastern European nationals who have entered the country legally. A change in trend has also been observed with the trafficking of adult women originating from Asian countries. Trafficking for labor exploitation and domestic servitude is increasing in relevance worldwide and also in the Maltese scenario. Investigations and procedures relating to cases, including alleged cases of human trafficking for labour exploitation, are ongoing” (Contino, 2014).

### **Action Plans**

The Malta Action Plan on Combating Trafficking in Persons (October 2011 – December 2012) states that in Malta trafficking for sexual exploitation, exploitation in the production of goods or the revision of services, and exploitation in the removal of organs is prohibited by the Criminal Code (Cap. 9 of the Laws of Malta). That is, an offence of human trafficking entails an infringement of the provisions of the Criminal Code (Cap. 9 of the Laws of Malta) falling under the heading “*Of the traffic of persons.*”

Act III of 2002 introduced Sub-title VIII BIS entitled *Of The Traffic of Persons* into the Criminal Code (Cap. 9 of the Laws of Malta) in accordance with Malta’s commitment to the United Nations Convention Against Transnational Organized Crime and the protocols

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<sup>25</sup> Malta, OHSA, European Report on Migrant Workers, available at <http://ohsa.org.mt/Home/UsefulInformation/GoodPractice/EuropeanReportonMigrantWorkers.aspx>.

thereto. Malta ratified the Convention and Protocols, including the Palermo Protocol, on the 14th of September 2003.

The Action Plan states that “with a view to ensuring the provision of adequate victim support, a Memorandum of Understanding was signed between the Malta Police Force and the Ministry responsible for Social Policy. The MOU is complemented by the services provided by Aġenzija Appoġġ, the Government Agency responsible for providing and coordinating social support services to potential victims of human trafficking.

Later on, the [Malta Action Plan on Combating Trafficking in Persons \(January 2013 – December 2014](#)<sup>26</sup>) states that it retains the same monitoring structure<sup>27</sup> and the same objectives of the first Action Plan<sup>28</sup>.

This second Action Plan addresses key issues particularly (i) the fostering of awareness among persons vulnerable to human trafficking; (ii) the conducting of an awareness raising campaign; (iii) the finalisation of guidelines for the identification of victims of human trafficking (iv) the formalisation of arrangements for the identification and referral of victims of human trafficking; and, (v) the completion of a study on the human trafficking scenario in Malta<sup>29</sup>.

The Action Plan lists the ongoing actions as follows:

1. The regular convening of the Human Trafficking Monitoring Committee and the Stakeholder Task Force on Trafficking in Human Beings;
2. The submission of a progress report to the Prime Minister, once every 6 months;
3. Enhancement of the Administrative Capacity of the authorities involved in victim identification, victim support or the apprehension/prosecution of offenders;
4. The fostering of awareness among persons vulnerable to human trafficking;
5. Liaison with EU and international bodies addressing human trafficking issues, including the EU Anti-Trafficking Coordinator and the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA);
6. Participation in international conferences and events, including meetings hosted by the EU Anti-Trafficking Coordinator; and,
7. Upholding and strengthening ongoing Police efforts towards the identification of new crime trends and risks. Reviewing Police modus operandi as necessary in order to better address changing situations.

## **The Institutional Setting**

The Maltese Government, through the commitments undertaken with the National Action Plan 2013-2014, has established formalised procedures for the identification and referral of potential and recognised victims of human trafficking. These procedures, known as Standard Operating Procedures (SOPs), are meant to regularise and harmonise related practice

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<sup>26</sup> Malta Action Plan on Combating Trafficking in Persons January 2013- December 2014 available at: [Malta Action Plan on Combating Trafficking in Persons](#).

<sup>27</sup> The implementation of the first Action Plan was overseen by the Anti-Human Trafficking Monitoring Committee, a committee appointed by the Prime Minister and chaired by Malta’s Anti-Human Trafficking Coordinator.

<sup>28</sup> 1<sup>st</sup> Action Plan covered the period 4<sup>th</sup> quarter 2011 to 4<sup>th</sup> quarter 2012.

<sup>29</sup> These measures have therefore been incorporated into the present Action Plan, either as ongoing measures, or measures to be implemented during or by a specific timeframe.

amongst the various public entities and NGOs, which may come across potential victims of human trafficking in the course of their work. Indeed, the referral system established recognises the entities in question as a possible 'first contact' of a potential human trafficking victim. Such entities include, amongst others, Caritas Malta, JRS, AWAS, the Refugee Commission, ETC, Department of Industrial and Employment Relations (DIER), and the Central Visa Unit.

If any of these entities identify (with the help of what are known as indicators of human trafficking) a service user as a potential victim of human trafficking, they are meant to notify Aġenzija Appoġġ, a process known as initial referral. The entity acting as 'first contact' must also report the existence of such case to the Vice Squad Police, a step referred to as informal reporting. Any information about the presumed victim gathered by the first contact should be transmitted to both Aġenzija Appoġġ and Vice Squad.

In practice, the Vice Squad, with the help of Aġenzija Appoġġ, conduct an interview with the potential victim of human trafficking in order to obtain essential information, in an attempt to clarify and better establish what is the situation and what are the presumed victim's needs. Amongst others a victim is informed about his or her rights, and about the possibility to avail him/herself of what is known as the 'reflection and recovery period', in accordance with the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations (Subsidiary Legislation 217.07). During this reflection period potential victims are given the time to recover, stabilise and decide if they want to cooperate or not with law enforcement. This period should be accompanied by the granting of a temporary residence permit whenever required. Furthermore, if the potential victim agrees to be assisted, Crisis Intervention Care is offered by Aġenzija Appoġġ (and if need be with another service provider) which includes, but is not limited to, emergency accommodation, referral to legal assistance, psychological counselling, and liaison with the police.

An identification interview is carried out to determine formally whether the individual is a victim of human trafficking. A recognised victim, with regards Vice Squad, would have been subjected to an offence qualifying as a human trafficking offence in terms of the Criminal Code or other relevant legislation. This interview takes place during or after the recovery and reflection period and is carried out by a police officer deemed knowledgeable in human trafficking issues.

In case of seriously traumatised individuals, the social worker from Aġenzija Appoġġ and/or psychologist involved may also be present. The Victim Support Unit within the Parole and Probation Service may also be called in for assistance. Following formal identification, a victim may decide to testify, and will thus be given the necessary information pertaining to evidence gathering and judicial processes, testimony and protection options, etc. If a victim decides not to testify, he or she is provided with information related to the possibility of legal stay in Malta, about return options and on risk assessment prior to return, and other relevant information.

The following procedure involves the provision of formal information to the victim. After the individual's victim status is determined, a clear summary of information on services and procedures should be given to the individual as required. This is usually done by the appointed case manager/social worker of Aġenzija Appoġġ together with other stakeholders, such as JRS or Caritas, who may have already been involved in assisting the victim.

The issuance of necessary permits, including the permit for third-country nationals provided for by Subsidiary Legislation 217.07 on the Permission to reside for victims of trafficking or illegal immigration who co-operate with the Maltese Authorities. The Principal Immigration Officer may recommend the issuing of a residence permit to a third country national who is a victim of human trafficking who intends to cooperate with the competent authorities, in accordance with the circumstances of the case. The residence permit shall be valid for a period of six months which may be renewed if the need arises. The third country national will be granted a work permit for the duration of the residence permit.

The final step consists in the assisted voluntary return and reintegration (AVR&R). Individuals who have been trafficked should be given the opportunity to express whether, when and how they would like to return home. A person can only be returned voluntarily to the country of origin if s/he gives her/his informed consent in writing. Immediately after the victim expresses his or her desire to return home, a risk and security assessment prior to return is required in order to ensure that the victim as well as her/his family and friends are safe. Simultaneously, if the victim expresses the wish to return home and stay with her/his family, all efforts have to be made to trace the family in case the victim has lost contact with them. To allow the victim to return it is necessary to facilitate the issuance of temporary travel and/or identity documents, if victim does not possess such documents. The cooperation of a number of entities is required in this process including Vice Squad, Aġenzija Appoġġ, Immigration Police, and possibly international organisations such as IOM. Also, if the decision was made for the victim to voluntarily return to the country of origin relevant embassies or consulates of the destination country should be contacted.

### **Victim Compensation**

According to one respondent [S(1)] there is a fund for compensation of victims of violent intentional crime, which is regulated by the Criminal Injuries Compensation Scheme Regulations<sup>30</sup> which however excludes victims of labour exploitation unless they are also victims of other crimes and can show that they suffered grievous bodily harm.

Victims of violent intentional crime is defined as an act which constitutes a crime referred to in articles 198 (rape and carnal knowledge with violence), 204A(1)(a) (compelling persons under age to prostitution or pornographic performance), 211 (homicide) and 216 (grievous bodily harm), 248A to 248D (trafficking in persons, that is proper trafficking not smuggling), both inclusive, of the Criminal Code when committed by any of the means referred to in articles 217, 218, 312, 314A(2), 314B(2) and 314CB(1) and (2) of the said Code including the use of explosives, arms proper, pointed instruments, corrosive fluid, arson, where, as a result thereof, a person perishes or suffers grievous bodily harm.

It is pertinent to note that the individual must have suffered at least grievous bodily harm. Article 9 states that: the persons entitled to compensation are:

- (a) citizens of Malta; and
- (b) citizens of one of the Member States of the European Union; and
- (c) persons who are habitual residents of Malta.

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<sup>30</sup> Malta, Criminal Injuries Compensation Scheme Regulations - Subsidiary Legislation 9.12 - 29th May, 2012 – Legal Notice 186 of 2012, as amended by Act XVIII of 2013, accessible at [www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8983&l=1](http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8983&l=1).

Furthermore, the process to get compensation is not through the criminal proceedings but through an application to an administrative authority as described in the regulations.

## 4. Forms and frequency of incidents of labour exploitation

According to the experts, the most common form of labour exploitation of migrant workers in Malta is related to exploitation of migrant workers under particular working conditions (in terms of the *Employer Sanctions Directive*).

Almost all respondents ruled out slavery completely in Malta. None of the respondents stated that they had encountered child labour in their professional experience. A breakdown of experts' view on labour exploitation is given in Annex 2, Table 3.

The respondents stated that the most frequent types of exploitation<sup>31</sup> are related to:

- Wages being denied completely or partially; see relevant case in Annex 3
- Occupational health and safety breaches (particularly for the Sub-Saharan migrant workers);
- Excessive working hours; see relevant cases in Annex 3
- No entitlement to vacation/sickness leave; see relevant cases in Annex 3
- Bonuses not paid;
- No written contract;
- Lack of awareness of employment rights (such as the right to wear protective gear, and the right to basic occupational health and safety measures).

From the perspective of the police, the most frequent form of labour exploitation encountered is related to exploitation of migrant workers under particular working conditions sanctioned by the *Employer Sanctions Directive*. A participant [P(1)] said that the most frequent forms are those related to workers being denied their due wages or workers paid significantly less (see relevant case in Annex 3).

Secondly, another form of labour exploitation is related to migrant workers employed for very long hours, where the workers, given that they are used to worse conditions, are not aware of the exploitation taking place (see relevant cases in Annex 3).

One respondent from the police group highlights that the very low financial penalties before the introduction of the *Employer Sanctions Directive*, which varied between 500 and 1,000 Maltese Lira (equivalent to €1,150 and €2,300) were not enough as a deterrent. The employer would have reasoned that it is cheaper to pay the penalty and the lawyer's costs rather than pay the wages of the workers. Furthermore, the respondent said that he/she encountered cases of employers who "use" the police to get rid of their workers with no right to work by reporting them to the police without giving them due wages.

The respondent concluded that collating evidence vis-à-vis the employers for labour exploitation is very difficult for the police. Nevertheless, nowadays, with the recent introduction of the *Employer Sanctions Directive*, the respondent said, the police are in a better position to deal with such forms of labour exploitation.

The most frequent form of labour exploitation encountered by the victim support services is also related to migrant workers working in exploitative working conditions. Examples of such conditions are:

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<sup>31</sup> Refer to Annex 2, Table 4 for a breakdown of Forms of Frequently Observed Labour Exploitation.

- migrants workers “working without work permit, and they were not entitled to leave, they were not entitled to sick leave and so on and so forth” [S(1)];
- workers employed for very long hours for a full seven-day week for about €400 monthly;
- poor occupational health and safety standards and
- lack of awareness of workers’ rights to protective clothing and basic occupational health and safety measures. (see relevant case in Annex 3)

Such workers, according to a respondent [M(1)], are employed primarily in particular demeaning cheap labour situations unwanted by the Maltese. The respondent asserted that migrant workers are exposed to dangerous jobs with little or no protective clothing, are given relatively low pay, work for longer hours and are not provided with the necessary health and safety equipment such as scaffolding.

Two participants from the L professional group share the same views and declared that the most common form of labour exploitation is that related to migrant workers employed under particularly exploitative working conditions. While ruling out completely other forms of exploitation such as slavery, forced labour, child labour and trafficking for labour exploitation, a participant argued that they encountered exploitative conditions “at a very reduced rate of income, not given any income, just food and drink for example” [L(1)]. The respondent exemplified with concrete cases of two migrant workers given very poor working conditions on a chicken farm and at a construction site:

*“I had a case of a Bulgarian who used to work in a chicken farm and stole a bucket and stole some boots or whatever that was at this chicken farm. Basically, he said that he was being exploited because he was not being paid. He was just being given food and drink to remain at that”.*

*“... a migrant, for example, and this person said that he was working on the construction site, in the sun, for long hours, at a miserable rate of one euro and fifty cents per hour, for example.” [L(1)]*

A participant from the S group identified exploitation of migrants under particularly exploitative conditions as the most common. With a particular focus on the Filipino migrants, the respondent said that exploitation is mainly related to very long hours of work. The respondent says that she/he has friends “working up to ten o’clock” and “working without resting in the afternoon”. The respondent highlighted that some employers are not abiding by the signed contract and not following the eight-hour working day:

*I mean if you are working twelve hours ... because the ETC is giving us eight hours working hours a day. That is what we signed to the contract but the employers are not giving us ... because we are live-in workers, so the employers are not following that eight hours. Sometimes ten hours, twelve hours, like that. That is this one – exploitative working conditions. [S(1)]*

Annex 2, Table 4 reveals that the six most frequent forms of labour exploitation as pointed out by the interviewees are:

- 1) migrant workers do not have a contract written in a language they understand, or do not have a contract at all;
- 2) migrant workers are not properly informed about their entitlements as concerns wages, working conditions, annual leave etc.;
- 3) migrant workers depend on the employer beyond the employment contract, e.g. as concerns accommodation or employment of family members;

- 4) employers withhold wages or pay considerably less than what they are obliged to pay;
- 5) employer does not pay social security contributions;
- 6) migrant workers are not allowed to go on annual leave.

## 4.1 Other (less frequent) forms of labour exploitation

A respondent [P(1)] cited other forms of labour exploitation related to forced labour and trafficking for labour exploitation related to prostitution and sex services. The respondent [P(1)] said that their area of expertise as an investigator and a prosecutor is related to human trafficking of migrant workers for sex exploitation within the labour market. A respondent [N(1)] said that their area of work brings them in contact with trafficking for labour exploitation. The most common types of trafficking were directly related to sex exploitation. Victims are very likely to be females of Eastern European origin who entered Malta regularly using air travel with a VISA. The respondent also encountered cases involving both victims and/or perpetrators of a Chinese origin. The latter category of trafficking resulted in both sex related types of exploitation and other traditional forms of labour exploitation.

It is pertinent to note that the respondent highlighted that the number of cases involving reported human trafficking is not very large. The respondent said that in 2013, seven cases were reported to the police, one of which involved a Maltese national while the others were all non-Maltese nationals. Such a figure, according to the respondent, is not much and therefore the subject should be treated with caution. However, the respondent suspects that other victims called for help at *Aġenzija Appoġġ*, without making a police report.

Other, but less frequent, forms of labour exploitation mentioned within the S professional groups were related to bonded labour, human trafficking for labour exploitation and one-off cases of slavery where people were practically deprived of their liberty whereas the employer (generally non-Maltese) would retain the travel documents and force a work agreement with very exploitative conditions that amount to slavery. A respondent from professional group S said that:

*“the few cases I have seen of that kind are people who, usually they either have been discovered in conditions which are like slavery and they would have managed to get out either the police find them and help them out or else they manage to escape themselves and then they come here or somebody brings them here or another agency refers them. But they wouldn't be the majority basically” [S(1)]*

Another expert from professional group S asserted that bonded labour is more common with migrants of a West African and Filipino origin. On the other hand, when it comes to human trafficking, the respondent encountered cases of migrant workers of Filipino and of Chinese origin.

It is pertinent to note that two representatives of the E professional group denied that they have ever met any forms of severe and/or criminal forms of labour exploitation in the sector within which they operate. They both agreed that abuses are more likely to take place in the undeclared (shadow) economy where it is very difficult to identify to what extent labour exploitation is taking place. Referring to a list of five different forms of labour exploitation, one respondent said, “quite frankly none of the above”. [L(1)]

## 4.2 The Type of Jobs/Occupations and Economic Sectors Affected

The most common types of occupations in which migrant workers are being exploited are within the service and the unskilled economic sectors. The respondents stated that the most common types of occupations in which labour exploitation of migrant workers is to be found are:

- 1) labourers working in the construction industry;
- 2) waiters and other kitchen-related jobs within the catering industry;
- 3) domestic carers;
- 4) cleaners employed on a contract or piece-work basis; and
- 5) sex services related jobs in the entertainment sector or in massage parlours.

Refer to Annex 2, Table 5 for the most prevalent occupations and sectors of the economy of exploited migrant workers by sex.

The respondents explained that the type of occupation for labourers employed in the construction industry would include labour intensive jobs such as carrying out of construction debris, installation of electricity and clearing of construction sites, plastering or wall covering. An interviewee from the L professional group highlighted an example of a migrant worker employed on a construction site in very poor conditions for a miserable rate of pay per hour:

*“a migrant, for example, and this person said that he was working on the construction site, in the sun, for long hours, at a miserable rate of one euro and fifty cents per hour, for example” [L(1)]*

Another respondent [W(1)] stated that migrant workers, usually males, are hired either as a group from a particular country like Sri Lanka, India and/or Pakistan or individuals who are picked up from Marsa<sup>32</sup> traffic junction. The former group type is very common in labour exploitation in labour intensive building/construction tasks (2<sup>nd</sup> and 3<sup>rd</sup> phase):

*“In construction, irġiel normalment....u mhux ħafna drabi l-isfruttament mhux on individual basis...iġibu group....groups.....groups of workers. Ħafna drabi Sri Lanka, India, Pakistan...dawn il-pajjiżi hekk. Imbagħad hemm l-individual li jinżel il-Marsa u jippikkja tnejn min-nies”*

*“In construction, they are men mainly....and many times the exploitation is not on an individual basis...they get a group....groups.....groups of workers. Very often from Sri Lanka, India, Pakistan...these type of countries. Then there is the individual who goes down to Marsa and picks up two of the people from there.” [W(1)]*

A respondent [P(1)] said that sex services related jobs are very likely to be based on deceit. The migrant workers would be initially promised particular jobs such as carers or waiters but end up doing other jobs with different working conditions such as different working hours. The police group respondent stated that the modus operandi of the employer-employee relationship is always related to debt where the migrants owe money back to their employer or other third parties. One respondent from victim support services argued that an area which needs looking into is that related to migrant workers in massage parlours, in spite of the low number of reported cases:

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<sup>32</sup> Marsa is a Maltese locality well-known for the number of immigrants available for the casual odd jobs – mostly waiting next to a roundabout or very close to the Marsa open-centre.

*“We had a few cases of these massage parlours which were quite horrific. We haven’t had that many cases but I think that really needs looking at.”*  
[S(1)]

Speaking about domestic cleaners, a respondent [S(1)] said that they encountered a case in which the labour itself was not exploitative but the conditions tied to the labour were far below standards, including overcrowded accommodation for a very high rent and heavy penalties if the workers withdrew from the agreement:

*“They were getting paid normally but basically the arrangement itself to bring them here, give them the visa – all these services, to give them accommodation, were so inherently exploitative like for example they charged them a phenomenal amount of money to have ten people in a three bed-roomed flat for example or eleven or twelve in a three bed-roomed flat and so they were sleeping literally everywhere and the contract if for – let’s say a three year contract with a very heavy penalty if you withdraw so they really tied them in all round. It wasn’t the labour itself that was exploitative because that was done, but it was somebody exploited a niche in government service to make a hell of a lot of money because they were desperate to come and work over here basically.”*  
[S(1)]

Other (occasional) occupations mentioned by the respondents included:

- garbage collectors (3);<sup>33</sup>
- labourers in agriculture (1);
- shop assistants in fast food take away shops<sup>34</sup> (1);
- male working in a chicken farm (1);
- students carrying out temporary work phases<sup>35</sup> (1);
- clerical type of jobs in the services sector (1).

## **The economic Sectors**

According to the respondents the three economic sectors in which labour exploitation of migrant workers take place are:

- the construction industry;
- the accommodation and food services activities sector; and,
- to a lesser extent, in private households as employers of domestic workers (refer to Annex 2, Table 6).

It is pertinent to note that the construction industry is the economic sector in which labour exploitation is by far the most widespread. The biggest majority of the respondents identified the construction of buildings (more labour intensive) as the economic sector in which they have most often witnessed migrant workers being severely exploited. The respondents also mentioned the completion of building and construction installation activities whereby migrant workers experience some form of labour exploitation.

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<sup>33</sup> Figure in bracket denotes the number of respondents.

<sup>34</sup> Mostly involving Chinese nationals.

<sup>35</sup> Students mainly from Continental Europe working for a fee that covers their accommodation and food costs only.

A respondent from the W professional group distinguished between the three phases of construction. The respondent argued that migrant workers are very likely to be found in the second and third phase of construction involving labour intensive tasks.

*“First phase ma tantx ikollok labour intensive għaliex tħammil...the site being ready for building. In the second phase hemmhekk ikollok ħafna sfruttament għax għandek labour intensive building... Fit-third phase ikollok, għax għandek labour intensive installation għaddejja, pero jkollok ħafna sfruttament ta’ kuntratti li jgħaddu minn kuntrattur għall-ieħor”*

*“First phase does not involve intensive labour because it is clearing of the site...the site being ready for building. In the second phase a lot of exploitation takes place because you have labour intensive building... In the third phase you have, because there is labour intensive installation going on, but you have a lot of exploitation of contracts which pass from one contractor to another” [W(1)]*

An L group professional agreed and stated that the most common economic sectors are in manual type of jobs in construction sites:

*“Construction, manual labour, that is mostly where the people that I come across that are being exploited are usually people in labour intensive jobs such as construction carrying, transport, delivery people and so on...they say, we work in construction, or they say, we are plasterers, for example. People who come across a lot of problems, here in Malta, because they work for Maltese people, Maltese people abuse of them, and so on.” [L(1)]*

A participant [M(1)] highlights that migrant workers of African origin carry out the “dirty” jobs with very high exposure to dangerous work practices. The respondent also referred to people from the Balkans employed in other phases of the construction mainly in tile-laying, surfacing and plastering. A respondent [M(1)] said that the DIER encountered (recent) cases of unpaid wages in the labour intensive construction sites.

A respondent from the S professional group stated that migrant workers employed in the construction industry are picked up off the street at a roundabout and could be given work in anything related to the building industry ranging from a:

*“... quarry or literally, to the building itself, to the finishing of a building, to the electricity tiling whatever so at all stages.” [S(1)]*

In the second sector, the accommodation and the food service sector, different respondents highlighted that migrant workers are very likely to be employed as dishwashers, cleaners, waiters, room attendants and chamber maids. The focus group respondents said that migrant workers in this sector do not necessarily hail from Sub-Saharan countries.

A participant from the Monitoring professional group argued that the DIER encountered cases of unpaid wages in the catering sector employing Eastern European migrants. Another respondent [R(1)] said that currently there is a great influx of applications for cleaners and a big demand from temping agencies to recruit cleaners. The respondent is very suspicious as to whether the employees are being paid adequately and is wary about the industry. Two respondents [L(1); M(1)] attribute labour exploitation in the accommodation industry to the (traditional) degree of informality and to the shortage of employees working in the cleaning sectors of the hotel industry, respectively. A W group interviewee asserted that they had met a group of German students who were offered food and lodging in exchange to a full-time job. The respondent said that:

*“jiġu bħala studenti. Jiġu offruti l-ikel u l-akkomodazzjoni, imma jridu jagħmlu 8 siegħat kuljum....a full-time job.”*

*“They just come simply as students. They are offered food and lodging but they have to do an eight hour job....a full-time job.” [W(1)]*

A participant [R(1)] stated that domestic work is an area with little monitoring. Given the nature of work in which the workers have little or no contact with other colleagues, given that spot checks are limited, the respondent suspected that it “leaves room for possible abuse”. A respondent [L(1)] shares the same point of view and said that in the domestic area of care “there is a potential of big exploitation”.

A respondent [W(1)] said that in this area exploitation is the result of a lack of awareness of regulation. For example, migrant workers do not know that they have to pay National Insurance contributions. A respondent [S(1)] focussed primarily on the long hours of work. The respondent exemplified:

*“If the employer have visitors in the night like for example Friday night sometimes they have party, like that and the housekeeper stays up till...and sometimes the employer will go out for a dinner and sometimes they are going back home midnight, so the housekeeper, nanny is still with the children and cannot sleep. She is waiting employer. I have friend like that happen before but she leave from her employer she is already out of her employer because from Monday to Saturday sometimes three times a week that the employer go out. So the housekeeper/nanny is waiting for them so she cannot sleep. And then in the afternoon she is not allowed to sleep for a while, for a nap, so that is exploitation.*

*... the carer like for example they are staying with old person, and this person sometimes is asleep, like for example they like to sleep at nine o'clock or ten o'clock in the evening, but they still wake up at midnight so the carer is also wake up.” [S(1)]*

A participant representing the recruitment professional group asserts that the main complaints and queries are related to domestic workers (typically third country female nationals employed as carers, nannies and housekeepers) who are home-based and their work is limited to a household with little or no contact with other colleagues.

### **The informal sector of the economy**

One participant L group expert believes that migrant workers employed in the informal sector of the economy are much more vulnerable to labour exploitation. The respondent argued that the higher the degree of informality the more likely it would be to find labour exploitation. The respondent presumes that exploitative conditions are more likely to be found with small scale one-to-one informal types of employers-employees relationships. Such employers would go to the Marsa traffic junction and pick up migrant workers for work.

Another participant [E(1)] fully agreed. The respondent argued that abuses are more likely to take place in the undeclared (shadow) economy in which it is very difficult to point out to what degree and extent is labour exploitation taking place. The respondent said that she/he never met any forms of labour exploitation among the members of the employers' association within the declared economy. Labour exploitation presumably takes place in employment relationships whereby both the employer and the employee are irregular. Such

employers would be small employers doing small-scale jobs. The respondent concluded that men are much more likely to be employed in this type of economy (undeclared) with a particular set of conditions of work in which they are not legally covered and cannot seek any help given that they themselves are engaged in an unlawful practice. The respondent identified the construction and the tourism areas of the economy as potential sectors for exploitation given that the black economy prevails.

## 5. Risks and risk management

Certain circumstances or factors render migrant workers more vulnerable to exploitation than others. Annex 3, Figure 1 identifies the most prevalent and common risk factors.<sup>36</sup> According to the respondents, the migrant workers with the following traits are more likely to be exploited in the labour market: having an irregular employment status, having a low level of education, the experience of (extreme) poverty back home, low professional skills, being desperate for money, being a foreigner, having poor English and/or Maltese language skills and having a dark skin colour. It is indeed pertinent to note that the most prevalent risk factors identified by the respondents are very likely to be related to the workers themselves.

### Migrants' Status

The respondents pointed out that migrant workers with an irregular employment status are in a no-win situation. The status itself brings about different degrees of vulnerability. Those with no right to work are at a higher risk of labour exploitation. A respondent [E(1)] argued that if the workers know that they have no right to work and therefore are not protected by the law but still persist on working, they would be exposing themselves to a higher risk of labour exploitation.

*“L-ikbar wieħed żgur huwa jekk għandux permess jaħdem jew le. Jiġifieri jekk għandu permess jaħdem allura awtomatikament huwa kopert bil-liġijiet tax-xogħol. Jekk m'għandux permess haħdem u jrid jaħdem xorta waħda, allura qed jesponi lilu nnifsu, jew lilha nnifisha, għall-isfruttament tax-xogħol.”*

*“The biggest one is whether the person has the permit to work or not. I mean, if the worker has the work permit automatically s/he is covered by the employment laws. if s/he doesn't have the work permit but still wants to work, then s/he is exposing her/himself to labour exploitation.” [E(1)]*

Two respondents [P(1); S(1)] agreed that a person with no protection in Malta stands at a disadvantage since they cannot go to the authorities to report:

*“Mela dan qiegħed f'posizzjoni illi qiegħed Malta illegali, m'għandux status dan, qiegħed hawn mingħajr qishom ma jafu bih l-awtoritajiet, iktar jista' jiġi...u għaliex iktar jista' jiġi...għaliex mhux ħa jmur għand l-awtoritajiet dan biex jirraporta. Jiġifieri qiegħed f'posizzjoni dan li lose lose situation. Jew ħa joqgħod jiġi sfruttat jew inkella ħa jiġi għand il-pulizija u jaf x'se jiġrilu jekk jiġi għand il-pulizija.”*

*“So this person in a illegally staying in Malta, have no status, is her without being documented by the authorities, much more likely, because s/he cannot go to the authorities to report. That is s/he is in a lose-lose situation. It is either staying for exploitation otherwise s/he'll end up at the police and knows what will happen next if he ends up at the police.” [P(1)]*

Furthermore, a respondent of the S expert group said that the law is generous with offenders in the context of labour exploitation. As opposed to other counties, there are differences in terms of rights for those in legal or illegal employment. The employers are in absolute control of how to manage their employees. The respondent however acknowledged that nowadays there are penalties for those employing migrant workers irregularly; however, she/he

<sup>36</sup> Factors mentioned by **three** participants or more.

concluded that the law should give the opportunity to every worker to report any abuse irrespective of their status (regular or irregular) without any fear of being arrested and deported:

*“It’s true now there are penalties for sanctions for employing irregular migrants but at that time it was much less, but even then for them big deal, a slap on the wrist and you carry on going the business is not going to close... In some countries they have laws which say if you’re a worker, you have a right as a worker whether legal or illegal. If you report and claim non-payment of wages then you can sue and nobody will look at your migration status. I think it is the wisest piece of legislation we could possibly have.” [S(1)]*

An expert from the W professional group agreed, saying that there was a time when there was very little risk, if any, of offenders being punished. The respondent spoke of a lenient legal system which used to favour the offender, rather than the victim. The abusive employers used to be asked to pay meagre financial penalties irrespective of the number of workers being exploited:

*“Ma jeħlu xejn. Għamilna żmien ... bażikament jekk isibek tħaddem wieħed jew tħaddem ħames mija teħel ħames mitt euro. You might as well, inġib ħames mija. Kellna case in point fejn kuntrattur ġa kellu miegħu ħames mitt ħaddiem, l-aħħar tliet xhur tal-kuntratt ma ħallashomx, on the last day of the contract irraportahom hu.”*

*“They are not charged anything. There was a time...basically if found employing one person or if found employing five hundred persons you are charged five hundred Euros. You might as well get five hundred workers. We had a case in point where a contractor already had five hundred workers, he did not pay them for the last three months of the contract, and on the last day of the contract he reported them himself.” [W(1)]*

Those with the right to work, on the other hand, are in a slightly better position since they are entitled to a work permit as they have a right to stay (this including refugees, persons with subsidiary protection and those whose asylum application has been rejected). In stark contrast, those with an irregular status, those who arrived regularly and overstayed and those who no one actually knows about and whose existence in Malta is not documented at all, are by far the most vulnerable when it comes to employment. The latter categories of migrant workers typically end up working illegally and are more reluctant to report any form of abuse. One respondent [S(1)] exemplified this with a case of a Pakistani who was exploited in the catering industry soon after his work permit had expired and was not renewed. The respondent stated that such victims of labour exploitation fear the authorities since they might end up being imprisoned and deported. A respondent from the J group said that those working irregularly would be threatened by the employer that their identity would be revealed.

*“This Pakistani man was employed by another Pakistani, running a restaurant or whatever, he came here legally but the employer didn’t renew his.... that’s very common, they get them here to work, get a permit for the first six months and they don’t renew the work permit. And then the work permit expired, he continued working, he wasn’t paid, he was being horribly exploited, he told his aunt in the UK who very naively called the immigration here to tell them what was happening. What did the immigration do? They rushed in and arrested him. And put him in detention to deport him.” [S(1)]*

On the other hand, another respondent [L(1)] argued that failed asylum seekers are also at a disadvantage since they “cannot do anything” and are in a desperate situation. They are exploited by people who know about their vulnerability, which vulnerability they cannot do anything about. The respondent concluded that they are the ones who are exploited the most.

### **The degree of Desperation to Earn Money and the Experience of Poverty back home**

A respondent [S(1)] said that the dire financial situation of migrants make them highly vulnerable to different forms of labour exploitation. The respondent stated that the migrants incurred huge debts during their trip to Europe. Referring to boat people, the respondent said that they would have paid huge sums of money to travel to Europe via Libya through the Mediterranean Sea. Whatever they can earn, they will do it.

*“Let us not forget that these people have paid a lot of money before they crossed over. So they paid money or they borrowed money to leave their land of origin so they cross over the desert.....they have to pay for the boat trip from Libya, to cross over from Libya’s coast to Malta or to wherever they will be going, but end up in Malta. So these people have a lot of debts and that is why they are vulnerable, because they owe so much money they have to see from where they are going to bring it to pay up.” [S(1)]*

AnotherS group respondent pointed out that the overall material and social well-being of the migrant worker determines their need to work. Migrant workers who are more desperate to work because their material living conditions are poor are more likely to be exploited since they agree to any kind of work or treatment.

Focusing on issues of human trafficking for labour exploitation, two respondents of two different professional groups (N and P) stated that the experience of poverty of migrants back home is a risk factor in labour exploitation. They argued that it is not about having individual persons who cannot afford their daily food; it is more about the general economic climate of the countries of origin. The respondent refers to a number of conditions which act as push factors, such as low pay, low entitlement to rights, lack of job opportunities, low educational standards. Furthermore, the respondents also stated that there are certain cases where the victims of labour exploitation are not aware that they are being exploited for the simple reason that the conditions of work in Malta are far better than in their country of origin. A respondent [L(1)] argued that the experience of extreme poverty of certain migrant workers back home put them in a situation where they accept even meagre wages. For example, one respondent [N(1)] exemplified that the Chinese migrant workers are not aware that being paid around €4 an hour is just the minimum wage:

*“Naħseb waħda mill-fatturi ewlenin, fl-opinjoni tiegħi, hija l-faqar. Issa meta ngħid faqar qed nitkellem b’mod ġenerali mhux faqar fis-sens illi m’għandekx x’tiekol, ħa ngħid hekk, imma l-fatt li jkollok nies ġejjin minn ċerti pajjiżi fejn l-istandards huma daqsxejn iktar baxxi huma imdorrijin għal ċertu livell ta’ pagament jew livell ta’ culture u drittijiet. Allura ġieli wieħed lanqas biss ikun jaf li qed jiġi sfruttat. Jiġifieri dik għandek wieħed mill-fatturi li tista’ tagħmel il-persuna iktar vulnerabbli... Il-fatt li inti għandek nies li forsi jridu jidhlu fl-Ewropa at all costs. Dik tagħmlek vulnerabbli għax inti tista’ taqa’ għat-tricks ta’ min he is promising you a quick way in, biex ngħid hekk.”*

*“I think one of the main factors, in my opinion, is poverty. When I say poverty I am speaking in general not poverty in the sense of not having enough food to eat, let’s put it this way, but the fact of having people coming from certain countries where the standards are slightly lower and they are used to certain level of income or certain culture and rights. Therefore one would not even be aware that he is being exploited. That is, one of the factors that renders a person more vulnerable....the fact that you have person who would like to enter in Europe at all costs. That makes a person more vulnerable since you can fall at the trap of those who would promise you a quick way in, to put it that way.” [N(1)]*

*“Faqar hija number one. Faqar – nuqqas ta’ xogħol, il-kultura tagħhom, il-pajjiż per se, ħafna affarijiet li meta tagħmilhom flimkien tiskanta, kollha joħrogulek bihom. Għax aħna insaqqsuhom: kif ġejt hawnhekk? X’wasslek biex tiġi hawn.”*

*“Poverty is number one. Poverty – lack of job opportunities, their culture, the country per se, many factors that when added together, you’ll be surprised, everyone mentions them. We ask them: how did you come here? What motivated you to come here?” [P(1)]*

### **Education, Language and Professional Skills**

According to primary data, the level of education and the knowledge of the vernacular language determine ones risk of labour exploitation (also refer to Annex 2, Table 7). The lack of an educational background and lack of the capacity to speak up and access support and legal services are major risks. Furthermore, language barriers hinder migrants from accessing basic support services. The level of education determines the degree of access to rights and entitlements. Not having proper knowledge of the language (referring to Maltese) in order to communicate properly with the employer would result in exclusion:

*“Educational levels of the employee because that relates to how aware they might be to their rights or at least how aware they are that they should be aware of their rights or the existence of rights. Language capacity, because if they don’t speak the language of the employer or of anyone else there is a lot of exclusion going on.”[S(1)]*

According to one J group respondent, the biggest risk factor is whether the migrant worker has the right to work or not. However, the interviewee stated that the level of skills held by the worker is also a risk factor. Workers with a particular set of skills which are requested by the local economy have higher bargaining power. In employment, the respondent said, the element of negotiation is very important (this applies to both the declared and the undeclared economy – the latter is not governed by any legal framework, however the basic rule of the free economy prevails). The higher the skills the better the chance that a person renders himself employable. At the other end of the scale, the lower the skills, including knowledge of the English language, the higher the degree of vulnerability.

### **Being a foreigner and having a different skin colour adding to the risk of labour exploitation**

Being a foreigner carries a risk of labour exploitation. A respondent [S(1)] argued that the simple fact of workers being migrants puts them at a higher risk and makes them more vulnerable to labour exploitation. The respondent added that those who have been through the asylum procedure and labelled as “clandestine” (*klandestin*) have an additional risk. The

respondent stated that employers (typically, relatively small contractors in the private sector) consider asylum seekers, refugees and those with subsidiary protection as suitable and fit for certain menial jobs, most of which are refused by Maltese nationals. Eventually such jobs are therefore giving more 'opportunity' to work in harsher conditions; longer hours and more labour intensive work:

*"I am going to be very simplistic, because they are migrants...again remember the cohorts of migrants we are dealing with. So most of our clients are people who are people who have been through asylum procedure who have been through detention applied for asylum, rejected or whatever, but they've been through that process. Many of them are living in open centres, some of them are living in the community, and most of them are sub Saharan Africa, very much labelled to the title of 'clandestine'." [S(1)]*

A respondent [L(1)] stated that being a foreigner is in itself a risk since the person has no access to support mechanisms with the necessary contact points. In sharp contrast, a Maltese person can access assistance through friends, relatives and other personal networks. Migrant workers would be unable to know where to go and to whom to speak.

Another risk factor of labour exploitation, according to three of the respondents, is skin colour. One M group expert argued that the negative public perception that a migrant of African origin would have arrived on Maltese shores illicitly on a boat renders him at a disadvantage.<sup>37</sup> According to a respondent representing the S professional group, 'black' migrants are far more seriously exploited than any other migrant. The respondent stated that there is a difference in the treatment of migrant workers on the basis of their skin colour. Any black migrant stands a higher risk of exploitation at the place of work. The skin colour, according to the respondent, triggers the risk:

*"We see difference in treatment. I mean it's true for example Eastern Europeans are being exploited, but the level of exploitation of black people is far, far more serious .... Anyone who is black, whatever status. The employers don't really give a shit about status ultimately. What they look at is the person is a migrant and the person is black and that triggers." [S(1)]*

Although acknowledging that some employers are willing to employ black people in legal employment, one respondent [S(1)] highlighted that they "are more prone to having illegal employment", which implies a higher risk.

### **The legal and the institutional setting**

When asked to reflect on the legal and institutional setting, the respondents pointed out that there is a lack of institutions effectively monitoring the situations of workers in sectors of the economy where labour exploitation occurs. This is due to the lack of human resources in inspectorate services. One respondent [W(1)] claimed that to date only three authorities have inspectors; the ETC, the DIER and the OHSA. Table 8 reveals that all (except for the N) professional groups perceive this as an important risk factor that adds to the risk that migrant workers may be exploited. One respondent from the Employers (E) expert group agreed that rather than a lack of monitoring institutions, the main weaknesses lies in the resources available. The respondent claimed that resources in terms of the number of enforcement officers and on the worksite spot checks are lacking.

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<sup>37</sup> In spite of this the respondent argued that she/he himself meets many cases of migrants who are well integrated at the place of work, treated equally and given the expected conditions of work.

Annex 2, Table 8 reveals that most of the respondents also highlighted that there is a low risk of offenders being prosecuted and punished or having to compensate exploited migrant workers. One respondent [P(1)] stated that the fact that victims of human trafficking for labour exploitation would return to their country immediately after the report is made leaves no time for the case to be further processed.

Once again, only the N and the E professional group representatives denied such a risk factor. A respondent of the M expert group disagreed and stated that it is not true that there is a low risk of offenders being punished. The law stipulates clearly that employers who act irregularly are prosecuted and asked to pay back. The respondent also disagreed that there is a low risk of offenders having to compensate exploited workers. The respondent stated that migrants do lodge a complaint, and concluded that the legal set-up and the employment rights are there and are being applied accordingly.

The respondents also underlined other legal and institutional risk factors namely:

- The difficulty to collate enough evidence on alleged exploitation between one-to-one employment relationships (in cases of bigger groups the evidence might be easier to collate);
- Employers (themselves) exploit the situation of migrant workers in illegal employment by reporting them (the migrants) to the police in order for action to be taken against them and hence deny them of their due wages;
- Lack of coordinated interest on behalf of the authorities to address severe forms of labour exploitation;
- Lack of information on the victim's rights.

No respondent mentioned that there is corruption in the police.

### **Other Risk Factors**

According to the primary data, there are other risk factors (held by one or two participants only). Annex 3, Figure 2 elicits 13 other risk factors that render migrant workers more vulnerable to labour exploitation.

A respondent [M(1)] argued that discrimination is a key risk. By nature discrimination renders a migrant more vulnerable, less self-confident and therefore less likely to report to the authorities. The M group expert stated that migrant workers become so used to certain forms of discrimination that they undergo a process of normalisation; discrimination becomes a way of life and the worker finds ways and means to cope with and accept it:

*“Fuq diskriminazzjoni ikun hemm certu normalizzazzjoni tagħha maż-żmien... Jigifieri inti, ok il-ħaġa tkun qed iddejjqek, tgħaddi minnha kontinwament imma issir kważi parti normali minn ħajtek li hija ħaġa negattiva ħafna ma jfissirx li ma taffetwax, taffetwak imma taċċetta, iktar milli taċċetta tikkopja magħha, issib ways and means kif tikkopja magħha imbagħad jiddependi ħafna mir-reazjonijiet tal-persuna imma naħseb fejn jidhol under-reporting hemm dak l-aspett ukoll.”*

*“On discrimination there is a certain normalisation process over time...that is you, ok it bothers you, going through it continuously it becomes almost part of your negative life, it doesn't mean it won't affect you, it affects you but you accept it, more than accepting it you cope with it, you find ways and means how to go about it and cope with it. It all*

*depends on the reaction of the person and when it comes to underreporting there is that element as well.” [M(1)]*

A respondent of the R professional group sees a relationship between the nationality of a migrant and certain jobs/occupation. The ETC receives a lot of applications from Filipinos to work as domestic workers; Serbs to work in the construction industry; and Americans, Canadians and South Africans for highly-paid jobs. One respondent [L(1)] stated that it is very obvious that certain migrant workers of a particular region are more likely to be vulnerable.

*“Dik hija kwaži, stating the obvious! Jekk jien għandi t-tendenza li rrid nisfrutta, mhux sa nisfrutta Inġliż, Ġermaniż, sa nisfrutta, miskin, xi ħadd li ġie mis-South.”*

*“This is almost stating the obvious! If I have the tendency to exploit, I am not going to exploit an English, a German, I will exploit, that poor, someone coming from the South.” [L(1)]*

One respondent [R(1)] observes trends of groups of migrant workers of the same nationality applying and filling jobs in particular sectors. The respondent concludes that there is an association between certain jobs and certain nationalities.

*“Aħna naraw trend fuq it-tipi ta’ xogħolijiet li japplikaw għalihom it-tipi ta’ nationalities. Per eżempju il-maġġoranza tad-domestic workers huma Filipino nationals. Issa ma jfissirx li għax l-ETC toħroġ permessi lill-Filipino nationals, imma għax l-ETC qed tara li hemm shortage in the caring industry and the majority of the applicants jkunu Filipino nationals. In terms of construction, l-istess, ħafna mill-construction workers huma nies li ġejjin mis-Serbja...”*

*I feel that milli naraw aħna, mill-ammonti ta’ applikazzjonijiet li naraw aħna, nassoċjaw ċerta professjonijiet ma ċerta nationalities.”*

*“We see trends on certain job in which certain nationalities apply for them. For example the majority of domestic workers are Filipino nationalities. It doesn’t mean that the ETC issues work permit for the Filipino nationals, but it is because ETC sees a shortage in the caring industry and the majority of applicant would be Filipino nationals. In terms of construction, it follows, most of the construction workers are persons coming from Serbia.”*

*I feel that from what we can see, from the amounts of applications, we can associate certain professions with certain nationalities.” [R(1)]*

Another respondent [J(1)] observed that one possible risk factor to labour exploitation of migrant workers is the fact that members of particular ethnic groups tend to flock with others of the same group with little effort to integrate with others. The respondent explained that the employers detect this competition between different groupings (example Serbs vs. Bosnians) and use it for their own advantage. Using the maxim divide and rule, the employers would take advantage by creating rivalry between those ethnic groupings to perpetuate hatred on the basis of groups and ethnicity. The employer would give preference to a particular group at the cost of the others, which in turn lessens the possibility of a united workforce. This may create further room for exploitation:

*“Imma jekk inti tara u tħaddem ir-regola ta’ divide ed impera jiġifieri ifred u saltan, dawn huma ċirkustanzi partikulari fejn inti tkeskes dawk illi huma dipendenti mix-xogħol li qed tagħtihom proprju billi tkompli tipperpetwa l-ideja tal- mibegħda bejniethom. Allura dik tnaqqas is-saħħa ta’ bejniethom. Tista allura tidher li qed tagħmel privileġġi favur grupp partikulari a skapitu ta’ l-oħrajn, u dik hija diskriminazzjoni.”*

*“If you see and operate through the rule divide ed impera that is divide and rule, those are particular circumstances where you make those dependent on your work hostile to each other by perpetuating the ethnic based rivalry. Therefore that reduces the strength between them. Then you can look as if you are making a preference in favour of a particular group at the cost of the others, and that is discrimination.” [J(1)]*

Other possible risk factors putting migrant workers at a higher risk highlighted by the participants are related to:

- Misinformation on what are the workers’ rights, entitlement and standards of work set by the law;
- Migrant workers being accustomed to certain work practices and more tolerant of certain exploitative conditions of work, particularly workers who had worked and lived for several years in Libya who “might be used to worse”;
- Past (usually untreated) traumas in the life of the individual and mental health related vulnerabilities;
- Migrant workers who would like to enter mainland Europe at all costs.<sup>38</sup> Some, the respondent said, fall for tricks of people who promise an easy way out and a quicker way to make it;
- Migrant workers’ only target is to work. A respondent [S(1)] said that there is little one could do out of working hours since ‘their’ idea is to come to Malta solely for work purposes. Even if asked to keep on working during public holidays, on which days different hourly rates should apply, they will oblige;<sup>39</sup>
- The bigger the distance between the top and lower ranks of management, the higher the risk of labour exploitation, particularly in big tendering projects. A respondent [L(1)] warned that the government should be wary of big tendering projects:

*“Hemm ħafna limitations li għandhom – il-vulnerabilità, is-sitwazzjoni ta’ min xiex ikunu għaddew, minn xi trawma li għaddew u jekk idealjawx magħha li ma naħsibx ħafna drabi jkun hemm lok fejn...anke waqt detention li jiddealjaw ma ċertu affarijiet.”*

*“There are many limitations – the vulnerability, the situation and experience that they have been through, the trauma that they suffered and whether it was dealt with, I don’t think so many times there is no time to deal with certain matters even in detention centres.” [S(1)]*

#### The role of Recruitment Agencies

The fieldwork results reveal that most of the respondents believe that the recruitment agencies do have an important role in preventing situations of vulnerability of migrant workers to labour exploitation. Eight out of 13 respondents<sup>40</sup> who were asked to highlight the role, if any, of recruitment agencies pointed out that there are various roles that recruitment

<sup>38</sup> Respondent focuses particularly on human trafficking for labour exploitation.

<sup>39</sup> Respondent focuses particularly on Filipino migrant workers.

<sup>40</sup> The other 7 respondents were not asked to comment on the role of recruitment agencies.

agencies have in the prevention of labour exploitation. The other four respondents provided a different point of view.

### **The positive side of recruitment agencies**

Such agencies provide a level playing field and standard benchmarks for all workers. The respondents also focused on the educational role of recruitment agencies. Employment and recruitment agencies have an important role to inform and educate prospective migrant workers:

- on their employment rights such as what is the expected statutory minimum wage, how many hours of work a person should work;
- on general occupational health and safety standards;
- on what the Employment Act states;
- on agencies/entities where one can lodge a complaint, if need be.

Furthermore, another role of such agencies would be that of skills matching. A respondent [M(1)] stated that another role of the employment and recruitment agencies would be to inform the employers of non-discrimination practices. The respondent said that they get to know that certain employers would ask specifically for particular employees and tend to exclude others; for instance they favour Maltese employees or male employees rather than grant a level fair playing field.

One of the representatives of the E expert group said that migrant workers looking for work on their own without the backing of an agency are more vulnerable to exploitation. The respondent said that going through an agency would mean having a written contract explicitly showing the rights of the worker. They stated that the worker who gets a job through an agency is less likely to be a victim of exploitation than one waiting at a traffic junction on his own without any contract whatsoever.

### **The negative side of recruitment agencies**

On the other hand, only one respondent said that experience within the Filipino migrant community shows that employment and recruitment agencies do not prevent but rather create situations of vulnerability of migrant workers.

A respondent [S(1)] said that employment and recruitment agencies abuse the labour market, explaining that migrant workers would be asked to pay an amount of money up front but then the agency would not provide appropriate and suitable employers. He/she mentioned cases of deceit on behalf of the recruitment agencies because contractual conditions were not honoured once the migrants arrived in Malta.

Another interviewee [L(1)] said that whilst the recruitment agencies operating in Malta are heavily regulated and licensed, others operating from overseas are not. The interviewee stated that it is very difficult to get to know what conditions they are offering and how these recruitment agencies should be controlled.

Two respondents of the J and L specialist groups argued that whilst acknowledging the positive role of recruitment agencies, they doubt their effectiveness, since migrant workers seldom make use of them. A respondent [M(1)] said that from her/his very little experience and knowledge, she/he suspects that such agencies are very likely to be money-making agencies operating in very big construction sites which bring in groups of Serbs, Chinese, Bulgarians etc.

## **A necessary evil?**

One particular respondent referred to employment and recruitment agencies as a “necessary evil.” On one hand, given the several contacts they have in the employment field and given that they are regulated and protected by law, the migrant workers are less likely to end up being abused and exploited. On the other hand, migrants would be restricted and constrained to what extent they could negotiate their working conditions. Often migrant workers are brought here for a specific task and have no option on the conditions of work. The respondent [J(1)], said that migrant workers employed by a recruitment agency can only accept the pre-determined conditions set by the agency itself.

## **Lack of Knowledge on the monitoring of recruitment agencies**

The fieldwork highlights that most of the respondents (10 out of the 13 asked)<sup>41</sup> were not fully aware of which institutions are tasked to monitor the work of recruitment agencies. A few participants thought it is the ETC while others said it is the DIER.

Two respondents [M(1); L(1)] stated that it is the DIER which is responsible to monitor the role of employment and recruitment agencies as it issues licences (which are renewable) for employment and recruitment agencies to operate. The respondents argue that licences are only issued once the agency fulfils a set of necessary criteria.

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<sup>41</sup> The other seven respondents were not asked to comment on the role of recruitment agencies.

## 6. Prevention measures vis-à-vis risks of labour exploitation

This section highlights the various prevention measures taken against labour exploitation. It focuses on what kind of prevention measures are being carried out by the various professional groups. Annex 4 below refer to examples of best practice given their innovative nature in terms of prevention. Whilst the focus of the non-governmental side (even if limited) is more focussed on the advocacy role, the state monitoring bodies focus on campaigning, workplace inspections, court procedures, information giving through targeted training and, to a lesser degree, ongoing research.

### The Monitoring Bodies' Approach

As indicated earlier, the OHSA's main mission is to work with others to ensure a healthier and safer work place in Malta. It conducts regular campaigns on different sectors of the economy and sector-by-sector on-site spot checks. The authority has the power to issue an order and stop any employment practice in cases of poor level of occupational health and safety standards. Such an order lasts until the employer rectifies the situation. Furthermore, the respondent states that the authority is authorised to issue a fine against the employer which is found to have poor occupational health and safety standards. Providing that the employer ignores both the order and the fine and does not rectify the situation, the authority is formally responsible to proceed in court against the employer.

The DIER's inspectorate section is the main preventative tool against labour exploitation within the organisation. Inspectors try to give basic awareness information on workers' rights and standards of conditions of work during the on-site inspections. Other information is provided through leaflets, the official web portal, attendance in relevant fora and media slots discussions.

The DIER is also equipped with:

- a customer care service which receives complaints from current employed migrants (amongst others);
- a legal aid service to investigate allegations of irregularities and exploitation; cases of terminated employment and allegations of unpaid dues (amongst others);
- official web portal with basic information on conditions of work;

The DIER takes the initiative to strengthen industrial relations and contacts with the relevant employment stakeholders via a formal letter requesting which areas of concern they are encountering on their day-to-day work in the context of labour exploitation. The DIER also sends regular newsletters to the relevant stakeholders – for instance trade unions, employers' associations etc.

To date, the information to migrant workers is given via the front desk at the ETC. One respondent [R(1)] mentions that the ETC has just published an EU funded report about living and working in Malta for Third Country Nationals (TCNs) who want to live and work in Malta and to those who already reside and work here. It aims to create awareness through providing the necessary information for migrants living in Malta. This booklet includes information on health, residency, equal treatment, obligations of the employer and the employee derived from the *Employment and Industrial Relations Act*. The main idea is to inform the migrants about their rights and obligations before they actually arrive in Malta. This booklet (refer to Annex 4 Further Reading) is intended to be distributed in Maltese embassies and consulates abroad.

According to this research, this is the only pre-departure programme put in place by the government aimed at preventing labour exploitation.<sup>42</sup> No other research participants were aware of any other pre-departure programmes aimed to avert labour exploitation. The respondent believes that such a booklet, which provides proper information, mitigates abuse:

*“Hija vera proactive li qed nipprovaw nieħdu biex nipprevjenu milli jkun hemm abbuż. Għax inti tippreveni l-abbuż meta għandek il-migrant infurmat kif suppost, fl-opinjoni tiegħi.”*

*“It is a very proactive that we are trying to prevent labour abuse. You prevent abuse when the migrant is properly informed, in my opinion.”*  
[R(1)]

The ETC (as indicated earlier):

- carries out on-the-work inspections as per the *Employment Sanctions Directive* and monitors the legality of employment (through the Law Compliance Unit);
- explains clearly that the employer must give the conditions of work to the migrant worker according to the Employment and Industrial Relations Act when issuing an employment licence;
- carries out a more meticulous action (including more and more checks) in issuing the licence to suspected employers in order to prevent labour exploitation. In such cases the ETC may request and is authorised to ask for a profit and loss account to check the profits and the wages of the employees;
- evaluates in a detailed manner before it issues any employment licence.

The NCPE's main preventative measures are primarily related to awareness raising campaigns for anti-discrimination and equality in general and targeted training to specific companies in particular.

The NCPE's prevention tools are

- awareness campaigns which serve as information giving (rather than fear based campaigning),
- ongoing research in various fields of discrimination,
- targeted training to specific sectors and companies' workers,
- distribution of flyers in different languages for migrant workers and
- an equality mark for equal opportunities employers (which to date only applies for gender-based equality).

### **Prevention of Human Trafficking in the context of labour exploitation**

A respondent [N(1)] said that the best tool to address (hence prevent) human trafficking in the context of labour market, is through awareness campaigns, the setting up of relevant entities and agencies in place to which victims can refer when in need, and research initiatives. The respondent pointed out at training activities on identification of victims of trafficking and helping relationship techniques, targeting the Maltese stakeholders involved in counteracting trafficking in persons; supporting the Maltese stakeholders in developing the Referral Mechanism; the development and analysis of a first draft of Standard Operating Procedures (SOPs) of the newly established Referral Mechanism in Malta and the production of the awareness raising campaign tools, such as the TV spots.

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<sup>42</sup> A respondent [R(1)] states that the Filipino Government does provide courses for migrants going out of the country for work phases. The respondent mentions vocational courses for outgoing migrants entitled TESDA (Technical Training and Skills Development Authority) which provide informal training and medical treatment accordingly.

The interviewee said that:

*“Awareness aħna ovvjament fil-human trafficking dħalna iktar bħala awareness, kemm bir-riklam, anke we had commissioned the research among the migrant population biex naraw kemm fil-fatt jekk kienx hemm xi każijiet ta’ human trafficking pero’ ma jirrizultax li huwa l-każ. Pero’ l- iktar li tista’ tara hija awareness u li għandek aġenzija li jekk għandekk problema tista’ tmur għandha.”*

*“Awareness obviously we in human trafficking focused on awareness, both through advertisements, and we had commissioned a research among the migrant population to test whether in fact there are cases of human trafficking but it was not the case. But the best is awareness and that you have agencies where if you have a problem you can resort to.”*  
[N(1)]

Furthermore, the interviewee stated that awareness cards will be distributed in all local households and different places of work to raise further awareness on the lack of knowledge of what human trafficking entails.

*“Awareness aħna ovvjament fil-human trafficking sa nagħmlu dawk awareness cards, sa nagħmlu business cards, sa jkunu jindirizzaw,, sa jiġu mqassma kull bieb, sa jkunu jindirizzaw kemm lil xi ħadd li jista’ jkun f’sitwazzjoni ta’ sfruttament u kemm ukoll fuq il-postijiet tax-xogħol, ambaxxati, uffiċini pubbliċi, biex anke l-businesses ikunu aware minn x’jista’ jkun human trafficking. Naħseb hawn Malta lanqas hawn kunċett ta’ human trafficking.”*

*“Awareness obviously we in human trafficking focused, we will be doing awareness cards, we’ll doing business cards, to address, will be distributed in each and every house, will be addressing both those who might be in a situation of exploitation and even those on the place of work, embassies, public offices, even the business would be aware who might be in human trafficking. I think in Malta there is no concept of human trafficking.”* [N(1)]

Another interviewee [S(1)] asserted that their individual work is not really preventative. However, the organisation is now collaborating in the *Stakeholders Task Force on Trafficking in Human Beings* in which training and mentoring to the stakeholders was provided to identify and provide assistance to potential victims of trafficking. Furthermore, the respondent stated that that on the access to employment side, she/he facilitated information and training so the access to employment is fairer.

As indicated earlier, one respondent [S(1)] stated that her/his organisation is now participating in the recently set human trafficking task force and provides training and information in terms of access to employment.

*“So as such, if anything it’s more within the trafficking that’s within our work. We did some work - now we are on the stakeholders’ trafficking task force – on trafficking, and some of the cases we came across which we thought were trafficking, at least had the indications of trafficking.”*  
[S(1)]

One P group interviewee asserted that Malta is a signatory of the conventions which nowadays have been transposed to local law – referring particularly to the transposition of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/EC as per the Malta Action Plan on Combating Trafficking in Persons. The primary duty of the police is to protect the potential victims through other third party entities. At times such potential victims are put in safe environments and shelters through other third party entities such as Aġenzija Appoġġ.

As indicated earlier by a respondent from the police group, nowadays the police are making use of a set of indicators for the identification of victims of trafficking and *Standard Operations Procedures* set by the human trafficking task force. Furthermore the police make use of internal guiding questions to ask in cases of an alleged case of exploitation. These guidelines are an internal document and cannot be shared with third parties.

### **The Victim Support Services Prevention Measures**

The major role of the support services in the prevention of labour exploitation is advocacy. However, it is pertinent to highlight that the victim support representatives admit that not much is being done on the preventative side.

One respondent [S(1)] said that the organisation's role is not to monitor or inspect the labour market, but to advocate on behalf of the migrants to prevent further exploitative practices. It actively participates in national fora in order to ensure that working conditions improve. The respondent states that one of the most important priorities is to advocate for the entitlement of a work permit for everyone. The respondent said that thanks to the organisation's persistent advocacy, nowadays, every migrant worker irrespective of their status is entitled to a work permit:

*Le, ahna ma mmorrux fuq il-post tax-xoghol, imma fil-fora nazzjonali fejn huwa importanti li dawn jistghu jigu mharsa fuq il-post tax-xoghol, dejjem hadna sehem, anzi konna front liners biex rajna li l-kundizzjonijiet tax-xoghol jitjiebu u li jkollhom, per eżempju, il-permessi tax-xoghol. Illum kollha ghandhom, kemm dawk li ghandhom status kemm dawk li m'ghandhomx status kollha jistghu japplikaw ghal permess tax-xoghol. Konna ahna li shaqqna u shaqqna u ergajna shaqqna li ghandu jkollu il-permess tax-xoghol, li jahdmu bil-permess tax-xoghol b'mod regolari, halli jistghu jikkontribwixxu anke ghas-socjeta.*

*"We do not go to the workplace, but we have always taken part in the national fora, where it is important that these workers are protected in their workplace. We have always taken part, we even were front liners in seeing that the working conditions would improve and that they would have, for example, a work permit. Today they all have, both those that have a status and those who do not have a status, they can all apply for a work permit. It was us who emphasized and emphasised and again emphasized that they need to have a work permit, that they work with the work permit on a regular basis, so that they can even contribute to society." [S(1)]*

Another representative of the S professional group explained that her/his organisation works on different levels of advocacy; namely the macro and the micro levels of prevention. On the micro level, the respondent said that the organisation staff members, within the resources limitations of the organisation, contact migrant workers who call at the office to provide

information. On the macro end, the organisation carries out research initiatives<sup>43</sup> to improve legal and policy standards, better working conditions, improving the complaints mechanisms and immigration rules, permits and visas:

*“Talking to the government about changing the laws and the policies to have better working conditions eventually for migrant workers. Yes - the complaints mechanism, immigration rules and permits, visas, because all of that has an impact on their working conditions.” [S(1)]*

The three other victim support representatives admitted that not much is being done on the preventative side. One respondent [S(1)] said that prevention is not a top priority for their organisation. It is more about assisting victims in general rather than addressing prevention measures to address labour exploitation of migrants. The respondent stated that the organisation promotes the rights of workers on an individual basis, rather than on any national scale prevention campaign.

The respondent [S(1)] said that their role as a child welfare oriented organisation is service provision not prevention. In the remit of labour exploitation the respondent acknowledges the importance of networking. The respondent concludes by saying that there aren't any specific campaigns that target prevention of labour exploitation.

### **The Employers' Point of View**

Both representatives of the Employers category of professionals have stated that they have very little, if any, contact with workers in general and migrant workers in particular. A respondent [E(1)] said that their association does not carry out direct contact with migrants who are victims of labour exploitation. However, the organisation carries out training workshops to promote the employers' attitude and increase awareness for employers who provide work for foreign workers on how to go about recruitment, what the relevant legislative framework is, the relevant EU legal set-up on posted workers and any other employment-related legislation which applies to the Maltese workforce:

*“Ta' haddiema imigranti inpartikolari, li ġieli għamilna training sessions for employing foreign workers. Biex inżidu l-awareness, inti jekk ħa timpjega barranin xi trid trid tagħmel, x'restrizzjonijiet jeżistu u x'liġijiet jeżistu ukoll, għax hemm liġijiet ...tinsleix hemm anke direttivi tal-Unjoni Ewropeja, posting of foreign workers. Jgħoddu għal Malta ukoll. Jiġifieri hemm ħafna. Ikkumplikata ħafna. Jiġifieri din li nagħmlu aħna, and we promote the employers' attitude.”*

*“For migrant workers, what we did are training sessions for those who employ foreign workers. To increase awareness, if you're recruiting a foreigner what is expected of you, what are the existent restrictions, what are the laws, because there are laws...don't forget there are also EU directives, posting of foreign workers. They apply to Malta too. There is a lot. Very complex. That is what we do, and we promote the employers' attitude.”[E(1)]*

Finally, a respondent from the Workers' Organisations said that the best preventative tool is the law itself. The respondent highlighted the Employment and Industrial Relations Act which the trade union uses in collective bargaining to prevent labour exploitation. The law itself

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<sup>43</sup> aditus Malta and UNHCR, Nitkellmu?, December 2013, available at: [http://unhcr.org.mt/media/com\\_form2content/documents/c8/a629/f40/Nitkellmu\\_report.pdf](http://unhcr.org.mt/media/com_form2content/documents/c8/a629/f40/Nitkellmu_report.pdf). (refer to Annex 4).

states that you cannot discriminate on trade union affiliation, religious, gender and colour of the skin:

*“Fil-fatt, l-istess liġi. Toħroġ mill-istess liġi tax-xogħol fejn inti ma tistax tagħmel discrimination through trade union affiliation; ma tistax tagħmel diskriminazzjoni through religious; gender; colour of the skin. Dawn kollha huma part and parcel ... nużawha ħafna in collective bargaining. Bħala appoġġ għal kwalunkwe minority.”*

*“In fact, the law itself. It emerges from the law itself about work, where you cannot make any discrimination through trade union affiliation; you cannot discriminate through religious; gender; colour of the skin. Those are all part and parcel ... We use it a lot in collective bargaining. As a backing for any minority.” [W(1)]*

### **The role of mechanisms of standard-setting and accreditation at national and international level**

The respondents agreed that mechanisms of standard setting like the Social Accountability International (SAI) and the Social Accountability Accreditation Services (SAAS) do have a role in fighting labour exploitation. Such standards should serve as a baseline for working conditions. A respondent [S(1)] said that they would set the basic criteria for a good working relationship between the employer and the employee and prevent work place exploitation. Such standards would ensure a set of basic standards like the significance of a contract, the basic working hours, the minimum salary (basic salary) and the hourly rates of pay for work:

*“Ensure a set of basic standards like the significance of a contract, the basic working hours, the minimum salary (basic salary) and the hourly rates of pay for work, so they must follow that one so that there is no exploitation.” [S(1)]*

A respondent [E(1)] highlighted that it is very important to have international organisations that would monitor and report about the different situations in different countries, for comparative purposes. Such organisations of standard setting would bring to the fore the different issues experienced by the different migrant groups. The respondent stated that such mechanisms are important because it is very difficult to know what is happening on the ground since the migrant community is not a homogenous one.

## 7. Protection against (repeat) victimisation and investigations

### Positive action

A respondent [P(1)] said that the actions taken by the police to put an end to the situation of labour exploitation include, firstly, removing the migrant worker from the work place, and secondly, collating evidence on the allegation in order to prevent further exploitation. The respondent claimed that the best way to do this is to take action against and penalise the employers, either through hefty penalties or revoking their licence. In turn, this will protect the potential victim (and possible other workers) from further victimisation. The other respondent of the P professional group stated that the same applies to human trafficking cases in the context of the labour market. The first measure taken by the police would be to separate the victim from the perpetrator/offender. In cases where the case has been reported through other third party agencies, the latter should be involved throughout. The police would usually try to get in contact with the victim to help them accordingly. On the other hand, arrests of the offenders engaged in the human trafficking are made.

A respondent [S(1)] said that in cases of victims of sexual exploitation the police would include *Aġenzija Appoġġ* to help in the investigation and decide whether the person is a victim or not. The S expert claims that the police always supported and offered help to those victims, usually engaged in the sex service industry, who cooperated and who were ready to disclose information about their exploitative conditions. The respondent [N(1)] stated that in cases of suspected human trafficking issues, the police would intervene unexpectedly through a police raid and refer to *Aġenzija Appoġġ* accordingly, as it is the mainstream state agency which promotes the well-being of these persons through the development and provision of psycho-social welfare services. At times other non-governmental agencies are also involved to support this mainstream service. Nowadays, the respondent concluded, with the use of the Standard Operational Procedures, this referral system has been further formalised.

### The other side of the coin

On the other hand, the other participants claim otherwise. Although the police are authorised to take legal action in cases of labour exploitation of a criminal nature, often action is not taken against the employer, since the migrants are not yet perceived as victims. A respondent [S(1)] said that the police are expected to prosecute if the offence is of a criminal nature (for instance, employing people without a work permit is evidently a criminal offence), however, to date, migrants are not yet primarily perceived as victims of labour market but as illegally working or staying in Malta.<sup>44</sup> Moreover, very few workers are willing to testify and give evidence:

*“Those cases which they don’t investigate because you are seen simply as an irregular migrant not as an employee, so basically you know what you were doing so now go home, and the other cases would be they won’t find people who are willing to testify. Cos very often what you have with these cases are that the victims are quite disempowered themselves and the other people who are working there would not be willing to testify because they would lose their own bread and butter, it’s their families who are going to starve.” [S(1)]*

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<sup>44</sup> This point will be elaborated upon later.

## A reactive approach

Two respondents [S(1); L(1)] argued that they are not well-informed of measures and protection mechanisms taken by the police to end suspected cases of labour exploitation. Two other respondents [J(1); L(1)] claimed that the measures taken by the police are reactive rather than pro-active. One J group respondent believes that the police's approach is more about reacting to certain cases than pro-actively looking for cases. The respondent is not aware of any on-the-site inspection being carried out regularly.

One interviewee from the lawyers' group claimed that the police would take action as long as the offence has a criminal nature. However, the respondent said that "sometimes they (the police) need to be pushed to take that action...it is something that you have to ask the police through a criminal report". The respondent stated that in cases of labour exploitation the police action would be much more effective following a report signed by a lawyer, rather than if a person called on his own to report his experience:

*"...only point that I am making from experience is that sometimes it would be, that police need a bit of a push to tackle such circumstance."*  
[L(1)]

## The sex element

It emerges that police action is much more proactive when it comes to issues of human trafficking in the context of labour exploitation. Actions taken by the police when it comes to labour exploitation with a sexual element is more evident. A respondent [S(1)] complained that the measures taken by the police are not consistent. The respondent makes a distinction between 'victims' of labour and sex exploitation. The former group are not yet seen as victims as much as the latter group. Police would refer victims of sex exploitation to social welfare services and/or a shelter. But they would not do so for victims of other forms of exploitation. The respondent exemplified by saying that if the police would go and see exploitation of workers on a farm they would not refer them to social welfare services.

This was corroborated with the view of the child-oriented social welfare services representative. One interviewee [S(1)] claimed that the police are much more likely to report female victims of human trafficking, very often engaged in some form of prostitution circles, for shelter purposes.<sup>45</sup> The interviewee stated that she/he has never encountered any referrals of migrant workers doing other forms of jobs other than those related to sex exploitation:

*"S'issa li nista ngħid hu li meta kellna sitwazzjonijiet ta' sfruttament, dejjem ikkuntatjawna through l-istess ħaġa tal-human trafficking u offrejna xelter lil dawn...l-iktar li kellna nisa, jiġifieri offrejna xelter."*

*"All I can say is that in the cases of exploitation, they have always contacted us through the same issue of human trafficking and we offered shelter to them...mostly they were women, and we offered shelter." [S(1)]*

As indicated earlier, there are formal *Standard Operational Procedures* between the relevant human trafficking stakeholders but not for other forms of labour exploitation. However, a respondent [P(1)] said that now with the introduction of the *Employer Sanctions Directive* the

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<sup>45</sup> A respondent [S(1)] claims that she/he never had cases of labour exploitation directly referred by the police. The cases of victims of crime referred to them by the police are not related to labour exploitation but victims of other forms of crime such as robbery and domestic violence.

police are in a much better position to deal with other forms of labour exploitation (even if its initial implementation has not yet peaked due to a number of technical and logistic hurdles).

### **Are investigations and prosecution effective enough?**

According to the research findings, the effectiveness of both investigations and prosecution depends on a number of variables. The respondents highlighted that the way investigations and prosecutions are made are not fully effective. Some of the major key factors mentioned are:

- the reactive nature of investigations (as per indicated earlier);
- the long investigation procedures;
- the inspector you get;
- the resources available.

A respondent [L(1)] stated that this has to do with the resources available, and said that there is an overload of cases in court. At times around 40 to 50 cases per day are brought to the criminal court.

*“Le. Pero’ le mux minħabba jekk humiex imigranti jew le. Minħabba nuqqas ta’ riżorsi. Again, każijiet ta’ allegat sfruttament ta’ impjegati, għax il-każijiet tal-labour office dak li huma. Il-labour office sab każ fejn int ma tħallastx kif suppost. Allura ġejt sfruttat. Morna l-Qorti. Fil-Qorti jkun hemm , dik il-ġurnata, erbgħin kawża...lkollha ħamsin file l-avukat tal-labour office. M’għandiex il-ħin biex taqrahom. M’hemmx riżorsi. Pajjiż normali jkollha tlietkażijiet kuljum minflok ħamsin kuljum.”*

*“No. not because they are immigrants or not. But because of the lack of resources. Again, cases of alleged exploitation of employees, those are the cases of the labour office. The labour office finds a case where you are not paid adequately. Therefore you’re exploited. Went to court. In court there are, on that same day, forty cases....the labour office lawyer has fifty files. Does not have the time to read through. There are no resources. In a normal country you’ll have three cases per day not fifty.”*  
[L(1)]

One respondent [P(1)] agreed that there is a lack of human resources, given the workload. Furthermore the respondent stressed that another key factor which determines the effectiveness of both the investigations and the prosecution is the lack of proper coordination and joint effort by the relevant stakeholders. The police cannot carry out an investigation on their own but need the help of other relevant bodies such as the DIER which may indicate certain issues that are specifically in their remit of expertise.

*il-work force hija dik li hi. L-immigration għandha duties jekk tibda issemmihom lanqas tieqaf jġigifieri we are who we are just four inspectors with a maximum of twelve people in total. Għandek visas, work permits, repatriations, dgħajjes dieħlin, exploitation, working without permit*

*“The work force is what it is. The immigration has duties that are never-ending... we are who we are just four inspectors with a maximum of twelve people in total. You have visas, work permits, repatriations, boats coming in, exploitation, working without permit.”*[FG(P)]

Furthermore, one expert [L(1)] said that investigations are not effective because the major concern of the police in cases of migrant workers is to ‘catch out’ illegal workers rather than

about the number of victims of labour exploitation. This will be elaborated on further in the next section:

*“It’s a matter of we caught so many illegal workers not so many victims of exploitation.”[L(1)]*

On the other hand, two respondents from two different professional groups argued that the way investigations and prosecutions are made have improved a lot. One respondent [P(1)] said that over the past years, a lot of improvement had been made. Another respondent [S(1)] spoke about the DIER’s investigations and referred to them as very, very good. Once there is a complaint, the DIER investigates:

*“Yes, because once there is a complaint, then they are good at it. DIER is very good, the police once they get the case from DIER are also very good and that’s fine, that’s good. Very, very good in fact.”[S(1)]*

### **Victims of crime, or not?**

What would the police do if they carry out a raid on a work site and detect migrant workers who are working under very poor conditions, but at the same time, have an irregular residence status? A stark divergence of opinion emerges out of the fieldwork. Most of the research participants believe that the major concern would not be the conditions of work, but the residence status of the migrant worker. On the other hand, the police claim that the problem lies elsewhere. It has to do with the gathering of evidence. Collating evidence against the employer proves to be a hard task.

### **The removal process is the priority**

The respondents claimed that the topmost priority would be to check first and foremost the residence (immigration) status of the migrant worker. The illegality of the stay would be given more importance than the exploitation itself. One respondent [R(1)] stated that the Immigration Act is ‘stronger’ than the Employment and Industrial Relations Act. The respondent believes that the status is given importance over the poor conditions of work:

*“Bħala persuna li ma naħdimx mal-pulizija, pero I would say yes, naħseb l-immigration act għandu iktar saħħa mill-employment and industrial relations act, fl-opinjoni tiegħi.”*

*“As a person not working for the police, I would say yes, I think that the Immigration Act is stronger than the Employment and Industrial Relations Act, in my opinion.” [R(1)]*

*“L-illegalita tal-istay tagħhom hawn Malta tingħata importanza. Ma nafx ngħidlek kompletament huma xi prijorita jagħtu, u x’inhija l-prijorita, jew liema hi l-iktar reġat gravi mill-ieħor minn-naħa ta’ security. Pero fl-opinjoni tiegħi, l-iktar ħaġa important hija their legally...their status, their stay in Malta.”*

*“Their illegality of stay in Malta is given more importance. I cannot completely state which priorities are given, what is the priority, or which act is more serious in terms of security. But in my opinion, the most important is their illegality...their status, their stay in Malta.” [R(1)]*

According to one S group respondent, “it would bother the police more that they have no work permit rather than the conditions of work”. The respondent’s impression is that “the first

thing that would be seen by the police is that they were working irregularly”, unless it is a severe case of physical violence. In cases of poor working conditions like receiving low wages and working for long hours, the police would be more interested in the irregularity of the status rather than the labour exploitation:

*“I think that primarily even if they were regulated asylum seekers, failed asylum seekers, regular migrants, whatever you want to call them I think that the first thing that would be seen by the police, my impression, is that they were working irregularly... Ifhem, jekk isibuhom imsawtin, bid-demm iqattar, nahseb sa jaghtu naqra kaz” (“Listen, if they were to find them heavily beaten, with blood dripping, I presume that they would indulge in taking some action!”). But if it was poor conditions, that they were being paid very low, they were working exaggeratedly very long hours, if they were being kept from, jien naf, (What should I say) computers; I think that it would have to be very severe for the police to see it more important than the irregularity of the position.” [S(1)]*

Another respondent [L(1)] agreed that the main concern of the police would be the irregular residence status but without excluding the fact that the police would also take action against the employer for employing someone not properly registered. The respondent used the anecdote of a group of Chinese workers to exemplify their argument:

*“They would be definitely considered as people illegally staying in our country, because that would be the main concern of the police, in my opinion, but yes, I would not exclude if they take action against the employer for employing someone not properly registered. But I’ve come across many cases, for example, Chinese people who work in restaurants and they find out that they are not employed regularly but the police main concern is to chuck them out of the country.” [L(1)]*

### **The quick fix approach**

Other respondents admitted that they are not so knowledgeable on what takes place in such police raids, but also suspect that the police would be more interested in the illegality of the status rather than the exploitation itself. A respondent [L(1)] asserted that the police would adopt a “quick fix” approach. The respondent said that it is easier to chuck out the migrant worker than to proceed to court via the legal procedures. It is easier than getting an inspector, witness in labour office cases in front of the magistrate etc. Another interviewee from the M group agreed, supposing that the police main priority would be to seek a conviction. The M group interviewee asserted that it is very likely that the police would mainly look at the status of the workers rather whether they were potential victims of poor working conditions. They said that the police would find it much easier and plain sailing to provide evidence of lack of necessary documentation for work rather than evidence of poor working conditions.

### **The Flipside**

One respondent from the police acknowledged that the general perception is that the police would be more interested in the status of the worker rather than the actual conditions of work. The problem is to gather enough evidence to prove that exploitation. The respondent stated that it is not true to say, as the general public would think, that the police ignore the exploitation and focus on the employment or residence status of the worker. The problem however lies in getting enough sources of information and evidence. The respondent stated that it is very difficult to have enough evidence beyond reasonable doubt:

*kemm hu diffiċli biex, jew inkella kemm hu faċli biex ikollok provi biżżejjed fuq dak il-każ ta' sfruttament. Jiġifieri, outside, forse the view is " u l-pulizija? Qabduh u keċċewh." Daqshekk. Ma investigaw xejn fuq l-isfruttament. Imma behind the scenes aħna inkunu ippruvajna naraw nistgħux insibu xi provi fuq l-isfruttament. Imma in most of the cases it is extremely difficult biex ikollok każ biżżejjed , tafu kemm hu diffiċli, biex tmur il-qorti, you have to prove behind reasonable doubt, li kien hemm sfruttament*

*"How difficult is it, or how easy is it to have enough evidence on that exploitation case? What I mean to say is that on the outside, maybe the general perception would be 'and the police... they just caught him and deported him'. That is it. They did not investigate anything on the exploitation. But behind the scenes we would have tried to find the evidence on the exploitation. However, in most of the cases it is extremely difficult to have enough evidence to make a case, you don't know how difficult it is, to go to court, you have to prove beyond reasonable doubt, that exploitation took place." [FG(P)]*

Furthermore, it is very difficult to get other colleagues to testify in court to against their employer. This is difficult for Maltese nationals let alone for the migrant workers:

*Għax dan, l-employees l-oħra, ma tanxt ħa jixhdu kontra l-employer tagħhom għall-favur ta' immigrant. Lanqas ta' kollega Malti, aħseb u ara! Dik ir-realta*

*"It is not easy for the other employees to testify against their employer and in favour of the migrant. Not even if it were a Maltese colleague, let alone! That is the reality." [FG(P)]*

The respondent did not agree that the police would be more interested in the status of the worker at the cost of not investigating the poor conditions of work. The respondent said that it is not true that the police priority is the removal process. The problem lies elsewhere: that is to gather evidence:

*"Pero fl-ebda mod ma nista naċċetta jiena li xi ħadd jgħidli ism air-removal process ħa jirbaħ fuq l-investigazzjoni tal-isfruttar . No. Jiena ngħidlek all right jekk ħa tgħidli isma mhux ħa jkollok każ biex tmexxi għall-isfruttar, ngħidlek irbaħtli. Vera, u ħafna drabi dak li jiġri pero ma rridx li tiġi miftehma illi rebħet ir-removal process."*

*"I cannot in any way accept that someone states that the removal process wins over the investigation of exploitation. No. I would say all right if you tell me that there is not enough case to proceed on exploitation, you won. True, and many times that is what is happening but I don't want to be misinterpreted that the removal process won." [P(1)]*

One respondent [P(1)] concluded that in cases where migrant workers are potentially victims of crime but illegally staying in the country, the top priority would not be to chuck them out of the country, but that the persons are potential victims of crime. However, the respondent acknowledged that in practice a lot of difficulties are encountered to substantiate an argument vis-à-vis the employers. For instance, the police should collate enough evidence in the 48-hour time limit in cases of arrest. In those 48 hours the police have to collate enough evidence to proceed in court; otherwise it has to carry on with their removal. If enough

evidence is collated the worker would be given temporary residency status to help in the investigations.

Another P group respondent corroborated this using their own experience with victims of human trafficking in the context of labour exploitation. The respondent said that in cases of police raids where it is evident that a migrant worker with an irregular status is employed in poor conditions, nowadays (post-Convention), the top priority is the victim. The respondent said that even if the person is irregularly staying in Malta, as long as they are the victim, the priority is not the status but the victim.

The respondent asserts that especially in cases where the victim collaborates and is willing to help in the investigations, the police duty is to regularise the immigration position and give the victims a period of reflection. Before the year 2008, the police used to repatriate irregular migrants who were not willing to cooperate. Nowadays, victims with an irregular status (for example no visa and/or no extension of stay) a temporary status is issued and if they keep on witnessing in court they would be granted a residence permit. However, the respondent acknowledged that often the victims would want to leave the country and return back home voluntarily. The respondent stated that:

*“Mela, illum il-ġurnata nista nikkonfermalek li persuna li għalkemm qegħda Malta irregolari, jekk hija vittma, il-priority hija li tikkonsidra bħala vittma.*

*The first top priority. Speċjalment jekk din ħa tikkolabora mal-pulizija, jgħifieri jekk hi se tipparteċipa fl-investigazzjoni, għandna l-obbligu li rridu we regularise the immigration position, nagħtuha reflection period, jgħifieri aħna marbutin illum il-ġurnata li rridu nimxu b’dak il-mod. U hekk qegħdin nimxu.*

*Qabel hija...meta għiet iffirmata ... 2008. Ara l-konvenzjoni ħarġet fit-2005,6 jew 7, aħna we rectified, mhux signed, and rectified fit-2008. Minn hemm il-quddiem, il-vittmi irridu ngħinuhom, anke jekk huma irregolari. Jekk qalu li mxejna mod ieħor, aħna nibgħatuhom lura għax ikunu jridu jmorru lura huma, pero we never place them as, jien naf taħt xi lista fejn detain on arrival. Le, telqu, daqshekk.”*

*“I can confirm that nowadays if a person is in Malta irregularly, if s/he is a victim, the priority is to be considered as a victim.*

*The first top priority. Especially if the person collaborates with the police, if s/he participates in the investigation, we are obliged to regularise the immigration position, give her a reflective period that is we are obliged nowadays to follow such practice. And that is how we are working.*

*Before yes...once it has been signed ... 2008. The convention was launched in 2005, 6, or 7, we rectified, not signed, and rectified in 2008. From than onwards, victims were helped, even if irregular. If it was said that we did otherwise, we send them back because the victims wanted, but we never place them as, under a list for detain on arrival. No, they left, that is it.” [P(1)]*

## 8. Victim support Services

The following section assesses the overall effectiveness of the system of support services. It investigates whether support services are available free of charge, whether being formally recognised as a victim is a requirement to access victim support, the degree of openness of victim support services and whether or not victim support services accommodate the needs of migrant workers.

### **It is a matter of resources**

The key theme that emerged from the research data is related to the lack of adequate resources available for victim support services. It is very evident that even if victim support services are open to all victims of labour exploitation irrespective of their status (residence, nationality or right to work or not), there are several hurdles related to the availability of resources.

One respondent from professional group S stated that it makes no difference whether the migrant is formally recognised or not to access victim support services. However the respondent admitted that the support services are very limited as to what they could do. The very few services are all operating within the non-governmental sector on a very tight budget with no funding support from the government whatsoever:

*“The truth is we are all NGOs operating on a very limited budget, the government does not support us at all, the government does not invest in our services at all so basically we do what we can but literally you know stretching ourselves and our service really tend to you know? So even the quality of the service we provide, as I told you we can do much better if we had the funds but we don’t.” [S(1)]*

A respondent [S(1)] also asserted that such service is only provided by the non-governmental sector working on a very stretched budget. A respondent [W(1)] corroborated this and whilst singling out his organisation’s service, she/he said that there are no other support services available by other trade unions.

One respondent [S(1)] stated that some services might not be equipped with the resources that meet the needs of the migrant workers. The support system is not working very well, not because the services are not up to scratch, but because the labour exploitation issue is not yet taken seriously enough. The respondent continued to say that “people are aware that migrants are being exploited but I don’t think we have full understanding of the kind of exploitation, the sectors, who are we talking about, and what kind of support services are needed.” For instance the respondent suggested, no one really knows how the Filipino migrants are being treated. “Nobody knows. But we know that there are problems”.

A respondent [S(1)] said that as a victim support service they do not have the necessary resources to represent their victims in court. The victims are given legal consultation for free but if they wish to proceed further this will be against a fee through a private lawyer.

### **Support services to victims of human trafficking**

One expert [N(1)] asserted that support services are open to all victims of human trafficking. In fact, the respondent stated that all reported cases of migrant workers victims of human trafficking have entered Malta legally, but then overstayed. In such cases victim support is provided for free.

Support services to victims of human trafficking in the context of labour exploitation are mainly related to accommodation and psychological assistance. One expert from the P professional group opined that the primary duty of the police is to protect the potential victims through other third party entities. At times such potential victims are put in safe environments and shelters through other third party entities such as Agenzija Appoġġ. In addition, one respondent [N(1)] said that if the victim is ready to cooperate and would like to stay in Malta for some time, the victim would be granted a residence permit which includes the right to work. However, in all cases, the victims would ask to witness in court and leave immediately afterwards. Most of the victims would leave once the case is discovered and return to witness at the court, before they leave again. The respondent concluded that it is not easy to evaluate the overall effectiveness of the victim support services for victims of human trafficking as yet, firstly because the number of reported cases is still very low and secondly because all the victims wanted to leave Malta quickly, after they go through the traumatic experience.

One respondent [S(1)] admitted that “there are always weaknesses and we always trying to advocate for better resources, for better resources”. The respondent explained further that a case in point in Malta is that there are only three shelters for homeless persons, of which only one caters for both sexes:

*“Hija iktar issue ta’ riżorzi u ma nagħmilx distinzżjoni għal min kien għal immigrant u Malti biex ngħidu hekk. Li hawn certu nuqqasijiet, għax jekk persuna tiġi homeless, jien naf, Malta kull ma hawn xi tliet xelters fejn tista tmur u jiddependi jekk intx mara jew raġel għax hemm tnejn qisu, jew wieħed biss mixed. Jiġifieri hemm nara lacuna per eżempju, hemm nuqqasijiet imma mhijiex għax huma immigrantsi.”*

*“It is more of an issue of resources and I do not make a distinction for which it is targeted at whether it is an immigrant or a Maltese to put it that way. That there is certain limitations, for instance if a person becomes homeless, I don’t know, in Malta there are only three shelters where to go and it depends whether you’re a female or male there are two, one only is mixed. There is some lacunae for example, there are limitations but not because they are immigrants.” [S(1)]*

### **Do support services accommodate the needs of the migrant workers?**

According to the respondents of the S, W and N professional groups, there are various barriers for victim support services to accommodate the needs of migrant workers. The respondents highlighted three key barriers, related to:

- Language;
- Resources; and
- Personal circumstances.

As indicated earlier, the resources factor would hinder support services from accommodating the needs of migrant workers. One respondent [S(1)] complained about the lack of community outreach due to lack of resources. There are no resources for outreach projects which include social service workers knocking on doors in areas where there is a concentration of immigrants. It is rather the other way round. The migrants have to call at the community centres. Furthermore the respondent highlights the language barrier as a difficulty for victim support services to accommodate the needs of migrant workers. Having an interpreter and/or cultural mediator more available would help. The respondent stated that experience shows that home visits are much more effective when you are accompanied by an interpreter and/or cultural mediator. One other respondent of the W professional group

agreed and stated that “they do not know of victim support services and whoever attempts to make a claim finds all the hurdles possible, including the language barriers”:

*Min imur biex jagħmel claim issib il-hurdes tad-dinja kollha , anke jekk tmur tagħmel claim mad-direttorat tax-xogħol . Anke Malti jsib muntanja ! Aħseb u ara ħaddiem li jrid jispjega lilu nnifsu f'lingwa li anqas hija t-third language tiegħu , hija iebsa ħafna.*

*“They do not know of them. Whoever goes to make a claim finds all the hurdles possible, even if you go and make a claim with the work directorate. Even the Maltese finds difficulties. Let alone a worker who needs to explain himself in a language which isn't even his third language - it is very difficult.” [W(1)]*

One respondent involved in the coordination of anti-trafficking in Malta said that more services should be available. To date, the only services available for victims of human trafficking in the context of labour exploitation are related to basic accommodation and psychological support.

Three different respondents of the same professional group (S) agreed that victim support services are not being promoted enough with migrant workers. Rather, the migrants would rely “on personal acquaintances, community acquaintances, NGOs who might have an ongoing relationship with them because they are generally excluded group from general society. Migrants tend to remain a bit enclosed in them so unless you are part of their community in any way it's difficult for them to make a step and reach out to a mainstream service:

*“To be honest, from the impression I am getting it's quite inaccessible ... I don't think that they are very accessible or they are not promoted enough. I think that's the major gap. Because probably, if people knew where they could look, it would happen a bit more. Probably it needs a bit of promotion.” [S(1)]*

With a particular focus on victims of human trafficking for labour exploitation, one respondent [N(1)] said that it highly depends on the personal circumstances of the individual. The respondent said that there are various factors at play in assessing whether victim support services would be effective or not. Those victims who are heavily traumatised are tougher to deal with and accommodate their needs. With others, the milder cases, the support services could manage:

*“Jiddependi. Jiddependi, naħseb jiena mill-vittmi li tkun qed titkellem dwarhom. Għandek minnhom li jkunu heavily traumatised, li huma iktar diffiċli takkomodhom, hemm minnhom li ma jkunux daqshekk, allura s-servizzi they manage. Diffiċli tagħti dejjm servizzi li jakkomodawhom għax jiddependi ħafna miċ-ċirkustanzi individwali tal-vittma.”*

*“It depends. It depends, I think that it has to do which victims are you speaking about. There are those who are heavily traumatised, who are much more difficult to accommodate them, there are those who are not so much, therefore the services could manage. Difficult to provide service which accommodates them since it depends on the individual circumstances of the victim” [N(1)]*

## 9. Access to Justice

This section looks at how effective the civil justice system is in enabling the victim to claim compensation and back pay of denied wages. It investigates the research findings on to what extent civil law claims are dealt with by the criminal justice system. It also looks into whether complaints can be lodged through third parties. It closes off with a list of recommendations suggested by the research participants of mechanisms to facilitate the lodging of complaints of migrant workers vis-à-vis their employers.

Before describing the research findings, however, it is useful to outline the legal remedies available to employees to claim compensation and back pay of wages and the legal rules regulating access to legal aid.

### Legal remedies available

The main legal instrument regulating conditions of employment in Malta is the Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta)<sup>46</sup> and related subsidiary legislation. The Act provides for two types of action against employers who are in breach of the provisions regulating employment conditions:

- **Criminal proceedings** in terms of article 45, which makes it an offence to fail “to comply with any recognised conditions of employment prescribed by a national standard order or by a sectoral regulation order or collective agreement, or with any provisions of this Act or any regulations made thereunder”, instituted by the police and/or the Department of Industrial and Employment Relations (DIER).<sup>47</sup> The latter is charged with responsibility for monitoring compliance with the Act. Within the context of these procedures the employee is a witness, rather than a party to the proceedings.

In addition to the imposition of penalties for breaches of the employment conditions, the Act also provides that, where an employer is found guilty of failing to pay wages, the statutory bonus, or any other monies due or in terms of law, or of having withheld payments, made illegal deductions or imposed unlawful fines, “*the court shall, at the request of the prosecution, ... order the offender, on proof of the amount, to refund or pay to the employee or employees concerned... the said amount due by him*”. The law also states that “*any such order by the court shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action*” instituted by the employee.

Criminal proceedings must be instituted within one year from the commission of the offence.<sup>48</sup> Proceedings instituted by the DIER do not prejudice the right of the employee to recover wages due by other means.

- **Civil proceedings before the Industrial Tribunal** in terms of article 75, which states that the Tribunal has exclusive jurisdiction to consider and decide cases relative to unfair dismissal as well as those cases indicated in Title I of the Act as falling within the jurisdiction of the Industrial Tribunal. These include claims for payment of unpaid wages, among others.

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<sup>46</sup> The Act may be accessed at: [www.justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&gotoID=452](http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&gotoID=452).

<sup>47</sup> See article 44 of the Act, which states that: “*In criminal proceedings instituted by the Police before the Court of Magistrates for an offence against the provisions of this Act, the Director or any officer of his department deputed by him may, notwithstanding the provisions of any law to the contrary, lay the charge before the court, produce the evidence, plead and otherwise conduct the prosecution instead of the Police.*”

<sup>48</sup> See article 47 of the Act.

Applications to the Tribunal must be made in writing, either by the worker alleging the breach or by some other person acting in the name of such worker. Although the law specifically states that the assistance of a lawyer is not required to make an application – on the contrary it states that the employee himself may make the application – in practice it is very difficult for most people without legal knowledge, and particularly for foreign workers, to institute proceedings without assistance.

Proceedings before the Tribunal in terms of the Act must be instituted within four months “*from the effective date of the alleged breach*”.

Cases which do not fall within the exclusive jurisdiction of the Industrial Tribunal, including cases involving a breach of contractual obligations, would need to go before the First Hall of the Civil Court. In order to institute proceedings before the Civil Court an applicant would need to be represented by a lawyer. The fees for civil cases before the Courts are higher than those before the Industrial Tribunal, which are free of charge. Also the prescriptive period is longer, spanning from 18 months to 5 years depending on the case at issue.

Once the case is concluded, where the outcome is positive, the individual concerned has an enforceable decision ordering the employer to pay the wages due. Further legal action may need to be taken to enforce the decision if the employer does not pay the amount due.

## **Legal Aid**

In terms of law, applicants who lack the financial means to hire a lawyer and/or pay court fees may apply for the benefit of legal aid.<sup>49</sup> A request for legal aid to sue or defend a case may be made either by application to the First Hall of the Civil Court or orally to the Advocate for Legal Aid, who has an office within the building of the Law Courts.<sup>50</sup> Where legal aid is granted, the applicant is granted free legal assistance and is exempt from paying court fees.

Since legal aid is granted only to sue or defend a case, it is not granted to victims of labour exploitation who are *parte civile* in criminal proceedings instituted in terms of the Employment and Industrial Relations Act, as they are witnesses not parties to the proceedings.

The Legal Aid system has been the subject of considerable criticism in recent years, with the main problem identified being a severe lack of resources.<sup>51</sup> A recent report by the Justice Reform Commission highlighted some of the shortcomings of the system and made a number of recommendations for the strengthening and improvement of this service, which still have to be implemented.<sup>52</sup>

## **Protection from forced return pending the outcome of judicial procedures**

With specific reference to the situation of migrant workers, it is noted that for most their stay in Malta is dependent on the fact that they have a work permit. Once this permit is withdrawn/cancelled, for whatever reason, their residence permit is no longer valid. Once this happens they no longer have the right to stay in Malta and the immigration authorities

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<sup>49</sup> See article 911 et seq of the Code of Organization and Civil Procedure (Chap 12 of the Laws of Malta, accessible at: [www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8577&l=1](http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8577&l=1)) for the rules regulating entitlement to the benefit of legal aid and the procedure for application.

<sup>50</sup> Article 911(1) and (2).

<sup>51</sup> See *inter alia*: [www.timesofmalta.com/articles/view/20130701/local/Lawyers-urged-to-provide-voluntary-legal-aid.476098](http://www.timesofmalta.com/articles/view/20130701/local/Lawyers-urged-to-provide-voluntary-legal-aid.476098).

<sup>52</sup> Kummissjoni ghal Riforma Holistika fil-Qasam tal-Gustizzja, Final Report, November 30, 2013, at page 106 et seq.

may proceed to remove them from Malta in terms of the Immigration Act (Chapter 217 of the Laws of Malta).

This is the case also where the individual concerned would like to lodge a claim for payment of wages due, as the law does not provide any safeguards against removal pending the outcome of such proceedings.

While in theory it is possible to appoint a legal representative/attorney or lawyer to pursue proceedings on their behalf, in practice this is not always possible for migrant workers, as often they have neither the financial resources nor the contacts required to do so. This could undermine their chances of obtaining effective redress.

### **How effective is the civil justice system in enabling the victim to claim compensation and back pay of denied wages?**

One respondent [W(1)] said that their personal experience shows that the civil justice system generally works:

*Morna l-qorti, iva. Iktar imma milli civil case iktar compensation in regards to health and safety issues, accidents on place of work...Effettiva, hi effettiva is-sistema.*

*"We have been to court yes. More than civil case they were more for compensation in regards to health and safety issues, accidents on place of work ... It is effective, the system is effective." [W(1)]*

Three respondents [J(1); L(1); W(1)] agree. One respondent [L(1)] said that the civil justice system is quite an effective system in enabling victims to claim compensation and back pay of denied wages.

However, seven participants claimed that the civil justice system does not effectively enable migrant workers who are victims of exploitation to claim compensation and back pay of wages. The research highlights several factors. Annex 3, Figure 3 illustrates four key factors. The ineffective legal aid system; the length of time it takes for cases to be decided; the system is heavily overloaded and the cost of legal procedures, which include court expenses and legal fees.

One respondent from the S professional group argues that "the civil proceedings are not only lengthy but also expensive; unless the applicant gets legal aid" which the respondent argues provides little guarantee of adequate service given the severe shortcomings in this service. The respondent also stated that from the point of view of most migrant workers, "in general the former are deemed to be preferable at least as a first option, as not only are they free but also quite effective, as many employers pay in order to avoid being found guilty of a criminal offence".

This view was supported by another respondent from the S expert group who said the civil courts system is not effective at all. He points out that, "it is not only because it is expensive", but also because "it is a burdensome process that might take a number of years". The respondent stated that on the other hand, court proceedings in the criminal court led by the DIER are quite effective. The respondent argued that remedies are also available to illegally staying third-country nationals in accordance with the Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations [S.L. 217.14], that transposes the Employers' Sanctions Directive. Under this Regulation sanctions are imposed on the employer which include the payment of outstanding wages.

However, the effectiveness of this Regulation is undermined by the lack of procedural safeguards that protect the victim against the risk of deportation.

The effectiveness of criminal proceedings was highlighted by a respondent [M(1)], through the case of a male Sudanese aged 50, employed as a construction worker who was denied his wage for twelve (12) full working days. The migrant worker filed a claim at the *Department of Industrial and Employment Relations* against his former employer for compensation. The victim who used to live in an open centre for migrants was also denied his due pro-rata bonus, weekly allowance and vacation leave. After informing the victim of his rights and entitlements, the DIER opened a court criminal case.<sup>53</sup> against the employer (who was found during the investigation). The employer did not turn up in court on the first hearing and an arrest mandate was issued. The Court ordered the employer to pay compensation of €317 to the employee and a fine of €232 (the minimum).

However, one respondent [W(1)] argued that whilst they acknowledge that although it is effective, at times the system could be too bureaucratic:

*Inti għandek każijiet li jkunu suċċess kbir u jista jkollok każijiet li jiġġebdu, u jiġġebdu u jiġġebdu...x'nista ngħid?*

*"You will have cases which would be a huge success and you would have cases which will be prolonged and prolonged and prolonged ... what can I say?" [W(1)]*

The same is true of civil cases. Two interviewees from the S professional group argued that the lack of effectiveness of the civil justice system is due to the duration of the cases. They claim that "it's not fast, it is not effective". Very often it takes years for a case to be concluded, which makes it an ineffective remedy from the perspective of a migrant worker who may not have a legal right to stay in the country. One respondent [S(1)] highlighted that such workers aren't motivated to wait for such a period of time since they tend to be here in Malta temporarily and would like to leave sooner rather than later:

*"Now for people you tell them now listen you are going to recover your five hundred Euros, or your one thousand five hundred Euros, or your three thousand Euros in three years or in two years – it might take two years – forget it. Forget it I don't plan to be here in three years, I don't want you can do me a power of attorney." [S(1)]*

A respondent [S(1)] asserted that in principle, victims of labour exploitation with no adequate financial resources do have access to legal aid lawyer; however, the respondent doubts the effectiveness of this system. There are also questions about the accessibility of this system, especially because most migrant workers are not aware of its existence or how to access it.

One respondent [S(1)] said that legal aid is not always available. Another respondent of the same expert group went further. The respondent said that the legal aid system is a failed system and depends on who you get as a legal representative in court:

*"Everybody knows that the legal aid system in Malta does not function the way it should. Because you have a pool of lawyers, I don't know how much they are, you have twenty, thirty lawyers who are experts on their particular issues, but the system practically works with a ballot. So you could be lucky to get a brilliant lawyer, who is a nice guy and is knowledgeable on labour law, or you are going to get a lawyer who is*

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<sup>53</sup> A court criminal case was opened only after the employer refused to collaborate with the said entity.

*racist, does not understand anything on labour law, but he is the lawyer who is going to represent you.” [S(1)]*

This view is not held by all. A respondent [L(1)], stated that any person who would like to claim compensation and who cannot afford a lawyer can go to the legal aid administrator and a legal aid lawyer is appointed within a few days. The respondent described this procedure as “quite an easy process”. This view is in sharp contrast to the view held earlier by three participants of the S group stating that the legal aid system is a failed system.

In addition to the points mentioned above, which are primarily focused on the court procedures themselves, some interviewees highlighted factors that go beyond the justice system, but which also invariably impact the employee’s ability to recover wages due effectively.

A respondent [J(1)] highlighted the fact that effectiveness does not depend exclusively on the court procedures themselves. The remit of the court is to decide whether or not the wages claimed are due and, if so, to issue the ruling against the employer. The respondent stressed that, to a large extent, effectiveness depends on whether that ruling can be executed, later. [J(1)] stated that there are a number of other obstacles once a court sentence is issued. For instance, a case in point is when the court finds and concludes that a particular victim has the right for compensation but the employer’s business is shut down and has no money to repay back. The respondent claims that there are people who have the ‘skill’ of forming companies but they cannot meet their obligations, since the companies lack a proper capital base. So even if the company is ordered to pay wages or compensation, the judgment cannot be executed since the employer is not in a position to pay back.

*“Dejjem jibqalek ostakklu partikulari li se ngħidlek. Mela l-ligijiet ħafna drabi jistabilixxu d-dritt pero huma bosta u bosta s-sentenzi ġusti li jibqgħu mhux eżegwiti.”*

*“There always remains a particular obstacle that I will be mentioning. The laws very often establish the right but there are many and many just judgements that cannot be executed” [J(1)]*

### **Accessible or not?**

This section examines the factors impacting migrant workers’ access to the local courts. One issue raised by all interviewees which is directly related to the accessibility of civil procedures is the issue of cost.

As explained above, to file some types of civil procedures, the applicant would need to pay court expenses unless s/he is admitted to sue with the benefit of legal aid. Other procedures do not involve court fees however the applicant would need to pay his/her lawyer’s fees as, even where the assistance of a lawyer is not specifically required by law, most individuals would require the assistance of a lawyer or someone with legal knowledge to lodge a claim. This is particularly true of migrant workers who often know neither the system nor the language. Where the benefit of legal aid is granted legal assistance is provided free of charge.

Participants interviewed held differing views on the extent to which the cost of opening and pursuing a claim affected access to the procedures. Some interviewees claimed that the system is not effective because it is costly. Two S group participants stated that financially it is impossible for a migrant worker victim of labour exploitation to open a civil claim. As indicated earlier, one respondent [S(1)] asserted that civil proceedings are lengthy and

costly, unless a person has access to legal aid, which aid is hampered by other shortcomings and difficulties.

On the other hand, two respondents of two different expert groups held different opinions on the issue of cost and the extent to which it is an obstacle to access. They believe that the civil system is not effective because it is very accessible and affordable, especially in comparison to other countries. This in turn creates overloads at the law courts. They mention that in certain cases, such as the Industrial Tribunal, access is free as no registry fees apply, and a person can go even without a lawyer. In civil law claims concerning the violation of contracts certain fees apply however it is still relatively cheap.

One respondent [J(1)] supports this argument. The respondent claimed that access to the Maltese justice system is too easy to access. Hence it intensifies the heavy workload of the civil courts and makes the system ineffective. The respondent said that some years back the court tariffs were increased to act as a deterrent for frivolous actions.

Another participant, from the W expert group, highlighted another obstacle to access: the lack of victim support services. This, the expert claims, makes it difficult for migrant workers to access the legal remedies available to them.

Lack of information, about one's legal rights, about the remedies available and how to access them, was also identified as an obstacle. According to one respondent [J(1)], this is true not only of civil procedures but also for procedures instituted by DIER for the recovery of wages due.

The respondent concluded that the main obstacle to access to the criminal justice system is not the system itself, but the lack of knowledge about one's rights and how to access them. It is not about knowing where the law court is, but the knowledge of one's rights vis-à-vis his/her employer. Therefore the system is accessible as long as the person knows his/her own rights.

### **To what extent are civil law claims dealt with by the criminal justice system?**

The research fieldwork reveals that the civil and the criminal justice systems are two different and distinct systems. One respondent [L(1)] said that in the employment law there is an element of both the civil and the criminal side of justice. However, both systems are separate and proceed in parallel to each other. The respondent exemplified this by saying that in cases of unpaid pending vacation leave after one's termination of work (which is a very common occurrence) a person can file a claim for compensation at the civil court in front of a magistrate but at the same time the same person can ask the labour office (officially known as the DIER) to take criminal action against the director or the owner of the company.

During the focus group, another respondent from the M group agreed and stated that both systems are concurrent. Victims do have the right to proceed both in the civil court and on the criminal system. The respondent said that nevertheless the DIER does inform the clients of their right to resort to both civil and criminal proceedings, "there are persons who choose to do both. There are those who proceed just through us", which may result in two separate decisions.

One respondent [L(1)] said that civil claims are different (and separate) from criminal ones. The respondent highlighted that under the Maltese law it is a criminal offence when an employer does not pay the wages. The respondent said "if you're not paying that's a criminal offence". From the criminal point of view that would be "condemned by the court to pay your employee within a set period of time. If you do not pay them within a period of time there could also be imprisonment".

On the other hand, from a civil point of view “that is a claim that you are filing against your employer to receive money.” That is, “civil claims would be different from criminal claims”.

### **Complaints via third parties**

Is it possible that complaints can be lodged through third parties? This section looks at whether reports of crime to police in relation to a third person, reports of crime to police on behalf of (representing) a third person and other types of complaints to other institutions are possible or not.

According to the research anyone can actually phone/call/report to the police or the Department of Industrial and Employment Relations (DIER) as a third party and report a case of labour exploitation. The police/Department would then investigate and act accordingly. One respondent [J(1)] exemplified this by saying that everyone has the right to file a report with the police on behalf of someone who is being exploited, for example a migrant worker being locked in a farm, not being paid and not allowed to be free.

One respondent [P(1)] agreed and said that a report “could be anonymous, it could be whoever”. Then in order to proceed to court the police have to gather the evidence together, go on the site, and meet the victim. The respondent stated that the police would assess the situation and the conditions where the person is staying and speak to the worker away from the presence of the employer and separate the victim from the employer if need be. “It is the victim who has to give us this evidence, more than anyone else”. Comparing this to domestic violence, one respondent [P(1)] said that “in these circumstances you do not need the complaint of the injured party.”

In terms of the possibility to file a civil action on behalf of another, however, the position is somewhat different. As one respondent [M(1)] said that “chapter 12 of the Laws of Malta, namely the Code of Organisation and Civil Procedure (COCP), by virtue of Article 180 and 181A which stipulates who may make an application before the courts states that:

*Subject to the provisions of article 181, written pleadings may be filed –*

- (a) personally by the party pleading in his own name, or by the person pleading in a representative capacity as the parent of the children placed under his paternal authority, or as the tutor, curator, administrator of the community of acquests, executor, head of a department or other public administrator, or as attorney on behalf of any church, community, hospital, or other pious institution or as administrator of property under litigation, or as partner or representative of a commercial firm, or as any of the persons mentioned in article 181A(2)<sup>54</sup> in the case of a body having a distinct legal personality, or as agent or representative of any other lawful association, or as attorney on behalf of persons absent from the Island, either of Malta or Gozo, in which the written pleading is filed;*
- (b) by a legal procurator;*
- (c) by any other partner of a commercial firm to which the written pleading refers;*
- (d) by an ascendant, descendant, brother or sister, uncle or aunt, nephew or niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, husband or wife, appointed as an attorney for the purpose, by the party*

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<sup>54</sup> Any declaration or pleading to be sworn in terms of law shall, in the case of a body having a distinct legal personality, be sworn by the person or persons vested with the legal or judicial representation thereof or by any company secretary or by any other person authorised in writing by such body to file judicial acts on its behalf or to make any such declaration, sworn reply or sworn pleading.

*pleading whose signature is duly attested in accordance with article 634(2);*

*(e) by any joint party to the suit;*

*(f) by an advocate, if the written pleading is to be filed in any of the inferior courts, or in the Court of Appeal in cases of appeal from judgments of the inferior courts.*

*Nevertheless, no written pleading containing a waiver of the proceedings or an admission of the claim or the consent for the withdrawal of any deposit, may be filed by any person other than –*

*(i) the persons mentioned in sub-article (1)(a) and (c), or*

*(ii) an attorney specially authorized for the purpose, or*

*(iii) the advocate, if any such written pleading is filed during the hearing of the cause.*

The respondents agreed that third parties cannot lodge a complaint before the Courts on behalf of another, unless they are expressly authorised to do so in writing. The respondents said that “unless you have the power of attorney to act on behalf of someone” else, complaints cannot be lodged through third parties [L(1)]. In any case, the respondents said that “you always have to show a juridical interest”.

*No. Fil-fatt mill-awtoritajiet anke aħna stess....anke ħaddiem malti, biex jagħmel claim għal lost wages ma nistgħux nagħmluha aħna. Irid jagħmilha hu ma' l-awtoritajiet. Hu personali*

*“No. In fact even from the authorities – we ourselves ... even for Maltese workers, for someone to make a claim concerning lost wages we cannot do it for him ourselves. He has to do it with the authorities. He personally.”[W(1)]*

*“No. Not that I know of. As far as I know the individual has to complain, the migrant has to file the complaint. We can't complain for the migrant. We can complain for example to OHSa that a particular workplace is being exploitative. I think we can do that. We can maybe I think complain to ETC, we can complain to DIER that there is a situation, but it won't be a formal complaint, it will be more the bringing of information to the attention of.” [S(1)]*

One respondent [J(1)] confirmed that when it comes to court complaints, it is possible for third parties to lodge a complaint but only if someone has a direct, actual and a corporate interest. This includes labour exploitation related cases. The respondent gave an example of workers employed in conditions exposed to asbestos (hazardous mineral). Unless someone has a direct interest in the scenario, like being employed in a similar industry, he cannot lodge a complaint as a third party out of pity. On the other hand, two years ago Chapter 378 of the laws of Malta<sup>55</sup> gave the right to third parties to lodge a complaint as a *locus standi* (one's interest in the legal cause), only on consumer related issues.

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<sup>55</sup> Malta, Consumer Affairs Act, 23 January 1996, available at: [www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8845](http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8845).

## Mechanisms that would facilitate complaints

This section illustrates a list of 15 possible mechanisms that would facilitate the lodging of complaints of migrant workers against employers as recommended by the individual research participants. For ease of reference they are presented in a numbered list below:

1. The setting up of an information agency tasked with creating awareness and more knowledge of what goes on and what decisions are taken in the law courts. The respondent said that some media reports are not completely loyal to certain well-studied sentences and would inevitably result in sensational reporting. Furthermore the respondent said that this is freedom of information and a right for dissemination of knowledge under article 10 of the European Convention of Human Rights;
2. The setting up of whistle blowers' hotlines as systems of anonymous reporting;
3. Better use of the existent systems of reporting;
4. Revision of the law to look at workers primarily as workers irrespective of their status. The respondent defined it as "a legal provision which mandates the protection of an individual first and foremost as a worker regardless of their regular migration status";
5. The setting up of a system for the expedited payment of non-paid wages, stressing the frequency of this form of exploitation and the ease with which it could be addressed especially regarding relatively minor amounts;
6. The making of a structured and formal reference point where migrant workers would feel confident to lodge their complaint;
7. The setting up of an agency or an organisation, governmental or not, but one that is definitely recognised by the state, specifically dealing with cases of severe forms of labour exploitation;
8. The law should allow an easier process for the migrant workers to proceed in court. This can be done on the lines of similar ad hoc legislative measures that would allow easier access for the migrant workers to claim their rights. Such matters of labour exploitation should be separate from the generic labour office related legislation to make it easier for the potential victims to proceed in court against their employer;
9. More knowledge about the rights of migrant workers and how to go about claiming them;
10. The possibility of third-party complaints;
11. The possibility of anonymous complaints (anonymous to the employer and to the general public). However, the respondent acknowledged that this is quite tough to implement when it comes to individual complaints. This is more likely to work and be effective in cases of institutional complaints which represent whole sectors, not individual small businesses;
12. The issuing of temporary measures like temporary visas for complainants;
13. The streamlining and simplification (and standardisation) of the complaints mechanisms. The respondent stated that at the moment the different authorities have different procedures, different definitions, different rules, different legal basis, different timeframes, different possibilities of what kind of redress the migrant could get;
14. Set pre-departure programmes in the form of a package which complements that which is already available online (by the ETC, by the DIER and the Citizenship office) to inform the migrants of their rights in the host country. However, the respondent admitted that even such measures would at times be unsuccessful to reach the prospective migrant;
15. The availability of information is a very important factor. The respondent claims that timely information will help the migrants to know what they entitled for or not, rather than he/she gets to know about their rights years later.

## 10. Attitudes

This section looks at whether interventions into situations of labour exploitation serve the interests of migrant workers or not. It also investigates why migrants under-report and do not seek a way out of their situation. It closes off with an overview of the measures that would help to address severe and criminal forms of labour exploitation in Malta.

According to a one respondent from the E professional group, Maltese society is gradually adjusting itself to the fact that the labour market is becoming more and more cosmopolitan. Today, the respondent said, official data by the ETC reveal that 8% (equivalent to 13,000) of the Maltese workforce are declared to be non-Maltese workers. The respondent explained that there are three main categories of migrant workers in Malta. That is:

- (i) The EU nationals who have free mobility and everything is formally recognised;
- (ii) Third Country Nationals – who mostly go through the ETC channel in which the work permit is issued on the condition that there is a shortage in specific areas. In these cases, the employer has to provide sufficient evidence that TCNs are being recruited only after unsuccessful attempts to get currently unemployed workers registering for work (even if in reality, as the respondent said, there are lots of TCN's working in the cleaning industry, which area is in no way short of those looking for such a job); and,
- (iii) Irregular migrants. The latter category, according to the respondent(s) stands a higher risk of exploitation.

### Responsive nature of interventions

Are interventions into situations of labour exploitation, generally speaking, serving the interests of the migrant workers concerned? The research reveals that the participants perceive the interventions into situations of labour exploitation as primarily of a responsive nature.

One respondent [S(1)] said that even though she came across people involved in labour exploitation they have never met anyone who said that “there was an intervention by external authorities to do anything on this exploitation”. A second S group respondent said that given the lack of resources “the interventions are more of a responsive nature than of a proactive one”. Another [P(1)] agreed and stated that “we are reactive but we should be a little bit more proactive. Given the resources that there are it is a little bit difficult to be so”. An M group interviewee shared the same point of view. At the DIER the approach is responsive. In 2013 the DIER received 600 queries, “not necessarily all from migrants and also not every query would result in an investigation”. The respondent explained further, saying that in 2013 “we took up around 100 investigations, I mean from complaints coming from migrants, and we went to court with around 40 of them”. Some resulted in compensations, others go nothing and others are still pending.

### A more critical approach towards interventions

One respondent [S(1)] said that there are a number of obstacles related to (access to) justice. The respondent complained that justice has to be carried out in a reasonable time. Secondly, migrant workers are still perceived as irregularly working in Malta, rather than as victims of labour exploitation. Thirdly, the respondent highlighted the lack of deterrent mechanisms being put into force to date. The employers are being treated softly with impunity. The respondent stated that the law is on their side and they take advantage of it in their own interest.

*“And the way individual cases are dealt with in no way does it actually create some type of - a deterrent effect so to speak. The general effect is that employers who want to exploit can do it more or less with impunity. All the cards are in their hands, at every stage of the way. The law is so much in favour of the employer that until that changes, until the migrant worker is not given a little more autonomy – a little empowered to actually.... I think that within this system, any intervention could achieve a limited good in some cases, given all the delays and everything.” [S(1)]*

One respondent [N(1)] acknowledged that the structures to intervene into situations of labour exploitation are readily available. However, the respondent said that there is a need to strengthen those structures to increase the possibility of addressing exploitation and render such illicit business<sup>56</sup> (with huge profit margins) at a higher risk of being caught by the police.

Focusing on the Filipino migrant community, one respondent [S(1)] explained that once a problem with the employer arises, the employee simply leaves and resorts to other Filipino friends rather than reporting to any authorities to carry out an intervention. The respondent stated that she/he is not aware of any proper institutional structures where to resort to in cases of labour exploitation. The respondent said that there is no reference point for the migrant workers to report any problems with the employer. The respondent also complained about the five-year lack of consulate for Filipino migrants in Malta:

*“If we have problem to our employer we just leave from our employer and we ask help to the other Filipinos and this Filipino will help us to look for another employer. That is what we are doing, we are not reporting to any...because as I told you we don't have consulate because we don't have consulate before, we don't know if we have problem with our employer we don't know where we can go to ask for help or what department because we don't have consulate, we don't have...because work – there must be a consulate or embassy to help if we have problem to our employers. But in Malta we don't have consulate for how many years? Five years? Like that so that is the problem.” [S(1)]*

An S group interviewee believes that generally speaking, interventions into the situation of labour exploitation do serve the interests of migrant workers. However, he/she reiterated that given the dearth of information on what is going on, interventions are relying on legal standards and the policy approach that was drafted and formulated earlier on. The respondent called for an in-depth knowledge of what is happening and hence having the laws and approaches amended accordingly.

One respondent [J(1)] said that migrant workers do have access to justice, but that there are other obstacles once a court sentence is issued. Many times the victims do not get their due compensation, even after a court sentence, because the former employers' business is completely shut down. The respondent stated that there are employers who have the 'skill' of forming various companies but are unable to compensate workers since such companies lack a proper capital base.

### **Factors for Underreporting in Malta**

Annex 3, Figure 4 illustrates the six key factors that were mentioned by the research experts that hinder migrant workers from reporting labour exploitation.

### **Jobless is much worse than working in exploitative conditions**

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<sup>56</sup> Respondent referring particularly to human trafficking issues.

Nine different participants from various groups agreed that migrant workers are desperate to work and earn money (even if that income is a meagre one). Living in difficult material conditions makes them desperate to get a (any) job because they would need money. The migrant workers are in dire need of earning money and they are not ready to report since they know that it would mean that their employment relationship would be terminated. Having a basic daily income is perceived to be more important than being denied the basic work/employment conditions. They are less likely to report since they are afraid of losing their much-needed job and this would affect their job opportunities elsewhere:

*“Losing their job and not being able to get other jobs in the industry because it could be that if you are complaining about one construction giant and you are going to apply with the competitor they might be afraid that their name might be blacklisted.” [S(1)]*

*“Personally I think it is because of fear. There are people who are pleased to be working here, they are earning something and can survive here. But when it comes to reporting, even though he knows there was a wrongdoing, he would be afraid to report. He will think that if he reports, the employer will find out and will terminate his employment. And he will lose the money he has been earning, whatever it may have been. In my opinion, I think that is one of the reasons.” [S(1)]*

When asked to highlight which are the three most relevant factors that significantly account for the fact that not many migrant workers who have been severely exploited come forward, the respondent pointed out that victims perceive being jobless as worse than working in exploitative conditions (For more information refer to Annex 2, Table 9).

Annex 2, Table 9 reveals that victims are not aware of their rights and the support available to them and fear that if their situation became known to the authorities they have to be deported back.

### **Lack of information and basic knowledge**

A group of respondents attribute the low level of reporting to authorities to the lack of proper information about one's rights, entitlement and employment conditions. In some cases, the victims would be alienated and would not even know that they are being exploited or victimised. The respondents argued that given the fact that migrants are working in a foreign country doesn't help. Often, migrant workers would not know where to go and seek help. Working in a foreign country brings about certain vulnerabilities. A respondent [S(1)] said that certain migrants such as the Sub-Saharan ones and Filipino migrants are less likely to know where to go to access support services. This might be due to the fact that certain victim support services are missing in their country of origin.

A respondent [P(1)] stated that migrant workers who experience labour exploitation would not come forward because they might be used to working in such conditions and do not even consider it as exploitation. Most of the migrant workers would not even know what conditions of work they are entitled to, for example the minimum wage, leave entitlements and other rights of employment. For certain migrants, particularly those who arrived in Malta by boat from North Africa, it is normal to work every day, with no sick leave, not being paid if they fail to turn up for work because they feel unwell. One respondent [S(1)] shared the same opinion. The respondent said that lack of information leads to abuse and exploitation. The respondent listed the lack of information of what abuse entails, on how to lodge a complaint, lack of information on existing complaints mechanisms, procedures and lack of information on the rights of migrant workers as key factors for underreporting. The respondent stated that they “had cases where migrants were not aware that they were being exploited” [S(1)].

## Fear of retaliation

Victims of human trafficking in the context of labour exploitation would fear their employers. According to one respondent [P(1)], employers typically use threats against the family of the victims if they came to know that the employees reported to the police. The element of fear is very strong. One respondent [N(1)] said that victims are reluctant to seek help as they fear the perpetrator. The latter tend to control the victim through threats. Such threats would hinder the victim from seeking help and/or reporting. Victims would be afraid of retaliations from the perpetrator's side. The respondent admitted that as international studies suggest there are many other undetected cases which go unreported and are kept under wraps.

A representative of the lawyers' group agreed that the fear of reprisal is a key factor. Such victims are usually very vulnerable and are coming from a situation which renders them very vulnerable. At times, back in their country of origin, they would have been treated badly if they complained. Perhaps the migrant would think that the same applies in Malta.

## The dependence issue

One respondent [S(1)] said that migrant workers including those with a Visa permit might be reluctant to report and file a complaint against their employers since their right to stay in Malta is closely linked to their employment status. One respondent [S(1)] shares this view and states that Filipino migrants' dread reporting to the police, fearing that if they lost their job they would be deported. Those migrant workers who are literally imported to work here and whose status depends on their employment are less likely to report. They would argue that if they have a job, they can stay. If not, they have to leave or be deported. This therefore creates a dependence on the employer (which dependence is used wisely by the latter).

Furthermore, those with no form of protection or working without a work permit stand a higher risk of underreporting. Those who are purely in an illegal situation are less likely to report. Those with some form of protection, even if still engaged in precarious jobs, are in a better position to deal with exploitation than those who are overstaying or illegally staying in Malta:

*"Some people look for help. But – they are mostly people who have protection, who have a right to be here. The ones who don't look for support and help are one those who are in a more vulnerable situation so either they are brought here to work and if they complain then they lose their job and if they lose their job everything goes with it, including their right to stay in Malta because everything depends on their job. And those who are in a purely illegal situation so they know again that they are going to pay the penalty if ... it's that vulnerability, that dependence which creates the conditions basically."*[S(1)]

## Other (less common) factors

The following is a list of other factors which lead to underreporting as mentioned by individual respondents:

- Sense of apathy (1);<sup>57</sup>
- Language barriers (1)
- Sense of shame (1);
- Not unionised (1);
- No proper structures for reporting (1).

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<sup>57</sup> Figure in bracket denotes the number of respondents.

According to the respondents the most important factors for migrant workers who are victims of labour exploitation are:

- to be able to economically support other family members;
- to receive compensation and back pay from employers;
- to be respected and feel that their rights are being taken seriously;
- to be able to stay and make a living in an EU country.

(More information in Annex 2, Table 10)

### **The way forward**

The research reveals that most of the fieldwork participants believe that not enough is being done to address severe and criminal forms of labour exploitation in Malta. Some were more unequivocal and vociferous in their approach. Two respondents of two different expert groups are of the opinion that we have not even started. There is no knowledge on the extent of labour exploitation:

*“We have barely started. One because we are very reactive, we receive the complaints and we do a very good job with complaints, I think everybody agrees on that, with complaints we are doing a very good job. But even the fact that I told you a bit before, we do not know what exactly is going on out there, nobody knows. Because we are not doing raids, outreach etc, even the NGOs, we do not know who is being affected – whether it is men, women, children, the elderly ... We do not know. It could be that there are much more areas which we do not know of because we do not come across them. We do not know who is being exploited, and for what reasons.” [S(1)]*

Other respondents adopted a more optimistic and confident approach. One respondent from the police stated that unless some overall authority takes the responsibility, we will end up having a status quo in which all relevant parties do their own bit in their own separate way. The reality is that no one really knows who is responsible for what. This is also evident in the way the entities deal with the responsibility of the implementation of the *Employer Sanctions Directive*. One respondent from the W group said that whilst acknowledging that a number of positive measures and inroads on precariousness and exploitative conditions have been made recently, a lot more needs to be done in terms of the legislative framework, inspectorate and availability of information. Two other respondents share the same view and suggested that more needs to be done in terms of awareness raising, more access to information about rights, more direct work with employers, direct contact with employers, more coordination and collaboration between the relevant stakeholders. A respondent [J(1)] said that whilst Malta is well-advanced in terms of employment laws, the mentality of the Maltese vis-à-vis the foreigner tend to be dangerous and hinders the fight against labour exploitation.

On issues related to human trafficking in the context of labour exploitation, two respondents agreed that lately a lot of progress has been made in terms of legislation, networking and collective effort. However the respondents admitted that it is never enough since the criminal always finds new ways how to operate. As a country, there is a need for more awareness in order to get the public on board and help the police in cases of potential victims.

According to the respondents (refer to Annex 2, Table 11) the three most important measures to address labour exploitation in Malta are:

- measures to ensure that all workers know their rights;

- more effective cooperation and coordination between labour inspectorates, the police and other parts of the administration as well as victim support organisations and the criminal justice system;
- more effective monitoring of the situation of workers in the areas of the economy particularly prone to labour exploitation.

## 11. Conclusive Remarks

The research reveals that the most common form of labour exploitation of migrants in Malta is related to particular working conditions in terms of the *Employer Sanctions Directive*. The most frequent type of exploitation are related to wages being denied completely or partially; low levels of occupational health and safety breaches (particularly for the Sub-Saharan migrant workers); excessive working hours; no entitlement to vacation/sickness leave; unpaid bonuses; no written contracts and the lack of awareness of employment rights.

The most common types of occupations in which labour exploitation of migrant workers take place are within the service and the unskilled economic sectors. The research reveals that they are labourers working in the construction industry; waiters and other kitchen-related jobs within the catering industry; domestic carers; cleaners employed on a contract or piece-work basis; and sex services related jobs in the entertainment sector or in massage parlours.

The prevention measures against labour exploitation by State monitoring agencies in Malta focuses on campaigning, workplace inspections, court procedures, information giving through targeted training and, to a lesser degree, ongoing research. Albeit limited, the role of the victim support services in the prevention of labour exploitation is oriented towards advocacy. In terms of human trafficking in the context of labour market, prevention is done through awareness campaigns and research initiatives and the setting up of relevant entities and agencies in place to which victims can refer when in need.

According to this study, the most prevalent risk factors that render migrant workers more vulnerable to labour exploitation are various. The research found that having an irregular employment status, having a low level of education, the experience of (extreme) poverty back home, low professional skills, being desperate for money, being a foreigner, having poor English and/or Maltese language skills and having a dark skin colour are key factors.

This study reveals that there is a lack of adequate resources available for victim support services. It is very evident that even if victim support services are open to all victims of labour exploitation irrespective of their status (residence, nationality or right to work or not), there are several hurdles related to the availability of resources.

Most of the participants agree that the civil justice system does not effectively enable migrant victims of labour exploitation to claim compensation and back pay of wages. For others, in sharp contrast, the study reveals that experience show that the civil justice system generally works. In terms of accessibility, unless legal aid is provided, which system is hampered by other shortcomings, the research findings show that cost is one particular barrier for migrant workers victims of labour exploitation. One other particular obstacle is the lack of information about one's legal right about the possible remedies available and how to access them.

The research reveals that the participants perceive the interventions into situations of labour exploitation as primarily of a responsive nature. The research findings show that there are six key factors that hinder migrant workers from reporting labour exploitation. Migrant workers feel that being jobless is worse than being exploited. The findings attribute the low levels of reporting to authorities to the lack of proper information about one's rights, entitlement and employment conditions and the migrants' fear of their employers.

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## List of Abbreviations

DIER	Department of Industrial and Employment Relations
OHSA	Occupational Health and Safety Authority
EIRA	Employment and Industrial Relations Act
AWAS	Agency for the Welfare of Asylum Seekers
IOM	International Organisation of Migration
NGOs	Non-Governmental Organisations
ETC	Employment and Training Corporation
NCPE	National Commission for the Promotion of Equality

## Relevant National Law Acts

Immigration Act Chapter 217 of the Laws of Malta, Legal Notice 20 of 2013<sup>58</sup>  
Employment and Industrial Relations Act Chapter 452 of the Laws of Malta, Cap 135 and 266, 27<sup>th</sup> December 2002<sup>59</sup>  
Occupational Health and Safety Act Chapter 424 of the Laws of Malta dated 29<sup>th</sup> January 2002<sup>60</sup>  
Procedures for Investigations Regulations Subsidiary Legislation 456.02 Legal Notice 316 of 2011<sup>61</sup>  
Employment and Training Services Act Chapter 343 of the Laws of Malta, Legal Notice 424 of 2007<sup>62</sup>  
Refugees Act Chapter 420 of the Laws of Malta, 1<sup>st</sup> October 2001<sup>63</sup>  
Malta, Constitution of Malta, Article 35<sup>64</sup>  
Criminal Code Chapter 9 of the Laws of Malta<sup>65</sup>  
Young Persons (Employment) Regulations Subsidiary Legislation 452.92, Legal Notice 440 of 2003<sup>66</sup>  
White Slave Traffic (Suppression) Ordinance Chapter 63 of the Laws of Malta<sup>67</sup>  
**Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations [S.L. 217.14]<sup>68</sup>**

## Target Groups

M Monitoring Bodies  
P Police  
S Victim Support  
J Prosecutors or Judges  
L Lawyers  
R Representatives of Recruitment Agencies  
W Workers' Organisations (trade unions)

<sup>58</sup> Malta, Immigration Act (*Att Dwar l-Immigrazzjoni*), 21 September 1970 and subsequent amendments, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722> (10 July 2014)

<sup>59</sup> Malta, Employment And Industrial Relations Act (*Att dwar l-Impiegi u r-Relazzjonijiet Industrijali*), 2 December 2002 and subsequent amendments, available at: [www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8918&l=1](http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8918&l=1) (10 July 2014)

<sup>60</sup> Malta, Occupational Health and Safety Act (*Att Dwar l-Awtorità għas-Saħħa u s-Sigurtà fuq il-Post tax-Xogħol*) 29 January 2002, available at: [www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8890&l=1](http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8890&l=1) (10 July 2014)

<sup>61</sup> Malta, Procedures for Investigations Regulations (*Regolamenti ta' l-2011 dwar il-Proċedura ta' Investigazzjoni*), available at: [www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11714&l=1](http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11714&l=1) (10 July 2014)

<sup>62</sup> Employment and Training Services Act (*L-Att dwar is-Servizzi ta' Impieg u Tahriġ*), Adaptation of Laws (Chapters 301 - 350) Order, 2007, 21 December 2007, available at: [www.justiceservices.gov.mt/LegalPublications.aspx?pageid=32&year=2007&type=4&p=17&lid=1](http://www.justiceservices.gov.mt/LegalPublications.aspx?pageid=32&year=2007&type=4&p=17&lid=1) (10 July 2014)

<sup>63</sup> Malta, Refugees Act (*Att dwar ir-Rifuġjati*), 1 October 2001 and subsequent amendments, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8886> (10 July 2014)

<sup>64</sup> Malta, Constitution of Malta (*Kostituzzjoni ta' Malta*), 21 September 1964, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566> (10 July 2014)

<sup>65</sup> Malta, Criminal Code (*Kodiċi Kriminali*), 10 June 1854 and subsequent amendments, Article 248A (1), available at: [www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574](http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574) (10 July 2014)

<sup>66</sup> Malta, Young Persons (Employment) Regulations (*Regolamenti tal-2003 dwar l-Impieg ta' Żgħażaġh*), 5 April 2004, available at: [www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11226](http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11226) (10 July 2014)

<sup>67</sup> Malta, The White Slave Traffic (Suppression) Ordinance (*Ordinanza dwar il-Qirda tal-Kummerċ fil-Prostituzzjoni*), 1 August 1930, available at: [www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8614&l=1](http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8614&l=1) (10 July 2014)

<sup>68</sup> Malta, House of Representatives (2011), Subsidiary Legislation 217.14, Legal Notice 432 of 2011, Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations, available at: [www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11772&l=1](http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11772&l=1)

E Employers' Associations  
N National Policy expert at Member State level

## Annex 2 – Tables

**Table 1 – Face-to-face Interviews Information on participants and session**

	Group	Gender	Face to face	Duration	Recording
1	M	Male	Yes	95	Yes
2	M	Male	Yes	60	No
3	M	Female	Yes	73	Yes
4	P	Female	Yes	70	Yes
5	P	Male	Yes	65	Yes
6	S	Female	Yes	67	Yes
7	S	Male	Yes	67	Yes
8	S	Male	Yes	51	Yes
9	S	Female	Yes	68	Yes
10	S	Female	Yes	85	Yes
11	S	Female	Yes	68	Yes
12	J	Male	Yes	75	Yes
13	J	Male	Yes	66	Yes
14	L	Male	Yes	47	Yes
15	L	Male	Yes	58	Yes
16	R	Female	Yes	74	Yes
17	W	Male	Yes	92	Yes
18	E	Male	Yes	64	Yes
19	E	Male	Yes	52	Yes
20	N	Male	Yes	71	Yes

**Table 2- Focus Group Participants**

Participant	Group	Gender
1	M	Female
2	S	Male
3	S	Female
4	W	Male
5	P	Male

**Table 1 - Forms of labour exploitation encountered by experts**

Forms of labour exploitation according to professional group	S	E	L	R	P	J	M	W	N	Total
Slavery	1	0	0	0	0	0	0	1	0	2
Forced labour, including bonded labour (e.g. debt bondage)	3	0	0	1	1	0	0	0	0	5
Child Labour	0	0	0	0	0	0	0	0	0	0
Trafficking for labour exploitation	3	0	0	1	1	2	0	1	1	9
Moving beyond the categories mentioned so far: exploitation of a migrant worker under particularly exploitative working conditions <sup>69</sup>	6	0	2	1	2	2	3	1	0	17

**Table 2 - Forms of Frequently Observed Labour exploitation**

	S	E	L	R	P	J	M	W	N	Total
Migrant workers do not have a contract written in a language they understand, or do not have a contract at all	5	2	1	1	2	2	1	1	0	15
Migrant workers are not properly informed about their entitlements as concerns wages, working conditions, annual leave etc.	5	0	1	1	2	2	2	1	0	14
Employers withhold wages or pay considerably less than what they are obliged to pay	0	0	2	0	2	1	3	0	0	8
Parts of what is paid flows back to employers, e.g. for fees which the employer owes to recruiters or for food or services provided by the employer	0	0	1	1	0	0	0	1	0	3
The migrant worker depends on the employer beyond the employment contract, e.g. as concerns	2	1	2	1	1	2	1	0	0	10

<sup>69</sup> In terms of the Employer Sanctions Directive.

accommodation or employment of family members										
Employer does not pay social security contributions	2	0	1	0	1	2	0	1	0	7
Migrant workers are not allowed to go on annual leave	2	0	0	0	1	1	1	1	0	6
Migrant workers are restricted in their movement, either by physical barriers or by practical means, such as withholding travel documents	1	1	0	1	0	1	0	0	0	4
The employer adds to the migrant worker's isolation by impeding communication e.g. communication to representatives of labour unions or to labour inspectors	0	0	0	0	1	0	0	0	0	1
The migrant worker is subjected to physical violence or to threats of such violence	0	0	0	0	0	0	0	0	0	0
The worker's health conditions are impaired, e.g. through labour-intensive work or long hours	1	0	0	0	0	1	1	0	0	3
Other (please specify)	1	1	0	0	0	0	0	0	0	2
Don't know	0	0	0	0	0	0	0	0	0	0

**Table 3 – Most prevalent Occupations and Sectors of the Economy of Exploited Migrant Workers by Sex**

Type of Occupation	Frequency of responses	Genre of Employment	Sex of Potential Victims
Labourers working in the construction industry	15	Unskilled Workers	Males
Waiters and Kitchen Related jobs in the Catering Industry <sup>70</sup>	11	Service Occupations	Both
Domestic Carers <sup>71</sup>	8	Services Occupation	Females
Cleaners on Contract or Piecework basis <sup>72</sup>	7	Service Occupations	Both
Sex Services Related Jobs in Entertainment Industry (or in Massage Parlours)	6	Service Occupations	Females

**Table 4- Three Economic Sectors in which most labour exploitation occur**

Economic Sector <sup>73</sup>	Kind of Business
-------------------------------	------------------

<sup>70</sup> Employed as dishwashers and/or waiters.

<sup>71</sup> Recruited as either carers with the elderly and/or nannies and/or housekeepers.

<sup>72</sup> Usually recruited as chamber maids.

<sup>73</sup> Other sectors of the economy mentioned by the respondents (with much less frequency) are related to the entertainment industry; farming; waste management; cleaning industry and massage therapy.

<b>1</b>	Construction	Construction of Buildings Building Completion and Finishing Electrical Plumbing and Other Construction Installation Activities
<b>2</b>	Accommodation and Food Service Activities	Hotels and Similar Accommodation Bars (Beverage Services Activities) Other Food Services Activities
<b>3</b>	Private Households as Employers of Domestic Workers	Non-diplomatic households as employers of domestic personnel

**Table 5 - Personal Characteristics as Risk Factors**

	S	E	L	R	P	J	M	W	N	Total
Migrant worker has a low level of education	4	1	2	1	1	2	1	0	0	12
Migrant worker does not know the language of the country of workplace;	2	1	0	0	2	1	1	1	1	9
Migrant is not allowed to enter into employment;	1	1	2	0	1	1	1	0	0	7
Worker comes from a country the nationals of which are often exploited in the destination country;	2	0	1	1	1	1	0	0	0	6
Worker is prone to discrimination on behalf of their race or through their identification as belonging to a national minority	4	0	1	1	0	2	2	1	0	11
Worker is prone to discrimination on behalf of their sex	0	0	0	0	0	1	1	1	0	3
Worker has experienced extreme poverty at home;	2	0	1	0	1	1	1	0	0	6
Other (please specify)	2	0	0	0	0	0	1	0	1	4
Don't know	0	0	0	0	0	0	0	0	0	0

**Table 6 - Legal and Institutional Risk Factors**

	S	E	L	R	P	J	M	W	N	Total
Low Risk of Offenders of Being Prosecuted and Punished	5	0	1	0	0	1	1	1	0	9
Low risk to offenders of having to compensate exploited migrant workers	4	0	1	1	1	0	2	1	0	10
Lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs	4	1	2	1	2	1	2	1	0	14
Corruption in the police	0	0	0	0	0	0	0	0	0	0
Corruption in other parts of administration	0	0	0	0	0	2	0	0	0	2
Other	2	2	1	0	1	1	0	0	1	8
Don't know	0	0	0	0	0	0	1	0	0	1

**Table 7 - Significant factors for underreporting**

	S	E	L	R	P	J	M	W	N	Total
Lack of effective monitoring of relevant areas of economy	1	0	0	0	0	1	0	0	0	2
Lack of targeted support service provision available to victims	1	0	0	0	0	0	0	1	0	2
Victims are not aware of their rights and of support available to them	5	0	0	1	1	0	1	1	1	10
Victims fear retaliation from the side of offenders against them or against family members	1	0	0	1	1	1	2	1	1	8
Victims suffer from feelings of shame	0	0	0	0	0	0	0	0	1	1
Victims believe that speaking to authorities is not worthwhile or they would not benefit from subsequent proceedings	2	0	0	0	0	1	1	0	0	4
Victims believe that proceedings are too bureaucratic and costly	1	0	0	0	0	0	0	0	0	1
Victims fear that if their situation became known to the authorities, they would have to leave the country	3	0	0	0	2	2	2	0	0	9
Victims do not trust that the police in particular would treat them in a sympathetic manner	1	0	0	0	0	0	0	0	0	1
Victims perceive being jobless as worse than working in exploitative conditions	3	0	0	1	2	2	3	0	0	11
Other-please specify	0	0	0	0	1	0	0	0	0	1
Don't know	0	0	0	0	0	0	0	0	0	0

**Table 3 - Important factors for migrant workers victims of labour exploitation**

	S	E	L	R	P	J	M	W	N	Total
To be safe and to be protected against further victimisation	1	0	0	1	0	0	1	1	1	5
For their family to be safe	2	0	0	0	1	0	0	0	1	4

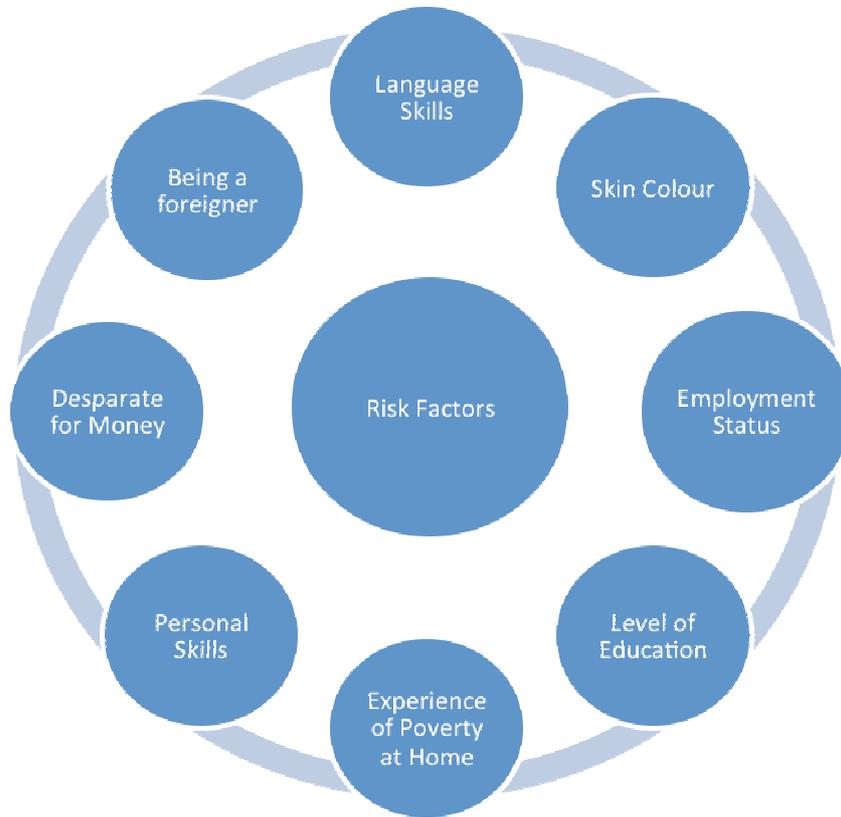
To be able to stay and to make a living in an EU country	3	0	1	1	1	0	1	0	0	7
To see that offenders are held accountable and that justice is done	0	0	1	0	0	0	1	0	0	2
To be respected and to see that their rights are taken seriously	1	0	2	0	0	2	1	1	0	7
To be in a position to economically support other family members	5	0	2	1	2	1	1	0	0	12
To receive compensation and back pay from employers	2	0	1	0	1	1	1	1	0	7
To be able to return home safely	0	0	0	0	1	2	0	0	1	4
Other (please specify)	0	0	0	0	0	0	1	0	0	1
Don't know	0	0	0	0	0	0	0	0	0	0

**Table 9 - Measures to improve labour exploitation in Malta**

	S	E	L	R	P	J	M	W	N	Total
Improve legislation against labour exploitation and its implementation	2	0	0	0	0	1	1	1	0	5
Improve legislation to allow better access to justice and compensation	2	0	0	0	0	1	0	1	0	4
More effective monitoring of the situation of workers in the areas of economy particular prone to labour exploitation	3	2	2	1	2	1	2	0	0	13
Measures to ensure that all workers know their rights	4	1	2	1	2	1	2	1	1	15
Measures to ensure that all workers have access to labour unions	1	0	0	0	0	0	0	0	0	1
More effective coordination and cooperation between labour inspectorates, the police and other parts of administration as well as victim support organisations and the criminal justice system	5	1	0	1	2	1	1	1	1	13
Setting up of specialised police units to monitor and investigate labour exploitation	1	0	1	1	0	0	0	0	0	3
Regularising the situation of certain groups of migrant workers with an irregular status	0	1	0	0	0	0	1	0	0	2
Regularising the situation of migrant workers once they have become victims of severe labour exploitation	0	0	0	0	0	0	0	0	0	0
Measures addressing corruption in the administration	0	0	0	0	0	1	0	0	0	1
More training of police, labour inspectors and other authorities	0	0	0	0	0	0	0	0	0	0
Police and courts taking labour exploitation more seriously	1	0	0	0	0	0	1	0	0	2
Don't know	0	0	0	0	0	0	0	0	0	0

## Annex 3 – Figures

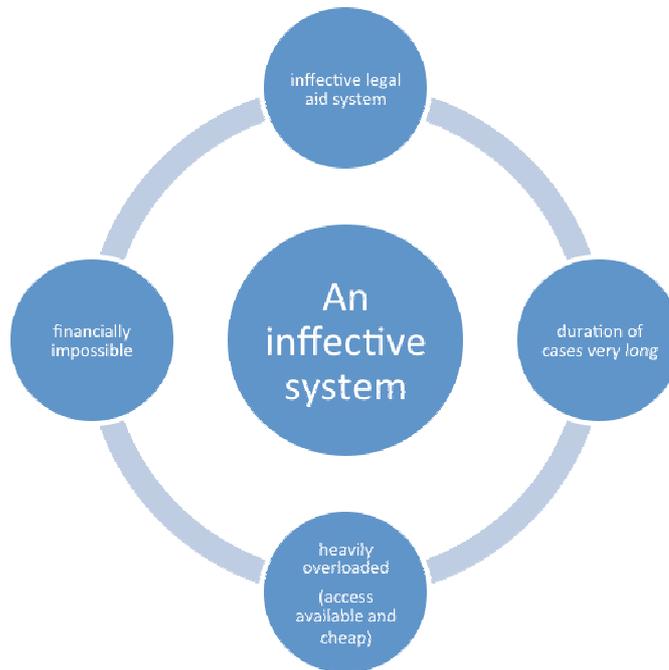
**Figure 1 - Most prevalent Risk Factors to Labour Exploitation**



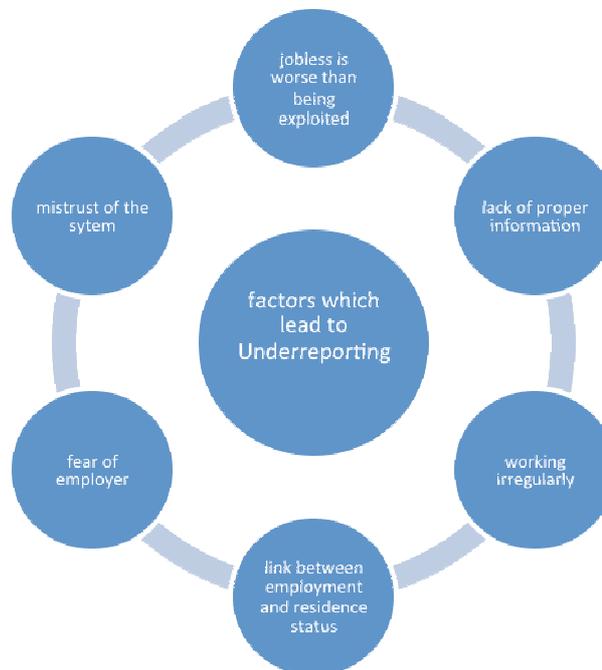
**Figure 2 - Other Risk Factor to Labour Exploitation**



**Figure 3 - Factors that Hinder an Effective Civil Compensation System**



**Figure 4 - Factors which lead to underreporting**



## **Annex 4 – Further reading**

### **Living and Working Conditions in Malta**

Booklet about living and working in Malta for Third Country Nationals who want to live and work in Malta and to those who already reside and work here.

This publication, which is available in nine languages namely English, French, Spanish, Arabic, Tagalog, Serbian, Chinese, Turkish and Russian, includes information about accommodation and the purchasing of property, applying for an employment licence, conditions of work, taxation and social security. It also has information about the cultural and social aspects of life in Malta. Copies of the report may be downloaded for free from the ETC website.<sup>74</sup>

The report focuses on five main areas namely Finding a Job, Moving to another country, Working Conditions, Living Conditions, Social Security and Insurance.

### **Nitkellmu?**

A report on Refugee Integration Perspectives in Malta by aditus Malta and the UN Refugee Agency.

This report presents the outcomes of two separate integration projects that are closely linked, both implemented in cooperation between UNHCR and aditus foundation. The approach is essentially based on the dual role integration measures play in the enjoyment of fundamental human rights by refugees. On the one hand, integration policies open the doors of important processes such as education, employment, political participation, non-discrimination, long-term residence or citizenship and family unity. On the other hand, integration opportunities act as a significant incentive for refugees to strive to be socially proactive, improving their educational profiles and engaging in fruitful employment. This report reviews settlement and integration realities from the perspective of beneficiaries of protection living in the community, as well as from the viewpoint of personnel within relevant mainstream services in Malta. It is hoped that the findings can contribute towards development of a better framework to facilitate a positive integration process, to the benefit of people in need of protection, as well as for the Maltese society at large (2013, Executive Summary).<sup>75</sup>

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<sup>74</sup> Employment and Training Corporation, Living and Working Conditions in Malta, available at: <http://etc.gov.mt/Resources/file/EURES%20Living%20and%20Working%20In%20Malta%202010.pdf> (11 July 2014).

<sup>75</sup> aditus Malta and UNHCR, Nitkellmu?, December 2013, available at: [http://unhcr.org.mt/media/com\\_form2content/documents/c8/a629/f40/Nitkellmu\\_report.pdf](http://unhcr.org.mt/media/com_form2content/documents/c8/a629/f40/Nitkellmu_report.pdf) (11 July 2014).