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Chinese Migrants and Forced Labour in Europe

Gao Yun
International Labour Office

InFocus Programme on Promoting the Declaration on Fundamental Principles and Rights at Work

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Chinese Migrants and Forced Labour in Europe

Abstract
A working paper prepared to support the advocacy mission of the ILO's Declaration on Fundamental Principles and Rights at Work and its Follow-up. Focuses on human trafficking of Chinese migrants in Europe and analyzes current Chinese law on trafficking.

Keywords
Bonded, Catherwood, Chinese, Cornell, Europe, Global, Globalization, Government, Human, ILO, ILR, Industrial, International, Labor, Labour, Law, Legal, Legislation, Library, Migrants, Organization, Organisation, Portal, Relations, Rights, School, Smuggling, Standards, Trafficking, University, Work, Workers Workplace

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InFocus Programme on Promoting the Declaration on Fundamental Principles and Rights at Work

WORK IN FREEDOM

International Labour Office

Chinese migrants and forced labour in Europe

Gao Yun

Special Action Programme to Combat Forced Labour

DECLARATION/WP/32/2004

Working Paper

WP. 32

Chinese migrants and Forced labour in Europe

Gao Yun

International Labour Office
Geneva

July 2004

Foreword

In June 1998 the International Labour Conference adopted a Declaration on Fundamental Principles and Rights at Work and its Follow-up that obligates member States to respect, promote and realize freedom of association and the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation.[1] The *InFocus Programme on Promoting the Declaration* is responsible for the reporting processes and technical cooperation activities associated with the Declaration; and it carries out awareness raising, advocacy and knowledge functions – of which this Working Paper is an example. Working Papers are meant to stimulate discussion of the questions covered by the Declaration. They express the views of the author, which are not necessarily those of the ILO.

As part of ILO activities to promote the Declaration, a Special Action Programme to combat Forced Labour (SAP-FL) was created by the ILO Governing Body in November 2001. Since then, SAP-FL's work has included research, awareness raising and technical cooperation, working with governments, employers, workers and others to abolish forced labour. And in all of these activities, particular attention has been given to the forced labour outcomes of human trafficking.

The global concern with human trafficking has risen quite dramatically in recent years. And yet, as is widely acknowledged, there is still limited knowledge of the trafficking process from places of origin through to transit and destination countries. Trafficking and its related forced labour outcomes can only be stamped out effectively when we have a better knowledge of the victims, of the reasons why they fall prey to traffickers, of the means of their entrapment, and of the abusive conditions to which they are exposed in the destination areas. And in expanding this knowledge base, the ILO has a particular competence on the subject of trafficking for labour exploitation.

Trafficked or smuggled Chinese workers have been notoriously subject to abusive and dangerous conditions of work or transportation, in Europe, the Middle East, the Americas and other destination places. Public attention is now focusing more on the situation of Chinese migrant workers in Europe, and on what can be done to stem the abuses. In the United Kingdom for example, the tragic death of twenty Chinese cockle pickers in January 2004 brought to light the severe forms of exploitation to which irregular migrant workers can be subjected. It also pointed to the close relationship between the Chinese "snakeheads" who transport the migrant workers into foreign countries, the recruiting intermediaries in the destination country (so-called "gangmasters" in the case of the United Kingdom), and the employers who demand cheap and flexible labour. All of them have their share of involvement and responsibility in the recruitment, transportation and exploitative employment of Chinese irregular migrants.

This working paper, by Chinese lawyer Gao Yun, is the result mainly of a desk review drawing on existing literature about Chinese migration to Europe, and of analysis of current Chinese law on trafficking. It has since led to a more comprehensive research project by the same author, on Chinese smuggling and trafficking in France, the results of which should be published in the course of 2004. This second research project contains detailed case material and interviews, examining the

[1]The text of the Declaration is available on the following web site :
http://www.ilo.org/declaration

process of recruitment and transfer in considerable depth, and also describing in detail the working conditions to which Chinese migrants are exposed in different sectors of the French economy.

In the meantime, to stimulate discussion, we consider it useful to issue the present Working Paper separately. It has some important conceptual observations, for example as to the complexities in drawing clear distinctions between the trafficking and smuggling of human beings. As the author observes, the seclusion of Chinese "ethnic business" can make it very difficult for law enforcement authorities to take effective action. It may also be difficult for trade unions or other civil society groups to intervene on behalf of these Chinese workers, given their vulnerable position and subjective perception of their circumstances. However, if these modern forms of forced labour are to be eliminated, the root causes including deficiencies in laws and labour market regulations must be addressed in both origin and destination countries. In addition, enhanced cooperation is needed among law enforcement authorities, labour market institutions and actors at both ends of the trafficking cycle.

I thank Gao Yun for her high quality research and analysis, which has since helped SAP-FL to develop follow-up proposals for practical action on behalf of vulnerable Chinese workers overseas.

Roger Plant

Head, Special Action Programme to Combat Forced Labour
InFocus Programme on Promoting the Declaration on Fundamental Principles and Rights at Work

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Introduction

Due to the enormous increase in the number of Chinese immigrants, especially since the 1980s, many European countries fear migration from the most populous nation in the world.[2] The closure and insularity of Chinese communities result in many 'myths' about Chinese legal and illegal migrants. Many destination countries feel that they are not able to control the Chinese immigrants who enter and remain in their territories.

Until now, research on Chinese migration has focused largely on North America. Research conducted on Chinese migrants' situation in European countries has been general rather than detailed and comparative. The main intention of such authors has been to study the 'successful' Chinese immigrants or the Chinese community as a whole from economic, cultural and anthropological perspectives. Fortunately some important recent work provides insights into the nature of the relations between people in Chinese communities (including the extent to which practices are in conformity with the law of destination countries) and uncovers some 'invisible' phenomena within these communities (Pieke 1992, Salt 2000, Skeldon 2000).

No significant research, however, has been done on trafficked Chinese in European countries. Investigations into 'trafficking' and 'forced labour' are potentially dangerous for the researchers and embarrassing for the government. In addition, there is much ongoing debate about many of the notions that this situation encompasses, including the notion of 'trafficking' itself.

The author of this report tries to explore the concept of 'forced labour' in the context of 'ethnic business'. Highly developed ethnic business in some European countries plays a significant role in encouraging people to immigrate. When efforts to immigrate are restricted by harsh immigration policies, people tend to turn to traffickers. Thus, human trafficking is an illegitimate service, which satisfies the demands of ethnic business.[3]

Definition of Human Trafficking

The UN Convention against Trans-national Organized Crime, together with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter the Palermo Protocol) were adopted by the UN General Assembly in November 2000. This move was a milestone in the history of combating human trafficking. The provisions in the Convention and the Protocol have served as the basis of legal reform in some countries. The Protocol defines 'trafficking in persons' and requires member states to criminalize such activities. 'Trafficking', as defined in Article 3, is composed of three elements:

1. A conduct including the recruitment, transportation, transfer, harbouring or receipt of person;
2. By means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or

[2] R. Skeldon, *Myths and Realities of Chinese Irregular Migration* (IOM, No.1, 2000) 14.
[3] J. Salt and J. Stein, "Migration as a Business: the Case of Trafficking", in *International Migration Quarterly Review* (Vol.35 N° 4, IOM, 1997) 467-492.

receiving of payments or benefits to achieve the consent of a person having control over another person; and
3. For the purpose of exploitation

According to the terms of the Palermo Protocol, children are an exception: no force, coercion or deception is required where children are involved, because they cannot give valid consent. Any recruitment, transportation or receipt of children for the purpose of exploitation is therefore a form of trafficking regardless of the means used.

It is worth noting that the definition has moved beyond the narrow and traditional focus on trafficking for sexual exploitation to ensure that the Protocol addresses contemporary trafficking situations, including forced labour, debt bondage and forced marriage. Trafficking should not be confined to sexual exploitation. Victims can be men or women, and the economic sectors involved are varied.

The difference between smuggling and trafficking

- Smuggling is always trans-national, whereas trafficking may not be.
- Smuggling involves migrants who have consented to emigrate, whereas trafficking victims have either never consented or their consent has been rendered meaningless by the use of force or other forms of coercion, deception, etc.
- Smuggling ends with the arrival of the migrants at their destination, whereas trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers.

Implicit in the notion of 'trafficking' is an element of forced labour which is not the case for 'smuggling': a 'smuggled' person may, however, suffer inhuman treatment during transportation and his or her human rights may be abused.

Trafficking can be divided into three stages:

a. Recruiting of potential migrants
b. Movement, transportation and harbouring
c. Integration into the destination country's labour market.

In the first stage, potential migrants generally consent to emigrate. Coercion is rarely used prior to departure from the country of origin. It is usually in the second or third stages that force or coercion are introduced, at the point when migrants realize what danger or deception lies behind the trafficker's claims and they begin to resist. For this reason, it is often difficult to identify victims of trafficking. Migrants who are apprehended during the second stage of transportation are not yet aware of the extent of the deception they have been subjected to, as the process has been interrupted. If traffickers have not yet applied force, their victims are identified and treated as 'smuggled people' rather than as 'trafficking victims'.

Some researchers concentrate on the conditions of transportation rather than the exploitative working conditions. However, it is during the third stage of human trafficking that the problem of forced labour generally arises. Our research therefore focuses on how the trafficked people

integrate into the destination country's labour market, under what conditions they work, and what kind of relationship they have with their employers.

Definition of forced labour

Under the ILO's Convention No. 29, the term forced or compulsory labour refers to "all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily".

The Global Report that was a follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Stopping Forced Labour (hereafter the Report), issued in June 2001, described the main forms of forced labour: Slavery and abductions, compulsory participation in public works projects, forced labour in agriculture and remote rural areas linked to coercive recruitment systems, bonded labour, domestic workers in forced labour situations, forced labour imposed by the military, forced labour as an outcome of the trafficking in persons and some aspects of prison labour and rehabilitation through work.

Forced labour has existed continuously; only its standards evolve and modify. Contemporary forms of forced labour reflect new forms of exploitation. They came into existence before traditional forms disappeared. The two forms of forced labour overlap so perfectly that traditional forms were not recognized as such before being integrated into contemporary ones.[4]

Forced labour can exist within or beyond national boundaries. The forced labourer can be a national or a foreigner. In the latter case, the person is usually an illegal or irregular immigrant who is trafficked to another country and forced to work. Even after illegal immigrants have been naturalised and obtained legal status, some will carry on working under the same conditions for a period.[5] In studying forced labour as an outcome of human trafficking, emphasis should be placed not on the issue of consent but rather on the variety of circumstances and the particular vulnerability of migrants.

[4] M. Lengellé-Tardy, *L'esclavage moderne,* Presses Universitaires de France,1re édition, 1999).9-11.
[5] F.Brun and S. Laacher, *Situation régulière* (L'Harmattan, 2001) 73.

Chinese diaspora and overseas ethnic business

1. A 'trade diaspora' and its ethnic economy

Many studies call Chinese populations abroad 'diasporas'. It is necessary to clarify the term 'diaspora' before analysing why employment or exploitation relationships exist mainly amongst the Chinese. According to Robin Cohen, a diaspora is the dispersal or expansion of a people from an original homeland. This can be in search for work or in the context of forced migration. It is often characterised by a sense of solidarity with members of the same ethnic group in other countries of settlement. Cohen considers it appropriate to describe the Chinese as a 'trade diaspora' on the basis that equal numbers of traders and indentured labourers have left the Chinese mainland and that merchants have had a sustaining influence on this situation[6].

According to Light and Gold (2000), an 'ethnic economy…consists of co-ethnic self-employed and employers and their co-ethnic employees' and 'exists whenever any immigrant or ethnic group maintains a private economic sector in which it has a controlling ownership stake'[7]. These characteristics of ethnic business apply to almost all illegal Chinese migrants. Some researchers have described the situation of Chinese ethnic business in the catering trade, textile and leather workshop sectors, all of which involve low technical complexity and high work intensity. Ma Mung (1992) has analysed several thousand contracts in an attempt to define the sectors and spatial expansion of Asian (mostly Chinese) commerce. Pieke (1992) has explored the immigration patterns of the Chinese restaurant workers and the growth of the Chinese catering trade in the Netherlands. He argues that in chain migration, workers do not emigrate to a foreign country but rather to an extension of their own community situated abroad. In this way, chain migration leads to a continuous increase in the number of restaurants or other business.

2. Chinese migrants in Europe

Fujianese migrants

Immigration from Fujian to Europe seems to be a very recent trend. While a migration culture already exists in Fujian province, most Fujianese in the past have gone to South-east Asia and North America. It is generally agreed by researchers that most Chinese immigrants in Europe are originally from Zhejiang; very few have studied the Fujianese. In a recent report to the French Ministry of Labour and Solidarity (MIRE), researchers indicate that among the group of 987 respondents, only 2% (19 people) were from Fujian province. It was noted, however, that this number 'constantly increased' over the course of the study[8].

According to Tomba's (1999) research, 82% of the Chinese in Tuscany live in Florence and Prato (where the Chinese constitute up to 65% of non-EC residents). Roughly 90% of them were born in

[6] R. Cohen, *Global Diasporas : An introduction* (University of Washington Press, 1997) 26-29.
[7] I. Light and S. J. Gold, *Ethnic Economies* (2000) 4-9.
[8] C. Guerrassimoff, E. Gurassimoff and N. Wang, *La circulation des nouveaux migrants économiques chinois en France et en Europe, Report to the Ministère de l'Emploi et de la Solidarité*, (Feb. 2002, not published)

the Wenzhou region of Zhejiang[9]. The death of 58 people in the Dover tragedy in June 2000 drew attention to the existence of Fujanese illegal immigrants in Europe[10]. It appears that there is a 'new trend' of Fujianese migration to Europe[11]. There are new demands for labour in the Chinese catering industry in the United Kingdom and the Zhejiangnese-owned workshops in Italy.

The recent migration from Dongbei

'Dongbei' refers to northeastern China and includes three provinces: Liaoning (population 41,940,000), Jilin (population 26,910,000) and Heilongjiang (population 38,110,000). According to the latest statistics of MIRE (France), 58% of Chinese migrants to France are from Zhejiang and 26% are from northern China. While immigration from the province of Zhejiang is an example of chain migration, which is typically a cumulative process, the new flows of immigration from Dongbei are the result of the "Reform and Opening" policy. People from Zhejiang tend to have networks abroad and know why they are emigrating, whereas people from Dongbei go abroad in an adventurous spirit and with the attitude that they have nothing to lose.

In 1996, the Chinese government set the implementation of a modern enterprise system and development reform as the main goals towards the establishment of a socialist market economic system. Since then, Chinese economic restructuring has focused on enterprise reform. A modern enterprise system was supposed to be established through the reform of large and medium-sized state-owned enterprises. Unemployment problems arose before a private insurance system was developed and social security funds could be obtained. The urban unemployment rate was estimated at seven percent by the Minister of Labour and Social Security, including workers laid off from state-owned enterprises: a total of roughly 14 million people. At the same time, there was an exodus from rural areas into the cities: there were 120 million internal migrants in 2002[12]. The most common destinations were eastern and southern coastal areas such as Guangdong, Zhejiang, Shanghai and Fujian, where there is a high concentration of foreign direct investment. China had to create enough jobs to absorb laid-off workers and internal migrants. In the northeast, China's rust belt, many factories and mines have closed, leaving laid-off workers unpaid and with little hope for new jobs. About 20 million urban jobless were living on a minimum living standard allowance of about US$ 30 per month in 2002[13].

Some researchers suggest that 'migration from Fuzhou to the United States has begun to reach its natural limit'; in some villages of Fujian province, between 80-85 percent of the registered population has moved to the United States[14]. The exhaustion of this source seems to have stimulated traffickers to develop markets in new parts of China. Other authors argue that other groups in China do not have the prior contacts and networks necessary for migration to develop.

[9] L. Tomba, 'Exporting the 'Wenzhou model' to Beijing and Florence: Suggestions for a comparative perspective on labour and economic organization in two migrant communities', in F. Pieke and H. Malleo (ed), *Internal and International Migration: Chinese Perspectives* (1999) 280-293.
[10] On June 18 2000, 54 men and 4 women died from asphyxiation in a lorry at Dover after four months travel through central and eastern European countries.
[11] F. N. Pieke, *Recent Trends in Chinese Migration to Europe: Fujianese Migration in Perspective* (IOM, Mar. 2002)
[12] *Migration News, China: Migrants, Economy*, (Vol. 9, No 11,Nov. 2002) or http://migration.ucdavis.edu/mn/more.php?id=2856_0_3_0
[13] *Migration News, China: Migrants, Economy*, (vol. 9 No 12,Dec. 2002)
[14] M. Hood."'Fuzhou' and Clandestine migration" in L. Pan (ed) *The Encyclopedia of the Chinese Overseas* (1998), 33-34.

While the recent movement from Dongbei is a definite indication of a new immigration wave, the pattern in Dongbei is less structured than in Zhejiang or Fujian. It remains to be seen whether immigrants from Dongbei will also bring their family members and form new migratory chains.

Not much is known about immigrants from Dongbei. It is clear that they do not yet have a chain immigration base and that most of them pass through eastern and central Europe. They are completely isolated. If there is hierarchy within the Chinese communities, they are at the bottom. The Dongbei immigrants are discriminated against by their Zhejiang counterparts. Many of the Dongbei women are employed by Zhejiang families as nannies. The Chinese prostitutes who have appeared in the streets of Paris and Milan in the last years are mostly from Dongbei. Immigrants from this region should be identified as a subject for further research.

Zhejiangnese migrants

Zhejiang is in the east of China and is the country's smallest province. When we talk about people from Zhejiang, we are referring generally to people from the southern regions of Wenzhou and Qingtian, from which most emigrants to Europe come. The people of Zhejiang are predominantly traders. Considered 'quick-witted for chances, markedly self-interested, purpose-like', the Zhejiangnese are noted for their capacity for hard work, physical power and endurance. They are said to prefer working for themselves than for wages. The typical progression: they begin as a peddler and end as the owner of a general store[15].

People in the province of Zhejiang usually have small-scale, family-managed workshops, which are concentrated regionally. Each workshop specialises in the production of one part, which is then assembled locally. With production specialised, productivity is high and management costs are low. This kind of production, termed the 'Wenzhou Economic Model' is recommended by the Chinese government to the whole country to boost the private economy. When we look at the 'ethnic business' in France and Italy - Chinese production in the leather goods and the clothing industry - we recognize an extension of the overseas 'Wenzhou Economic Model'.

Based on the research of Xiang Biao (1999) on the 'Zhejiang Village' in Beijing, Tomba (1999) draws a comparison between the 'Zhejiang village' in Beijing with the Chinese (mainly Zhejiang) community in Florence[16]. The 'Zhejiang Village' is the name given to a large community of internal Wenzhou migrants who settled in the suburbs of Beijing. Settlement began in the early 1980's and a large-scale economy developed around 1988, based on the production of the most competitive product - leather jackets. Many traders from Russia and eastern Europe came directly to the community to purchase jackets. Zhejiang villagers have now established mature market systems that promote the labour, raw materials and capital markets. At the same time, Wenzhou communities in France and Italy specialize in almost identical products to the Zhejiang village. The enterprises developing in Tuscany are based on family cohesion, kinship networks, high labour intensity, limited need for investment in fixed assets, and the overlap of work and residence: the same elements that make up the 'Wenzhou model'.

[15] L. Pan, *Sons of the Yellow Emperor* (1990), 128-152.
[16] Biao, Xiang, 'Zhejiang village in Beijing', in F. Pieke and H. Mallee (ed): *Internal and International Migration: Chinese Perspectives* (1999).

3. From 'slave' to 'entrepreneur'

It is generally agreed that a tradition of migration exists in the provinces of Zhejiang, Fujian and Guangdong. Research has shown that the first Chinese immigrants arrived in European countries in the 17th century[17]. Chinese communities have been developing in some European countries since the last century. The early immigration was concentrated in the catering trade sector, which demanded low skilled and low-wage labour. As previously mentioned, inherent to the 'Chinese diaspora' is a preference of restaurant owners for co-ethnic employees They look to their hometown for employees, ideally, people they know well: their relatives, friends or acquaintances.

Having worked for years on a clandestine basis in a restaurant or workshop, those who have paid off their debts will be liberated to conduct their own business. It is possible to participate in an association called a 'tontine', similar in nature to a fund, which is situated within the community. Although charged high interest by the controllers of the 'tontine', individuals can potentially obtain sums of up to Euros 75,000. Combined with personal savings, this amount generally suffices. The real problem is in obtaining residency status or citizenship, a prerequisite for founding a business. Immigrants have to wait for regularisation or must enter another European country where regularisation is easier to accomplish.

A most remarkable case is the rapid growth of Chinese in Italy following the phases of regularization in 1986, 1990 and 1996. Before 1986, there were roughly 1800 Chinese in Italy. This figure rose to 9880 after 1986 regulations (law no. 943/86) that allowed illegal immigrants in paid employment situations to obtain legal residency. In 1990, 19,237 Chinese obtained residence permits as a result of law no. 39/90 that legalized the position of irregular migrants, including self-employed migrants[18]. According to Campani (1992), Chinese in other European countries, particularly France and Netherlands were attracted by the possibility of entering Italy as self-employed. They generally did not arrive in Italy directly from China. The Local Sanitarian Unit in Tuscany found one Chinese employer who used his leather workshop as a closed dormitory. A workshop called Ugolini accommodated between 100 and 200 persons[19].

According to both Carchedi (1998) and Campani (1992), the Agreement between the Government of the Italy and the Government of the People's Republic of China (signed in 1985 and in force since 1987) played an important role in encouraging Chinese entrepreneurship. In fact, the Chinese government had signed similar agreements with more than 74 developing or developed countries including France, Germany, the United Kingdom and Austria prior to 1998, stipulating conditions of foreign direct investment and defining general principles of reciprocal investment protection. Curiously, China has signed such agreements with countries like Switzerland, where the number of Chinese is insignificant, while no such agreement has been signed with the United States, a favoured destination for Chinese migrants. Such agreements are not of prime importance in immigrants' choice of a destination country. This agreement cannot be considered a determining factor for Chinese immigrants.

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[17] A Chinese named Huang Jialue arrived in France in 1686. His 32-page diary can be found in the National Library of France.

[18] F. Carchedi and M. Ferri, "The Chinese Presence in Italy: Dimension and Structural Characteristics", in G. Benton and F.N. Pieke (ed) *The Chinese in Europe* (1998) 261-277.

[19] G. Campani and L. Maddii, « Un monde a part : les Chinois en Toscane » in *Revue Européenne des Migrations Internationales*, (Vol. 8, N°3, 1992)

The immigrants who meet the two conditions required will become entrepreneurs; they then recruit labour from their hometown. This chain migration leads to a migration flow and, as a result of the snowball effect, to an increase in the number of restaurants. A similar process takes place in other economic sectors, such as leather goods manufacturing and garment workshops. Although Chinese economic activities in European countries are constantly diversifying, chain migration continues to operate according to the same principles.

Chinese immigrants rarely compete with non-Chinese for jobs. They bring the sectoral niche from China to the destination country, develop it there and thus constitute a net gain for its economy. Chinese immigration operates independently of the general supply of labour in the destination country[20]. Ma Mung (1990) finds that none of the Zhejiang business owners had ever worked for local French companies and none had ever declared unemployment before founding his or her own business.

As is widely recognised, a principal reason for which people migrate from developing to developed countries is to look for work, integrating themselves in the labour markets of the place of destination. In the case of the low-skilled migrants, this work generally takes the form of "3D" dangerous, dirty and difficult jobs. These are characterised by low wages, long working hours and bad working conditions, which indigenous workers would not accept or tolerate. The people from Zhejiang form something of an exception to this pattern, in that their goal is not to integrate into local labour markets, and they often have their own business plans before leaving China. They do not make any effort to learn the local language, to understand legislation concerning civil and labour rights, or to call on any available assistance in the receiving country. All of this aggravates their dependant situation vis-à-vis their employer. In such an impenetrable community, living in clandestinity and without legal rights of residence, they endure hard working and inhuman living conditions together with a high degree of indebtedness. In the words of the workers, 'we work like oxen, eat like pigs, and sleep in hens' cages'[21]. Such conditions are considered as temporary but a 'must' process to success by most of immigrants. They are not conscious of their trafficking/forced labour victim status but just dream that once they have paid off their debts, they will become the owners of the businesses.

Unlike some more traditional forms, contemporary form of forced labour affect migrant workers over a relatively short period rather than a lifetime. However, this period should not be neglected. In studying the process by which Chinese go from 'working as hard as they can' to 'generating their own employment and wealth', many authors underplay the extent of their labour exploitation, concluding for example that they are 'on the whole, neither hapless victims of unscrupulous smugglers, nor political refugees fleeing political persecution, nor attracted by the spoils of the western welfare state'[22]. According to Pieke (2002), the success of a business compensates for the period of working as a "slave". Those who succeed in opening their own businesses, however, constitute only a minority of trafficked or smuggled workers. Most of them remain hidden 'underground', as long as they have not paid off their debt or obtained legal status.

[20] F.N. Pieke, *Recent Trends in Chinese Migration to Europe: Fujianese Migration in perspective* (IOM, Mar. 2002) 34.
[21] J. Béja and W. Chunguang, *Migration chinoise*, Hommes et Migration (N°1220, Jul.-Aug. 1999) p.79.
[22] Ibid.

In conclusion, there may be "winners" and "losers" in the Chinese migration process over the medium to longer term. But in either case it is at severe social cost, in terms of highly exploitative conditions of work.

4. 'Invisible' labourers

According to an OCRIEST (l'Office central de répression de l'immigration irrégulière et de l'emploi des étrangers sans titre) investigation in France, completely clandestine major economic enterprises are an increasingly rare occurance. A legal cover is usually used. The simplest way is to create a limited company in the form of a small enterprise, which conceals 'underground' workshops and makes invoicing possible. The managers or owners of the company (generally two or three people) are the only persons declared legally. Clandestine workers are completely hidden in the workshops.

Another method is to declare the legal workers in the workshop but not to declare a further group of clandestine workers who work at night. Subcontracted operations are the most difficult to monitor; the company transfers production tasks to subcontractors who are usually small in size (often producing at home) and widely dispersed. This kind of domestic production is easily concealed, as the locations are inconspicuous and residential. Moreover, owners of such companies do not have to meet social, tax and hygiene obligations. In an OCRIEST operation called 'Marechal' in Paris, inspectors discovered a workshop, which hired a few clandestine workers to produce ravioli; it sold four to five thousand ravioli daily to more than 50 restaurants and take-aways.

At the same time, the owners of companies are careful to ensure that the turnover they declare corresponds to the capacity of production and number of employees declared. They do their accounting properly and declare their tax punctually. Some companies are multi-structured; workers with legal or faked working papers are in the facility, but trafficked/smuggled workers are housed in inhumane conditions in other locations. They profit from the low labour cost of the clandestine workers and can out-compete the legally operated companies.

5. A lucrative business

Various positions, including the 'donneur d'ordre', 'façonnier'[23] and clandestine workshop owners are involved in the reservation, production and sales process. Everyone benefits from clandestine labour. A 'donneur d'ordre' confirmed that his clandestine workshop brought him euros

[23] The manufacturing system in Le Sentier's clothing industry, which has existed for some 20 to 30 years in France, requires a great deal of labour flexibility during the spring/summer and autumn/winter fashion collections. '*Donneur d'ordre*' in the fashion industry is the person who orders ready-to-wear clothes according to new fashion sets, usually the purchasing centres of big commercial companies. The orders could be large quantities within a short time limit due to quick changes in fashion. '*Façonnier'* is the person who manufactures clothes according to requirements and designs of the '*donneur d'ordre*'. In practice, a '*façonnier'* is a wholesaler who cuts and distributes the fabric, in the form of a sub-contract, to small workshops to sew them into clothes. It is these small workshops who shelter most illegal workers but the '*donneur d'ordre'* and the '*façonnier'* should be held responsible for illegal work in this production chain.

106.714,31 per trimester; the owner of a confection company was recorded to have earned euros 686.020,58 over 18 months[24].

Investigations of such enterprises require the co-operation of different departments. Controllers are more concerned about economic violations than about protecting the clandestine workers. Their rights are neglected and the nature of their relationship with their employers is poorly understood due to operational difficulties. For example, few clandestine Chinese workers speak languages other than Chinese, some speak only dialects and not even Mandarin. Some administration and immigration authorities cannot afford to hire interpretation services.

Sanctions against employers could be a solution to this problem. In most European countries the employment of foreign clandestine workers is punishable by fines if not prison sentences. In Italy and France, the penalties for hiring illegal migrant labour are very harsh. France introduced employer sanctions in the 1981 Labour Code Law, which stipulated that the employer be subject to imprisonment and a fine for each illegal worker hired. These sanctions were aggravated in 1993 to up to three years of imprisonment and a fine not exceeding 45,000 euros. A new range of penalties were added, including the confiscation of goods, exclusion from public contracts and, in the case of foreigners, expulsion from France.

The effectiveness of such sanctions is questionable; in Italy and France, where such measures have been adopted, the number of Chinese has increased dramatically in the past 10-15 years. The problem is that it is not easy to obtain evidence to prove that the employer engages illegal immigrants 'intentionally'. Employers are required to examine a worker's documents but they are not expected to be able to distinguish between real and fraudulent documents. When they plead that they themselves have been cheated, they are often discharged.

Why the garment and leather craft industries? The choice of destination country is certainly the result of many factors, as is the choice of the economic sector. Chinese workshop owners target Europe as a consumer market. Producing goods in Europe directly, they are able to circumvent transportation fees, exportation procedures and the limits of the 'quota' system. In addition, the market for Chinese restaurants is saturated in many European countries. Zhejiang businesspeople have chosen the garment and leather craft as sectors to develop their business, because Zhejiangnese are well known in China as tailors and leather-workers. These specializations complement existing markets in France and Italy. The Zhejiangnese benefit not only from a large European market where free movement of goods is possible, but also from the reputation of products 'Made in Italy' (such as leather) and 'Made in France' (such as clothes), which attract distributors from all over the world. The distributors' interest is in a low price combined with the label 'Made in Italy/France'. Consumers are rarely aware of the product's real 'nationality'. These workshop owners seem to be economically astute, and their businesses in France and Italy have expanded very quickly thanks to clandestine labour.

[24] OCRIEST, Analyse de l'opération "Printemps": les pratiques délictueuses dans le milieu asiatique de la confection, realisée en mai et octobre 2000, Lognes.

Forced labour as an outcome of human trafficking

1. Organisation of trafficking

Chinese-run organised crime has a very bad reputation. 'If Chinese restaurants are one feature of Chinatown, Chinese secret societies are another. Secret societies have always been endemic to overseas Chinese communities…if there is a capital in the Chinese criminal diaspora, that capital is Hong Kong'[25]. Research has shown that a few triads are based in Hong Kong and Taiwan; their specialisations are clandestine immigration, prostitution, gambling, drug dealing and debt collection. There is only one triad known to be based on the Chinese continent; it is thought to be involved in clandestine immigration but little is known about its organisation, structure and activities[26].

Illegal or irregular migration is almost impossible to quantify. In 1994, the United States' Immigration and Naturalization Service estimated that at least 100,000 Chinese were being smuggled illegally into the United States and another 100,000 into Europe annually. But only a small portion of them was apprehended. For example, in 1999, the United States Coast Guard apprehended 1,000 trafficked or smuggled Chinese[27]. In France, 32,000 Chinese nationals applied for visas in 1998 and 54,000 in 1999[28]. It is not known how many people amongst those whose applications were refused then turned to traffickers. To this figure must be added those who did not apply in the first place, but went directly to trafficking organizations.

According to Kwong (1997) Chinese traffickers have the reputation of being highly organised and well connected. 'Snakeheads' charge their clients about US$ 1,000 up front in order to arrange for transport to the United States. If delivered successfully to the destination, migrants should pay the full fee, which ranges from US$ 10,000-50,000, and is deducted from their future wages. The employer is connected to the trafficking network, thus facilitating the repayment, which can bear an annual interest rate of up to 30 percent.

Those who do not pay will be brutally beaten or held for ransom until their family pays. The migrant's family remaining in China constitutes a guarantee for traffickers. Hostages are tortured, handcuffed and not fed properly. The British police discovered one hostage who had had his finger sliced to the bone after he refused to rape a female captive. In another case, British police found a Chinese man who had escaped his captors by jumping through a first floor window. They raided the flat and discovered another four hostages. One had been held and treated as a slave for more than 22 months. In a west London flat, police rescued five hostages who had been tortured for ransom of more than US$ 30,000 each[29].

[25] L. Pan, *Sons of yellow emperor* (1990) pp. 338-345.
[26] T. Cretin, « Mafias du monde : organisations criminelles transnationales », in *Actualité et perspectives*, Presses universitaires de France, 3e édition, revue et augmentée, 2002) pp. 79-90.
[27] INS News Release: "INS Repatriates Second Group of Chinese Nationals from Tinian" (22 June 1999).
[28] "Migration News Sheet" (March 2000), p. 6.
[29] BBC News, 2 April 200; http://news.bbc.co.uk/1/hi/world/asia-pacific/797489.stm

2. *Forced labour in the case of Chinese immigrants*

The key terms in the definition of forced labour in the ILO's Convention No.29 on the subject are 'menace', 'penalty' and 'voluntarily'. Taking Chinese migration as an example, we shall analyse how a migrant could submit to forced labour under forces from three levels: external force (circumstance), debt and exploitation by the employer.

The force of circumstances – constituting a position of vulnerability

The lack of legal status: The person's movement is partly or completely restricted, during the journey or in destination country. S(he) has no access to legal and medical assistance and is in hiding for fear of deportation. Not protected by civil and labour laws that cover legal workers, (s)he can be treated as a commodity to generate profit; without a residence permit, (s)he cannot rent an apartment

The lack of language skills: This makes it almost impossible for immigrants to have access to all the information necessary for leading a normal life. The person is unable to communicate with local people and therefore has no alternative employment options; furthermore (s)he is unable to secure the application of the basic rights guaranteed by the legislation of the destination country.

Penalty by his/her own national government: for most immigrants, the ticket to a developed country is one-way. The Chinese Criminal Law (Article 322) punishes people who cross borders illegally under serious circumstances. The standard administrative penalty for illegal emigration is a short period of detention and a fine. Many immigrants who leave China without a passport or with forged documents provided by traffickers risk being placed in detention if they return home. Their only option is to wait for their identities to be legalized in the destination country. Only with naturalisation behind them can they travel and re-enter China.

Of these three external forces, legal status is the most important element. Even though many European countries have adopted tougher asylum laws to reduce the number of asylum seekers, the number of Chinese asylum seekers in France increased from 821 in 1990 to 5,169 in 1999[30]. This radical increase suggests that most clandestine workers hope to obtain a minimum of freedom. If their applications are turned down, they will go underground and become illegal but at least during the long procedure, they feel more or less secure, because the French authorities do not detain asylum seekers.

In summary, external forces put trafficked and forced labourers in a position of extreme vulnerability. Any abuse of this vulnerability should be regarded as a means of controlling and exerting force over people. Thus it is possible for trafficking to occur without the use of physical force. In the Explanatory Memorandum of the European Commission's proposal to the EU Framework Decision, the Commission defined 'the abuse of the vulnerability' as for instance 'persons being mentally or physically disabled or of persons illegally remaining on the territory of a member state who are often in a situation in which they have no choice or perceive themselves to

[30] See note 9.

have no choice, but to submit to the exploitation'. The offence should take the specific situation of the victim into account and not only the conduct of the trafficker[31].

'Vulnerability' is a nebulous concept, which can be defined objectively through the character of a threat or crisis, or subjectively through the individual's capacity for coping with stress. A useful analytical method is to consider vulnerability in terms of the need for protection[32]. Depending on the resources available to an individual, he or she might need basic legal, social, economic, or physical protection. 'Vulnerability' is also a relative concept. As compared with migrants from Algeria or Lebanon for example, Chinese lack basic language skills and are isolated from the host society. This is a kind of 'vulnerability'. The undocumented illegal migrants cannot communicate externally for fear of being arrested. This is another kind of 'vulnerability'. A person in a vulnerable situation has no means to refuse and therefore submits to dangerous situations.

The debt – a contemporary form of debt bondage

The debt is the trafficking fee that should be paid after the immigrant's arrival in the destination country. The debt is often so heavy that it takes a few years of labour to pay it off[33]. Chinese illegal immigrants are generally burdened by a significant debt incurred by their journey, which is extremely long and complicated. There are two sources of debt:

Legitimate borrowing: This kind of debt is generally from family, friends, or neighbours. It is legitimate, despite the high interest rate on it. In this case, the migrant is often subjected to financial and moral pressure.

Illegitimate loan or advance:. When a person is not able to borrow enough money from the first source, he or she turns to loans sharks affiliated with traffickers (who are called 'snakeheads' in Fujian and Guandong provinces, and 'yellow oxen' or 'bosses' in Zhejiang province). Since the loan is not legally protected because the money is to be used towards violence or the abuse of vulnerability, the repayment has to be arranged in a violent (illicit) way. In the event that the loan cannot be repaid, the person is threatened by violence or faced with the menace that their family members may be tortured or killed.

In its traditional form, bonded labour involves obliging a person to render services to another person, who has issued a loan, debt or advance. The system is similar to the relationship between a creditor and a debtor. The services are rendered for no or minimal wages, and there is no choice of employment or free movement.

[31] COM (2000) 854-C5-0042/2001-2001/0024(CNS). The European Council Framework Decision on combating trafficking in human beings was adopted in June 2002 by the Council (9576/02).
[32] R.Black, "Livelihoods under Stress: A Case Study of Refugee Vulnerability in Greece", in *Journal of Refugee Studies* (7/4, 1994) 360-77.
[33] Chloé Cattelain, Abdellah Moussaoui, Marylène Lieber, Sébastien Ngugen, Véronique Poisson, Claire Saillard, Christine Ta, *Les modalités d'entrée des ressortissants chinois en France*, Report to the Direction de la Population et des Migrations, Ministère des Affaires Socials, du Travail et de la Solidarité, pp 70-71. This research of MIRE showed that 52% of respondents owed 100,000 - 140,000 Yuan and 36% owed 30,000 - 40,000 Yuan. The author estimates that it was possible to repay a sum of 100,000 Yuan with two year's salary in the period of 1986-1992. However, given the competition on the textile market in recent years, it may now take 5-8 years.

In traditional forms of debt bondage, a person is placed directly under the control of his creditor and this person works solely for the interest of the creditor. The relationship between the labourer and his creditor is direct and clear. In contemporary forms, the debtor-creditor relationship is more complicated and less direct due to the involvement of traffickers. The labourer does not necessarily render services directly to the trafficker but rather works in the trafficker's interest. This is a form of covered or hidden debt bondage.

Further research needs to be done on the debt problem within Chinese migration. By quantifying the degree to which an immigrant has been forced, this debt is an essential criterion in the definition of 'forced labour'. There has been extensive research in the United States (Kwong 1997, Chin 1999) but very little in western Europe, where large-scale Chinese immigration is a relatively recent phenomenon and most studies have focussed on cultural and economic aspects of the Chinese community. Some research has addressed the subject but no studies have thoroughly examined the nature of debt, the arrangement of repayment and the importance of debt in the lives of illegal immigrants. This kind of debt is particular because it emanates from an illegitimate conduct but not a normal service – trafficking or smuggling. It can only be exacted by illegitimate means such as ransom, torture or other forms of violence. It is an important criterion in determining to what extent the migrant is a 'hapless victim'.

Exploitation by the employer – accomplice in trafficking crime?

Employers know how to take advantage of the illegal situation of their employees: they pay low wages, extend working hours, provide their employees with little food, poor accommodation and no social security. In many cases, employers force people to work using physical and psychological abuse: physical punishment, withholding identity documents or salary, or restricting personal movement. There have been no studies on the relationship between employers and traffickers. It is still unknown whether employers are involved in trafficking nets or are simply the beneficiaries of cheap illegal labour. If employers are involved in the trafficking process, then a question arises: should the employer be penalised as an accomplice to the trafficking crime?

Some authors believe that the mass media has exaggerated the exploitation and sub-human conditions in Chinese workshops and the restaurants. They argue that in China, working conditions in the new industries are similar to or worse than those in developed countries and wages in the developed countries are higher than in China; this, combined with the prospect of economic success, compensates for the miserable working conditions[34].

It is true that the working conditions in some new industries in China are not better than in the developed countries and the working standards differ from one country to another. But this cannot construct the basis of an argument in favour of the status quo. Firstly, a distinction must be made between Chinese workers with legal status and those trans-national immigrants who have no legal status, whom we call 'clandestine workers'. Legal status is a decisive factor when working conditions become intolerable. Workers in China can defend their rights to salary and insurance as these are guaranteed by law (although not always in practice). In 1997, 'Forcing Others to Work' was written into the Criminal Law of China as a punishable offence. 'Clandestine workers' have no legal recourse in the foreign territories, where legal protection applies only to their own citizens

[34] J. Antolín, in G. Benton and F.N Pieke (ed) *The Chinese in Europe: the Chinese in Spain* (Macmillan Press Ltd, 1998) p. 235.

and legal immigrants. Secondly, people who leave their own country burdened by debt, who risk crossing borders illegally and thus subject themselves to danger, do so to escape miserable working conditions in their own country, not to find the same conditions abroad. Thirdly, some clandestine workers are not from the poorest groups in their home country; traffickers or smugglers misinform them. The conditions they discover in the destination country are sometimes worse than what they knew at home.

3. Women and children

Women and children are extremely vulnerable groups. The trafficking of women from China to European countries for the sex industry has not yet taken on significant dimensions. It may be primarily regional in scope rather than extending to western countries[35]. Prostitution is more closed and more difficult to control than the 'underground' workshops. In France, prostitution does exist within the Chinese community. Most of the prostitutes are women from northern China who have been unable to find employment in workshops owned by the Zhejiangnese, rather than having been trafficked expressly for purposes of exploitation in the sex industry. However, a study in Ukraine revealed that some of the Chinese migrants were young unaccompanied females who had been trafficked and organized for such purpose[36].

While the trafficking of women is not highly visible, a noticeable increase in Chinese youth has been documented in France. ASE (Aide social à l'enfance) in Paris accommodated 145 minors in 2001; the figure in the previous two years had been 14. Most of them are from Wenzhou in Zhejiang province and have parents, aunts or uncles in France already. They work in their own family's workshop and are seen as "giving a hand" to the family when there are working inspection controls Consequently, they are usually considered as victims of "self-exploitation"

[35] R. Skeldon. *Myths and Realities of Chinese Irregular Migration*, (IOM, No. 1, 2000) p. 27.
[36] F. Laczko and D. Thompson (ed), *Migrant Trafficking and Human Smuggling in Europe, a review of evidence with case studies from Hungry, Poland and Ukraine* (IOM, 2000).

Chinese legislation and the fight against human trafficking

1. The crimes related to trafficking

In the former Chinese Penal Code, Articles 176 and 177 dealt with the crime of illegal border crossing, either in organised groups or as an individual initiative. These criminal activities were not well defined. In the last decade, the Chinese government has recognised that contemporary forms of slavery, including forced labour and debt bondage, not only violate basic human rights, but also have security implications; criminal activity is involved and the nation's image is damaged. After the tragedy of the *Golden Venture*[37] in 1993, measures were immediately taken to check unlawful and criminal activities surrounding the national border and to monitor exit and entry administration more carefully.

The Standing Committee of the National People's Congress adopted 'Supplementary Provisions on the Severe Punishment of the Crimes of Organization or Transportation of other Person(s) to Cross Illegally the National Border' on March 5, 1994. The Provisions covered a broad scope of criminal activity of this kind, including the organisation of border crossings, the provision of forged documents and the transportation of people. The amendment of the Chinese Penal Code in 1997 was a re-writing of Chinese criminal law. Several crimes were added, including all those stipulated in the Provisions of 1994, which were clarified and codified.

Under the Crimes against Control of National Border we find the following provisions:

Article 318 stipulates that anyone who makes arrangements for another person to cross a national border illegally shall be sentenced to fixed-term imprisonment of two to seven years and be fined. In any of the following cases, (s)he will be sentenced to no less than 7 years imprisonment (up to life), and may be fined or have property confiscated:

- Being a ringleader of a group that makes arrangements;
- Repeatedly making such arrangements for a large number of persons;
- Causing serious injury or death to persons for whom he makes arrangements;
- Depriving or restricting personal freedom of the persons for whom he makes arrangements;
- Resisting inspection by means of violence or threat;
- Gaining illegally from such enterprise; or
- Being involved in other exceptionally serious circumstances.

Anyone who commits the crimes detailed above or engages in criminal acts (murdering, injuring, raping or selling trafficked persons) can be sentenced to multiple penalties right up to the death sentence. According to the terms of this article, the Criminal Law punishes both individual traffickers and organized criminal groups.

[37] On June 6, 1993 , the *Golden Venture*, a human cargo ship, ran aground off New York's coast. Ten of the 286 illegal passengers drowned while trying to swim ashore.

Article 319 states that anyone who commits fraud to obtain a passport, visa or other travel documents in the name of labour export, economic exchange or trade towards helping other persons cross the national border illegally shall be sentenced 3-10 years imprisonment.

Article 320 stipulates that anyone who provides others with a counterfeit or altered passport, visa or other exit and entry documents or who sells such documents shall be sentenced to up to 5 years imprisonment.

Article 321 states that anyone who transports people secretly across the national border shall be sentenced to up to 5 years imprisonment and up to 10 years if they have

- Engaged repeatedly in transportation activities or transporting a large number of people;
- Used vessels, vehicles or other transportation equipment that does not meet safety standards;
- Made a large illegal gain, or
- Involved other people in exceptionally dangerous circumstances.

Article 322 stipulates that anyone who violates the laws or regulations concerning the national border or who crosses the national border illegally under 'serious circumstances' shall be fined and sentenced to imprisonment for up to one year. 'Serious circumstances' could mean crossing the border with forged documents, lying to or using violence against border authorities, causing diplomatic problems on the border; or crossing the border with the intention of evading punishment for other illegal activities[38].

The above-mentioned crimes are codified in the chapter on 'Crimes of Disrupting the Order of Social Administration'. The possibility that illegal immigrants suffer from human rights violations in crossing border is not taken in consideration. The aspects of immigrants' human rights seem to be neglected. By contrast, A specific stipulation on 'crime of abducting and trafficking women and children' is codified under the chapter of 'Crimes of Infringing Upon the Rights of the Person and the Democratic Rights of Citizens'

Article 240. Those abducting and trafficking women or children are to be sentenced to 5 to 10 years in prison plus fine. Those falling into one or more of the following cases are to be sentenced to 10 years of more in prison or to be given life sentences, in addition to fines or confiscation of property. Those committing especially serious crimes are to be sentenced to death in addition to confiscation of property.
(1) Primary elements of rings engaging in abducting and trafficking women or children;
(2) those abducting and trafficking more than three women and/or children;
(3) those raping abducted women;
(4) those seducing, tricking, or forcing abducted women into prostitution, or those selling abducted women to others who in turn force them into prostitution;
(5) those kidnapping women or children using force, coercion, or narcotics, for the purpose of selling them;

[38] According to the Supreme People's Court's interpretation (30/01/2002), « Serious Circumstances » includes any conduct jeopardizing the country's interest outside the PRC territory, crossing the national borders illegally more than three times, abducting others to cross the national borders illegally and crossing the national borders illegally within one year after an administrative sanction for the same reason, and other serious circumstances.

(6) those stealing or robbing infants or babies for the purpose of selling them;
(7) those causing abducted women or children, or their family members, to serious injuries or death, or causing other grave consequences;
(8) those selling abducted women or children outside the country.
Abducting and trafficking women or children refers to abducting, kidnapping, buying, selling, transporting, or transhipping women or children.

Thus the situation of trafficking, as in many countries at present, is limited by the legal provision that only women and children may be considered as victims. The aspects of the international definition of trafficking such as 'types of forced labour', 'debt bondage' and 'purpose of exploitation' are not covered under the act of trafficking.

Crossing the national border illegally is considered as a violation of law, despite the possibility that the person is subject to the use of force, deception or other forceful means from the trafficker. This legislation does not distinguish the situation of 'smuggling' from 'trafficking'. In this context there is a real risk that the migrants can be considered as in breach of national laws, or as accomplices of the traffickers, even in cases where they have been subject to deception or to physical and moral violence at the hands of the traffickers. Most migrants for example leave on a voluntary basis at the time of departure, and have to cooperate with the trafficking or smuggling agents in order to cross the border. But certain practices, such as the holding of forged documents or the violation of border control laws, can make them liable to prosecution under national laws.

2. Difficulties of law enforcement

In a three-month campaign during 2001 against illegal immigration and human trafficking in Shanghai, 728 Chinese citizens were seized, 60 of which were 'snakeheads'[39]. In Zhejiang, 15 'snakeheads' were sentenced to imprisonment ranging from six months to nine years for their involvement in a notorious human trafficking case: 25 stowaways suffocated in an airtight container and their bodies were thrown into the sea by the traffickers. In Jiangsu, 42 persons received sentences from two years to life for having organized and trafficked 713 illegal immigrants to foreign countries[40]. It is reported that in 2001, public security departments around the nation arrested a total of 9,465 persons for illegal border crossings and 1,405 'people smugglers'[41].

Although penalties are stiff, crimes continue to increase. This can be explained by the potentially high profits and relatively low risks of this 'business'. The average fee for a Chinese to be trafficked to Europe is US$ 25,000; each boat leaving the port is worth more than US$ 10 million. On December 7, 1999, the United States coast guard intercepted a vessel called the 'Wing Fung Lung' and 259 Chinese passengers were found inside. They reported that they had been charged US$10,000- 45,000 for the trip. Four crew members were identified as 'snakeheads'[42].

The following elements contribute to the ineffectiveness of current law enforcement:

[39] *People Daily* (11/11/2001).
[40] *People Daily* (07/01/2003).
[41] *People Daily* (31/03/2002).
[42] US INS Press Release (10/05/2000)

- The Chinese Penal Code is in principle territorial, and its application and effect are limited to within China. Traffickers have complex global networks but there are no harmonised global measures to combat human trafficking. National jurisdiction does not apply to criminals in other national territories. More treaties on extradition and judicial assistance in criminal cases are required. Law enforcement officials should be professionally trained. Intergovernmental cooperation is necessary not only to fight human trafficking, but also to eliminate forced labour. It is especially important to establish criteria for identifying forced labourers in receiving countries. As matters currently stand, they are often treated as 'smuggled people' or illegal immigrants.

- The second problem is the protection of trafficking victims. In practice, law enforcement does not distinguish victims from traffickers. Campaigns against human trafficking, like campaigns against other forms of crime, are effective only in the short term and are not sustainable. Quick inspection, prosecution and trial procedures are aimed at throwing as many 'criminals' as possible into prison. The questions that need to be answered are whether the people involved in trafficking are victims or criminals and whom the system is protecting. It is clear that identification and prosecution of traffickers relies heavily on the cooperation of trafficked persons, but if a trafficked person has to face criminal punishment, (s)he is unlikely to initiate cooperation. Therefore, more measures that protect victims should be introduced into legislation of both of the destination and home countries.

- Marketing efforts of traffickers are designed to encourage potential migrants to leave. They portray western countries as paradise and downplay the risks and hardships involved in getting there. Those who find themselves in misery are often reluctant to communicate this reality to their family for fear of 'losing face'. 'Face' is as important as human dignity in the Chinese ethic. This pertains in particular to women who work in the sex industry. They like to portray themselves as successful and continue sending money to their families. In so doing, they confirm the lies of the traffickers and smugglers and fuel the dreams of potential immigrants in China. It is important for the government to issue warnings and distribute accurate information on the dangers involved in trafficking or smuggling and to communicate the reality of forced labour abroad.

4. A limited legal conception of 'forced labour'

Although China has not yet ratified the International Labour Organization's Convention on Forced Labour 1930 (No.29) nor the Convention on the Abolition of Forced Labour 1957 (No.105), the country is making progress in eliminating forced labour within China. A *Crime of Forcing Employees to Work* was added in the 1997 amendment of the Chinese Penal Code, following the adoption of the Labour Law. Article 244 states that when an employer, in violation of the laws and regulations on labour administration, compels his or her employees to work by restricting their personal freedom, under serious circumstances, that employer will be sentenced to imprisonment of up to 3 years or criminal detention **and/or** a fine.

The shortcomings of this article are that it only applies where an employment relationship can be proven to exist between a 'working unit' and a 'worker' or 'labourer', as defined in the Labour Law. Bondage work, slavery and servitude may not be covered. Furthermore, the penalty is often

incommensurate with the severity of the circumstances involved. As an alternative penalty, a fine does not suffice; it should be considered as additional penalty to imprisonment.

Nevertheless, this new conception of criminal norms shows that the Chinese government is prepared to admit the existence of forced labour and to treat the illegal exaction of forced labour as a penal offence. The idea of incorporating these offences into criminal law was motivated by a need to address the forced labour concerns that could potentially arise in private and foreign investment enterprises at a time of economic transition. As mentioned before, the criminal law is territorial; crimes committed outside of China will be punished only when these crimes meet certain conditions. Victims of forced labour now enjoy a marginal degree of legal protection. What remains is for the civil law to be extended to cover working conditions.

Concluding comments: an agenda for research and action

The recent entry into force of the United Nations Convention against Transnational Organized Crime, and its respective protocols on trafficking and smuggling, has heightened the need for the clearest possible distinctions between the two offences of trafficking and smuggling. In both origin and destination countries legislation is needed to pave the way for improved law enforcement, better prevention of trafficking and smuggling, and also improved identification and protection of the victims of human trafficking. And as trafficking (and also smuggling) can result in the outcome of forced labour in the destination country, it is similarly important to have appropriate legislation on forced labour. This can enable the identification of forced labour cases, the prosecution of those responsible for exacting it, and the compensation or rehabilitation of victims.

These concerns are of major importance today for China, both for the Government of China at a time of profound social and economic transition, and for the growing numbers of Chinese who are now migrating overseas to all parts of the world. Moreover, a deeper knowledge of Chinese migration and overseas employment patterns, and of the particularities of the business practices of different Chinese ethnic groups, can help in conceptual terms to understand better the complex interlinkages between smuggling, trafficking and forced labour.

We have seen that China is now facing growing pressures for its citizens to migrate, not only from the well-known traditional poles of outmigration, but also from other and newer source areas. The Government of China has shown a determination to combat this irregular or illegal migration. It is continually making new efforts to adopt effective measures against it. However, many of these measures have had a rather narrow focus on the prevention of unlawful migration, and appear to have had limited efficacy. Preventive measures should not only be understood as reducing the present or future opportunities for organized criminal groups to abuse lawful markets and channels. They should also include a wider range of more strategic policies for lawful migration management, such as enlargement of legal access to the labour markets of destination countries, improved transparency of the migration process, or assistance to and protection of victims and witnesses.

The movement of irregular Chinese workers overseas is clearly a very complex phenomenon, involving a range of different recruiting, transporting and employment agents, and also involving large sums of money. To combat these human trafficking activities more effectively, the domestic laws limited by territoriality would appear to be insufficient, either in China itself or in the

destination countries. For more effective law enforcement, closer cooperation is needed between China and these destination countries. This can, for example, take the form of bilateral or even multilateral agreements However, such cooperation will not be realized effectively, unless the various countries are able to criminalize such activities, based on uniform approaches in both the terms of their criminal law and the scope of its application. At present, the narrow definition of "forced labour" and "human trafficking" used in Chinese legislation does not cover many aspects of transnational human trafficking in the sense of the Palermo Protocol to the United Nations Convention against Transnational Organized Crime. Nor does it correspond to the need to combat the gravity of such criminal activities.

At the same time the human rights of migrant workers need to be protected, regardless of their situation and status. The ILO's own Conventions on migrant workers can provide an important basis for such protection. Moreover, the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families entered into force on 1 July 2003, so far with only a small number of ratifications. This Convention divides migrant workers into different categories, and provides basic human rights protection to migrant workers and their families. At present however, neither China nor most of the destination countries for Chinese migrants have ratified this Convention.

To conclude, it is possible to identify a multiple agenda for future research and action. Further case studies are needed on the labour conditions to which Chinese migrants are exposed in different economic or industrial sectors of a range of destination countries. This research needs wherever possible to be carried out with the participation of Chinese ethnic communities, with a focus on their own perceptions and aspirations. Awareness-raising programmes on human and labour rights are also needed among these communities, ideally with the participation of employers' and workers' organizations in the destination countries.

In China, it is important that key actors in the law and policy reform process – quite active at the present time on issues including human trafficking – should be well informed as to the reality of the conditions experienced by Chinese overseas migrant workers, including the process of recruitment and transport as well as employment conditions in the destination country.

Finally there is a need for integrated programmes of cooperation between China and key destination countries, aiming to improve the conditions of Chinese workers overseas and to avoid forced labour situations. Apart from cooperation over criminal law enforcement, as mentioned above, there can be a focus on labour market analysis, systematic exchange of information through awareness-raising programmes, and also direct support to Chinese workers and their families where cases of forced labour abuse are detected. The ILO itself could play an important role in this regard, through well prepared pilot programmes with a range of participating countries.

The harsh conditions endured by Chinese workers overseas may be a cause of growing concern worldwide. But under present labour market conditions, from either the supply or the demand side, it remains unlikely that the "diaspora" will abate in the foreseeable future. The emphasis must now be on the better management of Chinese migration, with full respect for the principles of human and labour rights.

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