

# Identifying, managing, mitigating and preventing forced labour and modern slavery



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Commissioned by the  
Ethical Trading Initiative<sup>1</sup>

## 1 Introduction

This think piece<sup>2</sup> has been developed for a one-day expert/stakeholder meeting on 21 October 2015, convened by the Ethical Trading Initiative (ETI). The purpose of the meeting is to bring a diverse set of actors – practitioners and policy makers – to share their insights and experiences of working on forced labour in global supply chains; to learn lessons about promising practices that are having real impact on workers; to identify gaps where they exist; and to brainstorm ideas about how ETI as a multi-stakeholder organization can add most value to the work already underway.

The paper aims to clarify the concepts and issues, the actors and the options for addressing the challenges in preventing, managing and mitigating forced and slave labour in the global labour market. It provides a multi-stakeholder perspective to frame the analysis, with the intention of developing a 'theory of change' for a holistic response. It highlights some issues and options for how we can begin to change the landscape for the longer term involving multiple processes, actors and entry points. The critical actors include companies, governments,

non-governmental organizations (NGOs), trade unions, academics and international actors.<sup>3</sup>

The paper also offers insights from several examples of what is working (or not working), where and why. It is intended to complement a number of important reports relevant to this discussion.<sup>4</sup> There are also references to a number of valuable guidance notes and reports.

- 1 This paper does not represent the views of ETI but rather, is intended to provoke discussion
- 2 "A piece of writing meant to be thought-provoking and speculative that consists chiefly of background material and personal opinion and analysis", Webster English Dictionary
- 3 SOMO – Centre for Research on Multinational Corporations has some useful resources in this regard [www.somo.nl/@search?SearchableText=forced+labour](http://www.somo.nl/@search?SearchableText=forced+labour)
- 4 These include: Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings. 2014. "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. Organization for Security and Co-operation in Europe (OSCE), Vienna; and Bhoola, Urmila. 2015. "Report of the Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences." Office of the High Commissioner for Human Rights, Geneva.

## 2 The context

### DRIVERS OF FORCED LABOUR AND MODERN SLAVERY

The liberalisation of world trade has produced global markets for capital, goods and labour that have outstripped the international and national governance systems that previously regulated them. These global value chains are transnational and therefore very difficult for national systems to regulate.

The exponential growth in information technologies (IT) compounds this problem in that trillions of dollars' worth of activity in both the real and the financial economy flow up and down global value chains at the speed of light in innovative forms that many regulators struggle to track, let alone regulate. To the extent that there is international regulation of these trade and labour market flows, it is both inconsistent and inadequate. At the heart of the problem are governance gaps (including political will and capacity) that present real risks to employers and employees.

The global dynamics of trade in goods and services have enabled both companies and workers to expand their horizons: there is now access to labour markets for companies and access to jobs for workers that would not have been possible before. Job opportunities are available across the global market at all skill levels and will continue to grow as developed economy birth rates fall and societies age. Companies can identify and recruit IT professionals from South Asia, nurses from Malawi and the Philippines and office cleaners or kitchen staff from Eastern Europe or Central America to work in Europe or the United States.

The flow of labour from areas of low opportunity to areas of higher opportunity is growing alongside significant growth rates of national, regional and global inequality. Work seekers understandably gravitate towards the countries or regions that offer the best prospects. But getting access to these jobs can involve recourse to unscrupulous intermediaries; finding and keeping a job once the work seekers arrive may also expose them to gross exploitation and abuse.

The decentralisation and fragmentation that characterises many buyer-driven value chains and the competitive pressures on price, lead times and flexibility can create an enabling environment for high risk employment practices (see Box 1).

### THE SCALE OF FORCED AND SLAVE LABOUR

The 2015 Trafficking in Persons (TIP) report highlights the fact that 68 per cent of the estimated 21 million victims of trafficking are in forced labour while 22 per cent are in forced sexual exploitation.<sup>5</sup> As such, after many years of focus on the latter, there is now global recognition of the

need to focus more effort on the former. However, there is still scant attention given to direct preventive and remedial action at the workplace, where most victims are to be found.

The International Labour Organization (ILO) estimates that some 29 per cent of forced labourers are international (having crossed national borders). However, the majority, 56 per cent, are still in their place of residence and the remaining 15 per cent are being exploited elsewhere in their own country. Thus while movement is a significant risk factor – and the international dimension of forced

#### BOX 1. ENABLING CONDITIONS FOR FORCED LABOUR AND TRAFFICKING

##### Governance gaps

Many farms, mines and factories are located in countries with weak governance. These systems tolerate risky employment practices or find themselves unwilling or unable to enforce international or their own labour and human rights standards.

##### Volatile consumer demand

Increasingly fickle and demanding consumers mean that buyers try to order at the last minute to make sure they are on trend, and if the product sells they reorder to replenish stocks. In all circumstances lead times are under pressure and suppliers struggle to foresee future staffing requirements. As a result they maintain a core workforce and add overtime and/or temporary and casual staff as order volumes rise.

##### Flexibility

With time to market being an increasingly important factor, suppliers have to be agile, flexible and capable of ramping up or down at short notice. This favours short-term and temporary contracts and expands the scope for labour broking. It also adds layers to the employment relationship that can obscure situations of forced labour and trafficking (over and above wage and benefit violations and issues of freedom of association, discrimination, hours of work and occupational health and safety).

##### Costs

The incessant price competition at retail is repeated all the way down the value chain as each level is obliged to squeeze out cost. This favours the casualisation of the workforce to reduce wages and benefits and the costs of expanding and contracting the workforce.

<sup>5</sup> U.S. Department of State. 2015. "Trafficking in Persons Report 2015." [www.state.gov/j/tip/rls/tiprpt/2015/243364.htm](http://www.state.gov/j/tip/rls/tiprpt/2015/243364.htm)

labour and trafficking attracts the most political and media attention – the vast majority of forced labourers, 71 per cent, are being exploited in their home countries.

Forced labour occurs in many sectors, but agriculture, construction, domestic service, manufacturing and entertainment are high-risk spheres and migrant workers (internal and international) are particularly vulnerable. It is to be found not only in corrupt, poorly governed and/or poor countries but is also prevalent in Europe and the United States. As Kevin Hyland, the UK's first Anti-Slavery Commissioner says "Very often we talk about exploitation in the supply chain that's happening in Bangladesh or in India or Pakistan where UK companies are buying from, but it's actually happening here in the United Kingdom."<sup>6</sup>

### LACK OF LABOUR MARKET REGULATION OR PROTECTION FOR WORKERS

There is no single institution with a mandate to regulate the global labour market – no labour market equivalent to the international rules that the World Trade Organization (WTO) brokers for world trade. There are number of ILO and United Nations conventions, but they have limited ratification and depend on national enforcement agencies that are often not up to the task.<sup>7</sup>

There are also some 358 bilateral agreements on the migration of low-skilled workers in which groups of states agree to governance arrangements and protections for migrant workers. However, as a recent ILO report notes,

many agreements have failed to provide the protections foreseen and most do not even address the issue of recruitment malpractices (the *kafala* system continues in Gulf States, for example)<sup>8</sup> Indeed, there is ample evidence that principles, agreements and even laws are simply not converted into practical measures capable of addressing the issue.

Europe is currently witnessing the worst refugee crisis since the Second World War, and the media are providing 24-hour coverage of the drama being played out on land and at sea. This wave of people, mostly from the Middle East and North Africa, poses enormous policy and humanitarian challenges and comes on the back of the growing concern about migration, forced labour, slavery and trafficking. However, the debate is clouded by emotion and overreaction on the part of politicians, news media and the public at large and characterised by a profound lack of leadership across the board.

Global value chains complicate the issue because they are often driven by buyers – companies that do not own or control the suppliers along the global chain and hence do not employ the workers making their product. This has two implications: first, key factors such as choice of materials, price and delivery date are being set by companies that do not employ the workers involved, and these specifications have a strong influence on wages and working conditions at production sites; and second, there is a growing trend towards the use of sub-contractors and temporary or casual labour.

## 3 Definitions and why they matter

When a problem is not properly understood and defined, then it is not possible to address it with any prospect of success. Finding a solution, or even a workable response to forced labour, slavery, trafficking, migration and displaced people is made more difficult by the conceptual confusion that prevails. This gets in the way of rational analysis and problem solving and also leaves individual stakeholders feeling overwhelmed and helpless to prevent or remedy the situation. Definitions are therefore important to ensure clear focus and targeted action as well as comparable data.<sup>9</sup>

According to the ILO, "Forced labour refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities." It notes that this definition covers most situations of slavery or human trafficking. The term 'modern slavery', on the other hand, also encompasses slavery, servitude, forced and compulsory labour and human trafficking. Human trafficking, for its part, can be defined as a process of bringing a person into a situation of exploitation.<sup>10</sup> (All these terms are defined in more detail in Annex 1.)

One way of making sense of this complex set of issues is to make a distinction between:

- types of labour or employment relationship (forced, bonded, enslaved) on the one hand, and
- the channels into them, which include trafficking, slave trading, migration, displacement and, in some societies, birth.

6 Quoted in Warrell, Helen. 2015. "UK Migration: Toil, trouble and tension." *Financial Times*, 12 August.

7 ILO Convention No. 97 on Migration for Employment, for example, has been ratified by just 47 countries of which only 10 are in Africa, four in Asia and none in the Arab States. The Migrant Workers Supplementary Provisions Convention No. 143 has been ratified by only 23 states. Convention 96 on Fee-Charging Employment Agencies has been ratified by 42 states, but it is not in force in all of them, while Convention No. 181 on Private Employment Agencies has been ratified by only 30 states, five of them in Africa, none in the Arab States and three in Asia: Fiji, Japan and Mongolia (where it is not yet in force). ILO Conventions No. 29 on Forced Labour and No. 105 on the Abolition of Forced Labour form part of the core conventions and do enjoy high rates of ratification – 178 and 175 respectively – but have only national scope.

8 Migrant Forum in Asia Secretariat. Undated. "Reform of the Kafala (Sponsorship) System." Policy Brief No. 2. [www.ilo.org/dyn/migpractice/docs/132/PB2.pdf](http://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf)

9 Andrees, Beate. 2014. "Why Definitions Matter." [www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS\\_234854/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_234854/lang-en/index.htm)

10 Skrivankova, Klara. 2014. "Forced Labour in the United Kingdom." Joseph Roundtree Foundation, York. [www.gla.gov.uk/PageFiles/1602/IRF%20-%20Forced%20Labour%20in%20the%20UK.pdf](http://www.gla.gov.uk/PageFiles/1602/IRF%20-%20Forced%20Labour%20in%20the%20UK.pdf)

This enables us to pose two basic questions:

(a) Is the employment relationship characterised by elements of compulsion and coercion, debt bondage or outright ownership, and/or

(b) Did the channel into that employment relationship compromise the worker's rights?

It is worth making clear that all workers have inalienable

human rights, wherever they may find themselves and regardless of the employment relationship. Forced and slave labour are violations of both core labour and basic human rights. Governments have an obligation to protect those rights, and employers have an obligation to respect them. The challenge is to ensure protection and respect for workers along the entire length of the value chain.

## 4 Current responses

### LIMITED GOVERNMENT REGULATION

Nation states vary in their policy approaches and enforcement strategies. However, the trend towards 'small government' that began in the 1970s has generated a common view that labour market regulation should be left to 'the market' or to self-regulation. This approach has given rise to increased risks of labour exploitation and abuse.

The rise of forced labour cases in the UK, for example, is associated with a deregulated labour market and lack of resources for labour law enforcement and prosecution of those abusing and exploiting workers. Almost daily revelations of cases of modern slavery and forced labour are found in the care, hospitality, construction, textile and apparel sectors, which fall outside the remit of regulation by the Gangmasters Licensing Authority (GLA). But even in GLA-regulated sectors, there are many examples of unlicensed gangmasters operating. Among other factors, the reduction in the budget and staff of the GLA between 2010 and 2014 has been identified as a factor in the drop in numbers of investigations and prosecutions of forced labour cases.

According to the 2015 TIP report, there were only some 216 convictions for labour trafficking worldwide in 2014, the lowest number since 2008 and less than half the totals for 2013 and 2012.<sup>11</sup> These shocking statistics sit alongside the fact that 21 million victims of trafficking generate \$150 billion in profits each year.

There are many reasons for this: insufficient financial and human resources, a lack of cooperation between the many jurisdictions involved, and national jurisdictions versus transnational networks. However, it ultimately all boils down to supply and demand. So long as the supply and demand dynamics are strong enough to support the trade in question, traffickers and other unscrupulous actors able and willing to exploit the absence of regulation and enforcement will find a way to satisfy the market.

### LACK OF COLLABORATION AND LINKAGES

The conventions, laws and bilateral agreements on forced

labour all involve commitments to prevent forced labour through a combination of awareness raising, due diligence, enforcement and remedies. To date, however, the key labour market actors have largely failed to collaborate and their individual actions have been inconsistent. As a result, forced labour, modern forms of slavery and trafficking persist, and arguably are growing.

The experience of Latvian workers and other legal EU citizens working in the UK was recently exposed in the media. In some ways, the most shocking element of the story is that hundreds of them had complained to the authorities but this had failed to remedy their situation or prevent them being threatened, fired and blacklisted. These are EU citizens, entitled to protection from a range of authorities in their sending and host countries. Moreover, the suppliers are likely to have signed agreements to meet the obligations of ethical codes of conduct adopted by the supermarkets they were supplying. However, these mechanisms did not link up to form a safety net. Even less help is likely to be forthcoming for those who do not complain (see Box 2).

#### BOX 2: THE PROBLEM OF REPORTING THE CRIME OF SLAVERY

The victims of forced labour and modern slavery are usually reluctant to come forward because there is very little benefit for them in reporting the crime. There are a number of reasons for this. First, someone who has paid a smuggler or an unscrupulous labour broker to get a job does not want to jeopardise that job by exposing how they got it. Second, they may be in a country illegally and liable to (or afraid of) prosecution themselves. And third, if they are cheated along the way and end up in slavery or forced sexual exploitation, the criminals involved make sure that the threat of sanctions is strong enough to deter exposure. There are brave souls who do escape or blow the whistle, but they are a tiny percentage of the victims. The perceived disincentives outweigh the incentives for whistleblowing, and the risks – financial, physical and even legal – lie with the victim more than with the criminal.

<sup>11</sup> U.S. Department of State. 2015. "Trafficking in Persons Report 2015." [www.state.gov/j/tip/rls/tiprpt/2015/243364.htm](http://www.state.gov/j/tip/rls/tiprpt/2015/243364.htm)

## 5 Core elements of a holistic response

Any response should be in line with the United Nations Guiding Principles on Business and Human Rights.<sup>12</sup> This paper looks specifically at business practice in supply chains and asserts that no single actor can tackle the problem alone. There are important and different roles for different actors – working separately and together as and where appropriate. Governments, employers and employees all have a role to play here, as do academics and experts, mainstream and social media and civil society organisations.

### A) COMPANY RESPONSIBILITY

Companies have focused primarily on their supply chains of goods and services and paid inadequate attention to understanding broader labour market dynamics when they conduct due diligence and analyse the risks of forced labour. Also, there has not been sufficient attention to prevention and remedial strategies. As such, we would argue that any assessment of forced labour should include an appraisal of the entire value chain – including the flow of labour, goods and services. Ethical trade is not possible if forced labour (or other human rights abuses) occur anywhere along the chain. The case of hazelnuts in Turkey makes the point clearly (see Box 3).

### THE PROBLEM WITH CODES OF CONDUCT

The processes of offshoring, outsourcing and subcontracting can cloud the distribution of responsibility along the value chain, particularly when it comes to social and environmental standards. In the past these responsibilities were not specified, but in recent years more and more buyers have adopted codes of conduct that clarify their expectations of suppliers and extend the supplier responsibility to downstream suppliers and subcontractors.

Whether those tier 1 or primary suppliers are able to deliver on that commitment, however, is an open question, and many buyers do not verify this beforehand. And the reality is that suppliers often sign buyer codes of conduct and agree to cascade the code commitments all the way down the value chain but take no action to make that possible. Buyers do not follow up to make sure that the cascade is put into effect, and no one is held to account unless a problem emerges.

If a problem does emerge, buyers often blame the supplier(s) and penalise them financially or even terminate them entirely. There have been a number of well-publicised cases in the last decade where buyers were confronted by accusations that their product was being produced by children, forced labourers or even drug addicts in

rehabilitation centres. Even worse, many of the tragic fires and building collapses in Bangladesh involved brand name products. The brands and retailers concerned defended themselves by pointing out that they had audited those facilities and that the problems did not exist at that time, or that the production had been subcontracted to unauthorised facilities without their knowledge.

The sanctions taken by buyers against suppliers are often financial. Making a supplier reimburse recruitment fees paid by workers may well be an appropriate decision, but the fact that the abuse occurred in the first place highlights the fact that governance arrangements are not functioning properly and that the remedial action may also be compromised or perverted by those same failings. The supplier may attempt to claw back those costs in some other way and in future may choose a 'cheaper' recruitment channel, and this of course will have additional human rights implications.

### BOX 3. TURKEY: THE CASE OF HAZELNUTS

Hazelnuts have attracted particular attention in recent years because the Turkish crop is at least 75 per cent of global production and critical to a number of major confectionary and chocolate brands. The nuts are harvested by Kurdish workers who are recruited in their home villages by labour brokers who transport the entire family across the country to the Black Sea region where the farms are located. Once there, workers and their families are mostly housed in temporary camps that often lack basic sanitation and water supply. It is common for the entire family to go to the farms every day to collect nuts, partly because child labour is socially acceptable and partly because there are no other activities for the children in the camps and families cannot leave them unattended. The labour broker controls the recruitment, wages, movement and transport back to the home village of the workers, who are also in debt to him.

The child labour dimension has received considerable attention from the ILO, the Turkish Government, the Association of Chocolate, Biscuits and Confectionery (CAOBISCO), individual brands and Turkish intermediaries, but the forced nature of the overall labour supply has been somewhat obscured in the process and clearly demands a multi-stakeholder effort to reform the labour market.

<sup>12</sup> [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

## THE PROBLEM WITH AUDITS

Social audits – the mainstream tool and technique used by companies to assess compliance at both their own and supplier facilities – struggle to detect forced labour and trafficking. Audit questionnaires are essentially checklists that ask pass/fail or yes/no questions to test conditions against compliance benchmarks. As such they do not typically gather any data, note context or conduct root-cause analysis. A completed questionnaire may thus record violations of legal or code standards for wages and hours of work but not collect actual data on either. The manager receiving these results would know that there is a problem with hours and wages but not why or how it arose. A social audit will generally not address these questions.

If social audits are limited on quantitative code standards (hours, wages, health and safety), they are even weaker on rights, especially those rights in which the absence of something is unlikely to be picked up. For example, in some instances there may be a clear case of a worker's right to freedom of association having been violated – such as a trade union organizer being dismissed, arrested or threatened. But it is highly unlikely that an audit will pick up the lack of an enabling environment for workers to exercise their right to freely associate. The absence of democratically elected worker representation or collective bargaining may be noted (although this is rare), but it is difficult to see how an auditor would be able to assert that workers at that facility are free to associate. Discrimination is even harder to test for. Most social auditors only look at maternity leave to try and detect any obvious anomalies, but the checklists are stumped when it comes to assessing equality of opportunity and equal pay for work of equal value.

The same goes for forced labour. Many audits will record hours of work in excess of 60 hours per week (the code standard) and issues with the payment of overtime

premiums. They may also note issues with wages being paid in full and on time, but do they try to connect the dots and establish whether these situations represent enough compulsion and coercion to be qualified as forced labour? Commercial auditors are generally up against the clock and do not have time to engage in further analysis and, frankly, many do not have the training to make such determinations. On the opposite end of the spectrum we often see auditors rushing to judgement, labelling excessive overtime as forced labour without weighing the evidence to establish whether workers could realistically refuse without fear of punishment or financial penalty.

Trafficking for labour exploitation also tends to escape the purview of the audit checklists. Some auditors ask about recruitment fees and debts that the worker may owe to the recruiter, broker or boss, but few have the time or the skills to understand the channels that delivered workers to the employer if workers do not divulge or confirm this sensitive information. Even in labour markets in which recruitment agents and labour brokers are a fixture and fees known to be high, decades have passed without company and third party auditors uncovering the trafficking and forced labour situations hiding in plain sight before them (see Box 4).

### BOX 4. CASE STUDY: WHY DOES FORCED LABOUR PERSIST IN MALAYSIA?<sup>13</sup>

The case study over the next two pages highlights two key issues: first, the importance of translating code commitments into procedures and systems; and second, the need to guard against assumptions that companies have realigned their human resource practices in the light of public policy debates. Business as usual is often the default option, even after many years of controversy over the treatment of foreign migrant workers.

<sup>13</sup> [http://www.mef.org.my/Att\\_GeneralNews/MEFReport\\_PGERPERFWM.pdf](http://www.mef.org.my/Att_GeneralNews/MEFReport_PGERPERFWM.pdf)

# Case study: Why does forced labour persist in Malaysia?

Malaysia has been the focus of attention by multi-national companies over the past decade for improvements in labour standards. Despite this, the findings of a survey of foreign worker recruitment practices was conducted in 2014 by the Malaysian Employers Federation (MEF) and the ILO reveal that these efforts have failed to tackle some of the most critical issues. 101 companies were surveyed - including local and foreign investors were surveyed, covering manufacturing and non-manufacturing sectors.

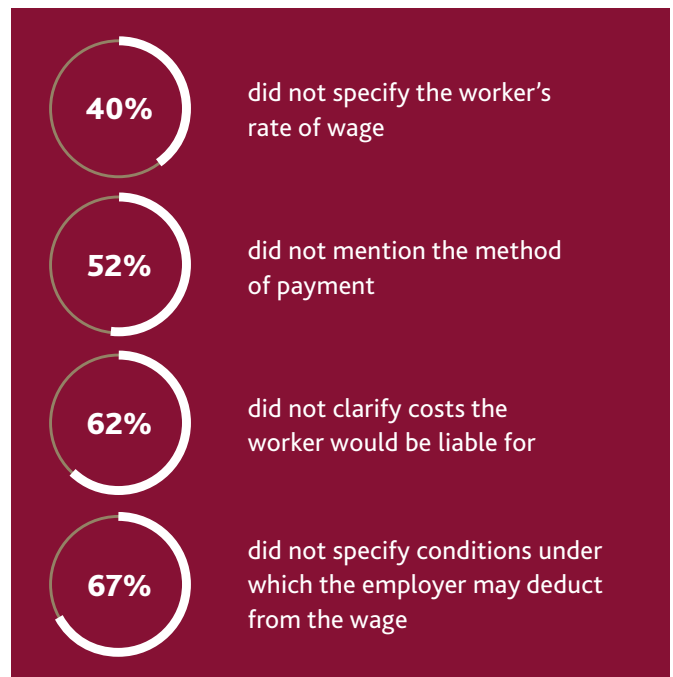
## Migrant workers' contracts



**81%** of companies issued contracts to foreign workers before they arrived in Malaysia

Only 68% reported that contracts were written in a language understood by the workers

62% of companies had contracts signed in the source country

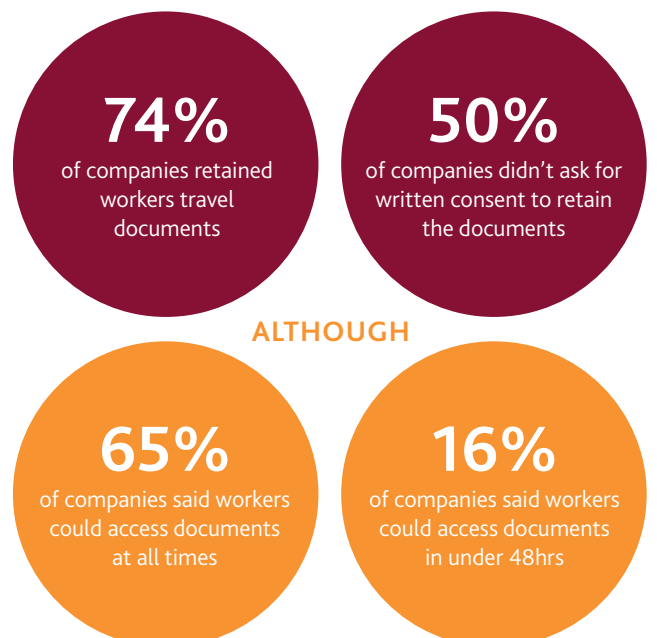


## Recruitment



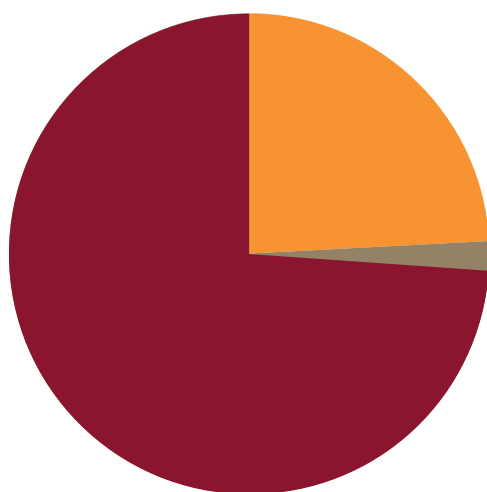
87% of companies used recruitment agencies

50% of companies using recruitment agencies made workers pay the costs  
These workers needed to keep their job in order to pay off these costs, effectively tying them to their employer.



## Freedom of association

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● Unionised companies

● Companies preventing workers from forming or joining unions

● Companies that are not unionised but do not prevent workers from forming or joining unions



Malaysian law allows migrants to form and join trade unions.

The only restriction in the law is that foreign migrant workers may not hold office in trade unions.

Good dialogue between employers and workers could mitigate the risks, but the percentages are not promising.

## Grievance Procedure

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84% of companies have a grievance procedure



However 8% of them do not allow foreign migrant workers to use the procedure

The MEF report notes that foreign migrant workers may be hesitant to raise grievances because they do not fully understand the system or the language and fear reprisals.

The Electronics Industry Citizenship Coalition recently announced that they would pilot a new programme in Malaysia to improve labour-management dialogue and grievance mechanisms backed by a new helpline to address grievances that are not resolved at factory level.

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**This case study highlights two key issues: first, the importance of translating code commitments into procedures and systems, and second, the need to guard against assumptions that companies have realigned their human resource practices in the light of public policy debates. Business as usual is often the default option, even after 25 many years of controversy over the treatment of foreign migrant workers.**

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## HUMAN RESOURCES SYSTEMS AND PROCESSES

Human resource management and procurement systems are the cornerstone of any programme to prevent forced labour and trafficking. It is vital that companies not only adopt a code of conduct or human rights policy that includes commitments on forced labour but also that crucial functions such as human resources, procurement and supply chains retool their systems to meet those standards. All company principles, policies and procedures need to be congruent with international human and labour rights standards. All contracts and purchase orders should specify the actions and deliverables expected of employees and suppliers.

Similarly, it is essential that suppliers have effective human resource management systems. As the Malaysian case study highlights, companies cannot assume that their suppliers, even major ones, are equipped with the appropriate systems to prevent forced labour throughout the employment lifecycle. A review of HR systems and identifying gaps among major suppliers is highly recommended. Those gaps could be filled with capacity building support, followed by impact assessments to monitor progress and outcomes.

Buyers could also collect data on employment practices at supplier facilities and track key indicators for signs of potential forced labour or trafficking. Hiring and labour turnover data, types and duration of contracts, age and sex profiles, percentage of migrant workers, hours of work and wages, leave (annual and maternity) can all be indicators of high-risk employment practices and provide clues of where to look. If the supplier has no system or data, an essential first step would be to get systems in place and ensure the accuracy of data collection. Many farms, for example, simply do not have written contracts, proper time-keeping systems or payslips, which makes it very difficult to monitor respect for code standards, especially when they may be hiring extra workers for harvesting.

A joint buyer-supplier review of HR policies and practices may be the only way to ensure that alignment is flowing through all the sourcing and HR processes. This implies a high degree of engagement by buyers with the supply chain, and those with large footprints can need to enlist technology and third parties to take this to scale. A number of third-party service providers specialise in risk assessment and preventive remediation in the field of forced labour and trafficking, and buyers or suppliers could partner with them to thoroughly review and revamp sourcing and HR systems. Verité is well known in this area and has partnered with a number of initiatives (the Walk Free Foundation, Sedex, AIM-PROGRESS) whose members are at risk.<sup>14</sup>

<sup>14</sup> Verité. 2011. "Fair Trade Hiring Kit." [www.verite.org/helpwanted/toolkit](http://www.verite.org/helpwanted/toolkit)

<sup>15</sup> Apple Inc. 2015. "Supplier Responsibility 2015 Progress Report." [www.apple.com/supplier-responsibility/pdf/Apple\\_Progress\\_Report\\_2015.pdf](http://www.apple.com/supplier-responsibility/pdf/Apple_Progress_Report_2015.pdf)

<sup>16</sup> HP. 2014. "HP Reinforces Protection of Foreign Migrant Workers." Press release, 10 November. [www8.hp.com/us/en/hp-news/press-release.html?id=1836213#.Vhaqbo-qkqo](http://www8.hp.com/us/en/hp-news/press-release.html?id=1836213#.Vhaqbo-qkqo)

## RECRUITMENT

The moment of recruitment is a critical point at which to prevent forced labour, and employers need to have additional controls appropriate to their recruiting system. The question posed earlier about how workers came to be applying for the job is central to those controls. Were recruitment agencies, labour brokers or any other intermediaries involved? Were fees paid, loans secured or any other assistance provided to the applicant? Experienced HR professionals at supplier level should be aware of these risks and adopting appropriate checks, but it is not something buyers should assume or rely on. The HR audits referred to above should look specifically at how effectively suppliers handle recruiting and hiring and provide capacity-building assistance if necessary. Box 5 looks at how two companies have addressed recruitment fees.

## GRIEVANCE PROCEDURES

Giving voice to workers through grievance procedures is a standard objective of most codes of conduct, but it is fair to say that this remains a work in progress for most buyers and suppliers. Moving beyond suggestion or complaint boxes to create channels capable of uncovering and resolving issues is a real challenge and even more delicate in the case of forced labour. As discussed elsewhere in this paper, the risks to the victims are real and possibly dissuasive but that should not stop companies from trying.

Best practice suggests that grievances should be resolved through collective bargaining and should be as close to the source as possible. With highly sensitive issues such as forced labour, however, it may be more feasible to identify and use neutral but skilled and trained third-party channels or a professionally trained senior manager able to

### BOX 5: ADDRESSING RECRUITMENT FEES IN THE ELECTRONICS SECTOR

Hewlett-Packard (HP) and Apple are two companies in the electronics sector that have taken high profile stands against recruitment fees imposed on workers and the retention of workers personal and travel documents. Apple recently raised the standard on recruitment fees from a ban on excessive fees (over one month's net wages) to a total ban on recruitment fees charged to workers.<sup>15</sup> HP added a requirement that all foreign migrant workers in its supply chain should be directly employed by the company.<sup>16</sup> HP also proactively analyses the risk of forced labour in its supply chain by studying audit data, engaging with stakeholders and interviewing workers. Both Apple and HP support these measures through training and auditing of employees and suppliers.

intervene and deal with the issue sensitively but decisively. Needless to say, anyone charged with receiving and dealing with grievances should be trained to do so with due empathy and discretion because cases may contain a mix of legal, HR and personal factors that all need attention. Some well-meaning but ill-advised actors have thwarted efforts to identify unscrupulous agents and criminals because they have taken matters into their own hands rather than carefully referring them on to appropriate authorities or experienced NGOs that know how to protect victims while also conducting secret investigations into those behind a trafficking situation before they abscond.

## REMEDICATION

Remediation is a key concern, both because it is challenging to truly make reparations for the harm that is done to victims and because the danger of further victimisation is ever-present. Trafficked and forced labourers face termination, deportation and a possible reckoning with their creditors if exposed. As with child labour, a zero-tolerance policy should not jeopardise the position of the victims. Buyers should be careful to maintain and use their leverage as constructively as they can. Terminating the supplier, or imposing financial penalties, may be appropriate but only once provision has been made for protecting the forced labourers involved. The priority in remediation must be to secure their economic and social situation – ideally with the cooperation of the employer and the authorities. If that cannot be relied on, the buyer may have to work civil society organisations to provide support to the workers.

A point worth emphasising here is that the multi-factor nature of forced labour means that the counter-measures must also be multi-factor. Some interventions may be more strategic than others, but if not accompanied by other measures they may well have unintended consequences. Regulators, buyers, suppliers, workers representatives and civil society all have a part to play in remedying cases of forced labour.

## COMPANIES COLLABORATING

Companies also need to work together, collaborating with one another across industries, sectors and countries. However, competitive pressures are not likely to ease in the increasingly global market, and buyers and suppliers need to be frank about the potential consequences. An increasing reliance on cheaper and more flexible contingent labour is one of these, and avoiding high-risk providers of contingent labour would be a topic for joint discussion all the way down the supply chain.

## B) WORKER-LED ACTION ON FORCED LABOUR

Workers, trade unions and other support groups have a key role to play in exposing forced labour. While there are significant challenges for the victims themselves to come forward (as highlighted in Box 2), trade unions and other workers organisations have a clear interest in exposing forced labour. Forced labour lies at the extreme end of the spectrum of abuse of workers' basic rights: the right to choose their employer or to leave their place of work; and the right to negotiate the terms and conditions of their work, including pay and hours of work. Collective bargaining is rare for vulnerable and migrant workers – not only because they are employed on temporary terms, but also because they often cannot speak the local language. They do not have the same access to employment or bargaining rights as other workers who live permanently in host countries, let alone access to basic services such as health care. Cross-border cooperation between trade unions can help inform potential victims of the dangers and their rights. Trade unions in both sending and receiving countries can team up to provide briefings and documentation to migrant workers and to pressure authorities to ensure that their rights are respected.

The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) has published a booklet titled "Workers and Unions on the Move: Organising and defending migrant workers in agriculture and allied sectors", which documents many examples of union efforts to protect migrant workers.<sup>17</sup> The Finnish and Estonian trade unions, for example, established an Information Centre in Tallinn to provide material to people thinking of working in Finland. In Germany, the majority of seasonal migrant workers come from Poland, so the Union of Construction, Agriculture and Environment Workers (IG-BAU) teamed up with the Polish Agricultural Workers' Union (ZZPR) to produce a booklet in German and Polish as well as additional material on occupational health and safety. Kommunal, the Swedish Municipal Workers' Union, distributes a brochure to temporary farm workers arriving in Sweden. In Cyprus, the Hotel, Catering and Restaurant Employees Federation (OEXEV-SEK) provides incoming migrants with one booklet on workers' rights and another detailing the terms of the collective agreement covering the hotel sector.

Unions have been particularly focused on the increasing use of contingent labour and the risks that accompany it. They have mobilised to protect regular contracts against 'casualisation' and to ensure equal treatment for contingent workers. UNI Global Union signed a Memorandum of Understanding with the International Confederation of Private Employment Agencies (CIETT), which covers temporary agency work and commits the organisations to combat trafficking. Trade unions in many EU countries have also been focusing on abuse of agency workers and issues of wage dumping.

Most international framework agreements (IFAs) between global unions and multinational enterprises

<sup>17</sup> Boincean, Svetlana. 2008. "Worker and Unions on the Move: Organising and defending migrant workers in agriculture and allied sectors." IUF, Geneva. [www.ituc-csi.org/IMG/pdf/IUF\\_migration-2.pdf](http://www.ituc-csi.org/IMG/pdf/IUF_migration-2.pdf)

have specific clauses on forced labour, and some of them provide for joint action in the event of any cases being identified. The IFA signed between the International Textile, Garment and Leather Workers Federation (ITGLWF) and Inditex, for example, dealt with issues such as 'deposits' that workers may be required to pay and the retention by employers of workers' personal and travel documents. It also provided for joint investigations by the company and the union.

The International Trade Union Confederation (ITUC) has launched the Fine Tune project along with Anti-Slavery International and other NGOs in several EU countries. The project is looking particularly at new forms of forced labour and trafficking, including the gender dimension, and new forms of recruitment using the Internet and social media.<sup>18</sup> The ITUC has also published a best practices manual on forced labour that includes a chapter on what trade unions can do to prevent trafficking and forced labour or to

support the victims.<sup>19</sup> In the UK, for example, trade unions have been instrumental in securing legislation to protect migrant domestic and farm workers.

Unions have also been active in national and supranational organisations to develop better legal frameworks for migrant workers. At the national level, for example, the Coalition of Immokalee Workers (CIW) in the United States has been running an anti-slavery campaign for 15 years that has freed over 1,200 workers held against their will (see Box 6). Internationally, the ITUC formed the Global Trade Union Alliance to Combat Forced Labour and Human Trafficking with the ILO's Bureau of Workers Activities (ACTRAV) and the Special Action Programme on Forced Labour (SAP-FL).

<sup>18</sup> [www.ituc-csi.org/forced-labour-and-trafficking](http://www.ituc-csi.org/forced-labour-and-trafficking)

<sup>19</sup> International Trade Union Confederation (ITUC). 2009. "How to Combat Forced Labour and Trafficking: Best practices manual for trade unions." Brussels: ITUC. [www.ituc-csi.org/IMG/pdf/TU\\_Guide\\_Forced\\_labour\\_EN.pdf](http://www.ituc-csi.org/IMG/pdf/TU_Guide_Forced_labour_EN.pdf)

#### BOX 6: CASE STUDY: COALITION OF IMMOKALEE WORKERS – MARKET SANCTIONS AND WORKER INVOLVEMENT SUPPORTED BY LEGISLATION AND ENFORCEMENT

The Coalition of Immokalee Workers (CIW) in the United States works with lawmakers, law enforcement, labour rights campaign groups, buyers and suppliers on how to identify and assist people in forced labour situations.<sup>20</sup> The Fair Food Program that they helped develop holds major buyers and their growers responsible for preventing forced labour and uses a worker-to-worker education programme to turn workers into monitors who can identify and report forced labour.

The CIW's collaborative approach has helped to raise awareness, strengthen regulations, train officials, employers and workers, support victims and prosecute offenders. This combination of market sanctions and worker involvement supported by legislation and willing enforcement agencies appears to be effective in the tomato and other crops covered by the CIW and could be emulated in other labour markets, including the agricultural supply chain serving UK supermarkets.

<sup>20</sup> <http://ciw-online.org/slavery/>



### C) WORKING WITH NGOS AND THE MEDIA

Independent third parties play an important role in investigating and exposing forced labour, either in response to complaints or on their own initiative. In the case of the Latvian citizens mentioned above, it was only after the Latvian Embassy commissioned (and released) an independent report by an NGO into their conditions of employment that action was taken to protect them. This also highlights the importance of civil society actors holding government and employers to account, and the value of transparency in getting these issues into the public domain.

NGO campaigns have also made good use of the media to mobilise public and official action against forced labour and trafficking for labour exploitation. Both mainstream and social media continue to play a critical role in raising awareness about the spread of modern slavery and forced labour as well as exposing specific cases. This is very powerful in focusing the attention of those implicated – whether companies, government authorities or suppliers – and catalyses action. The CNN Freedom Project is probably the highest profile example of media focus,<sup>21</sup> but the print media have also done extensive work in exposing trafficking networks and the industrial sectors they feed into.

When campaigns are thoughtful and based on credible evidence and an understanding of root causes, this can be extremely effective. However, it should also be noted that actions focused only on exposing abuse are less helpful in the long term as workers may lose out in boycott campaigns and withdrawal of investment. The leverage to improve working conditions in those supply chains is dramatically reduced if companies withdraw, and suppliers may well go elsewhere for their workers and seek orders from countries and companies that are less concerned with human rights.

### D) ROLE OF IT AND DATA/EVIDENCE

Technology can be enlisted to have suppliers self-assess and upload relevant documents and key performance indicators. Apple has pioneered the wall-to-wall collection of hours of work data, for example, and there are other key indicators of forced labour that could be collected to form risk profiles. Physical inspections can then be targeted at high-risk facilities. Good data is only part of the response however, and has to be accompanied by strategic interventions by companies at the level of purchasing practices, investments in HR capabilities and lower risk employment contracts. Buyers could provide a valuable source of firm-level labour market data to other supply chain actors and government agencies. The overall labour market reforms needed to prevent forced labour and

trafficking start with good labour market data to inform the coordinated actions of government enforcement agencies, trade unions, NGOs and responsible brands.

### E) THE BRAZIL CASE: EFFECTIVE PARTNERSHIPS BETWEEN GOVERNMENT, TRADE UNIONS, COMPANIES, NGOS, THE MEDIA AND INTERNATIONAL ORGANISATIONS

The 'Brazilian model' has attracted a lot of praise in recent years (see Box 7). It harnesses the enforcement powers of a special inspectorate to the 'name and shame' power of both a 'dirty list' and the NGOs that investigate and pressure companies on the list.

#### BOX 7: CASE STUDY: NATIONAL PACT FOR THE ERADICATION OF SLAVE LABOUR – A MULTI-STAKEHOLDER INITIATIVE IN BRAZIL

The National Pact for the Eradication of Slave Labour in Brazil is one of the most comprehensive responses to forced labour.<sup>22</sup> It is a multi-stakeholder initiative involving Ethos Institute, the Social Observatory Institute, the ILO and the NGO Repórter Brasil. National and international companies that sign on to the Pact pledge to keep their supply chains free of slave labour.

Key components of the Pact are:

- A national commission to eradicate slave and forced labour
- A national action plan
- A special inspectorate
- The publication of a 'dirty list'
- Civil society organisations that drill down on the supply chains of the companies on the list and pressure them to help clean up the chain

The Pact has been emulated in the Brazilian Steel Industry, where 15 companies came together with the ILO, the Association of Steel Industries in Carajas, Ethos Institute, the Social Observatory Institute and the National Confederation of Steel Workers to form the Citizen Coal Institute (ICC) to fight against forced labour in the production of charcoal. The ICC hires and trains monitors, conducts site visits, builds capacity and publishes reports.

The Brazilian model is rare in that it combines public and private pressures to defend human rights, and both the public and private actors concerned have been innovative in the way they pursue their mandates. The roles of the public and private actors have almost been reversed in that the labour authorities name and shame companies by publishing a 'dirty list' while the NGOs analyse the supply chain networks to identify the most strategic pressure points for intervention.

<sup>21</sup> <http://thecnnfreedomproject.blogs.cnn.com>

<sup>22</sup> [www.oit.org.br/sites/all/forced\\_labour/tbesc\\_english/brasil/iniciativas/iniciativas.htm](http://www.oit.org.br/sites/all/forced_labour/tbesc_english/brasil/iniciativas/iniciativas.htm)

The Brazil model is unique but a number of other country governments and NGOs, as well as international institutions such as the ILO, are learning from this and seeking to replicate elements of it elsewhere. This approach is not entirely new either: In the 1990s the US Department of Labour (DOL) named brands and retailers working with non-compliant suppliers and impounded shipments using the 'hot goods' provisions of the Fair Labor Standards Act, which prohibits the interstate shipment of goods produced in violation of the Act's minimum wage, overtime or child labour provisions. Retailers then had to get their suppliers to comply before the DOL would release their goods.

#### F) THE VALUE OF MULTI-STAKEHOLDER INITIATIVES

Multi-stakeholder initiatives such as the ETI have a valuable role to play in convening critical actors that can make a real difference through collaborative efforts. Their role includes providing a safe space for companies to collaborate on a pre-competitive basis when dealing with labour rights challenges in their supply chains; lobbying governments for more effective regulation (the ETI's role in the creation of the Gangmasters Licensing Authority is a case in point); facilitating direct engagement between companies and trade unions, as well as 'critical friend' partnerships with NGOs. Where this works well, their value lies in long-term, systemic change. But this is not always

possible, and it is certainly not easy, particularly in relation to forced labour.

But multi-stakeholder coalitions are more difficult to mount in countries where there little regard for human rights or space for democratic institutions. In such countries, governments may see such initiatives as threatening or undermining their state functions, or as an admission of failure on the part of the enforcement agencies. Uzbekistan, for example, refused for many years to accept that it had a problem of forced and child labour in the cotton harvest before eventually agreeing to allow the ILO to monitor a harvest season.

The Gulf States have also been very slow to acknowledge the problems in their migrant labour regime despite major international pressure, although some are now committing to reforms. Even investor-friendly Malaysia has been resistant to appeals from foreign investors to reform the migrant labour system (see case study above), and the private sector may have to find alternative mechanisms to protect workers and employers from the risk of forced labour. In such uncooperative environments international coalitions of supply chain actors may need to work with sending country governments to create leverage on receiving countries that fail to protect the migrant workers. An international version of the Coalition of Immokalee Workers could be an effective model in such cases.

## 6 Conclusion

The global labour markets trends that underpin forced labour and trafficking for labour exploitation cannot be countered by any one actor or intervention. Removing the conditions that favour forced labour will take cooperation between enforcement agencies, multinational companies, suppliers, trade unions, civil society organisations and the media at both national and international levels.

Many of the factors are fundamentally economic in nature, however, and difficult to remove through regulation. The lack of economic opportunities in certain countries and regions, poverty and exclusion are likely to drive more job seekers into vulnerable positions in the labour market where they will satisfy an increasing demand for contingent labour. Alongside this is a growing market for recruitment agencies or labour brokers, and opportunities exist for huge profits to be made by unscrupulous agents preying on the desperation of workers for a job on almost any terms.

The short-term attractions of increased flexibility and lower labour costs for businesses are obvious, but the longer-term costs to employers, workers and society

are real and urgent. There is much that can be done by companies to manage their risks, such as better leadership and decision-making from the top, changing business models, simplifying supply chains and ensuring greater visibility of supply chains, rewarding transparency and whistleblowing, ensuring that HR managers, procurement staff, suppliers, employers and labour recruitment agents understand the risks and take appropriate measures to mitigate and prevent these risks; improved independent third-party monitoring of working conditions in supply chains, and most importantly, giving workers both the right and the means by which they can negotiate their own terms and conditions of work.

It would be simplistic to conclude that companies are the main drivers of forced labour and that the solutions to this problem lie primarily in their hands. Governance failures, deregulated labour markets, poverty, exclusion and unemployment, the lack of democratic space and rights for workers are all critical factors and will need coordinated efforts by a wide range of actors working together and separately to address them.

# Annex 1: Definitions

## FORCED LABOUR

As defined in ILO Convention No. 29, forced labour involves coercion, either direct threats of violence or more subtle forms of compulsion – i.e., the key element is that people are forced to work. The retention of passports and ID documents, debt and manipulation of a worker's immigration status are other forms of coercion commonly used. The threat of a penalty and the involuntary nature of the labour are central to this definition. Modern forms of slavery, debt bondage and human trafficking are related concepts, and to the extent that they result in labour they are covered in the international instruments dealing with forced labour. The ILO estimates that about 22 per cent of the 20.9 million people in forced labour are victims of sexual exploitation and the remaining 68 per cent are in other forms of labour.<sup>23</sup>

## MIGRANT WORKERS

The ILO estimates that there are 232 million migrant workers in the world and has two conventions (Nos. 97 and 143) and two recommendations (Nos. 86 and 151) covering them. However, all international labour standards apply to migrant workers, including the eight fundamental conventions (freedom of association and collective bargaining, discrimination, child labour and forced labour) and instruments containing specific provisions on migrant workers such as the Private Employment Agencies Convention (No. 181) and the Domestic Workers Convention (No. 189). The 10 United Nations core human rights instruments also cover migrant workers.<sup>24</sup> The scope of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is wider than just the labour dimensions of migration and covers the entire process from preparation to eventual return. It includes documented and undocumented migrants but not refugees.<sup>25</sup>

## REFUGEES OR DISPLACED POPULATIONS

Refugees or displaced populations are often categorised as migrants as well, even though their situation is almost always involuntary and they would return to their home country if they could. They are forced to seek refuge elsewhere or forcibly displaced, normally by political factors – often involving violence – and increasingly by environmental factors. These displaced people may well seek work but that is not the driving force behind their relocation.

Syrian refugees in Turkey provide a case in point. They may also turn to traffickers in order to reach their destination and could even be sold into slavery along the way. Refugee and asylum procedures generally prohibit refugees from seeking employment, but they need income and this makes them vulnerable to exploitation by unscrupulous intermediaries or employers who coerce or compel them to work under threat of exposure and

deportation. They are therefore a high-risk category for companies, particularly in the value chain.

## TRAFFICKING FOR LABOUR EXPLOITATION

Trafficking is the forced transition of people into an exploitative situation. According to the Palermo Protocol:<sup>26</sup> "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." This rather complex definition covers the entire cycle of trafficking, the means and the purpose, which may include slavery, forced labour or servitude but also non-labour objectives such as the harvesting of organs. It is to be distinguished from people smuggling, which is the illegal movement of people across borders for a fee, usually with their consent.

## MODERN SLAVERY

The definition of modern slavery in the UK Modern Slavery Act is explained as a broad term used to encompass the offences of 'slavery, servitude and forced or compulsory labour' and 'human trafficking'. These offences are related but not the same in a legal sense. Slavery is where ownership is exercised over a person; servitude involves the obligation to provide services imposed by coercion; forced or compulsory labour involves work or service exacted from any person under the menace of a penalty and for which the person has not offered himself voluntarily; human trafficking concerns arranging or facilitating the travel of another with a view to exploiting them.

The UK government states that 'those committing these heinous crimes exploit whatever means they have at their disposal to coerce, deceive and force individuals into lives of abuse, servitude and inhumane treatment. The most common forms of abuse are sexual exploitation, labour exploitation and domestic servitude. In all cases, some of the most vulnerable people in society are stripped of their dignity and basic freedoms, and forced to work for someone else's gain or benefit.

<sup>23</sup> [www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS\\_181922/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_181922/lang-en/index.htm)

<sup>24</sup> [www.ilo.org/global/topics/labour-migration/standards/lang-en/index.htm](http://www.ilo.org/global/topics/labour-migration/standards/lang-en/index.htm)

<sup>25</sup> [www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx)

<sup>26</sup> <http://palermoprotocol.com>

The Ethical Trading Initiative (ETI) is a leading alliance of companies, trade unions and NGOs that promotes respect for workers' rights around the globe. Our vision is a world where all workers are free from exploitation and discrimination, and enjoy conditions of freedom, security and equity.

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