

# Engaging the Private Sector to End Human Trafficking

A Resource Guide for NGOs



**Suzanne Hoff & Katrin McGauran**

October 2015

## Colophon

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La Strada International (LSI) is a leading and value-driven network uniting European NGOs, operating independently and from a grass root level, to ensure a world without trafficking in human beings where human rights are respected. LSI monitors European anti-trafficking policies and measures and promotes human rights protection of trafficked persons through lobby and advocacy, data collection and analytical research and capacity building.

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## About this Resource Guide

This Resource Guide, was developed within the framework of the project NGOs & Co.: NGO - Business engagement in addressing human trafficking. We would like to thank all organisations that partnered in the project including: La Strada Czech Republic, La Strada Foundation against Trafficking in Persons and Slavery, Animus Association Foundation, Association Accompagnement, Lieux d'accueil, Carrefour éducatif et social (ALC), Association for Action against Violence and Trafficking in Human Beings "Open Gate", Macedonia, Association for Developing Alternative Practices for Reintegration and Education (ADPARE), Associazione On the Road Onlus, Coördinatiecentrum Mensenhandel (CoMensha), Defence for Children International Netherlands/ECPAT, End Human Trafficking Now, FIZ – Advocacy and Support for Migrant Women and Victims of Trafficking, Gender Perspectives, German Nationwide Activist Coordination Group Combating Trafficking in Women and Violence against Women in the Process of Migration (KOK), Human Resource Development Foundation (HRDF), International Labour Organisation (ILO) - Brussel office, International Organization for Migration (IOM) - Brussels office, International Women's Rights Centre La Strada Ukraine, KISA - Action for Equality, Support, Antiracism, LEFÖ - Beratung, Bildung und Begleitung für Migrantinnen, Living for Tomorrow, Pag-Asa - Centre for shelter and assistance to victims of human trafficking, Projecto Esperanza, FairWork, and the United Nations Office in Drug and Crime (UNODC).

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The content of this publication is the sole responsibility of La Strada International and SOMO.

## Glossary

Agency worker	A worker who is recruited to work for an employer by an agency and has a contract with that agency rather than the hiring company.
Buyer	An international company that purchases or retails a product from a manufacturer based in a sourcing country.
Certification	Certifications (e.g. the SA8000 standard, developed by Social Accountability International) should guarantee that a certified facility meets international standards with regard to human and labour rights.
Civil society	Includes registered charities, non-governmental organisations (NGOs), community groups, women’s organisations, faith-based organisations, trade unions, social movements, coalitions and advocacy groups.
Destination country	The host country that receives migrant workers or to which people are trafficked, and the location of their employment or exploitation.
End user	The company that is the end user of recruited or sub-contracted labour or products in a supply chain.
Gangmasters	Abusive recruiters or labour providers, term used in Italy and the UK.
Hiring company	The company that is the end user of recruited or sub-contracted labour.
Home country / country of origin	The home country of migrant workers or trafficked persons.
Labour intermediary	See recruitment agency.
Multistakeholder Initiative	Processes in which business, NGOs, trade unions and possibly other stakeholder groups interact to make business processes more socially and/or environmentally sustainable.
Private sector	Legal entities doing business with a profit motive. This can range from small- to medium-sized businesses to international corporations and their suppliers.
Recruitment agency	An agency that recruits workers for other employers, often in a cross-border context. Agencies can operate in migrant home countries, destination countries or third countries. Depending on legal arrangements in countries and contracts between businesses, recruitment agencies can be responsible for migrant workers’ immigration, employment, contracts, wages, treatment and accommodation.
Sub-contractor	One who takes a portion of a contract from the principal contractor or from another sub-contractor.
Supplier	An organisation that provides a product to a company or buyer. Note there are many and complex tiers of suppliers between primary products and end buyers.
Supply chain	A channel of production, value-addition and distribution, beginning with the supplier of materials or components, extending through a manufacturing process to the distributor and retailer, and ultimately to the consumer.
Verification	The process of checking whether a business is in compliance with its commitments or legal obligations.

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## Abbreviations

AEPs	Athens Ethical Principles
ALP	Association of Labour Providers (United Kingdom)
CFMW	Commission for Filipino Migrant Workers
CIETT	International Confederation of Private Employment Agencies
CIS	Commonwealth of Independent States
CSO	Civil society organisation
CSR	Corporate social responsibility
ECCJ	European Coalition for Corporate Justice
EICC	Electronic Industry Citizenship Coalition
ECPAT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
ETI	Ethical Trade Initiative
EU	European Union
EuroCIETT	European Confederation of Private Employment Agencies
FIDH	International Federation for Human Rights
FNV	Federatie Nederlandse Vakbeweging (Dutch Federation of Trade Unions)
FSC	Forest Stewardship Council
FWF	Fair Wear Foundation
GFA	Global Framework Agreement
GLA	Gangmasters Licensing Authority (United Kingdom)
HRC	Human Rights Council
IALM	International Association on Labour Migration
ICFTU	International Confederation of Free Trade Unions
IHRB	Institute for Human Rights and Business
ILO	International Labour Organization
IOM	International Organization for Migration



IRIS	International Recruitment Integrity System
ISO	International Organization for Standardization
ITUC	International Trade Union Confederation
LSI	La Strada International
NAP	National Action Plan
NGO	Non-governmental organisation
MEAT	Most Economically Advantageous Tender
MNC	Multinational corporation
MNE	Multinational enterprise
MSF	Médecins Sans Frontières
MSI	Multi-stakeholder initiative
NAP	National Action Plan
NCP	National Contact Point
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
PICUM	Platform for International Cooperation on Undocumented Migrants
THB	Trafficking in human beings
TNI	Transnational Institute
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNCTC	United Nations Centre on Transnational Corporations
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNODC	United Nations Office on Drugs and Crime
WSR	Worker-driven social responsibility

# 1 Engaging with the private sector to end human trafficking

*“Non-State actors are involved in, and profit from, trafficking-related exploitation including large corporations that benefit from cheap, exploited labour in their supply chain and recruitment agencies that channel vulnerable individuals into exploitation. [...] It is in relation to these individuals and groups that significant challenges remain in securing accountability.”*

*Joy Ngozi Ezeilo, former Special Rapporteur for the UN Human Rights Council on trafficking in persons, especially women and children, 2014<sup>1</sup>*

## 1.1 Why this Resource Guide?

Anti-trafficking non-governmental organisations (NGOs) and networks have so far not focused much on engaging the private sector on its role in trafficking in human beings (THB). Because the legal definition of human trafficking has historically been restricted to exploitation in the sex industry, anti-trafficking action has, until recently, been largely tackled and framed in the context of women’s rights, debates on sex work and within criminal law. This changed in 2000 when the UN Palermo Protocol<sup>2</sup> extended the definition of human trafficking to include all forms of forced labour and slavery-like practices in all economic sectors. This has made labour law and relevant stakeholders such as trade unions central to this issue, and has merged debates on human trafficking and forced labour. The EU Anti-trafficking Directive from 2011 reaffirmed this.

The legacy of human trafficking being regarded as a problem that is exclusive to the sex industry is still apparent. The majority of the cases identified and registered still relate to exploitation in the sex industry,<sup>3</sup> even though it is known that labour exploitation occurs in many different sectors. More awareness and attention is needed for all forms of human trafficking, which is often still framed as only a criminal justice issue, whilst the relevance of labour rights is underreported. This is also perpetuated by the fact that anti-trafficking organisations – and indeed other stakeholders such as service providers, municipalities and government institutions – have developed collaborative and well-functioning multi-stakeholder networks specifically dealing with prevention and direct support

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- 1 UN Human Rights Council, Report of the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo. Addendum. Stocktaking exercise on the work of the mandate on its tenth anniversary, A/HRC/26/37/Add.2, March 2014, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-37-Add2\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-37-Add2_en.doc), para. 91.
  - 2 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred to as the Trafficking Protocol or UN TIP Protocol) is a protocol to the Convention against Transnational Organised Crime that entered into force in 2003. For more background, see <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>
  - 3 The Eurostat report of the European Commission on human trafficking of 2014 reveals that data on registered victims disaggregated by different forms of exploitation for all three reference years (2010-2012) showed that the majority (69%) of registered victims were trafficked for the purpose of sexual exploitation, 19% for labour exploitation and 12% for other forms of exploitation such as the removal of organs, criminal activities or selling of children.

for trafficked persons. Anti-trafficking NGOs, such as members of the European anti-trafficking network La Strada International (LSI),<sup>4</sup> often provide services for trafficked people, such as shelter, medical and legal advice, as well as advocacy directed at states to ensure improved legislation for the rights of trafficked people. Their networks include law enforcement, judiciaries, criminal law experts, social services (women's shelters, psychologists) or immigration officials and organisations that directly deal with the identification, support, court cases, return and reintegration of trafficked persons. The framing of human trafficking in these networks and practices therefore naturally refers to the focus of these stakeholders and relevant laws.

The extension of human trafficking so that it is generally understood to include labour exploitation in sectors other than the sex industry has meant that the private sector has become seen as a more important stakeholder in anti-trafficking work. This has now been recognised by all relevant organisations dealing with the fight against human trafficking, as the above quote by the UN Special Rapporteur on trafficking in persons indicates.

Anti-trafficking NGOs have also started to acknowledge the need to engage the private sector. First, as increasing requests for assistance are received for those exploited in different labour sectors; and second, as they are being confronted with cases in which the private sector plays a role in the exploitation of people. One example of this is the tree workers case in the Czech Republic, where at least 2,000 workers, mainly from Vietnam, but also from Romania, Bulgaria, Hungary, Slovakia and the Ukraine, have been forced to work under very harsh conditions during 2009 and 2010 in the state forest of the Czech Republic, recruited and employed by legal agencies.<sup>5</sup>

In the framework of the NGOs & Co project,<sup>6</sup> LSI carried out a survey in 2013, among 27 European anti-trafficking NGOs, including LSI members, assessing their overall level of engagement with the private sector, as well as the perceived obstacles, enablers and lessons learned in partnering with businesses. This assessment revealed that, although 80% of the respondent NGOs have experience in targeting the private sector and claim to see the private sector as one of their key target groups, less than half of the participants in the survey recognised the importance of such work in their Strategic Plans, and only 11% (3 out of 27 organisations) have a specific staff person dedicated to engaging with the private sector.<sup>7</sup> In short, there is little capacity for engagement or indeed knowledge of the different strategies of private sector engagement applied in other civil society networks.

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4 See <http://lastradainternational.org/>

5 See further information at <http://thetreeworkerscase.com/the-case/>

6 The project, funded by the Prevention of and Fight Against Crime Programme of the European Union, critically addressed the issue of (employers' and consumers') demand and supply for products and services that involve the use of forced and trafficked labour by building the capacity of anti-trafficking organisations on the role of the private sector in human trafficking and strengthening the cooperation between these organisations and the business sector in effectively preventing and addressing human trafficking. For more information about the project, see <http://lastradainternational.org/about-lsi/projects/ngos+co>

7 The 'Assessment Results: NGO initiatives and practices in engaging the business sector in addressing human trafficking' is published at <http://lastradainternational.org/doc-center/3018/assessment-results-ngo-initiatives-and-practices-in-engaging-the-business-sector-in-addressing-human-trafficking> .

This Resource Guide aims to close that gap by providing guidance and background information for anti-trafficking NGOs in Europe on the role of the private sector in trafficking in human beings. It provides facts and figures on human trafficking and forced labour in Europe, an explanation of the overlaps and differences in the legal definitions of human trafficking and forced labour, as well as numerous case studies on human trafficking and forced labour in Europe throughout the text. It also provides some strategic guidance on whether and how anti-trafficking organisations can best engage with the private sector, if they choose to involve this new stakeholder in their work.

## 1.2 Methodology

The idea and structure of the Resource Guide was developed on the basis of La Strada International's experience in the European anti-trafficking field, and the recognition of the increasing importance of private actors therein. A survey was conducted with La Strada member and partner organisations, which identified priorities, information gaps and needs. On the basis of this, the focus of this Resource Guide was decided by a project team in consultation with a project Steering Group,<sup>8</sup> encompassing leading organisations and experts in the field.

The Resource Guide's focus and structure was then tested in a series of discussions in workshops at the 7<sup>th</sup> La Strada International NGO Platform that was held on 19-20 June 2014 in Sofia, Bulgaria.<sup>9</sup>

The Resource Guide is based on extensive desk research, using sources from academics, international institutions and NGOs. Cases of exploitation mentioned in this report were drawn from existing literature; some cases are based on additional desk research carried out by the Centre for Research on Multinational Corporations (SOMO, *Stiching Onderzoek Multinationale Ondernemingen*) using NGO and trade union reports and news sources.

A number of sources deserve highlighting here. The Chapters on the legal frameworks and facts and figures were particularly informed by documentation and research by the ILO and anti-trafficking NGOs.<sup>10</sup> Chapter 3 draws on legal opinions by Andrees, Jägers and Rijken,<sup>11</sup> Skrivankova<sup>12</sup> and Van

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8 Nadia Kozhouharova (La Strada Bulgaria), Irena Konecna (La Strada Czech Republic), Irena Dawid (La Strada Poland), Katrin McGauran (SOMO), Suzanne Hoff (LSI), Theo Noten (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes – ECPAT), Irene Wintermayr (ILO), Irina Todorova (IOM), Silke Albert (UN Office on Drugs and Crime – UNODC), Sandra Claassen (Fairwork).

9 See <http://us3.campaign-archive2.com/?u=68f02e29844b94aad760e929d&id=8ca5b88673&e=ef408f3075> for a more detailed description of the workshops.

10 ILO, Andrees, B., *Forced labour and trafficking in Europe: how people are trapped in, live through and come out*, 2008, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_090548.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf)

11 Jägers & Rijken, 'Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations', *Northwestern Journal of International Human Rights*, Volume 12, issue 1, 2014, <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1167&context=njihr>

12 Skrivankova, K., *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation*, 2010, Joseph Rowntree Foundation, <http://www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf>

Damme and Vermeulen<sup>13</sup>. Also worth highlighting is Dottridge's extensive report for the Organization for Security and Co-operation in Europe (OSCE), which outlines much of the same legal and non-binding frameworks covered in this Resource Guide.<sup>14</sup> Two reports by the former Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, were particularly insightful and have been used widely in this report.<sup>15</sup>

The ILO, UN Office on Drugs and Crime (UNODC) and the the International Organization for Migration (IOM) and the research centre Verité have produced numerous informative and practical guidelines on corporate accountability for the recruitment sector, which this Resource Guide draws on extensively. An article by Todres<sup>16</sup> discusses in detail the private sector's role in prevention work and the legal implication for this. The assessment on many of the non-binding businesses and human rights initiatives relevant to address human trafficking mentioned in this Resource Guide are drawn from experts, individuals and CSOs that have researched and campaigned on improving corporate accountability for a number of decades now. These include Anti-Slavery International (ASI), the Clean Clothes Campaign (CCC), the European Coalition for Corporate Justice (ECCJ) and SOMO. A very useful overview of the current state of affairs and extensive background material is provided by the Business and Human Rights Resource Centre. Chapter 7 on NGO strategies regarding private sector engagement draws on publications from the Canadian Council for International Cooperation and the Clean Clothes Campaign and numerous unpublished workshop materials and civil society discussions, including those held during LSI NGO Platform sessions mentioned above.

Finally, the Resource Guide was reviewed by a number of experts from different fields of expertise, mentioned in the acknowledgements.

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- 13 Van Damme & Vermeulen, 'Towards an EU Strategy to Combat Trafficking and Labor Exploitation in the Supply Chain. Connecting Corporate Criminal Liability and State-Imposed Self-Regulation Through Due Diligence?', in Brodowski et al. (eds.), *Regulating Corporate Criminal Liability*, 2014, Springer International Publishing Switzerland.
  - 14 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Dottridge, M., *Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector*, Occasional Paper Series No.7, November 2014, <http://www.osce.org/secretariat/126305>
  - 15 UN Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo. Addendum. Stocktaking exercise on the work of the mandate on its tenth anniversary, A/HRC/26/37/Add.2, March 2014, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-37-Add2\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-37-Add2_en.doc); Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Integration of a human rights-based approach in measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and which leads to human trafficking, 23rd Session (HRC), 2013, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/122/82/PDF/G1312282.pdf?OpenElement>
  - 16 Jonathan Todres, 'The Private Sector's Pivotal Role in Combating Human Trafficking', *California Law Review Circuit*, Vol. 3, February 2012, pp. 190-208, <http://ssrn.com/abstract=2002957>

### 1.3 Terminology

Because this Resource Guide deals with legal issues, practices and networks that are not central to the work of anti-trafficking NGOs (yet), the terminology used in the text might raise a number of questions with readers. The term civil society organisation (CSO), for instance, is often used by groups in the business and human rights field to refer to a broad group of actors, such as charities, non-governmental organisations (NGOs), community groups, women's organisations, faith-based organisations, trade unions, social movements, coalitions and advocacy groups. This Guide might sometimes refer to the CSOs when a broader group of actors is involved. Anti-trafficking groups are referred to as NGOs in the text, simply because anti-trafficking organisations often use this term to refer to their own partners and networks, such as the La Strada International NGO Platform.

Other terms used in the text that might not be common in literature on human trafficking but rather relate to the business and human rights field, such as the global governance gap, supply chains or multistakeholder initiatives, are explained in the text or in the Glossary to this Resource Guide.

### 1.4 Limitations

A number of areas have been excluded from the focus of this Guide. These include children's rights, child trafficking, women's rights and a specific focus on trafficking for exploitation in the sex industry. The gender dimension of trafficking in human beings is obviously central to existing debates and preventive measures must take into consideration women's rights and the improvement of the socio-economic position of women in source and destination countries. LSI and members and NGO partners have published extensively on the subject. A specific gender focus in engaging the private sector, however, would have extended the remit of this Guide.

Children's rights is another area that requires special attention because trafficking in children affects one of the most vulnerable sections of society. Again, a focus on trafficking in children would have extended the remit of this Guide. However, there are numerous guidelines established for the private sector on this issue; the work of ECPAT<sup>17</sup> is notable here.

Finally, this Guide focuses on human trafficking in Europe and as such does not cover initiatives and legal frameworks outside of Europe. A plethora of initiatives and extensive experience exists in places such as Asia and the US on private sector engagement to prevent human trafficking. The Californian Transparency in Supply Chains Act,<sup>18</sup> for instance, is often mentioned as one of the first instruments specifically demanding corporations to report on their due diligence to eradicate human trafficking from their supply chain, but it is not analysed in detail here.

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<sup>17</sup> End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes. See <http://www.ecpat.net/>

<sup>18</sup> See, for instance, Kamala D. Harris, Attorney General, California Department of Justice, The California Transparency in Supply Chains Act. A Resource Guide, 2015, <https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf>

## 1.5 Structure

This Chapter (Chapter 1) explains the origins and the methodology used in the writing of this Resource Guide. The Chapter also points out the terminology used and limitations as well as the structure of the publication.

Chapter 2 provides some context to the role of business in human trafficking. The Chapter discusses the implications that the new definition of human trafficking in the 2000 UN Palermo Protocol has on our understanding of human trafficking in all economic sectors and not only the sex industry. The concepts of the global governance gap and of corporate accountability are also explained from the perspective of CSOs that are working to hold corporations to account.

Chapter 3 provides facts and figures on human trafficking in Europe, largely sourced from the International Labour Organization (ILO). The legal definitions of forced labour and human trafficking and their overlaps and differences are explained, based on the opinions of academics and practitioners. Economic sectors in which human trafficking is known to occur are identified and examples and case studies are outlined, based on defined indicators. The chapter focuses on the role of the recruitment sector due to its central role in providing labour that is potentially exploited. The gradual liberalisation of labour intermediaries is highlighted as a regulatory gap that contributes to trafficking for labour exploitation.

Chapter 4 looks at the role that corporations could potentially play in contributing to and preventing human trafficking. The demand for a cheap and docile labour force is one of the root causes of trafficking and as such corporations are central in driving the demand for trafficking. However, different sections of the private sector have different roles in this process, depending on whether they buy services and products produced from exploited labour through supply chains or sub-contracting, whether they directly employ trafficked workers or recruit vulnerable workers to serve the global labour market. Human trafficking is a profitable business, and increasingly calls are being made to improve the confiscation of the proceeds of that crime and use these to improve access to justice for victims. A number of steps are outlined that businesses can take to avoid contributing to human trafficking, based on existing guidelines and toolkits.

Chapter 5 outlines UN, ILO and EU business and human rights frameworks and identifies the state's duty to protect human rights with regard to business-related violations relevant to anti-trafficking work. To understand the positioning of corporate accountability campaigns and movements in current business and human rights initiatives, the Chapter discusses civil society views on binding vs. non-binding frameworks and provides an overview of some relevant civil society networks. A number of themes are identified that anti-trafficking NGOs can use to approach the role of businesses in human trafficking, namely, business operations related to public funds, rules preventing abusive recruitment, the legal protection of migrants and labour inspections.

Chapter 6 provides an overview of existing non-binding business and human rights frameworks at UN, Organisation for Economic Co-operation and Development (OECD) and EU level, as well as relevant voluntary business sector initiatives. The five core elements of the internationally accepted United National Guiding Principle (UNGPs) framework are explained and relevant concepts are

discussed, such as the corporate responsibility to respect human rights through exercising due diligence. Voluntary initiatives relevant to the recruitment sector and migrant workers are highlighted, as they can form a reference point for good business practices for anti-trafficking NGOs. Again, the recruitment sector plays an important role in the prevention of human trafficking and a number of guidelines for ethical recruitment are outlined.

Chapter 7 explains which strategies NGOs can pursue to engage the private sector to tackle human trafficking and to hold corporations accountable. Specifically, the Chapter describes the questions NGOs should ask themselves before deciding which strategy to take, outlines different possible NGO strategies, looks at possible dilemmas and risks related to these strategies and provides an example of engagement from the meat industry in the UK. Despite the many challenges that exist with regard to adding a new stakeholder to anti-trafficking work, the Chapter concludes that there is a clear need to engage the private sector in anti-trafficking work. In the coming years, NGOs should therefore think strategically and critically about the role of the private sector and define how they want to engage businesses in their work.



## 2 Context

### 2.1 What is the global governance gap?

At the centre of the issues discussed in this Resource Guide is the so-called global governance gap: while a regulatory framework protecting corporate interests is maintained and expanded at the national and international level,<sup>19</sup> effective monitoring of labour conditions in supply chains is lacking. There is no international jurisdiction to hold companies accountable for human rights violations that occur in global business operations.<sup>20</sup> At the national level, regulation and monitoring has also been weakened: labour inspection systems have been reduced in many countries or abolished entirely. In 2008 the ILO estimated a shortfall of around 40,000 labour inspectors worldwide, for instance. About half of this global shortfall exists in industrialised economies, which are destination countries for trafficked labour.<sup>21</sup>

This situation leads to general impunity with regard to corporate conduct. Workers do not have access to effective grievance mechanisms due to weak legal protection and state enforcement mechanisms fail. This gap in regulation and monitoring of employment relationships, and lack of enforcement when human rights are violated by corporate conduct in supply chains, is often called the global governance gap.

The political-economic background to the creation of this governance gap is the internationalisation of business operation and the creation of multinational corporations and the parallel abolition of protectionist economic policies in the 1980s. This opened domestic markets and smaller companies up to global competition. At the same time, the abolition of the state monopoly on recruitment from the 1990s onwards led to the rise of recruitment agencies, which allowed for labour recruitment to be exploited for profit-making, and increased labour exploitation.<sup>22</sup>

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19 See, for instance, BothENDS/Friends of the Earth Netherlands/SOMO/TNI, *Socialising Losses, Privatising Gains. How Dutch investment treaties harm the public interest*, February 2015, <http://www.tni.org/briefing/socialising-losses-privatising-gains>

20 Although decisions by the European Court of Human Rights have held states responsible for a number of human rights infringements outside of their national territories (see Chapter 5.3).

21 The Vienna Forum to fight Human Trafficking, 13-15 February 2008, Austria Centre Vienna, Background Paper, 019 Workshop: The Roles of Employers' Organizations, Businesses and Trade Unions in Combating Trafficking for Labour Exploitation, <http://www.unodc.org/documents/human-trafficking/2008/BP019TheRolesofEmployersOrganizationsILO.pdf>, pp. 4-5.

22 Fudge, J., Strauss, K. (eds.), *Temporary Work, Agencies and Unfree Labour. Insecurity in the New World of Work*, 2014, Routledge, New York.

**Box 1: Supply chains and buying power of globally operating businesses**

Large corporations set up global supply chains, with subsidiaries or sub-contractors in low-wage countries. Major parts of whole industries – manufacturing and labour intensive sectors such as textile and garment production but also manufacturing industries such as assembly and parts production in various sectors – have been relocated to lower income countries or sub-contracted to small and flexible suppliers.

As a consequence, value chains have grown immensely in size, geographical reach and complexity. Within these value chains, there are different types of businesses and stark power imbalances. Large buyers put pressure on small suppliers to produce in a cheap and flexible manner that serves changing production patterns. Suppliers compete for clients on the global market where buyers can drop suppliers from one day to the next for cheaper ones in different countries. The pricing policy and buying power of actors at the top of the supply chain thus directly influences working conditions, can lead to labour exploitation, or prevent it.

Because of these power imbalances and the direct influence of large buyers on wage levels and working conditions, NGOs often choose to target them in campaigns, rather than the producers. It is important however, in particular when aiming to tackle labour exploitation, to be aware of all parts of a supply chain, including the practices of suppliers to sub-contract parts of the work to informal suppliers (private households or smaller production sites operating in the informal economy).

## 2.2 Corporate accountability: rights for people, rules for business

There are a number of international standards or definitions for corporate social responsibility (CSR), notably from the International Organization for Standardization (ISO)<sup>23</sup> and the International Labour Organization (ILO).<sup>24</sup> The ISO defines CSR as the responsibility of an organisation for the impacts of its decisions and activities<sup>25</sup> on society and the environment, through transparent and ethical behaviour.<sup>26</sup>

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23 International Standard (ISO, 2010) Guidance on social responsibility, 26000:2010, <http://www.iso.org/iso/home/standards/iso26000.htm>, pp. 14-15.

24 International Labour Organization, Resource guide on corporate social responsibility (CSR), <http://www.ilo.org/public/english/support/lib/resource/subject/csr.htm> (accessed on 25 February 2014).

25 Activities include products, services and processes.

26 International Standard (ISO, 2010) Guidance on social responsibility, 26000:2010, <http://www.iso.org/iso/home/standards/iso26000.htm>, pages 14-15.

This behaviour should:

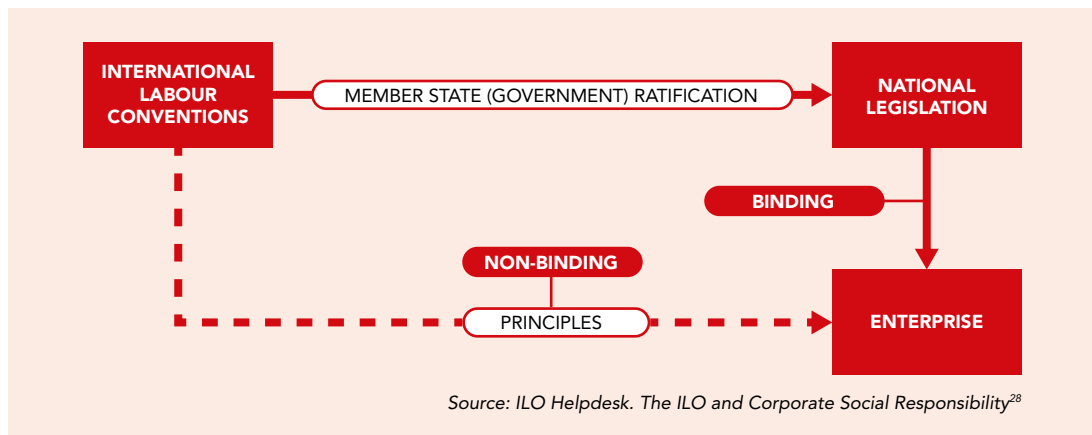
- ❑ contribute to sustainable development, including health and the welfare of society
- ❑ take into account the expectations of stakeholders
- ❑ be in compliance with applicable law and consistent with international norms of behaviour
- ❑ be integrated throughout the organisation and practised in its relationships<sup>27</sup>

The ILO defines CSR as follows:

- ❑ voluntary: enterprises voluntarily adopt socially responsible conduct by going beyond their legal obligations
- ❑ an integral part of company management
- ❑ systematic, not occasional
- ❑ linked with sustainable development
- ❑ not a substitute for the role of government or for collective bargaining or industrial relations

Comparing the ISO and ILO definitions, it is noteworthy that ILO puts a central emphasis on the voluntary nature of CSR, not because it believes CSR should not be binding, but because it stresses that CSR is *not a replacement* of binding legislation. The ILO thus strives towards binding legislation.

**Figure 1: ILO on the role of binding vs. non-binding regulation of businesses**



The call for binding rules for businesses is reflected in CSO debates (see Chapter 5.2). Whilst the origins of CSR lie in philanthropic activities that are voluntary in nature, NGOs and trade unions have long advocated that CSR is not a voluntary tool but a binding obligation, because corporations, just like individuals, should be accountable with regard to their societal impact of their operations and business conduct. Many NGOs therefore use the term corporate accountability to signify that corporations are accountable to society and have obligations to serve the public good and respect human rights.

<sup>27</sup> Relationships refer to an organisation's activities within its sphere of influence.

<sup>28</sup> See [http://www.ilo.org/wcmsp5/groups/public/@ed\\_emp/@emp\\_ent/@multi/documents/publication/wcms\\_116336.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/@multi/documents/publication/wcms_116336.pdf)

There is no official definition of corporate accountability, but the slogan 'Rights for People. Rules for Business',<sup>29</sup> developed by the NGO network European Coalition for Corporate Justice (ECCJ), points to a rights-based approach to advocacy, which many anti-trafficking NGOs also follow in their prevention and advocacy work.

This implies the demand that governments should develop laws to hold companies, their subsidiaries and their directors legally responsible for the social and environmental impacts of their operations. Moreover, advocates of the corporate accountability movement believe that, rather than relying on good intentions and the benevolence of corporations, legal measures are necessary to enable those who are negatively impacted by business operations to seek justice in international and national courts, with successful convictions leading to fines, compensation and prison sentences for directors or other responsible individuals.

In the past two decades, many CSOs have built up significant practical skills and knowledge about social and environmental issues. They engage with small and big businesses on a regular basis, applying multiple strategies to achieve goals that are compatible with their mission, examples of which are given throughout this Resource Guide.



*The European Coalition for Corporate Justice (ECCJ) brings together NGOs, trade unions and coalitions promoting corporate social responsibility from all over Europe. It works with the European institutions to address the environmental, social and human rights costs of EU-based companies, as well as increasing public awareness of this problem and addressing the role of the EU to regulate business.*<sup>30</sup>

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29 European Coalition for Corporate Justice, Press release – Citizens and policy makers urge greater corporate accountability, 12 July 2011, <http://www.corporatejustice.org/citizens-and-policy-makers-urge.html?lang=es>

30 European Coalition for Corporate Justice (ECCJ), About us, <http://www.corporatejustice.org/-about-eccj,012-.html?lang=en>

## 3 Human trafficking and forced labour in Europe: facts & figures

This chapter provides background information and definitions on human trafficking and forced labour in Europe. The case studies and examples presented in this Resource Guide relate to both human trafficking and forced labour, because, although there are legal differences between the two, in practice there is often no clear distinction.

It is generally recognised that human trafficking and forced labour largely overlap and are both connected to the problem of labour exploitation and its root causes such as the economic realities of profit maximisation in the context of poverty, flexible labour relations and/or gender discrimination. The private sector plays a distinctive role in this continuum, as the case studies presented in this chapter will illustrate.

In summary, in this chapter we will:

- ❑ Provide you with the legal definitions of human trafficking and forced labour and explain the differences in and interpretations of human trafficking and forced labour/labour exploitation.
- ❑ Give available figures and estimations about human trafficking and forced labour in Europe.
- ❑ Explain which sectors are particularly vulnerable to human trafficking and forced labour/labour exploitation and why.
- ❑ Provide some cases studies to illustrate the nature of labour exploitation in these sectors.

### 3.1 Legal definitions

#### 3.1.1 Human trafficking definition

In the anti-trafficking field, researchers, international institutions and NGOs generally use the UN definition of human trafficking, which is laid down in the UN (Palermo) Protocol of 2000.<sup>31</sup> According to this definition, human trafficking involves the movement of a person, often but not always across international borders, for the purpose of exploitation, which can include forced labour. The Palermo Protocol was important for bringing together debates and actors in the anti-trafficking and forced labour field:

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31 “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, 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 receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” United Nations, Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime, United Nations, 2000, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

*“The Palermo Protocol brought about a major change by including various forms of labor exploitation under the same umbrella as sexual exploitation. Up until that time the definition of THB [trafficking in human beings] mainly concerned THB for sexual exploitation. The inclusion of exploitation in labor and services in the THB discourse seriously enlarged the group of actors involved in THB both on the active and the repressive side (both perpetrators and those involved in combating THB). It also brought THB into the legal and regulated part of society as labor exploitation can take place in legally established, well-regulated and monitored businesses.”<sup>32</sup>*

The Palermo Protocol definition emphasises three elements of human trafficking and various forms of coercion:

1. **Activities**, including each phase of the trafficking cycle, namely recruitment, transportation, transfer, harbouring or receipt of a person;
2. **Means**, including the threat or use of force, deception, abduction, coercion, fraud, threats and abuse of power or of a position of vulnerability;
3. **Purpose**, which is exploitation, including forced labour, slavery and servitude.

An important aspect of human trafficking is the intended purpose: even if the purpose, that is the labour exploitation itself, has not occurred yet, trafficking can be found and prosecuted when it is clear that the intended purpose is exploitation. Trafficking has thus been summarised as “a process of bringing someone into a situation of exploitation, a series of actions with the final purpose being a form [of] exploitation (such as forced labour)”.<sup>33</sup>

The Protocol distinguishes between trafficking in children (under 18 years of age) and adults. The recruitment and movement of a child for exploitation by a third party is considered to be “trafficking in persons” even if it does not involve the illicit means identified in the definition. The Protocol also explains that “the consent of a victim of trafficking in persons to the intended exploitation [...] shall be irrelevant where any of the means set forth [above] are established”.<sup>34</sup>

### 3.1.2 Forced labour definition

The internationally recognised definition of forced or compulsory labour can be found in the Forced Labour Convention of ILO Convention No. 29 (1930). According to Article 2.1 of this Convention, forced labour is “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.<sup>35</sup>

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32 Jägers & Rijken, ‘Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations,’ *Northwestern Journal of International Human Rights*, Volume 12, issue 1, 2014, <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1167&context=njihr>, p. 49.

33 Skrivankova, K., *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation*, 2010, Joseph Rowntree Foundation, <http://www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf>, p. 8.

34 Article 3b of the Palermo Protocol

35 See Article 2 of the Convention at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029)

The ILO definition includes all work or service, including all types of work, service and employment, regardless of the industry, sector or occupation within which it is found, and encompasses legal and formal employment as well as illegal and informal employment. The definition further refers to any person; to adults as well as children, regardless of their nationality, and it is considered irrelevant whether the person is a national of the country in which the forced labour case has been identified.

In 2005, the ILO gave guidance on the interpretation of the definition of forced labour “and pleaded for a broad application including situations in which a person cannot freely leave a job”.<sup>36</sup> The involuntary nature of the exploitation thus covers changing situations. For instance, employment might start on a voluntary basis but become involuntary if a person wants to quit after some time but is not allowed to do so or is disabled from doing so due to a number of external circumstances. The ILO interprets the terms “offered voluntarily” as including workers’ freedom to leave their employment at any time, and specifies that a denial of this freedom includes false promises made by an employer or recruiter in order to induce a worker to take a job that he or she would not otherwise have accepted.<sup>37</sup> Furthermore, the involuntariness of forced labour relates to the freedom of choice or consent, the realities of which “pose difficult questions when trying to objectively evaluate an individual’s labour situation”.<sup>38</sup>

The ILO does not accept economic need – that is the need to keep a job to earn one’s living – to constitute a menace of penalty that stops a worker from leaving an abusive employment relationship. From a practitioner’s point of view, however, it is “debatable whether when a person is in a situation where s/he has only one opportunity, one choice, freedom of choice can truly be achieved”.<sup>39</sup> It has thus been argued that the ILO definition falls short of capturing the reality of forced labour in this regard.

### 3.1.3 Overlaps and differences in the THB and forced labour definitions

In the Protocol of 2014 to the Forced Labour Convention, the ILO explicitly stated that trafficking for forced or compulsory labour is included in the Convention’s definition of forced labour,<sup>40</sup> so there are clear overlaps but also differences in legal definition. In essence, according to the ILO definition, persons are in a forced labour situation if they enter work or service against their freedom of choice, and cannot leave it without penalty or the threat of penalty. This does not have to be physical punishment or constraint; it can also take other forms, such as the loss of rights or privileges.<sup>41</sup>

36 Jägers & Rijken, ‘Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations,’ *Northwestern Journal of International Human Rights*, Volume 12, issue 1, 2014, <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1167&context=njihr>, p. 49.

37 ILO, Strengthening action to end forced labour, Report IV(1), 103rd Session, 2014, [http://www.ilo.org/wcmsp5/groups/public/--ed\\_norm/--relconf/documents/meetingdocument/wcms\\_217752.pdf](http://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_217752.pdf), para 20.

38 Skrivankova, K. *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation*, 2010, Joseph Rowntree Foundation, <http://www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf>, p. 6.

39 *Ibid*, p. 6.

40 See Article 1(3) of the Protocol at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:P029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029)

41 International Labour Office. *Combating forced labour: a handbook for employers and business*. Geneva: ILO, 2008.

This is more or less similar for persons in a human trafficking situation, where the definition includes the threat or use of force, deception, abduction, coercion, fraud, threats and abuse of power or of a position of vulnerability.

Further, both definitions focus on exploitation of others. For both definitions the consent or voluntary agreement of a person is irrelevant if the person cannot leave the employment or did not consent to the specific conditions of the employment/services to be offered.<sup>42</sup>

Current differences in the definitions, and in particular their interpretation, relate to exploitation and recruitment. The human trafficking definition clearly defines the element of recruitment, transportation, transfer, harbouring or receipt of a person, which the ILO convention does not. This is because the ILO does not consider it relevant how a person ended up in a forced labour situation, whether through trafficking or other systems (e.g. hereditary slavery). However it could be argued that in practice people in forced labour have also been somehow recruited and transferred. "Hence, a person who moved away from his or her place of origin, and was recruited at some point into coercive labour or service would be called a forced labour victim. At the same time, he or she is also a victim of human trafficking."<sup>43</sup>

Another distinction – not in the legal definition but in the applied ILO definition of forced labour, for instance, in data collection – is that the ILO classifies forced labour in three main categories or forms: forced labour imposed by the State, and forced labour imposed in the private economy either for sexual or for labour exploitation.<sup>44</sup>

Although the ILO in its interpretation of forced labour generally adopts a broad definition of the term that includes human trafficking, not all forms of THB actually qualify as a form of forced labour, such as the removal of organs. According to the Andrees, the ILO Forced Labour Convention complements the Palermo Protocol but states that the latter is more specific on the forms of coercion as well as exploitation: "*While forced labour according to the ILO Forced Labour Convention (No 29) includes any work or service – be it legitimate or not – the Palermo Protocol distinguishes between forced prostitution and forced labour. It also lists particular forms of exploitation such as serfdom, debt bondage and slavery-like practices that are also covered under Convention 29*".<sup>45</sup>

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42 "Even if a worker entered a labour agreement voluntarily, his or her consent becomes irrelevant if coercion or deception was used (ILO, 2005b). Beate Andrees/ILO, Forced labour and trafficking in Europe: how people are trapped in, live through and come out, 2008, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_090548.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf)

43 Andrees, B./ILO, Forced labour and trafficking in Europe: how people are trapped in, live through and come out, 2008, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_090548.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf), p. 2.

44 ILO, A global alliance against forced labour. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. 2005, [http://www.ilo.org/wcmsp5/groups/public/--ed\\_norm/--declaration/documents/publication/wcms\\_081882.pdf](http://www.ilo.org/wcmsp5/groups/public/--ed_norm/--declaration/documents/publication/wcms_081882.pdf), p. 10.

45 Beate Andrees/ILO, Forced labour and trafficking in Europe: how people are trapped in, live through and come out, 2008, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_090548.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf)



As such, the ILO stresses that not all forced labour is the result of human trafficking and that not all human trafficking-related activities necessarily result in forced labour.<sup>46</sup>

The differences in definition of THB and forced labour in international law are not based on experiences from practice, but rather can be explained by the historical development of the human trafficking and forced labour discourses. The fight against human trafficking primarily originated from the fight against trafficking for sexual exploitation, and was later broadened to include all regulated and unregulated economic sectors. The authorities and legal frameworks dealing with human trafficking are therefore originally linked to women's rights and criminal law and relevant state (law enforcement) authorities. The fight against modern forms of forced labour are closely related to the trade union movement, and relevant legal frameworks are thus related to labour rights and relevant state authorities.

### 3.1.4 National definitions

Legal definitions of exploitation, forced labour and THB differ at an international level, but national systems also interpret international definitions differently, or fail altogether to implement international frameworks. Given that law is enforced mainly at national levels, national definitions are important in the fight against labour exploitation and the role of business therein. National laws might fail to or inadequately define exploitation according to international standards, in which case NGOs can refer to the above-mentioned standards, such as the ILO core labour rights conventions (see Chapter 5.3.2), the ILO's MNE Declaration (see 6.2) and the Palermo Protocol (see 3.1.1).<sup>47</sup>

The consequence of national legal differences is that thresholds for a case to amount to THB can differ considerably from one jurisdiction to another. In Spain, for instance, severe violations of labour rights towards a foreign national are already considered as exploitation and can amount to human trafficking, whilst in the Netherlands the definition of exploitation is applied much more narrowly.<sup>48</sup>

### 3.1.5 From strict legal definitions to recognising a continuum of exploitation

Central to the definition of forced labour and that of trafficking in human beings is the attempt to define exploitation, which takes numerous forms depending on the context. The question of when "decent work evolves into a form of forced labor and under what conditions this can be considered to fall in the scope of THB"<sup>49</sup> is thus not also important in academic debates but also for practitioners who provide legal support for clients attempting to see justice after experiencing exploitation.

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46 International Labour Office. *Combating forced labour: a handbook for employers and business*. Op. cit.

47 Jägers & Rijken, 'Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations,' *Northwestern Journal of International Human Rights*, Volume 12, issue 1, 2014, <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1167&context=njihr>, p. 63.

48 *Ibid*, p. 62.

49 James G. Pope, *A Free Labor Approach to Human Trafficking*, 158 U. PA. L. REV. 1849 (2010), referred to in Jägers & Rijken, 'Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations,' *Northwestern Journal of International Human Rights*, Volume 12, issue 1, 2014, <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1167&context=njihr>, p. 49.

Rather than debating legal definitions, practitioners and researchers advocate for an understanding of forced labour in a continuum of exploitation:

*“The evidence suggests that forced labour has to be understood as a process and not as a static relationship between workers and employers. The vulnerability of migrants often increases over time as they are under pressure to repay their debts, or as they have been subjected to immigration controls and extortion from criminal networks. Moreover, employers often ‘test’ the resistance of workers before they squeeze them into more exploitative situations. One could think of this process [as] an ever narrowing labyrinth where the decision making power of the worker is surrendered in the end.”<sup>50</sup>*

The concept of a continuum of exploitation is an outcome of the difficulty in legal proceedings to distinguish between coercion and consent in labour cases brought before court.<sup>51</sup> This analysis can also be applied to forced labour situations that are an outcome of trafficking, with decent work on the one end of the spectrum and forced labour on the other end, and different “modes of coercion” in the various stages of exploitation.<sup>52</sup> The continuum of exploitation “captures not only the complex combination of situations that exist between decent work and forced labour (an environment that permits the existence of sub-standard working conditions), but also an individual work situation, as it evolves over time”.<sup>53</sup> Understanding exploitation in a continuum also addresses the shortcomings of strict legal definitions that fail to take into account economic circumstances in defining freedom and is more true to reality in that it exposes the “vulnerability [of a worker] that can be abused to obtain consent, and de facto negate the principle of freedom of choice, absence of which is one of the elements of forced labour” (see also Box 6).<sup>54</sup>

Most importantly, however, understanding exploitation in a continuum helps to address forced labour situations, because the analysis calls for a number of conclusions in the field of prevention and identification. For instance, it is important to recognise the importance of labour and migrants’ rights organisations in the fight against human trafficking and forced labour, at the stage of prevention, identification and access to remedy. Trade union organisers, migrant rights practitioners and labour inspectors are involved in early detection of rights violations by corporations and can thus play a central role in preventing bad working conditions from deteriorating into exploitation as well as identifying human trafficking cases. Trade unions and NGOs can also provide access to grievance mechanisms and remedies, whether through supporting judicial cases or starting media campaigns demanding justice for workers in cases of rights infringements by employers.

Promoting a human rights-centred approach, anti-trafficking practitioners have called not only for effective criminal law responses to anti-trafficking cases to enable the prosecution of perpetrators,

50 Beate Andrees/ILO, Forced labour and trafficking in Europe: how people are trapped in, live through and come out, 2008, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_090548.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf), p. 22.

51 Steinfeld, R., Coercion/Consent in Labour, Centre on Migration, Policy and Society, Working Paper No. 66, University of Oxford, 2009, [https://www.compas.ox.ac.uk/fileadmin/files/Publications/working\\_papers/WP\\_2009/WP0966%20Steinfeld.pdf](https://www.compas.ox.ac.uk/fileadmin/files/Publications/working_papers/WP_2009/WP0966%20Steinfeld.pdf)

52 See Skrivankova, K., Between Decent Work and Forced Labour: Examining the Continuum of Exploitation, 2010, Joseph Rowntree Foundation, <http://www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf>

53 Ibid., p. 19.

54 Ibid.

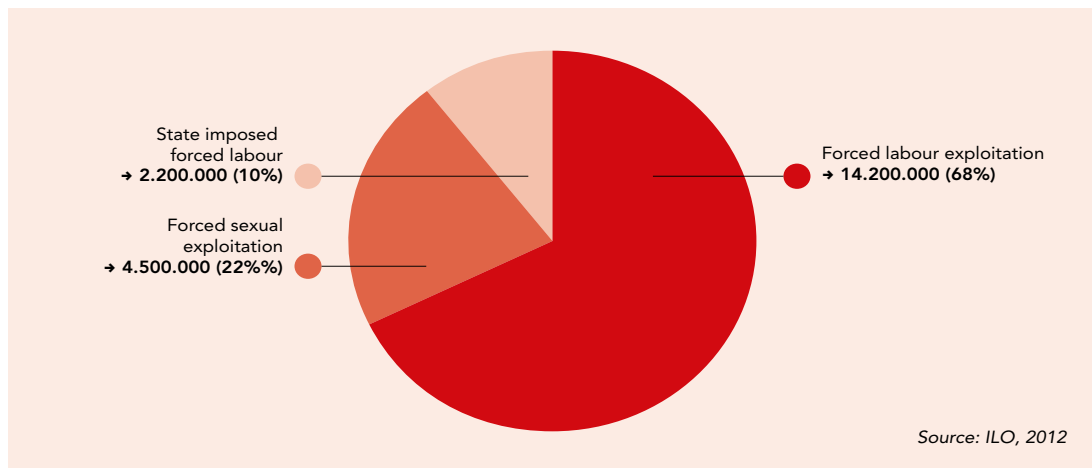
but also for adequate labour law responses to cases that might amount to forced labour or human trafficking.

### 3.2 Global estimates of forced labour

ILO research from 2012 found that there are currently 20.9 million people around the world who are victims of forced labour, trapped in jobs into which they were coerced or deceived and which they cannot leave. The data covers the study reference period of 2002-2011. The estimate therefore means that these 20.9 million people, or around three out of every 1,000 people worldwide, were in forced labour at any given point in time over this ten-year period.<sup>55</sup>

As stated above, ILO classifies forced labour into three main categories or forms: forced labour imposed by the State, and forced labour imposed in the private economy either for sexual or for labour exploitation. Of the above-mentioned 20.9 million people, 18.7 million (90%) are exploited in the private economy, by individuals or enterprises. Out of these, 4.5 million (22% total) are victims of forced sexual exploitation, and 14.2 million (68%) are victims of forced labour exploitation, in economic activities. The remaining 2.2 million (10%) are in state-imposed forms of forced labour, for example in prison under conditions that contravene ILO standards, or who are in work imposed by the state military or by rebel armed forces (Figure 2).<sup>56</sup>

**Figure 2: Global estimate by form of forced labour**



<sup>55</sup> This figure represents a conservative estimate, given the strict methodology employed to measure this largely hidden crime. See ILO SAP-FL, ILO Global Estimate of Forced Labour: Results and methodology, 2012, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf), p.13

<sup>56</sup> Ibid.

### Box 2: The problem with statistics on labour exploitation

It should be noted that the estimates of the ILO are frequently referred to as estimates for trafficking in human beings, even though there is a difference between human trafficking and forced labour in definitions and thus in data gathering methods. In fact, the ILO does not provide an estimate on how many of the forced labour cases would qualify as human trafficking. Although the distinction between the two can often not be made in practice, simply ignoring the differences does create problems with regard to data comparisons and reliability of estimates. Of course, other much bigger problems exist with estimating both forced labour and human trafficking, ranging from the illegal and often hidden nature of the crime, the lack of systematic and comparable data collection by national authorities, and the fact that exploitation indeed takes place in a continuum and is constantly changing. Given these constraints, the figures presented here should not be viewed as absolutes but rather should be seen as a general indication with regard to gender, geographical spread and economic sector.

### Gender, age and nationality

According to the ILO estimate, women and girls represent the greater share of total forced labour – 11.4 million victims (55%), as compared to 9.5 million (45%) men and boys (Figure 3). Adults are more affected than children; 74% (15.4 million) of victims fall in the age group of 18 years and above, whereas children aged 17 years and below represent 26% of all forced labour victims (or 5.5 million children).<sup>57</sup>

Figure 3: Global estimate by sex of victims of forced labour



57 ILO SAP-FL, ILO Global Estimate of Forced Labour: Results and methodology, 2012, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf), p.14.

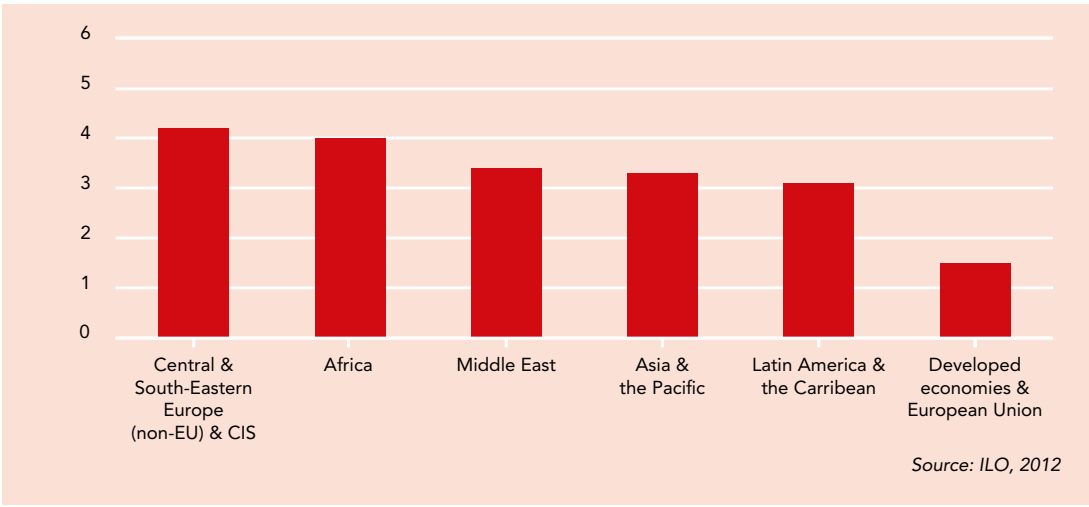
**Box 3: ILO Forced Labour Factsheet<sup>1</sup>**

- ❑ Almost 21 million people are victims of forced labour – 11.4 million women and girls and 9.5 million men and boys.
- ❑ Almost 19 million victims are exploited by private individuals or enterprises and over 2 million by the state or rebel groups.
- ❑ Of those exploited by individuals or enterprises, 4.5 million are victims of forced sexual exploitation.
- ❑ Forced labour in the private economy generates US\$ 150 billion in illegal profits per year.
- ❑ Domestic work, agriculture, construction, manufacturing and entertainment are among the sectors most affected.
- ❑ Migrant workers and indigenous people are particularly vulnerable to forced labour.

1 See [http://www.ilo.org/global/about-the-ilo/media-centre/issue-briefs/WCMS\\_207611/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/media-centre/issue-briefs/WCMS_207611/lang--en/index.htm)

When the prevalence of forced labour (number of victims per thousand inhabitants) is examined, the rate is highest in the Central and South-Eastern Europe and Commonwealth of Independent States<sup>58</sup> and Africa at 4.2 and 4.0 per 1,000 inhabitants respectively. It is lowest in the developed economies<sup>59</sup> at 1.5 per 1,000 inhabitants (Figure 4).

**Figure 4: Prevalence of forced labour by region (per 1,000 inhabitants)**



58 Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine.

59 North America, European Union (and Iceland, Norway, Switzerland), Australia, Israel, Japan, New Zealand.

9.1 million victims (44% of the total) have moved either internally or internationally, while the majority – 11.8 million (56%) – are subjected to forced labour in their place of origin or residence. Cross-border movement is strongly associated with forced sexual exploitation. By contrast, a majority of forced labourers in economic activities, and almost all those in state-imposed forced labour, have not moved away from their home areas. These figures indicate that movement can be an important vulnerability factor for certain groups of workers, but not for others.

### 3.3 Indicators of forced labour and THB

Various indicators have been drawn up to identify human trafficking and forced labour. Not all indicators are present in all situations involving trafficking in humans, but if any of the indicators are present, they should lead to authorities or NGOs investigating a case further. The UN Office on Drugs and Crime (UNODC), for instance, has developed general and specific indicators for human trafficking.<sup>60</sup>

A joint European Commission-ILO project, developed four sets of operational indicators of trafficking (adults and children for labour and sexual exploitation) based on a Delphi survey.<sup>61</sup> The result of the surveys conducted consists of four sets of operational indicators, relevant to the following dimensions of the trafficking definition:

- ❑ Deceptive recruitment (or deception during recruitment, transfer and transportation): 10 indicators
- ❑ Coercive recruitment (or coercion during recruitment, transfer and transportation): 10 indicators
- ❑ Recruitment by abuse of vulnerability: 16 indicators
- ❑ Exploitative conditions of work: 9 indicators
- ❑ Coercion at destination: 15 indicators
- ❑ Abuse of vulnerability at destination: 7 indicators

With regards to trafficking for labour exploitation, the UNODC points out that trafficked person might:

- ❑ Live in groups in the same place where they work and leave those premises infrequently, if at all
- ❑ Live in degraded, unsuitable places, such as in agricultural or industrial buildings
- ❑ Not be dressed adequately for the work they do: for example, they may lack protective equipment or warm clothing
- ❑ Be given only leftovers to eat
- ❑ Have no access to their earnings
- ❑ Have no labour contract
- ❑ Work excessively long hours
- ❑ Depend on their employer for a number of services, including work, transportation and accommodation.

60 UNODC, Human Trafficking indicators, 2010, [http://www.unodc.org/pdf/HT\\_indicators\\_E\\_LOWRES.pdf](http://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf)

61 ILO, Operational indicators of trafficking in human beings, March 2009, [http://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_105023/lang--en/index.htm](http://www.ilo.org/global/topics/forced-labour/publications/WCMS_105023/lang--en/index.htm)

More broadly, the ILO forced labour indicators,<sup>62</sup> which overlap with definitions of other institutions such as UNODC, are:

- ❑ Abuse of vulnerability
- ❑ Deception
- ❑ Restriction of movement
- ❑ Isolation
- ❑ Physical and sexual violence
- ❑ Intimidation and threats
- ❑ Retention of identity documents
- ❑ Withholding of wages
- ❑ Debt bondage
- ❑ Abusive working and living conditions
- ❑ Excessive overtime

The International Organization of Migration (IOM) also has indicators for case workers in asylum application processes. They focus also on recruitment and the migration status. Indicators regarding recruitment include deception and exploitation, for instance:

Deception:

- ❑ Chances of success of migration
- ❑ Travel and recruitment conditions
- ❑ Type or location of labour
- ❑ Content or legality of labour contract
- ❑ Pay/income (retention of wage/money, debt bondage)
- ❑ Labour conditions (prostitution)
- ❑ Living situation and living conditions (isolation, confinement, supervision)
- ❑ Legality of documents or residence permit
- ❑ Laws and conduct of authorities

Exploitation:

- ❑ Irregular residence status (confiscation of identity papers)
- ❑ Difficult family situation
- ❑ Lack of knowledge (language skills)

General indicators of coercion include:

- ❑ Difficulty living in a foreign environment or arranging travel independently
- ❑ Relationship with authorities/legal status
- ❑ Confiscation of identity papers
- ❑ Debt bondage
- ❑ Isolation, confinement, supervision, violence
- ❑ Forcing perpetration of illegal/criminal activities
- ❑ Threatening to make labour conditions worse

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62 ILO, ILO indicators of Forced Labour, 2012, [http://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_203832/lang--en/index.htm](http://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm)

#### **Box 4: Is irregular employment more vulnerable?**

Irregular employment as such does not necessarily imply the use of force and coercion in an employment relationship. On the contrary, ILO research found many cases where such a relationship was based on a mutual agreement between employers and migrant workers. Both were complicit because migrants often seek short-term gains and care less about long-term social security protection for reasons of economic necessity. The factors that determine forced labour to occur largely within irregular employment are firstly, when irregular migrant workers have very little bargaining power and no formally enforceable contracts and secondly, when irregular employment is often related to informal recruitment, which is marked by practices of coercion and exploitation (see Chapter 3.4.1).<sup>1</sup>

1 Beate Andrees/ILO, Forced labour and trafficking in Europe: how people are trapped in, live through and come out, 2008, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_090548.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf), p. 39

- ❑ Dependency on exploiter/employer (economic, psychological, emotional)
- ❑ Exploitation of cultural/religious beliefs.

As can be seen from these indicators, conditions of exploitation encompass a number of different areas ranging from legal resident status and family life to language and level of education. Furthermore, there is not a single set of indicators. The presence of any of these indicators might point to sub-standard or exploitative working conditions, but may not necessarily amount to forced labour or human trafficking. However, practice shows that exploitative conditions often degenerate into these severe forms of exploitation.

Several indicators of human trafficking and forced labour are present in the cases of exploitation detailed in Chapter 3.4 below.

### **3.4 What are the most vulnerable sectors?**

Forced labour and trafficking occur in an environment where labour regulations are weak and/or not enforced, and where flexible production patterns put suppliers under pressure to produce cheaply and quickly. Migrants, in particular trafficked or forced labour victims, “occupy niches in the economy that cannot be re-located or that local workers would not choose as employment”.<sup>63</sup>

Although in principle people can be exploited in any sector, whether this is a regulated labour sector or in informal work, the following sectors are believed to be the most vulnerable to human trafficking and

63 Beate Andrees/ILO, Forced labour and trafficking in Europe: how people are trapped in, live through and come out, 2008, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_090548.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf), p. 38.



### **Box 5: ILO research into forced labour in Europe from 2005**

In order to better understand the interplay of supply and demand in specific economic sectors, the ILO carried out a multi-country research programme over a period of two years, resulting in a report in 2005. The countries of transit and destination included France, Germany, Hungary, Japan, the Russian Federation, Turkey and the United Kingdom. Countries of origin included Albania, the Republic of Moldova, Romania, Tajikistan and Ukraine.

The country research teams were asked to document cases of forced labour exploitation in different economic sectors, in close collaboration with the social partners and community-based organisations of the migrant workers concerned. If the victim agreed, researchers would conduct a semi-structured interview (usually after the victim had already escaped the forced labour situation).

Secondary sources were also used, such as court proceedings, police statistics and trade union and media reports. In each country, researchers conducted semi-structured interviews with key informants – for example, social workers, police or labour inspectors. Altogether, 300 cases of forced labour were documented and entered in a database. Key issues include victim profiles, recruitment mechanisms, the use of travel documents and work permits, forms of coercion experienced by victims and exit from forced labour.

forced labour, and are highlighted in numerous publications on human trafficking and forced labour. For Europe, the most comprehensive study on forced labour was conducted by the ILO in 2005.<sup>64</sup>

- ❑ Labour intermediaries or recruitment agencies (cross-sectoral)
- ❑ Sex industry
- ❑ Agriculture and fishing
- ❑ Construction, mining, quarrying
- ❑ Domestic and care work
- ❑ Textiles and garments
- ❑ Food, manufacturing, processing and packaging
- ❑ Hotel and service industry sector
- ❑ Market trading and illegal activities.

The ILO research revealed that, apart from the sex industry, agriculture and construction are most prone to forced labour practices. The study on returned migrants in four Eastern and South-Eastern European countries found that, out of a sample of 300 forced labour victims, 23% had been trafficked

64 ILO, A global alliance against forced labour, 2005, [http://apflnet.ilo.org/resources/a-global-alliance-against-forced-labour/at\\_download/file1](http://apflnet.ilo.org/resources/a-global-alliance-against-forced-labour/at_download/file1); Anti-Slavery International, Trafficking for Forced Labour in Europe. Report on a study in the UK, Ireland, the Czech Republic and Portugal, 2006, [http://www.antislavery.org/includes/documents/cm\\_docs/2009/t/trafficking\\_for\\_fl\\_in\\_europe\\_4\\_country\\_report.pdf](http://www.antislavery.org/includes/documents/cm_docs/2009/t/trafficking_for_fl_in_europe_4_country_report.pdf)

into coerced sex work, 21% into construction and 13% into agriculture. The remaining victims (43%) had experienced coercion in sectors including domestic service and care work, small-scale manufacturing, restaurants and catering, and food processing, among others.

### 3.4.1 Recruitment sector

*“Employers in receiving countries frequently auction off contracts for the recruitment and selection of foreign contract workers. Contracts are awarded to the agencies that can supply foreign contract labor at the lowest cost. In many cases, the agencies do not charge the employers any fees for the recruitment and selection of foreign contract workers. Verité frequently uncovers situations where facility management personnel allegedly accept illicit payments from agents or brokers offering their services as a contract labor provider. This auction process adversely affects workers’ wages, because agencies try to outbid each other to provide the largest amount of workers at the lowest hourly cost to employers.”*

Verité, December 2013<sup>65</sup>

As this quote from Verité explains, competition between recruitment agencies to supply workers at the cheapest price, and the central role that end users of labour play in this process are central to generating exploitative working conditions. With the rise of flexible labour relations, labour agencies (alternately termed labour brokers, recruitment or private employment or temporary work agencies) have become a standard feature of the European labour market, with established sector lobby associations and sometimes an official place in national collective bargaining systems. Temporary work and private employment agencies or labour brokers were long opposed by trade unions for generating insecure and bad working conditions. They argue that, rather than filling a gap in the labour market or creating new jobs, temporary work is used by employers to avoid hiring permanent staff who have established labour rights.

According to data of the International Confederation of Private Employment Agencies (CIETT, using 2009 data), the UK is the largest host to employment agencies in Europe (15,600), followed by Germany (6,049) and the Netherlands (3,640).<sup>66</sup>

In 2013, CIETT recorded 8.7 million agency workers in Europe, representing 21.7% of a total of 40.2 million agency workers worldwide. This represented an increase of about 9.6% compared to 2012, when 7.9 million agency workers were recorded in Europe.<sup>67</sup> According to the CIETT, agency work, self-employment and temporary employment amounted respectively to 1.7%, 14% and 11% of all types of employment in the EU-15 countries<sup>68</sup>.

65 Verité, Corruption & Labour Trafficking in Global Supply Chains, December 2013, <https://www.verite.org/sites/default/files/images/WhitePaperCorruptionLaborTrafficking.pdf>

66 2010 and 2011 data are available for the Netherlands; the UK counted 15,600 and Germany 6,049 agencies in 2011, see CIETT website ‘Number of private employment agencies worldwide’, <http://www.ciett.org/index.php?id=162>

67 CIETT Economic Report, 2015 Edition (based on 2013-2014 data), [http://www.ciett.org/fileadmin/templates/ciETT/docs/Stats/Economic\\_report\\_2015/CIETT\\_ER2015.pdf](http://www.ciett.org/fileadmin/templates/ciETT/docs/Stats/Economic_report_2015/CIETT_ER2015.pdf)

68 EU members states prior to the accession of ten candidate countries on 1 May 2004, namely, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom.

### Box 6: The rise of temporary agency work and unfree labour

With the labour and capital liberalisation wave of the 1980s, agency work became an accepted alternative to regular (full-time, open-ended) employment. As corporations increasingly outsourced so-called non-core activities, private employment agencies as well as other enterprises started specialising in certain sectors, such as cleaning, security, marketing, and eventually also in the provision of cheap migrant labour.<sup>1</sup> In 2011, the European Parliament noted increasingly precarious employment relationships associated with so-called 'atypical' labour contracts in Europe.<sup>2</sup>

The ILO's Private Employment Agencies Convention No 181 from 1997 was a landmark in the liberalisation of European labour markets.<sup>3</sup> Ten years later, after a decade of political negotiations between Member States on the regulation of flexible labour in the EU, the Directive on Temporary Agency Work (2008/104) was adopted. Although that Directive partially harmonised rules across the EU, generally speaking, regulation in different member states remains highly diverse due to the different historical developments of regulatory frameworks and freedom for member states and partners to decide on the scope and implementation of the Directive.

The sector is very diverse, with internationally operating agencies making a considerable effort to retain a good reputation by adopting social regulations to separate themselves from the wide-spread phenomenon of abusive recruitments agencies. All agencies share, however, the triangular relationship between the agency, the worker and the user company, which often results in the weakening of directly enforceable labour rights for the workers.

The triangular character of outsourcing labour complicates the regulation of recruitment agencies. In the relevant literature the three aspects of regulation are said to encompass:

- ❑ The regulation of the agencies and the services they provide for user companies by law;
- ❑ The regulation of contracts between agencies and workers; and
- ❑ The regulation of assignments between workers and user companies.

The regulation of temporary agency work can therefore target different parts of the triangular relationship, and the rights and treatment of workers are shaped by a variety of laws at national level.

*See next page*

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- 1 H. Houwing, A Dutch approach to Flexicurity? Negotiated change in the organization of temporary work, Universiteit van Amsterdam, 2010, <http://arno.unimaas.nl/show.cgi?fid=21980> , pp. 150-151.
  - 2 Wynn, M., Power Politics and Precariousness. The Regulation of Temporary Agency Work in the European Union in Fudge, J., Strauss, K. (eds.), Temporary Work, Agencies and Unfree Labour. Insecurity in the New World of Work, 2014, Routledge, New York, p. 52.
  - 3 See Wynn, M., Power Politics and Precariousness. The Regulation of Temporary Agency Work in the European Union in Fudge, J., Strauss, K. (eds.), Temporary Work, Agencies and Unfree Labour. Insecurity in the New World of Work, 2014, Routledge, New York, pp. 48-69; ILO Convention No181 is published at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326)

► **Box 6 continued: The rise of temporary agency work and unfree labour**

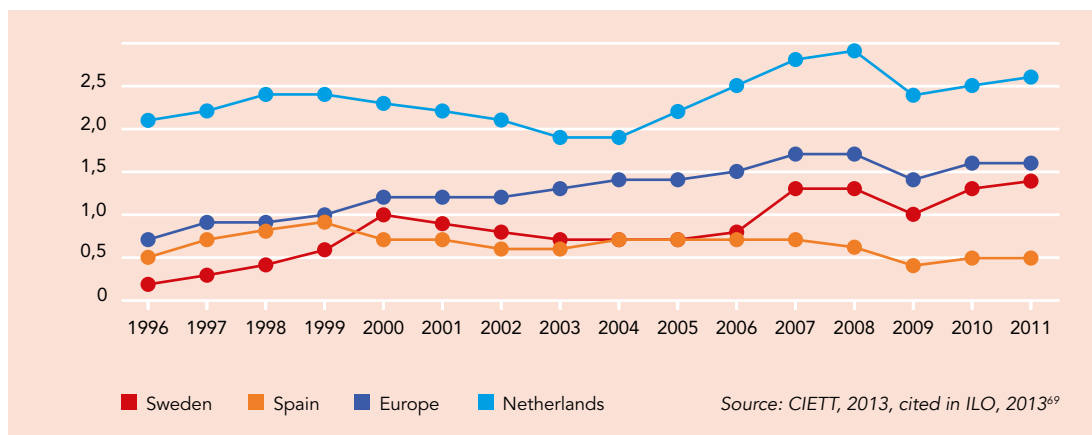
A collection of essays in a volume entitled 'Temporary Work, Agencies and Unfree Labour. Insecurity in the New World of Work' from 2014 argues from various national perspectives that the conditions that have contributed to the rise in precarity and insecurity in work – through the liberalisation of the labour market and rise in temporary agency work – have also contributed to the rise in forced labour in Europe and beyond. It also argues that gendered and racialised cross-border labour recruitment is facilitated and consolidated by recruitment agencies that place workers in specific labour market niches.<sup>1</sup>

Building on Skrivankova's analysis of a continuum of exploitation (see Chapter 3.1.5), the volume explores how constant de- and re-regulation of the labour market puts different groups of workers at risk of conditions of exploitation. The terms free and unfree here build on political economy literature analysing the links between production and reproduction, referring to the inherent tension in capitalist relations of production in which "workers are free insofar as they have the capacity to sell their labour as a commodity, and unfree insofar as they are compelled to do so in order to reproduce themselves".<sup>2</sup>

1 Fudge, J., Strauss, K. (eds.) Temporary Work, Agencies and Unfree Labour. Insecurity in the New World of Work, 2014, Routledge, New York, pp. 1-25.

2 Ibid., p. 14.

**Figure 5: Recruitment agency labour market penetration, 1996-2011 (%)**



69 van Liemt, Gijsbert, Private employment agencies in the Netherlands, Spain and Sweden, Sectoral Activities Department, 2013, Sector Working Paper No. 290, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---sector/documents/publication/wcms\\_231420.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_231420.pdf)

Figure 6: Definition and means of regulating temporary agency work

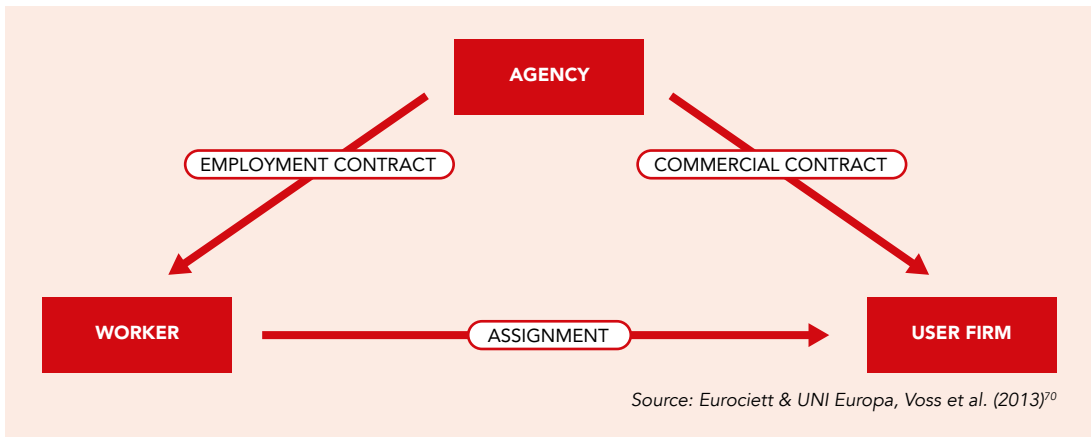
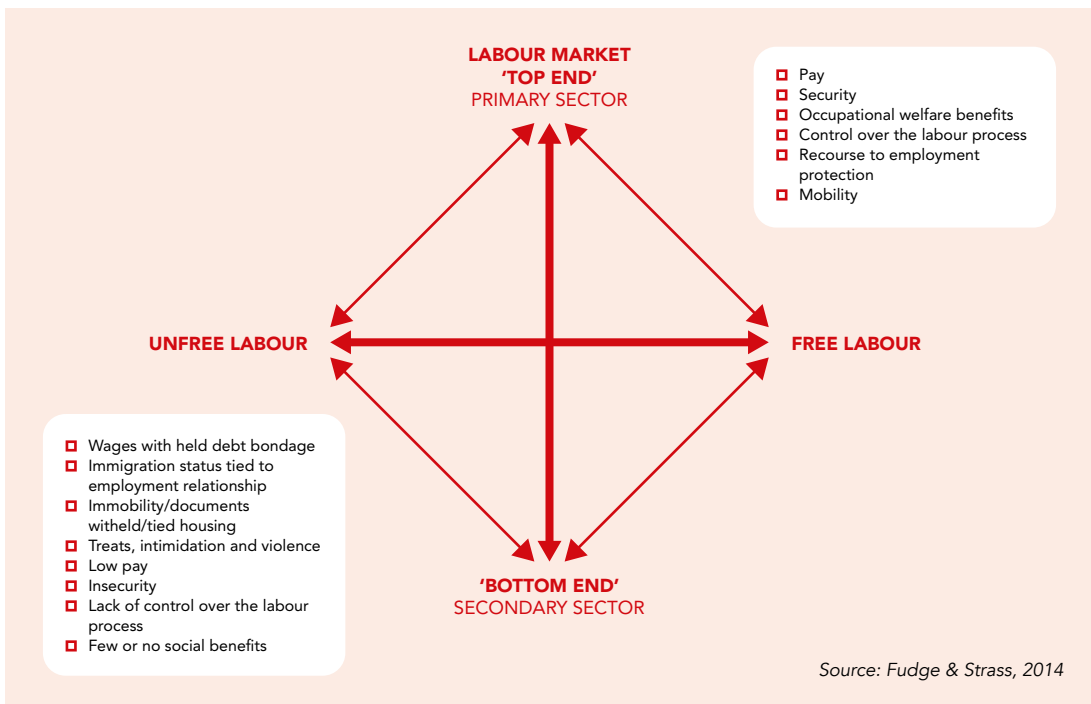


Figure 7: The Labour Market Continuum



70 Eurociett & UNI Europa, Voss et al., The Role of Temporary Agency Work and Labour Market Transitions in Europe: Institutional frameworks, empirical evidence, good practice and the impact of social dialogue, 2013, [http://www.ciett.org/fileadmin/templates/eurociett/docs/Social\\_dialogue/Transitions\\_project/Report/2013.02.08\\_-\\_Full\\_report\\_on\\_the\\_role\\_of\\_TAW\\_and\\_labour\\_market\\_transitions.pdf](http://www.ciett.org/fileadmin/templates/eurociett/docs/Social_dialogue/Transitions_project/Report/2013.02.08_-_Full_report_on_the_role_of_TAW_and_labour_market_transitions.pdf)

The European market share of the €282 billion sales revenue generated by agency work amounted to 38.2% in 2013. The top 10 firms took up about 25% of the total agency work market in 2014, with Adecco, Randstad and Manpower accounting for 16.6% of the total annual sales revenue.

Recruitment practices vary widely around the world. In recent years, the role of abusive private employment agencies and reports of abominable housing conditions, below minimum wage pay and extortion in the form of fees but also threats to workers and trade unionists have received media attention. Some common characteristics of abusive recruitment agencies include the following:

- ❑ They require migrants to take on debt (for recruitment and training fees, migration and travel costs, etc.) and exploit this debt to force the indebted migrants to work indefinitely in particular jobs or for extremely low wages.
- ❑ They practice deception (promising one job or salary, but providing something quite different) or
- ❑ Carry out other practices that constitute human trafficking, such as taking possession of a migrant's passport or identity papers and refusing to return them.<sup>71</sup>

In the Netherlands, the government reacted to a series of media reports about the exploitation of Eastern European migrants with a parliamentary investigation,<sup>72</sup> which found that a large number of recruitment agencies in the Netherlands operated in legal grey zones (charging high fees for housing and travel costs and charging high fines for alleged breaches of contract) and/or were acting criminally by misleading prospective migrant workers about wages, working conditions and the nature of their job. Although there is no comprehensive European-wide data gathering of cases of exploitation by recruitment agencies and end users hiring through these agencies, many reports can be found from other countries.<sup>73</sup>

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71 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Mike Dottridge, Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector, Occasional Paper Series No.7, November 2014, <http://www.osce.org/secretariat/126305>, p. 26.

72 Tweede Kamer der Staten-Generaal, Parlementair onderzoek Lessen uit recente arbeidsmigratie, 29 September 2011, <https://zoek.officielebekendmakingen.nl/kst-32680-4.html>

73 See, for instance, Fudge, J., Strauss, K. (eds.) Temporary Work, Agencies and Unfree Labour. Insecurity in the New World of Work, 2014, Routledge, New York; Ollus, N., Jokinen, A., & Joutsen, M. (eds.) European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), Exploitation of migrant workers in Finland, Sweden, Estonia and Lithuania: Uncovering the links between recruitment, irregular employment practices and labour trafficking, 2013, [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/heuni-report-75-15102013\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/heuni-report-75-15102013_1.pdf); Chakraborty, A., The Guardian, Ghost jobs, half lives: how agency workers 'get by' in Britain's shadow economy, 20 January 2015, <http://www.theguardian.com/commentisfree/2015/jan/19/jobs-agency-workers-britain-economy-insecure-low-paid-work>; Dewhurst, E., Agencies of Slavery: The Exploitation of Migrant Workers by Recruitment Agencies, 2007, Texas Wesleyan Law Review 37, [https://www.academia.edu/733471/E.\\_Dewhurst\\_Agencies\\_of\\_Slavery\\_The\\_Exploitation\\_of\\_Migrant\\_Workers\\_by\\_Recruitment\\_Agencies\\_2007\\_Texas\\_Wesleyan\\_Law\\_Review\\_37](https://www.academia.edu/733471/E._Dewhurst_Agencies_of_Slavery_The_Exploitation_of_Migrant_Workers_by_Recruitment_Agencies_2007_Texas_Wesleyan_Law_Review_37)

### 3.4.2 Sex industry

According to the ILO, 4.5 million persons are victims of forced sexual exploitation globally, exploited by individuals or enterprises.<sup>74</sup> Sex work in Europe is still largely performed by women, who constitute 87% of the entire sex worker population. In addition, men and transgender people have been recorded as part of the sex worker population in all of the European countries. A European mapping conducted by TAMPEP in 2009 found that 7% of sex workers in Europe are male.

In comparison, the gender composition of migrant and national sex workers shows that approximately 47% of all female sex workers are migrants and 47% of all transgender sex workers are migrants.<sup>75</sup>

Although an official definition of sex work does not exist, sex work can be referred to as the act of providing sexual services in exchange for money, goods or favours. People enter into sex work for a variety of complex reasons and circumstances. Some sex workers could pursue any career but choose their job simply because they enjoy doing sex work. Others have extremely limited options and do sex work in order to survive. As UNAIDS puts it, many people “enter into sex work as a result of conditions that, while deplorable, do not involve direct coercion and/or deceit by another; such conditions include poverty, gender inequality, indebtedness, low levels of education, lack of employment opportunities, family breakdown and abuse, dependent drug use, humanitarian emergencies and post conflict situations.”<sup>76</sup>

The prostitution sector is regarded as very vulnerable to human trafficking. In particular, as it is a sector where workers are invisible, unprotected, excluded and disempowered.<sup>77</sup> Often sex workers have no access to any social services, although medical clinics and outreach projects often target their sexual health. In some countries, undocumented workers, including sex workers are not granted the right to join public demonstrations or join formal associations. They are often mistreated by local police, who usually do not allow them to denounce abuse or exploitation due to their irregular legal status. Since they also experience the language and culture barriers common to all migrants, they may become overly dependent on others to help them navigate daily life.

The European Commission reported in 2015 that 69% of the identified and registered trafficked persons in the period between 2012 and 2014 were trafficked for sexual exploitation within the EU.<sup>78</sup>

74 See ILO SAP-FL, ILO Global Estimate of Forced Labour: Results and methodology, 2012, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf)

75 Tampep, Sex work in Europe. A mapping of the prostitution scene in 25 European countries, 2009, <http://tampep.eu/documents/TAMPEP%202009%20European%20Mapping%20Report.pdf>

76 Joint United Nations Programme on HIV/AIDS, UNAIDS Guidance Note on HIV and Sex Work, March 2009, [http://www.unaids.org/sites/default/files/sub\\_landing/files/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en.pdf](http://www.unaids.org/sites/default/files/sub_landing/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf)

77 La Strada International NGO Platform Statement, Ahead of the vote in the European Parliament on the Report of the Committee on Women's Rights and Gender Equality on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)), 2013, <http://lastradainternational.org/lisidocs/STATEMENT%20-%20FEMM%20report.pdf>

78 Eurostat report on human trafficking, 2015 edition, <http://ec.europa.eu/eurostat/web/products-statistical-working-papers/-/KS-TC-14-008-1>

### Box 7: The legality of sex work

Prostitution legislation and policies vary across Europe, ranging from legalisation to criminalisation of all or some prostitution-related activities. In 1999, Sweden was the first country to criminalise the purchase of sexual services. Since then, other countries have followed the same path or have taken steps in this direction. At the same time, other member States have chosen to legalise both the sale and the purchase of sexual services, in the hope that the existence of a legal sex-work sector would reduce the attractiveness of this business for criminal organisations or may improve the working conditions of sex workers.<sup>1</sup> The lack of precise and comparable data on prostitution and trafficking makes it difficult to assess with accuracy the impact that different regulations on prostitution may have on trafficking.<sup>2</sup>

1 Prostitution, trafficking and modern slavery in Europe, Committee on Equality and Non-Discrimination, 20 March 2014

2 Prostitution, trafficking and modern slavery in Europe, Committee on Equality and Non-Discrimination, 20 March 2014

The lack of precise and comparable data on prostitution and trafficking makes it difficult to assess with accuracy the impact that different regulations on prostitution may have on trafficking.<sup>79</sup>

### 3.4.3 Agriculture

In the European Union, agriculture relies heavily on migrant workers. Case studies in recent years have shown that the sector is prone to exploitation and many cases of exploited and forced labour have been reported. According to International Confederation of Free Trade Unions (ICFTU) research in 2003, about 4.5 million seasonal workers were employed every year on European fields and farms. Of these, an estimated 500,000 at the time were from North Africa and from Central or Eastern Europe.<sup>80</sup> There are no comprehensive recent statistics on the number of migrant workers employed in European agriculture, but a number of EU countries have reported an increase in migrant workers from Greece, Italy, Portugal and Spain as a consequence of the recent economic crisis and rising unemployment rates in their countries of origin; however, the biggest share of intra-EU migrant movements is still from Eastern European Member States westwards.<sup>81</sup>

According to a study commissioned by the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT), these workers form part of a sector characterised by "insecurity and poverty

79 Council of Europe, Committee on Equality and Non-Discrimination, Prostitution, trafficking and modern slavery in Europe, 20.3.2014, <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20559&Lang=EN>

80 Cited in Belser, P., *Forced Labour and Human Trafficking: Estimating the Profits*, ILO Working Paper, 2005, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_081971.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081971.pdf), p. 8

81 Eurofound, *Labour mobility in the EU: Recent trends and policies*, Publications Office of the European Union, 2014, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1456en\\_1.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1456en_1.pdf), pp. 19-20



### **Box 8: 'Europe's tomato slaves' in Puglia, Italy**

Every August, thousands of migrant workers, mostly from Africa, some from Eastern Europe, come to Southern Italy to earn some money picking tomatoes for processing and export across Europe. 20% of the Italian tomatoes are picked by hand, especially in the South of Italy. Manual labour is necessary for harvesting some particular tomatoes, such as cherry tomatoes, or when the soil is unfit for mechanical harvest.

Many African migrants immigrated to Italy because they have fled conflict and political unrest or because they tried to escape from economic uncertainty in their own country. The vast majority are young men between 20 and 40 years old from North and West Africa. The majority of tomato pickers in Foggia in the Puglia region are from Senegal, Mali, Burkina Faso, Ghana and Nigeria.

Numerous investigations<sup>1</sup> have revealed how the lucrative tomato trade is marked by exploitation and abuse. The following summary is based on reports by The Ecologist from 2011 and Danwatch from 2014.

In common with seasonal agricultural operations across Europe, gangmasters are central to Italy's tomato harvest. They broker deals with farmers and producers, and supply the workforce, as well as providing transport, accommodation, food, water and other essentials for the workers, making workers extremely dependent on them.

Migrants are forced to work for up to 14 hours a day picking tomatoes in harsh conditions for meagre wages, under the control of a network of gangmasters who make excessive deductions or charge inflated rates for transport, accommodation, food and other 'services'. Those complaining can face violence and intimidation.

Contracts are non-existent for most tomato pickers. The migrants are paid on a piece-rate system based on the amount of tomatoes successfully harvested. *See next page*

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1 Médecins Sans Frontières, A Season in Hell. MSF Report on the Conditions of Migrants employed in the Agricultural Sector in Southern Italy, 2008, [https://www.aerzte-ohne-grenzen.at/sites/default/files/attachments/69\\_msf\\_report\\_a\\_season\\_in\\_hell\\_2008.pdf](https://www.aerzte-ohne-grenzen.at/sites/default/files/attachments/69_msf_report_a_season_in_hell_2008.pdf); The Ecologist, Scandal of the 'tomato slaves' harvesting crop exported to UK, 2011, [http://www.theecologist.org/News/news\\_analysis/1033179/scandal\\_of\\_the\\_tomato\\_slaves\\_harvesting\\_crop\\_exported\\_to\\_uk.html](http://www.theecologist.org/News/news_analysis/1033179/scandal_of_the_tomato_slaves_harvesting_crop_exported_to_uk.html), Amnesty International, Exploited Labour. Migrant Workers In Italy's Agricultural Sector, 2012, <http://www.amnestyusa.org/research/reports/exploited-labor-migrant-workers-in-italy-s-agricultural-sector>; Danwatch, Behind the Canned Tomatoes: Labour exploitation in the production of canned tomatoes sold in Danish supermarkets, 2014, <http://business-humanrights.org/en/danwatch-report-raises-concerns-about-labour-exploitation-behind-canned-tomatoes-in-danish-supermarkets>

► **Box 8 continued: 'Europe's tomato slaves' in Puglia, Italy**

Workers frequently live in appalling housing conditions: their home is often a derelict building without power or any form of effective sanitation. As many as 30 people can be crammed into a single, filthy, one floor house. Healthcare is virtually non-existent and they are socially isolated as contact with the outside world is minimal.

Conditions are so poor that the charity Médecins Sans Frontières (MSF), which published a report about the appalling conditions in 2008, has sent mobile clinics to treat migrants in some areas, since immigrants have been denied access to public hospitals and many avoid hospitals for fear of being deported. The living and working conditions endured by the migrants are so bad that campaigners have dubbed them 'Europe's tomato slaves'.

wages", with salaries often below the legal minimum and inadequate health and safety conditions. Agricultural workers in Europe are vulnerable to exploitation due to insecure or irregular migrant status and lack of legal protection, racism, poverty and dependency on gangmasters or recruiters (see Box 8).<sup>82</sup>



*A detailed problem description and numerous case studies of forced labour and human trafficking cases was made by the OSCE in its 'Summary of Challenges on Addressing Human Trafficking for Labour Exploitation in the Agricultural Sector in the OSCE Region'<sup>83</sup>*

### 3.4.4 Fishing

An estimated 54.8 million people are involved in the primary production of fish, mainly in Asia and Africa. But Europe has a substantial fishing industry, too. The main producers in Europe are located in Norway, Spain, France, the United Kingdom, Italy, Russian Federation, Greece, the Netherlands, Faroe Islands and Ireland. Smoked and marinated fish products, for which shelf-life and transporta-

82 Ibid.

83 <http://www.osce.org/cthb/37937?download=true>

**Box 9: The Morecambe Bay cockling 'disaster' in the United Kingdom**

On the evening of 5 February 2004 at Morecambe Bay in North West England, at least 21 cockle pickers were drowned by an incoming tide off the Lancashire/Cumbrian coast.<sup>1</sup>

A group of Chinese workers, who were collecting cockles (edible marine bivalves) at low tide on sand flats at Warton Sands, near Hest Bank, and who were to have been paid £5 per 25 kg of cockles, (9p per lb) were cut off by the incoming tide in the bay at around 9:30 pm.

Although the emergency services were alerted by a mobile phone call made by one of the workers, only one worker was rescued from the waters due to lack of English language ability of the caller. A total of 21 bodies, of men and women between the ages of 18 and 45, were recovered from the bay after the incident. Two of the victims were women. The vast majority were young men in their 20s and 30s, with only two being over 40 and only one, a male, under 20. Most of the victims were previously employed as farmers, and two were fishermen.

The group was working under a gangmaster who was later convicted in court. He took the 30 Chinese cocklers, all undocumented migrants, out to work in the Warton Sands area despite bad weather warnings and without safety gear. Most of the workers were from farming backgrounds and "some had never even seen the sea until they first went cockle picking".

The cocklers lived in cramped conditions in houses shared with up to 30 others in Liverpool and Morecambe. All but one of the cocklers were from Fujian province in China and paid thousands of pounds for their passage to England. The family of one of the victims had borrowed £20,000 from loan sharks to pay the trafficking gang called Snakeheads, whilst their combined yearly income was just £1,000.

When the ten Chinese workers who survived were taken to the local police station they were met by their gangmaster and his girlfriend who told them to pretend two of their dead co-workers were the bosses. Some refused and testified against him in court, telling the jury how they and their family were threatened: "Someone went to my house and beat my dad, telling him I shouldn't go and act as a witness otherwise they would pay money for my head."

The tragedy, together with a number of publicised cases of severe forms of exploitation in Britain's agricultural industry, led the adoption of the UK Gangmasters (Licensing) Act in 2005, as well as a voluntary code of conduct for the UK agricultural sector.

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1 This description is taken from Wikipedia, [http://en.wikipedia.org/wiki/2004\\_Morecambe\\_Bay\\_cockling\\_disaster](http://en.wikipedia.org/wiki/2004_Morecambe_Bay_cockling_disaster) and BBC News, Death in a cold, strange land, 24 March 2006, [http://news.bbc.co.uk/2/hi/uk\\_news/england/4582470.stm#map](http://news.bbc.co.uk/2/hi/uk_news/england/4582470.stm#map)

tion time are important, are also being processed in Central and Eastern Europe, in particular in Poland and in the Baltic States.<sup>84</sup>

There are well-documented cases of unfair employment practices in the fishing industry worldwide, and there have been reports of severe human rights abuses and exploitation aboard fishing vessels that have led to calls for greater international attention to forced labour and human trafficking in the fishing sector. Again, especially migrant workers suffer from exploitation, many of whom are men, some of whom below the age of 18. Circumstances that make fishers particularly vulnerable to exploitation are:

- ❑ **Isolation of the workplace** – Fishers are vulnerable because their movements are restricted and their possibility of escape is limited once on board a fishing vessel at sea.
- ❑ **Length of time at sea** – Fishing vessels may stay at sea for long periods of time, meaning that abuse can take place for some time before any intervention is possible.
- ❑ **Transnational operations** – Fishing operations take place across multiple maritime zones and fishers must often rely on the protection of the country in which the vessel is registered. Some of these registries are established in countries that are unable or unwilling to adequately protect fishers and thus leaving them in a vulnerable position.
- ❑ **Labour supply** – Migrant workers may be particularly vulnerable to forced labour in the fishing sector. Large numbers of workers lack possessions and access to their identity documents making it difficult to leave their workplace. Such circumstances are especially common for those who may still owe money to their employer for registration or recruitment costs.<sup>85</sup>

### 3.4.5 Construction

As mentioned above, research by the ILO from 2005,<sup>86</sup> which has been confirmed by case studies since then, showed that construction, together with agriculture, form the second biggest economic sector in which forced labour is likely to occur, after the sex industry. The characteristics of exploitation and vulnerabilities are similar to other sectors, namely, sub-contracting is very common in the sector, forming a threat to the protection of basic labour rights. Recruiters or sub-contractors use the insecure legal status of migrant workers to intimidate and threaten them to accept sub-standard and dangerous working conditions. In the case of construction, it is not only private companies that are complicit in exploitation, but also the public sector, which is one of the largest clients for construction firms.

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84 Food and Agriculture Organization (FAO) of the UN, *The State of Fisheries and Aquaculture 2012*, <http://www.fao.org/docrep/016/i2727e/i2727e.pdf>

85 ILO, *Issue Brief: Forced Labour and Human Trafficking in Fisheries*, 2013, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_216003.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_216003.pdf)

86 ILO, *A global alliance against forced labour*, 2005, [http://apflnet.ilo.org/resources/a-global-alliance-against-forced-labour/at\\_download/file1](http://apflnet.ilo.org/resources/a-global-alliance-against-forced-labour/at_download/file1)

### **Box 10: Exploitation at a publicly contracted construction site in the Netherlands**

In 2013, an investigative journalist from the regional newspaper De Limburger revealed that in the construction of the A2 motorway in the Dutch city of Maastricht, the Irish employment agency Atlanco Rimec, which has thousands of construction workers employed on short-term contracts throughout Europe, withheld almost €1,000 from the monthly salary of some 70 Polish and Portuguese workers for housing and transport. Workers were housed three per room in accommodation designated for demolition near the building site, which cost their employer only €350, thus €117 per person. Atlanco Rimec thus earned an estimated €350,000 annual profit on extra charges to the workers alone.<sup>1</sup> Moreover, workers have no choice but to accept the expensive accommodation.<sup>2</sup> They are only given the job if they sign a contract with Atlanco Rimec, which has close ties with the construction company consortium Avenue2 that is responsible for the building workers.<sup>3</sup>

The withheld fees for accommodation and transport amount to half of the workers' salary before tax. It was also found that the workers often worked 60 hours per week, exceeding the maximum working hours laid down in the Dutch Collective Labour Agreement of the sector.

Due to continued investigative reporting by the regional newspaper and action by the Dutch trade union FNV, some of the money withheld was repaid to the Portuguese workers, but eight workers – the whistleblowers and those that gave evidence to an investigation committee that was instituted to look at the case – were sacked by the company and no action has been taken to reinstate them.<sup>4</sup> Furthermore, whilst the company stopped charging excessive fees for Portuguese workers, they continued doing so in 2014 for Polish workers, who had not been subject to much media scrutiny.<sup>5</sup> A Dutch regional court of Utrecht decided on 18 March 2015 that the company had to repay workers the illegally withheld fees with retrospective effect from 2012 onwards.<sup>6</sup>

*See next page*

1 Stoppafusket, Atlanco Rimec On Trial In Dutch Court, 26 January 2014, <http://www.stoppafusket.se/2014/01/26/atlanco-rimec-on-trial-in-dutch-court/>

2 NRC Handelsblatt, Uitbuiting arbeiders A2 moet stoppen, 8 October 2013, <http://www.nrc.nl/carriere/2013/10/08/uitbuiting-arbeiders-a2-moet-stoppen/>

3 NOS news, Onderzoekers: geen uitbuiting A2, 22 November 2013, <http://nos.nl/artikel/578109-onderzoekers-geen-uitbuiting-a2.html>

4 De Limburger, Klokkenluiders A2 de dupe, 22 February 2014, <http://www.limburger.nl/article/20150320/DOSSIERS/131009085>

5 De Limburger, De A2-tunnel piept en kraakt, 20 March 2015, <http://www.limburger.nl/article/20150320/DOSSIERS/131009085>

6 1 Lumburg news, Rechter: Rimec moet A2-Portugezen terugbetalen, 18 March 2015, <http://www.1limburg.nl/rechter-rimec-moet-a2-portugezen-terugbetalen>

► **Box 10 continued: Exploitation at a publicly contracted construction site in the Netherlands**

Atlanco Rimec has come into disrepute for keeping a blacklist of trade union construction workers that it would not employ due to their union activities.<sup>7</sup> The company has also been accused of “cross-border social dumping practices”: In 2014, two investigative documentaries from Denmark<sup>8</sup> and Ireland<sup>9</sup> revealed how the company exploits temporary posted migrant workers in the construction industry in Denmark, the Netherlands, France, Sweden and other countries. Polish workers, employed via local Polish subsidiaries of Atlanco Rimec, were shown to be offered Cypriot working contracts which have lower labour standards, even if they have never been in Cyprus.<sup>9</sup>

The case also shows how the use of sub-contracting arrangements through mailbox companies forms a substantial barrier to remedies for victims in corporate-related abuses: In 2013, Atlanco Rimec announced that it would declare the Dutch company responsible for the A2 tunnel construction bankrupt.<sup>10</sup> The trade union therefore lodged a complaint against the construction consortium Avenue2, which includes construction companies Ballast Nedam and the main contractor Strukton, which sub-contracted Atlanco Rimec to provide workers.

7 Rabble, Irish Company Accused of “Modern Day Slavery”, 15 July 2014, <http://www.rabble.ie/2014/07/15/atlanco-rimec/>

8 DR1, Østarbejdernes bagmænd, May 2014, <https://www.youtube.com/watch?v=fB91yFUpmZl>

9 RTE news, The treatment of foreign workers by Irish firms, 6 November 2014, <http://www.rte.ie/news/player/2014/1106/20677365-the-treatment-of-foreign-workers-by-irish-firms/>

10 European Federation of Building and Woodworkers, 3 November 2013, Another shocking documentary on cross-border social dumping practices of Atlanco Rimec, <http://www.efbww.org/default.asp?Index=931&Language=EN>

11 NRC Handelsblatt, Geen uitbuiting personeel tunnel A2 – FNV stelt aannemers aansprakelijk, 22 November 2013, <http://www.nrc.nl/carriere/2013/11/22/fnv-aannemers-aansprakelijk-voor-uitbuiting-bij-aanleg-a2/>

Research by Anti-Slavery International and other NGOs showed that construction workers are coerced into not taking sick leave by threatening to cancel their work permits. In the UK, some of those interviewed for the research expressed concerns about possible cases of forced labour in the construction sector, where workers were exploited on projects sub-contracted from the public sector.<sup>87</sup>

87 Anti-Slavery International, Trafficking for Forced Labour in Europe. Report on a study in the UK, Ireland, the Czech Republic and Portugal, 2006, [http://www.antislavery.org/includes/documents/cm\\_docs/2009/t/trafficking\\_for\\_fl\\_in\\_europe\\_4\\_country\\_report.pdf](http://www.antislavery.org/includes/documents/cm_docs/2009/t/trafficking_for_fl_in_europe_4_country_report.pdf), pp. 16 and 18.

### 3.4.6 Domestic work

According to the ILO, there are at least 53 million adult domestic workers worldwide, with numbers increasing in developed and developing countries. 83% of domestic workers are women.<sup>88</sup> Publicised cases in past years have highlighted the slavery-like conditions and severe forms of exploitation that domestic workers are subjected to, not only globally but also in Europe. The problem has been recognised by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, which started to work on trafficking for the purpose of domestic servitude, including in diplomatic households in 2010.<sup>89</sup> Diplomatic immunity of diplomat employers can obstruct efforts to combat abuses and the migrant worker's right to stay is typically not granted to the employee personally, but rather based on the employer's position, creating dependence and vulnerability.

The Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against children also identified domestic work, especially for diplomats, as one of the highest-risk sectors for labour exploitation in the Netherlands in 2007,<sup>90</sup> noting that domestic work is "hidden from view and can foster social isolation and multiple dependence, especially for foreign workers who live in the employer's home, making domestic workers particularly vulnerable to exploitation."<sup>91</sup>

There is a long-standing and active network of domestic workers in Europe fighting exploitation in private households, often led by Filipino migrants and women's organisations. In 2006, after a campaign by the Netherlands-based Commission for Filipino Migrant Workers (CFMW), the ABVAKABO FNV trade union opened up membership to undocumented domestic workers, providing them access to legal assistance and free instruction in the Dutch language, among others.<sup>92</sup> Long-term campaigning also led to the adoption of the ILO Domestic Workers Convention, 2011 (No. 189), which came into force in 2013.<sup>93</sup>

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88 See <http://www.ilo.org/global/topics/domestic-workers/lang--en/index.htm>

89 OSCE, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, 2010, <http://www.osce.org/secretariat/75804?download=true>

90 Dutch National Rapporteur on THB, *Trafficking in Human Beings – Fifth report of the Dutch National Rapporteur*, 2007, <http://www.dutchrapporteur.nl/reports/fifth/>

91 Dutch National Rapporteur on THB, *Trafficking in Human Beings – Seventh Report of the Dutch National Rapporteur*, 2009, <http://www.dutchrapporteur.nl/reports/seventh/>, p. 488.

92 Transnational Institute, *Breakthrough for Trade Union and Migrant Domestic Workers!*, 2006, [http://www.tni.org/archives/acts\\_migrantspress](http://www.tni.org/archives/acts_migrantspress)

93 See [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189)

### Box 11: Exploitation of a domestic worker in the Netherlands<sup>1</sup>

H (name not disclosed in the Dutch human trafficking rapporteur's report) worked as a domestic worker for an embassy in the Netherlands on the basis of a privileged document. It was agreed in her employment contract that she would work 40 hours a week and receive a monthly salary of €1,400. However, according to H, she actually worked 15 hours a day, seven days a week, and only received €200 a month in salary. Her employer also took her passport. H wanted to be transferred to another employer. A friend put her in contact with an NGO that helped her. The NGO contacted the Ministry of Foreign Affairs, which then contacted H's employer, who denied H's allegations. H went to the foreigners' police for an intake interview. She was not informed of her rights under the former B9 (now B8/3)<sup>2</sup> regulation for victims of trafficking, which allows for a residency permit if the victim collaborates in proceedings against the abusive employer, or offered a reflection period. H was not at all confident about how her case would be handled and decided to return to her country of origin. The public prosecution service did not launch a prosecution. The lawyer submitted a claim for back wages against the employer. Since the payments that H did receive were in cash, it was difficult for her to prove that she still owed wages.<sup>3</sup>

1 Dutch National Rapporteur on THB, Trafficking in Human Beings – Seventh Report of the Dutch National Rapporteur, 2009, <http://www.dutchrapporteur.nl/reports/seventh/>, p. 490.

2 The term B8/3 refers to the chapter B8/3 of the Dutch Alien circulaire 2000 (Before this was the chapter B9).

3 The outcome of the proceedings was not known at the time the Dutch human trafficking rapporteur's report was written.

### 3.4.7 Garment industry

Rather than merely being a problem in India and other well-known garment manufacturing countries, the garment sector is central to many Eastern European economies. Starting in the 1970s, western fashion and clothing corporations from Germany, Italy, the Netherlands and Switzerland increased their garment production outsourcing to, amongst others, Romania and Bulgaria. Already in 2004,<sup>94</sup> the German Clean Clothes Campaign highlighted highly exploitative working conditions in the garment industry in Eastern Europe.

*"In garment factories it is a common practice to stick notices about fines and penalties for such improper behaviour as speaking or drinking water during work time, for sitting idle or resting, or frequent visits to the toilet. The women engaged in the garment industry work 10 to 14 hours a day,*

94 Campaign for Clean Clothes, Made in ... Eastern Europe. The new 'fashion colonies', 2004, <http://www.cleanclothes.org/resources/national-cccs/made-in-eastern-europe.pdf>



*six or seven days a week. Grave non-compliance with conditions of labour safety often leads to accidents in the factories".<sup>95</sup>*

The continued existence of poverty wages and exploitative working conditions in the industry and the region over a decade highlighted in the first report were confirmed in a similar study from CCC published in 2014.<sup>96</sup> The report interviewed workers in 10 countries, namely, Romania, Ukraine, Turkey, Bulgaria, Croatia, Slovakia, Georgia, Macedonia (FYROM), Bosnia & Herzegovina and Moldova.



*"We work like robots. No rest. Nerves are ruined, eyes are spoiled, backs hurt. We are not treated like human beings. We are shouted at. We take the problems and the pressure home and the family is suffering. You get aggressive. You must not protest; you just have to function. Fear is forcing workers to do that,"<sup>97</sup>*  
Bulgarian worker

### 3.4.8 Manufacturing, processing and packaging

There have been numerous reports about the increasing use of recruitment agency workers in Europe's factories and manufacturing sectors. No general overview of labour exploitation in these diverse economic sectors exists, but various reports about the exploitation of migrant workers in production processes point to a structural problem of labour exploitation. The following case from the German meat industry is a shocking example how human trafficking can take place in a formal sector in factories operated by multinational corporations where relevant national and European labour laws apply.

<sup>95</sup> Ibid, p. 34.

<sup>96</sup> Clean Clothes Campaign, *Stitched Up – Poverty Wages in Eastern Europe and Turkey*, 2014, <http://www.cleanclothes.org/livingwage/stitched-up>

<sup>97</sup> Clean Clothes Campaign, 2014, *Stitched Up. Poverty wages for garment workers in Eastern Europe and Turkey*, <http://www.cleanclothes.org/resources/publications/stitched-up-1>

## Box 12: Eastern European workers trafficked in the meat industry in Germany

In recent years there have been several media investigations into the exploitation of Bulgarian, Hungarian, Polish and Romanian workers in numerous meat processing factories in northern Germany.<sup>1</sup> An estimated 40,000 recruitment agency workers make up a staggering 80% of the German meat industry workforce.<sup>2</sup> In May 2013, the German public prosecution offices of Oldenburg and Düsseldorf conducted a nation-wide raid against criminal recruitment networks providing cheap labour to Germany's meat industry, searching homes and offices in 90 different locations in the country. Investigations are ongoing at the time of writing against 22 suspects and a network of more than 20 companies.<sup>3</sup> Already in 2010, a Düsseldorf court passed a prison sentence of more than five years on a labour recruiter on grounds of human trafficking.<sup>4</sup>

### Labour exploitation amounting to trafficking

The workers are employed through various labour sub-contracting arrangements with Eastern European firms. Exploitation takes the form of:<sup>5</sup>

- ❑ Sub-standard housing provided by the recruitment agencies with several workers sharing small rooms and paying EUR 200 per month for the use of a mattress, no external visitors allowed and regular security checks. Extraordinary living conditions have been reported about workers living in make-shift tents in the forest near their place of work, often because they are kicked out of the houses by abusive landlords.<sup>6</sup>
- ❑ False promises with regard to wages and conditions on recruitment in Eastern Europe.

*See next page*

1 ARD Documentary, Lohnsklaven in Deutschland - Miese Jobs für billiges Fleisch, Marius Meyer & Michael Nieberg, 24.6.2013, <https://www.youtube.com/watch?v=IscoCH4MixQ>; Süddeutsche Zeitung, Skandalöse Verhältnisse in der Fleischindustrie. Lohnsklaven in Deutschland, 23.06.2013, <http://www.sueddeutsche.de/wirtschaft/skandaloes-verhaeltnisse-in-der-fleischindustrie-lohnsk-laven-in-deutschland-1.1703776>

2 Die Zeit Online, Fleischindustrie beutet osteuropäische Arbeiter systematisch aus, 10.12.2014, <http://www.zeit.de/wirtschaft/2014-12/schlachthof-fleischindustrie-arbeiter-osteuropa-ausbeutung>

3 Elmar Wigand, aktion ./. arbeitsunrecht e.V., Billiges Fleisch: Lohnsklaven im Schlachthof-Dschungel, 21.10.2013, <http://arbeitsunrecht.de/lohnsk-laven-im-billig-fleisc-dschungel/>

4 Österreichische Fleischerzeitung, Razzia gegen Schwarzarbeit in deutschen Schlachthöfen, 24.06.2013, <http://www.fleischerzeitung.at/razzia-gegen-schwarzarbeit-in-deutschen-schlachthoefen-126951.html>

5 When no footnote reference is provided, all news items cited elsewhere report on the conditions in various factories in northern Germany.

6 Die Zeit Online, Fleischindustrie beutet osteuropäische Arbeiter systematisch aus, 10.12.2014, <http://www.zeit.de/wirtschaft/2014-12/schlachthof-fleischindustrie-arbeiter-osteuropa-ausbeutung>

► **Box 12 continued: Eastern European workers trafficked in the meat industry in Germany**

- ❑ Exploitation wage levels: a German trade union found workers with an hourly pay of EUR 1 at factories of VION Waldkreiburg and D&S Fleisch Essen in Oldenburg.<sup>7</sup>
- ❑ Illegal fees deducted from the pay, workers also have to pay for their own protective gear and tools used for work and for support to see a doctor or fill in forms for the authorities
- ❑ Recruitment fees leading to indebtedness.
- ❑ Physical violence by organised gangs against workers when they complain about working conditions.
- ❑ A TV documentary reported that in factories of the companies Danish Crown and the Dutch Vion group, Hungarian migrants worked 10 to 14 hours per day, receiving EUR 362 for two months of work.<sup>8</sup> Trade unions and court cases have uncovered working hours of 10 to 20 hours a day, 6 to 7 work days a week and regular weekend and night shifts.<sup>9</sup>

**Profitable business that destroys employment in other EU countries**

The German meat industry has become so profitable through this level of labour exploitation that foreign corporations such as the Danish Crown and the Dutch Vion have moved their production to Germany. Denmark has lost more than two thirds of its employment in the meat industry to Germany (more than 10,000), the Netherlands has lost 10,000 industry jobs to German factories, and the same trend is detected in Belgium and France. The annual turnover in the industry has increased from EUR 21,6 billion in 2001 to EUR 40,8 in 2013 and Germany has developed from a pork importing- to a pork exporting country.<sup>10</sup>

7 Matthias Brümm, Gewerkschaft Nahrung-Genuss-Gaststätten (NGG), trade union secretary for Oldenburg, Fleischkapitalismus - Sklavenarbeit in Niedersachsen, Forum für Politik und Kultur e.V., Hannover, 18.3.2015, <http://www.koop-hg.de/fileadmin/user/Termine/Allgemein/2015/2015-03-18-Bruemmer-Fleischkapitalismus.pdf>

8 ZDF-Magazin, Frontal 21, cited in FAZ, Jan Grossarth, Arbeitsbedingungen auf Schlachthöfen. Das billige Fleisch hat einen Preis, 15.4.2013, <http://www.faz.net/aktuell/wirtschaft/wirtschaftspolitik/lebensmittel/arbeitsbedingungen-auf-schlachthoefen-das-billige-fleisch-hat-einen-preis-12148647.html>

9 Matthias Brümm, Gewerkschaft Nahrung-Genuss-Gaststätten (NGG), trade union secretary for Oldenburg, Fleischkapitalismus - Sklavenarbeit in Niedersachsen, Forum für Politik und Kultur e.V., Hannover, 18.3.2015, <http://www.koop-hg.de/fileadmin/user/Termine/Allgemein/2015/2015-03-18-Bruemmer-Fleischkapitalismus.pdf>

10 Matthias Brümm, Gewerkschaft Nahrung-Genuss-Gaststätten (NGG), trade union secretary for Oldenburg, Fleischkapitalismus - Sklavenarbeit in Niedersachsen, Forum für Politik und Kultur e.V., Hannover, 18.3.2015, <http://www.koop-hg.de/fileadmin/user/Termine/Allgemein/2015/2015-03-18-Bruemmer-Fleischkapitalismus.pdf>

### 3.5 Conclusion

This Chapter reviewed the UN and ILO legal definitions of human trafficking and forced labour, concluding that rather than two distinct phenomena they are part of a continuum whereby bad working conditions can deteriorate into forced labour situations. This has important consequences for anti-trafficking prevention and detection, as trade unions, labour inspectorates and migrant support groups are important stakeholders in identifying situations of exploitation. The Chapter provided examples of labour exploitation that fulfil a number of human trafficking criteria in economic sectors that are known to be vulnerable to human trafficking, ranging from construction to domestic work. The recruitment sector cross-cuts all economic sectors and play a central role in exploitation given its specific role in cross-border labour recruitment services. The liberalisation and market penetration of this sector in Europe was thus outlined, citing literature on the lack of regulation and how this has contributed to the precariousness and thus exploitation of temporary and migrant workers in Europe in particular.

## 4 The role of business in forced labour and human trafficking

The previous chapters discussed legal definitions of human trafficking and forced labour in Europe and provided case studies for these practices in Europe in various economic industries. This Chapter concentrates on the role and responsibility of corporations in this exploitation. It briefly discusses the political-economic context in which corporations operate, namely, the growth of flexible labour relations and the related demand for cheap and exploited labour. The following questions are then discussed in more detail:

- ❑ In which ways can companies be complicit in human trafficking and labour exploitation?
- ❑ What is the role of the recruitment sector in human trafficking?
- ❑ What are the financial gains generated from human trafficking?
- ❑ How can corporations address human trafficking in their operations and supply chains?

### 4.1 The demand for cheap and flexible labour

As outlined in Chapters 4 and 7 in more detail, the private sector is diverse in size, structure and position in the production chain and thus differs in the ways in which it can cause or be implicated in human trafficking. Most businesses, however, are linked to the growing global demand for cheap products and services, and, as such, to the exploitation of workers. Cheap labour means wages are low and often below-subsistence. For production and services to adapt to the flexible needs of buying companies at no cost, workers must be kept subservient. For example, they should not go on strike and demand better working conditions, such as fewer working hours, health and safety at work, job security, salary increases, sick and holiday pay or career prospects.

The ILO points out that bad working conditions and very low pay are the soil on which forced labour situations are allowed to grow:

*“Employers who operate on the basis of very low margins of profit and under fierce global competition have little incentive to improve labour standards. On the contrary, they will squeeze labour costs, in particular in labour intensive and low-skilled economic sectors in which workers can be quickly replaced. If this is accompanied by a general climate of impunity due to the absence of laws and strong labour law enforcement, the risks are high that sub-standard working conditions degenerate into forced labour.”<sup>98</sup>*

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98 ILO, Background Paper, Fighting Human Trafficking: the Forced Labour Dimensions, Conference paper for The Vienna Forum to fight Human Trafficking, 13-15 February 2008, Austria Center Vienna, Background Paper, 019 Workshop: The Roles of Employers’ Organizations, Businesses and Trade Unions in Combating Trafficking for Labour Exploitation, <http://www.unodc.org/documents/human-trafficking/2008/BP019TheRolesofEmployersOrganizationsILO.pdf>, pages 4-5.

And further:

*“Some initial research on the demand side revealed that employers prefer migrant workers because they are disciplined and more docile. Weak sanctions, loopholes in legislation and cumbersome bureaucratic procedures make it easy for employers to conceal exploitation. The availability of vulnerable workers combined with impunity influence the behaviour of business.”<sup>99</sup>*

To tackle a problem such as exploitation adequately, it is important to understand the political-economic and regulatory context that generated it and reproduces it. Some of this, such as the liberalisation and globalisation of the economy from the late 1970s onwards and the ensuing global governance gap, is already touched upon in Chapter 2.1.

The demand for cheap and exploited labour has been highlighted as a so-called root cause for human trafficking in recent years.<sup>100</sup> In fact, the concept derived from the field of trafficking for sexual exploitation and was first coined in the context of Sweden criminalising clients of sex workers based on the belief that any commercial sexual service is exploitation, whether the people with whom clients pay for sex have been trafficked or not (see Chapter 1.2).<sup>101</sup> The specific origin of this term has meant that there is a relatively uniform definition used in the anti-trafficking field, which has also been extended to other economic sectors with the human trafficking definition widening.<sup>102</sup> In a multi-country study on the demand for trafficked labour in Asia, the ILO has identified three levels of demand, which other organisations such as the UN Global Initiative to Fight Human Trafficking (UN.GIFT) and the Special Rapporteur on trafficking in persons, especially women and children, refer to. These are:

- ❑ Employer demand (employers, owners, managers or sub-contractors)
- ❑ Consumer demand clients (in the sex industry), corporate buyers (in manufacturing), household members (in domestic work)
- ❑ Third parties involved in the process (recruiters, agents, transporters and others who participate knowingly in the movement of persons for the purposes of exploitation)

99 Beate Andrees/ILO, Forced labour and trafficking in Europe: how people are trapped in, live through and come out, 2008, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_090548.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf), p. 38.

100 To name but a few: Anderson, B., O’Connell Davidson, J., IOM, Trafficking – a demand led problem? A multi-country pilot study, 2003, <https://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/Anderson04.pdf>; International Human Rights Law Institute, DePaul University College of Law, Demand Dynamics. The Forces Of Demand in Global Sex Trafficking, Conference Report, Conference held October 2003, [http://lastradainternational.org/Isidocs/514%20demand\\_dynamics\\_oct07.pdf](http://lastradainternational.org/Isidocs/514%20demand_dynamics_oct07.pdf); ILO, The Demand Side of Human Trafficking in Asia. Empirical Findings, 2008, [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_bk\\_pb\\_73\\_en.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_73_en.pdf).

101 Levy, J. & Jakobsson, P., Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers, Criminology and Criminal Justice, March 2014, <http://crj.sagepub.com/content/early/2014/03/31/1748895814528926>

102 Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Integration of a human rights-based approach in measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and which leads to human trafficking, 23rd Session (HRC), 2013, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/122/82/PDF/G1312282.pdf?OpenElement>

In all three types of demand, the private sector plays a central role, or rather, a number of central roles. Namely, as employers of exploited labour, as buyers in the global production process, and as labour intermediaries that target a vulnerable and flexible workforce to profit from offering their labour to others.

It has further been pointed out that the demand for the labour or services of trafficked persons *“is absent or markedly lower where workers are organised and where labour standards for wages, working hours and conditions, and health and safety, are monitored and enforced. This suggests that strong labour laws and improved implementation would have a direct impact on trafficking for forced and exploitative labour, provided they could be extended to cover all workers, including migrant workers who are currently undocumented”*.<sup>103</sup>

An analysis of demand for trafficked labour therefore requires an understanding of the context in which it is being discussed, such as existing labour laws and other regulations defining the sector as well as the characteristics of the labour or services exploited, including the gender of workers. In the context of this Resource Guide, this specifically requires NGOs wishing to engage with the private sector in their field to look at:

- ❑ the different actors in the supply chain of products and services linked to exploitation
- ❑ the (lack of) the protection of labour rights in the economic sectors concerned
- ❑ the (lack of) regulation of the (national) human rights impact of businesses
- ❑ the (lack of) regulation of the recruitment industry

The latter four points refer to the state’s responsibility to protect people from human rights abuses, including trafficking for labour exploitation. The next Chapter explores this in more detail. Advocacy in this regard should, for instance, focus on more effective identification of employers who violate existing labour laws and standards and prosecuting abusers, providing migrant workers in particular with access to remedies, regardless of their legal status, and improving laws in sectors such as domestic work and the sex industry that currently lack adequate formal legal protection.

The first point relates to the private sector, the focus of this Chapter. In this context, it should be understood that the demand for cheap labour is shaped by:

- ❑ powerful actors at the top of the supply chain that effectively determine prices of manufacturers
- ❑ fierce competition between medium-sized suppliers in a global market
- ❑ entrenched practices in many economic sectors of sub-contracting and the use of agency labour

This global competition and uneven power relationship between market actors in the supply chain is a major contributing factor in bad working conditions, and the subsequent deterioration of the same into forced labour and human trafficking.

In addition, not only in the cross-border but also in the national context, sub-contracting is used to push down wages and conditions of work in the cleaning, care, manufacturing, transport and constructions sectors. Working conditions in large parts of the economy, not only in developing but

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103 Marshall citing research by Anderson and O’Connell in: Addressing the Demand Side of Human Trafficking, 2012, <http://lastradainternational.org/doc-center/3047/addressing-the-demand-side-of-trafficking>, p. 2.

**Box 13: Brand and retailer pressure on suppliers: an example from the garment industry<sup>1</sup>**

Over the last few decades, the fashion industry has changed considerably. Brands and retailers are introducing ever more lines per year at lower costs. New items arrive in stores every few weeks. To be able to offer clothes at bargain prices and to respond rapidly to changing fashion trends, clothing brands and retailers are continually looking for cheap production locations that can accommodate complex orders and deliver quality goods at short notice.

The average garment company may spread its orders over hundreds of changing suppliers. Long-term relationships with suppliers are rare. The increased pressure on short lead times and low prices has a knock-on effect throughout the whole supply chain. This 'fast fashion' model has a detrimental effect on working conditions. Low wages, forced labour, unhealthy and dangerous working conditions and child labour are rampant throughout the garment supply chain.

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1 SOMO, Fact Sheet. Child labour in the textile & garment industry. Focus on the role of buying companies, March 2014, [http://www.somo.nl/publications-en/Publication\\_4058/](http://www.somo.nl/publications-en/Publication_4058/)

also developed economies have sharply deteriorated as a result of sub-contracting, and the bottom of the labour market is characterised by undocumented and migrant labour.<sup>104</sup>

Recruitment agencies or labour intermediaries play a central role in these sub-contracting processes by recruiting flexible and often vulnerable workers from abroad, obscuring the employer-worker contractual relationship, controlling all aspects of an agency worker's life in the host country making him or her dependent, and avoiding accountability with regard to working and living conditions by various artificial legal arrangements, such as the use of letterbox companies in jurisdictions with weak social protection.<sup>105</sup>

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104 See the collection of articles in Fudge, J., Strauss, K. (eds.), *Temporary Work, Agencies and Unfree Labour. Insecurity in the New World of Work*, 2014, Routledge, New York.

105 See the collection of articles in Bernaciak, M., ed., *Market expansion and social dumping in Europe*, London: Routledge.



## 4.2 In what ways can companies be complicit in human trafficking?

Chapter 3 talks about risk sectors and gives some examples of the type of violations that take place in Europe today that constitute forced labour and human trafficking. In cases of direct and knowing corporate complicity in the crime of human trafficking, employers and recruiters use a range of coercive measures to keep workers in exploitative conditions:<sup>106</sup>

- ❑ withholding of wages
- ❑ real or perceived lack of freedom of movement
- ❑ indebting workers (debts owed to the employer or intermediary)
- ❑ threats and violence.

Direct complicity is of course punishable under criminal law. There are many forms of indirect complicity in human trafficking, however, which are also forbidden under existing regulations and therefore require awareness of employers and businesses with regard to potential complicity. According to the Training Tool on Human Trafficking produced by the Human Rights and Business Dilemmas forum<sup>107</sup> there are three main ways in which companies may be complicit in human rights abuses related to human trafficking in human beings:

- ❑ Use of a company's products, facilities or services in the trafficking process (e.g. the transport of victims via airlines and shipping companies – or the use of tourism and hospitality facilities such as hotels and resorts)
- ❑ Exploitation of trafficking victims within a company's supply chain (e.g. the use of forced labour by suppliers or sub-contractors)
- ❑ Use of personnel supplied by third party agents (domestic or overseas), over which the company has limited oversight (e.g. labour brokers whose unscrupulous recruitment increases the likelihood of the use of trafficked people)

These examples, although the descriptions differ, closely correlate to the ILO's classification of demand into employers', consumers' and third parties' demand outlined in Chapter 4.1. Again, the use of recruitment agencies and sub-contracting in a supply chain is one of the main risk factors for businesses becoming complicit in human trafficking and forced labour. In short, if several trafficking indicators are found to exist in a company's supply chain, i.e. in the products or services purchased by a buying company, that company is most probably implicated in human trafficking.

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106 Beate Andrees, ILO, Forced labour and trafficking in Europe: how people are trapped in, live through and come out, 2008, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_090548.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf), p. 38.

107 The Forum is produced jointly by the United Nations Global Compact and Verisk Maplecroft and aims to create understanding of and stimulate discussion about the dilemmas multi-national companies can face in their efforts to respect and support human rights when operating in emerging economies, see <http://hrbdf.org/>

### 4.3 Role of the recruitment sector

In today's production processes, the use of labour is characterised by sub-contracting and labour intermediaries, not only in a cross-border context but also at a national level. Certain industries are known to use sub-contracting as a standard, such as the construction and transport industries. Sub-contractors and labour intermediaries often recruit workers and manage all labour-related issues, with the effect that workers and employers are no longer in direct contact anymore and have no formal relationship with each other in terms of an employment contract (see Chapter 3.4.1).

The US-based organisation Verité, which conducts research and manages a resource website on responsible recruitment,<sup>108</sup> has identified the following problems linked to recruiting migrant workers in global supply chains, which overlap with those identified in the previous sub-chapter:

- ❑ Recruitment fees, leading to debt human trafficking and debt bondage
- ❑ Passport retention, resulting in restrictions on workers' freedom of movement, and being used as a means to bind them to a particular job
- ❑ Deception and contract substitution, when workers agree to one set of payment terms and working conditions, but find themselves presented with substantially different and inferior terms after they have incurred costs and obligations that may limit their freedom to refuse the imposed changes
- ❑ Lack of freedom of movement related to housing, visas, retention of identity documents and return tickets
- ❑ Inadequate grievance procedures at the workplace
- ❑ Restrictions on Freedom of Association: the right of migrant workers to form and join trade unions is restricted in many countries and migrant workers are often targeted for reprisal

The role of end users of recruited labour is increasingly seen as in need of regulation through chain liability. This means making corporations that make use of exploited labour through recruitment or sub-contracting directly liable for labour law violations, compensation and unpaid wages. Good due diligence procedures entail that end users of recruited labour are required to select, evaluate and monitor not only recruitment agencies and labour intermediaries in their direct operations but also in all stages of the supply chain (see Chapters 3.4.1, 5.3.4 and 6.9).

### 4.4 What are the proceeds from forced labour and trafficking?

In 2005, ILO research on the quantitative and economic dimensions of forced labour and human trafficking calculated that trafficked and forced labour generated profits of almost US\$ 32 billion. In line with the ILO's classifications of forced labour and human trafficking (see Chapter 3.1.3), the ILO research calculated the profits extracted from forced commercial sexual exploitation, which includes women, men and children who have been forced by private agents into prostitution or into other forms of commercial sexual activities, as well as forced labour for economic exploitation, which comprises all forced labour imposed by private agents and enterprises in sectors other than the sex industry. The sectors analysed include forced labour in agriculture, industry and services, as well as

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108 See <http://www.responsiblerecruitment.org>

in some illegal activities. A distinction was also made between forced labourers who were trafficked and forced labourers who were not trafficked

It is estimated that profits made from forced labourers exploited by the private sector amount to US\$ 44.3 billion every year, of which US\$ 31.6 billion is from trafficked victims. The research also estimates that the largest profits – more than US\$ 15 billion – are made from people trafficked and forced to work in industrialised countries.<sup>109</sup> When compared to another ILO research, namely, the calculation of a minimum estimate of forced labour in the world, this represents an average profit of approximately US\$ 13,000 per year for each forced labourer, or US \$1,100 per month.<sup>110</sup>

A breakdown of these profits showed that margins of profit per capita are twice as high in the sex industry as in other economic sectors. Nonetheless, the ILO notes that employers can make significant profits based on the large number of illegally employed workers for whom they do not pay any social contributions, as well as paying no or very low wages.<sup>111</sup>

Human trafficking is therefore a profitable business and proposed counter-measures include the confiscation of proceeds from trafficked labour and linking this directly with the compensation of victims.<sup>112</sup> A number of initiatives in this regard exist at the EU level.<sup>113</sup>

## 4.5 What can corporations do to address human trafficking in their supply chains?

As a response to public pressure or in a genuine attempt to prevent or mitigate violations, many large corporations have policies on preventing labour exploitation in their supply chain. Some recent well-publicised examples of forced labour situations, as well as new anti-human trafficking legislation in North America and Europe, has also led businesses to strengthen supply chain management specifically with regard to trafficking in human beings.<sup>114</sup>

A number of advisory groups or multi-stakeholder initiatives have also developed and outlined steps that companies can take in this regard. Their relevant guidelines and publications are highlighted for further reading in the sections below. As outlined in Chapter 5.3.1, the UN Business and Human

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109 Patrick Belser, ILO, *Forced Labour and Human Trafficking: Estimating the Profits*, 2005, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081971.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081971.pdf)

110 ILO, *Combating forced labour: A handbook for employers and business*, 2008, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_101171.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf), Introduction & Overview, p. 14.

111 Beate Andrees/ILO, *Forced labour and trafficking in Europe: how people are trapped in, live through and come out*, 2008, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_090548.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf), p. 33.

112 See, for instance, the COMP.ACT project coordinated by La Strada International at <http://www.compactproject.org/>

113 See the EU website on Migration and Home Affairs on confiscation and asset recovery at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/confiscation-and-asset-recovery/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/confiscation-and-asset-recovery/index_en.htm)

114 ILO, *Combating forced labour: A handbook for employers and business*, 2008, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_101171.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf), Introduction & Overview, page 5.

Rights framework has developed the concept of due diligence to address the role of businesses violating human rights in their supply chain. NGOs and other institutions are currently developing frameworks regarding what due diligence can mean in practice, including its application regarding the prevention of trafficking. Some of these are highlighted here.

#### 4.5.1 What is a good due diligence procedure of buying companies?

A good due diligence procedure that buying companies should implement to reduce the demand for forced labour and ensure that their products and services are trafficking-free should contain the following elements:<sup>115</sup>

- ❑ Human rights risk assessment
  - As a standard due diligence procedure, buying companies should undertake human rights risk assessments at country or regional level before sourcing. Risks include human rights violations that are occurring or have occurred or that might occur in future. This assessment will help companies to stop current negative impacts and helps them prevent potential negative impacts in the future and to remediate any harm caused.
  
- ❑ Consultation with workers, trade unions, communities and CSOs
  - In order to gain a good understanding of the particular local context, consultation and cooperation with local stakeholders is essential. The concept of worker-led social responsibility<sup>116</sup> of corporations is gaining increasing support in this regard, which means that corporations should communicate directly with workers in the supply chain about existing human rights issues and complaints. Dottridge<sup>117</sup> goes as far saying, *"it is difficult to see how [UNGP 18b (consultation with potentially affected groups)] could be met without communicating directly with workers, some of whom may have first-hand experience of abuse or be well-informed about the circumstances in which abuse occurs."*
  - Extra attention should be given to signs that might be an indication of forced labour practices, such as the existence of on-site hostels and the presence of large groups of migrant workers among the workforce.
  
- ❑ Supporting freedom of association
  - Buying companies also have a responsibility to ensure that independent trade unions can play their designated roles. First and foremost, the right of workers to form and join trade unions and to bargain collectively should be protected and respected. This allows workers to defend their rights, voice grievances and negotiate recruitment and employment conditions.

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115 For due diligence and purchasing practices procedures see SOMO (September 2013) Fact Sheet. Forced Labour. Focus on the role of buying companies, [http://www.somo.nl/publications-en/Publication\\_3991](http://www.somo.nl/publications-en/Publication_3991).

116 See Coalition of Immokalee Workers, Worker-driven Social Responsibility (WSR): A new idea for a new century, 16 June 2014, <http://ciw-online.org/blog/2014/06/wsr/>

117 OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, Mike Dottridge, Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector, Occasional Paper Series No.7, November 2014, <http://www.osce.org/secretariat/126305>, p. 36.

- Buying companies should support and facilitate the training of management, workers and workers' representatives (both separately and jointly) in freedom of association, collective bargaining, labour-management relations, occupational health and safety etc. Such training should be delivered by trade unions or credible labour rights organisations.
- **Genuine grievance mechanisms**
  - In addition, genuine and credible grievance mechanisms should be established at buyer and supplier level to deal with workers' needs and complaints. Company grievance procedures are an important supplement to collective bargaining, but may never be used to replace this legitimate process.



*This fact sheet<sup>118</sup> offers examples of different types of forced and bonded labour and makes recommendations for garment buying companies to recognise and address cases of forced labour in their supply chains.*



*This EU Commission study<sup>119</sup> looks at responsible supply chain management and potential success factors and challenges for addressing human rights issues in EU companies' supply chains. The study focuses, amongst others, on child labour and freedom of association and collective bargaining and the supply chains garments from cotton, sugar from sugar cane and mobile phones. Opportunities and challenges are identified from twelve selected case studies from these three sectors.*

118 SOMO, Fact Sheet Forced Labour. Focus on the role of buying companies, 2013, [http://www.somo.nl/publications-en/Publication\\_3991](http://www.somo.nl/publications-en/Publication_3991)

119 CREM & SOMO, Responsible Supply Chain Management. Potential Success Factors and Challenges for Addressing Prevailing Human Rights and Other CSR Issues in Supply Chains of EU-based Companies, 2011, <http://ec.europa.eu/social/main.jsp?langId=en&catId=331&newsId=1014&furtherNews=yes>

### 4.5.2 Purchasing practices: tackling the demand for cheap labour

Purchasing practices of buying companies should enable – and not inhibit – decent working conditions at supplier factories. This includes:

- ❑ a pricing policy that takes into account the social and environmental quality of sourced products, including a living wage benchmark to ensure that suppliers are paying a fair wage
- ❑ building long-term, stable buyer-supplier relationships
- ❑ incorporating good production planning, including reasonable supply lead times, predictability of orders and minimising last-minute changes
- ❑ establishing effective communication between sourcing, financial and design divisions to make sure that the consequences of certain decisions, such as design changes and urgent orders, are understood



*As highlighted in this 2008 guide produced by the Clean Clothes Campaign, there are four major steps garment companies can take to ensure their products are made under humane conditions.<sup>120</sup> The guide outlines what companies can do to better assess, implement and verify compliance with labour standards along their supply chains, and eliminate abuses where and when these arise.*

### 4.5.3 Scrutinising recruitment agencies and improving contracts

As outlined in Chapter 4.3, one of the main ways that corporations are linked to human trafficking is by indirectly or directly employing staff through labour brokers or recruitment agencies. The first action point for businesses attempting to address this risk is therefore to improve their outsourcing processes and policies with regard to labour, both in their direct operations as well as in their supply chain management. Research from the UK<sup>121</sup> has generated the following recommendations:

- ❑ Employers should ensure that they have formal and detailed service-level agreements with labour providers. Such agreements should clarify where the employer's responsibilities lie with regards to matters such as the provision of health and safety training and the provision of interpreters for foreign workers.
- ❑ In light of their particular vulnerability to mistreatment and exploitation, employers should scrutinise agency workers' terms and conditions before engaging the services of a labour provider and should carry out greater oversight of agency workers within the workplace.

<sup>120</sup> <http://www.cleanclothes.org/resources/publications/full-package-approach.pdf>

<sup>121</sup> Mumtaz Lalani and Hilary Metcalf, Forced labour in the UK: The Business Angle, JRF Programme Paper, April 2012, <http://www.jrf.org.uk/publications/forced-labour-uk-business-angle>

- ❑ Businesses should facilitate direct not bogus self-employment by making the principal contractor responsible for all employees on site.
- ❑ Businesses should prevent exploitation further down the supply chain by increasing their familiarity with all suppliers within the supply chain and ensuring that they comply with the relevant employment legislation. Where possible, supply chains should be kept short.



*The US-based organisation Verité provides a plethora of resources on ethical recruitment practices and guidance on assessing labour intermediaries, working conditions for migrants in the supply chain, and improving supplier management of migrant labour.<sup>122</sup>*

It should be noted that NGOs have found that workplace checks by companies or state labour inspectors do not uncover most abusive practices. To ensure the prevention of trafficking or forced labour, more research needs to be carried out into the use of workforce engagement strategies, or independent worker-led monitoring and their ability to help expose problems in the workplace that social compliance audits are failing to uncover. The above-mentioned report 'Forced labour in the UK: The Business Angle' has suggested such research should focus initially on the food and agriculture industry where workforce engagement strategies are currently being used and should consider whether such an approach could be applied to other industries.

#### 4.5.4 Independent worker-led monitoring

An independent monitoring procedure of suppliers is a core element of responsible business conduct, as identified by virtually all business and human rights experts and practitioners. As mentioned above, the direct role of workers verifying the sound business conduct of suppliers is increasingly recognised (worker-led social responsibility). Corporations should communicate directly with workers in the supply chain about existing human rights issues and complaints.

A successful example of independent worker-led monitoring, or what the US-based Coalition of Immokalee Workers calls Worker-driven Social Responsibility (WSR), is the Fair Food Program, which was implemented across 90% of the Florida's tomato industry in 2011. Agricultural workers themselves designed the programme, its structure, function and implementation. One of the main differences of WSR in comparison to traditional CSR is that the monitoring of corporate commitments involves

<sup>122</sup> See the Fair Hiring Toolkit at <http://www.verite.org/fair-hiring-toolkit> or the Ethical Framework For Cross-Border Labor Recruitment at <http://www.verite.org/ethical-framework-for-intl-recruitment>



Source: Coalition of Immokalee Workers

the active participation of workers, who actively files complaints in case of non-compliance, rather than audit-based. The programme has been attributed with a material reduction of longstanding abuses from sexual harassment to modern-day slavery in Florida's tomato-growing industry. Campaigns for pay rises have added "over \$15 million in Fair Food Premiums to farm payrolls, and earned the praise of human rights experts from the White House to the United Nations."<sup>123</sup>

#### 4.5.5 Trade union involvement in monitoring and compliance

An example of involving trade unions in improving workers' rights in supply chains are Global Framework Agreements (GFA) between multinational companies and a Global Union Federation (GUF) to establish "an ongoing relationship between the parties and ensure that the company respects the same standards in all the countries where it operates".<sup>124</sup> These agreements are signed and implemented by labour unions and management and are seen by the ILO as a means of setting minimum standards and organising unions in MNCs and their worldwide production and supply networks.<sup>125</sup>

A similar example is multi-stakeholder agreements, such as the Fair Wear Foundation (FWF),<sup>126</sup> an independent not-for-profit foundation. One of the limitations of FWF's system is that audits are mostly taking place at first-tier supplier level, whilst forced labour often takes place in tiers further down the supply chain. The FWF has a tripartite (multi-stakeholder) board, in which business associations, trade unions and (labour) NGOs are equally represented. FWF verifies whether companies

123 See Coalition of Immokalee Workers, Worker-driven Social Responsibility (WSR): A new idea for a new century, 16 June 2014, <http://ciw-online.org/blog/2014/06/wsr/>

124 Dominique Michel from the International Labour Organization (ILO), cited by Business & Human Rights portal, <http://business-humanrights.org/en/freedom-of-association-0/issue/positive-company-initiatives/international-framework-agreements>

125 See also Fichter, M. & Stevis, D., Global Framework Agreements in a Union-Hostile Environment: The Case of the USA, November 2013, Friedrich Ebert Stiftung & Hans Böckler Stiftung, <http://library.fes.de/pdf-files/id/10377.pdf>

126 <http://www.fairwear.nl/>



comply with the Code of Labour Practices, through factory verification audits (member companies conduct their own audits, which are verified by the FWF) and a complaints procedure, through management system audits at the affiliates and through stakeholder consultation in production countries. FWF's verification system includes factory-level verification audits, a complaints procedure in all countries where it is active (not in all countries where members are based though) to serve as a safety net, and verification at company level to check whether companies implement the FWF Code of Labour Practices in their management systems effectively.<sup>127</sup>

#### 4.5.6 Awareness for employees and consumers

The private sector can play an important role in identifying situations of exploitation and reporting on them. Early intervention programmes can help to address human trafficking in the supply chain, and also educate those who might provide part of the demand.<sup>128</sup> There are numerous initiatives not outlined in detail here;<sup>129</sup> good practice examples are outlined in further detail in the Toolkit from the UN and ILO, amongst others, outlined in the Annex to this Resource Guide. One awareness-raising activity that businesses can engage in, which is possibly not highlighted enough in these Toolkits, is consumer awareness about the relationship between prices and labour conditions. Corporations could communicate better about the cost of good labour conditions to explain higher prices and point out, that dumping prices have a negative impact on fair wages. Transparency of costs relating to products would, however, be necessary to provide credibility and ensure that higher prices are not used to increase profits but to ensure fair wages.

#### 4.5.7 Resources for prevention, rehabilitation and reintegration

Apart from ensuring that they are not implicated in labour exploitation, companies can also offer resources for prevention, rehabilitation and reintegration. The global recruitment agency Manpower, which has fostered its image as an ethical labour broker and is involved in a number of anti-trafficking initiatives, funds programmes that help women and children to recognise illegal recruiters and understand the risks involved. It provides employment training and helps with job seeking to reduce the risk of being trafficked.

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127 See the Fair Wear Foundation's annual report 2013, Annual Report 2013, [http://www.fairwear.nl/ul/cms/fck-uploaded/documents/fwpublications\\_reports/FWFAnnualReport2013.pdf](http://www.fairwear.nl/ul/cms/fck-uploaded/documents/fwpublications_reports/FWFAnnualReport2013.pdf)

128 Jonathan Todres 'The Private Sector's Pivotal Role in Combating Human Trafficking', California Law Review Circuit, Vol. 3, February 2012, pp. 190-208, <http://ssrn.com/abstract=2002957>

129 See, for instance, The Protection Project, 100 Best Practices in Combating Trafficking in Persons: The Role of Civil Society, 2012, [www.protectionproject.org/wp-content/uploads/2012/07/100-Best-Practices-in-Combating-TIP\\_Final-Doc1.pdf](http://www.protectionproject.org/wp-content/uploads/2012/07/100-Best-Practices-in-Combating-TIP_Final-Doc1.pdf); Mekong Club (undated) 'Fighting Human Trafficking: The Role of the Private Sector', CSR Asia Weekly, <http://www.csr-asia.com/csr-asia-weekly-news-detail.php?id=12345>; Sydney Fields, Combating human trafficking: engaging the private sector, Stimson Center, 10 January 2013, <http://www.stimson.org/spotlight/combating-human-trafficking-engaging-the-private-sector/>

In the US there is a business-only Global Business Coalition Against Human Trafficking that “mobilises the power, resources and thought leadership of the business community to end human trafficking” by offering resources and sharing best practice examples with businesses.<sup>130</sup> The EU also has plans for a European Business Coalition against trafficking, which it announced in its Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 (see Chapter 6.4).

## 4.6 Conclusion

This Chapter outlined how corporations – from suppliers in global production chains to companies hiring workers through labour intermediaries – can be implicated in human trafficking. It was argued that increasingly flexible labour relations have exacerbated labour exploitation and that the demand for trafficked labour should be understood in the context of the lack of regulation in particular of recruitment and sub-contracting processes. The fact is that human trafficking is a profitable business and it will persist if the profits remain high due to lack of enforcement and weak worker organisation. Despite this important role of the state in regulating businesses’ impact on labour exploitation and trafficking, by improving workers’ and migrants’ rights and implementing effective enforcement, there are also a number of measures that businesses should take to address human trafficking, in particular in their supply chain. These range from implementing due diligence procedures, improving purchasing practices and scrutinising recruitment agencies, to conducting audits, raising awareness of employees and consumers to providing resources for the sector to the prevention of trafficking.

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130 See <http://www.gbcat.org/#about>

## 5 Business and human rights: international regulation

*“In relation to traffickers and their accomplices, an effective criminal justice response is the primary avenue for securing both criminal and civil responsibility.”*

*Joy Ngozi Ezeilo, Special Rapporteur for the UN Human Rights Council on trafficking in persons, especially women and children, 2014<sup>131</sup>*

*“Government regulation can serve an essential function in incentivising the private sector to use its unique characteristics and position to combat human trafficking. Governments would do well to explore the full range of vehicles for incentivizing constructive private sector initiatives and, in appropriate cases, seek to sanction the worst offenders.”*

*Jonathan Todres, 2012<sup>132</sup>*

As discussed in the introduction to this Resource Guide, one of the reasons for forced labour and human trafficking to occur is the current gap in a legally binding international business and human rights framework and the lack of enforcement at international and national levels in cases of corporate misconduct. There is currently no globally binding instrument for corporate accountability for human rights violations. In the supply chains of internationally operating businesses and in sub-contracting arrangements within and across borders, labour laws and internationally binding human rights principles are insufficiently enforced and monitored (see Chapter 4.1).

In the 1970s, with the increased role of businesses internationally, the issue of their impact on the enjoyment of human rights became subject to debate in the UN and other international organisations, and calls were made for their regulation. The political will to create a globally binding framework under UN auspices was – and in particular among OECD states still is – lacking. However, there is a growing recognition by civil society, academia and international institutions that a higher degree of control over the extraterritorial impacts of activities of businesses is necessary.

In this Chapter we will:

- ❑ provide a short history of international business and human rights frameworks
- ❑ discuss civil society views on binding vs. non-binding frameworks and provide an overview of some relevant civil society networks
- ❑ identify legal frameworks regarding the state’s duty to protect human rights with regard to businesses-related violations that are relevant to anti-trafficking work

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131 UN Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo. Addendum. Stocktaking exercise on the work of the mandate on its tenth anniversary, A/HRC/26/37/Add.2, March 2014, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-37-Add2\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-37-Add2_en.doc), para. 91.

132 Jonathan Todres, ‘The Private Sector’s Pivotal Role in Combating Human Trafficking,’ California Law Review Circuit, Vol. 3, February 2012, pp. 190-208, <http://ssrn.com/abstract=2002957>

The next chapter (Chapter 6) identifies soft law business and human rights frameworks that companies have to adhere to and voluntary initiatives such as corporate codes of conduct. Following from the overview of legal and soft law frameworks outlined in Chapters 5 and 6, a number of mechanisms are identified in Chapter 7 that NGOs can use to hold the private sector to account regarding its role in human trafficking.

## 5.1 A call for binding business and human rights framework at UN level

Since the 1970s there has been consistent political opposition of large states and corporations to giving the United Nations – the only intergovernmental organisation with a global political mandate – standard-setting and enforcement powers with regard to internationally operating businesses. The result is a so-called governance gap (see Chapter 4.1 for examples of how this gap leads to corporate impunity with regard to trafficking in human beings). In the early 1970s, the UN tried to address international corporate accountability by creating a permanent Commission on Transnational Corporations and an organisation called the United Nations Centre on Transnational Corporations (UNCTC).

A key event in the drive to establish a binding framework for transnationally operating corporations was the involvement of foreign corporations in funding the US-led campaign against democratically elected president Salvador Allende that eventually led to the violent coup d'état in Chile and murder of its president in 1973. US American multi-national corporations (MNCs) plotting against Allende included Anaconda Copper, ITT Corporations and Pepsi Cola.<sup>133</sup> Allende – under whose presidency public services were improved and large-scale industries such as copper mining and banking had been nationalised – had been openly critical of the unfettered power of large corporations vis à vis states. In 1972, one year before his murder, he spoke to the UN General Assembly:<sup>134</sup>

*“We are faced with a direct confrontation between the large transnational corporations and the states. The corporations are interfering in the fundamental political, economic and military decisions of the states. Corporations are global organizations that do not depend on any state and whose activities are not controlled by, nor are they accountable to any parliament or any other institution representative of the collective interest. In short, the world's political structure is being undermined. The dealers don't have a country. The place where they may be does not constitute any kind of link; the only thing they are interested in is where they make profits. This is not something I say; they are Jefferson's words.*

*The large transnational firms are prejudicial to the genuine interests of the developing countries and their dominating and uncontrolled action is also carried out in the industrialized countries, where*

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133 The Guardian, A Marxist threat to cola sales? Pepsi demands a US coup. Goodbye Allende. Hello Pinochet, 8 November 1998, <http://www.theguardian.com/business/1998/nov/08/observerbusiness.theobserver>

134 Salvador Allende, Speech to the United Nations (excerpts), 4 December 1972, <https://www.marxists.org/archive/allende/1972/december/04.htm>

### Box 14: Corporate liability in human trafficking cases

Even without a global treaty or enforcement powers at UN level, there is increasing support for the idea that business enterprises can already be held liable for the violation of internationally accepted human rights.<sup>1</sup> The extent to which human rights obligations already apply directly to companies has also been subject to a good deal of discussion in the context of the work of the UN Special Representative on Business and Human Rights, who noted:<sup>2</sup>

*“Under customary international law, emerging practice and expert opinion increasingly do suggest that corporations may be held liable for committing, or for complicity in, the most heinous human rights violations amounting to international crimes, including genocide, slavery, human trafficking, forced labour, torture and some crimes against humanity.”<sup>3</sup>*

This view is also held by anti-trafficking experts, as some forms of human trafficking – i.e. when they amount to modern forms of slavery – have the legal character of *Jus Cogens*, a fundamental principle of international law that is accepted by the international community of states as a norm from which no derogation is permitted. There is thus no exception to the protection or adherence to these rights and, moreover, private actors can be held accountable in case they are violated (for instance, when individuals are charged in front of the International Criminal Court for war crimes).<sup>4</sup> An example is the suggested legal liability of the private sector in the use of trafficked and forced labour in the 2005 Council of Europe Anti-Trafficking Convention and the 2011 EU Anti-Trafficking Directive described in Chapter 5.3.8 of this Resource Guide. The recognition of trafficking in human beings as a criminal offence in most national laws has thus arguably more binding implications for businesses.

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- 1 For instance, international law obligations have long been addressed directly to individuals in relation to crimes such as piracy and slavery. And the international criminal responsibility of individuals for war crimes, crimes against humanity and genocide has been recognised in a series of international treaties and judicial statements. See Zerk, *Multinationals and Corporate Social Responsibility*, 2006, Cambridge University Press, pp. 75-76 and Clapham, *Human Rights Obligations of Non-State Actors*, 2006, Oxford University Press. Human rights obligations also extend to armed opposition groups, private security companies and international organisations or *Human Rights Obligations of Non-State Actors in Conflicts Situations*, September 2006, in *International Review of the Red Cross*, Vol. 88, No. 863. See, more generally, Alston (ed.) *Non-State Actors and Human Rights*, 2005, Oxford University Press.
  - 2 For an explanation of the background to the UN Special Representative’s mandate and to access key documentation arising from that mandate see <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework>.
  - 3 United Nations, *Promotion and Protection of Human Rights. Interim report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, E/CN.4/2006/97, February 2006, <http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx>
  - 4 Jägers & Rijken, ‘Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations,’ *Northwestern Journal of International Human Rights*, Volume 12, issue 1, 2014, <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1167&context=njihr>, p. 55-56.

*they are based. This has recently been denounced in Europe and in the United States and resulted in a US Senate investigation. The developed nations are just as threatened by this danger as the underdeveloped ones.*<sup>135</sup>

The main objective of the UNCTC was to come up with substantive rules for corporations that are internationally active, ranging from abusive and unfair business practices to standards on labour and the environment. However, MNCs and their home states were very resistant to any kind of binding code, and when the UNCTC could not reach an agreement on the Centre's Draft Code of Conduct for Transnational Corporations, the Centre was abandoned in 1992 in the UN General Assembly.<sup>136</sup>

In the 1990s, after the UN had been politically marginalised as a global standard setting body on businesses and essentially lost the battle to the small group of rich countries that organised themselves in the OECD, the UN changed its course. It shifted from designing a code of conduct to regulating corporations to voluntary initiatives in cooperation with the private sector.<sup>137</sup>

In 1999, the then UN Secretary-General Kofi Annan launched the Global Compact (see Chapter 6.1), an effort to encourage corporations to abide by basic principles on human rights, labour, environmental protection and corruption. Although thousands of businesses around the world have agreed to participate in the Global Compact, its effectiveness was limited "by its voluntary nature and the generality of its principles" (see Chapter 6.1).<sup>138</sup>

The move towards a globally binding instrument gained renewed support in 2013, when, at the Regional Forum on Business and Human Rights for Latin America and the Caribbean in August, and later at UN Human Rights Council 24<sup>th</sup> session in September 2013, the representative of Ecuador before the UN made a declaration entitled Transnational Corporations and Human Rights. The declaration proposes a legally binding international instrument to regulate the activities of transnational corporations. Specifically, the framework instrument would "provide for the establishment of effective remedies for victims in cases where domestic jurisdiction is clearly unable to" provide them. In June 2014, the UN Human Rights Council adopted the resolution. The action taken by the Ecuadorian government was ratified in Geneva at the 2<sup>nd</sup> Forum on Business and Human Rights on 3 and 4 December 2014.<sup>139</sup>

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135 Salvador Allende, Speech to the United Nations, 4 December 1972 (excerpts), [www.rrojasdatatabank.info/foh12.htm](http://www.rrojasdatatabank.info/foh12.htm) (viewed on 21 February 2014).

136 For a useful brief overview of this history, see the Global Policy Forum et al., Corporate Influence on the Business and Human Rights Agenda of the United Nations, June 2014, [https://www.globalpolicy.org/images/pdfs/GPFEurope/Corporate\\_Influence\\_on\\_the\\_Business\\_and\\_Human\\_Rights\\_Agenda.pdf](https://www.globalpolicy.org/images/pdfs/GPFEurope/Corporate_Influence_on_the_Business_and_Human_Rights_Agenda.pdf); for a more detailed history, see Tagi Sagafi-Nejad, *The UN and Transnational Corporations: From Code of Conduct to Global Compact*, 2008, Indiana University Press.

137 Tagi Sagafi-Nejad, *The UN and Transnational Corporations: From Code of Conduct to Global Compact*, 2008, Indiana University Press.

138 John Knox, 'The Human Rights Council Endorses "Guiding Principles" for Corporations,' *ASIL Insights*, American Society of International Law, Vol. 15(21), 1 August 2011, [http://www.asil.org/insights/volume/15/issue/21/human-rights-council-endorses-%E2%80%9Cguiding-principles%E2%80%9D-corporations#\\_ednref1](http://www.asil.org/insights/volume/15/issue/21/human-rights-council-endorses-%E2%80%9Cguiding-principles%E2%80%9D-corporations#_ednref1)

139 See UN website, <http://www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx>

### Box 15: Treaty Alliance for binding international regulation

#### Civil society campaign for a for binding international law to address corporate human rights abuse

A number of networks and campaign groups around the world set up a Treaty Alliance to “help organise advocacy activities in support of developing binding international regulation to address corporate human rights abuses”. The groups involved include Dismantle Corporate Power Campaign, Europe-Third World Centre (CETIM), International Network for Economic, Social and Cultural Rights (ESCR-Net), the Foodfirst Information & Action Network (FIAN), Franciscans International, Friends of the Earth International, International Federation for Human Rights (FIDH) and the Transnational Institute (TNI).<sup>1</sup>

Leading up to the June 2014 UN Human Rights Council session following Ecuador’s call on UN member states “to begin dialoguing together, through an open-ended inter-governmental working group, to develop a treaty to address corporate human rights violations”, the civil society network re-opened its Joint Statement,<sup>2</sup> developed by the Corporate Accountability Working Group of ESCR-Net. By the end of 2014, 620 organisations had signed this call for the adoption of binding international instruments to address corporate human rights abuse.

1 See the website Campaign against Corporate Impunity, Global Movement for a Binding Treaty, <http://www.stop-corporateimpunity.org/?p=5424>

2 Treaty Alliance, Joint Statement: Call for an international legally binding instrument on human rights, transnational corporations and other business enterprises, <http://www.treatymovement.com/statement/>

The Business and Human Rights Resource Centre provides a useful overview of the developments in the Human Rights Council regarding a binding instrument, and analyses government and civil society positions on the matter.<sup>140</sup> Given the lengthy process of international law-making, it can be expected that there will not be a binding international business and human rights framework for some time to come.

## 5.2 Civil society views on hard and binding vs. soft and non-binding laws

In corporate justice movements, the question of binding versus non-binding corporate regulation is subject to regular discussions. Binding regulation includes conventions and national laws; so-called hard law instruments. The main implication of binding legislation is that individuals or groups that

140 See <http://business-humanrights.org/en/binding-treaty>, and specifically a brief analysis of the political context in High tide in Lake Geneva, June 2014, [http://business-humanrights.org/sites/default/files/media/high\\_tide\\_in\\_lake\\_geneva.pdf](http://business-humanrights.org/sites/default/files/media/high_tide_in_lake_geneva.pdf)

have been injured by corporate conduct can enforce this regulation through courts, with the possibility of compensation for victims and fines for perpetrators.

Non-binding instruments, so-called soft law instruments such as the OECD Guidelines or the UN Global Compact, are voluntary and have no enforcement mechanisms. Decisions by related grievance mechanisms, such as the OECD National Contact Points (NCPs), are therefore also non-binding. Non-compliance by businesses might have some negative repercussions such as exclusion from certain state funding or certain certification schemes or multi-stakeholder initiatives. It will, however, not result in fines or compensation for injured parties.

There has been a proliferation of voluntary business initiatives and codes of conduct in recent years, which is discussed in detail in the next Chapters in the context of how CSOs can use CSR initiatives to hold corporations accountable. NGO networks, corporate justice campaigns and trade unions often favour binding instruments because they offer enforcement mechanisms, whilst employer organisations and often governments favour non-binding frameworks.<sup>141</sup> CSOs do, however, regularly use non-binding mechanisms for advocacy as well as arbitration purposes (see Chapter 7.6.5).

Similar to the UN's trajectory in dealing with big business, many civil society organisations have moved from a confrontational to a collaborative approach. The nature of the cooperation with the private sector, however, can vary enormously, ranging from setting up or participating in multi-stakeholder initiatives or certification schemes for specific industrial sectors to partnering with corporations to jointly address societal and development issues (see Chapters 6 and 7).

There has also been a consistent core of networks and campaign organisations that have continued advocating for a binding treaty, some of which, when renewed attempts in this direction were visible at UN level, set up a Treaty Alliance (see Box 15).

At the heart of the resistance to soft law mechanisms is the insight that the private sector participation in voluntary certification schemes - and even the use of complex supply chains or sub-contracting arrangements by businesses - can be motivated by the deliberate circumvention of liability and accountability. Voluntary initiatives, rather than ensuring an end to exploitation, can in fact serve to avert public and state scrutiny or even absolve corporations from legal responsibility. A point in case is the end of the abolition of the Dutch government's licensing system for private recruitment agencies and subsequent introduction of industry self-regulation, whereby recruitment agencies that join the two largest industry federations have to be SNA certified.<sup>142</sup> When companies use recruitment agencies that have been certified by the sector in the Netherlands, they cannot be held liable for violations committed by these agencies. However, labour rights violations are also widespread within

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141 Shelton, Dinah (ed.), *Commitment and Compliance. The Role of Non-Binding Norms in the International Legal System*, October 2003, Oxford University Press.

142 The SNA (Stichting Normering Arbeid) certification is the quality mark of the Dutch Labour Standards Foundation, which checks that the temporary agency pays tax and at least the minimum wage, see <http://www.normeringarbeid.nl/over/doelstelling/doelstelling.aspx>



certified agencies,<sup>143</sup> so that end users of recruitment workers can escape liability in cases of labour law violations or abuse. In addition, recruitment agencies often escape liability through the use of mailbox companies in countries with lower social premium and labour law regulation, a practice called social dumping.<sup>144</sup>

This problem has also been highlighted by the former UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, in a 2014 'stocktaking exercise on the work of her mandate'.<sup>145</sup> She highlighted the need to strengthening accountability of non-State actors, expressed her support of binding regulation and assessed self-regulation, in particular of the recruitment sector, rather critically:

*"In some instances it appears that the use of third parties (for example, recruitment agencies) is motivated by a deliberate intention to distance the corporation from responsibility for exploitation. [...] businesses must be required to take at least the minimum steps necessary to assess their supply chains for risk of exploitation; to deal with any exploitation found; and to put in place mechanisms for effective future monitoring. [...] experience has shown that self-regulation measures are often inadequate. Codes of conduct and sector-wide verification procedures can be near worthless unless accompanied by independent monitoring."*

In practice, the existence of non-binding norms is a fact and, rather than a complete rejection of these instruments, the civil society debate focuses on the question whether and how such norms can be used effectively to prevent human rights abuses or seek remedy when they have occurred.

The question whether soft law leads to compliance to human rights standards can depend on a variety of factors, such as institutional setting, regional diversity, the type of obligation, and generality and specificity in wording in the soft law instrument. In some cases, soft law might supplement hard law or substitute it, if legally binding obligations are entirely lacking (this is particularly the case when the state apparatus is not working, as can happen in conflict areas, for instance). As mentioned above, soft law instruments, such as those outlined in the next Chapter can also contain grievance or complaints mechanisms that NGOs can use to address corporate misconduct.

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143 FairWork, *Verborgen Slavernij in Nederland*, 2012, <http://www.fairwork.nl/assets/structured-files/Publicaties/Rapporten/Verborgen%20slavernij%20in%20Nederland%2020121126.pdf>

144 Berntsen, L. and Lillie, N., *Breaking the law? Varieties of social dumping in a pan-European labour market*, 2015, in Bernaciak, M., ed., *Market expansion and social dumping in Europe*, London: Routledge.

145 UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo. Addendum. Stocktaking exercise on the work of the mandate on its tenth anniversary, A/HRC/26/37/Add.2*, March 2014, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-37-Add2\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-37-Add2_en.doc), para 93.

### Box 16: Due diligence

Due diligence is understood as a business process through which enterprises actively identify, prevent, mitigate and account for how they address and manage their potential and actual adverse human rights impacts. The process should include:

- ❑ **assessing** actual and potential impacts throughout their business operations,
- ❑ **integrating** and acting upon the findings,
- ❑ **tracking** responses, and
- ❑ **communicating** how impacts are addressed.

Due diligence implies more than just an assessment of risks for the company; the purpose is to understand and address risks and abuses that the company's activities pose to rights holders, including in its supply chain and through its other business relationships.

## 5.3 State duty to respect, protect and fulfil human rights

In relation to human trafficking, the former UN Special Rapporteur on trafficking in persons has reiterated that discussions around corporate responsibility “should not distract from the fact that it is States that have the ultimate responsibility to prevent and respond to human rights violations associated with trafficking that are occurring within their jurisdiction or otherwise under their control”.<sup>146</sup>

Under international human rights law, states indeed have clear obligations to protect people from business-related human rights violations. These duties also apply to areas outside a state's territorial boundaries, over which that state has “jurisdiction”.<sup>147</sup> This duty entails not just standards for treatment of individuals by the state itself, but also certain regulatory responsibilities on the part of the state as regards non-state actors, including businesses.

In recent business and human rights discourses, this state obligation is often framed as a three-part obligation to respect, protect and fulfil human rights. The concept of human rights ‘due diligence’ has gained increasing importance as a potential tool for improving businesses’ human rights conduct

146 UN Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo. Addendum. Stocktaking exercise on the work of the mandate on its tenth anniversary, A/HRC/26/37/Add.2, March 2014, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-37-Add2\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-37-Add2_en.doc), para. 94.

147 States may be treated as having “jurisdiction” over activities in other states in exceptional and limited circumstances, e.g. in the context of an armed conflict. See European Court of Human Rights decision in *Bankovic and Others v Belgium and Others* (Application no. 52207/99), 12 December 2001; and the judgements of *Hirsi Jamaa and Others v Italy* (Application no. 27765/09) 23 February 2012 and *Al-Skeini and Others v the United Kingdom* (Application no. 55721/07) 7 July 2011, searchable at <http://hudoc.echr.coe.int>.

as well as providing access to justice for victims of corporate human rights abuses. Due diligence is a business process through which enterprises actively *identify, prevent, mitigate and account* for how they address and manage their potential and actual adverse human rights impacts. Again, human rights experts point out that due diligence is not a replacement for states providing victims with effective redress mechanisms. Rather:

*“human rights due diligence is a means by which business enterprises can identify, prevent, mitigate and account for the harms they may cause, and through which judicial and regulatory bodies can assess an enterprise’s respect for human rights.”<sup>148</sup>*

The principle of due diligence obliges states to take measures to prevent, regulate, investigate and prosecute actions by business entities that violate the rights of individuals subject to that state’s jurisdiction.<sup>149</sup> There is thus a clear role of the state in ensuring that the private sector complies with due diligence to prevent human rights abuses, including human trafficking in supply chains.

The main internationally recognised instruments that oblige states, but also businesses, to protect and respect human rights are reiterated by the UN Guiding Principles on Business and Human Rights (UNGPs), which were endorsed by the UN Human Rights Council in June 2011. Under the UNGPs, these rights are understood, at a minimum, as those laid down in the

- ❑ International Bill of Human Rights (the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and the
- ❑ Principles concerning fundamental rights set out in the ILO’s Declaration on Fundamental Principles and Rights at Work.

Principles developed by the UN and the ILO, which is a tripartite UN agency with government, employer and worker representatives, are therefore the main points of reference for states’ duty to protect human rights. Although the 2005 Council of Europe Anti-Trafficking Convention and the 2011 EU Anti-Trafficking Directive also lay down clear state obligations with regard to preventing and addressing trafficking in human beings.

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148 De Schutter et al., *Human Rights Due Diligence: The Role of States*, published by ICAR, ECCJ and CNCA, December 2012, <http://accountabilityroundtable.org/wp-content/uploads/2012/12/Human-Rights-Due-Diligence-The-Role-of-States.pdf>

149 See for example, Clapham, ‘Revisiting Human Rights in the Private Sphere: Using the ECHR to Protect the Right of Access to the Civil Court’ in C Scott (ed), in *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation* (Oxford, Hart Publishing, 2001), p. 513. Commenting on the state’s obligations under the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Council states in its General Comment No. 31 that, “There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities”, cited in Ineta Ziemele, *Human Rights Violations by Private Persons and Entities: the Case-Law of International Human Rights Courts and Monitoring Bodies*, European University Institute Working Paper, AEL/2009/8, <http://cadmus.eui.eu/handle/1814/11409>

### 5.3.1 UN Guiding Principles on Business and Human Rights

In 2005, the UN Commission on Human Rights requested the Secretary-General to appoint a special representative on the issue of human rights and transnational corporations, and other business enterprises. The resolution mandated the Special Representative to identify and clarify standards of corporate responsibility and accountability, and to elaborate on the role of states in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights.

On 18 June 2008, the Human Rights Council unanimously “welcomed” the ‘Protect, Respect and Remedy’ Framework proposed by the Special Representative, John Ruggie, in his final report under the 2005 mandate. This policy framework comprises three core principles or pillars:

1. the **state duty to protect** against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;
2. the **corporate responsibility** to respect human rights, which means to act with due diligence to avoid infringing on the rights of others; and
3. the need for greater access by victims to **effective remedies**, judicial and non-judicial.

The mandate of the Special Representative was extended for a period of three years in order to operationalise the framework. On 16 June 2011, the Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights for implementing the UN ‘Protect, Respect and Remedy’ Framework.<sup>150</sup>

With regards to the second pillar of the principles – the corporate responsibility to respect – the UNGPs stipulate that “business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved.”<sup>151</sup> The Guiding Principles do not create new international law obligations, but rather, elaborate the implications of existing standards and practices for states and businesses, integrate them within a single, logically coherent and comprehensive template, and identify where the current regime falls short and how it should be improved. An Interpretive Guide was published in 2012 to provide specific guidance with regard to UNGPs’ second pillar.<sup>152</sup> The EU has endorsed the UNGPs in its 2011 CSR strategy and has made a commitment to support their implementation. A number of guiding materials have since been published<sup>153</sup> and the development of national action plans is addressed by the CSR peer review process with EU Member States (see Chapter 6.4).

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150 United Nations Office of the High Commissioner of Human Rights (OHCHR), Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, HR/PUB/11/04, 2011, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

151 United Nations Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/17/31, 21 March 2011, [http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31\\_AEV.pdf](http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf), para 6.

152 United Nations OHCHR, The corporate responsibility to respect human rights. An interpretive guide, HR/PUB/12/02, 2012, [http://www.ohchr.org/documents/publications/hr.pub.12.2\\_en.pdf](http://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf)

153 See Shift, European Commission Human Rights Sector Guides, <http://www.shiftproject.org/ec-sectoral-guides-corporate-responsibility-respect-human-rights>

### **Box 17: The ILO Declaration on Fundamental Principles and Rights at Work<sup>1</sup>**

Increasing concerns about the social impact of globalisation led the members of the ILO (representatives of government, employers and workers at the international level) to recognise in 1995 that there were four categories of labour principles and rights, expressed in eight conventions (the so-called 'core conventions'), that should be considered as fundamental because they protect basic workers' rights. These categories are:

- ❑ Freedom of association and the effective recognition of 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.

The process culminated in 1998 with the adoption of the ILO Declaration on Fundamental Principles and Rights at Work. This Declaration affirms that all ILO member states, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of ILO membership to respect, to promote and to realise the principles concerning the fundamental rights that are the subject of those Conventions.

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1 See <http://www.ilo.org/declaration>

### **5.3.2 The ILO's labour conventions**

The ILO Declaration on Fundamental Principles and Rights at Work defined eight ILO core conventions and thus gave the rights laid down in these conventions the status of core labour rights,<sup>154</sup> meaning that they are binding upon every member country of the ILO, regardless of ratification. Core conventions cover freedom of association and the effective recognition of the right to collective bargaining (by trade unions); 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.

Importantly, the ILO Declaration also requires all states to respect the standards in these conventions, whether or not a particular state has ratified them. The Fundamental Rights Declaration is supported by a follow-up procedure: member states that have not ratified one or more of the core Conventions are asked each year to report on the status of the relevant rights and principles within their borders, noting impediments to ratification, and areas where assistance may be required. These reports are reviewed by the Committee of Experts. In turn, their observations are considered by the ILO's Conference Committee on the Application of Standards.

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154 See <http://www.ilo.org/declaration/thedeclaration/lang--en/index.htm>

## Box 18: ILO Conventions

### The eight core and other ILO Conventions

- ❑ **Freedom of association and the right to collective bargaining**  
The right of all workers to form and join trade unions and bargain collectively is recognised (ILO Conventions 87 and 98).
- ❑ **Employment is freely chosen**  
No use of forced labour, including bonded or prison labour<sup>1</sup> (ILO Conventions 29 and 105).
- ❑ **No use of child labour/prohibition of the worst forms of child labour**  
Convention 182 prohibits the worst forms of child labour and requires governments to take effective measures to eliminate such forms of child labour. However light work that is not harmful to the child and that does not prejudice school attendance can be carried out in accordance with national laws. Art 7(4) of Convention 138 specifies that the age for light work (that is not harmful to the child and that does not prejudice school attendance) cannot be lower than 13.
- ❑ **No discrimination in employment**  
Recruitment, wage policy, admission to training programmes, employee promotion policy, policies of employment termination, retirement and any other aspect of the employment relationship are based on the principle of equal opportunities, regardless of race, colour, sex, religion, political affiliation, union membership, nationality, social origin, deficiencies or disabilities, equal wages for men and women for work of equal value (ILO Conventions 100 and 111).

Other important ILO Conventions cover subjects such as occupational health and safety, maximum hours of work, social security, maternity protection, employment injury protection, labour inspection, minimum wage protection of vulnerable groups (Indigenous Peoples Convention 169, Migrant Workers Conventions 97 and 143, Domestic Workers Convention 189, various Conventions on Seafarers):

- ❑ **Right to a safe and healthy work environment**  
(ILO Convention 187, ILO Convention 155).
- ❑ **No excessive working hours**  
Hours of work comply with applicable laws and industry standards. Workers are not required to work in excess of 48 hours per week on a regular basis and are provided with at least one day off for every seven-day period. Overtime is voluntary, does not exceed 12 hours per week, is not demanded on a regular basis and is always compensated at a premium rate (ILO Convention 1).
- ❑ **Labour inspections**  
Governments are required to have a system of labour inspections in place (Convention 81).

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1 Although the ILO stipulates that prison labour is possible if people are paid and the work is not contracted by private business and prisoners enter freely in the employment relationship.

The prohibition on the use of forced labour (ILO Convention No. 29) is one of the key issues required by the ILO's core conventions, and has also been a point of reference for many business codes.<sup>155</sup> A new Protocol and Recommendation to Convention No. 29 was introduced in June 2014<sup>156</sup> that clearly linked forced labour and human trafficking and created new obligations for states to prevent forced labour, to protect victims and to provide access to remedy, such as compensation.

The focus on the eradication of forced labour in this Declaration and its Follow-up led the ILO to set up the ILO Special Action Programme to combat Forced Labour (SAP-FL) in 2001, which has resulted in a number of guidelines relevant to businesses and their role in preventing human trafficking. Several thematic and country-specific studies and surveys have also been undertaken, on various aspects of forced labour, such as bonded labour, human trafficking, forced domestic work, rural servitude and forced prison labour. The programme promotes a Global Alliance to work towards the eradication of forced labour worldwide. Networking and information exchange is facilitated by a special website that provides information, both on the facts and features of modern forced labour and of best practices for the eradication of forced labour.<sup>157</sup>

### 5.3.3 ILO Protocol against forced labour and Recommendation No. 203

In 2013, the ILO recognised a general "implementation gap" with regard to the states' duties to end forced labour and decided to adopt supplementary measures and set standards to advance prevention, protection and compensation measures against the use of forced labour.<sup>158</sup>

It is noteworthy that this initiative came from the 'Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation' and can thus be seen as specifically aimed at fighting human trafficking. At the 103<sup>rd</sup> Session (June 2014) of the ILO Conference, a new Protocol against forced labour,<sup>159</sup> supplemented by Recommendation No. 203, was adopted.<sup>160</sup>

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155 OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, Mike Dottridge, Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector, Occasional Paper Series No.7, November 2014, <http://www.osce.org/secretariat/126305>

156 ILO Press Release, ILO adopts new Protocol to tackle modern forms of forced labour, 11 June 2014, [http://www.ilo.org/global/about-the-ilo/media-centre/press-releases/WCMS\\_246549/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/media-centre/press-releases/WCMS_246549/lang-en/index.htm)

157 See <http://www.ilo.org/global/topics/forced-labour/>

158 ILO, Supplementing the Forced Labour Convention, 1930 (No. 29), to address implementation gaps to advance prevention, protection and compensation measures, to effectively achieve the elimination of forced labour, <http://www.ilo.org/ilc/ILCSessions/103/on-the-agenda/forced-labour/lang-en/index.htm>

159 Protocol of 2014 to the Forced Labour Convention, [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:P029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029)

160 ILO, Forced Labour (Supplementary Measures) Recommendation (2014), [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:3174688](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3174688)

The Protocol is thought to add “a badly needed labour dimension” in national and international attempts to reduce the demand for exploited labour”.<sup>161</sup> The Protocol:

- ❑ clearly links forced labour and human trafficking
- ❑ requires governments to take measures to better protect all workers in all economic sectors, in particular migrant workers, from fraudulent and abusive recruitment practices
- ❑ obliges states to strengthen labour inspection and other services responsible for the implementation of the Protocol
- ❑ decriminalises victims when they had to commit unlawful activities as a consequence of being subject to forced labour, by entitling competent authorities not to prosecute or impose penalties for such acts
- ❑ obliges states to ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation for material and non-material damages
- ❑ obliges states to support due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour

The new ILO Protocol and Recommendation No. 203<sup>162</sup> specifies the prevention, protection, compensation and enforcement measures states should introduce in more detail:

Protect against abusive and fraudulent recruitment by regulating, licensing and monitoring labour recruiters and employment agencies, including:

- ❑ eliminating the charging of recruitment fees to workers;
- ❑ requiring transparent contracts that clearly explain terms of employment and conditions of work;
- ❑ establishing adequate and accessible complaint mechanisms;
- ❑ imposing adequate penalties; and
- ❑ regulating or licensing these services.

### 5.3.4 EU anti-discrimination Directives

The EU has a number of Directives that pertain to non-discrimination that can be applied to migrant and agency workers, namely, the Racial Equality Directive (2000/43/EC) and the Gender Equal Treatment Directives (the 2010/41 on self-employed persons, the 2006/54 Recast directive, and the 2004/113 Goods and services directive). Member States are required under these Directives to set up an equality body either by designating some existing institution or by setting up a new institution to carry out the competences assigned by the equal treatment legislation.

Although practices in Member States differ, equality bodies are required to provide independent assistance to victims of discrimination.

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<sup>161</sup> Zuzanna Muskat-Gorska, International Trade Union Confederation (ITUC), Will the new ILO Protocol and Recommendation make a difference?, undated, <http://www.demandat.eu/blog/will-new-ilo-protocol-and-recommendation-make-difference>

<sup>162</sup> See [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:3174688:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3174688:NO)



This assistance can involve a range of activities including:

- ❑ providing information about the existence of anti-discrimination laws and about the possibility to take legal action to seek remedy or compensation for an act of discrimination,
- ❑ directing people who experience discrimination to an organisation/institution that could help them;
- ❑ helping people who experience discrimination to come to an amicable settlement/mutual agreement (mediation) with the discriminators and
- ❑ giving legal advice and representation to people who have been discriminated.

Equality bodies can also

- ❑ conduct independent surveys on discrimination,
- ❑ publish independent reports and make recommendations on any issue relating to discrimination.

In some countries, equality bodies have the power to conduct a formal inquiry into abuses and even take enforcement action (such as the UK Equality Act 2006<sup>163</sup>). For an example of a trade union having achieved such an investigation under the UK Equality Act, see Chapter 7.8.

### 5.3.5 EU Employers Sanctions Directive

In 2009, the Council of the European Union approved a Directive that requires EU member states to prohibit the employment of third-country nationals who are not fulfilling the conditions of their stay (undocumented migrants). It also obliges employers to require non-EU citizens they employ to hold and present valid residence permits or other authorisation for their stay, and to keep copies or records of these permits for the duration of employment. The Directive further sets minimum standards for sanctions for employer violations, that EU member states may enforce against companies and individuals that violate this prohibition, including

- ❑ financial sanctions for employers and individuals that violate the new prohibitions and
- ❑ criminal sanctions for intentional and persistent violations.

The Directive also authorises member states to introduce inspection programmes to ensure employers and individuals are complying with the law.

EU member states had until July 2011 to implement these minimum standards into their domestic legislation. In August 2014 an evaluation report on the implementation by member states was published.

The EU Employers Sanctions Directive<sup>164</sup> established minimum standards across the EU on sanctions and measures against employers of irregular migrant workers. As such it recognised some fundamental rights of irregular migrants, such as the right to pursue unpaid wages. One of the limitations of the Directive, however, is that it focuses exclusively on remuneration issues.

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163 <http://www.legislation.gov.uk/ukpga/2006/3>

164 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, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0052>

**Box 19: Civil society critique of the EU Employers' Sanctions Directive**

One of the main critiques levied against the EU Employers Sanctions Directive is the fact that it focuses on the legal status of the migrant, rather than the exploitation by the employer. Although it contains some protective provisions, migrant support groups have raised concerns that the directive does not recognise that undocumented workers have labour rights and that these rights should be enforced.

The Brussels-based Platform for International Cooperation on Undocumented Migrants (PICUM) closely monitors the Directive and has raised the following concerns:

The Directive will have a number of unintended effects that run counter to the EU's values:

- ❑ Employers' sanctions based on legal status of workers will not reduce irregular employment in a significant way
- ❑ Exploitation of migrant workers will continue or even be exacerbated due to a law enforcement approach to employment of migrants
- ❑ Integration is being hindered through the stigmatisation of employment of third country nationals.

LSI had also raised concerns that the sanctions to penalise employers for hiring undocumented workers have a negative impact on migrant workers themselves. Raids on workplaces often result in the deportation of undocumented and exploited workers, who might have been trafficked. Workplace controls, which are necessary to ensure the protection of labour rights, should therefore be uncoupled from immigration controls, as the conflation of the two renders the proclaimed objective of protecting migrant workers ineffective. Further, although Article 6 of the Directive stipulates that undocumented workers can claim compensation from their sanctioned employers for unpaid wages, there is little to no record of cases of workers actually claiming their rights.

Nevertheless, the legislation contains at least some positive aspects towards undocumented workers. These include measures to enforce automatic payment of any outstanding remuneration and ensuring the possibility to lodge a complaint through or with the support of a third party, such as a voluntary body or trade union.

### 5.3.6 Subcontracting (chain) liability in Europe

There is currently no European mechanism of joint and several liability with regard to holding main contractors accountable for labour law violations that occur in subcontracting chains. An in-depth study from 2012<sup>165</sup> has found that only seven Member States and Norway have implemented more or less elaborated system of general joint and several liability for certain aspects related to wages and/or labour conditions in their legal system. General joint and several liability systems are thus not widespread in the European Union.

Table 1 provides an overview of which areas are covered in liability systems in certain European countries.<sup>166</sup> Countries that do not appear in the table do not have any joint and several liability provisions to protect sub-contracted workers.

**Table 1: Joint and several liability systems in European countries**

	<b>Wages</b>	<b>Public Procurement</b>	<b>Tax on wages</b>	<b>Social funds</b>	<b>Social Security contributions</b>
AT	Y	Y	Y	Y	Y
DE	Y	Y	Y	Y	Y
ES	Y	Y	Y	Y	Y
FI	Y	Y	Y	Y	
FR	Y	Y	Y	Y	
IT	Y	Y	Y	Y	Y
NL	Y	N	Y	Y	Y
NO	Y	Y	N	N	N

165 Jorens, Y., Peters, S., Houwerzijl, M., Study on the protection of workers' rights in subcontracting processes in the European Union, June 2012, Final Study, Ghent University, European Commission, <http://ec.europa.eu/social/BlobServlet?docId=7921&langId=en>

166 This table is a simplified version of the above-named report. The systems differ significantly in scope, amount, possibilities for exemption of liability and actual implementation. The authors note that there is practically no Member State with a general, widespread mechanism of joint and several liability.

## Box 20: Types of liability

### Joint and several liability

When two or more parties are jointly and severally liable for a punishable offence, each party is independently liable for the full extent of the injuries stemming from the offence. If a complainant wins a money judgment against the parties collectively, they may collect the full value of the judgment from any one of them. That party may then seek contribution from the other wrong-doers.<sup>1</sup> Joint and several liability favours the worker suing for damages because it enables him or her to seek payment from the party or parties with the most financial resources and reduces the risk of non-payment by an insolvent party, for instance a recruitment agencies that declares bankruptcy.<sup>2</sup>

### Chain liability

Chain liability is when joint and several liability not only applies to the contracting party, but also to the whole chain. A worker or tax authority can address all parties in the chain, which are all jointly and severally liable, for the entire debt. In other words, it could include not only the contractor but also, for instance, the principal contractor.<sup>3</sup>

### Direct liability

Direct liability is the liability of an individual or a business on the basis of negligence or other factors resulting in harm or damage to another individual or their property.<sup>4</sup> It thus applies only to the direct contractor and does not extend to the entire chain of subcontracting.<sup>5</sup>

### Strict liability

Strict liability, sometimes called absolute liability, is the legal responsibility for damages, or injury, even if the person found strictly liable was not at fault or negligent. Strict liability has been applied to certain activities in tort, such as holding an employer absolutely liable for the torts of her employees, but today it is most commonly associated with defectively manufactured products. An injured party must prove that the item was defective, that the defect proximately caused the injury, and that the defect rendered the product unreasonably dangerous. A plaintiff may recover damages even if the seller has exercised all possible care in the preparation and sale of the product.<sup>6</sup> It has been argued that strict liability should also be introduced in the business and human rights framework because end users exercising due diligence has proven not to be an effective mechanism to stop rights violations in sub-contracting processes.<sup>7</sup>

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1 [https://www.law.cornell.edu/wex/joint\\_and\\_several\\_liability](https://www.law.cornell.edu/wex/joint_and_several_liability)

2 <http://www.investopedia.com/terms/j/joint-and-several-liability.asp#ixzz3c5l0F5d>

3 Jorens et al., op.cit., p. 10

4 <http://www.businessdictionary.com/definition/direct-liability.html#ixzz3c5bYw6SI>

5 Jorens et al., op.cit., p. 22

6 <http://legal-dictionary.thefreedictionary.com/Strict+Liability>

7 SOMO & Repórter Brasil, From moral responsibility to legal liability?, May 2015, [http://www.somo.nl/publications-en/Publication\\_4188/](http://www.somo.nl/publications-en/Publication_4188/)

Although there is no comprehensive legislation to regulate liability in sub-contracting processes in Europe, the following EU Directives<sup>167</sup> lay down certain rules to protect workers in certain sectors:<sup>168</sup>

- ❑ Directive 89/391 (general framework on health & safety)
- ❑ Directive 92/57 (regarding health & safety on temporary and mobile construction sites)
- ❑ Directive 2004/18 and 2004/17 (on public procurement)
- ❑ Directive 2008/104 (on temporary agency work)
- ❑ Directive 2009/52<sup>169</sup> (sanctions on employment of illegally staying third-country national workers, including as an option joint & several liability)
  - This Directive establishes minimum standards across the EU on sanctions and measures against employers of irregular migrant workers, and recognises some fundamental rights of irregular migrants, such as the right to pursue unpaid wages. Article 8 of Directive 2009/52 contains both a direct and chain liability.
- ❑ Directive 2014/67 (enforcing the Posting of Workers Directive 96/71)
  - The Enforcement Directive clarifies legal terms used in the PWD and makes direct contractors liable, although only for non-payment of (minimum) salary and only in the construction sector. The Enforcement Directive came into force in June 2014 with a deadline for transposition in Member States by June 2016. Article 12 contains not only a mandatory direct liability but also the option for Member States to implement a (more extensive) chain liability.

Most of these Directives were not elaborated with the purpose of explicitly protecting sub-contracted workers but rather to protect workers in general, in a certain sector (the construction and the sector of the temporary work agency), or to coordinate procurement procedures. The latter two Directives and employers' sanctions and the posting of workers, however, introduced joint and several liability in EU law for the first time. They are elaborated here below.

### **Liability in the Employers' Sanctions Directive**

Although the Employers' Sanctions Directive 2009/52 is not directed specifically at subcontracted workers, this Directive for the first time introduced a "direct way of extending the responsibility/liability for protecting worker's rights in subcontracting processes to others than the direct employer only", including those contractors further in the subcontracting chain who knew that the subcontractor employed illegally staying third-country nationals.<sup>170</sup>

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167 See Jorens et al., op.cit., pp. 13-14

168 Other EU law also deals with liability regimes that go beyond direct liability, such as Directive 2008/94 on employee rights in the event of insolvency of their employer or the Product Liability Directive (85/374/EEC) from 1985, which created a regime of strict liability for defective products. European guidelines that are applied for granting market approval for medicines (the Good Clinical Practice, or the ICH-GCP guidelines) also make clear that the sponsor (that is the pharmaceutical company) remains responsible for the integrity of the data in cases of outsourced clinical trials, including the ethical conduct of the trial. See SOMO & Repórter Brasil, From moral responsibility to legal liability?, May 2015, [http://www.somo.nl/publications-en/Publication\\_4188/](http://www.somo.nl/publications-en/Publication_4188/)

169 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, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0052>

170 See Jorens et al., op.cit., p. 14.

### **Box 21: Chain liability in Article 8 of the Employers' Sanctions Directive 2009/52**

1. Where the employer is a subcontractor and without prejudice to the provisions of national law concerning the rights of contribution or recourse or to the provisions of national law in the field of social security, Member States shall ensure that the contractor of which the employer is a direct subcontractor may, in addition to or in place of the employer, be liable to pay... any back payments (outstanding remuneration)... Here a direct contractual relationship is required.
2. Where the employer is a subcontractor, Member States shall ensure that the main contractor and any intermediate subcontractor, where they knew that the employing subcontractor employed illegally staying third country nationals, may be liable to make the back- payments in addition to or in place of the employing subcontractor or the contractor of which the employer is a direct subcontractor.

#### **Liability in the Posting of Workers Directive**

The Posting of Workers Directive (PWD) put in place safeguards to protect the social rights of posted workers and to prevent social dumping requiring Member States to ensure that posted workers enjoy the same minimum labour rights than nationals. The past five years there has been growing recognition that the PWD fails in its objective to protect posted workers, and a Directive to enforce the PWD was adopted in 2014 which introduces, albeit weak, rules for chain liability in Article 12.

Rather than mandatory, Member States have the choice to opt for a chain instead of a direct liability. A wide-spread critique of the Enforcement Directive has been this optional nature. National measures imposing chain liability also have to be 'proportionate', which means the eight member states that currently have national laws making all companies in the sub-contracting chain potentially liable for breaches of contract such as non-payment of wages might be screened by the European Commission for potentially violating allegedly "more important internal market objectives".<sup>171</sup> Finally, Article 12 contains the option to exempt employers from liability if they can prove they conducted 'due diligence'. In sum, there is a "lack of clarity for posted construction workers, the direct liability is easily circumvented, the due diligence paragraph needs to be deleted as it may cause exemption of the liability and the Draft Enforcement Directive lacks flanking measures which strengthen the effect of the liability."<sup>172</sup>

Member states do have the option, however, to interpret Article 12 widely: In Sweden, an inquiry into the transposition of the Enforcement Directive has proposed to introduce strict chain liability

171 ETUC news, 16.4.2014, Barroso and MEPs fail to sort out the rights of "Posted" workers, <http://www.etuc.org/press/barroso-and-meps-fail-sort-out-rights-posted-workers#.VW1t2eEbFZh>

172 Bakermans, T., Liability within the EU in the draft Enforcement Directive on posted workers in the construction industry, MA Thesis, Department of International and European Law, Tilburg University, <http://arno.uvt.nl/show.cgi?fid=134285>, p.47

## Box 22: Due diligence and EU internal market provisions contradict labour rights

Due diligence measures by end users entail that main contractors need to carry out intensive checks and obtain evidence from foreign subcontractors to ensure that labour standards are upheld in sub-contracting chains, especially labour sub-contracting through recruitment agencies and brokers. But the replacement of legal liability with due diligence can contribute to the accountability gap that is created by sub-contracting. At the EU level, the 2014 Directive aimed at strengthening the enforcement of the Posting of Workers Directive (96/71/EC)<sup>1</sup> lays down that Member States should have the possibility to provide that a (sub) contractor should not be liable in specific circumstances or that the liability may be limited in cases where due diligence obligations have been undertaken by that (sub)contractor.<sup>2</sup> The EU Sanctions Directive<sup>3</sup> has a similar provision.<sup>4</sup>

This exemption from liability in the Posting of Workers Directive, as well as the stipulation that liability measures have to be 'proportionate', is criticised by the European Trade Union Confederation (ETUC) for creating an accountability gap in the sub-contracting chain.<sup>5</sup> The main problem with the provision is that it is often difficult if not impossible to verify and prove due diligence in court. An additional problem in the EU context is different interpretations of due diligence procedures, or a lack thereof.<sup>6</sup> Furthermore, the requirements clash with EU internal market provisions that promote a level playing field among economic actors (in particular the freedom to provide services).<sup>7</sup> The European Court of Justice (ECJ) can therefore rule national requirements as disproportionate.<sup>8</sup>

1 Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')

2 Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0067>

3 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, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0052>

4 Van Damme & Vermeulen, 'Towards an EU Strategy to Combat Trafficking and Labor Exploitation in the Supply Chain. Connecting Corporate Criminal Liability and State-Imposed Self-Regulation Through Due Diligence?', in Brodowski et al. (eds.), *Regulating Corporate Criminal Liability*, 2014, Springer International Publishing Switzerland, p. 188.

5 ETUC position on the Enforcement Directive of the Posting of Workers Directive, June 2012, <https://www.etuc.org/documents/etuc-position-enforcement-directive-posting-workers-directive#.Vbtrh-EbFZg>

6 The Enforcement Directive 2014/67/EU lays down that due diligence measures should be "defined by national law, taking into account the specific circumstances of the Member State concerned, and they may include, inter alia, measures taken by the contractor concerning documentation of compliance with administrative requirements and control measures in order to ensure effective monitoring of compliance with the applicable rules on the posting of workers."

7 Jorens et al., op.cit.

8 See, for instance, Judgment of 9.11.2006, case C-433/04, *Commission v Belgium*.

### **Box 23: Chain liability in Article 12 of the Posted Workers Enforcement Directive**

#### **Subcontracting liability**

1. In order to tackle fraud and abuse, Member States may, after consulting the relevant social partners in accordance with national law and/or practice, take additional measures on a non-discriminatory and proportionate basis in order to ensure that in subcontracting chains the contractor of which the employer (service provider) covered by Article 1(3) of Directive 96/71/EC is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker with respect to any outstanding net remuneration corresponding to the minimum rates of pay and/or contributions due to common funds or institutions of social partners in so far as covered by Article 3 of Directive 96/71/EC.
2. As regards the activities mentioned in the Annex to Directive 96/71/EC, Member States shall provide for measures ensuring that in subcontracting chains, posted workers can hold the contractor of which the employer is a direct subcontractor liable, in addition to or in place of the employer, for the respect of the posted workers' rights referred to in paragraph 1 of this Article.
3. The liability referred to in paragraphs 1 and 2 shall be limited to worker's rights acquired under the contractual relationship between the contractor and his or her subcontractor.
4. Member States may, in conformity with Union law, equally provide for more stringent liability rules under national law on a non-discriminatory and proportionate basis with regard to the scope and range of subcontracting liability. Member States may also, in conformity with Union law, provide for such liability in sectors other than those referred to in the Annex to Directive 96/71/EC.
5. Member States may in the cases referred to in paragraphs 1, 2 and 4 provide that a contractor that has undertaken due diligence obligations as defined by national law shall not be liable.
6. Instead of the liability rules referred to in paragraph 2, Member States may take other appropriate enforcement measures, in accordance with Union and national law and/or practice, which enable, in a direct subcontracting relationship, effective and proportionate sanctions against the contractor, to tackle fraud and abuse in situations when workers have difficulties in obtaining their rights.

for the construction industry: "In two regards, the liability should be stricter than the minimum set out in the enforcement directive. A worker who has not been paid by the employer should be able to turn to any contractor higher up in the chain, and the liability should become strict, i.e. the contractor should not be able to escape liability even when it has tried to make sure the subcontractor is a reliable actor."<sup>173</sup>

173 Nordic Labour Journal, News, 15.4.2015, Kerstin Ahlberg, Mediator needed to help with working conditions for posted workers, <http://www.nordiclaborjournal.org/nyheter/news-2015/article.2015-04-12.6801129423>



### 5.3.7 EU Directive on companies' non-financial reporting

In April 2013, the European Commission adopted a proposal to enhance the transparency of company reporting on social and environmental issues, to provide investors and other stakeholders with a more comprehensive picture of a company's performance. In 2014, a compromise was reached between the European Parliament and the Council on the scope of the proposed regulation. The new Directive 2014/95/EU (on disclosure of non-financial and diversity information by certain large undertakings and groups) amends the Accounting Directive 2013/34/EU. It requires publicly listed European companies with more than 500 employees to disclose in their management report, information on policies, risks and outcomes as regards:

- ❑ environmental matters
- ❑ social and employee aspects
- ❑ respect for human rights
- ❑ anti-corruption and bribery issues
- ❑ diversity in their board of directors.

This means that companies will have to report on policies in place and risks regarding forced labour and human trafficking, and can be scrutinised by CSOs for a lack of the same. The civil society network European Coalition on Corporate Justice (ECCJ) and its members welcomed this new mandatory requirement as a tool for enhanced transparency and accountability, but criticised that the scope of the regulation was weakened by some member states. For instance, whilst the original proposal was set to apply to listed and non-listed companies, the final adopted text only applies to listed companies, so covers only 6,000 of the 42,000 large companies that are incorporated within the EU.<sup>174</sup>

### 5.3.8 Reducing demand for exploited labour: EU initiatives

Parallel to the businesses and human rights framework developed at UN and ILO level, there is also a relevant debate in the anti-trafficking world on reducing demand for the products and services provided by trafficked persons or forced labour. Both the 2005 Council of Europe Anti-Trafficking Convention<sup>175</sup> and the 2011 EU Anti-Trafficking Directive (Article 18.4)<sup>176</sup> suggest criminalising those that make use of trafficked labour and services and prescribe that countries must adopt provisions for discouraging demand for trafficking in human beings.

What was initially framed almost exclusively as demand for sexual services – and is still often interpreted by states as a means to criminalise sex work – has, with the Palermo Protocol's extension

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174 ECCJ briefing, Assessment of the EU Directive on the disclosure of non-financial information by certain large companies, May 2014, <http://business-humanrights.org/sites/default/files/media/documents/eccj-assessment-eu-non-financial-reporting-may-2104.pdf>

175 Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, C.E.T.S. 197.

176 Directive 2011/36 on Preventing and Combating Trafficking in Human Beings and Protecting, 2011 O.J. (L 101).

of the definition of THB,<sup>177</sup> become a new debate on the responsibility and – given the criminal law implications of trafficking in human beings – liability of the private sector in the use of trafficked and forced labour.

The EU's 2012-2016 anti-Trafficking Strategy,<sup>178</sup> which supports the implementation of the 2011 Anti-Trafficking Directive, identifies demand for trafficking as identified as a root cause, and three actions are proposed to tackle it. These are:

- ❑ **Action 1:** Understanding and reducing demand, which includes funding research on the reduction of demand for and supply of services by victims of trafficking.
- ❑ **Action 2:** Promoting the establishment of a private sector platform, a so-called European Business Coalition against trafficking in human beings, to improve cooperation between companies and stakeholders.
- ❑ **Action 3:** EU-wide awareness raising activities and prevention programmes.

### 5.3.9 Thematic summary of the state's duty to protect

In combination, all the above-named initiatives lay down state obligations with regard to business-related human rights violations that are relevant to anti-trafficking work. These involve a number of areas that might provide entry points for anti-trafficking NGOs to hold corporations accountable by addressing the state's obligation to prevent and protect. The first area, public procurement, has not been dealt with in detail in the initiatives outlined above, but is detailed here below, because in many sectors where exploitation occurs, the state is an end employer or user of products from that industry. A case in point is state-commissioned construction, as the case in Chapter 3.4.5 shows.

The areas in which NGOs could hold states accountable for private sector violations are:

- ❑ publicly funded projects and public procurement
- ❑ obligation to regulate recruitment agencies
- ❑ obligation to protect workers, including irregular migrant workers, from exploitation
- ❑ obligation to strengthen and implement labour inspections

The areas identified here are not comprehensive, in particular given that there are numerous national frameworks that might lay down more obligations in the business and human rights area. Rather, they provide reference points for anti-trafficking NGOs when holding corporations accountable by also appealing to the state's duty to protect. The next Chapter will discuss more soft law mechanisms and voluntary initiatives that can also be used to hold corporations to account with regard to trafficking and forced labour in supply chains.

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177 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, G.A. Res. 55/25, Art. 3, UN Doc. A/55/383, December 2003.

178 The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016. Brussels, 19 June 2012, COM (2012) 286, for more background see the EU press release at [http://europa.eu/rapid/press-release\\_MEMO-12-455\\_en.htm](http://europa.eu/rapid/press-release_MEMO-12-455_en.htm)

### Publicly funded projects and public procurement

Funding and procurement – that is the acquisition by government-run or funded organisations of goods, services or works from an external source – by state institutions and international organisations has a very large potential in shaping businesses' human rights conduct. State-funded practices are often subjected to certain social and environmental criteria, in the form of conditionalities imposed on enterprises receiving funds, for instance, from export credit agencies<sup>179</sup> or development aid budgets.

States themselves – and international organisations such as the OECD, OSCE, UN or IOM – also have a responsibility in their own purchasing practices to ensure that suppliers “take appropriate measures to discourage demand related to exploitation and trafficking in human beings [...] and to ensure that private contractors do not facilitate or encourage trafficking in human beings”.<sup>180</sup> Potential state buyers can range from government ministries to law enforcement agencies; their suppliers (private contractors) can thus range from building firms, food suppliers and cleaning agencies to private military or security contractors.

ILO Convention No. 94 on labour clauses in public contracts<sup>181</sup> requires provisions in government procurement contracts to ensure the compliance of sub-contractors with labour standards. The ILO Conventions outlined in Box 18 are generally seen as a minimum threshold for state procurement policies and practices.

The legal basis for public procurement in the EU<sup>182</sup> is provided by the recently revised Public Procurement Directive 2014/24/EU<sup>183</sup> and EU Directive 2004/17/EC on public procurement in the water, energy, transport and postal services sectors.<sup>184</sup> The goal of these Directives is to “ensure that competitive conditions imposed by public authorities in their role as clients-main contractors, such as low pricing policies or tight deadlines, do not undermine the capacity of sub-contractors to comply

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179 See, for instance, OECD Council, Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, TAD/ECG(2012)5 (28 June 2012).

180 OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, Mike Dottridge, Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector, Occasional Paper Series No.7, November 2014, <http://www.osce.org/secretariat/126305>, p. 43.

181 See ILO, Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and Recommendation (No. 84), A practical guide, [http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS\\_099699/lang--en/index.htm](http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_099699/lang--en/index.htm)

182 The following section on the EU Procurement Directive is taken from SOMO, Fact Sheet. Socially Responsible Procurement of Garments and Textiles. Focus on the role of European governments and organisations in the public and semi-public sectors, November 2014, [http://www.somo.nl/news-nl/socially-responsible-public-procurement-of-garments-and-textiles-in-europe/at\\_download/attachment](http://www.somo.nl/news-nl/socially-responsible-public-procurement-of-garments-and-textiles-in-europe/at_download/attachment)

183 Repealing Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, see <http://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32014L0024>

184 OJ L 134, 30 April 2004; Directive 2004/17/EC of the European Parliament and of the Council of 31.03.2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors OJ L 134, 30 April 2004.

with relevant labor and social standards".<sup>185</sup> The EU Public Procurement Directive therefore defines the concept of the Most Economically Advantageous Tender (MEAT), which may include the best price-quality ratio, but has to be assessed on the basis of qualitative, environmental and/or social criteria, linked to the subject matter of the public contract in question.

In 2011, the European Commission published a "Buying Social Guide" distinguishing nine topics relevant for socially responsible public procurement, including:

- ❑ decent work
- ❑ compliance with social and labour rights
- ❑ ethical trade
- ❑ respect for human rights

The Guide explains how public authorities can apply social criteria in public procurement, on the basis of the 2011 EU legal framework. The Guide stresses that, while requirements relating to the labour conditions of workers involved in the production process cannot be taken into account in the technical specifications, they may be included in the contract performance clauses, provided they are linked to performance of the contract.

The Directive also stipulates that EU member states have a duty to create a legal framework in which the chances of economic operators performing public contracts that violate the social norms are as limited as possible. By April 2016, Member States will have to transpose the new EU Directive into national legislation, replacing existing legal provisions.

### **Responsibility to protect from abusive recruitment in sub-contracting chains**

The importance of states regulating the activities of public and private recruitment agencies in the fight against human trafficking was recognised by the former UN Special Rapporteur on trafficking in persons in 2014. She also pointed out that particular attention should be paid to "those agencies that charge fees to workers to secure a placement, as this is often a direct gateway to exploitative debt".<sup>186</sup> As mentioned in Chapter 5.3.3, the ILO Recommendation 203 lays down state obligations to protect workers from abusive recruitment agencies and practices, including eliminating the charging of recruitment fees. An Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings also calls for action at the national level to promote clear criteria for the "official registration of recruitment and placement agencies, and monitoring the activities of such agencies in

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185 Van Damme & Vermeulen, 'Towards an EU Strategy to Combat Trafficking and Labor Exploitation in the Supply Chain. Connecting Corporate Criminal Liability and State-Imposed Self-Regulation Through Due Diligence?', in Brodowski et al. (eds.), *Regulating Corporate Criminal Liability*, 2014, Springer International Publishing Switzerland, p. 189.

186 UN Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo. Addendum. Stocktaking exercise on the work of the mandate on its tenth anniversary, A/HRC/26/37/Add.2, March 2014, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-37-Add2\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-37-Add2_en.doc), para 94.

an effort to prevent all forms of THB and exploring possibility of removing the recruitment fees charged to employees".<sup>187</sup>

Interestingly, the former UN Special Rapporteur on trafficking in persons specifically calls for the binding regulation of recruitment agencies: *"there are strong reasons to believe that regulation of private employment agencies (recruitment businesses) may be more effective than self-regulation as a method to prevent human trafficking from occurring in the recruitment industry"*.<sup>188</sup>

This is in fact not a new claim. Indeed, temporary employment agencies were banned in most European and other countries during 1944, when the ILO was formed, and the 1970s. ILO Convention No. 34 of 1933 prohibited fee-charging agencies and ILO's Declaration of Philadelphia of 1944 recognised that "labour is not a commodity".<sup>189</sup> Many labour unions therefore still maintain that labour should never become a commodity in itself that can be exploited for profit, arguing that this will always come at a cost to workers. Exceptions to the ban on temporary work agencies, however, always existed in countries and industries. The gradual expansion of these agencies was given further legitimacy with the ILO Private Employment Agencies Convention 181 from 1997. This was not only due to the changing nature of work, but in particular due to lobby efforts of the recruitment sector, which itself is comprised of powerful multinational corporations.<sup>190</sup>

At EU level there has been much debate about abuse of employment in sub-contracting chains, in particular in the construction sector. The current situation regarding chain liability in EU law is outlined in more detail in Chapter 5.3.6.

### Protecting migrants

The international human rights framework accords all human rights to all migrants without discrimination, except for a few limited instances relating to political participation and freedom of movement.<sup>191</sup>

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187 Cited in OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, Mike Dottridge, Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector, Occasional Paper Series No.7, November 2014, <http://www.osce.org/secretariat/126305>, p. 68.

188 Ibid.

189 [https://en.wikipedia.org/wiki/Declaration\\_of\\_Philadelphia](https://en.wikipedia.org/wiki/Declaration_of_Philadelphia)

190 Strauss, K., Unfree Labour and the regulation of temporary agency work in the UK, in Fudge, J., Strauss, K. (eds.), Temporary Work, Agencies and Unfree Labour. Insecurity in the New World of Work, 2014, Routledge, New York. pp. 165-183.

191 Freedom of movement, for instance, is a human rights concept encompassing the right of individuals to travel from place to place within the territory of a country, and to leave the country and return to it. In the Universal Declaration of Human Rights this right is specifically attributed to citizens of a country. Restrictions apply to non-citizens in national law with regard to entering a jurisdiction and in certain instances to travel within a jurisdiction (as is the case with asylum applicants in Germany, for instance).

### Box 24: Failing labour inspectorates

A general survey of labour inspection conducted by the ILO in 2006 showed problems in countries where labour inspection systems are underfunded and understaffed, and consequently unable to do their job. Some estimates indicate that, in some developing countries, less than 1% of the national budget is allocated to labour administration, of which labour inspection systems receive only a small fraction.

However, problems also exist in developed economies, in particular with regard to the ratio of inspection. The Dutch trade union confederation says there are so few inspectors in the Netherlands that bad employers know that the probability of being inspected is once every 20 years at most.<sup>1</sup> In fact, the Dutch labour inspectorate has seen so many reorganisations (in particular staff cuts) in the last decade, that Dutch trade unions have lodged a complaint with the ILO against their government in 2012, arguing that the inspectorate no longer fulfils the obligations it incurs under the ILO conventions with regard to implementation and organisation.<sup>2</sup> The unions say that there is one labour inspector per 28,356 workers in the Netherlands and that, based on the indications provided by the technical labour inspection services of the ILO, this number is far below the standard for industrial market economies of one labour inspector per 10,000 workers.

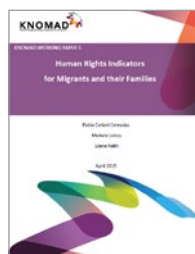
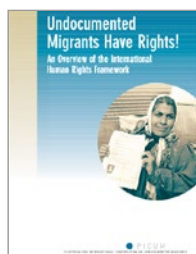
Because of the low frequency of inspection, only 1% of all of them indicate “fear of the labour inspectorate” as the reason for complying with legislation on working conditions. According to the unions, the continual shrinkage of capacity is also resulting in the liberalisation or abolition of regulations, because the capacity to enforce them no longer exists.<sup>3</sup>

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1 ILO, General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), 2006, <http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-iii-1b.pdf>, p. 83.

2 In a communication dated 22 June 2012, the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation of Professionals (VCP) (formerly the Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP)) addressed a representation to the International Labour Office, in accordance with article 24 of the ILO Constitution, alleging non-observance by the Netherlands of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Occupational Safety and Health Convention, 1981 (No. 155). The ILO Governing Body declared the complaint admissible in November 2014, see ILO, [http://www.ilo.org/wcmsp5/groups/public/--ed\\_norm/--relconf/documents/meetingdocument/wcms\\_320002.pdf](http://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_320002.pdf)

3 Ibid, p. 4.



*The Brussels-based Platform for International Cooperation on Undocumented migrants (PICUM) provides information on the legal obligation of states to protect migrants, including undocumented migrants.<sup>192</sup> Together with a number of migrant rights organisations, PICUM has also published indicators for the human rights of migrants to facilitate and monitor progress and compliance with legal obligations and promote evidence-based policy-making.<sup>193</sup>*

The ILO Convention Concerning Decent Work for Domestic Workers, No. 189 (Domestic Workers Convention)<sup>194</sup> is another specific human rights instrument relevant to human trafficking; it came into force in 2013 after a prolonged global civil society campaign.<sup>195</sup> The Convention provides for the same basic labour rights to workers, including migrant workers, who care for families and households as those available to other workers. This includes a minimum wage, clear terms and conditions of employment, daily and weekly (at least 24-hours) rest time, restrictions on in-kind payments, and respect for the right to freedom of association and collective bargaining.

EU anti-discrimination legislation also requires Member States to set up an equality body, some of which have powers of investigation and enforcement, depending on national legislation. A complaint lodged by a trade union with the UK's equality body, for instance, has led to an official investigation into labour rights abuses of migrant and agency workers in the UK's meat industry and a number of successful initiatives to improve working conditions in the sector (see Chapter 7.8).

### Labour inspectors

There is currently no binding regulation on the number of labour inspections that states have to carry out to ensure that the private sector adheres to national and international labour norms. The ILO does, however, prescribe that states have to have a system for labour inspections in place and what its function should be.<sup>196</sup>

192 PICUM, *Undocumented Migrants Have Rights! An Overview of the International Human Rights Framework*, March 2007, [http://picum.org/picum.org/uploads/file\\_/Undocumented\\_Migrants\\_Have\\_Rights\\_1.pdf](http://picum.org/picum.org/uploads/file_/Undocumented_Migrants_Have_Rights_1.pdf)

193 KNOMAD, *Human Rights Indicators for Migrants and their Families*, April 2015, <http://picum.org/picum.org/uploads/publication/KNOMAD%20Working%20Paper%205%20Human%20Rights%20Indicators%20for%20Migrants.pdf>

194 *Decent Work for Domestic Workers, Convention 189, Recommendation 201*, [http://www.ilo.org/wcmsp5/groups/public/-ed\\_protect/--protrav/--travail/documents/publication/wcms\\_168266.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_protect/--protrav/--travail/documents/publication/wcms_168266.pdf)

195 UN News Centre, *Landmark UN labour treaty extends rights for domestic workers worldwide*, 5.9.2013, <http://www.un.org/apps/news/story.asp?NewsID=45777#.Vbtu9uEbGpQ>

196 *Labour Inspection Convention No 81, 1947*, [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C081](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081)

Labour inspectors should assess the application of national law relating to working time, wages, occupational safety and health, and child labour, amongst others. In addition, labour inspectors should bring to the notice of national authorities loopholes and defects in national law. They play an important role in ensuring that labour law is applied equally to all employers and workers. It should be noted, however, that labour inspectorates face many challenges in applying their role on the ground.<sup>197</sup>

## 5.4 Conclusion

This Chapter provided a short history of international business and human rights frameworks and discussed civil society views on binding international legislation. A number of legal frameworks at the UN, ILO and EU level were identified in relation to the state's obligation to prevent tackle human trafficking for labour exploitation, such as the UN Guiding Principles, the ILO's labour conventions, the EU Employer's Sanctions Directive and general initiatives to reduce demand for trafficked labour. A thematic summary of state obligations was also given as the legal frameworks all deal with overlapping issues and it might be helpful for practitioners to approach the legal framework from a thematic perspective. The main issues identified that relate to business and human rights: are public procurement, abusive recruitment, the protection of migrants and labour inspections. In summary, it can be said that a plethora of legal frameworks exist that oblige states to protect migrant workers' rights. It is often not the frameworks that are lacking, but rather the political will to enforce them.

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197 See ILO Report V. Labour administration and labour inspection, March 2011, [http://www.ilo.org/ilc/ILCSessions/100thSession/reports/reports-submitted/WCMS\\_153918/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/100thSession/reports/reports-submitted/WCMS_153918/lang--en/index.htm)



## 6 Business responsibility to respect human rights

*“The Human Rights Council encourages businesses to commit themselves to implement the Guiding Principles on Business and Human Rights, establish an effective monitoring system to scrutinize the risks of human trafficking at all levels of the supply chain, conduct a risk assessment for their entire supply chain and develop and adopt high-level, company-wide policies or strategies to eliminate risks of trafficking in persons in their supply chains, which should be made applicable to all enterprises in a company’s supply chain by adequate measures and raise awareness among human resources and all other relevant staff [...].”*

*UN Human Rights Council, Resolution 23/5, 13 June 2013<sup>198</sup>*

As discussed in Chapter 5, there is still a lack of binding frameworks in relation to corporate human rights abuses that can be used effectively to hold corporations to account and achieve remedy for victims, also in relation to private sector involvement in human trafficking cases. Self-regulation and soft law mechanisms have both been used by the private sector to counter hard law initiatives, as well as to fill gaps in the face of lack of binding regulation, and have been used by civil society groups to hold corporations to account. At company level, there has been a proliferation of corporate codes of conducts, often as a reaction to grievances from citizens and civil society organisations.

While none of these soft law mechanisms are backed by formal (i.e. hard law) enforcement measures, they are proving influential in shaping governmental responses to business and human rights problems at national and international levels. They are relevant for NGOs fighting labour exploitation in two ways: in general, some Guidelines, such as those of the OECD and the UN (see Chapters 5.3.1 and 6.3), are internationally recognised. Others are accepted as sector standards. As such they can be used to address businesses in direct communications and campaigns when these Guidelines are violated by them.

The five core elements that have been internationally accepted as part of the corporate responsibility to respect human rights through exercising due diligence are:

1. The responsibility to have a human rights policy in place.
2. Assessing the human rights impacts resulting from business activities, including in the supply chain.
3. Integrating those values and findings into corporate cultures and management systems (address risks and adverse impacts).
4. Tracking and reporting on the human rights performance.
5. Grievance mechanisms

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198 Abridged version of UN Human Rights Council, Resolution 23/5, Trafficking in persons, especially women and children: efforts to combat human trafficking in supply chains of businesses, in Report of the Human Rights Council on its 23<sup>rd</sup> session, A/HRC/23/2, 27 August 2013, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-2_en.pdf), point 7.

Some instruments, such as the OECD Guidelines, also include a complaints mechanism, which can be used by NGOs to hold companies accountable if judicial mechanisms are unavailable, too expensive or not feasible for other reasons. Chapter 7 provides references to some of these complaints mechanisms and shows how anti-trafficking NGOs can use them in their advocacy or support work for their clients. The Tools and Resources Annex contains a list of existing handbooks for businesses and NGOs about how to use various standards.

Rather than existing separately, the instruments often build on and refer to each other, and soft law instruments typically refer to the internationally recognised human rights standards that are relevant to the state's duty to protect human rights, outlined in Chapter 5.3. The non-binding guidelines are explained in more detail in the following section, except the UN Guiding Principles, which were already discussed in Chapter 5.3.1.

As the UN Resolution on combating human trafficking in supply chains of businesses cited above highlights, soft law mechanisms are relevant to anti-trafficking NGOs. Alongside the overarching UN Guiding Principles, initiatives and mechanisms developed for economic sectors in which trafficking for labour exploitation in Europe might occur should be known to anti-trafficking NGOs.<sup>199</sup> Furthermore, trafficking in human beings is closely related to recruitment for labour exploitation, labour rights and migrants' rights, areas that are covered by a number of soft-law initiatives. The UN Human Rights Council, for instance, explicitly encourages businesses not only to implement the Guiding Principles on Business and Human Rights but also to "become supporters of the Athens Ethical Principles", which specifically deal with human trafficking.<sup>200</sup>

These and other soft law instruments and guidelines are outlined in more detail in this Chapter:

- ❑ UN Guiding Principles on Business and Human Rights (outlined in Chapter 5.3.1)
- ❑ UN Global Compact
- ❑ ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration)
- ❑ OECD Guidelines for Multinational Enterprises
- ❑ EU strategies on CSR and trafficking in human beings
- ❑ Athens Ethical Principles and Luxor Protocol
- ❑ Dhaka Principles
- ❑ OSCE Action Plan on trafficking in human beings.

Given the vast number of initiatives that exist, this Chapter does not aim to provide a narrative explaining the historical development and assessing the effectiveness of these soft law frameworks. It rather provides a directory of soft law initiatives to provide an overview and point to more extensive literature and guides.

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199 The sectors in which trafficking occurs worldwide, identified in Chapter 3.4, are: recruitment sector (cross-sectoral); agriculture and fishing; construction, mining, quarrying; domestic work; hotel and service industry sector; manufacturing, processing and packaging; market trading and illegal activities; prostitution and sexual exploitation; textiles and garments.

200 See UN Human Rights Council, Resolution 23/5, Trafficking in persons, especially women and children: efforts to combat human trafficking in supply chains of businesses, in Report of the Human Rights Council on its 23<sup>rd</sup> session, A/HRC/23/2, 27 August 2013, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-2_en.pdf), point 7.

## 6.1 The UN Global Compact

The UN Global Compact was first proposed by the former UN Secretary-General Kofi Annan in an address to the World Economic Forum in January 1999 and was established in 2000. More than 8,000 companies from over 145 countries had joined by 2015.<sup>201</sup> Participants of the Global Compact commit to implement, within their sphere of influence, the Global Compact's ten principles in the areas of human rights, labour, the environment and anti-corruption. The labour principles of the Global Compact are based on the ILO Declaration on Fundamental Principles and Rights at Work from 1998 and the ILO has actively collaborated with the Global Compact Office and its UN member agencies. Although it is a UN initiative, the Global Compact has no government backing and as such is a purely voluntary instrument.

The UN Global Compact offers practical tools and guidance materials and has a Human Rights and Labour Working Group that produces Good Practice Notes.<sup>202</sup> It has produced a Human Rights and Business Learning Tool<sup>203</sup> together with the OHCHR and runs an online Dilemmas Forum for businesses.

The simplicity of the UN Global Compact and the fact that businesses are given the opportunity to publicly commit to implementing the Compact's ten principles add to its appeal to corporations. However, there is also a clear downside. Due to the absence of screening of new participants and the lack of enforcement mechanisms to ensure that the corporate participants adhere to the ten principles, there is a risk that companies might use their Global Compact membership as a means to improve corporate images and not for real improvements in social and environmental issues.<sup>204</sup>



*SOMO has developed an online comparison tool<sup>205</sup> between the OECD Guidelines, the Global Compact and ISO 26000 (the ISO is not covered in this Resource Guide), since these three instruments cover a broad range of issues in the area of corporate responsibility, and incorporate both the UN Guiding Principles and the ILO Core Conventions that clarifies the similarities and differences between the three instruments.*

201 See <https://www.unglobalcompact.org/what-is-gc/participants/>

202 See <https://www.unglobalcompact.org/what-is-gc/our-work/social/labour>

203 See <http://human-rights-and-business-learning-tool.unglobalcompact.org/>

204 SOMO, Corporate Social Responsibility Instruments, A Comparison of the OECD Guidelines, ISO 26000 & the UN Global Compact, December 2013, [http://www.somo.nl/publications-en/Publication\\_4018/at\\_download/fullfile](http://www.somo.nl/publications-en/Publication_4018/at_download/fullfile)

205 See <http://www.somo.nl/dossiers-en/csr/corporate-responsibility-instruments>

### **Box 25: UN Global Compact Dilemmas Forum on human trafficking and migrant labour**

As part of the “Human Rights Dilemmas for Multinational Corporations in Emerging Markets” project, the UN Global Compact developed a Dilemmas Forum (see <http://human-rights.unglobalcompact.org>) jointly with the global risk and strategic consulting firm Maplecroft. It aims to enhance understanding of human rights themes and identify practical approaches for dilemmas facing businesses.

#### **Online Dilemma Forums on Human Trafficking and Migrant Labour**

Human Trafficking<sup>1</sup> and Migrant Labour<sup>2</sup> are two so-called dilemma areas in the Global Compact Dilemmas Forum. The specific pages on these issues present an introduction to and analysis of the dilemmas by presenting real-world scenarios and case studies, examining emerging economy contexts and exploring the specific business risks posed by the dilemmas. It also suggests a range of actions that responsible companies can take in order to manage and mitigate those risks.

The human trafficking page attempts to guide businesses in answering the question of *“How does a company ensure there is no association with human trafficking in its operations or supply chains when these extend into areas where trafficking is common in terms of the procurement of people, their transportation or their use as labour?”*

It includes interactive tools such as a webinar on human trafficking, case studies, a list of resources and a training tool that deals with a number of questions for businesses, such as steps to be considered when facing a dilemma, identification of potential stakeholders in the situation, their priorities and the risks that they pose, an analysis of potential actions to take and how best the dilemma could have been avoided in the first place.

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1 See [http://human-rights.unglobalcompact.org/dilemmas/human-trafficking/#.UsbeW\\_RDvTo](http://human-rights.unglobalcompact.org/dilemmas/human-trafficking/#.UsbeW_RDvTo)

2 See <http://human-rights.unglobalcompact.org/dilemmas/migrant-workers/#.UsbeefRDvTo>

## **6.2 ILO guidelines relevant to businesses and human trafficking**

Two areas of the ILO’s work are relevant to anti-trafficking organisations that want to engage with the private sector. First, the ILO’s opinions and reference points with regard to corporate social responsibility; and second, the ILO’s research and initiatives on forced labour and human trafficking. It is noteworthy that the ILO treats forced labour and trafficking as interrelated and thus has not developed separate guidelines for businesses in these two areas.

Human trafficking is viewed by the ILO as a form of forced labour (see Chapter 3.1.2). In particular, the ILO has developed tools and information to engage with the private sector, such as the 2008 ILO handbook for employers and business on how to combat forced labour.<sup>206</sup>



*This ILO Handbook for employers and business aims to “help business actors at different levels address the issue, providing practical tools and guidance material to enable them to identify and prevent forced labour, and take remedial action where necessary, within their sphere of influence”. It contains checklists and other practical tools and information about forced labour and trafficking in the supply chain that local anti-trafficking NGOs can use in their contact with and/or campaigns targeting businesses.*

The ILO has a tripartite organisational structure that includes employers’ organisations, trade unions and governments. As such it was involved in the discussions of the 1960s and 1970s regarding a possible international regulation for Multinational Enterprises (MNEs, see Chapter 5.1). The ILO’s competence lies with labour and social policy issues. Its engagement in the development of international guidelines consequently resulted in the adoption of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (generally referred to as the MNE Declaration) in 1977.<sup>207</sup> The MNE Declaration was updated in 2006 to take into account the adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998 (see Box 17).

The MNE Declaration lays down principles and provides guidelines to MNEs, governments and employers’ and workers’ organisations in the areas of employment, training, working and living conditions, as well as for its industrial relations. It aims to “encourage the positive contribution which multinational enterprises can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise”. It is the only international instrument addressed to enterprises that has been agreed to by governments, as well as by employers’ and workers’ organisations.

### 6.3 The OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises are government-backed recommendations to companies regarding responsible business conduct in their global operations. They were adopted in 1976 as part of a package that consisted of the Declaration on International Investment and Multina-

206 ILO, Combating forced labour: A handbook for employers and business, 2008, [http://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_101171/lang--en/index.htm](http://www.ilo.org/global/topics/forced-labour/publications/WCMS_101171/lang--en/index.htm)

207 See [http://www.ilo.org/empent/Publications/WCMS\\_094386/lang--en/index.htm](http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm)

tional Enterprises, for the facilitation of direct investment among OECD member countries, together with four instruments related to the Declaration.

The Guidelines cover a range of topics, including human rights, employment, environment, disclosure, corruption and taxation. In May 2011, the OECD and adhering governments updated the Guidelines, introducing substantial new provisions in areas such as human rights, due diligence and supply chain responsibility, and were aligned with the UNGPs.

While the OECD Guidelines are not legally binding on companies, OECD and signatory governments are required to ensure that they are implemented and observed. What distinguishes the OECD Guidelines from other corporate responsibility instruments and mechanisms is that they have a dispute resolution mechanism for resolving conflicts regarding alleged corporate misconduct (see next Chapter). Governments that adhere to the Guidelines must establish a National Contact Point (NCP) to promote the Guidelines and to handle complaints against companies that have allegedly failed to adhere to the Guidelines' standards.

Although not binding, a complaint can lead to mediations with the companies in question and to compensation of workers, a change in company policies and practices with regard to codes of conduct, demands towards suppliers and auditing practices.

## 6.4 EU strategies on CSR and trafficking in human beings

Two EU initiatives are relevant to addressing the role of the private sector in trafficking in human beings and forced labour. Firstly, the EU's work in recent years to reduce demand for the goods and services resulting from the use of trafficked labour as part of its 2012-2016 Anti-Trafficking Strategy.<sup>208</sup> Secondly, the EU is currently developing its 2015-2020 CSR strategy, accompanied by civil society demands to work towards binding measures.<sup>209</sup>

The EU's 2012-2016 Anti-Trafficking Strategy (see also Chapter 5.3.8) emphasised the role of the private sector in THB in terms of reducing demand for and supply of services by victims of trafficking. It foresees the establishment a European Business Coalition against trafficking in Human Beings. Although the deadline for this coalition was set for 2014, no outcome has as yet been formally announced.<sup>210</sup>

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208 The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016. Brussels, 19 June 2012, COM (2012) 286, for more background see the EU press release at [http://europa.eu/rapid/press-release\\_MEMO-12-455\\_en.htm](http://europa.eu/rapid/press-release_MEMO-12-455_en.htm)

209 See ECCJ, Amnesty International and Friends of the Earth Europe, Putting the rights of people at the heart of the new EU strategy on CSR, February 2015, [http://www.corporatejustice.org/IMG/pdf/ai\\_eccj\\_foee\\_statement\\_for\\_csr\\_ms\\_forum\\_final.pdf](http://www.corporatejustice.org/IMG/pdf/ai_eccj_foee_statement_for_csr_ms_forum_final.pdf)

210 Commission Staff Working Document, Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings, SWD(2014) 318 final, 17 October 2014, [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/commission\\_staff\\_working\\_document\\_-\\_mid-term\\_report\\_on\\_the\\_implementation\\_of\\_the\\_eu\\_strategy\\_towards\\_the\\_eradication\\_of\\_trafficking\\_in\\_human\\_beings.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/commission_staff_working_document_-_mid-term_report_on_the_implementation_of_the_eu_strategy_towards_the_eradication_of_trafficking_in_human_beings.pdf)

In 2011 the European Commission put forward a new definition of CSR as “the responsibility of enterprises for their impacts on society” and initiated its 2011-2014 CSR strategy, which acknowledged the need for regulation in addition to voluntary measures to ensure corporate accountability. According to the European Coalition for Corporate Justice (ECCJ), the EU thus parted “from the former purely voluntary approach”.

The EU has endorsed the UNGPs in its 2011 CSR strategy and has made a commitment to support their implementation (see Chapter 6.4). A number of guiding materials have since been published<sup>211</sup> and the development of National Action Plans is addressed by the CSR peer review process with EU member states.<sup>212</sup> In 2012, the European Commission decided to develop guidance documents on three business sectors, namely, oil & gas, ICT/telecommunications and employment & recruitment agencies.<sup>213</sup>

Given the central role of abusive and misleading recruitment practices in human trafficking, the latter is particularly relevant for anti-trafficking NGOs. A ‘European Commission Employment & Recruitment Agencies Guide’ was published in 2013, offering practical advice on how to implement the UNGPs in day-to-day business operations in the sector through step-by-step guidance.<sup>214</sup> The Business and Human Rights Resource Centre has a useful overview of existing tools for the implementation of the UNGPs and examples of uses.<sup>215</sup> As part of its CSR strategy, the EU also adopted the non-financial reporting Directive, which will require large companies to report annually on their human rights, environmental and social impacts.<sup>216</sup>

ECCJ and its member organisations have called for changes in the EU’s 2015-2020 CSR strategy that is currently being developed, and have voiced concerns about a rollback by the new commission on regulatory aspects of CSR as part of the European Commission’s ‘Better Regulation’ agenda. This aims to reduce so-called red tape for businesses, but is undermining the EU’s commitment to protect against corporate abuses through effective regulation and adjudication, which the UNGPs explicitly call for. As well as mandatory human rights diligence, ECCJ calls for the EU to take steps to improve access to remedy for victims of corporate abuse.<sup>217</sup>

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211 See Shift, European Commission Human Rights Sector Guides, <http://www.shiftproject.org/ec-sectoral-guides-corporate-responsibility-respect-human-rights>

212 These are all published at <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/>

213 From Principles to Practice: The European Union operationalizing the United Nations Guiding Principles on Business and Human Rights, Expert Conference hosted by the Danish EU Presidency, 7-8 May 2012, <http://www.business-humanrights.org/Links/Repository/1015422>

214 European Commission, Employment & Recruitment Agencies Guide, 2013, <http://www.shiftproject.org/publication/european-commission-employment-recruitment-agencies-guide>

215 See <http://business-humanrights.org/en/implementation-of-un-guiding-principles-governments>

216 For more background see Business and Human Rights Resource Centre, ‘EU requirements on companies’ non-financial reporting, 2014, <http://business-humanrights.org/en/eu-requirements-on-companies-non-financial-reporting-2014>

217 See ECCJ, Amnesty International and Friends of the Earth Europe, Putting the rights of people at the heart of the new EU strategy on CSR, February 2015, [http://www.corporatejustice.org/IMG/pdf/ai\\_eccj\\_foee\\_statement\\_for\\_csr\\_ms\\_forum\\_-final.pdf](http://www.corporatejustice.org/IMG/pdf/ai_eccj_foee_statement_for_csr_ms_forum_-final.pdf)

The EU's CSR strategy is relevant for advocacy at the national level, as Member States are obliged to implement it. As mentioned above, the development of National Action Plans (NAPs) on business and human rights is addressed by the CSR peer review process with EU member states. At the time of writing six states have developed and published NAPs on business and human rights, including the United Kingdom in September 2013, the Netherlands in December 2013, Denmark in March 2014, Finland in September 2014, Lithuania in February 2015 and Sweden in August 2015.<sup>218</sup> ECCJ and its members critically monitor the ongoing processes at the national level of developing NAPs.

## 6.5 Athens Ethical Principles and Luxor Protocol

The Athens Ethical Principles (AEPs)<sup>219</sup> were adopted in January 2006 by a group of chief executives from the private sector, representatives of non-governmental organisations, international organisations and governments on the initiative of Suzanne Mubarak Women's International Peace Movement, under the auspices of the Greek Ministry of Foreign Affairs.

The seven principles commit businesses to contribute to the combating of human trafficking by policy setting, public awareness raising, strategic planning, personnel policy enforcement, supply chain tracing, government advocacy, and transparency. The AEPs are similar to the UNGPs, but are more explicitly linked to supporting state action, "as they include corporations' responsibility to implement awareness-raising campaigns and coordinate with the government".<sup>220</sup> Jägers and Rijken criticise the AEPs on a number of issues, but argue they are a "useful tool when further operationalizing and analyzing the four elements of the corporate responsibility to respect and therefore serve as an inspirational document". There is no compliance or verification procedure connected to the Principles, making subscription to the same prone to window dressing.

The Luxor Implementation Guidelines to the Athens Ethical Principles (Luxor Protocol) were issued at an international conference on human trafficking held in Luxor, Egypt. It sets out more practical guidelines for operationalising the principles, also suggesting that signatories should "[s]eek independent external monitoring and verification of compliance with the company's code of conduct/standards at least annually, including unannounced audits, from a reputable/recognized organization".<sup>221</sup>

In a review for the OSCE of the responsibilities and existing initiatives of states and business in fighting human trafficking, it has been pointed out that the Luxor Protocol goes further than most other similar business commitments, calling on businesses as part of its zero tolerance policy to

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218 ICAR & ECCJ, Assessments of Existing National Action Plans (NAPs) on Business and Human Rights, November 2014, <http://accountabilityroundtable.org/analysis/napsassessments/>. For an update on the state of affairs regarding the NAPs, see the Business and Human Rights Resource Centre website at <http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans>

219 See <https://www.unglobalcompact.org/resources/70>

220 Jägers & Rijken, 'Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations,' *Northwestern Journal of International Human Rights*, Volume 12, issue 1, 2014, <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1167&context=njihr>, p. 60.

221 See <https://www.unglobalcompact.org/library/70>



prohibit patronising persons in prostitution while on official business travel: “[f]ew other business codes focus on how their staff behave while travelling.”<sup>222</sup>

## 6.6 International Confederation of Private Employment Agencies (CIETT) Code of Conduct

The International Confederation of Private Employment Agencies (CIETT)<sup>223</sup> has been a key lobbying force at the global and some national levels in the privatisation and liberalisation of the temporary agency work industry.<sup>224</sup> The European Confederation of Private Employment Agencies (EUROCIETT), for instance, played a major part in drafting the ILO’s Private Employment Agencies Convention No 181 from 1997, which was a landmark in the liberalisation of European labour markets (see Box 6: The rise of temporary agency work and unfree labour).<sup>225</sup> As such, the Codes of Conduct of private employment agency confederations are a good example of the interplay between the emergence of soft law mechanisms developed as an alternative to binding regulations.

CIETT adopted both a Charter of Private Employment Agencies and a Code of Conduct to be observed by all private employment agencies belonging to the Confederation. The principles reflect international human rights principles, and since June 2015,<sup>226</sup> also explicitly refer to human trafficking (Principle 1 states that *“Private employment services shall comply with all relevant legislation, statutory and non-statutory requirements and official guidance covering their activities. This principle explicitly covers the prohibition to use forced or bonded labour, human trafficking and child labour”*).

At the operational level, the main provision in the Charter relating to the prevention of human trafficking and debt bondage is the CIETT’s reiteration of the principle that *“Private employment services shall not charge directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for the services directly related to temporary assignment or permanent placement”*.<sup>227</sup>

222 OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, Mike Dottridge, Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector, Occasional Paper Series No.7, November 2014, <http://www.osce.org/secretariat/126305>, p. 12.

223 Founded in 1967, Ciett consists of 48 national federations of private employment agencies and 8 of the largest staffing companies worldwide: Adecco, Gi Group, Kelly Services, Manpower, Randstad, Recruit Co., LTD., Trenkwalder and USG People, see <http://www.ciett.org/>

224 See Coe, N., & Ward, K., The Creation of Distinctive National Temporary Staffing Markets, in Fudge, J., Strauss, K. (eds.), Temporary Work, Agencies and Unfree Labour. Insecurity in the New World of Work, 2014, Routledge, New York, pp. 94-117.

225 See Wynn, M., Power Politics and Precariousness. The Regulation of Temporary Agency Work in the European Union in Fudge, J., Strauss, K. (eds.), Temporary Work, Agencies and Unfree Labour. Insecurity in the New World of Work, 2014, Routledge, New York, pp. 48-69; ILO Convention No181 is published at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326)

226 See [http://www.ciett.org/uploads/media/Ciett\\_Code\\_of\\_Conduct.pdf](http://www.ciett.org/uploads/media/Ciett_Code_of_Conduct.pdf)

227 OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, Mike Dottridge, Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector, Occasional Paper Series No.7, November 2014, <http://www.osce.org/secretariat/126305>, p. 66.

This principle of free-of-charge provision of services to jobseekers is also stipulated in Article 7 of the ILO's Private Employment Agencies Convention (*"Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers"*).

EUROCIETT adopted a Code of Conduct of its own that also includes a principle of free-of-charge provision of services to jobseekers. The Code does not mention human trafficking explicitly, but requires that members *"shall also ensure that migrant workers are well informed in advance of their rights within the country of destination"*.

Neither CIETT nor EUROCIETT has a process for monitoring whether the standards stipulated are respected by their members. However, their members operate in the regulated recruitment market.<sup>228</sup> In his overview of duties of states and the private sector in ending human trafficking, Dottridge points out that *"measures implemented voluntarily in the regulated market tend to be ignored by smaller businesses operating at the unregulated or informal end of the market, whom it may only be possible to influence by greater regulation or by improving the bargaining power of the migrant workers who seek their services"*.<sup>229</sup>

## 6.7 Dhaka Principles for migration with dignity

The Dhaka Principles for migration with dignity<sup>230</sup> were developed between 2010 and 2012 in consultation with trade unions, civil society groups and businesses by the Institute for Human Rights and Business (IHRB), a think tank funded by a number of stakeholders (businesses, unions and governments). First discussed at a multi-stakeholder roundtable on migrant workers in Dhaka, Bangladesh in 2011, the Dhaka Principles aim to inform policies in practices in sending and receiving countries of migrant workers and form a standard for responsible recruiters and employers of migrant workers.

The Principles set two core principles of non-discrimination and equal protection under employment law and articulate the following ten standards:

1. No fees charged to migrant workers
2. Clarity and transparency of worker contracts
3. Inclusive policies and procedures
4. Non-retention of passports or ID documents
5. Regular, direct and timely remuneration
6. Right to worker representation
7. Safe and decent working conditions
8. Safe and decent living conditions
9. Access to remedies
10. Freedom to change employment and safe return guaranteed.

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228 Ibid.

229 Ibid, p. 63.

230 See <http://www.dhaka-principles.org/>



The Principles provide practical guidance for employers, labour brokers and other stakeholders following the migrant worker from the moment of recruitment to the place of employment through to the end of a contract. They follow ILO and UN international business and human rights frameworks and form an addition to the UNGPs by focusing specifically on migrant workers.

## 6.8 OSCE action plan to combat trafficking in human beings

The OSCE Action Plan to Combat Trafficking in Human Beings from 2003 addresses the role of businesses in preventing human trafficking, although it largely calls on participating states to take action to regulate businesses. In December 2013, the OSCE adopted an addendum to the 2003 Action Plan, which mentioned soft law initiatives and encouraged *“the private sector, trade unions and relevant civil society institutions, to promote codes of conduct to ensure the protection of the human rights and fundamental freedoms of workers throughout the supply chain in order to prevent the exploitative situations that foster trafficking in human beings”*.<sup>231</sup>

It also urged participating states to implement *“‘zero-tolerance’ policies or other similar standards in government procurement of goods and services”*. Dottridge notes<sup>232</sup> that:

*“In effect, this is a call for preventive action to be taken in the place to which people are trafficked or where the goods they produce or the services they provide are marketed, balancing other calls for preventive action in the places from which people are trafficked.”*

Chapter 5.3.9 outlines some existing social criteria guiding public procurement that take human trafficking for labour exploitation into consideration.

## 6.9 Company and sector-level CSR initiatives

There are a plethora of company codes of conduct and multi-stakeholder sectoral and cross-sectoral initiatives. Many but not all initiatives include the possibility of certification or verification against the initiative by independent third parties. In some instances, certification or third-party verification is a requirement. As outlined in Chapter 4.5, there are many concrete activities that companies can undertake to improve their human rights record, ranging from training management and staff and

<sup>231</sup> OSCE Permanent Council, Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later, PC.DEC/1107 (6 December 2013), Chapter III, paragraph 1.7., cited in OSCE/Dottridge op. cit., p 13.

<sup>232</sup> Ibid., p. 14.

### **Box 26: Economic interests of CSR initiatives and their potential risk**

When engaging in CSR initiatives and tools, it is important to bear in mind that some initiatives or tools are connected to commercial or economic interests, involving payment for use, a membership fee, or the payment for verification of certification services. Furthermore, companies can use CSR initiatives or tools to promote their product or organisation.

Although being paid for providing CSR services might be necessary for the organisation administering the initiative or tool to cover its costs and activities, there is also a danger that the profit-seeking behaviour of the administering organisation dominates the core goals of the CSR tool. In prioritising focus and staff resources, for instance, obtaining revenues from participating businesses might be prioritised over and above monitoring the compliance of companies to the certification scheme. NGOs should be aware of these conflicts of interest that might exist in CSR initiatives and tools.<sup>1</sup>

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1 International Standard (ISO, 2010) Guidance on social responsibility, 26000:2010, <http://www.iso.org/iso/home/standards/iso26000.htm>, p. 84.

improving transparency on financing and sourcing practices, to auditing factories or work places of suppliers, investigating complaints and providing remedy to victims.

The following section provides an overview of the main company and sector-level CSR initiatives that are relevant to forced labour and trafficking.

#### **6.9.1 Corporate codes of conduct**

A socially responsible company should be aware of the risk that human trafficking might occur in its supply chain. It should also have a policy, strategy or a code in place with the aim of preventing human trafficking from taking place in its supply chain. These are called corporate codes of conduct, which can be defined as follows:

*“Principles, values, standards, or rules of behaviour that guide the decisions, procedures and systems of an organisation in a way that (a) contributes to the welfare of its key stakeholders, and (b) respects the rights of all constituents affected by its operations.”<sup>233</sup>*

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233 Wikipedia cites the 2007 International Federation of Accountants' International Good Practice Guidance, “Defining and Developing an Effective Code of Conduct for Organizations”, see [http://en.wikipedia.org/wiki/Code\\_of\\_conduct](http://en.wikipedia.org/wiki/Code_of_conduct)

Codes of conduct may include provisions on the behaviour of employees, environmental standards, compliance with legislation or respect for human rights. A code of conduct should also apply to a company's supply chain. Codes vary in content as well as commitment.

The Clean Clothes Campaign<sup>234</sup> defines a good code of conduct as follows:

- having a clear scope that extends to all units in the supply chain.
- comprising core labour standards of the ILO and others, namely:
  - freedom of association and the right to organise
  - the right to bargain collectively
  - a living wage
  - maximum limit on hours of work
  - healthy and safe working conditions
  - security of employment
  - no discrimination
  - no forced labour; and no child labour.<sup>235</sup>

A code of conduct can be a strategic tool for getting companies to comply with international human rights, labour and environmental standards. Many civil society organisations campaign to hold companies to account for promises they have made in their own code of conduct.

In line with the civil society debate on hard vs. soft law mechanisms discussed in Chapter 5.2, civil society groups view codes of conduct not as a substitute for adequately enforced protection under national law. Rather they believe codes can offer workers leverage for demanding better working conditions and are often a first step towards eliminating abuses in the supply chain.

## 6.9.2 Sector initiatives

Sometimes companies decide to team up to address social and environmental issues specific to their economic sector. For instance, they develop a joint code of conduct, set up an initiative to collaborate in the auditing of factories or carry out a joint training programme.

A sector code of conduct can function as a soft law instrument if many companies have committed to these in writing. It then becomes a de facto standard for the industry. An example is the code of conduct of the Electronic Industry Citizenship Coalition (EICC).<sup>236</sup> Many of the major electronics manufacturers such as Apple, Philips and Sony are members of the EICC, which specifies that forced or trafficked labour should not be used, specifying conditions that need to apply to the work floor to

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234 The Clean Clothes Campaign is an alliance of organisations in 16 European countries working to improve working conditions and supporting the empowerment of workers in the global garment and sportswear industries. Members include trade unions and NGOs working on women's rights, consumer advocacy and poverty reduction, see <http://www.cleanclothes.org> .

235 See <http://www.cleanclothes.org/issues/faq/code-of-conduct>

236 See <http://www.eiccoalition.org/>

ensure freely chosen employment (such as freedom to leave the place of work, no withholding of passports and no recruitment fees).<sup>237</sup>

Another example is the Pharmaceutical Supply Chain Initiative (PSCI), initiated by leading firms in the industry.<sup>238</sup> After its launch in 2006, the PSCI developed the Pharmaceutical Industry Principles for Responsible Supply Chain Management. These principles specify responsible business practices throughout the pharmaceutical industry's supply chain. Most companies that endorse these principles have made slight modifications and adapted the code to their objectives and priorities.<sup>239</sup> Similar to the EICC Code above, the PSCI Principles lay down that suppliers shall not use forced, bonded or indentured labour or involuntary prison labour, but do not specify conditions further.

A challenge with these codes, as the above-cited UN Conference on Trade and Development (UNCTAD) study from 2012 notes, is that most companies will modify them according to their specific needs to create a unique company code. This phenomenon makes it harder for stakeholders to hold the company to account. In addition, sector initiatives often represent the lowest common denominator due to the number of companies involved in them.

#### **Initiatives by the recruitment sector and other stakeholders**

There are many initiatives to counter abusive practices in the recruitment sector, initiated by the sector itself as well as by the ILO, the IOM, NGOs and governments. A comprehensive overview is given by the OSCE in a publication from 2014, which also discusses the increased demand to roll back the liberalisation and self-regulation of the recruitment sector and re-introduce binding regulation for recruitment businesses rather than certification schemes (see Chapter 5.2).<sup>240</sup> A summary of the initiatives analysed in the OSCE report is given below:

- ❑ In the Russian Federation, a non-commercial partnership of private recruitment agencies, the International Association on Labour Migration (IALM), was set up in 2003, consisting initially of 20 Russian private agencies that were licensed to recruit Russian nationals to work abroad, along with employment agencies based in other Commonwealth of Independent States (former Soviet Republics) Member States. A code was drafted together with the ILO in 2005 to promote good practices in the sector, but it did not include a verification mechanism.
- ❑ Large recruitment agency initiatives: Recruitment agencies such as Manpower and Adecco have initiated several initiatives, such as the Athens Principles (see Chapter 6.5 above) and committed themselves to ethical recruitment. However, they have also been found to largely abstain from

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237 See the Code of Conduct at [http://www.eiccoalition.org/media/docs/EICCCodeofConduct5\\_English.pdf](http://www.eiccoalition.org/media/docs/EICCCodeofConduct5_English.pdf)

238 See <http://www.pharmaceuticalsupplychain.org/>

239 UNCTAD, Corporate social responsibility in global value chains: evaluation and monitoring challenges for small and medium sized suppliers in developing countries, New York and Geneva, 2012, [http://unctad.org/en/PublicationsLibrary/diaeed2012d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/diaeed2012d3_en.pdf)

240 OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, Mike Dottridge, Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector, Occasional Paper Series No.7, November 2014, <http://www.osce.org/secretariat/126305>, pp 61-66.

recruiting migrant workers, so that these initiatives do not necessarily cover the majority of workers that are vulnerable to abuse.

- ❑ The International Confederation of Private Employment Agencies (CIETT) adopted both a Charter of Private Employment Agencies and a CIETT Code of Conduct in 2006 intended to be observed by all private employment agencies belonging to the Confederation. They reiterated that “private employment agencies should not charge directly or indirectly any fees or costs to workers for job-finding services”, as stipulated in the ILO’s Private Employment Agencies Convention (1997).
- ❑ The European Confederation of Private Employment Agencies (EUROCIETT) adopted a Code of Conduct of its own in 2006, also containing a commitment not to charge job seekers fees or payments. The accompanying text does not mention human trafficking, but requires that, “Members shall also ensure that migrant workers are well informed in advance of their rights within the country of destination”.

The IOM has been particularly active in promoting best practices in the recruitment sector. It launched an International Recruitment Integrity System (IRIS), to *“bridge international legislative and regulatory gaps governing labour recruitment in countries of origin and countries of destination, and provide a global framework for addressing unethical recruitment. By agreeing to abide by a common code of ethical conduct and best practices, stakeholders engaged in recruitment in countries of origin and destination will have assurances that their counterparts are committed to fair and ethical recruitment.”*<sup>241</sup>

IRIS aims to develop a voluntary accreditation framework based on adherence to common principles for ethical recruitment and a code of conduct that will include:

- ❑ No fee charging to job seekers
- ❑ No retention of workers’ passports or identity documents
- ❑ A requirement for transparency in their labour supply chain.

IRIS also aims to administer a complaints and referral mechanism to assist victims of unethical or illegal recruiters to file grievances with the appropriate authorities.

In mid-2014, the European Institute for Crime Prevention and Control (HEUNI) published a set of guidelines intended to prevent abusive recruitment for states, but also for recruitment agencies on how to implement their due diligence obligation under the UNGPs in order to prevent abuse and exploitation in recruitment and employment of migrant workers.<sup>242</sup> Next to these guidelines, the following toolkits on fair recruitment have been developed in recent years:

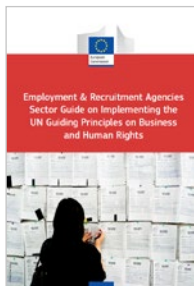
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241 See <http://iris.iom.int/>

242 HEUNI, Guidelines to prevent abusive recruitment, exploitative employment and trafficking of migrant workers in the Baltic Sea region, L. Sorrentino and A. Jokinen, 2014, <http://www.cbss.org/wp-content/uploads/2012/11/ADSTRINGO-Guidelines.pdf>, pp.47-63.



The Verité Fair Hiring Toolkit<sup>243</sup> provides guidance on fair hiring for brands, suppliers, governments and civil society groups, including materials for labour rights advocates and trade unionists. An overview of the most relevant tools and guidance is provided, with an explanation of how these tools can support their work on forced labor and human trafficking.



The European Commission Employment & Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights<sup>244</sup> offers practical advice on how to implement the corporate responsibility to respect human rights in day-to-day business operations in the recruitment sector through step-by-step guidance. The Guide summarises what the UN Guiding Principles expect, offers a range of approaches and examples for how to put them into practice, and links users to additional resources that can support their work. They are intended to help companies “translate” respect for human rights into their own systems and cultures.

### 6.9.3 Multi-stakeholder initiatives and codes

When several companies collaborate with NGOs, trade unions, and/or other organisations to address CSR issues, this is seen as a multi-stakeholder initiative (MSI). Governments may also be involved. The Ethical Trading Initiative (ETI) uses a multi-stakeholder approach. It is an alliance of companies, trade unions and voluntary organisations that work together to improve the lives of poor and vulnerable workers across the globe that make or grow consumer goods. Big companies such as Marks & Spencer and Gap are members, but NGOs such as Oxfam and CARE International also participate.<sup>245</sup> Another example of an effective MSI is the Forest Stewardship Council (FSC), a standard for responsible forest management worldwide.<sup>246</sup>

243 For an online version, see <https://www.verite.org/helpwanted/toolkit>

244 See [http://shiftproject.org/sites/default/files/ECHRSG.ERA\\_.pdf](http://shiftproject.org/sites/default/files/ECHRSG.ERA_.pdf) for the recruitment sector guide and <http://www.shiftproject.org/ec-sectoral-guides-corporate-responsibility-respect-human-rights> for other sectoral guides developed by the EU.

245 Ethical Trading Initiative, Our members, <http://www.ethicaltrade.org/about-eti/our-members> (accessed on 25 February 2014).

246 See <https://us.fsc.org/>





*This guide<sup>247</sup> is intended for professionals working for CSOs and participating in MSIs. It provides strategic perspectives for action and highlights critical issues to address when participating in MSIs. It is based on extensive research and experience gathered by SOMO over the years.*

The ILO “Fair Recruitment Initiative” in 2014, a multi-stakeholder endeavour designed and implemented together with ILO social partners and their affiliates, including the International Trade Union Confederation (ITUC) and affiliates, the International Organisation of Employers (IOE) and affiliates, and in particular the CIETT. Other partners are the Inter-Agency Coordination Group against Trafficking in Persons (ICAT), the IOM, World Bank, OHCHR and UNODC. Civil society partners include the Institute for Human Rights and Business (IHRB), Verité, Migrant Forum in Asia, and Panos Europe Institute. The initiative is going to be undertaken from 2015-2018 and will result in guidance to the recruitment sector. The new Protocol and Recommendation to the ILO Forced Labour Convention that specifically targets recruitment practices (see Chapter 5.3.3), has served as an impetus for this initiative.

#### 6.9.4 Certification

Many codes of conduct and MSIs work with certification. When a certificate is issued, it denotes that an auditing or verification process has been successfully completed against the requirements in the standard. There are hundreds of different certificates in the field of CSR. Some of the most well-known are Fair Trade,<sup>248</sup> Forest Stewardship Council (FSC)<sup>249</sup> and the Rainforest Alliance<sup>250</sup>.



247 SOMO, Multi-stakeholder initiatives. A strategic guide for civil society organizations, 2012, [http://somo.nl/publications-en/Publication\\_3786](http://somo.nl/publications-en/Publication_3786)

248 <http://www.fairtrade.net/361.html>

249 Forest Stewardship Council, <https://us.fsc.org/certification.194.htm>

250 <http://www.rainforest-alliance.org/certification-verification>

Certification should not be viewed as indicative of the value or effectiveness of an initiative.<sup>251</sup> Sometimes companies find ways of buying certifications or cheating during audits. Furthermore, some labels and certification schemes are little more than window-dressing for unsustainable companies and products. It can be quite difficult to know which certificates and labels are meaningful and which are just plain marketing. An effective monitoring mechanism and specific checks are therefore necessary to check the value of the certification per case.

## 6.10 Conclusion

This Chapter provided an overview of soft law and voluntary initiatives and available guides for civil society organisations regarding how to use these. International corporate social responsibility instruments and guidelines covered are those developed by the UN, ILO, OECD and EU, but also specific sector initiatives relevant to addressing the role of business in human trafficking and labour exploitation. In particular recruitment sector initiatives are relevant, given the role these agencies play in human trafficking, and codes of larger sector associations have recently included anti-trafficking articles in the codes that their members subscribe to.

Enforcement of soft law initiatives remains a problem, and this Chapter therefore noted that an active drive towards voluntary sector initiatives should not be promoted if this forms a barrier to binding state-enforced regulation of a business sector. The conduct of private employment agency confederations are a good example of the interplay between the emergence of soft law mechanisms developed as a replacement for binding regulations, for instance. Neither the global recruitment sector association CIETT nor its European counterpart EUROCIETT have a process for monitoring whether the standards stipulated are respected by their members or not. Furthermore, smaller businesses operating at the unregulated or informal end of the recruitment market do not follow association guidelines and need to be tackled by binding laws and their effective implementation.

In summary, there are many initiatives and guidelines that anti-trafficking NGOs can refer to in their work with the private sector. They can be a first step towards eliminating abuses in the supply chain, either through cooperation with the private sector towards improvement, or by using these instruments to fuel campaigns to put pressure on companies to prevent and address human trafficking in their operations and supply chains.

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251 International Standard (ISO, 2010) Guidance on social responsibility, 26000:2010, <http://www.iso.org/iso/home/standards/iso26000.htm>, pages 84.

## 7 Engaging the private sector to end human trafficking

As discussed in previous Chapters, the private sector is a crucial actor in labour exploitation and human trafficking. Chapter 4.5 outlines a number of measures that businesses should take to address exploitation practises, in particular in their supply chain. These can range from improving purchasing practices and scrutinising recruitment agencies, to continuous human rights and labour rights monitoring and ensuring exploited workers can lodge complaints and receive compensation. This Chapter explains which strategies NGOs can pursue to engage the private sector to tackle human trafficking and to hold corporations accountable. Specifically, the Chapter will:

- ❑ describe the questions NGOs should ask themselves before deciding which strategy to take
- ❑ outline different possible NGO strategies
- ❑ look at possible dilemma's and risks related to these strategies
- ❑ provide an example of engagement from the meat industry in the UK

### 7.1 From confrontation to cooperation: different strategies to address corporate misconduct

There are many strategies to counter harmful practices of companies against people or the environment. Civil society organisations may try to influence companies through engagement and dialogue with a company. Alternatively CSOs can take a more confrontational approach through initiating court cases, filing a complaint with a grievance mechanism, public awareness raising and shareholder actions. Civil society organisations and activist groups also use direct action tactics like demonstrations or strikes to pressure companies and claim rights.

There is essentially not one right or wrong strategy to follow when addressing corporate misconduct. Which strategy or combination of strategies is best for your case depends very much on the context within which harmful corporate practices takes place and actions that have been taken before. Moreover, CSOs should consider which strategy best serves their interests and those of the people they may represent. CSOs should also examine which strategy/ies best fit its organisational identity and capacity, and which sequence of actions is likely to create the most pressure and leverage on the company to change its behaviour. Within a coalition of civil society organisations working towards a common solution it may also be an option for different members of a coalition to follow a different strategy in order to create multiple pressure points on the company.

To assess which strategy best serves the purpose of your actions, it is useful to think more generally about what effects social change: which NGO actions have been successful in the past and why? What was the context in which they took place with regard to corporate behaviour, regulatory framework and the civil society field? For instance, it could be argued that progressive change in corporate behaviour or regulation is achieved when civil society organisations and movements pursue a mix of different strategies that must include confrontation (protest, litigation, etc.) as well as

dialogue (lobby, multi-stakeholder initiatives, etc.).<sup>252</sup> If this is so, how can this mix be achieved and what is the role your NGO can play?

The following sections provide some guidance to help anti-trafficking NGOs decide on whether to engage or target the private sector and if so, to take necessary steps to make that strategic choice effective. A number of resource guides and analyses already exist with regard to NGO-private sector engagement and campaigning. These are highlighted throughout this Chapter for further reading.

## 7.2 Defining the purpose of engaging the private sector

Before deciding whether or not to engage and about the 'model of engagement', you should identify what the purpose for the engagement for the specific case. Do you want to:

- ❑ Expose a company's corporate misconduct to make the case towards policy makers for better regulation.
- ❑ Increase private sector awareness about human trafficking risks and prevention.
- ❑ Change the behaviour of individual companies or groups of companies in a specific sector.
- ❑ Improve corporate social responsibility (CSR) initiatives.
- ❑ Engage the private sector in lobby to increase leverage for reform.
- ❑ Receive funding or other support from the private sector for your work.
- ❑ Achieve compensation from corporations for victims of human trafficking.
- ❑ Get business to support employment and reintegration of trafficked persons.

In a survey conducted in 2013 by La Strada International, anti-trafficking NGOs indicated that they seek more general financial and in-kind support from the private sector, an issue that is discussed in more detail in section 7.6.9. In December 2013,<sup>253</sup> La Strada International members more specifically defined the following services business could offer NGOs in the context of their work:

- ❑ Expertise (capacity building for NGO staff, clients, job training)
- ❑ Working time, volunteering (support with marketing and communication)
- ❑ Financial support or in kind contribution (computers, software, food and other products for shelters, printing materials)
- ❑ Free publicity
- ❑ Employment for trafficked persons and risk groups

In conclusion, when discussing the possibility of engaging with or targeting the private sector, you need to clearly identify the purpose of the engagement, because the purpose will define your strategy.

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252 van Huijstee, M., *Business and NGOs in interaction. A quest for corporate social responsibility*, 2010, Utrecht University, Netherlands Geographical Studies 393, <http://dspace.library.uu.nl/bitstream/handle/1874/42706/huijstee.pdf?sequence=1>

253 LSI financial sustainability seminar, held in Amsterdam on 3 and 4 December 2013.



*This Toolkit,<sup>254</sup> although focusing on tax justice research and advocacy, is a useful guide for understanding the relationship between private sector engagement and advocacy in any human rights field. It explains in easy to understand language the research and advocacy cycle and provides useful tools and exercises for advocacy and campaigning. The format and online version of the Toolkit facilitates picking and choosing relevant tools and sections for specific purposes.*

### 7.3 Defining your strategy

NGO strategies in addressing the role of the private sector in human rights abuses have become subject to research and debate. The Canadian Council for International Cooperation (CCIC), for instance, defines three main “modes of engagement” or strategies: advocacy, dialogue and cooperation.<sup>255</sup> As mentioned in the introduction to this Chapter, strategies can range from litigation to partnering, and they can be pursued separately or parallel, depending on the strategic choice or situation to be addressed. To decide on your strategy, you need to look at the following:

**□ Understand the company/sector you are seeking to engage or target.**

Different companies will be sensitive to different pressures and measures. A foreign multinational requires a different approach than a locally owned company. An end user of products and services needs a different approach than a supplier of those products and services, such as factories producing the goods or recruitment agencies supplying migrant workers to suppliers or end users. The forestry sector has a different ownership, financing and marketing strategy and a different position vis a vis regulators than the textile sector. The next section provides some tips for this type of corporate research.

**□ Understand the political context.**

It is hard to enter into a dialogue with corporations if they are not willing to listen and the issue you are addressing is not on the political agenda. To get an issue that has not reached mainstream public and political discourse yet on the agenda, a confrontational approach is often necessary. Only after sustained activist campaigning, often involving strategies of naming and shaming through media and protest actions, public pressure is felt in boardrooms of corporations, creating space for civil society demands.

254 SOMO & Christian Aid, Tax Justice Advocacy, A Toolkit for Civil Society, 2011, <http://taxjustice.somo.nl/>

255 Canadian Council for International Co-operation, Bridges or walls? Making our choices on private sector engagement: A Deliberation Guide for Action against Poverty, 2001, [http://www.ccic.ca/\\_files/en/what\\_we\\_do/002\\_dev\\_org\\_bridges\\_or\\_walls\\_final\\_guide.pdf](http://www.ccic.ca/_files/en/what_we_do/002_dev_org_bridges_or_walls_final_guide.pdf)

### Box 27: LSI member questions on engaging with the private sector

In December 2013, La Strada International members discussed which questions NGOs should be able to answer before starting to engage with the private sector.<sup>1</sup> They identified the following issues:

- ❑ What do we want to achieve?
- ❑ What is our profile and what are our limitations?
- ❑ What is our capacity?
- ❑ Do we use the organisation and staff available sufficiently for a common purpose? (e.g. organisational structures and involvement of communication and marketing etc.)
- ❑ What kind of processes lead to effective cooperation?
  
- ❑ How to brand ourselves – what do we do, are we a pressure group or rather a support group?
- ❑ How to brand our issue – which terminology is to be used, how to explain the issue of human trafficking to the business sector?
- ❑ How critically can we and do we want to be towards the private sector? How do we see their role in preventing human trafficking (do we work with companies or against companies?)
  
- ❑ How does company in question see the issue and what is its business approach?
- ❑ What motivates companies to work with us?
- ❑ How do we select the businesses we want to work with – do we prefer to work with businesses that have a bad practice or businesses that have a bad practice? What are the criteria we use in defining this?
- ❑ What kind of sectors are we interested in and for what reason? Who are the players/companies we want to work with? What are the potentials for change? What are the benefits of cooperation?
  
- ❑ How can corporations make a difference for our (NGOs) work?
- ❑ How do we evaluate the cooperation and how to set the goals within the engagement process?

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<sup>1</sup> Developed at the LSI financial sustainability seminar, held in Amsterdam on 3 and 4 December 2013.

#### ❑ Understand your position in relation to the company.

Multinationals are more likely to be responsive to engagement or campaigns in their country of origin than in host countries. So in case of seeking to engage or target foreign MNCs, you are unlikely to effect change on your own, as MNCs are largely accountable to their shareholders rather than the citizens in their host countries. In this case, linking up with other NGOs from the

MNC's country of origin is crucial. Alternatively, campaigners in host countries will often find it much more productive to target their governments and call on them to regulate MNCs, rather than seeking to engage with or target their campaign directly at MNCs. Again, your bargaining position and access to a company at national or local level will be different.

#### ❑ **Where are you situated in relation to other NGOs?**

In section 7.6 below the important role that trade unions and NGO networks play in addressing business and human rights issues is highlighted. Different NGOs play different roles in achieving social change, and these roles can be competing or complementary. Your actions can support existing initiatives by replicating them, or by filling a gap, but they can also confuse existing actions. There might be confusion about task divisions and internal and external legitimacy problems. Think about strategically distributing roles between different CSOs.

#### ❑ **What role do trade unions play?**

Human trafficking for labour exploitation is intrinsically linked to labour rights and existing trade union movements. You need to reflect on the role of the trade unions in the case or the sector that you are working on: are they active on the issue and if so, who do you need to talk to in the organisation? What is their position towards the company or the government? Sometimes there are competing trade unions, how will you negotiate this tension? You might need to understand a hierarchical union structure to anticipate or influence decisions made within unions. No matter how complicated the trade union field might be in your country, trade union expertise and influence is crucial to your work when addressing the role of business in human trafficking in all economic sectors. Section 7.6.1 provides some more background and cites resources anti-trafficking NGOs can use to improve their work with trade unions.

## 7.4 Researching a company and sector

No matter what type of strategy you might choose to engage with the private sector, you need to know basic facts about the company, the sector or the supply chain you are dealing with. Not only for the implementation of your strategy, but also for defining it. Research and strategy therefore take place not in a linear fashion but as an interactive process.<sup>256</sup>

As mentioned before, you need to take into account the nature of the businesses or sector for your approach. Research into the specificities of the company and sector and the supply chains can identify specific pressure points and stakeholders. The location of the company's headquarter defines the regulation the company falls under, so it is also important to know the company's legal and organisational structure.

Even if you only conduct a small research with limited resources and no expert support, you should define a terms of reference and goals for your research. This means outlining the steps you need to take, to make a realistic research plan with a timeline, from information gathering to writing up the

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256 For a useful outlined this advocacy and research cycle see SOMO & Christian Aid, Tax Justice Advocacy. A Toolkit for Civil Society, 2011, <http://taxjustice.somo.nl/getting-active-on-tax/engaging-with-corporates/>

### Box 28: Tips for company research

When researching a company or sector, it is important to:

- ❑ Design research questions and goals, what intervention the research will serve and plan a follow-up.
- ❑ Have a research plan ready: integrate the whole research and if applicable advocacy cycle.
- ❑ Always document methods. If publishing, always make a link to national or international events for momentum.
- ❑ Make a realistic resource planning.
- ❑ Ensure good quality research by following a tested methodology and cross-check facts.
- ❑ Before publishing, give the company a right to reply to avoid factual inaccuracies and libel.

*TIP: When researching businesses, think of people behind legal entities and financing, to have some context of the company and its performance, get ammunition in the form of controversies that the company has been associated with in the past and find hard and soft law accountability mechanisms that apply to the country and sector you are dealing with.*

research. There are different practical tools and sources you can use to research a company and you should document the ones you use in a systematic way so that you know where you gathered which details on the company afterwards. It is also useful to identify relevant stakeholders in the business world as well as other organisations that can support your research.

Using different available sources, including (financial) annual reports and online databases, you can map a company's (financing) structure and accountability and find out if there are cases of misconduct companies might have been involved or implicated in. Very often large companies have been subject to scrutiny by other NGOs: civil society reports are therefore also a source of relevant information. It is therefore important to link up with other civil society actors/stakeholders in the field. Ask partner NGOs in your country or abroad whether they have some good or bad cooperation or experience with some particular company.

In case you can you collect information about the sector in relation to human trafficking and labour exploitation, make a fact sheet (e.g. one page or power point presentation), which can form the basis for your advocacy or campaign.

NGOs should always consider possible dilemmas and risks that are linked to target a company, for example when demanding a boycott of suppliers, the factory where the violation takes place might continue to abuse workers but supply to other end users and no-name brands that do not have code of conducts or reputational damage risk. Further there might be personal or organisations risks, in particular large companies can decide to sue NGOs for misinformation or defamation. So it is above all important to have your facts right.



## 7.5 Talking to the private sector

Different projects focusing on NGO engagement with the private sector have pointed out that NGOs need to recognise and understand the business perspective and should make their issue a business issue. When engaging with businesses, ensure you can also speak “their language, talk about specific relevance of human trafficking for the company and focus on the risks & competitive advantage for your potential partners”.<sup>257</sup>

NGOs might find ways in which support for their agenda will be beneficial to the company. Businesses also have their own (economic) interest as argument against forced or trafficked labour in their supply chain, such as brand management and ensuring positive stakeholder opinion, to attract consumers and investors. Engaging with anti-trafficking initiatives might give private actors an advantage over their competitors. You might convince them that the reputational risk of not supporting your agenda is high. This engagement, however, might mean that you start using a business language to – quite literally - ‘sell’ the human rights case.

Although it is important to understand the private sector and to define why they might want to support your cause, NGOs need to critically reflect about whether they want to use business language in human rights advocacy. Business language is based on certain assumptions, namely, that profit maximisation is not only a legitimate but necessary goal to strive for. Wages are necessarily seen in this logic as a cost that needs to be reduced. Competition forces companies to depress wages wherever they can. In using business language, NGOs therefore implicitly support this logic.

Whether or not you want to use a business language in your advocacy, it is important to understand how to talk to the corporate world. Different workshops<sup>258</sup> held in the framework of the NGOs & Co project defined the following recommendations for NGOs, when talking to businesses:

- ❑ Know who to contact or to talk to; be prepared.
- ❑ Take a colleague who is different in character/approach.
- ❑ Don’t set a plan in stone, be flexible.
- ❑ Don’t lecture, show your motivation.
- ❑ Present your achievements.
- ❑ Be honest about your needs.
- ❑ Show interest and ask questions, ask about their challenges.
- ❑ Create informal moments, you are not only an NGO but can connect at a personal level.
- ❑ Be who you are and try to understand the other. Know what you stand for, convey it, and understand that they might have a different perspective.
- ❑ Decide how you will proceed after the meeting.

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257 Workshop on Corporate Social Responsibility to Prevent Human Trafficking”, coordinated by the Tilburg University, LSI NGO platform, June 2014, Sofia Bulgaria.

258 Minutes, workshop LSI NGO platform, Sofia, Bulgaria, 2014. Advocacy and how to talk to the corporate world. Campaigning around the role of businesses in combating human trafficking.

**Box 29: The private sector is diverse and awareness-raising necessary**

When wanting to address the private sector and having expectations about what they can offer, NGOs should bear in mind that there is no single, monolithic “private sector” any more than there is a uniform civil society. Many equate the term private sector with large corporations, but this term also embraces small micro-enterprises, worker-owned cooperatives, farmers, fishers and crafts people, as well as social enterprises. Corporations vary greatly in terms of size, budgets, ownership and accountability: They may be privately held firms, or publicly traded on the stock market, and effectively controlled by thousands of large and small investors. Also their business approach differs. Even social enterprises<sup>1</sup>, especially set up to address social issues, are part of the private sector. The diversity of private actors also implies that some may support your agenda and will be your allies, and others will be opposed to your agenda.

There may be individuals within a company who will agree with you and can be your advocates on the inside. Some companies might even want to fight human right violations by participating in or supporting your campaigns or your work in general. However, others might be reluctant to cooperate or even speak with NGOs and oppose to be associated with issues of labour exploitation and human trafficking. So it is not only important to think why you would want to engage with the private sector, but also why the private sector would want to engage with you.

A project coordinated by the Dutch Tilburg University<sup>2</sup> aimed at supporting socially responsible companies to apply the UN Guiding Principles on Business and Human Rights in the context of human trafficking found challenges with regard to corporate mentality towards CSR and above all unwillingness to engage on a “loaded”, grave issue as human trafficking. Anti-trafficking NGOs might therefore face a number of years of awareness-raising within the corporate sector before reaching the type of engagement they see as having direct results for their work.

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- 1 Social enterprises are businesses that trade to tackle social problems, improve communities, people’s life chances, or the environment. They make their money from selling goods and services in the open market, but they reinvest their profits back into the business or the local community.
  - 2 The project, entitled Corporate Social Responsibility to Prevent Human Trafficking, developed practical guides for companies in the agricultural, construction and hospitality sector in seven European countries (two sectors per country).

## 7.6 Strategies for engaging with the private sector

This section outlines a number of different strategies for private sector engagement, ranging from campaigning and addressing specific grievances to lodging complaints and engaging in dialogue with corporations. Before outlining these strategies, two issues are highlighted, namely, cooperation with trade union and participation in civil society networks, as they are crucial strategies that anti-trafficking NGOs should pursue no matter where they position themselves in the spectrum of private sector engagement.

### 7.6.1 Cooperation with trade unions

Trade unions have extensive experience and expertise in promoting and protecting labour rights and anti-trafficking NGOs have decades of experience in combating trafficking. But consistent cooperation between these two CSO networks to address the symptoms and the causes of trafficking and forced labour is still lacking. It is increasingly recognised that in order to address human trafficking in all economic sectors, specialised NGOs and trade unions need to build alliances to exchange experiences, take common action and devise prevention strategies. A useful guide has been developed by the International Trade Union Confederation (ITUC) and Anti-Slavery International to close this gap, based on a two-year research project, entitled "Creating a European coalition of trade unions and NGOs to prevent violence and protect women and young people in the workplace, with a specific focus on trafficking".<sup>259</sup>

The ASI-ITUC project found that lack of awareness of strategies and activities or different ways of working were the main obstacles for building broad national coalitions on workers' rights and human trafficking. When engaging in the business and human rights field, it is therefore important to discuss internally where structural cooperation with national trade unions or regional federations would be possible and desirable and if possibilities are identified, engage in the process of alliance building.



*This Guide<sup>260</sup> identifies the barriers and opportunities for joint trade union and anti-trafficking NGO work. It provides useful background to barriers, such as the different use of language by trade unions and NGOs to describe similar problems, explains trade union structures and identifies common ground and successful European case studies where trade unions and anti-trafficking NGOs collaborated to address human trafficking together.*

<sup>259</sup> See the project description at [http://www.ituc-csi.org/IMG/pdf/PERC-ETUC\\_project\\_brief\\_1\\_.pdf](http://www.ituc-csi.org/IMG/pdf/PERC-ETUC_project_brief_1_.pdf)

<sup>260</sup> International Trade Union Confederation, Anti-Slavery International, Never work alone. Trade Unions and NGOs joining forces to combat Forced Labour and Trafficking in Europe, February 2011, [http://www.ituc-csi.org/IMG/pdf/Forced\\_labour\\_EN\\_FINAL.pdf](http://www.ituc-csi.org/IMG/pdf/Forced_labour_EN_FINAL.pdf)

## 7.6.2 Participation in civil society networks

No CSO has ever achieved social change on its own. Participation in networks is a crucial form of cooperation, task distribution, sharing of expertise and building up sufficient societal pressure to achieve access to justice or regulatory change. Knowledge developed by members of a civil society network can more easily be shared with other members and common strategies can be developed to influence policy-makers, corporations and other stakeholders. Networks are not only useful to work more effectively by coordinating advocacy activities, for instance, but also more efficiently, by dividing tasks, such as research and advocacy, or pursuing complementary intervention strategies. There are many different kinds of networks and participation can take formal and non-formal ways. It is important to be aware of the relevant networks when engaging or targeting the private sector, to avoid duplication of actions or compete with and even negatively impact on existing initiatives. Networks can be organised around a general theme (e.g. European Coalition for Corporate Justice, ECCJ), a sector (e.g. Clean Clothes Campaign, CCC) or focus on advocacy or research (Global Union Research Network, GURN). It is useful to ask related NGOs and trade unions to point out existing networks relevant to corporate conduct in your region.

## 7.6.3 Advocacy

When deciding to specifically address violations in the private sector, advocacy can address the legislative framework and be targeted at the state, the general public or the private sector. Depending on your national context, you might want to reassert the government's regulatory role and pursue policies that support the struggle against human trafficking and forced labour. If business-related human trafficking offences are not on the political agenda, you might want to engage the public and willing businesses to advance an agenda of regulatory reform.

On the occasion of the EU anti-trafficking day on 18 October 2014, La Strada International and 30 partner organisations in Europe launched the website *Used in Europe*,<sup>261</sup> for instance, with the aim of raising awareness among consumers, the private sector and governments to address human trafficking and labour exploitation in Europe.<sup>262</sup> In a special statement, the NGOs called upon governments to take a clear stand against human trafficking and to end exploitative labour conditions, in particular for migrant workers, in Europe. Governments were asked:

- ❑ To ensure that all relevant national and international legislation, available to promote labour standards, is enforced.
- ❑ To promote decent working conditions; to ensure that informal and unregulated work is brought within the protection of labour laws and that labour rights are applied to all workers irrespective of migration and residence status.
- ❑ To increase the identification of human trafficking cases by ensuring adequate labour inspection, with a specific focus on human rights violations and exploitation. Inspection of violation of labour laws should be delinked from the control of residence status of workers, so that workers have an opportunity to report exploitation without fearing arrest and deportation.

261 <http://usedineurope.com/>

262 <http://lastradainternational.org/news-publications/lisi-statement-on-eu-anti-trafficking-day>

- ❑ To increase the investigation, detection and prosecution of human trafficking cases, including labour exploitation by businesses.
- ❑ To set up control mechanisms to monitor businesses compliance with labour standards and human rights; to provide incentives for companies that comply, while enacting sanctions for businesses that do not respect human rights.
- ❑ To be transparent about and critically assess own supply chains and services to ensure these are free of forced and exploitative labour; to take additional care in monitoring and preventing human rights abuses by business enterprises owned, controlled, or subcontracted by the state.
- ❑ To be coherent and consistent in internal and external policies and ensure that all government measures are based on human rights; to refrain from cooperation with countries that make systematic use of forced labour
- ❑ To increase awareness and information about the origins of products and services and to enable customers to make informed decisions about their purchases; to promote products and services made without labour exploitation and human trafficking.
- ❑ To provide victims of human rights abuses, including trafficked persons, with access to remedy through judicial, administrative, and legislative means.



*This guide<sup>263</sup> provides a method for CSOs to use the UN Guiding Principles on Business and Human Rights in company research and advocacy, and helps them to hold companies accountable for their corporate responsibility to respect internationally recognised human rights. The guide is available in Chinese, Spanish, Portuguese, Russian and French.*

#### 7.6.4 Campaigning and organising

Campaigning is different from advocacy in that it involves a concrete campaign start and an end. A campaign usually targets companies and involves media pressure, whilst advocacy aims at regulatory processes and decision-makers, often involving policy processes that are long-term. A campaign is usually aimed at building up pressure on certain actors and involves steps that build on each other, with a campaign plan that is revised at different conjunctures dependent on external developments and changing power relations and media attention. Campaigning can address specific instances of corporate involvement in labour exploitation, by calling for boycotts or other forms of consumer or direct action that generate media attention to put pressure on corporations. It can also address other stakeholders to put pressure on a particular company, such as calling on investors to withdraw

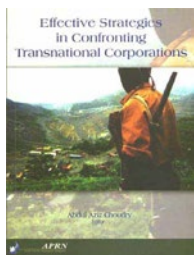
263 SOMO, How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy. A guide for civil society organisations, [http://somo.nl/publications-en/Publication\\_3899](http://somo.nl/publications-en/Publication_3899)

financial capital or calling on the state to force a company to implement a code of conduct or binding business and human rights regulations.

Campaigns need to be based on facts. Your credibility as a campaigner rests on the accuracy of the information that you provide about a specific case. This means you need to research a company and the case in detail before going public. In addition to the steps outlined in section 7.4, you can ask the following questions:

- ❑ Which corporate actors have most leverage, influence or power in this industry? They might be strategic targets.
- ❑ Which company or sector is of particular importance to you and why? Are there indications for a significant increase of human trafficking or labour exploitation in a particular sector?
- ❑ Do you have proof/indications for certain violations of law or bad treatment of workers?
- ❑ Do you have some hard data, research or statistics that can underline your need to address this sector (e.g. showing increase of migrant workers from particular country, unemployment rates etc.)? You can also use information collected from your services (hotline data) and or qualitative surveys (observation, interviews with target groups or other NGOs in the field).
- ❑ Are the companies you would like to target (operating in a specific sector), mainly multinational companies or local ones? Once you will decide for a sector, map companies that are operating in this field.
- ❑ Are these companies presenting themselves as socially responsible? Did they commit to certain ethical principles (see Chapter 6)? If it is concerning a large corporation, check the parent company's CSR commitments as they might not be reflected at local level.
- ❑ With whom do you need to talk? Who are the important partners/stakeholders in the sector?
- ❑ What do you think are the obstacles in achieving this in cooperation with businesses?

*Tip: Avoid any conflict of interest and never accept money or in-kind donations from a company that you want to influence. However, be ready to cooperate and discuss solutions, not merely criticise.*



*'Effective Strategies in Confronting Transnational Corporations'<sup>264</sup> is a study of several major campaigns against transnational corporations (TNCs) with an eye to drawing lessons to help increase the efficacy of future campaigning. Again, even if anti-trafficking NGOs do not apply these methods directly in their work, the case studies in this book help to understand how corporate injustices are dealt with by other stakeholders. The case on the struggle for workers' right in Sri Lanka's free trade zone and other campaigns involving struggles against unsafe working environments and labour exploitation are relevant to anti-trafficking NGOs, for instance. This is also one of the publicly available few resources for NGOs that contains detailed and practical strategic advice and debates.*

264 Choudry, A. Asia-Pacific Research Network, *Effective Strategies in Confronting Transnational Corporations*, 2003.

In social movements and trade unions, organising is an important strategy to achieve access to justice in case of corporate misconduct. Although this will probably not be your strategy, in the understanding that strong social movements are necessary to effect change, address corporate misconduct or improve supply chain responsibility, it is useful to understand other stakeholders' strategies and viewpoints.



*This book<sup>265</sup> outlines activist methods of organising for progressive social change. Even though anti-trafficking organisations might not apply these methods directly in their work, it helps to understand how political activists think and act about building counter-power vis a vis corporations. Providing cases from Canada, the USA, and New Zealand, as well as transnational networks, activists, academics, and artists reflect on the difficulties and opportunities inherent in a diverse range of organising contexts and practices.*

### Addressing a specific company or sector

Although in principle people can be exploited in any sector, practitioners and the ILO have identified a number of sectors in which forced labour and human trafficking are shown to be of particular concern. Among these are the sex industry, agriculture and fishing, construction, domestic work, textile and garments, and in particular the private employment agencies, that recruit labour in all economic sectors.

The majority of cases referred to anti-trafficking NGOs still relate to exploitation in the sex industry, however, over the last years an increasing number of cases of exploitation have been referred in other sectors. LSI members and partner NGOs identified the following sectors as important for them to address, whether for further research, cooperation or advocacy.<sup>266</sup> These sectors overlap to a great extent with the most vulnerable sectors, identified by ILO (see Chapter 3.4).

- ❑ recruitment sector
- ❑ hospitality sector
- ❑ entertainment/ sex industry
- ❑ transportation
- ❑ agriculture
- ❑ construction
- ❑ food processing
- ❑ garments & textiles
- ❑ fashion, modelling

<sup>265</sup> Choudry, A., Hanley, J., and Shragge, E. (eds.), *Organize! Building from the local for global justice*, 2012, PM Press/Between The Lines, Oakland.CA/Toronto.

<sup>266</sup> Financial sustainability seminar, Amsterdam, December 2013

**Box 30: Public campaigning in the Czech Republic on the tree workers case**

Several Czech forestry companies have been accused of the recurrent deceit of their employees from Vietnam, Slovakia, Romania and other countries. In 2009 and 2010 the companies Affumicata, Wood Servis Praha and PBM Union Jobs employed hundreds of workers in tree planting and other forestry work. The aforementioned firms were subcontracted to do work for the Less & Forest s.r.o., which is one of the biggest forestry companies in the Czech Republic and awarded with public tenders from the State Forestry Agency of the Czech Republic, the Krkonoše National Park and others.

The workers were promised salaries ranging from 400 to 600 euros. Apart from not being paid for their work, they at times starved and were threatened by their bosses. The recruited forestry workers performed their jobs for a few weeks and even months working from ten to twelve hours per day. Often they received either no pay at all or only some deposits that were not always sufficient to buy enough food. There were cases when they threatened to stop working. Those who were persistent in getting their pay reported being threatened in case they filed a complaint with the police or contacted the media. The Vietnamese workers were persuaded to sign a "training contract" instead of a work contract.

To support the workers' claim for unpaid wages and protest against the slow police investigation of the case, Czech NGOs a "Week of Forest Workers" with a number of events took place in March 2011 in Prague, Czech Republic. For more information on the case, see <https://vimeo.com/49263170>

Although anti-trafficking NGOs have not yet been very active in engaging or targeting the private sector, a few cases exist that can serve as examples to other NGOs. Some of these are illustrated per sector in Chapter 3.4. Cases outlined in the ITUC and Anti-Slavery International Guide mentioned in Chapter 7.6.1 also provide interesting information for NGOs wanting to learn more about successful campaigning in this field. A case from the Czech Republic where human trafficking was found to take place in state-contracted forestry work is outlined in more detail in Box 30.

### 7.6.5 Lodging Complaints

Judicial (through the courts) and a variety of non-judicial (through company, financier or other non-state) grievance mechanisms may also be relevant in cases of labour exploitation or human trafficking as a resort for victims to access justice or achieve remedy.

#### Judicial Grievance Mechanisms

It is generally recognised that it is difficult for victims of human rights abuses, including labour rights, to gain access to an effective remedy under international law. Home states of multinational corporations



in general fail to fulfil their duty to protect human rights by ensuring that victims have access to effective judicial remedies for business-related human rights abuses occurring abroad. With the endorsement of the UN Guiding Principles on Business and Human Rights in 2011, there have been a number of initiatives aiming at ensuring that the UNGPs third pillar (access to remedy) is adequately implemented by states (see Chapter 5.3.1). Given that the UNGPs focus on the international dimension of corporate conduct, the following resources and legal analyses largely deal with European judicial and extra-judicial mechanisms for redress in case of human rights violations committed by EU companies abroad.



*The Access to Justice project,<sup>267</sup> analyses the legal, procedural, and institutional barriers that exist in the EU and prevent victims of corporate abuses from gaining access to an effective remedy in home countries. It produced an EU's Business report that recommends a number of actions to be taken by the EU and its Member States to address these barriers, co-authored by Frank Bold, Association Sherpa, CORE Coalition, the European Center for Constitutional and Human Rights, and the European Coalition for Corporate Justice.*



*The Human Rights in Business project<sup>268</sup> aims at researching and resolving obstacles preventing access to justice in the EU for victims of environmental and human rights (HRs) abuses committed by corporations in third countries. The project includes trainings for stakeholders (judges, lawyers, activists, businesspersons and victims) to use the mechanisms which provide the necessary access to justice in the EU.*

This Resource Guide does not deal with national frameworks, but there are of course many relevant judicial mechanisms in criminal as well as civil law that allow for grievances to be lodged. They need to be explored on a case-by-case basis together with national legal experts and trade unions; if anti-trafficking NGOs decide to lodge complaints for clients relating to labour law, for instance. It should be noted that even if going to court would in theory be possible, clients of anti-trafficking NGOs are often reluctant to go down that route because they might not be able or willing to stay in the country where the exploitation took place for the duration of the court case. A court case exposes trafficked persons to confrontation with their perpetrators and possible retaliation of their traffickers. Court cases are also expensive and evidence gathering in human trafficking cases is difficult. However, court cases are often necessary for obtaining a legal residency status or claiming compensation as a trafficked person.

267 See <http://www.accessjustice.eu/en>

268 See <http://humanrightsinbusiness.eu>

### Non-Judicial Grievance Mechanisms (NJGMs)

Because judicial remedies might have undesirable effects for complainants, or because they are ineffective or non-existent in many jurisdictions, Non-Judicial Grievance Mechanisms (NJGMs) are in practice sometimes the only option for those affected by business-related human rights abuse. In recent years, CSOs have therefore increasingly opted for NJGMs. An NRGGM encompasses any complaint process that can be used by individuals, workers, communities and/or civil society organisations that are being negatively affected by certain business activities and operations, which is not enforced by a court on the basis of binding legislation or case law.

Although this section will show that these mechanisms far from a guarantee for access to remedy (in fact a recent analysis of OECD complaint cases showed a remedy-rate of only 1 per cent<sup>269</sup>), these cases are being used by many CSOs as an awareness-raising activity, the impact of which can be significant, but difficult to quantify. Examples of NJGMs are:

- ❑ National OECD contact points (NCPs)
- ❑ World Bank and International Finance Corporation (IFC) mechanisms
- ❑ Treaty body reporting such as UN Conventions and Special Rapporteurs and their periodic reviews and shadow reporting
- ❑ ILO complaints<sup>270</sup> and specific procedures using Forced Labour Convention

Some of these mechanisms are explained further below.

NJGMs vary in form and scope – the issues they address, the standards they apply, the companies within their jurisdiction, how they function, their authority and governance. Some only address the responsibility of states and cannot address recommendations directly to corporations. Others can only be used when the company in question has been financed by the institution that offers a grievance mechanism. Those established by multi-stakeholder initiatives address complaints that relate to the actions of one of its members.

Complaints may be filed by the victims of business-related human rights violations (such as directly affected workers, communities or individuals) and/or by the civil society organisations directly or in representation of others, depending on the specific requirements of each mechanism. Importantly, the outcomes each mechanism delivers, varies greatly.

Even when a case meets the criteria of an NJGM, complainants are not guaranteed an outcome or indeed a remedy at the end of a time- and resource-consuming process. The outcomes of NJGM processes can be categorised as follows:

- ❑ Provision of benefits to the complainants
- ❑ Policy change at the company or institution in question
- ❑ Both of the above, or
- ❑ No action

269 OECD Watch, June 2015, Remedy Remains Rare, [http://oecdwatch.org/publications-en/Publication\\_4201](http://oecdwatch.org/publications-en/Publication_4201)

270 <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/complaints/lang--en/index.htm>

**Box 31: Non-judicial grievance mechanisms: a snapshot<sup>1</sup>****Intergovernmental grievance mechanisms**

Intergovernmental NJGMs are created by an international agreement between states. Examples include mechanisms linked to United Nations treaty-based and charter-based bodies, and the International Labour Organization's Committee on Freedom of Association that accepts complaints concerning violations of trade union rights by states. At the regional level, intergovernmental grievance mechanisms can be found within the European, African and Inter-American systems of human rights. The National Contact Points, which handle complaints about alleged breaches of the OECD Guidelines for Multinational Enterprises, are something of a hybrid. Their creation is required by all member and adhering countries to the OECD, but they operate at the national level.

**National Human Rights Institutions (NHRIs)**

Many NHRIs can receive complaints regarding business-related human rights abuses. Mechanisms associated with Development Finance Institutions (DFIs): These grievance mechanisms receive complaints from individuals and communities adversely affected by the public and private sector activities financed by the DFI with which they are associated. Examples are the Inspection Panel of the World Bank, the Compliance Advisor Ombudsman of the International Finance Corporation, the Project Complaint Mechanism of the European Bank for Reconstruction and Development, the Accountability Mechanism of the Asian Development Bank, and the newly established Independent Complaints Mechanism that is shared between the Dutch and German development banks, FMO and DEG, respectively. Together, these mechanisms have formed the Independent Accountability Mechanisms network.

**Sectoral and multi-stakeholder grievance mechanisms**

Corporations and other stakeholders have created several self-regulatory initiatives in different sectors, developing standards and grievance mechanisms to handle complaints in the event that the standards are breached. Examples are the complaints mechanisms of the Roundtable on Sustainable Palm Oil (RSPO) and the Fair Wear Foundation. Operational-level grievance mechanisms: Many business enterprises have established their own project- or corporate-level grievance mechanisms. These vary from well-established mechanisms to hotlines. Because they are owned and operated by the same actors who have allegedly committed the abuse, these mechanisms often lack the confidence of stakeholders. They are not comparable to the aforementioned mechanisms because they are not as independent or robust and, therefore, are not the subject of this briefing note.

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1 SOMO, The Patchwork of Non-Judicial Grievance Mechanisms. Addressing the limitations of the current landscape, November 2014, <http://somo.nl/news-en/the-patchwork-of-non-judicial-grievance-mechanisms>, pp. 1-2.



*This website<sup>271</sup> provides a number of resources on corporate accountability, dispute resolution mechanisms and access to justice, including brochures describing various grievance mechanisms and a step by step guides to complaint processes of various mechanisms.*

The voluntary initiative UN Global Compact (see Chapter 6.1) also has a so-called integrity mechanism. Complaints about corporate malpractices can be sent to the Global Compact Office under this measure. The Integrity Measures include a procedure for initiating dialogue around serious violations of the Compact's overall aims and principles. The aim of the procedure is to promote a dialogue between the complainant and the company concerned. Ultimately, a company can be delisted from the Global Compact, but this has rarely happened. Filing a complaint with the Global Compact office can be useful in order to get a response from the company in question and to engage in a dialogue with the company. Second, it will give a signal to the Global Compact that, without adequate monitoring and enforcement mechanisms, the initiative fails to hold corporations to account.<sup>272</sup>

### **The OECD Guidelines complaints procedure**

Probably the most comprehensive NJGM in terms of scope are the National Contact Points (NCPs) under the OECD Guidelines for Multinational Enterprises. Complaints, called specific instances, can be filed regarding the global activities of any corporation, as long as that corporation is headquartered in or operating from an OECD member or adhering country. Because the provisions of the OECD Guidelines for Multinational Enterprises hold companies responsible not only for their own actions but for conducting human rights due diligence on their supply chains, the NCPs cover a significant portion of corporate activity. However, there are still limitations in their scope. For example, actions of companies of countries, which are not an OECD member or adhering country, are not covered.

The specific instance complaints procedure focuses on resolving disputes – primarily through mediation and conciliation, but also through other means – and can be used by anyone who can demonstrate an interest in the alleged violation. NGOs and trade unions from around the world have used the complaint process to address adverse social and environmental impacts caused by corporate misconduct. NGOs have also used the complaint process to raise awareness about the fact that companies are expected to uphold internationally recognised standards, contribute to sustainable development and, at a very minimum, do no harm wherever they operate.

271 Part of SOMO's Human Rights & Grievance Mechanisms Programme, a four-year project (2012-2015) to improve the accessibility and effectiveness of non-judicial grievance mechanisms for stakeholders who experience adverse impacts on their human rights as a result of business activities, see <http://grievancemechanisms.org>

272 SOMO, Corporate Social Responsibility Instruments, A Comparison of the OECD Guidelines, ISO 26000 & the UN Global Compact, December 2013, [http://www.somo.nl/publications-en/Publication\\_4018/at\\_download/fullfile](http://www.somo.nl/publications-en/Publication_4018/at_download/fullfile)

**Box 32: OECD Guidelines and trafficking in human beings**

Although Trafficking in Human Beings is not specifically mentioned in the OECD Guidelines, there are several chapters of these Guidelines that are relevant for human trafficking cases. The most important are Chapter IV on Human Rights and Chapter V on Employment and Industrial Relations. Chapter IV provides a general overview of the responsibilities and obligations of companies with regard to human rights. Companies should respect human rights (§1), avoid causing or contributing to human right violations and address them when they occur (§2), have a policy commitment to respect human rights (§4), conduct human rights due diligence (§5) and cooperate with remediation when they have caused adverse human rights impacts (§6).

Chapter V covers fundamental labour rights provisions, including freedom of association and right to collective bargaining, the effective abolition of child labour, the elimination of all forms of forced or compulsory labour and non-discrimination in employment and occupation. As discussed in Chapter 3.1 of this Resource Guide, exploitation for forced labour and trafficking, although differing in legal definitions, often overlaps and is part of a continuum. As such, THB falls under Chapter V of the OECD Guidelines.

The chapter states that companies should observe labour standards not less favourable than those observed in the host country by comparable employers and which at least satisfy the basic needs of the workers and their families ( §4a, b). It also prescribes how companies should handle issues such as training, working conditions and industrial relations. The chapter reflects the same fundamental labour rights contained in the ILO 1998 Declaration on Fundamental Principles and Rights at Work and the ILO Tripartite Declaration Concerning Multinational Enterprises and Social Policy from 2006.

**Opportunities for using complaint mechanisms in anti-trafficking cases**

The pros and cons of using complaint mechanisms were discussed in detail at the LSI NGO platform in June 2014 in Sofia, Bulgaria. Participants concluded that anti-trafficking NGOs should consider using grievance mechanisms for the following purposes:

- ❑ See Grievance Mechanisms (GMs) as another business engagement strategy by NGOs: using these can lead to improvements at the level of corporate practice, joint agreements between companies and victims and statement of facts by the complaint body that can also be used in later court proceedings. GMs can be seen as a cheaper and less confrontational way to achieve remedy for exploited persons.
- ❑ Spread information about Grievance Mechanisms as an awareness-raising tool to make beneficiaries aware of their rights and the possibility to claim rights.
- ❑ Lodge sex work cases under labour law mechanisms such as those of ILO to break up the separate treatment of sex work exploitation from other sectors of labour exploitation.

- ❑ Use the periodic country reviews by the UN and ILO and corresponding shadow reporting or Special Rapporteur procedures, which seem the most evident mechanisms to engage in for anti-trafficking NGOs;
- ❑ Use ILO mechanisms to build up networks with local trade unions. Specific cases can be lodged with local trade unions or information provided in the shadow reporting mechanisms. This can be supported by the International Trade Union Confederation (ITUC) which stands open to anti-trafficking work and can refer to local trade unions.
- ❑ Use GMs further as a prevention strategy to address very bad working conditions deteriorating into forced labour as well as in combination with an ongoing campaign.<sup>273</sup>

SOMO has a website with detailed guidelines on Grievance Mechanisms, and OECD Watch and TUAC (The Trade Union Advisory Committee) publish cases brought against companies. ILO has a business and human rights helpdesk and all ILO cases are published on Normlex, an ILO database.

The IOM's International Recruitment Integrity System (IRIS), which aims to *“bridge international legislative and regulatory gaps governing labour recruitment in countries of origin and countries of destination, and provide a global framework for addressing unethical recruitment”* also aims to administer a complaints and referral mechanism to assist victims of unethical or illegal recruiters to file grievances with the appropriate authorities. No mechanism is in place yet, however.

NGOs can also use other complaint mechanisms in relation to human trafficking and forced labour cases, such as the international independent expert (monitoring) bodies GREVIO,<sup>274</sup> GRETA,<sup>275</sup> and CEDAW,<sup>276</sup> or specific UN Rapporteurs of the Human Right Council, like the Special Rapporteur on human trafficking, or on slavery. NGOs can also consider starting national legal procedures or bringing cases to the European Court of Human Rights.

### 7.6.6 Claiming compensation

According international and national legislation, each trafficked person has the right to an effective remedy, including compensation. However, although various compensation mechanisms are in place, a range of barriers obstruct the consistent translation of the right to compensation into practice and

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273 Workshop on lodging complaints by SOMO, LSI NGO platform, June 2014, Sofia, Bulgaria.

274 Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) for the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), [https://www.coe.int/t/dghl/standardsetting/convention-violence/AboutMonitoring\\_en.asp](https://www.coe.int/t/dghl/standardsetting/convention-violence/AboutMonitoring_en.asp)

275 GRETA is an independent expert group responsible for monitoring implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, [http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/GRETA\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/GRETA_en.asp)

276 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. <http://www.un.org/womenwatch/daw/cedaw/>

the actual receipt of a compensation payment by a trafficked person is extremely rare. Consequently, many trafficked persons are left without justice.

The project COMPACT, European Action for Compensation for Trafficked Persons, was initiated by La Strada International and Anti-Slavery International to improve access to justice and compensation for trafficked persons. The project aimed to raise awareness and mainstream the issue of compensation within the international anti-trafficking agenda, to overcome the problems with the implementation of compensation measures for trafficked persons, and to ensure that compensation becomes one of the key elements of programmes of assistance and services in Europe.



*LSI and Anti-Slavery International published a toolkit in 2012, providing general and legal information on compensation for trafficked persons, research findings and recommendations on removing obstacles to obtaining compensation. The toolkit also comprises practical tools, such as a research template for country-level study on compensation, a visual overview of compensation procedures, guidance on representing trafficked persons in compensation claims, a detailed overview of the international legislation and a simple 5 Step Model for Claiming Compensation for trafficked persons.<sup>277</sup>*

### 7.6.7 Participation in multistakeholder initiatives or dialogues

A step that anti-trafficking NGOs can take to increase their understanding of private sector engagement is linking up with existing networks and multi-stakeholders initiatives (MSIs) that deal with labour rights. Multi-stakeholder cooperation can be crucial when aiming to address and prevent forced and exploitative labour in corporate supply chains. Who can help us to facilitate contact with a certain business, or convince the business of the need for change, are essential questions for NGOs to ask in this respect. Which strategies do they use and are they successful? Is there any potential and benefit in engaging/cooperating with them?

Although the relevance of stakeholders is again dependent on local circumstances and the objective of the engagement, there are certain stakeholders relevant in general for anti-trafficking NGOs to involve when addressing the private sector.

<sup>277</sup> Toolkit on Compensation for Trafficked Persons; COMPACT Findings and Results of the European Action for Compensation for Trafficked Persons, <http://www.compactproject.org/>

### Box 33: Multi-stakeholder initiatives

Multi-stakeholder initiatives differ from NGO-business partnerships in that there is greater distance between, and clearly defined roles for, NGOs and corporations. The intention of MSIs is that member companies improve conditions throughout their value chains (in order to reduce the negative impacts of their core activities) whereas NGO-business partnerships can be much broader and involve direct funding and common projects.

The Ethical Trading Initiative (ETI) was set up in 1998 and backed by the UK government.<sup>1</sup> ETI is a so-called multi-stakeholder initiative, a network of companies, NGOs, and trade union organisations working together to help member companies improve conditions throughout their value chains to reduce the negative impacts of their core activities. MSIs identify and promote good labour practices, including monitoring and independent verification. Some of ETI's members include supermarket chains Sainsbury and Tesco, garment industry players Levi Strauss and the Pentland Group, and the NGOs Oxfam and Save the Children.

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1 See <http://www.ethicaltrade.org/origins-eti>

#### ❑ Trade unions

Trade Unions aim to protect workers' rights and to introduce protective measures in favour to workers. They are therefore in close contact with businesses by their nature and can advise NGOs on sectors, business leaders, practices of various companies and can serve as source of information in order to prevent harm prior connecting NGOs name with some particular company. Anti-trafficking NGOs should more actively engage with trade unions to ensure that migrant labour concerns are integrated into negotiated collective labour agreements.

#### ❑ Governmental organisation

Ministries of trade and industries or equivalent or labour ministries are in charge of drafting legislation and preparation of strategies e.g. to increase employment, regulate/deregulate labour market, regulate labour migration and accelerate national economies and trades. They are often in contact with relevant companies or business representatives. They also have the mandate to control whether businesses comply with international and national standards and therefore a good stakeholder to target and cooperate with to ensure workers' rights protection by the private sector.

#### ❑ Employers' organisations/ associations

Companies, business and enterprises are often associated in order to unify their voice and representation during policy making processes. NGOs can get in touch with employer's association in order to find relevant partners in specific fields or sectors. They can also use this networks in order to intensify impact of a (particular) campaign targeting business or for dissemination of its message, capacity building, awareness raising or simply when addressing some of the industries.



#### ❑ **Business associations and networks**

There has been significant increase of networks that aim to associate business which claims that CSR, sustainable development and social justice matters. It is highly advised to research existing networks while preparing strategies on how to engage with business. These networks can be a very vital source of information while selecting the best partners to engage with.

#### ❑ **Other NGOs, consumer's organisations, activists, academics**

NGOs, activists and researchers can provide relevant information and experience with particular companies or sectors. Anti-trafficking NGOs should consider putting the issue of human trafficking high on the agenda of existing MSIs, such as the Fair Wear Foundation or the Ethical Trading Initiative, during annual meetings, or by using available grievance mechanisms through these MSIs.

#### ❑ **Media - research newspapers, newsletter or other social media channels**

The media can be a partner for disseminating research findings or campaign messages about corporate misconduct. They ensure a wider reach and ensure your message gets to policy makers, professional groups, as well as the general public, including people at risk or trafficked persons. It is therefore important to involve them in anti-trafficking work.

When defining your stakeholders, it is important for NGOs to consider:

- ❑ Local ownership/ representation: MSIs should include local labour rights advocates and local NGOs. Multi-stakeholder processes only make sense if workers' voices are strong: MSI cannot solve the problems for labour without its active and demanding participation.
- ❑ MSIs are only effective and sustainable if all participants have an equal say.
- ❑ All participating stakeholders must commit to the same standards.
- ❑ Commitment to the change agenda by businesses joining in the MSI is critical from the outset.
- ❑ The setting of standards should be accompanied by random audits at production sites, as well as interviewing workers off-site. This can also not be achieved without involving local actors.

### 7.6.8 Partnering with business

There is a notable trend in CSR toward strategic partnerships between civil society and private businesses aimed to address negative impacts of corporate activity. Donors such as the World Bank, some of the UN agencies, the European Commission and government aid agencies often encourage partnerships between NGOs and the private sector. Civil society organisations therefore increasingly find themselves sought out as partners by private sector firms. There is a growing number of NGOs and businesses that believe partnerships have helped to enhance business understanding of social and environment issues and to improve business practices.<sup>278</sup> The British newspaper The Guardian regularly publishes debates, largely in favour, on NGO-business partnerships.<sup>279</sup>

278 See C&E Corporate-NGO Partnerships Barometer 2014, <http://www.candeadvisory.com/barometer>

279 <http://www.theguardian.com/sustainable-business/future-bright-corporate-ngo-partnerships-challenges>; <http://www.theguardian.com/sustainable-business/2014/nov/10/corporate-ngo-partnerships-long-term-change-live-chat>; <http://www.theguardian.com/sustainable-business/partnership-ngo-companies-protect-ecosystems>

### Box 34: Involving the private sector in services for trafficked persons

The LSI assessment among anti-trafficking NGOs<sup>1</sup> revealed that current cooperation of anti-trafficking NGOs with the private sector mostly focus on common or support for awareness raising on the issue of human trafficking. At a workshop in May 2015, NGOs mentioned specifically:

- ❑ Support in awareness and field (street) work in general
- ❑ Awareness within the sector/company & common training and capacity building
- ❑ Compliance with codes of conduct

The LSI assessment further showed that NGOs also look for private sector engagement in order to seek employment opportunities for trafficked persons or ask business to facilitate further vocational reintegration programmes for trafficked persons, including through starting up of new ventures. Other potential partnerships that were mentioned are:

- ❑ Establish social enterprises that see profits flowing back to victims of human trafficking and their families.
- ❑ Collaborate on project-based partnerships to deliver assistance and development programming where areas of expertise are complementary.
- ❑ Engage in affinity relationships or social marketing campaigns with private sector firms to expand the reach of public fundraising and outreach.
- ❑ Raise funds from the private sector through sponsorships and donations, and utilise these funds to support a range of anti-trafficking projects and programmes.

Even though there have been several attempts to set up such cooperation by anti-trafficking NGOs, there are so far few successful examples in Europe of such cooperation.

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1 LSI carried out a survey in 2013, among 27 European anti-trafficking NGOs, including LSI members, assessing their overall level of engagement with the private sector, as well as the perceived obstacles, enablers and lessons learned in partnering with businesses. The results are published at <http://lastradainternational.org/doc-center/3018/assessment-results-ngo-initiatives-and-practices-in-engaging-the-business-sector-in-addressing-human-trafficking>

These partnerships, however, can be highly controversial in CSO and activist circles.<sup>280</sup> Although a partnership with business might at first sight seem mutually beneficial, there are many critical evaluations of such partnerships in terms of efficiency and in posing a threat of co-optation for

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280 <http://www.theguardian.com/environment/2013/sep/10/naomi-klein-green-groups-climate-deniers>; <http://www.spiegel.de/international/world/wwf-helps-industry-more-than-environment-a-835712.html>

NGOs.<sup>281</sup> Companies can be motivated by public relations interests to seek relationships with NGOs as a way of improving corporate image or deflecting criticism, leading to no meaningful change and reputational risks for NGOs. An often cited example is The World Wildlife Fund (WWF), which has been criticised by many peers for its close relationship as limiting its capacity to be critical;<sup>282</sup> the WWF's Round Table on Responsible Soy is often regarded as a greenwashing tool for corporations.<sup>283</sup>

Information about risks of partnering can be found in a toolkit developed by the Partnering Initiative, which was founded to promote partnerships between business, government, NGOs and the UN in the development field.<sup>284</sup> A number of useful case studies on partnerships between business and environmental NGOs are analysed in a research from 2010, discussing whether partnering and independence are incompatible or whether a partnership strategy can be combined with more confrontational litigation and advocacy activities.<sup>285</sup>

All commentaries on partnering with businesses note that partnering bears internal and external risks for NGOs that require consideration and dedicated resources. It is therefore essential to read-up on past experiences and mitigation strategies before taking decisions on business partnerships.

### 7.6.9 Requesting funding from the private sector

Many anti-trafficking NGOs struggle to obtain sufficient funding for their organisation and their services and look for alternative financial resources, especially because many are dependent on (European) project grants, which are hard to obtain. This might be a reason why anti-trafficking NGOs are generally eager to accept funding from the private sector. Indeed, funding and support for anti-trafficking work might actually be the initial reason for engaging with the private sector.

Regardless of a general scepticism among NGOs about the intentions of the private sector in NGO engagement, anti-trafficking NGOs questioned in the LSI assessment mention in the previous section generally believe that it is possible to work and cooperate and accept funding of private sector organisations, even if effective measures to prevent human trafficking in their supply chain is lacking.

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281 See, for instance, the literature references in Baur & Schmitz, Corporations and NGOs: When Accountability Leads to Co-optation, 25.11.2011, *J Bus Ethics* (2012) 106:9–21, published at [https://www.academia.edu/3045363/Corporations\\_and\\_NGOs\\_When\\_Accountability\\_Leads\\_to\\_Co-optation](https://www.academia.edu/3045363/Corporations_and_NGOs_When_Accountability_Leads_to_Co-optation) (free subscription required). Poret, Corporate-NGO partnerships in CSR activities: why and how? *Cahier de Recherche* 2014-21, 2014, <https://hal.archives-ouvertes.fr/hal-01070474/document>. See also Murphy & Bendell, 1997, *In the Company of Partners: Business, Environmental Groups and Sustainable Development Post-Rio*, The Policy Press.

282 <http://www.redd-monitor.org/2012/05/29/wwf-scandal-part-4-the-dark-side-of-the-panda/>; <http://www.theguardian.com/sustainable-business/wwf-president-business-partnerships-greenwashing>

283 Certified responsible? Critical assessment of the Round Table on Responsible Soy, [http://www.toxicsoy.org/toxicsoy/RTRS\\_files/RTRS%20backgrounder%20v2.pdf](http://www.toxicsoy.org/toxicsoy/RTRS_files/RTRS%20backgrounder%20v2.pdf)

284 <http://thepartneringinitiative.org/publications/toolbook-series/the-partnering-toolbook/>

285 van Huijstee, M., *Business and NGOs in interaction. A quest for corporate social responsibility*, 2010, Utrecht University, Netherlands Geographical Studies 393, <http://dspace.library.uu.nl/bitstream/handle/1874/42706/huijstee.pdf?sequence=1>

They see such support, as a first engagement or involvement of the private sector in the anti-trafficking field, and as a possible first step for change in corporate practice.

The LSI survey confirmed that NGOs accept and receive financial or in-kind donations of products and services by businesses for direct assistance support or for the promotion and running of helplines and other services, including coverage of phone call costs. Examples mentioned by European anti-trafficking NGOs are: hospitals offering free medical support for trafficked persons, equipment and food for shelters, internet and mobile providers hosting a website and/or telephone hotline, free publicity (air time on TV or free space in printed media), transportation or event venues free of charge. Pro bono and other support from law firms, including for test cases was also mentioned.

There is so far limited critical debate or a consensus among anti-trafficking NGOs in Europe on which funds are acceptable and which not, and whether funding should also be obtained from companies operating in vulnerable sectors. However, it has been acknowledged by all questioned NGOs that possible risks related to financial support and cooperation with the private sector should be mitigated.

NGOs that consider engaging with the private sector with view to receiving funding should carefully consider how they balance their fundraising aim in relation to a possible aim for supply chain improvement and their ability to remain critical towards corporations, as well as consider other ethical dilemmas when accepting funding from the private sector. It is generally advised not to accept funding from that part of the private sector you believe is implicated in human trafficking and labour exploitation.

## 7.7 Risks related to NGO engagement with the private sector

Whatever strategy NGOs take for engaging with the private sector, they should be aware that any cooperation with the private sector might involve some risks. Earlier we mentioned that NGOs might be scrutinised by peers or other stakeholders for engaging with businesses. There can be direct reputational risks for NGOs when being linked to a company that is involved in, or accused of, labour exploitation or human trafficking. Other possible scandals the private sector partner is involved in, such as environmental damage, can also bear reputational risks. Further, there might be personal or organisational risks when advocating against the private sector. In particular large companies can decide to sue NGOs for misinformation or defamation.

In sum, risks of cooperation with the private sector include:<sup>286</sup>

- ❑ Reputation impact: all organisations and institutions value their reputation and will rightly be concerned about whether that reputation can be damaged either by the fact of the partnership itself or by any fall-out in future should the partnership fail.

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286 Canadian Council for International Co-operation, Bridges or walls? Making our choices on private sector engagement: A Deliberation Guide for Action against Poverty, 2001, [http://www.ccic.ca/\\_files/en/what\\_we\\_do/002\\_dev\\_org\\_bridges\\_or\\_walls\\_final\\_guide.pdf](http://www.ccic.ca/_files/en/what_we_do/002_dev_org_bridges_or_walls_final_guide.pdf)

- ❑ Loss of autonomy: working in collaboration inevitably means less independence for each organisation in the areas of joint work.
- ❑ Conflicts of interest: whether at strategic or operational levels, partnership commitments can give rise to split loyalties and / or to feeling pushed to settle for uncomfortable compromise.
- ❑ Drain on resources: partnerships typically require a heavy 'front end' investment (especially of time), in advance of any appropriate level of 'return'.
- ❑ Implementation challenges: once a partnership is established and resources procured there will be a fresh set of commitment and other challenges for each partner organisation as the partnership moves into project implementation.

From the LSI survey conducted among NGOs in 2013,<sup>287</sup> 78% of survey participants recognised risks in partnering with the private sector. They mentioned reputational damage, value gaps, and window-dressing as main motivation for engagement. Many anti-trafficking NGOs are also concerned about the confidentiality and safety of trafficked persons they assist, and consequently pursue a low-profile visibility strategy, which might contradict a company's drive for visibility in engaging in CSR issues. Several NGOs expressed the fear that the life stories of trafficked persons and the organisation itself will be misused in order to promote purely commercial interests. Moreover, a surveyed NGO from Southeast Europe suspected that the integrity of their potential private sector partners might be shadowed by non-transparent origin of funds, hidden political agendas or connections with organised crime.

81% of LSI's survey respondents mention the importance of ethical screening and applying a number of criteria when selecting potential business partners. Nevertheless only several organisations mentioned to have established 'black lists' of companies to be avoided as partners. Most recognised the need for its development or alternatively, a compilation of 'white lists' of potential business partners. However, survey respondents realise that having a set of criteria in place to evaluate acceptability of engagements and partnerships is not necessarily a sufficient tool to be able to weigh key engagement considerations, and in-depth research is needed to be able to receive reliable input for decision-making. Respondents with less experience working with the private sector expressed interest in joint preparation of criteria for private sector engagement.

## 7.8 Example of private sector engagement

This case study on sustained engagement with the meat and poultry sector in the UK involves a number of strategies and actors. The main civil society actor is a trade union, Unite, but other examples exist in which NGOs have taken up similar roles in campaigning and litigation. The example represents a long-term strategy and commitment to one particular sector, and as such might not be representative for cases in which NGOs might want to achieve individual justice.

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287 Assessment Results: NGO initiatives and practices in engaging the business sector in addressing human trafficking, <http://lastradainternational.org/doc-center/3018/assessment-results-ngo-initiatives-and-practices-in-engaging-the-business-sector-in-addressing-human-trafficking>

### **Box 35: The case: exploitation of migrant agency workers in the UK's meat industry**

In 2005, the trade union Unite decided to make the poultry sector the focus of a new strategy to address the poor labour conditions of migrant workers by not just taking the campaign to the factory employers but also to the employers' clients, the supermarkets. Specific meat processing companies were targeted (e.g. the 2 Sisters Food Group), together with the supermarkets they were supplying (e.g. M&S). Throughout 2006 and 2007, a series of campaigns<sup>1</sup> and tripartite negotiations also took place under the auspices of the Ethical Trading Initiative (a multi-stakeholder alliance of companies, trade unions and voluntary organisations), a trade union alliance, the big chicken processors and the supermarkets.

After an impasse in the multi-stakeholder negotiations, the union brought the case to the EHRC, showing that agency workers were treated differently to directly employed workers in terms of pay and conditions and their treatment at work. In 2008 the EHRC used its powers under section 16 of the UK Equality Act to conduct a formal inquiry, which was published in 2010,<sup>2</sup> with the aim of encouraging and supporting change in the sector, prioritising engagement with key stakeholders, including supermarkets, labour providers, processing firms, government, regulators and unions specifically to improve the working conditions for migrant and agency workers. The report found widespread mistreatment and exploitation of migrant and agency workers and frequent breaches of the law and licensing standards in meat processing factories - some of which supply the UK's biggest supermarkets - and the agencies that supply workers to them. It also highlighted conditions in breach of minimum ethical trading standards and basic human rights. The meat and poultry sector is characterised by casual foreign labour; one third of the permanent workers and two-thirds of agency workers are migrants, with Polish being the largest nationality, followed by Lithuanian, Latvian, Czech, Slovakian and Portuguese. The EHRC report found that 80% of processed meat goes to Britain's supermarkets and that the main reason agency staff is used is to meet the big stores' fluctuating demand.

The EHRC reviewed the progress made by the sector on the basis of its findings and recommendations a year later, the review was published in November 2012. In case of insufficient progress, enforcement action under the Equality Act 2006 was possible,<sup>3</sup> but did not follow

1 Unite, January/February 2009, Landworker, <http://www.unitetheunion.org/uploaded/documents/landworker01020911-8412.pdf>

2 Equality and Human Rights Commission, Inquiry into recruitment and employment in the meat and poultry processing sector: Report of the findings and recommendations, March 2010, <http://www.equalityhumanrights.com/publication/inquiry-recruitment-and-employment-meat-and-poultry-processing-sector>

3 Website Equinet, the European Network of Equality Bodies, Great Britain, Inquiry into recruitment and employment in the meat processing and poultry processing sector project, August 2014 <http://www.equine-teurope.org/Great-Britain-Inquiry-into>

Next to long-term commitment, this case shows how accountability with regard to labour conditions in the supply chain can be demanded from end users of products made with exploited labour.

A number of characteristics are worth highlighting pertaining to this case:

❑ **Impasse in voluntary approach leads to campaigning**

Initial discussions between the trade union and employers reached an impasse, which led the trade union to take legal steps to put the sector representatives under pressure. *The case shows that different strategies might need to be pursued by civil society groups engaging with the private sector, depending on the reaction of other stakeholders and the commitment and resources for the case in question.*

❑ **The complaint was filed under an equality body**

Rather than a court of law or a business and human rights mechanism, the complaint was filed under an equality body (the UK Equality and Human Rights Commission), an independent organisation that is legally required to promote equality and combat discrimination in relation to one, some, or all of the grounds of discrimination covered by European Union (EU) law. The UK Equality Act 2006 gives this Commission investigative and enforcement powers (see Chapter 5.3.4). *NGOs should think innovatively about possibilities to lodge complaints and seek advice from different civil society actors which authorities or mechanisms might be receptive to or responsible for a grievance case.*

❑ **Trade union campaign leads to company auditing its own suppliers**

The equality body is not allowed to name specific companies in its investigation reports, action might therefore be long-term. Sustained naming and shaming of the supermarket led to a company audit that did improve working conditions on specific working conditions at a specific factory. *Again, the case shows that parallel strategies might need to be pursued to achieve specific improvements on the work floor, involving long-term sector change and engagement with specific factors or corporations.*

❑ **The EHRC's investigation led to some improvements**

The 2012 review monitoring the response of the sector showed that the investigation had some positive effects, some pertaining to working rights. Over 1,000 staff had been moved to permanent status, for instance. Other results pertain to policies of industry bodies and major supermarket chains in the UK.<sup>288</sup> EHRC developed a training programme together with the Association of Labour Providers (ALP) and ALP produced two toolkits, which formed the basis of the 'Stronger Together' project which is a joint effort of ALP, the Gangmasters Licensing Authority (GLA) and Migrant Help.<sup>289</sup> ASDA started to audit all its meat suppliers with improved audits, focusing on the issues raised in the EHRC report. At the time of the 2012 review report of EHRC, 27 suppliers uncovered 400 issues of concern, issues that were not picked-up by earlier

288 Website Equinet, the European Network of Equality Bodies, Great Britain, Inquiry into recruitment and employment in the meat processing and poultry processing sector project, August 2014 <http://www.equineteurope.org/Great-Britain-Inquiry-into>

289 Stronger Together, Gangmasters Licensing Authority, 31.10.2013, UK food industry unites to tackle modern day slavery, <http://www.gla.gov.uk/PageFiles/1491/stronger%20together.pdf>

**Box 36: EHRC's recommendations to UK meat processors and buyers**

- ❑ **Recruitment consultants and managers need to be trained**, but also the supervisors of processing firms to promote equality.
- ❑ **Service Level Agreements** need to be made with labour providers/agencies which specify how workers should be treated.
- ❑ Audits have to make use of **off-site workers interviews** (away from the production lines and the managers).
- ❑ **Supermarkets have to adapt their buying practices** into more sustainable approaches to ordering which supports a more manageable and balanced workflow.
- ❑ Setting up of **genuine grievance mechanisms**; helping workers to raise issues of concern.

audits. The Health and Safety Executive (HSE) published new guidance based on the inquiry findings to improve the H&S inspections. *Although an official investigation might not have short-term effects on the improvement of specific working conditions, it can have a much broader positive impact on regulation than individual complaints.*

## 7.9 Conclusion

This Chapter discussed different strategies NGOs can use to address the private sector in their work. It is important to first define why you want to engage the private sector and what your final aim and targets are. Further you should ensure that you have substantial organisational capacities, including enough personnel for such engagements. It is also essential to possess efficient communication channels and have access to sufficient information. No matter what type of strategy you might choose to engage with the private sector, you need to know basic facts about the company, the sector or the supply chain you are dealing with. Not only for the implementation of your strategy, but also for defining it. Also it is important that NGOs know how to best address the private sector and how to 'sell' their issue. Companies might be willing to work with NGOs, especially if it is in their business interest. However, first research results show that human trafficking is not an issue companies in general would like to be associated with. There are many different types of interaction, including advocacy, campaigning, lodging complaints and or claiming compensation, dialogue and other forms of cooperation, such as common awareness raising or support for direct social work from the private sector.

Advocating against a company or lodging a complaint requires different strategies than entering a dialogue or establishing cooperation with the private sector. Anti-trafficking NGOs generally focus more on dialogue and cooperation, possibly as a result of the, up to now, few labour exploitation cases in sectors other than the sex industry that are referred to anti-trafficking NGOs. There is also a resulting lack of data and evidence of the direct involvement of the private sector in human



trafficking and labour exploitation cases in Europe. Finally, anti-trafficking NGOs lack knowledge on binding and non-binding legal measures that can be taken, in case such cases do occur.

NGOs which consider engaging with the private sector for a funding aim, should carefully consider how they balance their fundraising aim in relation with a possible aim for supply chain improvement and critical stance towards corporations and other ethical dilemmas. NGOs should be aware of the challenges in working with the private sector as well as the possible risks and work on harm reduction and develop criteria for working with the private sector. Lastly, NGOs should be aware of other possible obstacles when engaging with this 'new stakeholder', such as time-consuming processes of trust-building, networking or negotiation, and the initial lack of direct results. Despite these obstacles, there is a clear need, however, to engage the private sector in anti-trafficking work. In the coming years, NGOs should therefore think strategically and critically about the role of the private sector and define how they want to engage them further.



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