

Training Tool: Human trafficking

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Human Rights and Business Dilemmas Forum



Photo: Bala Sivakumar



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The relationship between business and human rights



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The UN "Protect, Respect and Remedy" Framework

In 2011, the Human Rights Council approved the [UN "Protect, Respect and Remedy" Framework](#) which set out the boundaries of human rights responsibility for businesses globally from all industries. Under the Framework:

- Companies have a responsibility to **RESPECT** human rights – including compliance with national laws plus their own due diligence processes to manage human rights

- Both govt.'s and companies should provide **ACCESS TO REMEDIES** – incl.:
 - For govt.'s: Appropriate/effective judicial and non-judicial mechanisms
 - For companies: Grievance mechanisms through which stakeholders can seek redress should their rights be undermined by a company's activities

Human Rights



The UN Guiding Principles

The [Guiding Principles for the Implementation of the UN "Protect, Respect and Remedy" Framework](#) provide guidance on how businesses can operationalise their responsibility to respect human rights. It is based on three pillars:

- ❑ **Implement a human rights policy:** This should include a commitment to respect human rights and guidance as to the specific actions to be taken to give this commitment meaning
- ❑ **Apply human rights due diligence:**
 - ❑ Periodic assessment of actual/potential impacts of company activities/relationships
 - ❑ Integration of human rights commitments into internal control systems
 - ❑ Tracking of human rights performance
 - ❑ Public and regular reporting on human rights performance
- ❑ **Provide for remediation:** Where companies are responsible for adverse impacts, they should provide for – or cooperate in – their remediation

About human trafficking and human rights



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Human trafficking: Definition

According to Article 3 of the [UN Protocol to Prevent, Suppress and Punish Trafficking in Persons](#), trafficking in persons is defined as:

Act

“The recruitment, transportation, transfer, harbouring or receipt of persons...”

Means

“...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...”

Purpose

“...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”

Note the wide spectrum of ‘means’ included in the definition...



Potential for complicity in human rights abuses

There are three main ways in which responsible companies may be complicit in human rights abuses relating to trafficking:

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

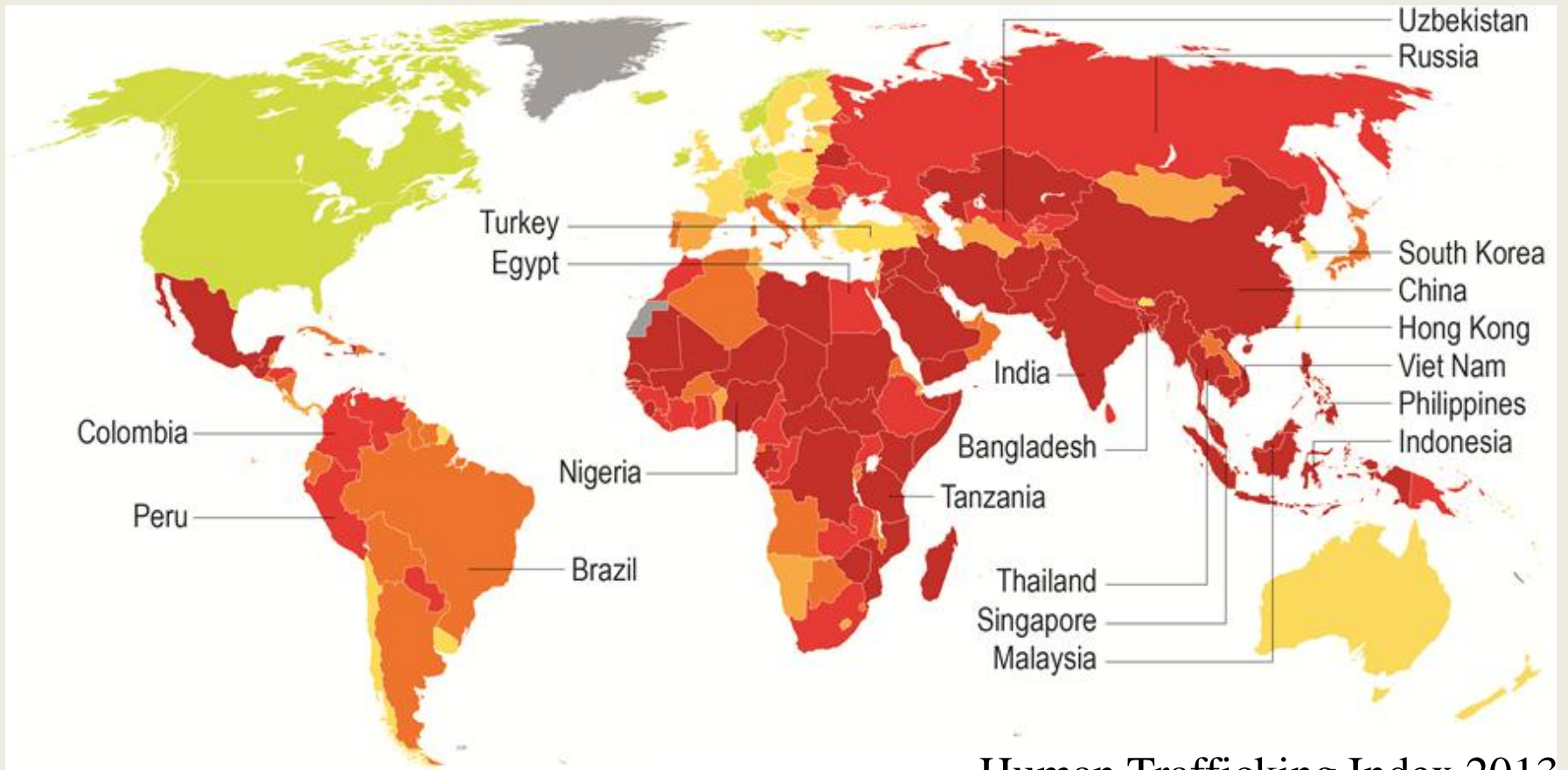


Potential for complicity in human rights abuses

Given that human trafficking generally takes place in illegal circumstances, it is a challenge for companies to address it. While many companies can ensure their own workforces are free from trafficking, it is much harder when managing supply chains – particularly where these extend into areas of weak governance.

According to the [UN Global Initiative to Fight Human Trafficking](#), trafficking is driven by a range of factors, including (amongst other things):

- Unemployment and lack of economic opportunities in source areas/countries
- Growing inequality between and within countries
- Lack of information for pot. migrants about migration risks and opportunities
- Increased freedom of movement between states
- Market demand for sexual services and cheap labour
- The vulnerability of migrant workers (incl. uncertain legal status/discrimination)



Human Trafficking Index 2013

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Legend	Extreme Risk	High Risk	Medium Risk	Low Risk
	0.00 - 1.25	>1.25 - 2.50	>2.50 - 3.75	>3.75 - 5.00
			>5.00 - 6.25	>6.25 - 7.50
				>7.50 - 8.75
				>8.75 - 10.00



Rights that might be impacted by human trafficking

Right	Reference	Description	Examples
Right to rest and leisure	UDHR, Article 24	Trafficked persons are likely to have little/no say with respect to terms of employment, incl. working hours and holiday	Persons trafficked for forced labour unlikely to have regulated hours of work, daily and weekly rest periods and annual holidays
Right not to be subject to torture, cruel, inhuman and/or degrading treatment or punishment	ICCPR Article 7	Human trafficking is likely to involve the use of force, threats, physical and psychological violence, or other forms of coercion	Use of physical and/or sexual abuse by criminal gangs to establish/maintain control over trafficked people
Right not to be subjected to slavery, servitude or forced labour	ICCPR, Article 8	Includes sexual and economic exploitation and trafficking. Victims of trafficking are particularly vulnerable to slavery, servitude or forced labour	A key motivation for traffickers is to benefit from the forced labour/debt bondage of their victims



Rights that might be impacted by human trafficking

Right	Reference	Description	Examples
Right to liberty and security of person	ICCPR, Article 9	Trafficked persons are likely to experience arbitrary arrest and detention and be deprived of liberty during the trafficking process	Trafficked workers may be locked in workplaces and/or accommodation to prevent escape
Right to freedom of movement	ICCPR, Article 12	Trafficked persons are likely to face restrictions on their movement in order to ensure their efficient exploitation by their abusers	Victims are likely to have their passports (or other relevant identity documents) withheld by traffickers to prevent them escaping and to generate improper leverage
Right to freedom of association	ICCPR, Article 22	Trafficked persons exploited through forced labour are unlikely to be able to exercise this right	It is very unlikely that traffickers will tolerate any kind of organisation or cooperation amongst victims



Rights that might be impacted by human trafficking

Right	Reference	Description	Examples
Right of protection for the child	ICCPR, Article 24	Children are particularly vulnerable to trafficking due to their emotional, psychological, social and intellectual status	Children are common victims of trafficking to tourist locations for the purpose of commercial sexual exploitation
Right to an adequate standard of living	ICESCR, Article 11	The exploitation element of human trafficking means victims' standards of living are likely to be severely compromised	Traffickers are likely to maximise the economic returns of their exploitation of victims by mostly providing less than basic living conditions

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Risks posed to business

Aside from the moral imperative to avoid complicity, evidence of trafficked victims within a company's operations or its supply chain can result in a number of risks.

These include:

- ❑ **Legal liability** under national law – or under applicable laws in home jurisdictions such as the California Transparency in Supply Chains Act 2010 as well as applicable laws on combating trafficking in US federal contracting such as Title XVII of the National Defence Reauthorisation Act 2013
- ❑ **Exclusion from certain types of tenders** (e.g. where customers insist on proof of a trafficking-free supply chain/effective anti-trafficking systems) – including US federal contracts, for example
- ❑ **Reputational damage and brand erosion** as a result of negative publicity, activist campaigns and consumer boycotts
- ❑ **Divestment** by ethical and/or mainstream investors (e.g. where sovereign wealth funds divest or withhold funds from certain companies on human rights and ethical grounds)



Case study boxes

Human trafficking in Walmart's supply chain

(Thailand)

In April 2012, it was revealed that workers at a shrimp processing factory supplying Walmart had been trafficked from neighbouring Cambodia and Myanmar after paying labour brokers excessive fees to get the jobs. Phatthana Seafood Co. Ltd, based in Bangkok, Thailand, allegedly retained the workers' official documents, so they were unable to leave. They were told they could only receive their documents once their debts were paid off – conditions amounting to debt bondage. When questioned by Human Rights Watch, Walmart claimed that it had conducted factory audits, which included checking personal documentation to ensure work was voluntary. Walmart later denied sourcing products from Phatthana Seafood.

Case against Kellogg Brown and Root

(Iraq)

A lawsuit was brought against Kellogg Brown and Root (KBR) in the US in 2008, regarding the alleged trafficking of 13 Nepalese men in Iraq. The plaintiffs claim that local firm Daoud & Partners and KBR recruited the men to work overseas with promises of employment in hotels and restaurants, when they were actually going to do physical labour for the US military. Their passports were seized on arrival into Jordan by KBR's subcontractor, Daoud & Partners. They were then reportedly trafficked to a US military camp, but 12 of the 13 were killed by insurgents en route. The claim was lodged under the Trafficking Victims Protection Act with the trial due to take place in April 2014.

Suggestions for responsible business



Photo: Shutterstock



Suggestions for responsible business (continued)

I. Anti-trafficking management system

When operating in – or sourcing from – a high risk sector or region, companies should consider implementing management systems aimed at preventing, mitigating and/or remediating human trafficking violations. This should ideally apply both to their own operations, as well as their suppliers and labour brokers.

Any management system (including policy) should ideally address the following key elements:

- Compliance:** Assess and comply with national/international laws on human trafficking (whichever provide the highest level of protection)
- Full 'spectrum' approach:** Consider and address the full spectrum of trafficking elements, not only including issues such as physical coercion and slavery– but also less obvious elements such as deception, debt bondage and other forms of exploitation
- Guidance:** Set clear guidelines in relation to responsible recruitment practices – including the use of labour brokers
- Business relationships:** Carry out relevant due diligence/risk assessment of business partners (e.g. JV partners, suppliers, contractors, etc.) and require them to-provide their employees with legitimate employment conditions



Suggestions for responsible business (continued)

II. Implement supply chain and contractor controls

Companies should ensure their human trafficking policy commitments are reflected in supplier contracts or through its Supplier Code of Conduct. Such stipulations should be supported by a monitoring system, to ensure suppliers and subcontractors are not contravening company policy.

This could include regular checks on major suppliers in countries that are 'high risk' source, destination or transit countries (as identified through relevant due diligence initiatives). Such checks might include:

- Unannounced visits to facilities
- Implementation of an anonymous whistle blower hotline
- Auditing of suppliers by third party specialists

Companies may also seek to apply internationally recognised standards such as SA8000 within their supply chain, with auditors paying particular attention to forced/compulsory labour and migrant workers.



Suggestions for responsible business (continued)

III. Implement employee training programmes

Companies may consider working with third-party specialists (NGOs, international organisations and consultants) to educate management and staff regarding the identification and prevention of human trafficking.

Training should focus on:

- Motivation:** Why it is important to address the issue (e.g. the legal and moral aspects of human trafficking)
- Identification:** How to identify the signs that human trafficking is taking place (e.g. the withholding of passports, non-payment of wages, signs of coercion)
- Action:** What to do if you identify human trafficking (e.g. legal requirements, information to record, sensitive approaches to addressing the issue)
- Procedure:** Understand the procedures to address trafficking when it is discovered (e.g. reporting lines, remedies and sanctions) (*continued*)



Suggestions for responsible business (continued)

(continued)

Training should be focused on personnel that are more likely to come into contact with the issue, including for example:

- Procurement personnel**
- Supply chain managers**
- Construction project managers**
- Facility cleaning, security and maintenance teams**
- Customer service staff (e.g. tourism, travel and accommodation)**

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Suggestions for responsible business (continued)

IV. Awareness raising campaigns

This includes the provision of direct training or funds for third-party expert training on human trafficking amongst external stakeholders. This should ideally be targeted at:

- Communities from which trafficking victims are drawn** (e.g. to reduce 'supply' by educating potential victims of the risks posed by human trafficking and how to identify/avoid potential trafficking situations)
- Communities to which victims are trafficked** (e.g. to reduce 'demand' by making potential direct/indirect beneficiaries aware of the realities, consequences and human costs of trafficking - including legal sanctions)
- Victims** (e.g. to help victims to escape from trafficking situations through the provision of information about their legal rights, sources of potential assistance and rehabilitation programmes)



Suggestions for responsible business (continued)

V. Sectoral standards and initiatives

Where appropriate and feasible, work with peer companies and external specialists to develop sector-specific certification standards. This is particularly important in sectors in which human trafficking is perceived to be a problem – for example, the hospitality, travel and agricultural sectors.

These might include (for example):

- Alignment of common policies and procedures
- A sectoral human-trafficking code of conduct
- The pooling of resources to implement anti-trafficking initiatives in major, high risk supplier locations - including auditing
- The marketing of 'trafficking-free' products
- Joint advocacy activities

For example, ECPAT's [Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism](#), has been endorsed by some of the world's leading travel companies and hotel chains.



Suggestions for responsible business (continued)

VI. Multilateral partnerships

A company may choose to develop and/or join multilateral partnerships with public bodies, peer companies, unions, NGOs and other interested stakeholders to address human trafficking through:

- Information sharing, cooperation and collective action
- The improvement of socio-economic conditions in trafficking locations
- The establishment of recognised principles and codes of conduct
- Programmes to help rehabilitate trafficking victims

For example, companies can become signatory to the [Athens Ethical Principles](#), an initiative to get a wide range of businesses to commit to helping eradicate human trafficking.



Suggestions for responsible business (continued)

VII. Establishment of formal grievance mechanisms – plus corrective action

A company could develop confidential and transparent grievance mechanisms, such as whistle-blowing hotlines and other complaints mechanisms, particularly in countries where migrants may have limited access to other remedies (for instance, due to fears of losing their visa status).

Corrective action should be taken immediately if human trafficking is evident within the company's direct operations, or within its supply chain.

Remedies and/mitigation could take the form of:

- Investigation of claims
- Cooperation with law enforcement agents and the judiciary
- Review of suppliers' contract terms to encourage improved working conditions
- Rehabilitation following abuse
- Alternative, safe employment
- Assistance with travel back home
- Reimbursement for recruitment fees/compensation

Scenario exercise: Responding to labour brokers and the *kafala* (sponsorship) system in recruitment



Photo: Reuters/ Fadi Al-Assaad



The situation

Responding to labour brokers/the *kafala* (sponsorship) system in recruitment

- **Location:** The Gulf

- **Context:** You are general manager for a well-respected and responsible EU-based construction company, that has won contracts for several large-scale, government-sponsored projects in a rapidly developing growth market in The Gulf. As a result, you have subcontracted large portions of the work to a locally-based company, which will lead the recruitment process. The projects (which are being built under a tight schedule) require the rapid establishment of a total workforce of around 10,000. A lack of appropriate workers within the country means the subcontractor will have to rely on labour brokers to facilitate the employment of migrant workers (mainly from South Asia).

- **Complex recruitment chain:** The short timescales means the labour brokers have to use a network of sub-agents to recruit workers – creating a complex labour supply chain. In this context, three worrying issues have come to light:
 - (1) Some of the migrant workers were initially promised jobs within the tourism sector – and have since been coerced into employment within the construction sector.
 - (2) The country has a *kafala* (sponsorship) system, whereby migrant workers are only awarded work permits if they are sponsored by their employer. Migrant workers are thereafter prohibited from working for another employer, and must receive written permission from their existing employer before they can leave the country.
 - (3) There are credible NGO allegations that the *kafala* system facilitates human trafficking – and encourages slavery-like practices, whereby workers' wages are withheld, passports are confiscated and workers are required to perform work under conditions of forced labour.



Initial issues to consider

Before any action is taken, you should consider some immediate questions with respect to what should guide you in this situation and who you should inform about it. Questions to consider include the following:

- What are my immediate priorities in this situation?
- What internal guidance should I apply in this situation?
- Who are the external stakeholders I should consider contacting about this?
- Who are the internal stakeholders I should contact about this?

Note: Suggestions on next slide



Initial steps to consider (continued)

Potential immediate priorities

- Maintaining a steady, adequate workforce to support project progress
- Avoiding the alienation of your local business partner
- Avoiding complicity in human rights abuses, incl. trafficking/forced labour
- Ensure fair working conditions for workers employed by the subcontractors
- Avoiding negative publicity and reputational damage

Potential internal guidance

- Principles/Values
- Policies/procedures (e.g. Human Rights Policy, Supplier Code of Conduct, Human Resource Policy and procedures, Business Ethics Policy)

**Any other
priorities?**

**Any other
guidance?**



Initial steps to consider (continued)

Potential internal stakeholders to contact

- Country manager
- Country human resources manager
- Country legal counsel
- Country external relations manager
- Group legal counsel
- Group human resources manager

Potential external stakeholders to contact

- Local subcontractor
- Local subcontractors' migrant workers (subject to subcontractor permissions)
- Labour brokers and/or subagents (subject to subcontractor permissions)
- Local labour officials
- Local civil society organisations

**Anyone else to
contact internally?**

**Anyone else to
contact externally?**



Potential stakeholders

In addition, when framing your decision-making you need to take into account the different stakeholders in the situation.

Questions to consider include the following:

- Who are the key stakeholders in this situation?

- What are the priorities of each of these stakeholders in this situation?

- What risks do each of these stakeholders pose in this situation?

Note: Suggestions on next slide



Potential stakeholders (continued)

Stakeholders	Stakeholder priorities	Associated risks
Group management	<ul style="list-style-type: none"> ❑ Timely/cost effective delivery of projects ❑ Legal compliance ❑ Policy compliance ❑ Avoidance of reputational harm 	<ul style="list-style-type: none"> ❑ Hasty establishment of complex recruitment channels likely to increase risk of trafficking complicity ❑ Focus on local legal compliance may result in practices that conflict with international standards
Subcontractor	<ul style="list-style-type: none"> ❑ Meeting of contractual obligation ❑ Legal compliance ❑ Maintenance of profit margin on the projects ❑ Operational continuity 	<ul style="list-style-type: none"> ❑ Pressure to execute the project in time – and to make profit is likely to result in limited scrutiny by the subcontractor of the source of its workers ❑ Subcontractor’s use of labour brokers / subagents (in the <i>kafala</i> context) is likely to expose the company to indirect complicity with trafficking
Affected migrant workers	<ul style="list-style-type: none"> ❑ Gainful and dignified employment ❑ Realisation of human rights and international labour standards 	<ul style="list-style-type: none"> ❑ In the context of the <i>kafala</i> system – as well as the use of complex network of labour brokers – it is highly likely that worker rights will be undermined



Potential stakeholders (continued)

Stakeholders	Stakeholder priorities	Associated risks
Government officials	<ul style="list-style-type: none"> ❑ Compliance of all parties with local law ❑ Project delivery – on time and on budget 	<ul style="list-style-type: none"> ❑ The company and its subcontractor have no choice but to comply with the <i>kafala</i> system – but by doing so they may be in breach of international legal standards ❑ Project timescales and budget pressure means there is limited scope for exploring other more responsible labour structures
Local civil society organisations	<ul style="list-style-type: none"> ❑ Ensuring respect for human rights and international labour standards ❑ Protection of employees, particularly migrant workers 	<ul style="list-style-type: none"> ❑ Given its reputation and EU origins, the company is likely to be a focal point for civil society criticism for benefiting from the <i>kafala</i> system, as well as its ultimate reliance on an opaque, transnational migrant labour that is open to abuse in countries with poor human rights record

Anyone else?

What are their priorities and what risks do they represent?



Analysis of potential reactions

Next, you need to consider the opportunities and risks with respect to each of the following courses of action:

- ❑ **Option 1:** Continue to allow the subcontractors to use labour brokers, but insist subcontractor accepts third party auditing of its workforce to ensure it is free of trafficking
- ❑ **Option 2:** Continue to allow the use of labour brokers, but use legitimate influence to encourage government to enhance labour regulation – including (for example) labour inspections to reduce abuses linked to the *kafala* system
- ❑ **Option 3:** Impose anti-trafficking obligations on your subcontractor (e.g. contractual provisions, training, policy commitments, monitoring, etc.) – and make them cascade these down to their labour brokers / subagents
- ❑ **Option 4:** Refuse to allow the subcontractor to use labour brokers / subagents

Option	Implications
<p>1: Continue to allow the subcontractors to use labour brokers – subject to third-party auditing of the workforce</p>	<p>Opp.: Minimisation of overall project disruption by maintaining existing labour recruitment practices and relationships. Third party auditing will provide a significant degree of assurance that there is no trafficking in the workforce</p> <hr/> <p>Risk: This will not necessarily delve into the complex web of labour suppliers behind the labour supply chain (e.g. subagents are likely to continue to use deception/manipulation to ‘hide’ illegal activity). Also, the ‘discovery’ of trafficked persons is not enough – provision also needs to be made as to what the subcontractors’ obligations are when such a discovery is made</p>
<p>2: Continue to allow the use of labour brokers, but use legitimate influence to encourage government to enhance labour regulation</p>	<p>Opp.: Company will be seen as proactive in attempting reform of harmful labour practices and (eventually) laws</p> <hr/> <p>Risk: May strain govt. relations (especially if the govt. has a poor human rights record), is unlikely to have any immediate, concrete impact in the context of the development of the projects and offers no guarantees that such efforts will ultimately be effective</p>



Analysis of potential reactions (continued)

Option	Implications
<p>3: Impose anti-trafficking obligations on your subcontractor – and make them cascade these down to their labour brokers/ subagents</p>	<p>Opp.: Would significantly reduce the risk of violations taking place within the labour supply chain – and shift responsibility, accountability and transparency amongst all supply chain actors</p> <hr/> <p>Risk: Imposing such obligations <i>after</i> contracts have been agreed will be challenging. This might be made a condition if the subcontractor or subagents wish to win future projects / renew their existing contracts. Otherwise, the company may instead have to rely on ‘soft’ influence (e.g. training and advocacy)</p>
<p>4: Refuse to allow the subcontractor to use labour brokers / subagents</p>	<p>Opp.: Risk of association with human trafficking substantially reduced – and a clear, responsible stand taken by the company</p> <hr/> <p>Risk: May breach the terms of your contract with the subcontractor. Likely to result in significant project delays and additional costs. Challenge would remain as to how to maintain an appropriate / stable workforce to support project development</p>

Any other options?

What are the risks/opportunities?



Prevention of the situation

- What precautions could have been taken before this situation arose to ensure that you were not placed in this dilemma in the first place?

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Suggestions for responsible business (continued)

Potential retrospective good practice might include:

- ❑ Carry out a country human rights risk assessment prior to engagement – including the risks and impacts posed by business partners
 - ❑ **For:** Will help you prepare strategies to minimise your potential human rights impacts. This might include alternative labour sourcing models, pre-engagement with the government over the *kafala* system or the selection of alternative sub-contractors who are better able to guarantee responsible labour sourcing
 - ❑ **Against:** Will not necessarily ‘solve’ the dilemma – esp. if the company is intent on participating in the projects. The company may be reluctant to engage govt. on these risks – or with other, costlier subcontractors – for fear of losing the projects
- ❑ Engage with peer companies that have experience of operating in this market to understand how they have navigated labour-related challenges
 - ❑ **For:** Your peers are likely to be able to offer practical insight into how to address this issue. This might include information on responsible subcontractors, key points of (legitimate) leverage with respect to the govt., labour management models, etc.
 - ❑ **Against:** Peer practices may not be aligned with your policy / intl. best practice

Any other options?

What are their respective strengths and weaknesses?

Continue the discussion at:

<http://human-rights.unglobalcompact.org/>