



THE HUMAN RIGHTS AND BUSINESS PAGES

FORCED LABOUR

Chinese prisoners return to their compounds at Jiangbei Prison in the central province of Hubei in the evening after working in the fields and collecting cotton branches for firewood. Jiangbei Prison, one of the five biggest in China, is divided into six brigades and accommodates about 10,000 prisoners. Prisoners are re-educated through ideological study and hard labour. Photo by STR. (C) REUTERS 1998

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PREFACE

This publication is the first of a series: *The Business and Human Rights Pages*. Each issue in this series will provide the reader with an introduction to a particular issue in the area of business and human rights and the key purpose of this series is to link human rights themes to business practices. This issue is about forced labour, it describes how companies might be confronted with forced labour, it sets out the relevant international human rights framework and makes recommendations on how to prevent being an accomplice to such practices. The series is written for policymakers in the area of Social Corporate Responsibility (CSR) but also for the operational manager in the field, and if it is used as an awareness-raising tool or as a guideline in the prevention of forced labour it will have achieved its main goal.

After a summary of key issues, this publication considers the question why human rights should be of concern to companies. Subsequently the subject of forced labour is further explored: definitions; the different manifestations; the characteristics and the legal framework in chapters 2 and 3. Against this background, chapter 4 gives guidance on how to move from policy to practice. It sheds light on the link between forced labour and company activities and discusses dilemmas for companies confronted with forced labour practices. Chapter 5 provides information on risk business sectors and regions. In doing so, this part reveals the business risks of forced labour. The final chapter contains concluding remarks and a checklist of recommendations.

The Business and Human Rights Pages Series is published by Amnesty International's Dutch section. In producing this series Amnesty International has collaborated and consulted with companies that participate in the section's Round Table.¹ The Round Table's primary objective is to provide a forum for (currently) fifteen multinationals and Amnesty International to assess the best ways companies can meet their responsibilities with regard to human rights. It also aims to contribute to the awareness in the Dutch business community of the importance of human rights as an essential element of company policy, and to promote the best ways in which to meet these responsibilities. While the Round Table meets four times a year, separate working groups explore human rights themes more thoroughly throughout the year.

SUMMARY

Overview of Key Issues and Recommendations

States, companies and human rights

- States have the primary responsibility for human rights. Companies have to comply with national laws and have a responsibility for human rights according to the Universal Declaration of Human Rights, as they are “organs of society”.
- Within their spheres of activity and influence companies have the responsibility to respect human rights as well as to avoid complicity in violations and abuses committed by other parties.

Forced labour - definition, characteristics and legal framework

- Forced Labour (sometimes referred to as ‘compulsory labour’) is used in this report as an umbrella term for practices relevant for companies such as: slavery, chattel slavery, serfdom, bonded labour (debt bondage), prison labour, forced overtime, child labour, trafficking, domestic work and sex-slavery. These practices are explained in Chapter 2.
- According to a 2005 International Labour Organisation (ILO) publication, approximately 12.3 million people are victims of forced labour worldwide. 2.5 Million of them perform forced labour for states or armed groups; 9.8 million are forced to labour by private agents.
- The 1930 Forced Labour Convention of the ILO (also known as ILO Convention No.29) defines forced labour as: *‘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’*.
- In short, forced labour is labour performed under compulsion and subject to a penalty.
- States are obliged to protect people against forced labour.
- Companies are accountable under national law when infringing the law concerning forced labour.
- Slavery, and similar practices can amount to crimes under international law.
- Forced labour often takes place outside the scope of the public eye. Victims are difficult to trace, they are vulnerable and feel shame. Therefore they are afraid to speak out.
- Governments are reluctant to acknowledge that forced labour practices can be found on their soil, resulting in a lack of research and (statistical) information about forced labour.
- The secret nature of forced labour makes it difficult to document, prevent and suppress it.
- Causal relationships exist between forced labour, poverty and discrimination. Extreme poverty and severe discrimination aggravate the existence forced labour.
- In many cases forced labour is covered up by the services of employment agencies and fake labour contracts.
- In certain business sectors, like the agricultural sector (food and beverages) and the textile sector, companies run a relatively higher risk of becoming involved in forced labour. Other sectors, like the manufacturing sector and the extractive sector, should also be alert of the probability of encountering forced labour.
- Certain countries or regions are notorious for instances of forced labour. Different regions are often associated with different types of forced labour:
 - South Asia: bonded labour in agriculture, in domestic work and in other manufacturing industries.
 - Asia Pacific: state imposed forced labour like forced prison labour and forced labour in construction work on infrastructural projects.
 - Africa: traditional chattel slavery in the agricultural sector. Africa is place of origin (and transit) for trafficking.
 - Latin America: debt bondage often in agricultural sector performed by rural or indigenous

- peoples. Latin America is place of origin, transit as well as destination for trafficking.
- North America and Europe: place of origin, transit and destination for trafficking, trafficked peoples work in prostitution, agricultural sector, domestic service, construction works and sweatshops.

Recommendations

- Companies are advised to refer to ILO Conventions (No. 29 and No. 105) in their Business Principles.
- It is recommended to translate the Business Principles into policies to prevent becoming involved in forced labour situations within the sphere of influence and activity of the company. Forced labour prevention policies should include:
 1. Work must be voluntary of character, freely chosen and workers must be free to leave.

Recommended preventive measures:

 - *It is suggested to use standard labour contracts including workers' rights, working hours and wage specification;*
 - *It is suggested to make an effort for standard regular wage payment and payments directly to the worker (without intermediary).*
 2. Work should not be performed under the threat of any penalty.

Recommended preventive measures:

 - *It is suggested to prohibit use of violence, use (or threat) of penalties, or intimidating practices (such as confiscation of personal documents).*
- Forced labour prevention policies should further explicitly contain non-discrimination and minimum age requirements clauses.

In addition, companies are recommended to:

- Include human rights principles, including provisions on the prevention of and protection against forced labour, in all contracts with joint venture partners, suppliers and sub-contractors;
- Apply suggested recommendations to the entire supply chain;
- Provide human rights training to the local staff which explicitly include forced labour issues;
- Consider providing human rights training to major suppliers;
- Set up complaint and remediation mechanisms;
- Implement compliance-, monitoring and independent verification mechanisms in co-operation with local NGOs and trade unions;
- Be informed about the risks of encountering forced labour in certain regions;
- Conduct a human rights risk assessment before deciding on investments;
- Report instances of forced labour (preferably publicly).

Companies should take extra care to avoid becoming involved in forced labour practices when:

- Suppliers claim that all their workers are 'self-employed', for this may conceal illegal practices;
- A complex network of contracts and suppliers is practiced that may conceal forced labour;
- In hiring labour, the services of external employment agencies are used.

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INTRODUCTION

States, Companies and Human Rights

Human Rights

Human rights are the rights people have as a consequence of being human. They do not need to be given, bought, earned or inherited. Human Rights are those basic standards without which people cannot live in dignity. The most widely accepted statement on human rights is the *Universal Declaration of Human Rights* (UDHR), adopted 10 December 1948 by the General Assembly of the United Nations.² Its provisions have been cited as the justification for numerous UN actions, and have inspired or been used in many conventions and protocols adopted by the UN and other international organizations.

The two key covenants based on the UDHR are the International Covenant on Civil and Political Rights (1966) (ICCPR) and the International Covenant on Economic, Cultural and Social Rights (1966) (ICESCR). These key covenants together with the Universal Declaration on Human Rights are at the heart of what has been called the International Bill of Rights. Together with the core labour standards of the International Labour Organisation (ILO) the International Bill of Rights represents the most widely accepted codification³ of human rights standards.⁴

The role of companies with regard to human rights

Since the adoption of the UDHR, it have usually been states, not companies, which ratify conventions, protocols and other instruments for human rights. States are therefore the primary duty bearers for human rights. Nonetheless, the UDHR also calls on '*every individual and every organ of society*' to play their part in securing the observance of the rights enshrined in it. This also includes companies.

Preamble of the UDHR:

"... the GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."
(Emphasis added)

- *Indirect international human rights obligations of companies:*
Governments have the primary obligation to respect, ensure respect for, prevent abuses of, and promote internationally recognised human rights. Therefore states have an obligation to protect individuals against corporate activities that violate human rights. Given that international human rights law is incorporated into national legislation, companies are accountable for national legislation. With this international human rights law becomes *indirectly* applicable to companies via the national legislator.
- *Direct international human rights obligations of companies:*

Liability of non-state-actors (like companies) under customary international law is highly uncertain. Companies and other private actors are prohibited under international law from committing crimes such as piracy, genocide and crimes against humanity. However, the relevant courts (e.g. the International Criminal Court) only have jurisdiction to try individuals for these crimes, and no jurisdiction over 'artificial bodies' like companies. This means that currently, companies cannot be held liable under international criminal law in international courts. Management or employees however, can be prosecuted before international courts and tribunals under international criminal law.

The United Nations draft Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights set out a comprehensive list of the human rights obligations for companies. The current status of the UN norms is explained in the box below. It starts with the following assumption:

States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including ensuring that transnational corporations and other business enterprises respect human rights. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.

United Nations Standards for Companies

In 2003 the UN Sub-Commission on the promotion and protection of human rights adopted the United Nations Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.⁵ The document gives a comprehensive outline of human rights duties for companies. The document was forwarded to the Commission of Human Rights in 2004. By consensus the Commission noted the importance of the issue of corporate human rights responsibility and requested a report compiled by the High Commissioner for Human Rights. In 2005 the Human Rights Commission recognised the current existing gaps in regulation and the need for clear standards with respect to corporate human rights obligations. A Special Representative of the UN Secretary-General was appointed. The Special The Special Representative on the issue of Human Rights, Transnational Corporations and Other Business Enterprises has been mandated to identify standards of corporate accountability for businesses; elaborate on the role of states in effectively regulating the role of business, including through international cooperation; research and clarify concepts such as 'complicity' and 'sphere of influence'; develop materials and methodologies for undertaking human rights impact assessments of business activities; and compile a compendium of best practices of states and businesses.

Different human rights obligations for states and companies

Companies thus, have a responsibility for human rights limited to their respective spheres of influence and activity. This concept has not been defined authoritatively, however the “sphere of influence” of a business entity tends to include the individuals to whom it has a certain political, contractual, economic or geographic proximity. Every business entity, whatever its size, will have a sphere of influence; the larger it is, the larger the sphere of influence is likely to be.⁶

Moreover, the UN Norms talk about: the obligation to promote, secure the fulfilment of, respect, ensure respect of, and protect human rights. Distinguishing between respecting, protecting and fulfilling human rights might help to analyse the responsibilities of companies for human rights.⁷ Firstly, companies should respect human rights; meaning companies should not abuse human rights themselves. Secondly, to protect means companies are expected to take measures to prevent third parties of abusing human rights. Limited to the sphere of influence this means, taking measures to prevent its business partners from abusing human rights. Thirdly, the responsibility to fulfil is most unclear. One could argue that a corporation has a degree of moral responsibility towards society that goes beyond respecting and protecting human rights. For instance, if a company operates in a territory where the state is unable to fulfil the rights of its people. Under these circumstances a company could be asked to act within the sphere of influence to ensure individuals have access to those resources needed for survival.

Litigation

Several authors expect “the legal pressure is likely to increase”.⁸ SustainAbility, a UK consulting company writes in a 2004 report: “Human Rights lawyers are increasingly turning to litigation as a tool for change. Notably, courts in the US and UK are becoming more willing to hear cases where the violation occurred outside of the court’s geographic location. And national courts are increasingly sensitive to human rights claims.”⁹ There are many countries where human rights litigation is possible for violations that occurred abroad.¹⁰ “The laws of Canada, France, Norway, the United Kingdom and the United States of America all have legal frameworks that permit businesses to be held liable under civil or criminal law for activities of such businesses when operating abroad.”¹¹

There is a growing corporate and public awareness that corporate reputation is at risk, if companies become implicated in human rights violations. The so-called ‘license to operate’ needs to be gained and continually justified. The benefits of integrating human rights into corporate mainstream business practices are not easy to calculate but generally acknowledged.

According to a recent ILO¹² report, at least 12.3 million people are victim of forced labour worldwide. Forced labour can be divided into state-imposed labour, such as prison labour, and labour imposed by private actors such as debt bondage, forced domestic work and various forms of servitude. According to the ILO report referred to above, worldwide 2.5 million people are victim of forced labour that originates from states or armed groups, while 9.8 million people are victim of forced labour at the hands of private actors.

Forced labour is a collective term for different practices of which some elements of control and ownership are shared:¹³

1. The degree of restriction of the right to freedom of movement (*worker is not free to leave*);
2. The degree of control over personal belongings (*worker is 'owned' or controlled by an 'employer'*);
3. The existence of informed consent, and full understanding of the nature of the relationship between the parties (*work is not voluntary of character or freely chosen*).

These characteristics of control and ownership are often accompanied by use of (or threat of use of) violence or other threats and penalties like confiscation of wages, confiscation of personal documents, (threat of) dismissal etc.

It is argued that a causal relationship exists between forced labour and poverty. At the very least, poor conditions are conducive to the existence of forced labour. The poorer and more vulnerable one is, the easier one is induced into debt or compelled into forced work. Illiteracy is a contributing factor as well. It increases people's vulnerability to deception or fraud aiming to draw them into forced labour situations. In addition, in a society where discrimination thrives, instances of forced labour are more likely to be found. Members of minority groups are more vulnerable to becoming entangled in forced labour. In Asia forced and bonded labour occurs often in certain ethnic and caste minorities. In Latin America the main victims of forced labour often are indigenous people. In Africa contemporary forced labour is linked to countries with a recent history of slavery.¹⁴

- **(chattel) slavery**

"Exercise of the right of ownership over a person" is particularly key in (*chattel*) slavery where the owners were able to treat slaves as if they were possessions. Across the world, the nature of slavery is changing from one of long-term ownership to one where the exploited person is perceived as a disposable asset. In the new types of slavery, someone is perceived to become the property of another person, who exploits his or her labour, until such time as it no longer suits the owner.¹⁵ This may be in the context of domestic work, agricultural work, the sex-industry or elsewhere. The old style of slavery where one person becomes the property of another person and their children inherit the same status is diminishing. However, both types are to be found in Mauritania today and both are grave abuses of basic human rights.¹⁶ In Mauritania, "within the Moorish community, some of those in slavery remain with those who have enslaved them or their ancestors and have been punished for trying to leave....".¹⁷

- **Serfdom**

Traditional *serfdom* refers to the status of a person who is by law, custom or agreement bound to live and labour on land belonging to another person, forced to perform services for that person, whether for reward or not.¹⁸ This form persists to this day in a few countries. Slave raids

800 years ago, began a system of serfdom that continues to this day, with Arab-Berber masters holding black Africans as inheritable property.

- **Bonded labour**

The most widespread form of forced labour is *bonded labour (debt bondage)*. A situation in which a debtor made a pledge of his personal services (or of those of a person under his control) as security for a debt. The value of those services is not applied towards the liquidation of the debt. Or the length and nature of those services are not limited and defined.¹⁹ People become bonded labourers by taking a loan, or being tricked into taking one. With inflated interest rates, debts are often inherited and passed down through generations. Bonded labour often occurs in situations of extreme poverty. For example in cottonseed production in India poor families are offered a loan during low season, in exchange for the labour services of their children during the harvest. The child's labour serves as repayment of the debt taken, but the amount of labour, hours, etc. is rarely fixed. In Bangladesh, India, Nepal, and Pakistan millions of people work as bonded labourers, firmly rooted in the caste system and the feudal agricultural relationships. In these countries it is practiced in brick making and stone quarrying and in agriculture, both on small farms and on large export-oriented estates.²⁰

- **Prison labour**

Legal provisions limit the scope of possibilities for a prison to require the prisoners to work. Still there are countries in which prisoners are subject to forced *prison labour*, which is characterised by lack of consent (the work is not voluntary of character), and lack of reasonable remuneration. China, for instance, makes use of forced labour as a corrective measure; prisoners are detained for re-education or reform through labour, without right of access to a lawyer nor a hearing for them to defend themselves. Assignment to re-education through labour, is usually decided by the police alone, without judicial supervision or review. Often these prisons are concealed behind a façade of commercial factories, masked by a company name.²¹ Some of these factories produce for export to Western countries or are suppliers to foreign corporations.²²

- **Forced overtime**

Another and more subtle issue of concern is *forced overtime*. In periods of high demand, it is common practice to request extra working hours from employees. Sometimes the pressure to meet tight production targets induces managers to apply illegal methods to force employees to work extra hours. When a worker has not voluntarily offered to work overtime and is working extra hours under the menace of a penalty he/she is considered to be forced to work. The threat of penalties can range from wage-cuts to mistreatment (physical or mental), from threat of dismissal to simply being locked-in.

- **Child labour**

Child labour and forced labour are closely connected. See for instance the example under the section of debt bondage where an adult offers the services of a child as repayment of a debt. Child labour (under 15) may be a form of impermissible forced labour if the working child has not willingly consented to work. Children (under 18) working in particularly exploitative, abusive or dangerous settings also qualifies as forced labour under international law. Quite a few human rights groups actually consider all child workers as forced labourers, because children are regarded as lacking the legal and mental ability to give true consent. The International Labour Organization estimated that some 246 million children aged 5-17 years are engaged in child

labour around the world. Of these, some 179 million are caught in the worst forms of child labour.²³

- **Trafficking**

A group of forced labourers currently receiving more publicity are victims of *trafficking*; individuals lured by the promise of a good job who instead find themselves forced to work, e.g. as domestic or sex workers or in sweatshops. Organised crime helps fuel this international trade in human beings. People are drawn in such a job by means of threat or use of force or other forms of coercion, like abduction, fraud, deception, abuse of power.²⁴ Trafficking often flows from developing nations to the West. For instance, the CIA estimates that 50,000 women and children are trafficked into the US each year.²⁵

- **Domestic work**

When *domestic work* is concerned, especially migrant women are in a position to become a victim of forced labour. Isolated in a strange country, not able to speak the local language and without a social network to fall back on, these women are subject to the whims of their employers.

- **Sex slavery**

A form of forced labour not of particular interest to companies, though important to mention, is *sex slavery*. This occurs mostly in South Asia, where girls are forced into prostitution by their husbands, fathers, and other family members to earn money, in many instances to pay back debts to local money providers. Others are lured by offers of good jobs and then forced to work in brothels.

Forced Prison Labour in China

Recently, the UN Human Rights Committee urged China to abolish forced labour as a corrective measure. In China, labour activists, especially those who attempt to establish independent workers' organisations, are repressed and arrested. Some are sentenced to labour camps called "reform through labour", or "laogai", after criminal trials in which their rights as defendants are systematically ignored. Others are sent to "rehabilitation through labour" or "laojiao", formerly translated by the authorities as "re-education through labour", a form of administrative detention officially not exceeding three years and imposed by public security authorities without trial or the right of appeal. In practice, these periods of forced labour can be extended at the authorities' will.

When producing in China, or exporting from China, companies may be confronted with prison labour. Prison camps are often concealed behind a façade of commercial factories, masked by a company name. Moreover, most camps have two names: a public name (mostly an enterprise name), and an internal administrative name. In these prison camps the circumstances and conditions of work are known to be extremely exploitative. While prisoners are forced to work in a wide range of business sectors, the bulk of them is caught up in the supply of small manufacturing goods and components or in raw materials. "Goods made in the laogai have become a part of China's domestic economy, and to an extent laogai-made goods are also filtering into foreign markets."²⁶

The USA signed a memorandum of understanding with China on prison labour in 1992, in which China agreed to block exports of prison-made goods to America. Yet the USA has difficulty monitoring this memorandum. In 2003 however, US-Chinese co-operation under this memorandum improved, US visits to three prison (and forced labour) -related facilities were conducted during that year. But the Chinese government continued to explicitly exclude from the agreements reform and re-education through labour institutions.²⁷

The Laogai Research Foundation is a non-profit organisation dedicated to collecting information about China's system of forced labour camps. This site provides the most up to date information available on the laogai in every region of China. According to this site, an estimated 8 million individuals are confined in the laogai. The laogai handbook is apparently the best resource about the Chinese Prison System – where, who, how many, what goods are being produced – and contains information on more than 1200 camps.²⁸

Instances of forced labour

Albania: Teenage girls are tricked into sex slavery and trafficked by organized crime rings.²⁹

Brazil: Lured into the rainforest, families burn trees into charcoal at gunpoint.³⁰

Myanmar: The military forces ethnic minority civilians, even women and children, to construct new roads or repair existing ones. People are forced to maintain military camps, work on plantations, bake bricks, and to perform sentry duty at night.³¹

China: Labour activists are sentenced to forced labour after criminal trials in which their rights as defendants are systematically ignored.³²

Dominican Republic: Haitians are rounded up at random, taken across the border, and forced to cut cane in sugar plantations.³³

Democratic Republic of Congo: A variety of forced labour regimes are found at coltan mines that have been managed by Rwandan military mining detachments.³⁴

Ghana: Families repent for sins by giving daughters as slaves to fetish priests.³⁵

India: Children in debt bondage roll beedi cigarettes 14 hours a day.³⁶

Ivory Coast: Child slaves are forced to work on cocoa plantations.³⁷

Mauritania: The politically dominant Moorish community is holding black Mauritians in slavery and their children inherit that same status.³⁸

Pakistan: Children with nimble fingers are forced to weave carpets in looms.³⁹

Sudan: Women and children abducted to the north were kept by their abductors' family, given away or sold and forced to work, normally in agricultural tasks or domestic work for nothing or for extremely low wages.⁴⁰

Thailand: Women and children become sex slaves for tourists.⁴¹

United Arab Emirates: Bangladeshi boys are transported and exploited as jockeys for camel racing.⁴²

USA: The CIA estimates that 50,000 peoples are trafficked as sex slaves, domestics, garment and agricultural slaves.⁴³

Forced labour is an attack on human dignity and freedom since it goes against the very idea of human rights. Article 1 of the Universal Declaration of Human Rights states: "all human beings are born free and equal in dignity and rights". No man, woman or child is a slave. Forced labour, in all its forms, is an abuse of fundamental human rights and is prohibited in all circumstances. It is an abuse of the right to physical and mental integrity and frequently an abuse of the right to be free from discrimination. Victims of forced labour, like victims of other serious human rights abuses, have a right to reparation.⁴⁴

The Slavery Convention of 1926 aimed to abolish slavery in all its forms. For the purpose of the Convention slavery is defined as "*the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*". Freedom from slavery was the first human right to be protected under international law.

Forced Labour is explicitly banned by four major international human rights agreements: the 1926 Slavery Convention; the 1948 Universal Declaration of Human Rights; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery; and the 1966 International Covenant on Civil and Political Rights (ICCPR).⁴⁵ The latter two also prohibit forced labour and slavery-like institutions, but the best-known international instrument for the suppression of forced labour is the 1930 ILO Convention No. 29 (concerning forced labour). It defines forced labour as:

'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'.

In short, forced labour is labour performed under compulsion and subject to a penalty.

The prohibition of slavery has now crystallized into a rule of customary international law (*ius cogens*) and attained the character of a peremptory (compulsory) norm.⁴⁶ The International Court of Justice has identified protection from slavery as one of two examples of obligations '*erga omnes*' arising out of human rights law.⁴⁷ This means that the prohibition of slavery is an absolute right for everyone that endures no limiting considerations, even in times of war or other emergencies and a private person is not able to renounce his right of freedom from forced labour.

Moreover, certain instances of forced labour (enslavement) are codified as a crime against humanity through the Statutes of the International Criminal Court, and other International Criminal Tribunals.⁴⁸

ILO Conventions

According to the ILO, freedom from forced labour is one of the four fundamental labour rights (the others are freedom of child labour, freedom of discrimination and freedom of association). In a declaration adopted in 1998, it states that all ILO members, even if they have not ratified the fundamental Conventions, have an obligation to respect, to promote and to realise the principles concerning the fundamental rights which are the subject of those Conventions. "The ultimate aim of the ILO is to provide a basis for ILO assistance to member states in establishing these rights in law and in practice to allow for ratification of the Conventions."⁴⁹

For companies this implies they are subject to national legislation on forced labour and states are obliged to implement and enforce this legislation. In addition, companies have to comply to national labour law and regulations regarding hours of work, wage payment, discrimination, child labour, etc. If national legislation falls below international standards, the company should follow ILO and other international standards.

ILO Conventions 29 (Forced Labour Convention, 1930) and 105 (Abolition of Forced Labour Convention, 1957) are most frequently referred to when defining forced labour, as most other standards find their definition in these ILO Conventions. In Convention 29 the circumstances are defined in which some forms of work are allowed to be used by the national authorities (e.g. a national emergency), subject to a detailed list of conditions and guarantees. Convention Number 105 obliges governments to suppress and not make use of any form of forced labour (and specifically specifies purposes for which forced labour is forbidden (Convention Nr 105).

Forced labour Convention Number 29

Forced labour is permitted to be used by national authorities only, for public purposes and subject to the following conditions and guarantees (the listing below is an abbreviation of the actual list):

- *Compulsory military service;*
- *Normal civic obligations;*
- *As a consequence of a conviction in a court of law;*
- *In cases of emergency (..) in the event of war (..) or threatened calamity such as fire, flood, famine, earthquake, violent epidemic (..) "or"(..) minor communal services (..);*
- *In general, work may not be imposed for the benefit of private individuals, companies and associations;*
- *The work must be of important direct interest for the community and of imminent necessity;*
- *It has been impossible to obtain voluntary labour;*
- *The work may not lay too heavy a burden on the worker: it may not take up more than 60 days in a year, it must be limited to normal working hours and must allow a weekly day of rest;*
- *Workers must be adult able-bodied males between 18 and 45 years old;*
- *Workers must be remunerated in cash at rates not lower than those prevailing for similar kinds of work, and extra hours must be paid;*
- *Wage must be paid to each worker individually (not to any other person);*
- *Deductions from wages shall not be made either for the payment of taxes or for special food, clothing or accommodation supplied to a worker;*
- *Compensation for accidents or sickness must be provided for, also for persons dependent on the worker;*
- *Healthy and safe working environment.*

The second ILO Convention (No.105) concerning the Abolition of Forced Labour (25 June 1957) is additional to No.29. This convention obliges governments to "suppress and not to make use of any form of forced or compulsory labour" for specified purposes:

- *As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;*
- *As a method of mobilising and using labour for purposes of economic development;*
- *As a means of labour discipline;*
- *As a punishment for having participated in strikes;*
- *As a means of racial, social, national or religious discrimination.*

Prison Labour

Prison labour is **not allowed**:

- When imprisoned without fair trial, or as a punishment for expressing oppositional views;
- As a means of labour discipline;
- As a punishment for having participated in strikes;
- As a means of racial, social, national or religious discrimination.

Is **allowed** as a consequence of a conviction in court of law provided that:

- The work is carried out under supervision and control of public authority;
- The person is not placed at the disposal of private individuals, companies or associations;
- The work is carried out on a voluntary basis, under decent conditions of work and against a reasonable remuneration.

Child Labour ⁵⁰

Under ILO standards the minimum age (ILO Minimum Age Convention, C138 (1973)) for entry into employment should be no younger than 15. If the company operates in a country where the age of entry into employment is higher than 15, the company must follow national legislation. If national legislation falls below the minimum of 15 years of age, the company must follow ILO standards.

In rare circumstances, governments in developing countries may set the age for entry into employment at 14, but only when done in accordance with ILO Convention 138, and only after consultation with employers and workers organisations.

In all circumstances the work may not interfere with the child's basic right of education. The company must not hire minors (below the age of 18) to perform work that is hazardous or harmful to their health (ILO Worst Forms of Child Labour Convention, C182 (1999), safety, or morals. National governments are responsible for defining the type of work considered hazardous or harmful to minors. Also the ILO Recommendation 190 regarding Worst Forms of Child Labour can be consulted (ILO Worst Forms of Child Labour recommendation, R190 (1999).

The Draft UN Norms of Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.

The UN draft Norms (explained in chapter 1) refer to forced labour in article 3 under the heading the 'Right to Security of Persons' and art.5 under the heading 'Rights of Workers', mentioning that transnational corporations and other business enterprises shall not use forced or compulsory labour as forbidden by the relevant international instruments and national legislation as well as international human rights and humanitarian law.

The official commentary to the draft Norms specifies that companies (a) "shall not use forced or compulsory labour, as forbidden in ILO Conventions 29 and 105 and other relevant international

human rights instruments. Workers shall be recruited, paid, and provided with just and favourable conditions of work.” and “They shall take all feasible measures to prevent workers falling into debt bondage and other contemporary forms of slavery.”

Paragraph b of the commentary specifies “workers shall have the option to leave employment and the employer shall facilitate such departure by providing all the necessary documentation and assistance.”

In addition, paragraph c of the commentary specifies that “Employers shall have resort to prison labour only in the conditions spelled out in ILO Convention No. 29, which allows such labour only as a consequence of a conviction in a court of law provided that the work or service is carried out under the supervision and control of a public authority and that the person concerned is not hired out or placed at the disposal of private individuals, companies or associations.”

These provisions apply to transnational corporations and other business enterprises, as well as to their officers, workers, contractors, subcontractors, suppliers, licensees and distributors, and natural or other legal persons that enter into any agreement with the transnational corporation or business. Here as well, reference is made to the ILO forced labour conventions.

Voluntary standards

While most ILO documents focus on states as the bearers of obligations, the **ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy** is directed at companies. The part of the Tripartite Declaration on forced labour is based on ILO Convention No. 29 and No. 105 and in Art. 58 it refers to forced labour in relation to the examination of grievances by multinational enterprises.

The **OECD Guidelines for Multinational Enterprises** are recommendations for multinational enterprises regarding nine areas of business conduct addressed by governments. Chapter IV (1c) states that companies are expected to contribute to the elimination of all forms of forced or compulsory labour.

According to the United Nations **Global Compact** Art. 4, businesses should uphold the elimination of all forms of forced and compulsory labour. In the explanation of the article, the Global Compact states that all managers should be aware of the forms and causes of forced labour and provide for business strategies in the workplace and in the community of operation, which prevent them from occurring.

Forced Labour in Myanmar⁵¹

"Ethnic minority civilians living in counter-insurgency areas continue to be taken as porters for the army, although the practice has decreased since ceasefires were agreed. The most difficult and egregious form of forced labour in Myanmar is forced portering, when the tatmadaw, or Myanmar army, forces civilians to carry heavy loads for several days or weeks at a time. Since ceasefires with armed opposition groups have been agreed, the use of forced portering has significantly decreased. It should be noted at the outset however, that forced labour on infrastructure construction projects has dramatically increased since the rapid expansion of the tatmadaw to all areas of Myanmar. As the army began to occupy most of the country, its troops forced ethnic minority civilians into forced labour duties on motor and railroads; building barracks and other military installations and working on military farms, which had been confiscated from the very civilians who once farmed that land. Forced labour still occurs on a regular basis in counter-insurgency areas, which include the southeastern Shan State; and areas of the Mon and Kayin States; and parts of Tanintharyi Division. Remnants of armed opposition groups operate in all these regions, which have subsequently become counter-insurgency areas with an increased tatmadaw presence."

"A 24 year old Bama Buddhist man who worked six days per week in a rock quarry in Kya-ein-sei-kyi township, Kayin State, and one day per week in forced labour duties making charcoal for the military to sell, told Amnesty International that he was required to perform forced portering in March 2004. He was taken by tatmadaw Division 45, and forced to carry rice and other supplies weighing 35 kilos. He was with 13 other village men, who were all forced to walk to Kyeikdone, near Three Pagodas Pass on the Thai-Myanmar border with no rest during the day or night. After three days he managed to escape with some others to Thailand, and although he was not beaten, he found it extremely difficult to carry such a heavy load with no rest and very little food. A 25-year-old Karen woman from Myawaddy township, Kayin State, told Amnesty International that her husband had to porter for the military in April 2004. He also escaped after a few days and fled to Thailand. Neither of these townships in the Kayin State are areas of intense counter-insurgency activities by the tatmadaw."

4

FROM POLICY TO PRACTICE

Dilemmas in the Workplace

Business principles

In their business principles, many companies refer specifically to human rights. To a lesser extent, company codes refer to forced labour. For instance, **Heineken International** does not explicitly refer to forced labour in its business principles but does state that they “endorse the principles underlying the Universal Declaration of Human Rights: respect for the dignity of all people, irrespective of race, religion, sexual orientation or political conviction. We will not cooperate, actively or passively, directly or indirectly, in any violation of human rights and we support our employees if third parties violate their rights. We are happy to publish our human rights policy in every country in which we operate. We endeavour to make sure all our employees are aware of their rights, not matter where in the world they work with us.”⁵²

On the other hand, the business principles of the company **Philips**, explicitly mentions forced labour: “Under no circumstances will Philips make use of forced or bonded labour”. The company’s Supplier Declaration adds: “Employment should be freely chosen. Under no circumstances will supplier make use of forced or bonded labour - such as forced labour performed by persons placed in an institution, or compulsory labour including labour as a means of political coercion or education – to design, manufacture or assemble products and services for Philips.”⁵³

Vendex KBB’s Company Code states: “We consider it unacceptable for any companies that manufacture goods for group companies to make use of forced labour or apply similar practices.”⁵⁴

Some companies mention forced labour together with child labour and core labour conventions. **Ahold** does so in its Global Code of Professional Conduct and Ethics: “We respect the fundamental rights of associates codified in local laws and by the International Labour Organization. These rights include freedom of association, prevention of forced and child labour, non-discrimination and equal remuneration for equal work.”⁵⁵

Like Philips, **Unilever** is focussing on their suppliers in particular. Unilever’s Code of Business Principles under the section regarding employees states: “We will not use any form of forced, compulsory or child labour.” Furthermore under the heading of Business Partners it mentions “Unilever is committed to establishing mutually beneficial relations with our suppliers, customers and business partners. In our business dealings we expect our partners to adhere to business principles consistent with our own.” Unilever has a special Business Partner Code in which is written: “There shall be no use of forced or compulsory labour, and employees shall be free to leave employment after reasonable notice”. Furthermore this code explicitly states that: “Wages and working hours will, as a minimum, comply with all applicable wage and hour laws, and rules and regulations, including minimum wage, overtime and maximum hours in the country concerned.”⁵⁶

Sara Lee/DE, has a similar approach. The company writes in its global business standards, under the section Human Rights and the Law: “We will not employ children or forced labour, including prison or bonded labour. We will not allow physical punishment or abuse. The company has Global Standards for Suppliers, in which it states that: “:Forced labour - Suppliers will not use forced or involuntary labour whether bonded, prison or indentured, including debt servitude.

Another section of relevance is *Workplace harassment or abuse - Suppliers will not subject employees to physical, verbal, sexual, or psychological harassment, nor use corporal or physical punishment to discipline employees*. Finally, Sara Lee's suppliers standard also includes a section on compensation - *Suppliers will, at a minimum; comply with applicable wage and hour laws and regulations, including those relating to minimum wages.*⁵⁷

Business Principles and Company Codes can be seen as an important declaration of intent. They give an important signal to the company and to the rest of the world. However, they are hollow statements when not complemented with solid enforcement mechanisms, enhanced with monitoring and independent auditing instruments, with clear procedures for non-compliance.

Implementation of Principles on Forced Labour

Only a few companies give particular attention to the issue of forced labour by translating their forced labour principles into practice. The ILO⁵⁸ itself and organisations such as the Global Compact⁵⁹, the Danish Centre for Human Rights⁶⁰ and specialised groups such as Anti-slavery International⁶¹ offer practical guidance in relation to forced labour. This section draws upon their efforts.

To give guidance on how to implement the principles we should return to the ILO definition. The ILO defines forced labour as *'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'*. There are two important elements:

1. "Not offered voluntarily"

All labour should be freely chosen and employees should be free to leave in accordance with the employee's contract. A company should make sure all the employees present themselves voluntarily for work and are free to leave. Rights should therefore be specified in the workers' contract and the worker should give informed consent to the contract. Workers should not be able (or obliged) to lodge unreasonable deposits, making it impossible for them to leave of their own free will. In addition, all terms and conditions of service should be specified in employment contracts, such as working conditions, hours and wages compliant with the minimum labour standards of the country and international standards, rules regarding termination of employment contracts and information about complaint mechanisms, voluntary nature of employment, freedom to leave (including the appropriate procedures) etc. All these conditions should be translated into the employee's language. Companies can incorporate minimum age requirements into their policies, to avoid young workers sent to work without personal consent.

Forced Labour is often concealed behind false contracts, therefore standardised labour contracts used within a company as well as within the chain of suppliers and subcontractors can assist in preventing forced labour. Another means to counteract illegal practices and unmask exploitative labour relations is making sure wages are paid regularly and directly to the individual. In addition, it is wise to have as few intermediaries as possible between the company's human resources department and the employee, to be sure to use respected employment agencies and to be alert when employees say they are "self-employed". The latter could hide a 'forced labour relationship'.

2. ***“Under the menace of any penalty”***

People are forced to work by using violence, or threat of violence or other penalties, like denial of pay, benefits or rest periods, threat of dismissal etc. Company policies can be implemented to forbid the use of violence, threat of penalties, or other intimidating practices like confiscation of personal documents (only copies) or wage punishments (information about wage cuts should be provided in the books). In addition, companies can implement policies to ensure the protection of vulnerable employees, e.g. discriminated minority groups.

“In February 2004, Greek workers were brought to Cornwall to pick daffodils. Some of the flowers were picked for Winchester Growers, a major supplier of flowers and to retailers including Sainsburys, Tescos, Marks and Spencer, Homebase and major garden centres. The daffodil pickers however, claimed they had been subjected to slave ‘labour conditions’, labouring 10 hours a day in the rain and snow and being given cans of dog food to eat. They slept in tents and unheated sheds, which on inspection were described by the local authority head of planning and building control as ‘totally unfit for human habitation’. They allege that they were physically beaten and threatened by armed thugs when they said they wanted to return to Greece. They called me in and said to me, ‘Do you know what it means to be involved with the mafia?’ So I said no and they showed me guns and told me no one was leaving. They finally obtained a telephone card and contacted their village in Greece. Friends from there in turn contacted the Greek Embassy who arranged to help the escape. The managing director of the agency that supplied the workers claimed that they simply couldn’t do the work and they made up these stories as excuses so they could leave.”⁶²

Additional Implementation Mechanisms

• ***Complaint mechanism***

To further complete the translation from principle to policy, the company should provide a process for seeking justice. Workers should be able to file a complaint about an instance of abuse of the business principles without being afraid of losing their job or being harassed. Such a system also helps giving insight into the labour situation in certain assets. To this end an objective complaints mechanism can be implemented together with a mechanism to protect the complainant filing a complaint. In an effective complaints mechanism employees are well informed of the procedures and aware of their rights and duties. In addition policies can be implemented ensuring fair investigation of complaints.

• ***Training***

Principles stay principles when not really planted in the heart of the company. Operational managers should be aware and knowledgeable of the risk of becoming involved in forced labour. They also should be aware of the company’s regulations when encountering it on one of the premises. Training employees on human rights & business related matters is an important and effective step in implementing business principles.

- **Supply chain**

Practices of forced labour are often at stake in the supply chain of a company and in outsourced activities, at a distance from the parent company's headquarters. A complex network of contracts and suppliers can conceal forced labour. In order to identify forced labour in the supply chain, some elements require ongoing attention:

- Awareness of the characteristics of forced labour and of the regions where it occurs.
- Understanding of the implications of discrimination against minority groups and the regions where this abounds.
- Paying ongoing attention to the particular risks of the specific business sector and their relationship to different types of forced labour.
- Open communication to suppliers about zero tolerance towards forced labour. Integration of position and policies in contracts with suppliers and subcontractors and consider providing training to the main suppliers. Shell had negotiated such an integrated approach on forced labour in its former joint venture with PetroChina on the EastWest Pipeline.
- Subsequently close monitoring of the supply chain is indispensable. Companies need to obtain a detailed understanding of employment practices covering the localities, factories and suppliers in question. This can be achieved in collaboration with local NGOs or local unions. These organisations are knowledgeable in terms of the local labour market. Consultation and co-operation with them can result in regular checking procedures, necessary to acquire vital information. They could even assist in providing human rights training.
- A practical suggestion to monitor the supply chain made by a representative from the GAP Int. is to keep track of the outsourcing activities of a factory. This information can be obtained by keeping a close eye on the order set out in a certain factory in relation to the capacity of this particular factory. This requires ongoing attention by purchasing departments and, when necessary, co-operation with other companies that set out orders in the particular factory. Especially in countries where small sweatshops or homework thrives, like India and China, this can be useful.
- Finally, a company needs to develop a mechanism charting the necessary steps to take in situations where forced workers are identified. For example, outline actions not only to counteract the practice, but also to provide for the rehabilitation (and compensation) of the workers involved. A comprehensive set of interventions to address not only the needs of individual forced labourers but also the needs of their families. Facilities and services should be provided to enable them to make viable alternatives. It is advisable to contact local NGOs or trade unions to develop a sustainable resolution.

A company's policy gives insight into its position towards forced labour. Yet it is important to understand how companies bring these commitments into practice and thus can make a positive contribution towards the suppression of forced labour. Philips for instance, executed an extensive pilot on monitoring child labour in the supply chain. According to the company, this pilot was valuable in revealing risk areas for forced labour. Unilever set up the Shakti Project, a micro credit project where poor rural women are provided with the tools to sell soap and other personal hygiene products of Unilever in remote areas. Although originally set up by Hindustan Llever (Unilever's Indian Subsidiary) in collaboration with the Indian government to reach untouched markets in rural India, it also helps to fight poverty as a root cause of forced (child) labour. In the meantime the initiative expanded to 12 states in India to Sri Lanka and Bangladesh. The company helps train them in techniques for selling and provides local marketing support.

Sector Differences

Forced Labour in Saipan

USA fashion companies have been purchasing finished items of clothing from operations based in Saipan.⁶³ Saipan is the largest island in the Northern Mariana Islands, a group of Islands in the Pacific Ocean (a U.S. Commonwealth), and is attractive to the garment industry because of its low (minimum) wages, incoherent immigration laws, and exemption from U.S. import duties. Workers in the factories are migrants, mainly young women from Bangladesh, China, Philippines and Thailand, lured to the island with promises of work in the USA. To get to the island, the workers had to sign a 'shadow contract' requiring them to pay a 'recruitment fee'-which many borrowed at extremely high interest rates- and prohibiting them from activities such as protesting against working conditions. After arriving on the island, the women encountered conditions not corresponding with promises made. The workers faced harsh living and working conditions and especially long-hours of work that amounted to forms of peonage and involuntary servitude.

- **Trafficking**

The case of Saipan illustrates the susceptibility of the textile sector for trafficked migrant women. Trafficking is the fastest growing form of forced labour. It often involves (migrant) women and children. Countries of concern are both Western countries as the place of destination as well as developing countries as the place of origin and transit of the trafficked person.

Trafficked people are sometimes tied to employment agencies, using a variety of illegal methods to tie people to their business, such as the unlawful seizure of passports, residence- or working permits. Migrants, even if they migrate voluntarily (either on their own or via a contractor or trafficker), are often tricked into forced labour at farms, or in sweatshops. Companies should be extra diligent when using external agencies for their labour supply, especially in the agricultural sector and textiles sector. The Human Resources department should be aware of possible exploitative labour relations between an agency and the employee. The company has little or no control over this relationship.

Child slaves in Cocoa Plantations in Ivory Coast

About 15,000 children between the ages of 9 and 12 have been sold into forced labour on cotton, coffee, and cacao plantations in the Ivory Coast in recent years. These farms are situated in remote areas in the Ivory Coast. Although the issue received international attention it is still not resolved. Reportedly, African children are trafficked to the Ivory Coast and forced to work harvesting and cultivating cocoa beans without pay on cacao plantations. The child labourers cannot leave the plantations, which are guarded day and night. There are reports of child workers being beaten and receiving severe punishments

in retaliation for escape attempts. The cocoa industry developed a voluntary industry initiative in an attempt to eliminate the worst forms of child labour in the West African cocoa industry. A key part of the agreement is an obligation for companies to have in place an independent and credible system of farm monitoring, certification and verification for their suppliers by the 1st of July 2005, to ensure no child labour is taking place. In addition, companies are expected to implement credible programmes to address the rehabilitation of child labourers.

Bad or illegal labour practices are often linked to very low prices paid by the industry, in the case of Ivory Coast the price of cacao. As such, it is recommended to set up an industry-wide dialogue to solve the inhuman conditions in a sector.

Bonded child labour in Indian cotton seed industry

In a report from the India Committee the Netherlands it was revealed that during 2001/2002 more than 80.000 children, between 6 and 14 years of age, were working in poor conditions on cottonseed farms in the state of Andhra Pradesh in India.⁶⁴ These farms produce for both Indian and multinational corporations like Monsanto and Syngenta. The seed industry unilaterally fixed a price that makes it almost impossible for the farmers to pay more than a child's salary. A child earns 25% less than a woman. These children work as bonded labourers, they are being recruited by intermediaries to live and work at places away from their parents. It is reported that 70% of the child workers are, through advances paid to their parents, bonded to the same employer. These children work 12 to 13 hours a day and sleep in the farmer's cowshed or in a 'child camp'.

- ***Bonded labour***

Difficult to trace, because bonded labour is often concealed behind the veil of an employer-employee relationship. Without a thorough investigation and direct contact with employees it is hard, if not impossible, to ensure employees are not forced to work to pay off their 'debts'. Therefore, contact with local NGOs or trade unions is pivotal.

In the agricultural sector, as the example in the cotton seed industry illustrates, the supply chains are sometimes complex and unsettled. Monitoring the supply chain therefore, can make great demands on a company but is indispensable. Keeping close contacts with local NGOs to keep track of and assist in monitoring the local situation can be of assistance.

Bonded labour occurs mostly in India and other Asian countries, most notably in the sectors of agriculture and textile production. There are more reports of instances where forced child labour is linked with debt bondage.

- ***Forced overtime***

Another issue companies rather keep undisclosed is forced overtime, which occurs on a global scale. With a production process under extreme time and financial pressure, or possibly when

materials are delivered late due to administrative or logistical trouble, or if a deadline is too tight. A situation in which a supplier shifts to illegal methods to ensure targets are met, e.g. violence or threat of dismissal. Suppliers are pressurized by the menace of losing a contract when they cannot deliver in time, which is considered too big a financial loss. In China, the fierce competition between factories in e.g. the manufacturing industry, results in competition at the cost of labour conditions.

Companies can contribute to resolve a forced overtime situation. The first step is to understand the causes of forced overtime. It could be considered to provide training to improve inefficient production or administration. One could also consider to provide better compensation or set more reasonable deadlines.

Although the textile and agricultural sector can be regarded as risk sectors with regard to forced labour, Amnesty International received reports of practices in other business sectors. For example the manufacturing of electronics, the production of steel, mining of natural resources or large infrastructural projects.

Regional Differences

Companies should be extra cautious when operating in countries where the state violates international human rights law. The "Geography of Corporate Risk" published by Amnesty International and the Prince of Wales International Business Leaders Forum in 2002, provides an analysis of human rights abuses in different countries sorted by sector. Forced labour is one of the human rights abuses analysed in this publication.

South Asia: Bonded labour in agriculture, domestic work, sex trade and other manufacturing industries. Often involves women and children. India, Pakistan, Bangladesh, Nepal, Thailand, Philippines, Sri Lanka, Indonesia, Vietnam.

Asia Pacific: State imposed forced labour. Myanmar: infrastructural works and maintenance of military camps and China forced prison labour.

Africa: Chattel slavery, ethnic or religious groups. Local authorities or militias abduct people and force them to fight or work. Migrant women are trafficked and work in the textile sector or as domestic servants. Mauritania, Niger, Sudan, Ghana, Ivory Coast, Angola, Zimbabwe, Tanzania, Kenya.

Middle East: Domestic service, debt bondage, involuntary servitude. Young boys trafficked into to work as camel jockeys. United Arab Emirates, Saudi Arabia, and Morocco.

Latin America: Debt bondage, abusive conditions of work; rural or indigenous populations in remote areas. Trafficking for sexual exploitation, domestic slavery or other sorts of labour; often migrants. Brazil, Dominican Republic and Haiti.

North America: Trafficking; forced to work in prostitution or domestic work, on farms or factories.

Europe: Trafficking; sexual exploitation, forced to work in agriculture, domestic service, construction work, sweatshops. East and Central Europe, Russia and Former Soviet States.⁶⁵

No simple business guide exists to identify exactly where forced labour is practised, nor is anyone able to predict precisely where and when companies will be confronted with forced labour. This section concludes with some guidelines and recommendations to enable companies to prevent and resolve forced labour in their sphere of activity and influence. It offers an overview of practical guidelines to use for example in a pre-investment risk assessment, as well as recommendations for ongoing monitoring of the situation, intervention and compensation advices.

Understanding the causes of forced labour is the first step towards taking action against forced labour.

Recommendations for pre-investment decisions:

- It is recommended to be well informed about geographical and other characteristics of forced labour practices. Amnesty International and Human Rights Watch reports can be consulted as well as ILO information.
- It is recommended that companies are knowledgeable about national legislation on forced labour in any country of operation;
- It is recommended that companies conduct a human rights risk assessment before investment materialises, e.g. the Human Rights Compliance Assessment of the Danish Institute of Human Rights. Especially in situations where companies have little managerial control, a risk assessment is an opportunity to anticipate forced labour.

Define principles and policies:

- Company principles should be based on the ILO Convention (No. 29) concerning Forced Labour, and on the ILO Convention (No. 105) concerning the Abolition of Forced Labour;
- Followed by policies designed to prevent forced labour. It is recommended to implement:
 - Standardised labour contracts, including specifics in labour contracts: hours of work, wage agreements (in local language);
 - A policy to make sure payments are regularly and direct.
 - A non-discrimination policy;
 - A minimum age requirement;
 - A policy regarding worker representation and right to organise;
 - A policy to prevent the use of violence within the company;
 - A policy to prevent the use of threats of penalties prohibit intimidating practices;
 - A policy to prevent confiscation of personal documents (make Copies);
 - A policy to make sure work is freely chosen and workers are free to leave.

Inform employees and raise awareness of rights:

- Several departments within a single company might be confronted with the issue of forced labour. It is recommended that information is distributed on the issue of forced labour to these different departments, and to stimulate them to take a special interest in the subject - e.g. purchase department, human resources, quality control, country managers. It is recommended

- that these departments be provided with human rights training;
- It is recommended that local workers in risk countries are made aware of the company's business principles in local languages. Arrange for oral briefings where literacy is a problem.

Implement policy toward suppliers:

- It is recommended that standards are incorporated into all contracts with joint venture partners, suppliers and sub-contractors, and built into monitoring of business partners' practices;
- It is recommended that there is a clear follow-up for non-compliance;
- Consider providing human rights training to major suppliers.

Check compliance:

- Continuous monitoring of the local situation is advisable. Consider operating with local experts;
- Use independent verification to ensure continuous improvements in the areas of labour standards, worker representation and dealing with grievances and cases of worker maltreatment. Independent monitoring can be established in consultation and co-operation with local trade unions and NGOs working in geographical proximity to company facilities of the company and/or its suppliers;
- Local NGOs and Trade Unions can assist in resolving an instance of forced labour;
- It is strongly recommended to report instances of forced labour, and make them public.

Provide and install complaint and remediation mechanisms:

- It is recommended that an objective complaint mechanism is adopted to assure the protection of the complainant;
- It is recommended that there is a fair process for investigation of complaints. Does the company have a compensation mechanism to recompense for any wrongdoing?

Take extra care when:

- Suppliers claim that all workers are 'self-employed'. This can conceal illegal practices;
- A complex network of contracts and suppliers may conceal forced labour;
- Services of external employment agencies are used.

In addition:

- Staff should be prepared to raise concerns regarding forced labour in a variety of ways, such as directly, at an appropriate level within the host government, or indirectly, by making it public. Disclosing a forced labour problem to the public may create possibilities to resolve the situation;
- Be prepared to raise concerns of employee persecution by state authorities with relevant

- government officials through quiet diplomacy or speaking out when the need demands;
- The ILO suggests in their latest report "*A global alliance against forced labour*" that freedom of association be encouraged: "Empowering such workers through association can be an important mean of tackling their vulnerability to forced labour situations";
 - It may be of interest of the corporate sector to encourage legislation, both at the regional and national level;
 - The ILO suggests in its latest report "*A global alliance against forced labour*" that the corporate sector "might explore avenues in an area singled out as a means of undermining the spread of forced labour: microfinance. Providing small loans to individuals can important both for reducing the dependence of workers on wage advances from their employers and for effective rehabilitation of released bonded labourers."

BIBLIOGRAPHY

- Amnesty International, *People's Republic of China, Detained and Imprisoned Labour Rights Activists*, AI Index: ASA 17/014/2002, 30 April 2002.
- Amnesty International, *Mauritania: A future free from slavery*, AI Index: AFR 38/005/2002, 7 November 2002.
- Amnesty International, *Democratic Republic of the Congo. "Our brothers who help kill us" - economic exploitation and human rights abuses in the east*, AI Index: AFR 62/010/2003, 1 April 2003.
- Amnesty International, *Zhang Shanguang teacher and labour activist, China*, AI Index: ASA 17/003/2003, 15 January 2003.
- Amnesty International, *International Labour Organization, Amnesty International's concerns relevant to the 91st session of the International Labour Conference*, AI Index: IOR 42/003/2003, 11 April 2003.
- Amnesty International, *International Labour Organisation: 91st Session of the International Labour Conference, 3-19 June 2003*.
- Amnesty International, *Kosovo (Serbia and Montenegro) "So does it mean that we have the rights?" Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo*, AI Index: EUR 70/010/2004, 6 May 2004.
- Amnesty International, *Myanmar. The Rohingya Minority: Fundamental Rights Denied.*, AI Index: ASA 16/005/2004, 19 May 2004.
- Amnesty International, *Report 2005: The State of the World's Human Rights*, London, 2005.
- Amnesty International, *Myanmar Leaving Home*, AI Index: 16/023/2005, 8 September 2005.
- Amnesty international, *Human rights for human dignity, A primer on economic, social and cultural rights*, 2005.
- Amnesty International UK and the Prince of Wales Business Leaders Forum, *Human Rights – is it any of your business?*, 2000.
- Amnesty international UK and the Prince of Wales International Business Leaders Forum, *Business and Human Rights A Geography of Corporate Risk*, 2002.
- Anderson, B., Rogaly B., and Trade Union Congress, *Forced Labour and Migration to the UK*, 2005.
- Bales, K., *Disposable People: New Slavery in the Global Economy*, University of California Press, 2000.
- Bronkhorst D., *China: Human Rights & Business Briefing*, Amnesty International Dutch section, 2005.
- Danish Institute for Human Rights, *The Human Rights Compliance Assessment The right to freedom from forced labour and servitude*, 2004.
- Davuluri V., *Child Labour in Hybrid Cottonseed Production in Andhra Pradesh: Recent Developments*, 2004.

Gordon, K., *The OECD Guidelines and Other Corporate Responsibility Instruments: A Comparison*, Working Papers on International Investment No. 2001/5, OECD Directorate for Financial, Fiscal and Enterprise Affairs, 2001.

India Committee of the Netherlands, *Multinational and Indian Companies still profit from bonded child labour in cottonseed farms in India*, 2004.

ILO, *Global Report: A future without Child Labour*, Report I (B) International Labour Conference, 90th session, 2002.

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, International Labour Conference 93rd session 2005.

International Peace Academy and Fafo, *Business and International Crimes: Assessing the liability of business entities for grave violations of international law*, 2004.

International Council on Human Rights Policy, *Beyond Voluntarism Human rights and the developing international legal obligations of companies*, Versoix Swiss, 2002.

Jägers, N., *Corporate Human Rights Obligations: in Search of Accountability*, Antwerp, Intersentia, 2002.

Jayawickrama N., *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence*, Cambridge University Press, 2002.

Joseph S., *Corporations and Transnational Litigation*, Hart, Oxford, 2004.

Kamminga M., Zia-Zarifi S., *Liability of multinational corporations under International Law*, Kluwer Law International 2000.

Lanotte vande J. & Haeck Y., *Handboek EVRM. Deel 2 artikelsgewijs commentaar*, Intertsia, 2004.

Laogai Research Foundation, *Laogai handbook 2003-2004*, Washington DC, 2004.

Sullivan, R (ed.), *Business and Human Rights, Dilemmas and Solutions*, 2003.:

SustainAbility, *The changing landscape of liability, A director's guide to trends in corporate environmental, social and economic liability*, 21 January 2005.

US Department of State, *Country Reports on Human Rights Practices China*, 2004.

United Nations OHCHR, *Report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights*, Commission on Human Rights, Sixty-first session, Item 16 of the provisional agenda, 2005

Weisbrodt D. and Anti-Slavery International, *Abolishing Slavery and its Contemporary Forms*, United Nations New York and Geneva, 2002.

NOTES

- 1 Members of the Round Table: ABN Amro, Ahold, Akzo Nobel, Boskalis Westminster, C&A, DSM, Heineken, ING Group, Numico, Philips, Rabobank, SaraLee/DE, Shell, Unilever, vendex KBB and Amnesty International Dutch Section.
- 2 In the 1993 *Vienna Declaration and Program of Action* representatives of 171 states “[r]eaffirm(ed) their commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights”.
- 3 In law, codification is the process of collecting and restating the law of a jurisdiction in certain areas, usually by subject.
- 4 Amnesty International and The Prince of Wales Business Leaders Forum, *Human Rights - Is it any of your business?*, April 2000 p.22.
- 5 E/CN.4/Sub.2/2003/38/Rev.2 (2003).
- 6 E/CN.4/2005/91, 15 February 2005, Report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights. 2005, p 14. International Council on Human Rights Policy, *op. cit.*, p 136.
- 7 The tripartite typology of obligations was first developed by Henry Shue in 1980. In 1987 the tripartite typology was reintroduced by Asjborn Eide, at that time the UN Special Rapporteur on the Right to Food. Jägers applied this typology in the context of corporations in her dissertation *Corporate Human Rights Obligations: in Search of Accountability*, 2002.
- 8 Joseph, S., 2004, p. 151 details and analyses the developments in recent civil cases “to serve as a guide to the new ways in which corporations may be liable in domestic courts for human rights abuses. Even though there are no final merits judgements, the interim decisions to date give important clues as to the possible extent of modern trans national corporate human rights liability.”
- 9 SustainAbility, 2004, p.27.
- 10 “Relevant municipal laws have existed for many years in many countries which impose domestic human rights responsibilities on corporations. In the last few years, creative litigants have forged potential new paths for holding TNC’s liable in the courts of their developed home countries for their allegedly egregious activities in developing host countries. That is, TNC’s are being sued at home for their alleged extraterritorial human rights abuses.” Joseph, S., 2004, p 12.
- 11 International Peace Academy and Fafo, 2004.
- 12 ILO, *A global Alliance against Forced Labour*, 2005.
- 13 Weisbrodt D. and Anti-Slavery International, 2002, pp 5-7.
- 14 ILO, *A global alliance against forced labour*, 2005, p 30.
- 15 For a fuller exploration, see Bales, K., 1999. See also Amnesty International, *Mauritania A future free from slavery?*, 2002.
- 16 Amnesty International, *Report 2005: The State of the World’s Human Rights*, 2005, p 175.
- 17 Amnesty International, *91st session of the International Labour Conference, 3-19 June 2003*, p 19.
- 18 Weisbrodt D. and Anti-Slavery International, 2002, p 6.
- 19 Weisbrodt D. and Anti-Slavery International, 2002, p 14.
- 20 www.antislavery.org visited June 8, 2005.
- 21 Bronkhorst D., 2005.
- 22 www.laogai.org, visited 8 June 2005. This website provides a Laogai Handbook listing Laogai (Reform through Labor) camps in China and the products made in each of these camps.
- 23 ILO, 2002, pp 17-18.
- 24 Amnesty International, *Kosovo (Serbia and Montenegro) “So does it mean that we have the rights?”*, 2004.

- 25 American Anti-Slavery Group Factsheet: <http://www.iabolish.com/today/factsheet.htm>, visited 16 July 2005.
- 26 Laogai Research Foundation, 2004, p.17.
- 27 US Department of State, 2004, p 39. [www.state.gov/internationaltopics and issues/human rights](http://www.state.gov/internationaltopics_and_issues/human_rights).
- 28 www.laogai.org, visited 8 June 2005.
- 29 [www.iabolish.org/today/factsheet.htm](http://www.iabolish.com/today/factsheet.htm), web portal of the American Anti-Slavery Group, visited 5 August 2005.
- 30 *Ibid.*
- 31 Amnesty International, *Myanmar. The Rohingya Minority: Fundamental Rights denied*, 2004.
- 32 Amnesty International, *People's Republic of China, Detained and Imprisoned Labour Rights Activists*, 2002.
- 33 www.laogai.org/today/factsheet.htm, web portal of the American Anti-Slavery Group, visited 5 August 2005.
- 34 Amnesty International, *Democratic Republic of the Congo, "Our brothers who help kill us"*, 2003.
- 35 [www.iabolish.org/today/factsheet.htm](http://www.iabolish.com/today/factsheet.htm), web portal of the American Anti-Slavery Group, visited 5 August 2005.
- 36 *Ibid.*
- 37 *Ibid.*
- 38 Amnesty International, *Amnesty International's concerns relevant to the 91st session of the International Labour Conference*, 2003. Amnesty International, *Mauritania: A future free from slavery*, 2002.
- 39 [www.iabolish.org/today/factsheet.htm](http://www.iabolish.com/today/factsheet.htm), web portal of the American Anti-Slavery Group, visited 5 August 2005.
- 40 Amnesty International, *Amnesty International's concerns relevant to the 91st session of the International Labour Conference*, 2003.
- 41 [www.iabolish.org/today/factsheet.htm](http://www.iabolish.com/today/factsheet.htm), web portal of the American Anti-Slavery Group, visited 5 August 2005.
- 42 *Ibid.*
- 43 *Ibid*, visited 16 July 2005.
- 44 Amnesty International, *Mauritania A future free from slavery?*, 2002, p 1.
- 45 According to article 7 of ICCPR (International Covenant on Civil and Political Rights) "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." In Article 8 it is stated that: "No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited, no one shall be held in servitude and no one shall be required to perform forced or compulsory labour". Article 8 further states that "the prohibition of forced labour does not precludes the performance of hard labour in pursuance of a sentence to such punishment by a competent court and subscribes four kinds of work or service not deemed to be included within the term of 'forced or compulsory labour'."
- 46 Human Rights Committee, General Comment 24 (52), General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994).
- 47 Jayawickrama N., 2002.
- 48 Rome Statute of the International Criminal Court, Art. 7(1)(c) en 7(2)(c). The International Criminal Tribunal of Yugoslavia, the International Criminal Tribunal of Rwanda, and the Statute of the Far East War Crimes Tribunal and Control Council Law No. 10. Essentially, the necessary elements

are, in addition to the widespread or systematic elements: that the perpetrator exercise any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty. From: International Peace Academy and Fafo, 2004.

49 Gordon K., 2001.

50 Danish Institute of Human Rights, 2005, pp 12-15. [www://hrca.humanrightsbusiness.org](http://hrca.humanrightsbusiness.org).

51 Amnesty International, *Myanmar: Leaving Home*, 2005.

52 www.heinekeninternational.com/responsibility/policies/humanrights, visited 23 August 2005.

53 www.philips.com/about/investor, visited 23 August 2005.

54 www.vendexkbb.com/en/CompanyCode.pdf, visited April 3, 2005.

55 www.ahold.com/corporategovernance, visited 23 August, 2005.

56 www.unilever.com/ourvalues/purposeandprinciples/ourprinciples, www.unilever.com/ourvalues/purposeandprinciples/business_partners_code/default.asp, visited 23 August, 2005.

57 www.saralee.com/ourcompany/globalbusinesspractices.aspx, visited 23 August 2005.

58 www.ilo.org/declaration on fundamental principles and rights at work/forced labour

59 www.unglobalcompact.org/abouttheGC/thetenprinciples/principle4.html

60 www.humanrightsbusiness.org/humanrightscomplianceassessment

61 www.antislavery.org/slaverytoday

62 Story reported in *The Independent* Feb. 13th 2004. From: Anderson, B., Rogaly B., 2005, p 36.

63 Amnesty international and the Prince of Wales Business Leaders Forum, 2000, p. 60.

64 The research was done in assignment of the India Committee of the Netherlands by Dr. Davuluri Venkateswarlu, 2004.

65 This matrix is by no means inclusive and based on several resources: Amnesty International and Prince of Wales International Business Leaders Forum, 2002. ILO, *global alliance against forced labour*, 2005. Multiple Reports Amnesty International.