

ENDING EXPLOITATION.

Ensuring that Businesses do not
Contribute to Trafficking in Human Beings:
Duties of States and the Private Sector

ISBN: 978-92-9234-447-4

Published by the OSCE Office of the Special Representative and Co-ordinator
for Combating Trafficking in Human Beings
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Design: Sebastian Traxl

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Cite as: OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector*, Occasional Paper Series no. 7 (Vienna, November 2014).

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Organization for Security and
Co-operation in Europe

ACKNOWLEDGEMENTS

I would like to thank the two consultants who helped prepare this paper, Mike Dottridge, the main author, who has worked on the topic for many years, and Vera Gracheva, who prepared detailed information concerning one region. I would also like to thank my Deputy, Ruth Freedom Pojman, whose idea it was to investigate this topic and who also provided substantive inputs and support to the consultants throughout its preparation. Numerous reports have been published in recent years on the general topic of business and human rights, but this one is special, as it focuses specifically on what businesses can do to stop trafficking in human beings and on the way that States should encourage and support them.

As director of a human rights organization focusing on modern forms of slavery, Mike Dottridge began investigating the links between business and human rights in the 1990s. Over the past decade he has contributed to several reports prepared by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, as well as to anti-trafficking initiatives by other organizations. In 2011 he presented the early findings for this study at a conference of the *Alliance against Trafficking in Persons*. Vera Gracheva became involved in the preparation of the study as a specialist on the topic of trafficking in human beings in the post-Soviet region. She collected information about relevant practices available in Russian language sources, which enriched the substance and broadened the geographical coverage of this paper, in both the chapter dedicated to the region and other parts.

I would like to thank everyone who read and commented on drafts of this study, particularly Noelle Damico, Jeff Ballinger, Vera Gracheva and Ruth Freedom Pojman. I would also like to convey our gratitude to the OSCE anti-trafficking focal points who assisted in obtaining the information in the countries where they are based. Thanks are due too to the many individuals in organizations focusing on business and human rights who contributed information and patiently answered our consultants' questions. Together with Vera Gracheva, I would like to thank the representatives of the Russian business community and NGOs who responded so positively to this research and helped to navigate the multiple sources of information.

My special thanks go to the two members of my Office, Claire Jessel, Administrative Assistant, and Alfred Kueppers, Public Information Officer, who assisted with proofreading and copy-editing and who managed the production process of the publication.

Ambassador Madina Jarbussynova

OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings

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LIST OF ACRONYMS

CIS	Commonwealth of Independent States	RSP	Russian Union of Industrialists and Entrepreneurs
CIW	Coalition of Immokalee Workers	THB	Trafficking in human beings
CSR	Corporate social responsibility	UK	United Kingdom
ETI	Ethical Trading Initiative (based in the United Kingdom)	UN	United Nations
EU	European Union	UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
ICMPD	International Centre for Migration Policy Development	UNDP	United Nations Development Programme
ILO	International Labour Organization (and International Labour Office)	UNICEF	United Nations Children's Fund
IOM	International Organization for Migration	US	United States of America
NGO	Non-governmental organization	USAID	United States Agency for International Development
OECD	Organisation for Economic Co-operation and Development	WFSGI	World Federation of the Sporting Goods Industry
OSCE	Organization for Security and Co-operation in Europe		

GLOSSARY

compliance The process followed by business “A” for ensuring that another business in its value chain (or supply chain) complies with whatever minimum standards business “A” is committed to respecting.

debt bondage The UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, 1956, defines this (in article 1(a)) as *“the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”*.

forced or compulsory labour The ILO’s Forced Labour Convention, 1930 (No. 29), states in article 2 *“For the purposes of this Convention the term forced or compulsory labour shall mean 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”*.

labour exploitation A collective reference to the purposes of trafficking in human beings referred to as forced labour or services, slavery or practices similar to slavery, and servitude.

practices similar to slavery (also known as “slavery-like practices”) The UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, 1956, lists four practices similar to slavery: debt bondage; serfdom; three categories of forced marriage; and a category of exploitation of children that has become known subsequently as “the sale of children” (Article 1(d): *“Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”*). Servitude, which, along with slavery, is prohibited by article 4 of the Universal Declaration of Human Rights (but not defined there), may also be regarded as a practice similar to slavery.

supply chain See “value chain” below.

trade association Organization of businesses operating in the same sector of the economy, such as those involved in manufacturing or marketing clothing or sporting goods.

trafficking in human beings (also “trafficking in persons” and “human trafficking”) The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (also known as the “Palermo Protocol”), states in article 3:

“For the purposes of this Protocol:

(a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) ‘Child’ shall mean any person under eighteen years of age”.

value chain A UNICEF report (Children’s Rights and Business Principles) explains that *“A business’s value chain encompasses the activities that convert inputs into outputs by adding value. It includes entities with which the business has a direct or indirect business relationship and which either a) supply products or services that contribute to the business’s own products or services [conventionally known as a ‘supply chain’], or b) receive products or services from the business”* [conventionally known as a production chain].

verification The process of checking whether a business is in compliance with its commitments or obligations.



EXECUTIVE SUMMARY

This paper outlines the measures that businesses can take to ensure that trafficking in human beings does not occur in their workplaces or those of their suppliers (i.e., other businesses that sell products or services to them). It also reviews the obligations of the Organization for Security and Co-operation in Europe's (OSCE) participating States to regulate business activities and to enable businesses to take appropriate action to stop human trafficking from occurring. It ends with a series of recommendations for OSCE participating States.

The question of what business enterprises, other organizations and individual consumers can do to ensure that people are not trafficked as a result of a business' conduct, whether in the workplace, supply chains, in purchasing decisions or other behaviour, has been a focus of interest since the United Nations (UN) adopted a *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the "UN Trafficking Protocol") in 2000.

The paper reviews how action by private sector businesses (and potentially state-owned ones as well) can prevent trafficking in human beings from occurring in their workplaces and those of their suppliers, thereby reducing traffickers' earnings and potentially helping drive them out of business. The paper focuses on how to maximize the substantial influence that managers of businesses and organizations have to prevent human trafficking through their procurement or purchasing decisions. It focuses in particular on the benefits that occur when businesses make commitments to respect human rights (or not to tolerate specific abuses of human rights), notably by setting minimum standards in codes to regulate their workplaces and those of their suppliers.

The paper starts (Chapter 1) by demonstrating that trafficking in human beings occurs in conventional

business activities, as well as in criminal enterprises, and is not limited to businesses operating in only certain sectors, such as the entertainment or hospitality industries. It then reviews (Chapter 2) what constitutes "demand" in the context of human trafficking and the requirement in the UN Trafficking Protocol that States Parties must "*adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral co-operation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking*".¹

The nature of demand for the services and products of trafficked people is complex and was said by the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, to consist of the following three levels:²

- "employer demand" (from business managers, employers or subcontractors in what is called a "supply chain", notably those who want particularly docile or cheap workers);
- "consumer demand clients or prostitute-users" (i.e., those paying for commercial sex), corporate buyers (in manufacturing and retail), household members (in domestic work);
- "and third parties involved in the process (i.e., traffickers and their associates who aim to make money out of someone who has been trafficked)".

1 United Nations, *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (2000), Article 9, subparagraph 5.

2 United Nations Human Rights Council, *Report submitted [to the UN Human Rights Council] by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo*, A/HRC/10/16 (20 February 2009), paragraph 53, citing the UN Global Initiative to Fight Human Trafficking (UN.GIFT).

The forms of exploitation to which trafficked persons are subjected are, “*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*”.³ This paper focuses in particular on forms of forced labour or services, slavery or practices similar to slavery, and servitude, referred to collectively by the OSCE as “trafficking for labour exploitation”. The paper also considers what businesses can do to stop trafficking for the purpose of the exploitation of the prostitution of others and other forms of sexual exploitation.

It would be relatively simple to challenge the sale by businesses of the services and products of trafficked persons if these accounted for everything made by a particular company or for all the services of a certain sort that were available. However, in practice this is not usually the case. For example, agricultural produce picked by workers who have been trafficked may be marketed in the same containers as produce harvested by workers who have not been trafficked or subjected to abuse.

This creates a dilemma for consumers, whether they are individuals or organizations (businesses in general, but also including government departments and state-run corporations) that buy products from others. Should they refuse to buy anything which comes from a particular company which is reported to have used forced labour, or even refuse to buy specific commodities once there have been confirmed reports that some of the workers involved are victims of forced labour (as in the case of cotton grown in parts of Central Asia) or other human rights violations? In some countries (notably Brazil), businesses have agreed to precisely this: not to do business with any other company known to have used forced labour or tolerated forced labour in its supply chain.

For individual consumers there is a direct choice: either buy or don't buy. However, businesses and large organizations have other options which enable them to influence conditions in their suppliers' workplace in a positive way: for example, suspending purchases with a condition that purchasing will be resumed if the supplier can demonstrate effective reform and accountability. The importance of procurement

policies which require suppliers to check that trafficking in human beings and labour exploitation have not occurred is stressed in the paper.

Alongside conventional businesses, recruitment and employment agencies and also marriage brokers are reported to have facilitated or participated in human trafficking. For example, certain recruitment agencies deceive migrants about the nature of the work they will undertake and exploit the issue of debt (of migrants who become indebted in the course of migrating to find work) to force them to work in particular jobs or for extremely low wages, in particular by making migrants pay a fee for finding them a job, in contravention of international standards.⁴ Similarly, certain employers resort to coercion to stop workers leaving their jobs, for example by withholding their passports or identity documents or threatening violence against them or their close relatives. The paper highlights the action that recruitment agencies and others, including OSCE participating States, can take to stop human trafficking from occurring in the recruitment process.

Chapter 3 summarizes what happens when businesses and government authorities do not take appropriate action. They are criticized publicly and consumers sometimes boycott the products of specific businesses as a result. The first example shows consumers influencing a supermarket chain to change its purchasing policies so that it refuses to do business with others who are found to have trafficked people or used slave labour. The second example shows that businesses around the world decided to boycott one product (cotton) produced in a country where the authorities were judged to be doing too little to stop the use of forced labour. In contrast, Chapter 4 describes some more positive responses to reports of human trafficking and how both businesses and others, including workers' organizations and non-governmental organizations, can play a positive role in preventing human trafficking, introducing a model known as “Worker-driven Social Responsibility”.

Chapter 5 outlines the development of international standards for business and human rights, giving special attention to measures to stop trafficking in human beings and forced labour. The UN has given more attention to the world of business since 2000 than

3 United Nations, *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (2000), Article 3.

4 International Labour Organization (ILO), *Private Employment Agencies Convention*, C181 (1997).

previously, first in the framework of the UN Global Compact⁵ and subsequently in a set of *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*.⁶ These Guiding Principles require business enterprises to exercise what is termed “due diligence” to check the human rights impact of their business activities and to take action to remedy adverse effects. They apply both to businesses which are multinational in character, and to smaller businesses that operate only at national or local level. The specific measures that businesses can take to stop trafficking in human beings from occurring are situated in the context of these wider frameworks.

This chapter outlines a six-step model for businesses to follow in carrying out what the *Guiding Principles* call “human rights due diligence”. The steps involve:

Step 1	An initial assessment of the ways in which the business <i>might</i> cause “adverse human rights impacts”, such as human trafficking, in its workplace or those of its suppliers or others with whom it does business: in effect, a risk assessment.
Step 2	Adopting a policy, outlining the business’ commitments and the process it intends to implement.
Step 3	Communicating the policy to all personnel, business partners and other relevant stakeholders.
Step 4	Implementing the policy by exercising due diligence and verifying that the policy is respected.
Step 5	Taking remedial action, as required, if evidence comes to light that the policy is not being adhered to.
Step 6	Tracking the business’ overall performance and issuing periodic public reports

Based on the States’ duty to protect human rights (the importance of which is emphasized by the UN *Guiding Principles*) and the duty of States to act with due diligence in preventing trafficking in human beings, Chapter 6 outlines the measures that participating States are obliged to take to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication. The *Guiding Principles* outline (in Principle 3) the four practical steps that States must take to meet their duty to protect:

a	“Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
b	Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
c	Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
d	Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts”.

Other measures for States to take include ensuring that the procurement policies of any government-run institution (including local government and the security forces) do not facilitate trafficking in human beings. The chapter reviews the legislative measures taken in some places to require businesses to be more transparent about the action they take to ensure that human trafficking does not occur in their workplaces or those of their suppliers.

Chapter 7 concentrates on the commitments that businesses themselves have made to respect human rights, including measures to stop trafficking in human beings. Many businesses, within their statements of core principles concerning respect for internationally-recognized human rights or labour standards, already make commitments to ensure that trafficking in human beings and forced labour do not occur in their workplaces or supply chains. Some have made an explicit commitment to stop human trafficking. If they are successful, their action can have a beneficial effect on a series of other businesses in their supply chain. It can also bring about improvements in working conditions and practices in the workplace, which would otherwise have made it easier for trafficking and exploitation to occur.

The key actions required by businesses to stop people being trafficked, using codes or similar commitments, centre on recruitment procedures and on ensuring that workers are free to leave their jobs if they want to. This means ensuring that they are not loaned such large amounts of money in advance that they would be unable to repay the money and would consequently be “bonded” to their employer (i.e., potentially subjected to debt bondage, which is known by the UN as a “practice similar to slavery”⁷) and unable to leave

⁵ A voluntary initiative that asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption.

⁶ Issued in March 2011 and endorsed by the UN Human Rights Council in June 2011.

⁷ United Nations, *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (1956).

their jobs; and also ensuring that no other techniques are used to prevent workers leaving their jobs (such as their employer or an agent taking possession of their passport or official identity document, or withholding wages over a prolonged period). It also means ensuring that workers are not intimidated in such a way that they do not dare disobey their employer or leave. Consequently, checking that cruel, inhuman or degrading treatment or punishment are not used or threatened in a work context is important (i.e., any sort of physical punishment, including slaps, and also threats of violence or other psychological pressure, such as threats to relatives, or of deportation).

Businesses in many different OSCE participating States have made impressive commitments. By itself, however, the adoption of a code or other commitment by a business may make no difference and be little more than window dressing. So, systems must be put in place by a business to check what happens in reality and to remedy abuses or practices which could result in abuse. It is primarily in North America and Europe that businesses have introduced methods intended to ensure that their subcontractors and suppliers comply with whatever code or other commitments they make. The chapter describes the development of the management systems required and the procedures to verify that the provisions of codes are implemented. Some have been adopted by individual companies, some by trade associations (i.e., groups of businesses operating in the same sector, buying and selling a specific commodity, such as sporting goods, and belonging to a single organization) and some are “multi-stakeholder” initiatives, which require independent verification of the standards specified by a quality standard organization.

The chapter nevertheless concludes with some worrying observations about the weakness of the current dominant business model, which allows individual businesses to decide what minimum standards to set and whether to check that these are observed and how. This model regularly involves the use of “social auditors” to check that the minimum standards that a specific business expects its suppliers to observe are being respected. As a result of a number of recent tragedies, involving mass loss of life in workplaces which have been checked and where standards were certified as acceptable, the efficacy of social auditors has come into question.

Chapter 8 describes the experiences of businesses operating in three specific sectors: the recruitment industry (private employment agencies); the tourism and hospitality sector; and the private security sector. Each sector has adopted sector-wide minimum

standards intended to prevent human trafficking or specific forms of exploitation, but the methods used for checking compliance vary greatly. The recruitment sector is reported to have come under intense scrutiny in 2013 and 2014, though legitimate recruitment businesses began pressing others in the sector to adopt stricter standards eight years ago, with the adoption of a code of conduct by the International Confederation of Private Employment Agencies (CIETT) and adoption of the *Athens Ethical Principles Against Human Trafficking*, both in 2006. The first of the *Athens Ethical Principles* says that a business should “*Explicitly demonstrate the position of zero tolerance towards trafficking in human beings, especially women and children for sexual exploitation*”⁸. A subsequent protocol to these Principles, adopted in Luxor, Egypt, in 2010, went further than most other similar business commitments, calling on businesses to develop a zero tolerance policy towards trafficking in human beings which “*Prohibits patronizing persons in prostitution while on official business travel*”⁹. Few other business codes focus on how their staff behave while travelling.

Chapter 8 also reports on the experience of businesses in the hospitality and travel sector, where the *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism* was adopted in 2001. This was prepared by businesses in the tourism sector, together with a non-governmental organization (NGO), ECPAT International. By June 2014 *The Code* was reportedly being implemented by over 1,300 companies from 66 countries. Nevertheless, weaknesses have been identified in its systems for checking that businesses respect the terms of *The Code* and these are said to be in the process of being addressed.

As it has been primarily in North America and Western Europe that public attention has been given to the development of methods by businesses to check that their workplaces and those of their subcontractors and suppliers comply with the codes or other commitments they make, Chapter 9 reviews the information available about the development of corporate social responsibility in general in the former Soviet Union (the Commonwealth of Independent States along with Georgia and Ukraine), including codes and commitments by businesses to respect certain human rights and their potential to prevent forced labour and trafficking in human beings.

8 The *Athens Ethical Principles* (or “seven ethical principles of the Athens Action Plan”) were accessed on 3 July 2014 at <<http://www.unglobalcompact.org/resources/70>>.

9 The *Luxor Protocol* was accessed on 3 July 2014 at <<http://www.unglobalcompact.org/resources/70>>.

Chapter 10 summarizes some lessons learned, notably the limits to business practice which involves proclaiming support for certain standards without introducing systems to check that such standards are respected in practice (or using ineffective checking methods). Good practice is found to involve introducing robust verification systems and to involve auditors or other inspectors communicating directly with workers or others at risk of exploitation (such as children at risk of commercial sexual exploitation in hotels), rather than paper-based auditing systems which encourage auditors to talk to managers without seeking confidential interviews with the very workers whose rights are the subject of audits to confirm that their human rights are respected. The importance of relevant information for business managers being available in a language they understand is also stressed.

Chapter 11 looks at relevant initiatives by international organizations (including the UN and OSCE), both with respect to procurement and the out-of-hours behaviour of their staff.

Finally, Chapter 12 contains recommendations and starts by emphasizing the importance of participating States taking action to implement a provision of the December 2013 *Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*. The *Addendum* recommended the following action (for participating States) at the national level:

“*Encouraging the private sector, trade unions and relevant civil society institutions, to promote codes of conduct to ensure the protection of the human rights and fundamental freedoms of workers throughout the supply chain in order to prevent the exploitative situations that foster trafficking in human beings*”.¹⁰

It also refers to a recommendation made to all UN Member States in 2013 by the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, who urged States to,

“*Develop laws, programmes and initiatives that motivate businesses to proactively comply with their responsibility to prevent and combat trafficking in persons, such as tax incentives, product certification and labelling*”.¹¹

In addition to meeting their existing legal obligations to protect human rights, participating States are urged to ensure that senior political figures make periodic public statements confirming that trafficking in human beings and the exploitation of workers, including migrants from other countries, is always unacceptable. Other recommendations to participating States include:

1. Ensure there is a properly resourced labour inspectorate or other branch of law enforcement specializing in labour law that has a mandate and the expertise to detect human trafficking cases in workplaces, including private homes and isolated places such as forests, farms and fishing vessels operating in a State’s territorial waters;
2. Avoid issuing visas or work permits that tie a migrant to a particular employer and reduce her or his right or opportunity to terminate their employment and to change employer;
3. Regulate the recruitment industry;
4. Promote meaningful commitments by business and the use of effective compliance methods;
5. Require public reporting by businesses on how they are meeting their responsibilities (to respect human rights); increase the obligations on business in a progressive way, initially focusing on larger businesses or those reported to experience particular abuse in their workplaces or supply chains and requiring them to report publicly on the remedial measures taken;
6. Take action with respect to products imported from other countries, which may have been produced with forced labour, both by obtaining as accurate information as possible when human trafficking or forced labour is reported in the production of an imported product and consulting various other stakeholders on what remedial action is likely to be most effective, before implementing such action.

The importance of the OSCE co-operating with other organizations, and supporting co-operation among business organizations in participating States, is stressed at the end of the paper.

¹⁰ OSCE Permanent Council, *Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*, PC.DEC/1107 (6 December 2013), Chapter III, paragraph 1.7.

¹¹ United Nations Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum, Expert consultation on human trafficking and global supply chains*, A/HRC/23/48/Add.4 (4 March 2013).

CHAPTER 1: INTRODUCTION

When the United Nations (UN) adopted a *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the “UN Trafficking Protocol”), in 2000, supplementing the *UN Convention against Transnational Organized Crime* (2000), it required States Parties to, “*adopt or strengthen legislative or other measures [...] to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking*” (Article 9.5; emphasis added). It suggested that the measures required could include “*educational, social or cultural measures, including through bilateral and multilateral cooperation*”.

Since 2000, numerous other international treaties and declarations intending to stop human trafficking have reiterated the need to address demand, including the *OSCE Porto Declaration on Trafficking in Human Beings* (2002) and the *OSCE Action Plan to Combat Trafficking in Human Beings* (2003). In December 2013 the OSCE adopted an addendum to the 2003 Action Plan. Among various preventive measures urged at national level, this encouraged

“*[T]he private sector, trade unions and relevant civil society institutions, to promote codes of conduct to ensure the protection of the human rights and fundamental freedoms of workers throughout the supply chain in order to prevent the exploitative situations that foster trafficking in human beings*”.¹²

It also urged participating States to consider “*incorporating, or, as applicable, implementing, ‘zero-tolerance’ policies or other similar standards in government procurement of goods and services*”.¹³

In effect, this is a call for preventive action to be taken in the place to which people are trafficked or where the goods they produce or the services they provide are marketed, balancing other calls for preventive action in the places from which people are trafficked. Businesses have a key role to play, both those involved in recruitment (alongside government-run organizations involved in recruiting migrant workers for employment abroad), those that employ workers on a sub-contracted basis, who might be trafficked, and other businesses retailing the products of such

employers. This paper explores the measures that States, businesses and others can take to respond to this call.

1.1 The definition of trafficking in human beings

The UN Trafficking Protocol contains a definition of trafficking in persons (also referred to as “trafficking in human beings” and “human trafficking”) in its Article 3.¹⁴ Although the UN Trafficking Protocol and the related *Convention against Transnational Organized Crime* sought primarily to address transnational crime involving two or more countries, the definition of human trafficking also applies to cases of internal (or “domestic”) trafficking, in which an individual is trafficked without being taken across a border (i.e., within their own country or within another country).

The definition in the Trafficking Protocol lists the forms of exploitation which are the purposes of trafficking as, “*at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour¹⁵ or services, slavery or practices similar to slavery, servitude or the removal of organs*”. Some of these terms had already been defined in UN conventions or international treaties prior to the adoption of the UN Trafficking Protocol, while others had not.¹⁶

¹⁴ See the definition in article 3 of the UN Trafficking Protocol quoted in the Glossary to this report.

¹⁵ For a definition of ‘forced labour’ see the Glossary. The UN Trafficking Protocol states that forced labour or services are one of the purposes of trafficking in persons. Not all cases of forced labour involve trafficking. Out of the 20.9 million people estimated by the International Labour Office (ILO) in 2012 to be in forced labour, 2.2 million (10 per cent of the total) were reported to be in state-imposed forms of forced labour, for example in prison under conditions which contravene ILO standards on the subject, or in work imposed by the national armed forces or by armed insurgent forces (see: International Labour Office, Special Action Programme to Combat Forced Labour (SAP-FL), *ILO Global Estimate of Forced Labour: Results and Methodology* (Geneva, 2012)).

¹⁶ The terms “exploitation of the prostitution of others” and “other forms of sexual exploitation” are not defined in the UN Trafficking Protocol, “*which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws*”. See, *Interpretative notes for the official records (travaux préparatoires) of the negotiation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, published in Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions, Addendum Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, A/55/383/Add.1* (3 November 2000). See section 10.2.2 below for a definition of ‘sexual exploitation’ issued by the UN Secretary-General.

¹² OSCE Permanent Council, *Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*, PC.DEC/1107/Corr.1 (6 December 2013), Section III, article 1.7.

¹³ *Ibid.*, article 1.6.

In 2002, the European Union (EU) adopted a Framework Decision which distinguished, among the purposes for which people might be trafficked, between “labour exploitation” and “sexual exploitation”. The term “labour exploitation” was used to refer to exploitation of a “*person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude*”, i.e., a generic term for referring to forced or slave labour and related forms of exploitation. The term “sexual exploitation” was used to refer to “*the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography*”¹⁷. This terminology is also used by the OSCE¹⁸ and in this paper.

The UN Trafficking Protocol names three elements that characterize trafficking in human beings for adults aged 18 and older:

- recruitment (or “transportation, transfer, harbouring or receipt”) by an intermediary;
- abusive means of control by an intermediary – “the threat or use of force or other forms of coercion” – in the course of recruitment, transportation, transfer, harbouring or receipt;
- subsequent exploitation, or an intention to exploit, in one of several ways, namely the exploitation of the prostitution of others, other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹⁹

The UN Trafficking Protocol states that the “*consent of a victim of trafficking in persons to the intended exploitation [...] shall be irrelevant where any of the means [...] have been used*” (Article 3(b)). So, it is legally impossible for a person to consent to the abusive means of control listed in the Protocol. When it comes to the abusive means used by traffickers to control their victims, it is important to note that the Protocol refers to more than “force or other forms of coercion” and includes “abuse of power” and abuse of a “position

of vulnerability”, along with payments given to a person to induce their apparent consent. It also refers to “deception”, which, as one commentary on the UN Trafficking Protocol has observed, is a method commonly used to persuade people to migrate on the basis of a false job offer.²⁰

In the case of children, the UN Trafficking Protocol makes it clear that it is not necessary for a child to have been subjected to abusive means of control (i.e., coerced or deceived) in the course of being recruited for the case to constitute trafficking. It is sufficient that a young person under age 18 has been recruited to be exploited (whether moved to a different location or not) to be regarded as a victim of trafficking. In addition, if a child’s recruitment or transportation – regardless of end intention – involves any of the means used to traffic adults (e.g., threats, violence, abduction or deception), the case is also considered trafficking.²¹

1.2 When trafficking in human beings occurs in conventional business operations

Businesses generally need to be competitive and to keep down the costs at which products are sold on to others (and eventually to the public). This creates a demand for goods and/or services which are cheap. One way of keeping production costs down is to minimize labour costs – and one way of doing this is to pay workers very little (or nothing at all) while ensuring that they are not in a position to change their job (i.e., to use forced labour or that the alternative jobs available are just as badly paid). So, pressure for low production costs can contribute to both forced labour and appalling working conditions. When the workers concerned are subjected to forced labour (or what is referred to as “labour exploitation”), they are trafficked; the demand for cheap goods or services that influenced an employer to subject them to forced labour is a form of demand that fostered the exploitation of persons and led to human trafficking. Even though the demand for cheap goods and services does not invariably result in human trafficking, States that have ratified the UN Trafficking Protocol have a duty to discourage such demand.

17 European Union, *Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings*, in Official Journal of the European Communities L 203, 01/08/2002, Article 1, pp. 1–4.

18 See OSCE Ministerial Council, *Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, through a Comprehensive and Proactive Approach*, MC.DEC/14/06 (5 December 2006).

19 Exploitation of the prostitution of others had been the subject of a previous UN convention in 1949. Forced labour had been the subject of two International Labour Organization (ILO) conventions. Slavery or practices similar to slavery had been the subject of two UN conventions. The removal of organs for commercial purposes had been the subject of comment by the World Health Assembly (WHO). The term “other forms of sexual exploitation” has not been defined by an international instrument and has not been the subject of further elaboration by UN bodies.

20 “In most situations, people agree to one set of work conditions (with a work permit, good working conditions, and a certain salary) and then are forced to work in dangerous, illegal conditions, locked in and have little or no pay”, in *The UN Trafficking Protocol: an Imperfect Approach*, Program on Human Trafficking and Forced Labor, Center for Human Rights & Humanitarian Law (Washington DC), Issue Paper 1 (November 2010), <<http://www.rightswork.org>>, accessed 2 March 2011, but no longer available in 2014.

21 UNICEF, *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe* (Geneva, 2006), page 14, <http://www.unicef.org/ceecis/protection_4440.html>, accessed 12 August 2014.

Some legitimate businesses employ workers who are recruited by brokers or agencies that deceive or cheat them, notably by saddling them with a debt (for recruitment services) that is so great that the worker concerned has no option to leave his or her job; subjected to forced labour, such workers have been trafficked. Other legitimate businesses contract labour providers or ‘gangmasters’ to provide them with the workers they need, when, once again, the workers concerned may be trafficked. In both these cases, the owners and managers of the business concerned may be unaware that their workers have been trafficked. Finally, some businesses use coercion to force workers to stay in a job, for example threatening them with physical harm or even death if they try to escape. Nevertheless, the other businesses or consumers to whom they sell their products are unlikely to be aware that coercion has been used and that workers have been trafficked.

Some businesses are affected by both trafficking for the purpose of the exploitation of the prostitution of others or the commercial sexual exploitation of children, when their premises are used in the process of such exploitation, notably hotels and other hospitality businesses.

In each case, it is unacceptable for a business owner or manager simply to claim that he or she was unaware that people had been trafficked and that their business was profiting as a result of trafficking in human beings.

1.3 The problems that company codes aim to prevent

In the context of international trade, where importers and retailers in industrialized countries purchase goods made in developing countries at far lower prices than those available from suppliers in their own countries, concern about cases of forced labour and other labour abuses in the value chains of retailers who sell products in industrialized countries has led numerous businesses to adopt a corporate code (sometimes known as a “code of conduct”) that guarantees explicitly that forced labour will not occur in their workplace or those of their suppliers, or that workers have not been trafficked. This paper reviews the scope of such codes and what has been done to ensure that they are not simply empty words (or window dressing), but actually achieve their objectives.

1.4 Methods used to compile this paper

Over the past two decades a substantial amount of information has been made public on the issue of

corporate social responsibility, including the efforts of businesses to stop abuses of human rights and labour rights from occurring in their workplaces or those of their suppliers.²²

This paper is based largely on a review of information that has been published (in English, French, Portuguese, Russian or Spanish) or is available on the Internet, about the efforts of businesses to reduce demand or to stop forms of exploitation associated with human trafficking. Extra information was obtained during the 11th OSCE *Alliance against Trafficking in Persons* Conference entitled “Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice”, held in Vienna in June 2011.

At the end of 2013 the OSCE Permanent Council adopted the *Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*. This includes a commitment for the relevant OSCE executive structures to update the relevant internal regulations “to ensure that no activities of the OSCE executive structures, including contracts for goods and services, contribute to any form of THB [trafficking in human beings]”.²³ The publication of the present paper is also relevant to these endeavours.

22 Much of this can be found (in several languages) on the website of a single organization: Business and Human Rights Resource Centre, <<http://www.business-humanrights.org>>.

23 OSCE Permanent Council, *Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*, PC.DEC/1107 (6 December 2013).

CHAPTER 2: THE NATURE OF DEMAND THAT BUSINESS CODES CAN DISCOURAGE

2.1 Understanding demand for the services of or goods produced by people who have been trafficked

As early as 2002, the OSCE Ministerial Council emphasized the importance of participating States addressing “demand for the activities of persons trafficked for the purposes of sexual exploitation, forced labour, slavery or other practices similar to slavery” and urged “countries of destination to take measures to effectively address such demand as a key element in their strategy for effectively preventing and combating trafficking in human beings, and to exercise zero tolerance towards sexual exploitation, slavery and all forms of exploitation of forced labour, irrespective of its nature”.²⁴

A recent UN Special Rapporteur on trafficking in persons, especially women and children (whose mandate ran from 2008 to 2014), Joy Ngozi Ezeilo, provided a succinct summary of what is meant by the term “demand” in the context of the causes of human trafficking. She noted that,

“ The definition of demand, which is an economic term, can be adapted to the context of trafficking to describe it as the desire ‘for labour that is exploitative or services which breach the human rights of the person delivering those services’.²⁵ It includes demand for sexual exploitation; for cheap labour and domestic workers; for organ removal and sale; for illicit adoption and forced marriages; for criminal activities or begging or for exploitation within the army.²⁶ As noted by several authors, globalization has increased the demand for cheap labour and services as well as for sex tourism.

“ ‘The demand side of trafficking generally refers to the nature and extent of the exploitation of the trafficked persons after their arrival at the point of destination, as well as the social, cultural, political, economic, legal and developmental factors that shape the demand and facilitate the trafficking process’.²⁷ As such, it does not have to be properly

understood as the demand for a trafficking victim’s prostitution, labour or services. Rather, demand must be understood expansively, as any act that fosters any form of exploitation that, in turn, leads to trafficking²⁸”.²⁹

The same Special Rapporteur noted subsequently that the UN Global Initiative to Fight Human Trafficking (UN.GIFT) had identified three levels of demand related to human trafficking:

1. “employer demand (employers, owners, managers or subcontractors);
2. “consumer demand clients or prostitute-users (in the sex industry), corporate buyers (in manufacturing), household members (in domestic work³⁰);
3. “and third parties involved in the process (i.e., traffickers and their associates, including various brokers or corrupt officials who are involved)”.³¹

This paper focuses primarily on the first of these levels (“employer demand”), focusing on the action that businesses can take themselves, while also reporting on the measures that States are required to take to influence businesses and the efforts of civil society and workers’ organizations to persuade business to adopt particular policies.

The different terminology used to refer to broadly similar patterns of abuse – human trafficking, forced labour, slavery, practices similar to slavery, and servitude – has appeared at times to confuse members of the public, including businesses, and meant that the

24 OSCE Ministerial Council, *Declaration on Trafficking in Human Beings*, MC(10).JOUR/2 (Porto, 7 December 2002), Annex 2.

25 UNODC, *Toolkit to Combat Trafficking in Persons* (Vienna, 2008), p. 457, quoted by the Special Rapporteur.

26 UNODC and UNGIFT, *Human Trafficking: an overview* (2008), p. 13, quoted by the Special Rapporteur.

27 UNODC, *Toolkit to Combat Trafficking in Persons* (Vienna, 2008), p. 457, quoted by the Special Rapporteur.

28 UN Commission of Human Rights, *Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children*, Sigma Huda, E/CN.4/2006/62 (20 February 2006), para. 52, quoted by the Special Rapporteur.

29 UN Human Rights Council, *Report submitted by the Special Rapporteur on trafficking in persons, especially women and children*, Joy Ngozi Ezeilo, A/HRC/10/16 (20 February 2009), paras. 51 and 52, reiterated in 2014 in: UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, Joy Ngozi Ezeilo. *Addendum. Stocktaking exercise on the work of the mandate on its tenth anniversary*, A/HRC/26/37/Add.2 (27 March 2014), para. 68.

30 Domestic work is also the focus of another OSCE occasional paper. Some domestic workers (particularly migrant workers) are trafficked into situations of forced labour and servitude. See: OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, Occasional Paper Series no. 4 (Vienna, 2010).

31 United Nations Human Rights Council, *Report submitted by the Special Rapporteur on trafficking in persons, especially women and children*, Joy Ngozi Ezeilo, A/HRC/23/48 (18 March 2013), para. 13.

managers of companies sometimes do not understand the relevance to their business of measures to stop human trafficking. When businesses first began adopting codes to set standards in their workplaces and among their suppliers, the term “trafficking in human beings” had not yet been defined, so prohibitions were included on forced labour and child labour without any reference to human trafficking. Preoccupation specifically with human trafficking has grown since 2000, meaning that some businesses which had already opted to prohibit forced labour have revised their codes to refer to human trafficking as well. Yet others persist in thinking (erroneously) that human trafficking only occurs in the sex industry and assume they are under no obligation to take action against it.

2.2 The debate on how to address demand

There is an ongoing debate as to whether demand for the services of people trafficked into sexual exploitation is directly comparable to demand for the services of people in labour exploitation and therefore whether the measures to reduce demand should be similar or different. The key points of disagreement relate to the nature of commercial sex and the proportion of trafficked persons who are subjected to exploitation in the sex industry, rather than other sectors of the economy.

For example, a report by a Council of Europe Parliamentary Assembly (PACE) committee in March 2014 suggested that 84 per cent of the number of people trafficked in Europe “are trafficked to be forced into prostitution” (it estimated the total to be between 70,000 and 140,000 people each year). It also suggested that “victims of trafficking represent a large share of sex workers” in Europe.³² At much the same time, an ILO report (about the profits made by traffickers and others who exploit people) estimated that the number of people in the developed economies of the world and in the European Union who are subjected to forced labour in the private sector totalled about 1,300,000, of whom just under a quarter (300,000) were in “forced sexual exploitation” and just over three quarters (one million) were subjected to “forced labour exploitation”.³³ In view of the huge difference in the estimated proportions of those exploited in the sex industry versus other sectors (84 per cent versus 23 per cent according to the first source; and 16 per cent versus 77 per cent, according to the second), a comment

by the Dutch National Rapporteur on trafficking in human beings is relevant:

“*Figures are used to reinforce viewpoints and can form the basis for intensive policy measures. However, positions are sometimes taken on the basis of unverifiable, unreliable or inaccurate data. For example, estimates are sometimes taken from earlier studies to demonstrate the alarming scale of prostitution or human trafficking without any enquiry into how the original researchers arrived at their estimates. But ‘bad data are worse than no data’.*”³⁴

Some observers argue that just a proportion of the women and men who earn money in return for sex have been forced into doing so and that the same analysis of demand for their services can be made as for the situation of others who experience labour exploitation – for not everyone earning a living in this way may have been forced or trafficked into doing so.³⁵ Others consider that earning money from commercial sex is inherently abusive (or that purchasing sex specifically from women denigrates the status of women in society), noting that many women who do so have been subjected to abuse. In this case, measures to reduce demand, including legislation to penalize anyone who pays for sex, are regarded as justifiable and necessary, whatever the specific proportion of people involved who have been trafficked. For example, in 2002 US President George Bush spelled out the US position on prostitution, stating that the US “*opposes prostitution and any related activities, including pimping, pandering, or maintaining brothels, as contributing to the phenomenon of trafficking in persons*”.³⁶

32 Council of Europe Committee on Equality and Non-Discrimination, *Prostitution, trafficking and modern slavery in Europe*. Council of Europe document 13446 (20 March 2014).

33 ILO, *Profits and Poverty. The Economics of Forced Labour* (Geneva, 2014), page 17 (Table 2.2).

34 Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, *Does legalised prostitution generate more human trafficking* (2013), <http://www.dutchrapporteur.nl/Images/dutch-rapporteur.does-legalised-prostitution-generate-more-human-trafficking.2013_tcm64-558164.pdf/>, accessed 12 August 2014.

35 Lin Lean Lim, *Trafficking, demand and the sex market*, paper presented at the International Symposium on Gender at the Heart of Globalization, 12 March 2007.

36 *National Security Presidential Directive 22* of 16 December 2002, <<http://www.combat-trafficking.army.mil/documents/policy/NSPD-22.pdf>>. The President’s statement should be interpreted in the context of the United States’ definition of what constitutes human trafficking, enacted shortly before the UN agreed to a definition in 2000. The *Trafficking Victims Protection Act* of 28 October 2000, most recently amended by Title XXII of the *Violence Against Women Reauthorization Act 2013*, defines human trafficking using the term “severe forms of trafficking in persons” to mean “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age”; or “(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery” (section 103(8)). The definition of “sex trafficking,” in turn, means “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act” (section 103(9)).

On the basis of this policy position, the US routinely includes prohibitions on all forms of commercial sex when recommending actions to stop human trafficking (including in procurement policies and codes for Government employees or others).

The UN Special Rapporteur on Trafficking in Persons, especially women and children, Joy Ngozi Ezeilo, summed up the arguments in her report to the UN General Assembly in 2010. She noted that,

“ [...]here are divergent perspectives on how to tackle the demand for exploitative commercial sexual services. At one end of the spectrum is the argument that prostitution is inextricably linked to trafficking in persons and thus that trafficking cannot be prevented without curbing the demand for prostitution. On the basis of that approach, some States have adopted legislation that criminalizes the buying or soliciting of sexual services, which has reportedly led to a significant reduction in the number of foreign women engaged in street prostitution, thus creating an unprofitable market for sex trafficking. At the other end of the spectrum, the ‘free choice’ advocates draw a clear distinction between prostitutes who voluntarily work in the sex industry and trafficked persons who are forced to work as prostitutes. They do not view the abolition of prostitution as an effective strategy for reducing the incidence of trafficking and advocate for prostitutes’ right to earn their livelihood and to organize themselves to assert their rights.”³⁷

The two major approaches in this debate have resulted in two quite different models in Europe for regulating or stopping prostitution, notably those currently practised in the Netherlands and Sweden.³⁸ In the former, prostitution has been legalized as work, and in Sweden the purchase of sexual services has been criminalized. Depending on what approach is adopted, the steps taken to address demand in the sex industry are radically different. In some countries, various practices associated with prostitution, such as soliciting or running a brothel, are offences and in others purchasing sexual services is criminalized, as in Sweden. Sweden’s *Act Prohibiting the Purchase of Sexual Services* (SFS 1998:408) made it an offence to pay for sex, punishable by a fine or imprisonment for up to

six months.³⁹ A 2010 review for Sweden’s Ministry of Justice of the implementation of this Act between 1998 and 2008 concluded that prohibiting the purchase of sexual services had helped to combat prostitution, citing evidence that the number of street prostitutes in Sweden’s three largest cities had declined from 730 women in 1998 to just under 300 in 2008. The review commented that, “*Although it is difficult to assess precisely the extent of sex trafficking in Sweden, there are data suggesting that the scale has been affected by the ban on purchases of sexual service*”.⁴⁰ The data cited by the report mentioned a view (that the Swedish police reported having overheard criminals express) that Sweden was not a good place to market sexual services, along with reports from the police that, on average, just two to four women were found in brothels which the police had raided in Sweden, whereas, the report suggested, much larger numbers of women were found in brothels elsewhere in Europe. Based on its understanding of the data available about people who are trafficked in Europe, the Council of Europe committee referred to earlier concluded that “[P]olicies prohibiting the purchase of sexual services are those that are more likely to have a positive impact on reducing trafficking in human beings”.⁴¹

In contrast, in the Netherlands the ban on prostitution was lifted in 2000 and commercial sex businesses are licensed to operate by local government. The national organization representing brothel owners, the *Vereniging voor Exploitanten Relaxbedrijven* (VER), is reported to have used its influence within the sex industry to try to ensure that the conditions for licensing are respected (and that trafficked women are not present in licensed establishments) and to discourage unlicensed businesses (where trafficked women are considered more likely to be present) from operating. However, the extent to which such efforts by businesses operating within the sex industry are effective at stopping human trafficking remains questionable.

37 UN General Assembly, *Trafficking in persons, especially women and children*, Interim report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, A/65/288 (9 August 2010), para. 34.

38 There are a variety of other models. In some countries prostitution is considered an administrative offence and is punished as such (by paying fines), while pimping is a criminal offence.

39 In connection with the sexual crimes reform of 2005, the Act was revoked and replaced by new legislation on the purchase of sexual services (Chapter 6, Section 11 of the Penal Code). The Government’s website says that, “*The reason behind the introduction of legislation on the purchase of sexual services was – and is – the importance for society of fighting against prostitution. Prostitution is considered to cause serious harm both to individuals and to society as a whole. Large-scale crime, including human trafficking for sexual purposes, assault, procuring and drug-dealing, is also commonly associated with prostitution*” (Government Offices of Sweden, *Legislation on the purchase of sexual services*, <<http://www.sweden.gov.se/sb/d/4096/a/119861>>, accessed 10 July 2014).

40 A. Skarhed, *Förbud mot köp av sexuell tjänst. En utvärdering 1999–2008* [SOU 2010:49] (Stockholm, 2010), p. 122, unofficial translation.

41 Council of Europe Committee on Equality and Non-Discrimination, *Prostitution, trafficking and modern slavery in Europe*, Doc. 13446 (20 March 2014), p. 1.

In both Sweden and the Netherlands, it is not left up to employers within the sex industry to adopt voluntary codes or other initiatives to stop human trafficking: they are required to follow the letter of the law (although the extent to which they do so or to which the authorities try to enforce the law varies). A study of these various legal approaches in the EU by the International Centre for Migration Policy Development (ICMPD) found that “*more independent and methodologically sound research is needed to conclude authoritatively on the impact of these types of legislative regimes, and inform policy makers*”.⁴²

Evidently the policy differences that are inherent in these different approaches and the use of the same terminology (“trafficking in persons/human beings”) to refer to a different range of practices, contribute to causing confusion and to undermining the unanimity that the international community appeared to have achieved when the UN Trafficking Protocol was adopted in 2000.⁴³

Some commentators have noted that in cases involving forced labour, the concept of demand can “be taken to refer to employers’ requirements for cheap and vulnerable labour” and “to consumer demand for cheap goods or services”, as suggested by one speaker at a OSCE Human Dimension Implementation Meeting.⁴⁴ It is important to point out that, in both cases, the (employers’) requirements and (consumer) demand represent preferences by those making purchasing decisions (for cheap labour and cheap goods), not any sort of deliberate choice in favour of forced labour.

ILO authors have suggested that,

“*A major incentive for trafficking in labour is the lack of application and enforcement of labour standards in countries of destination as well as origin. These [standards] include respect for minimum working conditions and consent to working conditions.*”⁴⁵

This analysis is broadly along the lines of the approach agreed in 2003 in the OSCE *Action Plan to Combat Trafficking in Human Beings*, which called on “countries of destination” among the OSCE’s participating States to address “*the problem of unprotected, informal and often illegal labour, with a view to seeking a balance between the demand for inexpensive labour and the possibilities of regular migration*”.⁴⁶ Much the same call was made by the UN Special Rapporteur on Trafficking in Persons, Joy Ngozi Ezeilo, in 2010, when she urged that, “...[I]t is important to address the lack of regulations and labour rights as one of the key structural factors fostering trafficking in persons, whether for sexual exploitation or labour exploitation” and it is “*imperative to address the demand for cheap and exploitable labour and services through the framework of labour rights protection and migration management.*”⁴⁷

Evidently, if decent jobs were available and wages higher in countries of origin (or the salary gap was not so enormous between different countries), the supply of migrants to work in unprotected, informal or illegal work might well dry up.

2.3 Consumer demand

Members of the public are all consumers who can potentially contribute indirectly to the profits of traffickers by paying money for products or services made or provided by people who have been trafficked. They rarely do so deliberately. Individuals create demand for specific products (especially products which are cheap)

42 International Centre for Migration Policy Development (ICMPD), *Legislation and the Situation Concerning Trafficking in Human Beings for the Purpose of Sexual Exploitation in EU Member States* (2009), p. 12. The authors go on to observe that, “Ultimately, it depends on the actual implementation of the policy, including strict enforcement of legislation against forced prostitution and trafficking in human beings for sexual exploitation, whether the expected benefits of this policy will materialise”. In 2014 the ICMPD was reported to be organizing a subsequent project on the issue of ‘demand’, with European Commission support: see <http://www.icmpd.org/fileadmin/ICMPD-Website/ICMPD-Website_2011/ICMPD_General/News/DemandAT/DemandAT_Summary-of-the-project_February2014_Final.pdf>.

43 Commenting on what she called “the difficult and contentious issue of trafficking and prostitution” the UN Special Rapporteur on Trafficking in Persons, Joy Ngozi Ezeilo, noted in 2014 that the debate about the two phenomena “has often been destructive to broader goals of advancing human rights, dignity and freedom” (see: United Nations Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo. Addendum. Stocktaking exercise on the work of the mandate on its tenth anniversary, A/HRC/26/37/Add.2* (27 March 2014), para. 78).

44 J. O’Connell Davidson (Nottingham University, United Kingdom), in Addressing the demand factors in trafficking in persons, in Office for Democratic Institutions and Human Rights, *Overview of Special Day on Trafficking at the 2006 OSCE Human Dimension Implementation Meeting and Summary of Key Recommendations* (Warsaw, 27 October 2006), <http://www.osce.org/documents/odhr/2006/11/21990_en.pdf>, accessed 23 December 2009 but no longer available in 2014.

45 ILO, *Getting at the Roots: Stopping Exploitation of Migrant Workers by Organized Crime*, Perspectives on Labour Migration, P. A. Taran and G. Moreno-Fontes Chammartin (Geneva, 2002). The authors went on to observe that, “Tolerance of restrictions on freedom of movement, long working hours, poor or non-existent health and safety protections, non-payment of wages, substandard housing, etc. all contribute to expanding a market for trafficked migrants who have no choice but to labour in conditions simply intolerable and unacceptable for legal employment.”

46 OSCE Permanent Council, *Decision No. 557/Rev.1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005), chapter IV, para. 3.2. The Action Plan was adopted by Decision No. 557 on 24 July 2003.

47 UN General Assembly, *Trafficking in persons, especially women and children*, Interim report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, A/65/288 (9 August 2010), para. 38.

or services (which include commercial sex, domestic work and personal care, notably for the elderly or infirm). However, not surprisingly, few consumers are aware of either the contractual or working conditions involving those generating the products and supplying services. Consumers may wish to avoid contributing to the profits of traffickers and bad employers, but are unsure how to do so.

It is relatively easy to understand that the purchasing decisions made by men and boys who pay for sex are qualitatively different to a shopper's decision about which tomatoes or clothes to buy or a care agency's decision about which care workers to hire. Those who assert that paying for commercial sex is intrinsically harmful (and prejudicial to the status of women) regard such consumer decisions as inherently different to ones made about other services or products.

The influence that consumers wield is relatively simple: they choose whether or not to purchase a particular product or service and, when there is a range of products or services that meets their needs, decide which to select. In theory, individual consumers can use their purchasing power to protest that they fear that a product may be produced in abusive conditions (for example, if it has become too cheap), either by deliberately choosing to buy an alternative product (including a more expensive one) or by refusing to buy a particular product at all. In practice, it requires information that is clear and uncontested to persuade them to do so. Once individual businesses start reporting publicly on the measures they have taken to ensure that human trafficking or forced labour do not occur in their value chain, consumers can, in theory, take this information into account. Occasionally individual consumers associate themselves with others (such as consumer campaign groups or workers' organizations) in campaigns about particular products (such as the Campaign for Fair Food described in the next chapter) or in pressure groups which aim to influence specific retailers. Such consumer actions include letter writing, public protest, boycotting particular products or retailers, expressing their concerns to shop managers and participating in shareholder actions. Of course, many individual consumers are also voters in elections, so they can have some influence on government policies affecting business via the ballot box or by directly lobbying politicians.

However, businesses and large organizations (such as local and national government entities and state-run enterprises) also create a demand for the goods and services that they buy from other companies. They potentially have far more options enabling them to

influence conditions in their suppliers' workplace in a positive way: for example, suspending purchases with a condition that purchasing will be resumed once the supplier can demonstrate effective reform and accountability. Whereas individual consumers are mostly aware that, by itself, their purchasing decision has little influence, large businesses and organizations know that they can have a great deal of influence on their suppliers. The options open to them are examined in this paper.

2.3.1 Evidence about the impact of consumer choice

Despite much publicity about cases of human trafficking and exploitation over the past decade, the evidence that purchasing decisions made by consumers have been influenced significantly is confined to relatively few commodities where intense publicity has focused attention on a particular product or retailer. Even when consumers suspect that money they spend might go into the pockets of traffickers or abusive employers, consumers may choose not to change their spending decisions, on the reasonable grounds that they cannot differentiate between the services or products provided by people who have been trafficked or subjected to other abuse and those provided by workers who have not.

In the case of efforts to stop child labour in the 1990s, there were examples of consumer decisions not to buy certain products having an impact and also examples of consumers deliberately opting for products which were accompanied by some sort of guarantee that they had been made without the involvement of children (sometimes called "social labelling"). For example, in 1996, following publicity that children were involved in stitching footballs, retailers noticed a drop in sales of balls which offered no guarantee that children had not been involved. In 2005 researchers in the US investigated whether consumers were willing to pay higher prices for products that displayed a label saying they had been made with good labour standards.⁴⁸ They noted that consumers generally claimed that they would be willing to pay extra for products made under good working conditions rather than in sweatshops. In an experiment in a shop in New York, they found evidence of this willingness and confirmed that sales of such labelled products increased, even when the price of the product was increased by between 10 and

48 M. Hiscox and N. Smyth, *Is There Consumer Demand for Improved Labor Standards? Evidence from Field Experiments in Social Product Labeling* (2008), <<http://scholar.harvard.edu/hiscox/ethical-supply-test>>, accessed 16 June 2014.

20 per cent in comparison to its price before a label was attached (saying that the product was produced in good working conditions). The researchers concluded that this was evidence of a “strong latent consumer demand” for social labelling, particularly regarding the adequacy of labour standards.⁴⁹ Since then, it has been primarily in the US that campaigns have been launched to provide individual consumers with information relating to topics such as the “slavery footprint” of particular items on sale.⁵⁰

2.3.2 Social labelling

Another US academic has argued in the opposite direction, that raising wages among workers in developing countries and restricting workers’ hours will continue to be difficult as long as consumers, and therefore companies, give priority to the price they pay in a shop.⁵¹ Suppliers and subcontractors in developing countries, he reckons, are likely to understand that, although it is necessary to maintain the appearance of social responsibility, in practice contracts continue to be awarded by Western businesses to factories that produce high quality/low cost products and are willing to oblige their workforce to work long hours of overtime to meet orders at short deadlines (especially in the garment industry, where retailers insist that their suppliers produce new products extremely quickly to keep up with fashion trends). This interpretation assumes that the prices that consumers are willing to pay are the main determining factor. In practice there seem to have been discussions among importers about the disadvantages of using social labels to seek commercial benefits, knowing both that this is a risky strategy for retailers and the industry as a whole and that consumers are unlikely to know how to distinguish between honest labels and meaningless ones used by unscrupulous competitors.

Social labelling can probably only work if consumers have confidence in the label and in the information that they are provided by the business marketing a labelled product or others. Conceivably such confidence could be achieved if a label was guaranteed by an independent organization with a robust inspection system for verifying the claims made on a label. So, to some extent, social labels have been undermined by retailers not standardizing the information they provide to potential buyers.

Despite much publicity about human trafficking, much of the focus has been on the sex sector and the involvement of adult forced labour in producing goods for export or trade has not achieved the same visibility as child labour, nor generated the same public outrage. On the whole, a combination of ignorance and the prevailing ideology about the benefits of free markets convinces most consumers that it is reasonable to buy as cheaply as possible and to expect institutions operating at a different level (e.g., governments, importers or retailers) to take the action necessary to prevent the abuse of workers involved in producing the goods they buy, rather than requiring the individual consumer her- or himself to make purchasing decisions that would do so.

49 Ibid.

50 See <<http://www.slaveryfootprint.org>> for information on this initiative, which initially aimed to provide consumers with information about specific commodities based on five published sources. It subsequently became part of a broader initiative entitled ‘made in a free world’ (see <<http://madeinafreeworld.com>>, accessed 6 August 2014).

51 D. Vogel, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (Washington DC: Brookings Institution Press, 2005).

CHAPTER 3: WHAT HAPPENS WHEN BUSINESSES DO NOT TAKE ACTION TO STOP HUMAN TRAFFICKING OR RELATED ABUSE?

When inadequate preventive action is taken, abuse occurs (the current term used by the UN for referring to human rights abuse caused by business is “adverse human rights impacts”). There have been countless public campaigns over the past two decades calling on businesses and individual consumers not to buy particular products when some of the workers involved are reported to have been trafficked or subjected to forced labour, child labour, or other abuses in the workplace. Several are mentioned in subsequent chapters. Many campaigns have achieved part of their objectives by convincing companies which buy or sell particular products to take action to ensure that their suppliers put an end to such abuse.

3.1 Example 1: Agricultural produce in the United States

The first example concerns a campaign in the United States (US). The Campaign for Fair Food involved a coalition of activists mobilizing consumers to support their demands. It was initiated by a community-based human rights organization of farm workers, the Coalition of Immokalee Workers (CIW)⁵², which became aware in the early 1990s that some farm workers were trafficked for labour exploitation in Florida and other states in the south east of the US. The CIW assisted the US Department of Justice in the successful investigation and prosecution of these cases which helped define human trafficking as a federal crime in the US.⁵³

The Campaign for Fair Food aimed to stop trafficking and the use of forced labour on farms in the US and to eliminate the poverty and lack of rights which helped cases of modern slavery to flourish by demanding that corporations buying tomatoes use their market power to improve wages and conditions. The campaign was supported by a broad coalition of NGOs, faith-based organizations, student and worker coalitions, and anti-trafficking and anti-slavery campaigners, which called for a consumer boycott of Taco Bell, a food corporation that was purchasing tomatoes from Florida farms. The wider objective of the boycott was to persuade retailers to work with the CIW to pay an increase in wages to farmworkers and thereby address the downward pressure that their purchasing strategy had on tomato

pickers’ wages (i.e., a company buying a large volume of tomatoes was able to use its purchasing power to insist on low prices) and to establish a code of conduct with an enforceable zero-tolerance policy for forced labour.⁵⁴ The eventual result was that in March 2005 Taco Bell’s parent company, Yum! Brands, agreed to work with the CIW to pay a wage increase to farmworkers and introduce a Fair Food Code of Conduct (agreed with the CIW) for its grower-suppliers.

In response to the campaign, some businesses took action on their own, without reference to the CIW or the Campaign for Fair Food. In November 2007, a fast-food business, Burger King, organized a press conference with the executive vice president of the Florida Tomato Growers Exchange, an agricultural co-operative representing more than 90 per cent of the growers in Florida in an attempt to mute growing calls for Burger King to sign a Fair Food agreement with the CIW.⁵⁵ The executive vice president told a journalist that accusations about the enslavement of tomato pickers were entirely incorrect: “We’re not going to be accused of things we don’t do. This is certainly not a labor force held in servitude”.⁵⁶

The growers had established a non-profit organization known as SAFE (Socially Accountable Farm Employers), which took on the job of checking if labour rights were being respected among farm workers. However, it tried to do so without involving workers or their organizations in the process. SAFE reportedly started checking farms in 2006 and had, by November 2007, concluded that nine out of the 12 major tomato farms in Florida deserved its certification. That month, the president of a supply chain monitoring business, Intertek Sustainability Solutions, was quoted by a newspaper as saying that the audits had “found no slave labor”. However, on the same day, 20 November 2007, three tomato pickers arrived

at their local County Sheriff’s office after escaping two days earlier through the ventilation hatch of a locked truck where they had been held against their will by their employers, a family which supplied workers to harvest tomatoes on farms owned by some of Florida’s major tomato producers.⁵⁷ Two members of the family were subsequently indicted on charges of conspiracy, holding workers in involuntary

52 The Coalition of Immokalee Workers “has 4,000 members, who harvest primarily tomatoes and oranges in Florida’s growing season from September through May, and then harvest everything from tomatoes to apples to squash to blueberries while migrating in the summer throughout the Southeastern US and along the East Coast as far north as New York State”. Laura Germino, Coalition of Immokalee Workers, *Presentation at Technical Seminar on Trafficking for Labour Exploitation in the Agricultural Sector*, OSCE, Vienna, 27–28 April 2009, <<http://www.osce.org/what/trafficking/62945>>, accessed 23 June 2010.

53 Notably *US vs. Flores*, 1997; *US vs. Cuello*, 1999.

54 Noelle Damico (Presbyterian Church U.S.A. Campaign for Fair Food), “Brief Overview of the Campaign for Fair Food”, <<http://www.pcusa.org/resource/pcusa-campaign-fair-food-brief/>>.

55 Noelle Damico (Presbyterian Church U.S.A. Campaign for Fair Food), “Brief Overview of the Campaign for Fair Food”, <<http://www.pcusa.org/resource/pcusa-campaign-fair-food-brief/>>.

56 E. Walker, ‘Tomato companies, workers and fast food firms square off’, *Miami Herald*, 20 November 2007, quoted on the website of the Florida Tomato Growers Exchange, <<http://www.floridatomatogrowers.org/news/newsdetails.aspx?id=15>>, accessed 28 November 2011.

57 CIW, ‘Fresh allegations of “human slavery” emerge from the tomato fields of Immokalee’, 7 December 2007, <http://www.ciw-online.org/no_slave_labor.html>, accessed 1 July 2014.

servitude and peonage. In February 2008 they were convicted and sentenced to 12 years' imprisonment.⁵⁸ In light of this debacle, Burger King quickly signed a Fair Food agreement with the CIW, and in 2010, the Florida Tomato Growers Exchange did likewise. SAFE no longer exists.

Due to ongoing consumer action, by the end of 2010 nine food corporations in the fast-food, food service and grocery sector had signed fair food agreements with the CIW. Retailers purchasing large quantities of tomatoes were legally obliged under these agreements "to cut off purchases in the event slavery is discovered in their supply chain [...]".⁵⁹ When a prosecution in Florida revealed that enslaved labourers had worked on the farms of two growers who supplied tomatoes to corporations that had Fair Food agreements with the CIW, those corporations were under an obligation to suspend purchases from those two growers.⁶⁰ This market-force pressure for grower accountability led the Florida Tomato Growers Exchange, to reach a direct agreement with the CIW, known as the Fair Food Program, which was launched in 2010.⁶¹ This extended fair food principles across the industry and involved farmworkers in the establishment and protection of their own rights.⁶²

To ensure and monitor the implementation of the Fair Food Program, a separate not-for-profit organization, the Fair Foods Standards Council, was set up in 2011 with the sole function of overseeing the Program. The Council is responsible for both financial and systems audits of participating farms and retailers, for staffing a 24-hour toll-free complaint telephone line, for investigating

and resolving complaints that arise, and for otherwise helping growers and corporate buyers comply with the requirements of the Program. By 2013 the Council reported having conducted almost 60 audits, visited 45 farm locations and interviewed 4,000 workers to assess compliance.⁶³

In January 2014 Wal-Mart, the world's largest retailer, became the twelfth corporation to join the Fair Food Program and committed to work with the CIW to expand the programme beyond Florida and into other crops.⁶⁴

This example illustrates the risks to business both of failing to respond when cases of trafficking are reported and of responding inadequately. At the same time, it also shows how business interests and workers' organizations can co-operate. At the beginning of 2014 Alexandra Guáqueta, the Chairwoman of the UN Working Group on Business and Human Rights, travelled from Colombia to Florida to attend the announcement that Wal-Mart was joining the Fair Food Program and to read a statement on behalf of her Working Group. She began by saying, "*We are here to support the Immokalee workers and the Fair Food Program, which offers such promise for us all,*" and went on to praise the Program as a "ground-breaking accountability arrangement" comprised of a "smart mix of tools" and "closely aligned with the UN Guiding Principles on Business and Human Rights." Her statement ended by expressing the UN's eagerness to see the Fair Food Program "serve as a model elsewhere in the world."⁶⁵

3.2 Example 2: Cotton grown in Uzbekistan

Another example of an ongoing campaign concerns Uzbekistan. Among the countries where the production or processing of cotton is reported to involve violations of human rights, the situation in Uzbekistan has been singled out by campaigners.⁶⁶ This is in part because of the large number of children reportedly subjected to forced labour and also because the State has a monopoly over cotton production and export.

In 2005 the International Crisis Group reported that, "*The cotton industry in Uzbekistan, Tajikistan and Turkmenistan contributes to political repression, economic stagnation, widespread poverty and environmental degradation [...]. Forced and child labour and other abuses are common*".⁶⁷ Subsequent reports focused particularly on Uzbekistan, confirming that school-aged children were forced to harvest cotton each autumn. In 2007, a series of retailers in Europe and North America announced that they would cease to allow Uzbek cotton to be used in products they

58 A. Bennett Williams, 'Immokalee family sentenced for slavery', *Ft. Myers News-Press*, 28 February 2008, <<http://sanders.senate.gov/newsroom/news/?id=517f1da1-8900-40ee-b650-b3acd6ff8efe>>, accessed 1 July 2014.

59 L. Germino, Op. Cit.

60 N. Damico (Presbyterian Church U.S.A. Campaign for Fair Food), "Harnessing Consumer Demand and Market Force to Address Human Trafficking", *Plenary address at the US Department of Justice National Conference on Human Trafficking* (May 2010).

61 Further information about the Fair Food Program was found at <<http://ciw-online.org/fair-food-program>>.

62 "Historic Breakthrough in Florida's Tomato Fields", Joint Press Release by the Coalition of Immokalee Workers and the Florida Tomato Growers Exchange, 1 July 2014, <http://ciw-online.org/FTGE_CIW_joint_release.html>.

63 Fair Foods Standards Council, *Fair Food Program Report, 2011–2013* (2013), <http://fairfoodstandards.org/reports/FFP_2011-13_web_v1.0.pdf>, accessed 6 August 2014.

64 Participating corporations in the Fair Food Program as of 29 May 2014 were: Yum! Brands, McDonald's, Burger King, Subway, Chipotle Mexican Grill, Aramark, Sodexo, Bon Appetit Management Company, Compass Group, Whole Foods, Trader Joe's and Wal-Mart. Further information about the Fair Food Program was found at <<http://ciw-online.org/fair-food-program>>.

65 UN Working Group on Business and Human Rights, 'Visit to Immokalee, Florida', 16 January 2014, <<http://www.ohchr.org/EN/Issues/Business/Pages/2014Activities.aspx>>, accessed 16 June 2014.

66 For general information about the campaign focusing on Uzbekistan's cotton sector, see <<http://www.cottoncampaign.org>>, accessed 26 June 2014. A report issued by the US Government at the end of 2010 mentions a total of eight countries in which forced labour is reported to be used in the production of cotton, of which four are OSCE participating States: Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan. The other four countries are Benin, Burkina Faso, China and Pakistan (the report also notes that forced labour is involved in the production of cottonseed in India). See, US Department of Labor (Bureau of International Labor Affairs), *The Department of Labor's List of Goods Produced by Child Labor or Forced Labor* (Washington DC: Department of Labor, 2010), p. 19, <<http://www.dol.gov/ilab/programs/ocft/pdf/2010tvpra.pdf>>, accessed 5 January 2011, but no longer available in 2014.

67 International Crisis Group, *The Curse of Cotton: Central Asia's Destructive Monoculture*, Asia Report No. 93 (28 February 2005), page i.

sold,⁶⁸ confirming that the campaign now involves major businesses, rather than only human rights activists or non-governmental organizations (NGOs).

In September 2008, Uzbek authorities announced that the country was signing two International Labour Organization (ILO) conventions on child labour and that the Government had adopted an action plan to eliminate the use of child labour. Nevertheless, there were further reports that children were forced to pick cotton in the autumn 2008 and autumn 2009 harvests. A report in 2010 estimated that forced child labour accounted for over half the country's cotton harvest.⁶⁹

The number of businesses using cotton in their products that made commitments not to buy cotton from Uzbekistan increased. In 2008 a "Responsible Sourcing Network" was set up. The UN Global Compact (see below) reported that the Network "includes a wide range of players including socially-responsible investment companies such as Calvert and Boston Common Asset Management, a range of major brands and retailers, and sector organisations including the National Retail Federation of the US and the National Retail Council of Canada".⁷⁰ By 2010 a wider range of companies had publicly announced that they would not knowingly source cotton from Uzbekistan, including 24 named on a UN Global Compact website.⁷¹

The authorities in Uzbekistan are reported to have acted to stop children under 16 being forced to pick cotton,⁷² but there have been continuing reports that older children are still forced to harvest cotton. In 2013 the Uzbek authorities invited ILO monitors to observe the harvest and during the 2013 cotton harvest (September and October), joint ILO-Uzbek teams monitored the harvesting to check if "worst forms of child labour" were occurring in violation of the ILO's Convention No. 182 (on worst forms of child labour, which include forced labour involving young people under 18). The ILO subsequently reported that "the monitors reported 62 observations of children in the cotton fields, including 57 confirmed cases of children working in the cotton fields. Of these cases, 53 children between the ages of 16 and 17 years (21 girls and 32 boys) were engaged in picking cotton".⁷³ The ILO "mission report states that it would appear that forced child labour was not used on a systematic basis in Uzbekistan to harvest

cotton in 2013".⁷⁴ The Uzbekistan Government said it was committed to co-operating further with the ILO, including on policies to abolish child and forced labour. Despite the presence of ILO monitors, others nevertheless reported that older children were still being forced to harvest cotton in 2013.

The campaign has had a significant impact on numerous businesses. Initially, the businesses which refused to use cotton from Uzbekistan were reported to have had difficulty in finding out where the cotton used in products they sell (such as clothes) came from. However, they are reported to have found new ways to check and are now active participants in efforts to end the use of forced labour in Uzbekistan. Uzbekistan is reported to still be able to find buyers for its cotton, but the range of buyers has been curtailed. Regular updates publicizing the use of forced child labour ensure that the issue remains in the public eye.

The Thomson Reuters Foundation published the following news item near the end of the 2013 cotton harvest, noting one of the results of the campaign:

"Cotton traders head to the Uzbek capital Tashkent for their annual cotton fair on Wednesday, as a growing number of international companies have declared their refusal to source cotton from the country until it ceases the forced labour of children and adults in its cotton fields. The market value of companies that are signatories to the 'Company Pledge Against Forced Child and Adult Labour in Uzbek Cotton' has surpassed \$1 trillion, with 136 companies now part of the agreement, said the Responsible Sourcing Network".⁷⁵

Although not precipitated specifically by reports of forced labour in Uzbekistan, the Better Cotton Standard has been established by the Better Cotton Initiative (BCI) to address negative impacts associated with cotton cultivation worldwide that undermine its sustainability. One of its six long-term objectives is the promotion of decent work for farming communities and cotton farm workers.⁷⁶

3.3 Example 3: Recruitment practices which allow trafficking to occur

Recruitment practices vary widely around the world. Efforts have been made by the ILO, governments and others to improve the regulation of private recruitment and employment agencies, in particular those recruiting workers in one country for jobs in another. In some countries, major recruitment agencies

68 Including Wal-Mart Stores, Tesco and Marks & Spencer. See 'UPDATE 1-Wal-Mart asks suppliers to avoid Uzbek cotton', *Reuters*, 30 September 2007, <<http://www.reuters.com/article/idUSN3043422920080930>>, accessed 22 June 2010.

69 Anti-Slavery International, 'The Curse of Uzbekistan's Cotton Crimes', *The Reporter*, Series VIII, Volume 16, Issue No. 4 (autumn 2010), p. 9.

70 UN Global Compact: 'Human Rights and Business Dilemmas Forum', *Forced Labour*, 'Combating Forced Child Labour in Uzbekistan', <http://human-rights.unglobalcompact.org/case_studies/forced-labour/forced_labour/combating_forced_child_labour_in_uzbekistan.html>, accessed 26 June 2014.

71 Ibid.

72 '2013 Cotton harvest in Uzbekistan with use of forced labour on big scale', *Anti-Slavery International*, 28 November 2013, <http://www.antislavery.org/english/press_and_news/news_and_press_releases_2009/2013_uzbek_cotton_harvest.aspx>, accessed 10 July 2014.

73 Report of the Committee of Experts on the *Application of Conventions and Recommendations, Application of International Labour Standards 2014 (I), General Report and observations concerning particular countries* (Geneva: ILO, 2014), p. 268.

74 Ibid.

75 Astrid Zweynert, 'Pressure grows on Uzbekistan to stop using forced labour in cotton fields', *Thomson Reuters Foundation*, 16 October 2013, <<http://www.trust.org/item/20131016080406-sih3o/>>, accessed 27 November 2013.

76 See BCI annual reports: <<http://bettercotton.org/about-bci/bci-annual-report/>>, accessed 1 August 2014.

are still permitted to impose extremely onerous conditions on would-be migrants. In others, unregistered agents or agencies operate, which not only fail to observe international good practice recruitment standards, but which require migrants to take on debt (for recruitment and training fees, migration and travel costs, etc.) and exploit this debt to force the indebted migrants to work indefinitely in particular jobs or for extremely low wages.⁷⁷ Some recruiters practice deception (promising one job or salary, but providing something quite different) or other practices that constitute human trafficking, such as taking possession of a migrant's passport or identity papers and refusing to return these.

Some recruitment agencies have taken action explicitly designed to ensure that migrant workers whom they help find jobs are not trafficked. In other cases, inter-governmental organizations have promoted multilateral agreements or particular good practice to make the recruitment process safer and to prevent abuse of migrant workers. In 2014 the ILO launched a Fair recruitment initiative, aimed at preventing human trafficking, promoting safe migration and reducing the costs of labour mobility.

Examples of initiatives to address abuses in the course of recruitment are reviewed in Chapter 8.

As many workers who are trafficked do not have the formal status of "employees", it is important to note that businesses create a demand for cheap workers, some of whom may be trafficked, in their supply chains. Often there is a fine line between trafficking and "facilitating travel by migrant workers", when the workers concerned end up in extremely onerous conditions and with debts which oblige them to continue working in a job they would prefer to leave.

3.3.1 The example of companies that buy wild berries harvested in Scandinavia

Migrant workers from northeast Thailand travelled to parts of Scandinavia, particularly Finland and Sweden, for several years to pick wild berries during the Scandinavian summer. Their journeys were not financed by the businesses which purchased the berries they picked, but rather by loans that individual migrants obtained from banks in Thailand.

In both countries, the Thai migrants were reported to work extremely long hours and to live in harsh conditions while picking blueberries, cloudberries and lingon berries. Although many wild berries are picked for direct

consumption by the Swedish public, the berries harvested by migrants were reported to be used principally by the pharmaceutical and cosmetic industries, on account of the berries' anti-oxidant properties and their pigmentation (both due to the long hours of daylight in northern Scandinavia during the growing season).⁷⁸

Up until 2009, the migrants were allowed into Sweden with temporary work permits issued by the country's Migration Board, but did not have employee status, earning from piece-work (i.e., according to the amounts they harvested) rather than receiving a regular wage. They based their cost-benefit calculation (about the costs of travelling to Sweden and the amounts they might be able to earn) on information provided by Thais who had made the journey before and also by the businesses which purchased the berries.

There was a crisis in Sweden in 2009 when numerous Thai berry pickers found themselves out of pocket at the end of the berry picking season and were unable to repay the debts they owed in Thailand. They had not been trafficked or subjected to debt bondage, but nevertheless found that the obligation to repay debts in Thailand was crippling them. They organized protests in Thailand, joined a new (Thai) Network against Exploitation and Trafficking of Migrant Workers and later helped form a Migrant Workers' Union Thailand. The solution proposed by the Swedish Trade Union Confederation (LO) was an agreement on standard remuneration for temporary workers in Sweden who picked berries: the LO negotiated a minimum wage for berry pickers of at least 16,000 Swedish Crowns (EUR 1,680 or USD 2,320) per month. In 2010 significantly less Thai workers are reported to have travelled to Sweden to harvest berries than in 2009. In 2010, it was Chinese and Vietnamese migrants who were reported to have organized a protest in northern Sweden, claiming they had been duped into coming to work in Sweden on the basis of inaccurate information.⁷⁹

By 2012 and 2013 a greater proportion of the berry pickers in Sweden were reported to come from other European countries (such as Bulgaria and Ukraine), and in 2012 it was Bulgarians who were reported to be protesting that they were 'stranded' in Sweden. In 2013 the Minister of Labour, Hillevi Engström, reportedly acknowledged to journalists that Sweden faced more of a problem of labour trafficking than had been anticipated.⁸⁰

77 See case studies in: OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, Occasional Paper Series no. 4 (Vienna, 2010).

78 Charles Woolfson, Christer Thörnqvist and Petra Herzfeld Olsson, *Forced Labour in Sweden? The Case of Migrant Berry Pickers. A Report to the Council of Baltic Sea States Task Force on Trafficking in Human Beings: Forced Labour Exploitation and Counter Trafficking in the Baltic Sea Region* (2011), p. 8.

79 'Berry pickers in new strike in northern Sweden', *The Local*, 10 August 2010, <<http://www.thelocal.se/28282/20100810/>>, accessed 1 August 2014.

80 'Trafficking fears sour berry picking season', *The Local*, 20 August 2013, <<http://www.thelocal.se/20130820/49742>>, accessed 1 August 2014. Details about abuses during the berry harvest in 2013 were found in Mats Wingborg, *Blabars Sverige. En resa bland bärplockare, brutna löften & framtidsdrömmar (Blueberries Sweden – A trip among berry pickers, broken promises and dreams for the future)* (Swed-watch, 2013).

In effect, in both Sweden and neighbouring Finland, migrant workers carry the bulk of the risk of their enterprise, rather than the relatively better-off businesses which pay them for their harvest. Some of those involved are trafficked and human trafficking is facilitated by the lack of oversight (by law enforcement officials, such as labour inspectors, or sector-specific monitors employed by private businesses) of the working and living conditions of the migrant workers involved.

3.4 Example 4: Employer practices which allow human trafficking to occur

In their efforts to sell goods at cheaper prices than competitors, businesses throughout the world create a demand for cheap and unprotected labour, both in their own workplaces and in the workplaces of businesses from which they buy products or services or to which they sub-contract production of particular items. This demand is not tantamount to a demand for the labour of people who have been trafficked, but it creates pressures to cut the cost of labour, or, in extreme conditions, to avoid paying workers altogether. It also creates pressures to keep workers toiling for long hours without an option to leave work or to avoid overtime. While most employers would agree that failing to pay workers was unacceptable, relatively few agree that it is desirable to take action to end demand for cheap labour, seeing reductions in labour costs as a key way for businesses to be more competitive. Likewise, most consumers seem content to see shop prices reduced for them, without seeking to understand the reasons why. A notable exception is in the US, where the Campaign for Fair Food resulted in many thousands of consumers demanding the end of cheap and vulnerable labour in order to prevent situations of slavery and human trafficking from occurring.

Once trafficked persons are in the control of employers who subject them to labour exploitation, experience in some developing countries suggests that it is doubtful whether it is effective to embark on a single strategy of categorizing the employers as criminals (and thereby implying that the only suitable response is to prosecute them). This strategy tends to convey the message that it is impossible to influence such employers by any method except prosecution. In practice a variety of strategies can be deployed: indeed, if the rule of law is weak and influential employers benefit from the protection of the police or other officials, it may be more effective to try other strategies first, which do not rely on the efficacy of law enforcement officials when they are relatively unlikely to enforce the law. Relevant experience is in developing countries where child workers and migrants from other parts of the country are exploited on such a

massive scale (and by so many employers) that routine prosecution is not a viable option, for example in parts of South Asia and West Africa.

Many employers in the informal economy of developing countries subject adult and child workers to forced labour without recognizing that what they are doing is either abusive or illegal and without, indeed, being penalized by the authorities or criticized by others in their society. An ILO report has noted that, “[...] *demand-side research is about recognizing that the line between criminal behaviour of traffickers and lesser crimes of employers engaged in labour exploitation is quite blurred*”.⁸¹ This is particularly the case when the individuals being exploited are migrants from another country, for throughout the world discrimination against foreign workers results in an unfortunate belief by employers (and sometimes by officials responsible for enforcing labour laws) that it is acceptable for foreigners to be subjected to working conditions which are neither acceptable nor legal for nationals. This is not an argument for not enforcing the law: indeed, in countries where the rule of law is strong, it is clear that enforcement should be a priority, backed up, wherever necessary, by statements from senior government officials that exploitation of poor workers, including migrants from abroad, is always unacceptable. However, it is an argument for businesses and others to explore complementary strategies and, in particular, for businesses to take action to set their own house in order.

3.5 Example 5: Exploitation in the supply chain

Example 1 illustrates how a business (a chain of supermarkets) needs to take an interest in the working conditions of its suppliers (that is, businesses in its supply chain), for consumers and others are likely to regard it as culpable if human trafficking is detected in any of the businesses that supply it. Though less common, it is also possible for a business to be held responsible for abuse committed by businesses which it supplies (known as its production chain). This would occur, for example, if a business producing or selling sheep wool in one country was accused of complicity in the use of child forced labour in another country where children use the wool to make hand-knotted carpets.

While retailers that face criticism from the media and consumers are concerned primarily about human trafficking exploitation occurring in their supply chains, in principle they should be worried about it occurring anywhere in their value chain.

⁸¹ ILO, *Human Trafficking: Redefining Demand. Destination factors in the trafficking of children and young women in the Mekong sub-region*, The Mekong Challenge series, E. Pearson (Bangkok, 2005), p. 8.

CHAPTER 4: POSITIVE RESPONSES TO REPORTS OF EXPLOITATION

The previous chapter illustrates some of the problems which arise for a business or even a State when it does not react promptly and appropriately to reports that trafficking in human beings or forced labour have been occurring. Bad publicity ensues, sometimes slashing the value of an individual business or causing investors and buyers to turn elsewhere. In contrast, some much more positive responses can be given which help put an end to patterns of trafficking or human rights abuse.

4.1 Voluntary Codes of Conduct and other commitments made by businesses

During the 1990s, numerous businesses in industrialized countries took steps to protect themselves against criticisms of human rights abuses in their workplaces or those of their suppliers. Before the UN Trafficking Protocol was adopted in 2000, prominent brands marketing products in Western Europe and North America had committed themselves to respecting voluntary codes of conduct intended to stop the use of forced labour or child labour (cases of which received more media attention in the 1990s than forced labour). These commitments either focused specifically on their own work places or those of their suppliers and sub-contractors, which were often situated in developing countries. Prior to 2000, references were chiefly to “child labour” and “forced labour”, whereas since 1999 reference has also been made to the “worst forms of child labour”⁸² and since 2000, when the term “trafficking in persons” was defined and as trafficking in human beings has become better understood, explicit prohibitions have been placed on trafficking in persons or trafficking in human beings.

OSCE participating States which only began developing market economies at the beginning of the 1990s were, not surprisingly, slower to recognize that they faced a risk of criticism and consequently were slower to adopt codes of conduct for individual businesses or across entire sectors. However, as a more detailed assessment of the development of business commitments to respect human rights in the States of the former Soviet Union shows in chapter 9, numerous

⁸² A reference to the ILO’s 1999 Convention No. 182, the *Worst Forms of Child Labour Convention*, which includes a ban on the sale and trafficking of children and on forced or compulsory labour (article 3a) and on “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances” (article 3b).

businesses in the Russian Federation and elsewhere have made commitments not to allow forced or child labour and to respect other human rights. For example, the *Social Charter of Russian Business*,⁸³ states explicitly, “We do not allow at our enterprises forced labour, child labour, and we stand for their elimination”.

At the international level, business owners and managers did not set standards and adopt codes for themselves or their suppliers simply to prevent abuses of human rights. They did so for solid business reasons. These included:

- Reduced risk to their brand’s reputation, matched by higher loyalty to their brand by customers or consumers;
- Reduced investor activism;
- Minimized risk of others criticizing and campaigning against them;
- Improved customer relations;
- Improved employee morale;
- Increased brand capital;
- Higher quality of goods;
- Reduced health and safety risks;
- Reduced risk of governmental intervention;
- Support of socially responsible investors;
- Support of NGOs and other civil society organizations.

Increasingly what are known as “corporate social responsibility” (or “corporate social accountability”) initiatives have involved businesses in efforts to respect a wider range of human and labour rights than child labour and forced labour,⁸⁴ by including other issues, such as protection of the environment.

The most noticeable characteristic of voluntary codes adopted by businesses, employers’ associations or trade associations (organizations of businesses marketing a particular category of products or operating in the same sector of the economy⁸⁵) is that relatively large businesses based in Western Europe and North

⁸³ The Social Charter has been signed by 252 organizations (companies, sectoral and regional associations of business and other NGOs, with over six million employees). See <<http://www.rsp.ru/simplepage/158>>, accessed 29 July 2014.

⁸⁴ In particular the so-called ‘core’ labour rights guaranteed by the ILO’s *Declaration on Fundamental Principles and Rights at Work* (1998). As well as reiterating a ban on forced labour, the *Declaration* bans child labour and discrimination in the workplace and also seeks to uphold freedom of association (workers’ right to form trade unions).

⁸⁵ E.g., the World Federation of the Sporting Goods Industry (WFSGI).

America have taken the lead in adopting the codes, while large businesses based in other regions have been less vocal or active. At the other end of the spectrum, smaller businesses, particularly those operating in the informal sector in developing economies, have been oblivious or unwilling to act pro-actively to improve labour standards, though those which are part of a supply chain have followed requirements set forth by those that buy products from them. One conclusion is that new models still need to be developed to influence businesses which are not involved in selling goods or services for export to Western Europe or North America – ones which specifically do not involve invoking the influence of multinational companies based in industrialized countries, but which harness local values and use systems developed at national level.

Liking to be seen to take action (by shareholders, consumers and other businesses) does not necessarily signify that a large business based in Western Europe or North America gives greater priority to ensuring respect for human rights than businesses based elsewhere. First, businesses in other parts of the world sometimes make progress with less hullabaloo. Secondly, the very businesses based in Western Europe and North America, which claim to give priority to human rights, have been found (away from the public eye) lobbying against improvements in labour standards. For example, in 2006 the *New York Times* revealed that, when the Chinese authorities were considering a new law “to crack down on sweatshops and protect workers’ rights by giving labor unions real power for the first time since it introduced market forces in the 1980s”, “foreign corporations [...] lobbied against it by hinting that they may build fewer factories” in China.⁸⁶

In the case of businesses which are well-known and feel their commercial success depends on their reputation and established brand, an analysis of the possible risks faced by the business is quite likely to persuade them to take action to minimize the possibility that the company (or its suppliers) might be criticized for practicing forced labour or other abuse. In contrast, small businesses do not face the same risk and some

feel they can ignore internationally recognized human rights and labour rights with impunity.⁸⁷ Businesses in some sectors of the economy have been more ready to make positive commitments than those operating in others, notably those which depend to a large extent on keeping wages low for their profits. So, for example, businesses in the Russian Federation’s oil and mineral extraction sector have made strong commitments, while businesses in the same country’s construction sector have not prioritized respect for the human rights of workers in their public commitments.⁸⁸

4.2 Initiatives by trade unions or workers’ organizations

When multinational businesses began making unilateral announcements in the 1990s that they intended to respect certain workers’ rights, international trade union organizations realized that collective bargaining was no longer occurring and that workers’ organizations and trade unions were in effect being systematically excluded by multinational businesses from discussions about standards in the workplaces operated by their suppliers and workers’ rights. They initiated a campaign of their own both to increase their own influence at the international level and to insist on the importance of collective bargaining at the local level. One of the most prominent of the international trade union organizations, the International Confederation of Free Trade Unions (now the International Trade Union Confederation) and the various International Trade Secretariats (federations of trade unions representing, at international level, trade unions that operate in particular sectors of the economy) developed a basic code of labour practice in 1997, which included the guarantee that “employment is freely chosen” and that “the employment relationship is established”.⁸⁹ This was intended to provide a model for agreements between trade unions and employers, either at the local or the international level. International trade secretariats have pushed for the adoption of ‘framework agreements’ between multinational businesses and their international trade union federations, invariably reiterating the business’ commitment to respect the rights guaranteed by the ILO’s various core conventions (see 5.1 below).

⁸⁶ D. Barbosa, ‘China Drafts Law to Empower Unions and End Labor Abuse’, *New York Times*, 13 October 2006, <<http://www.tradeobservatory.org/headlines.cfm?refid=89257>>, accessed 28 January 2011, but no longer available in 2014. A US-based NGO, Global Labor Strategies, reported that, “US-based corporations are opposing legislation to give Chinese workers new labor rights” (Global Labor Strategies, Behind the Great Wall of China, <http://laborstrategies.blogs.com/global_labor_strategies/files/behind_the_great_wall_of_china.pdf>, accessed 1 August 2014), a claim which was repudiated by some of the companies which were named.

⁸⁷ In such cases, local community action can bring about change in smaller businesses too.

⁸⁸ See, ILO and the European Bank for Reconstruction and Development (EBRD), *Preventing Forced Labour Exploitation and Promoting Good Labour Practices in the Russian Construction Industry* (Geneva, 2009).

⁸⁹ The code was accessed 1 July 2014 at <<http://actrav.itcilo.org/actrav-english/telearn/global/ilo/guide/icftuco.htm>>.

Trade unions have played a role in preventing trafficking for the purpose of forced labour (labour exploitation) at various levels, particularly local level interventions on behalf of migrant workers who are wary of approaching the police or other officials. A major group of workers whose precarious situation, sometimes involving trafficking in human beings and forced labour, has come to international attention in recent years concerns seafarers who work on fishing vessels registered in a country other than their own.⁹⁰ At the local level, national trade unions, such as the Seafarers Union of Russia, advise members on how to avoid getting into difficulties related to their employment.⁹¹ These are standard recommendations made by the relevant International Trade Secretariat, the International Transport Workers' Federation (ITF).⁹² The ITF is also a key contact point when it comes to protecting and assisting seafarers who have been trafficked or exploited. For example, an ITF representative who was contacted by trafficked seafarers at a fishing vessel that had docked in Japan was reportedly able to use his influence to prevent the vessel leaving port as planned, and he reached the port to meet the complaining workers the next day. Similarly, Ukrainian seafarers trafficked to Turkey were reportedly able to leave the ship on which they were trapped after contacting an ITF representative in London who, in turn, contacted the ITF representative in Turkey. The ITF was subsequently involved in taking the matter to court (initiating civil proceedings to recover wages) and paid for the trafficked men's travel expenses to return to Ukraine.⁹³

A lesson noted by the ILO is that, "*If workers or employers are denied the possibility of organizing, they will not have access to a range of other rights at work*".⁹⁴ However, workers subjected to coercion, threats of violence or other symptoms of forced labour may be unable to take this course of action by themselves. Once supported by a stronger national trade union, they may be successful. So, for example, in Spain trade unions have set up local advice centres for migrant workers.

90 See, for example, IOM and Nexus Institute, *Trafficked at sea. The exploitation of Ukrainian seafarers and fishers*, R. Surtees (2012).

91 Such advice was accessed on 5 August 2014 at <<http://www.sur.ru/moryak/moryakam>>. The Seafarers Union of Russia publishes information about disputes solved with its support, including substandard working or living conditions, wage arrears or significantly low wages and a range of other abuse.

92 The ITF (see <<http://www.itfglobal.org/seafarers/index.cfm>>) represents the interests of seafarers worldwide, of whom over 600,000 are members of ITF affiliated unions. The ITF works to improve conditions for seafarers of all nationalities and to ensure adequate regulation of the shipping industry to protect the interests and rights of the workers. The ITF helps crews regardless of their nationality or the flag of their ship. The ITF Seafarers Section maintains a network of over 100 ITF inspectors around the world.

93 IOM and Nexus Institute, *Op. Cit.*, pp. 90–91.

94 International Labour Office, *Decent work and the informal economy*, International Labour Conference, 90th Session (Geneva: 2002), p. 71.

Trade unions have also provided advice to exploited workers on how to set up an organization of their own. For example, in Ireland the main workers reported to be picking mushrooms in the last decade were women migrants, working in poor conditions and paid on a piece-work basis according to the amounts they harvested, rather than receiving an hourly wage. Some were reported to be earning as little as EUR 200 for a 90 hour week.⁹⁵ A NGO set up to support migrants, the Migrants Rights Centre Ireland (MRCI), was approached by some of the mushroom workers and helped them establish their own migrant worker federation, the Mushroom Workers Support Group. By November 2006 the Group reportedly had over 50 members, the majority of whom were women from Belarus, Latvia, Lithuania, Moldova, Ukraine, China and Thailand.⁹⁶ The Group was subsequently affiliated to one of Ireland's main trade unions, the Services, Industrial, Professional and Technical Union (SIPTU). By 2008 the number had grown to 900 members. The result was that workers were able to negotiate collective bargaining agreements, with improvements in wages and working conditions, at some 40 mushroom farms (out of over 100 in Ireland), involving over 1,000 workers.

In several other OSCE participating States, workers' organizations have organized campaigns to stop workers harvesting tomatoes or other agricultural produce from being exploited. In Italy, the General Confederation of Labour (CGIL) and its affiliate, Federation of Agriculture and Food Workers (FLAI), launched a campaign entitled "Red Gold, from fiction to reality" to protest at the long hours of work and low wages of tomato pickers. The Fair Food Program developed by the Coalition of Immokalee Workers in the US has been mentioned as a model for ensuring co-operation between workers and the businesses that buy their products, and for enabling the workers themselves to monitor and report on whether commitments made by employers and businesses are respected in practice. This model has now been branded "Worker-driven Social Responsibility".⁹⁷

95 European Federation of Food, Agriculture and Tourism Trade Union (EFFAT), 'Ireland: Winning equality for workers in the mushroom industry' (2010), <<http://www.precarious-work.eu/en/what-did-trade-unions-do/ireland-winning-equality-workers-mushroom-industry>>, accessed 1 July 2014.

96 See The Mushroom Workers Support Group, *Harvesting Justice. Mushroom Workers Call for Change*, Migrants Rights Centre Ireland (November 2006), <http://mrci.ie/wp-content/uploads/2012/10/Harvesting-Justice_Mushroom-Workers-Call-for-Change_2006.pdf>, accessed 1 August 2014.

97 See Greg Asped, 'Worker-Driven Social Responsibility (WSR): A New Idea for a New Century', *Huffington Post*, 17 June 2014, <http://www.huffingtonpost.com/greg-asped/workerdriven-social-re-spo_b_5500104.html>, accessed 1 July 2014.

CHAPTER 5: PROMOTION BY THE UNITED NATIONS OF HUMAN RIGHTS STANDARDS FOR BUSINESS

This chapter reviews the role of the United Nations in setting relevant standards, both the UN Global Compact and the *Guiding Principles on Business and Human Rights* which were endorsed by the UN Human Rights Council in 2011.

5.1 Internationally-recognized labour rights

A prohibition on the use of forced labour is one of the key labour rights required by the ILO's "core" conventions, which have been a point of reference for many business codes. These are eight ILO "core" conventions⁹⁸ concerning the issues of freedom of association (the right to form trade unions), child labour, forced labour and discrimination. They were given the status of "core" labour rights by the *ILO Declaration on Fundamental Principles and Rights at Work* in 1998, which requires all States to respect the standards in these conventions, whether or not a particular State had ratified them.

5.2 The UN's involvement in voluntary initiatives by business

The ILO adopted a *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* in 1977.⁹⁹ The Organisation for Economic Co-operation and Development (OECD) adopted a set of *Guidelines for Multinational Enterprises* in 1986,¹⁰⁰ which were revised in 2011.

The 1990s saw the publication of many sets of standards that businesses were asked to respect, some prepared by individual companies, some adopted by a trade association and some by NGOs. By the end of the 1990s there were efforts to standardize and consolidate the commitments being made.

Following an address to The World Economic Forum in January 1999, UN Secretary-General Kofi Annan challenged business leaders to join what he called a "Global Compact" and support ten (initially nine) principles in the areas of human rights, labour and the environment. The Global Compact was

formally launched in July 2000.¹⁰¹ It is a voluntary policy initiative that "asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption".¹⁰² It makes no explicit reference to human trafficking, though Principle 4 implicitly commits businesses that sign it to take action against human trafficking (it requires "the elimination of all forms of forced and compulsory labour"). Two principles focusing on human rights similarly require businesses to act against trafficking (Principle 1, "Businesses should support and respect the protection of internationally proclaimed human rights" and Principle 2, "make sure that they are not complicit in human rights abuses").¹⁰³ In 2008, the Global Compact Labour Working Group spelled out in a publication what it thought the most relevant labour issues were for businesses participating in the Global Compact.¹⁰⁴

To join the Global Compact, the Chief Executive Officer (CEO) of any business employing more than ten staff members has to send a letter to the UN Secretary-General, declaring support for the Global Compact's Principles.¹⁰⁵ Such businesses are mentioned on the Global Compact's website. They are required to make a financial contribution, proportionate to their turnover, to the Foundation for the Global Compact,¹⁰⁶ which provides financial support for the implementation of the Compact. The Global Compact does not involve independent monitoring of the performance of the businesses that sign up. Each business is expected

98 Originally seven.

99 See <http://www.ilo.org/empent/Publications/WCMS_094386/lang-en/index.htm>, accessed 15 July 2014, for versions in English, French, German, Portuguese, Russian and Spanish.

100 The 2011 OECD Guidelines for Multinational Enterprises [C/MIN(2011)11/FINAL]: <<http://www.oecd.org/corporate/mne/48004323.pdf>>, accessed 15 July 2014.

101 General information about the UN Global Compact is available on its website, <<http://www.unglobalcompact.org>>.

102 UN Global Compact Office, *Corporate Citizenship in The World Economy* (October 2008), <http://www.unglobalcompact.org/docs/news_events/8.1/GC_brochure_FINAL.pdf>, accessed 24 June 2014.

103 *The Ten Principles*, <<http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>>, accessed 24 June 2014, available in Russian at <http://www.unglobalcompact.org/Languages/russian/ten_principles.html>.

104 ILO, *Labour Principles of the United Nations Global Compact: A guide for business* (Geneva, 2008), <http://www.ilo.org/empent/Publications/WCMS_101246/lang-en/index.htm>, accessed 24 June 2014 and available in languages including Azeri, English, French, Portuguese, Spanish and Russian.

105 See, UN Global Compact, *Frequently Asked Questions*, accessed 24 June 2014 at <<http://www.unglobalcompact.org/aboutthegc/faq.html>>. This specifies that, "Properly constituted (under prevailing national law) companies from any industry sector are eligible for participation, except those companies involved in the manufacture, sale etc. of anti-personnel landmines or cluster bombs, companies that are the subject of a UN sanction or that have been blacklisted by UN Procurement for ethical reasons".

106 See <<http://www.globalcompactfoundation.org/about.php>>, accessed 24 June 2014.

to publish its own annual “Communication on Progress” (COP), on the actions it has taken to implement the Global Compact and its ten principles (one extra one was added) and to submit this to the Global Compact secretariat in New York.¹⁰⁷ This is intended to encourage good practice by participants. Those who do not comply or who fail to report on their progress are “delisted”, i.e., struck off the list of businesses supporting the Compact.

By the beginning of 2011, some 6,066 companies from 132 countries were reported to be actively committed to supporting the Global Compact (3,536 of the companies were based in the OSCE’s participating States). In mid-2013 the Global Compact reported that 99 companies had been expelled in the first half of 2013 for failing to submit communications on progress for at least two consecutive years.¹⁰⁸

An appendix to a Guide issued jointly by the UN Global Compact and others listed specific human rights abuses which were known to occur in particular sectors of the economy, presenting a very general set of characteristics. It noted that forced labour was reported in nine out of ten of these sectors. The nine were:

- Agriculture;
- Banking and Business Services;
- Construction and Infrastructure;
- Extractive – Oil, Gas and Mining;
- Food and Beverage;
- Retail – Garment, Footwear, Homeware, Toys, etc.;
- Technology – Hardware, Software, Telecommunications;
- Tourism; and
- Transport – Air, Land and Sea, including Manufacture.

Country-specific analyses have been able to identify with greater precision the conditions that give rise to forced labour. For example, a study in the United Kingdom identified the “*illegality of product (cannabis), volatility and self-regulation of labour providers*”

(*construction*) and *seasonality (food)*”.¹⁰⁹ It also observed that the complexity of labour supply chains (involving multiple sub-contractors) allowed forced labour to thrive.

National Global Compact networks have been organized in some regions. For example, in the Balkans, where the UN Development Programme (UNDP) took the initiative, the Global Compact was launched in Bulgaria (2003), the former Yugoslav Republic of Macedonia (2004), Bosnia and Herzegovina (2005), Serbia (2007) and Croatia (2007).¹¹⁰

5.3 Setting general international human rights standards for business

Starting in 1995, the UN’s Sub-Commission on the Promotion and Protection of Human Rights focused attention on the human rights-related obligations of, first, transnational corporations and, later, businesses in general. By 2004 the Sub-Commission had developed a draft set of *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*. However, this was not approved by the Sub-Commission’s parent body at the time, the UN Commission on Human Rights, which opted instead for a process which would involve representatives of businesses directly in developing a consensus about what they should be doing to ensure that human rights were respected. The result was the appointment of a UN Secretary-General’s Special Representative on human rights and transnational corporations and other business enterprises and, eventually, a new set of *Guiding Principles* for States and businesses that the UN Commission’s successor, the Human Rights Council, endorsed in 2011.

The UN Secretary-General’s Special Representative, John Ruggie, held this role from 2005 until 2011. He proposed a “protect, respect and remedy framework”, describing this in the following terms:

“ *The Framework rests on three pillars: the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which means*

¹⁰⁷ See *Communication on Progress*, <<http://www.unglobalcompact.org/COP/index.html>>, accessed 15 November 2013. ‘Communication on Progress’ (COP) reports are available on the UN Global Compact’s website.

¹⁰⁸ “Number of Expelled Companies Reaches 2,000 as Global Compact Strengthens Disclosure Framework”, 20 January 2011, <<http://www.unglobalcompact.org/news/95-01-20-2011>>, and UN Global Compact Bulletin August 2013, <http://www.unglobalcompact.org/NewsAndEvents/UNGC_bulletin/2013_08_01.html>, both accessed 24 June 2014.

¹⁰⁹ J. Allain, A. Crane, G. LeBaron and L. Behbahani, *Forced labour’s business models and supply chains* (York, Joseph Rowntree Foundation, November 2013).

¹¹⁰ M. Baab and M. Busck, “Balkan Capacity Building Pilot”, <http://www.humanrightsbusiness.org/?f=capacity_building>, accessed 24 June 2014.

to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur; and greater access for victims to effective remedy, judicial and non-judicial.¹¹¹

The UN Human Rights Council welcomed the “protect, respect and remedy framework” in 2008 and asked Ruggie to spell out what measures were needed to “operationalize” this framework. Commenting in 2009 on the commitments made by businesses and the need for further measures to “operationalize” these, he noted that,

“*Company claims that they respect human rights are all well and good. But the Special Representative has asked whether companies have systems in place enabling them to demonstrate the claim with any degree of confidence. He has found that relatively few do. What is required is an ongoing process of human rights due diligence, whereby companies become aware of, prevent, and mitigate adverse human rights impacts. The four core elements of human rights due diligence [are...]: having a human rights policy, assessing human rights impacts of company activities, integrating those values and findings into corporate cultures and management systems, and tracking as well as reporting performance*” (emphasis added).¹¹²

The *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* were issued in 2011, initially for comment and in a finalized form in March 2011.¹¹³ In June 2011, shortly before Ruggie’s mandate came to an end, the UN Human Rights Council endorsed the *Guiding Principles*.¹¹⁴ The contents are summarized in the next section.

111 Draft *Guiding Principles for the Implementation of the United Nations ‘Protect, Respect and Remedy’ Framework*, para. 11, <<http://www.reports-and-materials.org/Ruggie-UN-draft-Guiding-Principles-22-Nov-2010.pdf>>, accessed 24 June 2014.

112 UN Human Rights Council, *Business and human rights: Towards operationalizing the “protect, respect and remedy” framework*, Report of the Special Representative of the [UN] Secretary-General [to the Eleventh session of the UN Human Rights Council] on the issue of human rights and transnational corporations and other business enterprises, A/HRC/11/13 (22 April 2009).

113 UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31 (21 March 2011), <<http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx>>, accessed 24 June 2014. Available in Russian at <http://www.ohchr.org/Documents/Publications/GuidingPrinciples-BusinessHR_RU.pdf>.

114 By UN Human Rights Council resolution 17/4, ‘Human rights and transnational corporations and other business enterprises’, A/HRC/RES/17/4 (6 July 2011).

5.4 The UN Guiding Principles on Business and Human Rights

Following a statement of general principles, the *Guiding Principles* are divided into three parts:

- Part I on “the State duty to protect human rights”;
- Part II on “the Corporate responsibility to respect human rights”; and
- Part III on “Access to remedy”.

Each part consists of some “foundational principles”, followed by a set of “operational principles” (31 principles in total). Each principle is accompanied by a commentary which spells out its purpose or what action is expected to be taken to implement the principle.

While businesses have responsibility for the provisions of their own codes of conduct, Part I emphasizes the important role that States must play: for example, “*States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations*” (Principle 2).

The first “foundational principle” for businesses is that:

“*Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved*” (Principle 11).

The Guiding Principles’ key requirements on businesses

“The responsibility to respect human rights requires that business enterprises:

- Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”.¹¹⁵

115 Principle 13 in Part II of the *Guiding Principles*. Principle 14 adds that, “*The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure*”. However, it also points out that, “*the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts*”.

With specific reference to the contents of business codes and policies, Principle 15 specifies that,

“In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- a A policy commitment to meet their responsibility to respect human rights;
- b A human rights due-diligence process [emphasis added] to identify, prevent, mitigate and account for how they address their impacts on human rights;
- c Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute”.

The term “due diligence” required by Principle 15(b) is a critical one. It refers to the process that a business must undertake to identify its possible impacts on human rights and to address these, in effect setting minimum standards that every business should meet. A UN publication describes it as follows:

“*Human rights due diligence refers to the process of identifying and addressing the human rights impacts of a business enterprise across its operations and products, and throughout its supplier and business partner networks. Human rights due diligence should include assessments of internal procedures and systems, as well as external engagement with groups potentially affected by its operations.*”¹¹⁶

Principle 16 requires business enterprises to demonstrate their commitment to fulfilling this responsibility by adopting “a statement of policy” at “the most senior level of the business enterprise”, communicating this to all “personnel, business partners and other relevant parties” and ensuring the statement of policy is “reflected in operational policies and procedures necessary to embed it throughout the business enterprise”.

Principle 17 defines the parameters for human rights due diligence, the process that a business must undertake to identify its possible impacts on human rights, while Principles 18 through 21 elaborate its essential components. The range of possible impacts is wide, going far beyond human trafficking and labour standards. According to Principle 17, businesses should carry out human rights due diligence,

“In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts[...] The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- a Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- b Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- c Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise’s operations and operating context evolve”.

The commentary on a subsequent principle (18) says that businesses should consult their workers and those of their suppliers (i.e., rather than restricting their inquiries to checklists or discussions with managers):

“To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement”.

Principles 22 to 31 of the *Guiding Principles* are concerned with remedial action, with Part III (Principles 25 to 31) focusing on access to remedies for those who have experienced abuse. Four of the principles concern what are called “Non-State-based grievance mechanisms”, such as grievance mechanisms at the operational level of a business and procedures shared by businesses involved in the same sector in a multi-stakeholder initiative. The *Guiding Principles* note that it is important for codes of conduct and multi-stakeholder initiatives to include grievance procedures (Principle 30) and the commentary observes that, “The legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms”. The last of the *Guiding Principles*, Principle 31, lists eight criteria for assessing whether a non-judicial grievance mechanism (both State-based and non-State-based) is effective or not.¹¹⁷

¹¹⁶ *The UN Guiding Principles on Business and Human Rights. An Introduction*, <http://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf>, accessed 24 June 2014.

¹¹⁷ Principle 31 highlights the need for non-judicial grievance procedures to be “legitimate”, “accessible”, “predictable”, “equitable”, “transparent”, “rights-compatible”, “based on engagement and dialogue” (in the case of operational-level mechanisms) and a “source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms”.

While the *Guiding Principles* offer a framework for action by all businesses, wherever they are based and whatever their size, Ruggie recognized that some businesses would face particular challenges, commenting in an interview that “*The challenge going forward will be to develop systems that are appropriate for small and medium-sized enterprises.*”¹¹⁸ *Much of the thinking and recommendations that flow out of most initiatives takes for granted that we are dealing with large multi-national companies. Scaling down those systems is a real challenge – one size does not fit all.*¹¹⁹

5.5 Six steps for a business to implement the UN Guiding Principles

Both the UN *Guiding Principles on Business and Human Rights* and other advice from the UN Global Compact and business organizations suggest a business should adopt a general policy on human rights or its wider responsibilities, encompassing initiatives to prevent human trafficking and forced labour, rather than focusing exclusively on these specific issues. Of course, a business which has already been made aware that particular forms of abuse are occurring in its workplace or supply chain would be justified in targeting them in a focused way.

A potential benefit of adopting a general policy is that the business concerned can use the opportunity to inform all of its staff (and potentially others, such as its suppliers and investors) about the subtle and invisible nature of some forms of abuse, such as debt bondage, and their interrelationship with various forms of exploitation, as well as about the specific measures the company intends to take to identify and prevent abuse. The disadvantage of a general policy is that a company’s management may adopt a standard model code or policy (“off the shelf” and designed by others) in order to satisfy external stakeholders, without giving much thought to its provisions or what the implications of implementing it are for its staff.

Various flowcharts and other forms of advice have been offered to businesses about the steps that they should take to implement their policies to ensure respect of human rights. The *Guiding Principles on Business and Human Rights* have helped formalize such advice in the principles addressed directly at businesses and the commentaries on them. The *Guiding Principles*

outline the process that each business should follow, once it has investigated what possible adverse consequences it could be having on human rights (or on other issues, such as the environment).

The steps involve:

Step 1	An initial assessment of the ways in which the business might cause “adverse human rights impacts”, such as human trafficking, in its workplace or those of its suppliers or others with whom it does business: in effect, a risk assessment.
Step 2	Adopting a policy, outlining the business’ commitments and the process it intends to implement.
Step 3	Communicating the policy to all personnel, business partners and other relevant stakeholders.
Step 4	Implementing the policy by exercising due diligence and verifying that the policy is respected.
Step 5	Taking remedial action, as required, if evidence comes to light that the policy is not being adhered to.
Step 6	Tracking the business’ overall performance and periodic public reporting

The actions required at each stage are summarized as follows.

5.5.1 Step 1 – Investigating possible “adverse human rights impacts”

Understand the risks that the business might be causing “adverse human rights impacts”, drawing on internal and/or independent external human rights expertise, as appropriate. Along with Step 4 below (involving “due diligence”), this requires a business to look beyond the confines of its own activities at those of others in its value chain with whom it has transactions, either buying from or selling to them, both directly and indirectly. In the case of large multinationals, this potentially involves mapping thousands of suppliers situated in different places and making varied contributions.

For example, when considering how to respond to a report in 2000 that some children working on West African cocoa farms were enslaved, before adopting a policy or making commitments they might not be able to keep, cocoa importers in the United Kingdom commissioned an independent expert to inform them about working conditions in their supply chain. In carrying out due diligence and seeking information about adverse human rights impacts that could be occurring, businesses can consult a range of publications available about products reported to be produced with forced labour. Some possible sources are mentioned in section 12.2.7 below.

¹¹⁸ Small and medium-sized enterprises are those employing less than 250 people.

¹¹⁹ J. Ames, ‘Taking Responsibility’, *The European Lawyer* (February 2011), <<http://www.business-humanrights.org/media/documents/european-lawyer-interview-with-professor-ruggie-feb-2011.pdf>>, accessed 24 June 2014.

5.5.2 Step 2 – Adopt a policy

Adopt “a statement of policy” summarizing the business’ commitment to respect certain human rights or not to tolerate certain forms of abuse in its workplace or those of its suppliers (such as human trafficking or the employment of children before they reach the legal minimum age for entry into employment). The voluntary codes adopted by some businesses, committing them and their suppliers not to allow abuse of specific human rights to occur, such as human trafficking, constitute such policies. However, the UN *Guiding Principles* imply that policies and commitments should relate to all human rights, rather than only some.

5.5.3 Step 3 – Communicate the policy to all personnel, business partners and relevant stakeholders

“Internal communication of the statement and of related policies and procedures should make clear what the lines and systems of accountability will be, and should be supported by any necessary training for personnel in relevant business functions” (Commentary on Principle 16).

Principle 16 specifies that a business’ statement of policy,

- “(d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;*
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise”.*

In addition to telling personnel about the policy, therefore, a business should back this up with appropriate policies, procedures and training programmes.

5.5.4 Step 4 – Implement the policy by exercising due diligence and verifying that the policy is respected

Principle 17 spells out what needs to be done to verify that commitments are being respected, by exercising “due diligence”. The commentary on this Principle points out that,

“Where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where

the risk of adverse human rights impacts is most significant, whether due to certain suppliers’ or clients’ operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence”.

Focusing on how this should be done, Principle 18 suggests that, *“This process should:*

- (a) Draw on internal and/or independent external human rights expertise;*
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation”.*

The commentary does not say explicitly that every business should consult with its workers and those of its suppliers, but it is difficult to see how the standard that is suggested (in Principle 18) – “consultation with potentially affected groups” – could be met without communicating directly with workers, some of whom may have first-hand experience of abuse or be well-informed about the circumstances in which abuse occurs. The commentary recognizes that this may sometimes not be possible and suggests that, *“In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society”.*

5.5.5 Step 5 – Take remedial action as required

After finding out about human rights impacts, businesses *“should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action”* (Principle 19). Also, *“Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”* (Principle 22). The type of remedial action that is appropriate is likely to vary, according to *“Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship”* and also *“The extent of its leverage in addressing the adverse impact”.*

As far as its reaction with respect to a supplier who does not comply with the business’ own code or policy is concerned, the commentary to Principle 19 recognizes that,

“Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise’s leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences”.¹²⁰

The question of whether, and how, to engage with individuals and communities who may be adversely impacted by a business’ activities is taken up below (7.2.6) as it may be critical to both the legitimacy of a code (or similar initiative) and its eventual successful implementation.

5.5.6 Step 6 – Tracking the business’ performance and periodic public reporting

The responsibility of business’ managers does not end once they have taken remedial action. Principle 20 calls on each business to “track” its performance in order to “verify whether adverse human rights impacts are being addressed”. This is intended to enable “a business enterprise to know if its human rights policies are being implemented optimally, whether it has responded effectively to the identified human rights impacts, and to drive continuous improvement” (Commentary on Principle 20). Rather than basing its view uniquely on information presented from inside the business, tracking should “Draw on feedback from both internal and external sources, including affected stakeholders” (Principle 20).

The *Guiding Principles* also offer guidance on public reporting.¹²¹ The commentary says that, “Showing [that a business enterprise has in place policies and

processes through which it can both know and show that it respects human rights in practice] involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors[...]. The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility” (Commentary on Principle 21).

While the *Guiding Principles* do not make public reporting mandatory, they imply that this is necessary if and when a business is accused of abusing human rights. A business or other organization which publicly commits itself to upholding certain rights or principles and which does not report publicly on its progress in doing so may well be suspected of window dressing or covering up cases of abuse.

Starting with legislation in the US State of California in 2010, some governments have been reviewing whether to require certain types of business to report publicly on what measures they have taken to ensure that certain human rights abuses do not occur in their value chain.

Reporting on proactive or preventive measures to make it less likely that abuse will occur is a different process to reporting on remedial action once cases of abuse have been detected. The *Guiding Principles* encourage business to be transparent about the way a business has tried to identify possible “adverse impacts on human rights” (thereby potentially allowing others to criticize the inadequacy of the process followed), as well as about proactive measures taken to ensure that adverse impacts do not occur.

5.6 Moving towards implementation of international standards for business

After it endorsed the *Guiding Principles*, the UN Human Rights Council set up a Working Group on the issue of human rights and transnational corporations and other business enterprises, whose tasks include promoting the dissemination and implementation of the *Guiding Principles*.¹²² The Working Group has so far hosted one regional Forum on Business and Human Rights (for Latin America and the Caribbean in August 2013), reviewing the impact

¹²⁰ The commentary to Principle 19 also points out that, “The more complex the situation and its implications for human rights, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond. If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors. There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so.”

¹²¹ Principle 21 says, “In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders”.

¹²² Further information about the Working Group was accessed at <<http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>>.

of businesses on human rights in a particular region. By mid-2014 it has visited three countries (Mongolia, USA and Ghana), while a visit to the Russian Federation that was due in 2013 was reportedly postponed.¹²³ It was scheduled to visit Azerbaijan in August 2014. In addition, two general Fora on Business and Human Rights have been held in Geneva at the end of 2012 and 2013, each of which was attended by more than 1,000 participants.

Numerous guides have been issued, in a variety of languages, about the *Guiding Principles* and how businesses should implement them or others could take advantage of them.¹²⁴ In 2012 the Office of the United Nations High Commissioner on Human Rights issued a 76-page *Interpretive Guide on the Guiding Principles*¹²⁵ and in 2013 the Working Group itself issued a short introduction to the *Guiding Principles*.¹²⁶ In 2014 the Working Group was reported to be reviewing several national plans to implement the *Guiding Principles* (by June 2014 four States were reported to have adopted such plans: Denmark, Italy, Netherlands and the United Kingdom; see comments in 6.4 below).

Ruggie himself has commented that both governments and businesses need to increase their own expertise (or build their own 'capacity') to apply the *Guiding Principles*. In the case of governments, this means learning more about what they can and should be doing to protect the individuals whose rights are violated, and how they can influence businesses based or operating in their territory. He has also stressed that the challenge mentioned of making the *Guiding Principles* accessible to and implementable by businesses other than large multinational companies (i.e., small and medium-sized business enterprises) has not yet

been overcome. The evidence available about cases of human trafficking in which legitimate businesses have been implicated reveals that it is not only large multinational companies which are involved and which need to reform their business systems and operating principles. So, there is a particular need to identify sources of advice for small-sized and medium-sized business enterprises on how they should carry out a human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.

In 2012 the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, included in her report to the UN General Assembly nine recommendations addressed specifically to businesses, intended to enable them to combat trafficking in their supply chains. These suggested that, to address trafficking, businesses should follow much the same steps as those called for in the *Guiding Principles*. The steps that she recommended to businesses are:¹²⁷

1. Conduct a risk assessment for their entire production chain and, on that basis, develop and adopt high-level, company-wide policies or strategies to eliminate risks of human trafficking in their supply chains that should apply to all enterprises in a company's product or supply chain and should be integrated into contracts and agreements with suppliers and business partners;
2. Raise the awareness of human resources, compliance and other relevant staff of the risks of human trafficking and train them in the company's anti-trafficking policies so that they are able to identify trafficking cases and take remedial measures;
3. Implement an effective monitoring system, such as social audits, to scrutinize the risks of human trafficking at all levels of the supply chain;
4. In cases in which human trafficking is discovered in the supply chain, co-operate with victim service providers to ensure that trafficked workers receive the necessary assistance and contribute to programmes that assist victims, such as vocational training;
5. Establish effective, credible and confidential grievance mechanisms to enable workers to voice concerns and promote an institutionalized mechanism for resolving workplace conflict;
6. Communicate regularly with stakeholders, including investors, on company policies, programmes, performance and impact with regard to efforts to combat human trafficking;
7. Co-operate with civil society organizations with experience and expertise in working with trafficked persons and consult them in developing policies or programmes to prevent trafficking in supply chains;
8. Pursue anti-trafficking agreements, policies and dialogue with other relevant stakeholders such as industry and business peers and trade unions.

123 See 'Country visits of the Working Group on the issue of human rights and transnational corporations and other business enterprises', at <<http://www.ohchr.org/EN/Issues/Business/Pages/WGCountryVisits.aspx>>, accessed 25 June 2014.

124 For example, a guide in Russian for civil society organizations is available, Stichting Onderzoek Multinationale Ondernemingen (SOMO), Centre for Research on Multinational Corporations), Center for Human Rights and Environment (CEDHA) and Civedep, *How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy/ Как применять Руководящие принципы предпринимательской деятельности в аспекте прав человека ООН для исследования компаний и правозащитной деятельности. Руководство для организаций гражданского общества* (2012), <<http://www.business-humanrights.org/Links/Repository/1017440>>, accessed 15 November 2013.

125 UN, *The Corporate Responsibility to Respect Human Rights. An Interpretive Guide* (2012), <<http://business-humanrights.org/en/interpretive-guide-to-un-guiding-principles-corporate-responsibility-to-respect-human-rights-by-office-of-un-high-commissioner-for-human-rights-now-in-booklet-form#c62391>>, accessed 9 July 2014.

126 *The UN Guiding Principles on Business and Human Rights. An Introduction*, <http://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf>, accessed 15 November 2013.

127 UN General Assembly, *Report of the Special Rapporteur on trafficking in persons, especially women and children, A/67/261* (7 August 2012), para. 50.

5.7 The questions to ask when checking compliance (in value chains)

A relatively detailed list of *Benchmarks and indicators for ensuring trafficking-free supply chains* was prepared at a UN expert consultation on human trafficking and global supply chains in 2012, organized in Turkey by the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo. Introducing this, the Special Rapporteur commented that,

“*The Special Rapporteur believes that the set of indicators and benchmarks could prove to be a valuable tool for businesses to help them to exercise due diligence, in accordance with the Guiding Principles on Business and Human Rights, in their supply chains in order to detect and prevent trafficking cases. As a result, the Special Rapporteur sees the checklist as a specific tool aimed at building on and complementing the Guiding Principles.*”¹²⁸

The benchmarks and indicators consist of questions that businesses could ask themselves, but which could also be checked by auditors or others.

Benchmarks and indicators for ensuring trafficking-free supply chains¹²⁹

Voluntary recruitment and employment

1. Is all work voluntary and do workers have the freedom to terminate their employment with reasonable and fair notice, at any time without penalty?

Recruitment fees

2. Are workers charged any fees for recruitment, including costs associated with travel and processing of official documents?
3. Are workers required to lodge security deposits or payments of any kind, including non-cash deposits?

Contracts of employment

4. Are workers fully briefed on the terms and conditions of their employment, including skills requirements, in language they understand?
5. Are legal written contracts of employment provided to workers in their native language, clearly indicating their rights and responsibilities with regard to wages, working hours, deductions and other employment conditions?
6. Where prospective workers can neither read nor write are appropriate measures taken to ensure that they understand and agree to all clauses set out in the contract?
7. Are migrant workers provided their contract of employment at the initial stages of consultation prior to any formal agreements or plans for deployment being made?

128 UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum, Expert consultation on human trafficking and global supply chains*, A/HRC/23/48/Add.4 (4 March 2013), para. 21.

129 *Ibid.*, Appendix I.

8. Do you prohibit supplemental agreements and the practice of contract substitution?
9. Are changes to contracts of employment prohibited that diminish originally anticipated wages, benefits or other conditions of work?
10. Do you monitor subcontractors and the contractual agreements they hold with their workforce?

Passport confiscation

11. Is the confiscation or withholding of worker identity documents (e.g., passports) strictly prohibited?
12. Where employers maintain workers' documentation for legal reasons, do workers have access to their documentation (including travel, identity and work-related documents) at any time upon request?

Humane treatment

13. Is the use or threat of physical and sexual violence, harassment and intimidation strictly prohibited and sanctioned?
14. Are there effective procedures of redress in place to address such incidents if they occur?

Equality at work

15. Are all workers treated fairly and equally, with no discrimination based on factors including sex, gender, nationality, ethnicity, trade union affiliation, political affiliation, beliefs, sexual orientation, disability and residence status?

Wages and benefits

16. Are workers held in debt bondage or forced to work to pay off a debt of any kind, including non-monetary debt (e.g., resulting from the provision of tools or training)?
17. Are workers paid in legal tender and provided written, itemized pay slips/receipts in language they understand, indicating wage rates, hours worked, total pay and any legally authorized deductions made by the employer?
18. Are workers paid at least the minimum wage required by applicable laws and provided all legally mandated benefits?
19. Are wage payments made at regular intervals directly to the worker and/or their bank account, and not delayed, deferred or withheld?
20. Are deductions made from workers' wages lawful, authorized and not excessive?
21. Are wage advances or loans provided to workers, including interest rates and repayment terms, compliant with the law, advised to workers in their own language and agreed in advance by both parties?
22. Do workers retain full and complete control over their earnings and are they free to spend such earnings at their discretion?

Freedom of movement

23. Are workers physically confined to the workplace or do they face restrictions (including psychological intimidation and/or verbal threats) on their freedom of movement outside working hours or in related premises such as dormitories or residences?

Freedom of association and collective bargaining

24. Do all workers irrespective of their nationality or residence status have the right to join unions and bargain collectively?

Compliance framework and monitoring

25. Do you have in place a policy or code of conduct that explicitly prohibits all forms of human trafficking?
26. Do you have an effective management system to support the implementation of anti-trafficking policies?
27. Are you aware of the processes of sub-contracting in your company and supply chain?
28. Do you conduct comprehensive supply chain assessments and due diligence to monitor recruitment and employment conditions in your supply chain, including sub-contractors?
29. Are your human resource, social compliance and other relevant staff trained on risks and signs of human trafficking and company anti-trafficking policies and procedures?
30. Where cases of human trafficking are discovered in the supply chain, are the well-being and best interests of the affected worker(s) considered first and foremost, with referral mechanisms that provide services and compensation to victims?
31. Have you established effective and credible grievance mechanisms to enable workers to voice concerns about recruitment or employment conditions, including whistleblower policies to protect the confidentiality of workers wishing to remain anonymous?
32. Do you publicly report and communicate regularly with stakeholders, including investors, about company policies, programmes, performance and impact against human trafficking?
33. Do you engage other stakeholders to translate your corporate anti-trafficking commitments into action?
34. Do you engage governments and other public actors, including international organizations, to advocate for progressive legal, regulatory and policy reform to support anti-trafficking measures?

5.8 Good practice identified by international organizations

Advice for businesses on methods they can use to avoid trafficking or forced labour from occurring and summaries of good practices have already been prepared by numerous organizations, notably an ILO handbook for companies, *Combating Forced Labour. A Handbook for Employers and Business*.¹³⁰ This sets out guiding principles and includes a checklist and guidance for assessing compliance, such as details on particular methods to use. A similar resource was issued in 2010 by UN.GIFT, *Human Trafficking and Business – Good Practices to Prevent and Combat Human Trafficking*.¹³¹

130 ILO Special Action Programme to Combat Forced Labour, *Combating Forced Labour. A Handbook for Employers and Business* (Geneva, 2008). This contains a foreword by the Secretary-General of the International Organisation of Employers, Antonio Peñalosa. It is available in various languages and was accessed in English on 9 July 2014 at <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf>.

131 By the same author as the ILO Handbook, Philip Hunter, and published by UN.GIFT in 2010. The UN.GIFT publication was accessed 9 July 2014 at <http://www.ungift.org/doc/knowledgehub/resource-centre/GIFT_Human_Trafficking_and_business.pdf>.

The ILO Handbook takes the form of a management development guide, containing seven separate booklets for business managers to consult when developing policies and action in their own companies. It includes a checklist and guidance for assessing compliance, which is intended to be used by social auditors and others assessing company compliance, offering model questions for auditors to use.

ILO Handbook questions on the topic of “Coercion in Wage Payment, including Debt Bondage and Bonded Labour”

- “Does the employer use irregular, delayed, deferred or non-payment of wages as a means to bind workers to employment?”
- Are non-cash or ‘in-kind’ payments used as a means to create a state of dependency of the worker on the employer?
- Is there any evidence that wages are paid in the form of vouchers, coupons or promissory notes?
- Do workers earning wages on a piece-rate or performance-related basis earn the legally mandated minimum wage?
- Is there any evidence that workers are required to lodge deposits or that unlawful or unauthorised deductions from wages are made with the aim of indebting workers?
- Do wage advances or loans provided to workers comply with national law?
- Are workers forced to work in order to repay an actually incurred or inherited debt?”

On the specific issue of human trafficking, the handbook suggests compliance-related questions about: migration for employment and recruitment of migrant workers; and private employment agencies and contracts of employment. It also suggests appropriate questions on a range of other internationally-recognized labour rights.

5.9 Recommendations for businesses concerning respect for children’s rights

Both UNICEF and the Committee on the Rights of the Child, the Committee responsible for monitoring the implementation of the UN Convention on the Rights of the Child (1989), have published relevant recommendations and guidance for business. In 2012 UNICEF issued a set of *Children’s Rights and Business Principles* that had been developed by UNICEF, the UN Global Compact and an NGO, Save the Children. The ten principles outline a set of actions for businesses to take with respect to children.¹³²

132 *Children’s Rights and Business Principles*, accessed 4 July 2014 at <<http://www.unicef.org/csr/12.htm>> in seven languages used in OSCE participating States (Azerbaijani, English, French, German, Portuguese, Russian, Spanish). The ten principles are:

1. Meet their responsibility to respect children’s rights and commit to

They focus on the need to take action to prevent the worst forms of child labour in general, rather than targeting child trafficking in particular. UNICEF and others have published several manuals summarizing the steps businesses should take to respect these principles.¹³³

While the *Children's Rights and Business Principles* were aimed chiefly at businesses, in April 2013, the Committee on the Rights of the Child, issued a General Comment on State obligations regarding the impact of the business sector on children's rights. Its focus is on the responsibilities of the State and the General Comment notes (paragraph 28) that, "*States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children's rights. Such measures can encompass the passing of laws and regulations, their monitoring and enforcement, and policy adoption that frames how business enterprises can impact on children's rights. States must investigate, adjudicate and redress violations of children's rights caused or contributed to by a business enterprise*".

With respect to the infringement of children's rights by business enterprises when they are operating outside the country in which they are registered or based (paragraph 45), the Committee on the Rights of the Child encourages States to implement three different sets of measures:

- (a) "Making access to public finance and other forms of public support, such as insurance, conditional on a business carrying out a process to identify, prevent or mitigate any negative impacts on children's rights in their overseas operations;
- (b) "Taking into account the prior record of business enterprises on children's rights when deciding on

- supporting the human rights of children;
- 2. Contribute to the elimination of child labour, including in all business activities and business relationships;
- 3. Provide decent work for young workers, parents and caregivers;
- 4. Ensure the protection and safety of children in all business activities and facilities;
- 5. Ensure that products and services are safe, and seek to support children's rights through them;
- 6. Use marketing and advertising that respect and support children's rights;
- 7. Respect and support children's rights in relation to the environment and to land acquisition and use;
- 8. respect and support children's rights in security arrangements;
- 9. Help protect children affected by emergencies;
- 10. Reinforce community and government efforts to protect and fulfil children's rights.

¹³³ See: Save the Children and UNICEF, *Children's Rights in Policies and Codes of Conduct. A Tool for Companies* (Geneva, 2013); and Danish Institute for Human Rights and UNICEF, *Children's Rights in Impact Assessments. A guide for integrating children's rights into impact assessments and taking action for children* (Geneva and Copenhagen, 2013).

- the provision of public finance and other forms of official support;
- (c) "Ensuring that State agencies with a significant role regarding business, such as export credit agencies, take steps to identify, prevent and mitigate any adverse impacts the projects they support might have on children's rights before offering support to businesses operating abroad and stipulate that such agencies will not support activities that are likely to cause or contribute to children's rights abuses".

The General Comment notes early on that "*the Committee recognizes that duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises. Therefore, all businesses must meet their responsibilities regarding children's rights and States must ensure they do so*".¹³⁴ It contains a number of provisions which are addressed to businesses, albeit indirectly.

Committee on the Rights of the Child General Comment No. 16 (2013) provisions addressed at businesses

"To meet their obligation to adopt measures to ensure that business enterprises respect children's rights, States should require businesses to undertake child-rights due diligence. This will ensure that business enterprises identify, prevent and mitigate their impact on children's rights including across their business relationships and within global operations" (paragraph 62).

"States should lead by example, requiring all State-owned enterprises to undertake child-rights due diligence and to publicly communicate their reports on their impact on children's rights, including regular reporting" (paragraph 64).

The General Comment notes that guidance provided by governments to businesses should include "the implementation of zero-tolerance policies for violence in all business activities and operations" (paragraph 73).

Finally, the Committee underlines that businesses should report publicly, recommending that they "should be required to publish the actions taken to ensure that the goods and services they produce or commercialize do not involve serious violations of children's rights, such as slavery or forced labour. Where reporting is mandatory, States should put in place verification and enforcement mechanisms to ensure compliance" (paragraph 65).

¹³⁴ United Nations Committee on the Rights of the Child, *CRC General Comment No. 16 (2013): State obligations regarding the impact of the business sector on children's rights*, CRC/C/GC/16 (17 April 2013), para. 8.

5.10 Moving beyond voluntary commitments to requiring businesses to implement measures to stop human trafficking and forced labour

The *Guiding Principles* point to the obligation of businesses to respect human rights but are interpreted to allow business to decide what to do, which includes doing nothing. With respect to trafficking in human beings, however, this is not a serious option for a business which risks prosecution in the criminal justice system for trafficking or for abetting traffickers. Nor should it be an option for a State to condone a business response which includes turning a blind eye to cases of human trafficking in the business' supply chain.

In 2014, the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, expressed the view that States should oblige businesses to take certain minimum steps. She recommended that “*businesses must be required to take at least the minimum steps necessary to assess their supply chains for risk of exploitation; to deal with any exploitation found; and to put in place mechanisms for effective future monitoring*”. She noted that initiatives aimed at promoting greater responsibility and self-regulation should be encouraged, but also that experience had shown that self-regulation measures were often inadequate. She also commented that codes of conduct and sector-wide verification procedures could be nearly worthless unless accompanied by independent monitoring.¹³⁵

Academics have also pointed to businesses, as well as States, having a legal obligation to take action to stop cases of trafficking from arising.¹³⁶

In June 2014, the ILO adopted the Protocol of 2014 to the Forced Labour Convention, 1930 and an accompanying Forced Labour (Supplementary Measures) Recommendation, 2014. The Recommendation notes that, “*in giving effect to their obligations under the Convention [ILO Convention No. 29 on Forced Labour, 1930] to suppress forced or compulsory labour, Members should provide guidance and support to employers and businesses to take effective measures to identify,*

prevent, mitigate and account for how they address the risks of forced or compulsory labour in their operations or in products, services or operations to which they may be directly linked” (article 3.i).¹³⁷

Also in June 2014, the UN Human Rights Council decided to establish a working group to draft “*an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises*”. The decision was not taken by consensus (20 States voted in favour, 14 against, with 13 abstentions).¹³⁸

In conclusion, the obligations of States are relatively clear. However, businesses also have legal as well as moral obligations and the nature of these may change in the next few years. Among the various abuses of human rights for which they may potentially be held responsible, not only when occurring in their own workplace, but also when they are aware of it occurring in their supply chain, is trafficking in human beings.

135 UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo. Addendum. Stocktaking exercise on the work of the mandate on its tenth anniversary*, A/HRC/26/37/Add.2 (27 March 2014), para. 93.

136 See N. Jägers and C. Rijken, ‘Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations’, *Northwestern Journal of International Human Rights*, Volume 12, issue 1 (2014): “*It is argued that the jus cogens character of such a crime [slavery-like practices] provides legal ground both for States to interfere in corporations’ policies and for corporations to take action on the matter of THB [trafficking in human beings]*”.

137 ILO, *Forced Labour (Supplementary Measures) Recommendation* (2014), accessed 11 June 2014 at <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_246188.pdf>.

138 UN Human Rights Council, *Resolution 29/9*, A/HRC/26/L.22/Rev.1 (25 June 2014).

CHAPTER 6: A SUMMARY OF MEASURES THAT STATES HAVE A DUTY TO IMPLEMENT TO ENSURE BUSINESSES AND OTHER ORGANIZATIONS DO NOT CONTRIBUTE TO TRAFFICKING IN HUMAN BEINGS

Following on from the various comments and recommendations made in the previous chapter concerning the obligations of States concerning business activity, this chapter summarizes the measures that all OSCE participating States (and other States) are required to take.

6.1 Fundamental obligations of the State

States have a responsibility to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication. The commentary on Principle 2 of the *Guiding Principles on Business and Human Rights* stress that this means States should provide “*Guidance to business enterprises on respecting human rights*” and that this “*should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence [...]*”.¹³⁹

States are also responsible for implementing appropriate measures to guarantee internationally recognized labour rights in all categories of workplaces, particularly the ‘core labour rights’ which include the two ILO conventions on forced labour,¹⁴⁰ as well as ILO conventions to guarantee the right to freedom of association and against child labour and discrimination. The UN Special Rapporteur on Trafficking in Persons, especially women and children, Joy Ngozi Ezeilo, reports having “*noted in the course of country visits that Government authorities make repeated exceptions, in law or in practice, creating spaces where employers can violate labour rights with impunity*”.¹⁴¹

To guarantee labour rights, States must develop a suitable body of professional labour law enforcement officials, generally known as labour inspectors, and provide them with an appropriate mandate and adequate resources to operate, travel to and inspect relevant workplaces and impose appropriate sanctions

on employers who violate the law. In reality, many labour inspectorates have restricted mandates which do not allow them to detect or respond effectively to cases of human trafficking.¹⁴²

6.2. State procurement policies

All sorts of organizations and institutions can influence businesses via their purchasing decisions, usually by adopting or modifying their procurement policy and thereby requiring companies that they do business with to meet particular standards. This includes international organizations (policies of the OSCE and UN organizations are mentioned below in chapter 11), government institutions, local government councils, and a host of others.

States have a responsibility to ensure that all government-run organizations take appropriate measures to discourage demand related to exploitation and trafficking in human beings in the context of their purchase of services and of goods. States have substantial numbers of such organizations at both the national and local level, including government ministries, statutory bodies, parastatal organizations and branches of the security forces or law enforcement agencies (such as the armed forces, police, intelligence services, immigration service and border police and labour inspectorates). In numerous cases, state-run organizations (such as the armed forces) engage private contractors to deliver products or services (including private military or security contractors). In all such cases, wherever contractors are active, States have a responsibility to take appropriate measures to ensure that these do not facilitate or encourage trafficking in human beings.

At the regional and local level, relevant bodies include a wide array of local government institutions which purchase products and services. To cite just one example, those responsible for the upkeep of a government building or a local town hall might subcontract the cleaning of the facilities, and it is possible

¹³⁹ UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31 (21 March 2011), <<http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx>>, accessed 24 June 2014.

¹⁴⁰ ILO, *Convention on Forced Labour*, C29 (1930); ILO, *Abolition of Forced Labour Convention*, C105 (1957).

¹⁴¹ UN Human Rights Council, *Report submitted by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo*, A/HRC/23/48 (18 March 2013), para. 63.

¹⁴² A notable exception is Brazil, where labour inspectors are involved in investigating cases of what is known in Brazil as “slave labour”. See, Secretariat of Labour Inspection (Ministry of Labour and Employment) and ILO Office in Brazil, *The Good Practices of Labour Inspection in Brazil: The Eradication of Labour Analogous to Slavery* (Brasilia, 2010), also available in Portuguese and Spanish.

that a sub-contractor may secure cheap labour from a labour provider implicated in trafficking workers into this type of work. The State's responsibility to ensure that procurement policies at every level of State institutions discourage exploitation of persons includes the responsibility to frame contracts in an appropriate way when sub-contracting responsibility for exploiting state-owned resources, such as minerals or forestry. For example, one State is alleged to have been negligent in stopping forestry workers who worked in state-owned forests from being subjected to forced labour.¹⁴³

This responsibility extends to government-owned (or partially owned) organizations which provide credit or banking services or insurance, such as banks or other credit institutions. In all cases, State-owned and State-run organizations should be instructed to cease doing business with any entity which is found to tolerate trafficking in human beings or to use forced labour, or to buy products from others who do. Further, being "found" to tolerate trafficking does not require a criminal conviction; credible allegations should be sufficient evidence to suspend any business dealings.

In much the same way, States should also ensure that any preferential customs tariffs concerning goods imported from other States, including privileged reductions in regular tariffs, are not made available to goods which have been made as a result of the exploitation of persons. In both cases, these duties apply to credit and preferential customs tariffs available from intergovernmental organizations to which a State belongs. For example, since 1971, the European Union (EU) has had rules allowing exporters from developing countries to pay lower duties on some or all of the goods they sell to the EU. This scheme, is known as the "Generalised Scheme of Preferences" (GSP), gives them access to EU markets and is considered a way of helping the economies of developing countries to grow. The main variants of the scheme are periodically readjusted. In the case of 48 Least Developed Countries, the current GSP gives duty free access to

143 An ongoing case in the Czech Republic (routinely referred to as the 'Tree Workers' Case') concerns two labour providers accused of exploiting some 2,000 forestry workers who came from Vietnam and five other countries. Vietnamese workers who were required to sign 'training contracts' instead of employment contracts reported that anyone who complained faced threats from managers. The labour provider who reportedly trafficked the workers won a tender to supply workers in state-owned forests and the Krkonoš National Park. See *Na 2000 cizinců otročilo v českých lesích* (2,000 foreigners enslaved in Czech forests), 27 July 2011, <<http://www.novinky.cz/krimi/240168-na-2000-cizincu-otrocilo-v-ceskych-lesich.html>>, accessed 26 June 2014; J. Beirnaert (International Trade Union Confederation), 'The "Tree Workers" Case' sheds light on human trafficking in Europe', *Equal Times*, 21 September 2012, <http://www.equaltimes.org/the-tree-workers-case-sheds-light-on-human-trafficking-in-europe?lang=en#_U6wJN_lDvic>, accessed 24 June 2014.

the EU for all products except arms and ammunition. In the case of any state-run organizations which function or carry out transactions outside the national territory, such as the diplomatic service, a government-run aid or co-operation agency, or any contingents of the security forces based abroad or participating in peacekeeping or other international operations, this responsibility requires taking measures to discourage demand while individuals employed by the government are based in another country. In this case, it is not only the procurement policies of the institutions involved which the State must supervise; it must also endeavour to influence the personal behaviour of individuals employed by the State who might themselves employ or pay for the services of someone who has been trafficked. As in the case of businesses with long supply chains,¹⁴⁴ there are limits to the extent to which government-run organizations can be expected to go.

6.2.1 The example of Federal procurement policies in the United States (US)

The authorities in the US have put more emphasis than those in other countries on the importance of procurement policies that avoid buying the products or services of trafficked persons, with federal contracts worth many millions of US dollars and reports in the past that some contractors had been responsible for trafficking in human beings.¹⁴⁵ The US *Federal Acquisition Regulations* (FAR) require that a clause prohibiting trafficking in persons be added to all US government contracts. Reflecting US policy, this also prohibits the procuring of "commercial sex acts during the period of performance of the contract".¹⁴⁶

144 See Principle 17 of the *Guiding Principles*, quoted in section 5.5.1 above.

145 K. J. Allred, 'Human Trafficking and Peacekeepers', in C. Friesendorf (ed.), *Strategies Against Human Trafficking: The Role of the Security Sector* (Vienna and Geneva, Austrian National Defence Academy and Geneva Centre for Democratic Control of the Armed Forces, 2009).

146 Under the FAR regulations, all US Government contracts are required to,

"(a) Prohibit contractors, contractor employees, subcontractors, and subcontractor employees from—

(1) Engaging in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procuring commercial sex acts during the period of performance of the contract; or

(3) Using forced labor in the performance of the contract;

(b) Require contractors and subcontractors to notify employees of the prohibited activities described in paragraph

(a) of this section and the actions that may be taken against them for violations; and

(c) Impose suitable remedies, including termination, on contractors that fail to comply with the requirements of paragraphs (a) and (b) of this section".

See Federal Acquisition Regulation, clause 22.1703, Subpart 22.17—Combating Trafficking in Persons, 17 February 2009 (introduced in 2006), <<http://www.acquisition.gov/Far/current/pdf/FAR.pdf>>, accessed 1 August 2014. Footnote 36 explains the meaning of terms used in the US such as "severe forms of trafficking in persons".

Relatively little data has become available so far to assess the impact of these regulations,¹⁴⁷ making it difficult to assess whether the ban on procuring commercial sex acts altogether has made it easier to implement the ban on trafficking or more difficult.

Within the US, one of the first Government agencies to reflect these provisions in its own code of conduct was USAID, in a code (*USAID Counter Trafficking in Persons Code of Conduct*) adopted in January 2011. This committed USAID to prohibiting “*USAID contractors, subcontractors, grantees and subgrantees during the period of performance of their contracts or awards from engaging in trafficking in persons, procuring commercial sex acts, or using forced labor*”. Similar prohibitions were adopted by private businesses providing services to the US Government. For example, PAE, a private equity business, provides recruitment and human resources support to the OSCE (known as the “Rapid Expert Assistance and Cooperation Teams” or REACT programme) on behalf of the US Government. At the instigation of a member of the OSCE’s staff who had been recruited by PAE, the company adopted a policy statement about trafficking in persons. The provisions of the US *Federal Acquisition Regulations* relating to trafficking in persons are now mentioned in the PAE Ethics and Compliance Code of Conduct (2013). This specifies that “*contractors and contractor employees may not: (1) Engage in severe forms of trafficking in persons, which are generally defined to include any conduct that involves sex trafficking or involuntary servitude; (2) Procure commercial sex acts, which are defined as any sexual activity on account of which anything of value is given to or received by any person; or (3) Use forced labor in the performance of a government contract [...]*”.¹⁴⁸

147 In an evaluation published in January 2011, the Inspector General of the US Department of Defense was able to spot weaknesses in the implementation of the policy, but did not present evidence on its possible impact. The evaluation noted that, “*three quarters of the contracts sampled contained a Combating Trafficking in Persons clause, only little more than half had the required Federal Acquisition Regulation clause*” and that the “*DoD’s [Department of Defense] contracting offices lack an effective process for obtaining information pertaining to trafficking in persons violations within the DoD*”. Inspector General, US Department of Defense, *Evaluation of DoD Contracts Regarding Combating Trafficking in Persons: US Central Command*, Report No. SPO-2011-002 (18 January 2011), page i, <http://www.dodig.mil/SPO/Reports/SPO-2011-002_508.pdf>, accessed 26 June 2014. A subsequent US Department of Defense report focused specifically on procurement contracts in Afghanistan and reported involving “*over 110 interviews, including meeting with 78 personnel from contracting offices, and 145 local and third-country national contractor employees*” (Inspector General, US Department of Defense, *Evaluation of DoD Contracts Regarding Combating Trafficking in Persons: Afghanistan*, Report No. DODIG-20 12-086). In 2014 the US Department of Defense also adopted its own five-year strategic plan for combating trafficking in persons.

148 PAE, *Leading the Way. The Ethics and Compliance Code of Conduct* (2013), <<https://www.pae.com/Media/docs/about-pae-ethics-leading-the-way.pdf>>, accessed 7 August 2014.

In September 2012 US President Obama signed an Executive Order forbidding federal contractors and subcontractors from engaging in certain trafficking-related practices. A fact sheet issued by the White House specifies that this prohibits contractors, subcontractors and their employees from engaging in misleading or fraudulent recruitment practices, from charging employees recruitment fees and from destroying or confiscating an employee’s identity documents, such as a passport or a driver’s license. In the case of contractors and subcontractors carrying out work outside the US valued at more than USD 500,000, it also requires them to have a compliance plan that covers employee awareness (of human trafficking, as defined by US law), a process for employees to report suspected cases of human trafficking without fear of retaliation, and recruitment and housing plans.¹⁴⁹ The US Department of Defense has enacted more detailed regulations, intended not only to prevent human trafficking, but also to stop contractors withholding the passports of contracted workers or housing them under inhumane conditions.¹⁵⁰ In January 2013 the US Congress passed (and President Obama signed into law) the National Defense Authorization Act for Fiscal Year 2013 (NDAA),¹⁵¹ which includes Title XVII on “Ending Trafficking in Government Contracting” containing many of the same or similar protections against trafficking-related activities as the Executive Order, in addition to a few other protections.

6.3 Export credits

In 2012, the OECD adopted a Recommendation intended to “[p]romote coherence between Members’ policies regarding officially supported export credits, their international environmental, climate change, social and human rights policies, and their commitments under relevant international agreements and conventions”.¹⁵² This requires OECD Members to screen all applications for officially supported export credits. It was agreed that, as part of this, Export Credit Agencies

149 See Executive Order 13627, *Strengthening Protections Against Trafficking in Persons in Federal Contracts*, 77 Fed. Reg. 60029 (25 Sept. 2012); see also *Fact Sheet: Executive Order Strengthening Protections Against Trafficking in Persons in Federal Contracts*, 25 September 2012, <<http://www.whitehouse.gov/the-press-office/2012/09/25/fact-sheet-executive-order-strengthening-protections-against-trafficking>>, accessed 3 December 2013.

150 See US Central Command Joint Theater Support Contracting Command clauses 952.222-0001, “Prohibition Against Human Trafficking, Inhumane Living Conditions, and Withholding of Employee Passports”.

151 See US Public Law 112-239 (2 January 2013), <<http://www.gpo.gov/fdsys/pkg/PLAW-112publ239/html/PLAW-112publ239.htm>>, accessed 26 June 2014.

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

(ECAs) should take into account not only potential environmental impacts but also “social impacts”, which are defined as “*project-related impacts on the local communities directly affected by the project and on the people involved in the construction and operation of the project; these social impacts encompass relevant adverse project-related human rights impacts*”. The Recommendation notes that “*Potential social impacts may include, but are not limited to, labour and working conditions, community health, safety, and security, land acquisition and involuntary resettlement, indigenous peoples, cultural heritage, and project-related human rights impacts, including forced labour, child labour, and life-threatening occupational health and safety situations*”, i.e., all issues covered by the *Guiding Principles on Business and Human Rights*.

Under the terms of this Recommendation (article 15), one participating State, the United Kingdom, has said publicly that it will consider any negative final statements or reports made publicly available by National Contact Points (at the conclusion of a specific instance procedure under the OECD Guidelines for Multinational Enterprises) about a company’s human rights record when considering a project for export credit.¹⁵³

The Committee on the Rights of the Child has urged States that adhere to the OECD Guidelines for Multinational Enterprises to ensure that their national contact points “*are adequately resourced, independent and mandated to work to ensure respect for children’s rights in the context of business issues*”, notably with respect to the operations of businesses based in the national contact point’s country, but affecting children in other countries.¹⁵⁴

6.4 Promotion by governments of the UN Guiding Principles on Business and Human Rights

At the national level, some governments have already taken specific steps to promote awareness of the *Guiding Principles* in their country’s business community. Shortly after the adoption of the *Guiding Principles*, the European Commission published a Communication inviting its Member States to prepare national plans for their implementation.¹⁵⁵ By June 2014, four

EU States had informed the UN that they had done so (Denmark, Italy, the Netherlands and the United Kingdom). By that time, there was no information available to indicate that other OSCE participating States had published plans about implementing the *Guiding Principles*.

In 2013 the European Commission co-published three guides on implementing the UN *Guiding Principles*, each intended for businesses operating in different sectors of the economy: ICT (information and communications technologies), oil and gas, and the recruitment sector. The last of these makes explicit references to action to prevent human trafficking.¹⁵⁶ The European Commission also dedicated a report specifically to how small and medium-sized enterprises should identify and minimize possible adverse human rights impacts (presented in the format of a series of “frequently asked questions”).¹⁵⁷

The Netherlands’ National Plan¹⁵⁸ describes a series of initiatives to enhance business’ understanding of the UN *Guiding Principles* and due diligence requirements. The reason for this is that during a consultation with 50 businesses, comments were made that businesses still did not understand what acting with due diligence entailed. The Plan sought to clarify the Government’s expectations. Nevertheless, initiatives by business that are essentially voluntary remain the order of the day. For example, the Netherlands Government’s Plan reports that by the end of 2013, an action plan prepared by textile companies in the Netherlands to tackle abuse in the production of clothing was likely to be implemented by half the textile sector businesses in the country. The Netherlands Plan emphasizes the importance of public reporting and notes the Government’s intention to adopt legislation requiring large companies (approximately 600 in the Netherlands) “*to disclose information on human rights, environmental matters, social and employee-related matters and corruption*”.

The United Kingdom Foreign and Commonwealth Office issued a report about the *Guiding Principles* in

153 United Kingdom Foreign and Commonwealth Office, *Good Business. Implementing the UN Guiding Principles on Business and Human Rights* (London, 2013).

154 Committee on the Rights of the Child, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights*, CRC/C/GC/16 (17 April 2013).

155 European Commission. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A renewed EU strategy 2011–14 for Corporate Social Responsibility*, COM(2011) 681 final (Brussels, 25 October 2011).

156 SHIFT and the Institute for Human Rights and Business (IHRB), *Employment and Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights* (Brussels, European Commission, 2013).

157 GLOBAL CSR and BBI International, *My business and human rights. A guide to human rights for small and medium-sized enterprises* (Brussels, European Commission, 2012).

158 Government of the Netherlands, *Nationaal Actieplan bedrijfsleven en mensenrechten: Rapport over het Nederlandse beleid rondom de bevordering van eerbiediging van mensenrechten door het bedrijfsleven* (National Action Plan on Business and Human Rights) (December 2013), <<http://www.business-humanrights.org/UNGuidingPrinciplesPortal/ToolsHub/Governments/TypeInitiative/natlaction-plans>>, accessed 30 June 2014.

September 2013 in English and seven other languages¹⁵⁹ and told its Embassies about them to enable diplomats to give appropriate advice to British businesses operating around the world. The Government reported spending GBP 750,000 (approximately EUR 888,000 or USD 1.2 million) in 2012–13 to promote the *Guiding Principles*.

Most of Italy's Plan is devoted to describing measures taken by the State to protect human rights, with relatively little focus on business' responsibility to respect human rights.¹⁶⁰

Denmark's Plan reports on progress by Danish businesses and contains a useful summary of the status of the various Guiding Principles in Denmark. It refers to recommendations (for business) made by the Danish Council for Corporate Social Responsibility in 2010, consisting of seven guidelines.¹⁶¹

6.5 Legislation requiring supply chain transparency

While the prime responsibility for discouraging demand lies with the State where trafficked persons are exploited, when the people who have been trafficked originate in a different State, their own State still has a responsibility to protect them and use its influence both to prepare migrant workers (to minimize the likelihood that they will be trafficked) and to influence the authorities in the countries where they go to work. States which enter into formal arrangements with other States to provide migrant workers have a particular opportunity, as well as a responsibility, to ensure that these arrangements contain practical safeguards to ensure that the migrants in question will not be subjected to any form of exploitation of persons in the course of their employment.

The obligations under article 9 of the UN Trafficking Protocol (to discourage demand) are not limited by the Protocol to discouraging demand related to goods or services in a particular territory. When there is credible evidence that particular goods being imported have been produced wholly or partially by trafficked persons in another country, the relevant authorities of a State evidently have an obligation to take action.

¹⁵⁹ Including French, Portuguese, Russian and Spanish. United Kingdom Foreign and Commonwealth Office, *Good Business. Implementing the UN Guiding Principles on Business and Human Rights* (London, 2013).

¹⁶⁰ *The Foundations of the Italian Action Plan on the United Nations "Guiding Principles on Business and Human Rights"* (2013).

¹⁶¹ Danish National Action Plan – implementation of the UN Guiding Principles on Business and Human Rights (March 2014).

In doing so, they should consult with businesses in their own country and also with relevant international organizations to assess whether appropriate (and sufficient) remedial action is already being taken in the State where human trafficking is reported.

Some participating States have laws prohibiting the importation of goods made with forced labour. For example, such a law has been in force in the US since 1932, concerning goods made with forced labour, prison labour or indentured labour.¹⁶² In 1997 an amendment clarified that this law also applied to products made with forced or indentured child labour and in 1999 the US introduced a more specific measure to ensure that US federal agencies did not procure goods made by forced child labour.¹⁶³ The US Department of Labor has been required by law since 2009 to compile and publish an annual list of goods from other countries that the Department's Bureau of International Labor Affairs has reason to believe were produced by forced labour or child labour in violation of international standards. This publication states that the list is not intended to be punitive and that its "*primary purposes are to raise public awareness about forced labor and child labor and to promote efforts to address them*".¹⁶⁴

6.5.1 California's Transparency in Supply Chains Law

While some businesses have already started modifying their ways of working to conform to the *Guiding Principles*, few governments have yet advised businesses based on their territory to conform to the standards proposed in the *Guiding Principles*, and none is known to have made it mandatory for them to do so. One particular law that has already come into force is the *California Transparency in Supply Chains Act* (SB657), enacted by a US state, California, in September 2010. It was designed specifically to find out whether businesses have taken suitable action to ensure that neither trafficking nor slavery occur in their

¹⁶² Under the terms of section 207 of the Tariff Act of 1930. In 1997 the Sanders Amendment clarified that this Act also applied to products made with forced or indentured child labour.

¹⁶³ Executive Order 13126, *Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor* (June 1999), <<http://www.dol.gov/ILAB/regs/eo13126/main.htm>>, accessed 1 August 2014.

¹⁶⁴ US Department of Labor's Bureau of International Labor Affairs Office of Child Labor, Forced Labor, and Human Trafficking, *US Department of Labor's List of Goods Produced by Child Labor or Forced Labor* (2012), page 1. The report goes on to explain that "*Publication of the List has provided ILAB new opportunities to engage in technical cooperation with foreign governments to combat child labor and forced labor and has also been a valuable resource to many companies in carrying out risk assessment and due diligence on labor rights in their supply chains*".

supply chain. The Act requires companies operating in California that do business worth more than USD 100 million a year to disclose information on their Internet sites, from January 2012 onwards, about their efforts to ensure that their supply chains are free from slavery and human trafficking.¹⁶⁵ It was estimated initially that some 3,200 businesses would be covered by the requirement.

By November 2013, a year after California's Attorney General could have issued injunctions against businesses which had failed to display the information required by the new Act, no court cases had been reported and it was still difficult to assess the impact of the Act. At the beginning of 2014, two organizations, the Business and Human Rights Resource Centre and KnowTheChain (a coalition of 13 US-based NGOs) contacted more than 120 businesses operating in California that were believed to be under an obligation to disclose information, but which had not done so. They reported that more than half failed to respond. Among the 44 that did so, some reported having adopted a statement, others said they were preparing one and some indicated that they were not subject to the Act.¹⁶⁶

While the focus of this paper is on what businesses themselves can do, rather than on how States can regulate or how consumers can influence business practice, the California Act contains a useful listing of the information that businesses should be ready to make available about their supply chains. As a practical example of what exercising "due diligence" with specific respect to the issues of human trafficking and slavery involves, this list looks like an appropriate reference for businesses everywhere.

The requirements imposed by the California Transparency in Supply Chains Act on businesses in California

The law focuses on the requirement that companies doing a relatively large volume of business (USD 100 million a year or more) should disclose particular information when asked to do so. However, the following actions would also be appropriate for businesses with a smaller turnover. Each business is, in effect, obliged to do the following:

- (1) *Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.*
- (2) *Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.*
- (3) *Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.*
- (4) *Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.*
- (5) *Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.*¹⁶⁷

As the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, noted, the Act does not require businesses to take action, but only to report whether they have taken any action and, if so, what they have done. "Accordingly, the effectiveness of the Act will hinge upon the extent to which advocates and investors strategically use the disclosures to affect the companies' brand image and consumer opinion".¹⁶⁸

A federal law making similar provisions applicable throughout the US was under consideration in mid-2014 (The Business Supply Chain Transparency on Trafficking and Slavery Act). Similar provisions have been proposed in other participating States, such as the Netherlands and the United Kingdom, but have not become law. Participating States also have more general legal provisions obliging registered businesses to issue regular public reports on their activities, but these do not necessarily touch on issues such as the working conditions of suppliers.¹⁶⁹

¹⁶⁵ "Every retail seller and manufacturer doing business in this state and having annual worldwide gross receipts that exceed one hundred million dollars (\$100,000,000) shall disclose [...] its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale" (section 1714.43. (a) (1)). The provision does not apply to a retail seller or manufacturer having less than USD 100,000,000 in annual worldwide gross receipts. The disclosure is required to disclose to what extent, if any, that a particular retail seller or manufacturer "Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party" (section 1714.43. (c) (1)). See California Transparency in Supply Chains Act, <<http://www.state.gov/documents/organization/164934.pdf>>, accessed 1 August 2014.

¹⁶⁶ See <<http://www.business-humanrights.org/Documents/KnowTheChain>> for a list of businesses consulted, accessed 26 June 2014.

¹⁶⁷ California Transparency in Supply Chains Act, section 1714.43. c.

¹⁶⁸ UN General Assembly, *Report of the Special Rapporteur on trafficking in persons, especially women and children, A/67/261* (7 August 2012), para. 23.

¹⁶⁹ E.g., in the United Kingdom, where general reporting obligations for companies were modified in 2013 (by the Companies Act 2006 [Strategic Report and Directors' Report] Regulations 2013) to require

In April 2014 the European Parliament approved a Directive (proposed the previous year by the European Commission) concerning “*disclosure of non-financial and diversity information by certain large undertakings and groups*”. This includes an obligation on certain businesses to disclose information on the due diligence process used by the business, both with respect to its own workplace(s) and those of “*its supply and subcontracting chains in order to identify, prevent and mitigate existing and potential adverse impacts*” related to human rights, anti-corruption and bribery matters (i.e., there is no specific reference to human trafficking). However, the obligation would apply only to large companies employing more than 500 people. It was reckoned that, when the Directive comes into force, this provision will apply to some 6,000 companies and groups based in the European Union.¹⁷⁰

6.6 Tracking commodities in a value chain

There have been other examples to promote transparency in value chains, particularly when some products, but not all, are suspected of being produced in abusive circumstances and when either the international community as a whole or particular States or organizations wish to exclude such commodities from the market. Some of these are reminiscent of initiatives surrounding cotton, mentioned in section 3.2, which aim to distinguish between cotton produced with forced labour and cotton from other sources.

Businesses in Brazil working together against “slave labour”

The country in which processes of this sort have gone further than any others is Brazil, where reports of forced labour received substantial publicity from the mid 1990s onwards. Although the term “trafficking” is rarely used in Brazil to refer to such workers, virtually all have been trafficked under international definitions of trafficking in human beings. Brazil’s National Pact to Eradicate Slave Labour (*Pacto Nacional pela Eradicação do Trabalho Escravo*), was launched in May 2005. This is a voluntary agreement which businesses in Brazil can sign to guarantee that they will

publicly quoted companies (whose shares are quoted and sold on the Stock Exchange) to report on “social, community and human rights issues”, in an annual “strategic report”.

170 See European Commission, ‘Non-financial reporting’, <http://ec.europa.eu/internal_market/accounting/non-financial_reporting/index_en.htm>, accessed 1 August 2014; and ‘Position of the European Parliament adopted at first reading on 15 April 2014 with a view to the adoption of Directive 2014/.../EU of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (1) (Text with EEA relevance)’, <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0368+0+DOC+XML+V0//EN&language=EN#B-KMD-68>>, accessed 1 August 2014.

not use forced labour or tolerate the use of slave labour in their supply chain, or do business with companies which do. The Pact is overseen by a Steering Committee consisting of the ILO, the Ethos Institute of Business and Social Responsibility, the Social Monitoring Institute and an NGO, Repórter Brasil. The Steering Committee can suspend or exclude businesses which have signed the Pact but which fail to abide by its terms. There is an associated monitoring mechanism, involving research into value chains by Repórter Brasil (which has discovered on various occasions that businesses which have signed the National Pact were receiving supplies from businesses using or benefiting from forced labour). Its findings have been challenged by businesses in court, but never successfully. Significantly, since 2003 the Ministry of Labour and Employment has also published a “Dirty List” of business entities (companies or individuals) where slave labour has been detected. Formally it is a register of the names of individuals or legal entities that have been caught exploiting workers in conditions “analogous to slavery” by the Brazilian Government’s mobile inspection unit. Those put on the list are kept on it for two years, during which they are re-inspected to check that they are no longer using slave labour.¹⁷¹ These actions therefore represent a joint initiative by the Government and civil society.

6.7 Measures relating to national security forces

Units of the security forces, including the military, police, intelligence services and others, should be required to take at least the same measures as other government-run organizations to discourage demand. The mobility of some forces and their redeployment to new areas within their own country or to other countries creates special obligations. The deployment of substantial numbers of male soldiers is known to have created, on repeated occasions, a substantial demand for sexual services by both male soldiers and male non-military personnel deployed alongside them.¹⁷² When the deployment of substantial numbers of soldiers has created a demand by male soldiers for sexual services, traffickers are reported in numerous cases to have met this demand by trafficking women and girls for the purpose of the exploitation of the prostitution of others.

Measures to discourage demand that fosters exploitation should go beyond a focus on sexual exploitation and should discourage other forms of exploitation

171 ILO Special Action Programme to Combat Forced Labour, *Fighting Forced Labour: The Example of Brazil*, Patricia Trindade Maranhão Costa (Geneva, 2009).

172 See paragraph 3 in Prince Zeid Ra’ad Zeid Al-Hussein, A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations, in *Letter dated 24 March 2005 from the Secretary-General to the President of the General Assembly*, A/59/710 (24 March 2005).

as well, in particular influencing military and police procurement policies and any arrangements with sub-contractors who provide workers. States consequently have a responsibility to develop regulations and codes of conduct setting out expected standards of behaviour of personnel participating in military, peacekeeping, humanitarian or other international missions. They should require all personnel to report on any instances of trafficking or related exploitation that come to their attention. The relevant security forces should take responsibility for ensuring compliance with rules and regulations, as should managers and commanders.

Some OSCE participating States have made more specific commitments concerning their armed forces. In 2004 the North Atlantic Treaty Organization (NATO) adopted a Policy on Combating Trafficking in Human Beings,¹⁷³ whereby members of NATO agreed explicitly “to incorporate contractual provisions that prohibit contractors from engaging in trafficking in human beings or facilitating it and impose penalties on contractors who fail to fulfil their obligations in this regard”. Further, NATO’s policy encourages all nations contributing forces to NATO-led operations to adhere to the OSCE Code of Conduct (see section 11.3 below).

6.8 Codes regulating the personal behaviour of diplomats

Staff in the diplomatic services of many States are governed by a code of conduct. For example, Australia’s Department of Foreign Affairs and Trade has a *Code of Conduct for Overseas Service* which seeks to prevent bribery or corruption and to maintain the reputation of diplomats for integrity.¹⁷⁴ The code mentions behaviour which is likely to be sensitive in some countries, such as “sexual behaviour and use of alcohol” (article 5.1). It requires employees to abide by national laws on the age of consent (the minimum age that a person may have sex) and in no circumstances to have sex with a child under 16 years of age (article 5.3). There is no reference to human trafficking, but an explicit ban on using “mission office facilities, staff or

resources for the purpose of arranging or facilitating access to sex workers by any person, including visitors to the mission” (article 5.4). While no specific verification procedure is spelled out, other employees of the same organization are required to watch out for breaches of the code.

Instructions to their diplomats by other governments address a variety of issues related to human trafficking. Some focus specifically on the issue of domestic workers (employed by a diplomat while based in a foreign country, whether the domestic worker in question is a national of the country where the diplomat is based or from the diplomat’s own country or a migrant worker from elsewhere). In the US, such instructions are addressed to all employees of the Department of State (i.e., the ministry of foreign affairs), both when based abroad and while back in the US. In January 2011 USAID issued a *Counter Trafficking in Persons Code of Conduct* which requires USAID personnel, “to report suspected cases of USAID employee misconduct [...] and abuse in USAID programs as related to human trafficking” (article 4). The procedure to put this code into practice is to involve the designation of a “Counter Trafficking in Persons Coordinator” in all USAID Missions, who is to serve as the primary point of contact for staff on issues related to the code.

Although there is as yet no explicit international agreement either to stop diplomats exploiting domestic workers or to allow them to be prosecuted in a country where they have diplomatic immunity,¹⁷⁵ in 2011 the ILO adopted a Recommendation (No. 201) concerning Decent Work for Domestic Workers. Although non-binding, this represents an international standard on the issue. Concerning diplomatic immunity and the employment of domestic workers, it recommends that States should consider:

- “(a) adopting policies and codes of conduct for diplomatic personnel aimed at preventing violations of domestic workers’ rights; and
- “(b) cooperating with each other at bilateral, regional and multilateral levels to address and prevent abusive practices towards domestic workers.”¹⁷⁶

173 NATO, *Policy On Combating Trafficking In Human Beings* (29 June 2004), <<http://www.nato.int/docu/comm/2004/06-istanbul/docu-traffic.htm>>, accessed 6 August 2014, point 5(f). The Policy also specifies that “NATO and non-NATO troop contributing nations will develop and implement various measures that discourage the demand by their military and civilian personnel that fosters all forms of exploitation of persons” (point 3).

174 Australian Department of Foreign Affairs and Trade, *Code of Conduct for Overseas Service*, <http://www.dfat.gov.au/dept/code_of_conduct200598.html>, accessed 11 December 2013.

175 For details on efforts by host governments to protect migrant domestic workers employed by diplomats, see ‘Diplomatic Privileges and Domestic Work’ in OSCE OSR CTHB, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, Occasional Paper Series no. 4 (Vienna, 2010).

176 ILO, *Recommendation Concerning Decent Work for Domestic Workers*, C201 (2011), article 26 (4).

The December 2013 *Addendum* to the OSCE's 2003 *Action Plan to Combat Trafficking in Human Beings* commits the OSCE to taking further action to prevent diplomats or their households from keeping domestic workers in servitude.¹⁷⁷

6.9 Advertising

States have a duty to stop certain forms of advertising and in practice many States regulate the advertising industry, rather than allowing on self-regulation by individual businesses. In its 2013 General Comment on the business sector and children's rights, the Committee on the Rights of the Child noted that,

“Advertising and marketing can also have a powerful influence over children's self-esteem, for example when portraying unrealistic body images. States should ensure that marketing and advertising do not have adverse impacts on children's rights by adopting appropriate regulation and encouraging business enterprises to adhere to codes of conduct and use clear and accurate product labelling and information that allow parents and children to make informed consumer decisions”.¹⁷⁸

Advertising companies and the media which publish advertisements are themselves in a position to influence the purchasing decisions of consumers and institutions, for example by refusing to advertise products which are either known or reputed to be made by forced labour. In practice, clear-cut examples where all the products advertised can be linked to the use of forced labour are rare.

In various countries parts of the media have agreed to curtail advertisements for services which are reputed to be a front for brothels or other forms of sexual services, such as massage parlours. In the United Kingdom, a media company, Newsquest, announced that it would no longer allow such advertisements in the 200 weekly newspapers, magazines and trade publications it owned,¹⁷⁹ i.e., a company policy decision, not the

result of a new code of conduct. The announcement followed a local-level campaign and also remarks by a government minister who had criticized local newspapers in 2007 for “promoting slavery by running sex adverts for foreign women”.¹⁸⁰ Similarly, although a public debate in Spain about whether the Government should impose a curb on advertisements for sexual services has not resulted in new law, a few media companies have also opted not to publish such advertisements.¹⁸¹ In Argentina the same type of advertisements were banned by the Government in 2011.¹⁸²

These were initiatives to stop advertisements about sexual services in general, rather than ones that focused specifically on stopping human trafficking. A different approach has been taken in the Netherlands, reflecting its policy of regulating licensed commercial sex businesses. In 2005, the Ministry of Justice signed an agreement with the Groep Nederlandse Dagbladers, Dutch Daily Press Group, and a media company, Wegener, requiring businesses that placed what were termed “erotic advertisements” (i.e., for sexual services) in daily newspapers (those that were sold rather than distributed free) to mention their licence number in the advert, to ensure that those that advertised were operating within the regulatory framework and were consequently unlikely to be advertising the services of a trafficked person.¹⁸³

177 OSCE Permanent Council, *Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*, PC.DEC/1107 (6 December 2013), Chapter III: it states that “The OSR/CTHB, in co-operation with relevant OSCE executive structures, will continue to promote the exchange of best practices aimed at the prevention of THB for domestic servitude, inter alia in diplomatic households, and protection of the victims”.

178 Committee on the Rights of the Child, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, CRC/C/GC/16 (17 April 2013), para. 59.

179 Following a campaign by the Croydon Community Against Trafficking (CCAT). See, M. Gould, ‘News group ban on sex ads welcomed’, *The Guardian* (UK) (23 July 2008), <<http://www.guardian.co.uk/society/2008/jul/23/pressandpublishing.gender>>, accessed 10 July 2014.

180 P. Macey, ‘How newspapers are fuelling the sex trade’, *Press Gazette* (1 November 2007), <<http://www.pressgazette.co.uk/story.asp?storycode=39319>>, accessed 10 July 2014, reporting comments by Harriet Harman, UK Minister for Women and Equality, on 25 October 2007.

181 A Catalan newspaper, *El Punt Avui*, reportedly took this option in response to requests from its reader (see ‘Prensa española vuelve a debatir sobre prohibir anuncios de prostitución’, *Ética segura Red de ética y periodismo*, 2 January 2013, <<http://eticasegura.fnpi.org/2013/01/02/prensa-espanola-vuelve-a-debatir-sobre-prohibir-anuncios-de-prostitucion>>, accessed 10 July 2014). According to media reports, annual revenue in Spain from the advertisements was worth EUR 40 million a year (approximately USD 51 million) in 2011.

182 ‘Cristina Fernández prohíbe la publicidad de contactos’, *Público.es*, 7 July 2011, <<http://www.publico.es/internacional/385578/cristina-fernandez-prohibe-la-publicidad-de-contactos>>, accessed 10 July 2014.

183 Dutch National Rapporteur on Trafficking in Human Beings, *Human Trafficking. Seventh Report from the National Rapporteur* (The Hague, 2009), p. 281.

CHAPTER 7: HOW BUSINESSES CAN PREVENT PEOPLE FROM BEING TRAFFICKED

7.1 What corporate codes endeavour to achieve

A variety of cultural, economic, political and social factors contribute to allowing or encouraging trafficking in human beings to occur. Some factors, such as a lack of livelihood options that result in large numbers of people leaving to start a new life elsewhere, are apparent in the places of origin from which people are trafficked. Other factors are noticeable in the areas to which people are trafficked in order to be exploited, such as immigration policies that restrict opportunities for legal labour migration and result in would-be migrants becoming dependent on smugglers or falling into the hands of traffickers. When human trafficking gained international attention in the first half of the last decade, it was conditions in countries of origin (and ways of influencing them) which received the most attention. However, since 2005 factors in the places where trafficked persons are exploited (and goods are bought) have received more attention. Among these is the question of demand for the services of trafficked persons or for products made by them. Taking action to influence such demand is one way in which it is hoped that the numbers of people who are trafficked can be reduced, if not prevented altogether, alongside criminal justice strategies and other preventive strategies.

Both businesses and individual consumers can potentially take action to affect demand. Many businesses, within their statements of core principles concerning respect for internationally recognized labour standards or human rights, have made commitments to ensure that forced labour or human trafficking do not occur in their workplaces or supply chains. Some have made an explicit commitment not to do business with others who are reported to allow human trafficking to occur.

The commitments to respect international standards take various forms, notably corporate codes which are intended to be binding on either employees or, more widely, on sub-contractors and other suppliers. This chapter focuses on the role of such codes and the best ways of implementing them.

Statements of core principles or codes send out an important message about a business or organization's commitment to stopping human trafficking or other forms of abuse, both to its employees and the outside world. There has been an important shift over the past five years in the priority that such statements

and codes have given explicitly to trafficking in human beings. For example, in 2008 the report of an international conference about human trafficking commented that comparatively few businesses were “*actively involved in the front lines of the fight against human trafficking, compared with their involvement in other issues*”.¹⁸⁴ There have subsequently been calls for renewed attention to be given to the practical ways in which businesses can reduce or prevent human trafficking, by the UN¹⁸⁵ and the OSCE and also by some OSCE participating States. In her 2009 Annual Report, the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro, urged that,

“*Codes of conduct in businesses, international organizations and in the military are needed to stop the production of goods and services made with child and forced labour as well as to prevent any misconduct, exploitation or abuse by military and civilian personnel*”.¹⁸⁶

Businesses can introduce systems to detect and stop the use of forced labour and human trafficking, both in their workplaces and those of their suppliers. They also have the effect of dissuading other employers in a supply chain from resorting to such methods and thereby reduce the likelihood that workers will be trafficked for labour exploitation. However, the systems need implementing carefully and to be actively supported by a business' senior management: if not, there is potential for commitments to amount to little more than window-dressing.

The decision by a particular business to adopt a code or similar commitments is voluntary, albeit made under a variety of pressures, so they are usually referred to

184 The United Nations Global Initiative to Fight Human Trafficking (UN-GIFT), *The Vienna Forum report: a way forward to combat human trafficking* (New York, 2008), p. 51.

185 The UN Global Plan of Action to Combat Trafficking in Persons (2010) includes several articles calling for action to discourage demand. Article 22 calls on States to “*Increase and support prevention efforts in countries of origin, transit and destination by focusing on the demand that fosters all forms of trafficking and the goods and services produced as a result of trafficking in persons*” (emphasis added). See United Nations, *Resolution Global Plan of Action to Combat Trafficking in Persons: resolution / adopted by the General Assembly, A/RES/64/293* (12 August 2010).

186 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *An agenda for change: implementing the platform for action against human trafficking*, 2009 Annual Report of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (10 December 2009), p. 14.

as “voluntary” or “non-binding” codes. However, many codes set standards which are intended to be respected by the suppliers or sub-contractors who work with that business, for whom the code is not voluntary (for failure to abide by it would trigger punitive measures, including a refusal to do further business with the supplier concerned). Businesses have also made commitments to workers’ organizations which, once again, are voluntary to begin with (albeit made under pressure), but which subsequently entail accepting legal obligations that mean that the business concerned no longer has an option not to respect the code or other provisions that it has agreed.

When businesses based in Europe and North America were criticized for abuses in their supply chains in the early 1990s, many company boards tried reassuring their shareholders and consumers by issuing a public denial. They soon realized this was not enough. The next step was to publicly state their commitment to respecting internationally recognized human rights or labour rights.¹⁸⁷ Such statements of support represent a first step, but turning them into reality requires a series of measures to be implemented by each business – a system.

7.2 The evolution of voluntary company codes

Many codes that are intended to influence standards in the workplace mention a ban on forced labour or make commitments which are intended to have the effect of ensuring that neither forced labour nor trafficking take place. The older ones (such as “1” below) tended to mention forced labour without including any reference to human trafficking. More recent ones tend to mention human trafficking explicitly.

The range of codes prohibiting forced labour

1. Initiatives by international organizations, such as the UN Global Compact, the ILO *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (1977)¹⁸⁸ and the Organisation for Economic Co-operation and Development (OECD) *Guidelines for Multinational Enterprises*¹⁸⁹ (initially adopted in 1986 and revised in 2011);

¹⁸⁷ A list of several hundred individual companies which have adopted a formal policy statement which explicitly refers to human rights is available at <<http://www.business-humanrights.org/Documents/Policies/>>, accessed 27 June 2014.

¹⁸⁸ Adopted in 1977 and amended in 2000 and 2006, containing references to the ILO’s two conventions on forced labour, <http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf>, accessed 27 June 2014.

¹⁸⁹ “Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations”. The 2011 OECD Guidelines for Multinational Enterprises [C/MIN(2011)11/FINAL] were available at <<http://www.oecd.org/corporate/mne/48004323.pdf>>, accessed 27 June 2014.

2. Model codes and guidelines prepared by workers’ organizations (including trade unions), faith-based groups or NGOs;
3. Codes issued by a trade association (a group of businesses which sell similar products or operate in the same industry or sector of the economy);
4. Codes issued by an individual business (many well-known brands which import and retail products in Europe and North America have their own code);
5. Codes issued by quality standard organizations (known as “multi-stakeholder codes”), which require independent verification of the standards specified;
6. Codes issued by “ethical trading” and “fair trade” organizations, which businesses or producers commit themselves voluntarily to implementing;
7. Codes designed for all businesses in a particular country to sign, committing them to respecting common standards, such as the prohibition on the use of forced labour in Brazil’s National Pact to Eradicate Slave Labour (see 6.6 above).

7.2.1 Codes of conduct to influence suppliers, including minimum standards to exclude Trafficking in Human Beings

Most codes are intended to apply to a business’ suppliers and sub-contractors, in addition to the workplace of the company adopting them. Initially, they were largely a statement of the minimum standards that a business insisted on being respected (such as “no forced labour”). Subsequent codes focused on the process for implementing such standards (generally referred to in business as “compliance”) and checking they were adhered to (known as “verification”).

Much of the concern expressed publicly over the past 20 years about abuses of labour rights concerned abuses committed by relatively small businesses which were suppliers for well-known brands that imported products into industrialized countries. For example, sporting goods retailers were criticized in the mid-1990s for selling footballs that were stitched in Pakistan by children, and clothing retailers were criticized when children were found to be working in garment manufacturing plants in countries such as Bangladesh and Morocco. Well-known brands have therefore set relatively high standards in the codes they adopted, which their suppliers are obliged to meet (and, often, to pay the costs of meeting). However, the specific provisions vary.

At the level of standard-setting, it soon became apparent that stopping forced labour and human trafficking meant focusing on recruitment procedures and on ensuring that workers were free to leave their jobs if they wanted to. This in turn means ensuring that recruiters do not demand payment of fees from

workers, particularly large amounts in advance, which would result in the workers concerned taking on a debt that they are unable to repay (they would consequently be “bonded” to their employer and unable to leave their job, i.e., subjected to debt bondage); and also ensuring that no other techniques are used to prevent them leaving their job (such as visas or work permits which entitle migrants to work, but restrict them to working for a single, specified employer; or employers taking possession of their passport or other official identity document). It also means ensuring that workers are not intimidated in such a way that they do not dare disobey their employer, so checking that cruel, inhuman or degrading treatment or punishment (i.e., any sort of physical punishment, including slaps and threats of violence) is not used or threatened is important, as well as checking for other subtler forms of coercion.

7.2.2 Sector-specific codes adopted by trade associations

Businesses which usually compete against each other in the market have found it expeditious to co-operate in agreeing minimum standards on some issues, such as minimum labour standards and procedures for ensuring compliance with standards, particularly in the workplaces of their suppliers. The existence of a trade association, an organization that brings together businesses with a common interest at the national or even international level, has facilitated such common responses. Notable examples include the sporting goods industry (World Federation of the Sporting Goods Industry, WFSGI¹⁹⁰), the tobacco growing industry (International Tobacco Growers’ Association, ITGA) and the garment industry (which has numerous trade associations, some in countries where clothes are manufactured and marketed and some in countries which specifically export clothing, such as the Bangladesh Garment Manufacturers and Exporters Association, BGMEA).

In principle, agreements of this sort ensure mutual accountability (between one business and another) and reduce the likelihood that businesses operating in the same sector use claims about their respect for human rights (or lack of it) to enhance their competitiveness. At the practical level, it also reduces the likelihood that a business is obliged to implement different standards and procedures required by a range of other businesses which it supplies with its products (though this remains a problem).

¹⁹⁰ The members of the WFSGI include brands such as Adidas, Erke, Li-Ning Sporting Good Co. Ltd, Nike Inc., Pentland, Reebok and Shimano. See <<http://www.wfsgi.org>>.

The information technology sector is one of many sectors where recruitment is reported sometimes to have involved human trafficking. A trade association, the Electronic Industry Citizenship Coalition (EICC), developed a voluntary code of conduct in 2004, which included a prohibition on the use of forced labour. The code has been amended several times, and the 2012 version introduced an explicit reference to trafficking in persons. With respect to labour, this states that

“*Participants [i.e., businesses which declare that they support the code] are committed to uphold the human rights of workers, and to treat them with dignity and respect as understood by the international community. This applies to all workers including temporary, migrant, student, contract, direct employees, and any other type of worker*”.

Four sections of the code specify minimum standards with respect to labour, health and safety, the environment, and business ethics, and a final section outlines what system is required to ensure the code is respected.

On the specific issue of labour standards, nine issues are covered by the EICC code: freely chosen employment; child labour avoidance; working hours; wages and benefits; humane treatment; non-discrimination; and freedom of association. It is the first of these (freely chosen employment) that mentions trafficking in persons explicitly. The expected standard is:

“*Forced, bonded (including debt bonded) or indentured labor, involuntary prison labor, slavery or trafficking of persons shall not be used. This includes transporting, harboring, recruiting, transferring or receiving vulnerable persons by means of threat, force, coercion, abduction or fraud for the purposes of exploitation. All work must be voluntary, and workers shall be free to leave work at any time or terminate their employment. Workers must not be required to surrender any government-issued identification, passports, or work permits as a condition of employment. Excessive fees are unacceptable and all fees charged to workers must be disclosed*”.¹⁹¹

One company in this sector that replicated this standard almost word for word in its own Supplier Code of Conduct is Hewlett-Packard, a multinational company marketing information technology products.¹⁹²

¹⁹¹ Item A.1 in the EICC Code of Conduct (2012).

¹⁹² In line 5, rather than specifying that “workers shall be free to leave work at any time or terminate their employment”, the Hewlett Packard suppliers code specifies that “workers shall be free to leave work at any time or terminate their employment upon reasonable notice”

7.2.3 Compliance

Setting a minimum standard that is expected to be observed either in a business' own workplace or in those of its suppliers is only a first step. The key next steps are to make the standards known to everyone who might be involved and to develop systems for checking on compliance.

In order to check that the various standards set in its Supplier Code of Conduct are respected, Hewlett-Packard instructs suppliers to keep documents and records which are evidence of compliance and specifies a number of questions to be checked (initially in a self-assessment, but potentially by external auditors as well):

- *“The facility assures that its workers are free to quit their job and leave upon reasonable notice*
- *The facility does not require workers to pay a deposit upon being hired*
- *The facility does not withhold workers' government-issued identification (passports or work permits) upon hire*
- *The facility assures that its workers are free to enter and exit the facility and housing during their non-work hours and within curfew hours*
- *The facility does not use involuntary prison labor.”¹⁹³*

Sector-specific codes have been developed for use in numerous other sectors of the economy. Some of these have given specific attention to particular issues, such as the recruitment of migrant workers.

Concern about abuses of workers involved in manufacturing clothing ('garments') has been a characteristic of the garment industry worldwide, particularly when the demands of fashion create pressure to make workers toil for long hours to meet short deadlines. The horrendous results of businesses in the garment industry supply chain paying next-to-no attention to workers' safety became worldwide news in April 2013, when the Rana Plaza building on the outskirts of Bangladesh's capital, Dhaka, containing five garment factories, collapsed, killing an estimated 1,138 people

(emphasis added) See HP Electronic Industry Code of Conduct, Version 4.01, 12 June 2012, <<http://www.hp.com/hpinfo/globalcitizenship/environment/pdf/supcode.pdf>>, accessed 27 June 2014.

193 “HP Supplier Self-Assessment, Part I, Part D: Labor / Ethics Management System”, <<http://www.hp.com/hpinfo/globalcitizenship/environment/pdf/laborethicsquestionnaire.pdf>>, accessed 27 June 2014. Similar searching questions are asked to detect other forms of abuse, such as child labour, discrimination, harsh or inhumane treatment, failure to pay minimum wages, excessive working hours and denial of freedom of association (the right to form trade unions).

and injuring more than 2,000 others.¹⁹⁴ 28 garment retailers operating in industrialized countries were reported to buy clothes made by these five factories.¹⁹⁵ However, only a month earlier, campaigners in Europe had reported that some 400 workers had been killed as a result of two fires in garment factories in Bangladesh and Pakistan in September and November 2012.¹⁹⁶

A slate of emergency measures followed the Rana Plaza tragedy,¹⁹⁷ but concern about the contractual arrangements of garment workers, as well as their working conditions, is nothing new and has not been restricted to factories based in developing countries. In both Europe and North America, trade unions and campaigners had long demanded action to end abuse of garment workers occurring in their own countries, as well as in the workplaces of suppliers in other countries. In Europe, the “Clean Clothes Campaign”, based in the Netherlands, developed a Code of Labour Practices for the Apparel Industry Including Sportswear in 1998. A special organization, the Fair Wear Charter Foundation, was established the following year to monitor efforts to ensure that garments imported into the Netherlands were not manufactured in conditions that contravened international standards.

7.2.4 Verification: the challenge of turning commitments into reality

However well-intentioned the managers of a business are, unless a system is in place for checking what happens in reality, their good intentions are likely to come to nothing. This principle applies to initiatives to stop human trafficking as much as to codes to stop forced labour or other forms of abusive or exploitative practices. While some standards, such as the Global Compact, were put into place without any procedure

194 See Clean Clothes Campaign, ‘A dark day for fashion’, <<http://www.cleanclothes.org/ranaplaza?searchterm=Rana>>, accessed 27 June 2014.

195 Lucy Siegle, ‘Rana Plaza a year on: did fast-fashion brands learn any lessons at all?’, *The Observer*, 20 April 2014, <<http://www.theguardian.com/world/2014/apr/20/rana-plaza-bangladesh-disaster-anniversary>>, accessed 27 June 2014.

196 At Ali Enterprises in Karachi, Pakistan, in September 2012 and at Tazreen Fashions Limited in Dhaka, Bangladesh, in November 2012. See Martje Theuws, Mariette van Huijstee, Pauline Overeem, Jos van Seters and Tessel Pauli, *Fatal Fashion. Analysis of recent factory fires in Pakistan and Bangladesh: A call to protect and respect garment workers' lives* (Stichting Onderzoek Multinationale Ondernemingen (SOMO), Centre for Research on Multinational Corporations and Clean Clothes Campaign: Amsterdam, March 2013).

197 For example, the European Commission agreed a “Sustainability Compact” with the Bangladesh Government in July 2013 and shortly afterwards Bangladesh passed a law giving workers the right to form trade unions without the prior approval of factory owners. See: International Centre for Trade and Sustainable Development (ICTSD), ‘EU, Bangladesh Agree on “Sustainability Compact” in Wake of Factory Collapse’, 11 July 2013, <<http://www.ictsd.org/bridges-news/bridges/news/eu-bangladesh-agree-on-sustainability-compact-in-wake-of-factory-collapse>>, accessed 27 June 2014.

to verify compliance, in many cases individual companies have decided to check (or “audit”) their suppliers. These audits are generally known as “social audits” and are carried out by a range of different organizations, some with a background in financial auditing, some specializing in quality control (i.e., their usual work involves checking the quality of the products provided by sub-contractors, rather than investigating working conditions) and some specifically set up to carry out social audits.

There are numerous separate “multi-stakeholder initiatives” which involve common standards (on labour rights and other issues) agreed by representatives of a range of organizations, such as businesses, trade unions and NGOs, and which specify the way in which compliance with these standards is to be monitored. The Ethical Trading Initiative (ETI), based in the UK, is one example. It developed a nine-point “base labour code”.¹⁹⁸ Rather than reiterating a ban on forced labour, this starts with the commitment that “Employment is freely chosen”. In addition to the principle that “*There is no forced, bonded or involuntary prison labour*”, it also asserts that “*Workers are not required to lodge ‘deposits’ [of money] or their identity papers with their employer and are free to leave their employer after reasonable notice*”.

For the ETI, like other multi-stakeholder initiatives, the standards set in a code are just a starting point. These are backed up by a set of “Principles of Implementation”¹⁹⁹ and also by Guidelines on investigating alleged violations of the base code. The Guidelines note that, precisely because ETI members include trade unions and NGOs (rather than only businesses), reports of violations often come from trade union affiliates or NGO partners in the country where a violation has taken place. In principle ETI members have agreed “*that any alleged violations [...] would be reported in the first instance to the ETI member company concerned, to allow the member to investigate and take remedial action before the alleged violation became a media issue*”.²⁰⁰ The Guidelines emphasize the importance of avoiding any sort of

victimization or retaliation against workers or others who report code violations.²⁰¹

7.2.5 The further challenge of ensuring that “verification” procedures are effective

It is important for a particular business to focus on possible abuse for which it would bear responsibility and which would be within its power or influence to stop. As businesses are required by the *Guiding Principles* to monitor whether their code or policy is being respected, they should find a monitoring method which ensures they are provided with objective, accurate information (it is not in their interests to choose a monitor who praises the business’ managers, but fails to alert them to the problems that are occurring, as occurred in the US example cited in the previous section). It is not invariably necessary for them to introduce a system of external, independent verification, although in most cases this seems likely to be a more reliable method than internal checks.

This paper started (in section 3.1) with an example of social auditors certifying that no trafficked workers were working in Florida’s tomato fields and being shown to have got it wrong. Business consequently faces an additional challenge of choosing the right way to check whether the commitments they make are being upheld and finding the right specialists to do so.

To establish a global standard for such social auditing, Social Accountability International (SAI), which describes itself as “*a global, multi-stakeholder, standards setting organization*”,²⁰² developed an international standard for ethical sourcing, the Social Accountability 8000 (SA8000) factory certification system. The most recent (2008) version of the SA8000 standard²⁰³ has been translated from English into 13 languages, including one other language used in OSCE participating States, Romanian. Modelled on International Standards Organization (ISO) systems for certifying assurance, SA8000 seeks to create an “auditable” code of conduct that can be applied across industries producing consumer goods. The 2008 version of SA8000 contains definitions of terms such as “human trafficking” and specifies four criteria for confirming

198 <<http://www.ethicaltrade.org/eti-base-code>>, accessed 27 June 2014.

199 *ETI Principles of Implementation* (2009), <<http://www.ethicaltrade.org/resources/key-eti-resources/principles-implementation>>, accessed 27 June 2014. The six topics covered by the principles are: (1) Commitment to ethical trading; (2) Integrating ethical trade into company culture and business practices; (3) Capacity-building for suppliers and others; (4) Identifying problems in the supply chain; (5) Improvement actions; (6) Transparency.

200 *ETI Alleged Code Violation Investigation Guidelines* (November 2001), <http://www.ethicaltrade.org/sites/default/files/resources/Alleged%20Code%20Violations%20Guidelines%202009_0.pdf>, accessed 27 June 2014.

201 The *ETI Alleged Code Violation Investigation Guidelines* specify (point 11) that, “*When informing the supplier that an allegation has been made, the ETI member company should make it clear to the supplier that there is a ‘no victimisation’ policy in relation to employees who may have made allegations of code violation and that any victimisation will be regarded as a serious breach of the Code and will call into question the supplier relationship*”.

202 On its website <<http://www.sa-intl.org>>, accessed 24 June 2014. The SA8000 standard can be downloaded from this site.

203 In late 2013 SA8000 was reportedly being revised.

that a business is not using “forced or compulsory labour”. An affiliate, Social Accountability Accreditation Service (SAAS), accredits qualified audit organizations to certify compliance. However, the SA8000 certification system received a setback in 2012, when, following a fire in September 2012 at a garment factory in Karachi (Pakistan) that resulted in several hundred workers being killed (in part because exit doors were locked; see footnote 196) it emerged that inspectors working for an SAI affiliate had awarded the SA8000 certificate to the factory only the previous month. As one newspaper article noted, “*The Karachi tragedy is a huge embarrassment to the factory monitoring system, in which many Western garment and electronics companies rely on auditing groups to provide a coveted seal of approval to their low-cost suppliers in the developing world*”.²⁰⁴

In 2010 the International Standards Organization (ISO) issued its own standard, ISO 26000 on Social Responsibility, which provides guidance to both business and public sector organizations on social responsibility.²⁰⁵ However, unlike SA8000, ISO 26000 is not intended to be audited independently. The advantage of a standard with a high level of international recognition is that training on its implementation is provided by specialists in different parts of the world, including, for example China and the Russian Federation.²⁰⁶ The Chinese authorities are reported to urge China-based businesses to use this as a point of reference. However, a standard which is not intended to be audited is evidently not particularly useful to a business which wants evidence that the partner businesses in its supply chain are abiding by the minimum standards they have agreed to respect.

Social auditors have been criticized from various quarters, notably when they are paid by the business they are auditing (and therefore may not be sufficiently independent) and when they focus narrowly on a

checklist of the obligations of the business they are auditing, rather than engaging more widely with the workforce and obtaining full information on working practices. A particular criticism of the way social auditors work is that they pay too little attention to the opinions and personal experiences of the workers concerned.²⁰⁷ Most social auditors have relatively few contacts with the workforce in the workplace they audit or with the surrounding community. Some have none. This can be a major flaw in their work. However, some specialist social auditors seek to establish links with community-based organizations in order to get a broader picture of the impact of the activities of a company operating in the area.

Criticisms of the social auditing process published by the Clean Clothes Campaign in 2005²⁰⁸ were made specifically about audits of factories manufacturing garments. Nevertheless, many criticisms were equally applicable to other sectors; for example, that audits were usually “*too short, too superficial and too sloppy to identify certain types of code violations*” and that factory managers were “*deceiving social auditors in many ways, most notably by coaching workers before they are interviewed by auditors to convey false or incomplete information and by falsifying records*”. In general, social auditors were criticized for “*making it too easy for workplaces to receive positive evaluations, particularly by announcing audit visits in advance, thereby giving factory managers time to prepare for audits and convey a false impression of working conditions*”.²⁰⁹ These fears seemed to be borne out by both the garment factory fire in Pakistan in September 2012 and the disastrously inaccurate claims by the Florida Tomato Growers Exchange in 2007.

Even without bad faith being practised by the managers of workplaces being inspected, social auditing runs into other difficulties when a particular workplace is the subject of a variety of different codes and standards and managers complain of “compliance monitoring fatigue” as a result of being monitored several times a year on behalf of each of the global businesses to which they supply products.²¹⁰ Everyone seems to have an interest in common standards being adopted (both standards to be observed in the workplace and

204 Declan Walsh and Steven Greenhouse, ‘Inspectors Certified Pakistani Factory as Safe Before Disaster’, *New York Times*, 19 September 2012.

205 See ISO’s own introduction, *ISO 26000 Social Responsibility*, available at <http://www.iso.org/iso/discovering_iso_26000.pdf>, accessed 1 July 2014. It is on sale from national standards organizations in many countries. It has been translated into numerous languages used in OSCE participating States: Bulgarian, Czech, Dutch, English, Finnish, French, German, Italian, Kazakh, Montenegrin, Norwegian, Polish, Portuguese, Romanian, Russian, Serbian, Slovak, Spanish and Swedish. Also see UN Global Compact and International Standard ISO 26000 Guidance on Social Responsibility, *An Introduction to Linkages between UN Global Compact Principles and ISO 26000 Core Subjects*, <http://www.unglobalcompact.org/docs/news_events/8.1/UNGC_ISO_Final.pdf>, accessed 1 July 2014.

206 ISO itself does not publicize contact details for all those who provide training, but numerous trainers advertise on Internet that they are organizing training sessions in particular countries.

207 Clean Clothes Campaign, *Looking for a quick fix. How weak social auditing is keeping workers in sweatshops* (Amsterdam, 2005), <<https://www.cleanclothes.org/resources/publications/05-quick-fix.pdf/view>>, accessed 27 June 2014.

208 *Ibid.*

209 *Ibid.*, pages 14 and 15.

210 See, R. Locke, B. Rissing and T. Pal, ‘Complements or Substitutes? Private Codes, State Regulation and the Enforcement of Labour Standards in Global Supply Chains’, *The British Journal of Industrial Relations*, Vol. 51, No.3 (September 2013), pp. 519–552.

standards for the verification process), but the current practice of leaving it up to individual businesses to set their own standards favours heterogeneity and has made it difficult to develop truly global standards. Business in one sector, categorizing themselves as “fast moving consumer goods manufacturers”, has adopted the principle of “an audit for one is an audit for all”, recognizing that, while different businesses are competing with each other, there are some data and procedures that can be shared without endangering competition.²¹¹

7.2.6 The importance of involving “individuals and communities who may be adversely impacted” in checking compliance

As noted already, a key strategic choice that any business adopting and implementing a code must make concerns the way in which it involves its own workers and those of any business partners or suppliers who are to be affected by its commitments to respect human rights or to avoid particular types of abuse. The strategic questions are whether workers should be associated with the development of a code and what role they should play in monitoring it.

Early on, in the second half of the 1990s, common practice generally involved businesses based in Europe and North America trying to minimize the role given to workers and to avoid negotiating the standards stipulated in a code or the process for monitoring it with a trade union or other workers’ organization. This tactic was generally perceived to be part of a wider strategy to marginalize the influence of trade unions. However, on numerous occasions this tactic undermined the effectiveness of business commitments and, more specifically, the process of monitoring whether it was being implemented, notably in the cases mentioned above in Florida (US) in 2007 and Pakistan in 2012.

Initiatives which involve workers can potentially ensure that efforts to exclude forced labour and human trafficking are sustainable. After all, it is workers who are subjected to forced labour, so, in principle, organizations representing them or in which they participate should be well-placed to report on what happens in practice. The exception is when trade unions only represent locally-born workers and fail to represent migrant workers in the same workforce.

211 See AIM-PROGRESS, at <<http://www.aim-progress.com/page.php?pmenu=1&id=18>>, accessed 1 July 2014. In 2013 the 36 member organizations included companies such as Danone, Heineken, Nestlé and Unilever.

Central to this approach is the ability of workers to report abuse without fear of retaliation through a trusted, easily accessed complaint process. While external monitors come and go, workers themselves are always present and their ability to know their rights and safely report abuse or suspected abuse is critical to identifying and addressing complex and severe exploitation of human trafficking. The ability to bring a grievance needs to be matched by confidence that any report will be fairly investigated, that a corrective action plan will remedy the problem and that non-compliance will provoke significant consequences. Because workers may not be aware of every possible systemic problem, in-depth audits by an external monitor are a necessary compliment to the complaint process.

The *Guiding Principles* emphasize the importance of involving workers and their communities without being explicit in saying who should be involved or how. Principle 29 states that,

“*To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted*” (by a business’ activities).

Evidently there are other provisions in international law, which either require that particular categories of people should be consulted about activities that are likely to affect them, or which point to the advantages of doing so.²¹² While community-based organizations and workers’ organizations (and many others) emphasize the advantages of doing so, the way in which a business chooses to do it is bound to vary.²¹³

212 For example, the UN General Assembly’s *Declaration on the Rights of Indigenous Peoples* (2007) specifies that, “*Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions*” (article 18).

213 The commentary on Principle 29 emphasizes that, “*Operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms*” (emphasis added).

An example of information provided to workers using posters and leaflets

A “Stronger Together” campaign was launched in 2013 to reduce labour exploitation at all levels of the food industry in the United Kingdom by informing migrant workers about unacceptable recruitment and working practices. Posters and leaflets were produced in a variety of languages used by migrant workers in the industry (e.g., English, Lithuanian, Polish, Russian and Slovak).

The five questions listed by the campaign for workers to ask themselves (to allow them to conclude for themselves if they were being exploited illegally) are:

1. Are you being forced to work when you don't want to?
2. Do you have to pay someone money to give you work?
3. Are you being forced to live in accommodation against your will?
4. Is someone controlling your identity documents or bank account?
5. Is someone threatening or intimidating you or your family?²¹⁴

7.3 Paying the costs of verification and remedial action

Businesses which want to have a meaningful guarantee that specific labour standards are to be respected in their own workplaces and those of their suppliers have had to pay two or three extra costs:

1. The costs of introducing new management systems and any remedial action that is needed to meet new standards;
2. The costs of audits and other forms of verification; and
3. The costs of any action required by a supplier to meet new standards (which a supplier may be expected to pay, though often this would not be realistic).

These costs can be substantial, particularly when businesses importing and retailing in an industrialized country want independent checks carried out in the workplaces of numerous suppliers situated on the other side of the world. In such cases, there has been a presumption by many businesses and other organizations in Europe or North America that their suppliers should absorb the costs of any remedial action required to end abuse or to meet new and higher standards,

while the business retailing goods in Europe or North America only pays the costs of checking if the standards are respected. For example, if a supplier had been failing to pay the minimum wage and started to do so, that supplier should pay the additional cost involved. The problem with this presumption, of course, is that the same supplier is under substantial pressure not to increase the cost of its products, in order to remain competitive and to maintain its contracts with the companies in Europe or North America which are, at the same time, insisting that internationally recognized standards be respected.

Reviewing the impact of business codes around the world in 2004, a report for the US Department of State observed that it was the specific actions that businesses took to promote labour standards in their supply chain that had the greatest effect. Alongside relatively conventional measures (such as training and monitoring programmes) the report noted the importance of “*incentive programs (to reward partners that comply with a code and punish those that do not) and remediation programs (to assist supply chain partners that have the desire but not the capacity to achieve compliance)*”.²¹⁵ In such instances, the costs of meeting new standards have not been paid for exclusively by suppliers. This approach, involving mentoring and recognition that a process of learning and adaptation is occurring, which takes time and money to complete, probably represents good practice and may well produce more sustainable results than a harder edged approach which involves simply policing minimum standards.

7.4 Meeting the standard of “due diligence” in practice

The requirement that businesses should become aware of, prevent and mitigate “adverse human rights impacts” of their activities through a process of human rights due diligence means that individual businesses should assess for themselves what “exercising due diligence” means for them, rather than expecting to find an “off-the-shelf” code or simply copying another company’s methods for checking compliance. Using verification techniques or a social audit company which are already reputed to be ineffective could be regarded as a failure to exercise due diligence.

214 ‘Help reduce labour exploitation’ poster for display in work places, issued by Stronger 2gether (in English, Lithuanian, Polish, Russian and Slovak), <<http://stronger2gether.org/workers>>, accessed 1 July 2014. The posters and leaflets were developed by the Association of Labour Providers (ALP), the Gangmasters Licensing Authority (GLA) and Migrant Help (an NGO assisting trafficked workers) with sponsorship by five UK retailers: the Co-operative Food, Marks & Spencer, Sainsbury’s, Tesco and Waitrose.

215 E. J. Schrage, *Promoting International Worker Rights through Private Voluntary Initiatives: Public Relations or Private Policy?* A report to the US Department of State on behalf of the University of Iowa Center for Human Rights (Iowa, January 2004), <<http://www.cfr.org/content/publications/attachments/Schrag-DOS.pdf>>, accessed 2 July 2014.

The examples cited in this paper demonstrate that there is a lack of unanimity among businesses on certain key points: whether codes and other standards should invariably involve an independent verification process; and whether the workers whose rights are intended to be protected should be involved directly in monitoring codes or other standards that are set with respect to their rights in the workplace.

In numerous other fields of human activity, the principle is accepted that publicly made commitments (or even privately made commitments about quality standards) should be backed up by some form of independent scrutiny. Similarly, if a particular form of scrutiny or inspection is shown to be ineffective, it seems obvious that it should be replaced. It is difficult to see why businesses operating in OSCE participating States should be an exception to this rule. There is already a strong trend towards insisting that larger companies should be transparent about the steps they take to ensure that no human trafficking occurs in their supply chains, so a logical next step would be to agree standard ways of checking this objectively. The scale of an individual business' activities is clearly relevant to determining both its level of responsibility and the level of cost it can bear.

The UN *Guiding Principles* already require businesses to consult individuals and communities who may be adversely impacted by their activities, so this internationally-recognized standard already makes it unacceptable for a verification process to be restricted to

auditors talking to a supply business' managers and filling in forms, without also talking directly to the workers whose rights are being monitored and ensuring that workers can express their views freely to monitors.

Experience suggests that it is easier to persuade relatively large businesses to set standards for respecting human rights and labour rights in the workplace and those of their suppliers. It has proved more difficult to persuade smaller businesses to do so, particularly those in the informal and unregulated sectors, including employers of domestic workers. It has also been difficult to persuade any businesses to take appropriate action in countries where the government is not supportive or denies that cases of trafficking and labour exploitation occur.

In theory, if a business takes the right action to ensure that none of its employees is subjected to abuse or any form of exploitation associated with trafficking, it does not matter whether it makes an explicit reference to "trafficking" or not. In practice, the increased attention given to trafficking in human beings in public policy and by the media both signify that it would be prudent for a business which has focused in the past on eradicating forced labour to ensure that no cases of human trafficking occur in its value chain and that its personnel do not contribute to human trafficking in any way, for example by purchasing, in work time or in any official capacity, the services of people who have been trafficked or goods produced by them.

CHAPTER 8: EXAMPLES FROM THREE BUSINESS SECTORS

8.1 The recruitment sector: influencing private employment agencies and other recruitment businesses to stop human trafficking

It has been clear for a long time that some recruitment practices involve human trafficking. Consequently, from the middle of the last decade onwards some recruitment businesses (known under international law as “private employment agencies”) took a prominent part in efforts to promote good practice and to stop human trafficking from occurring, particularly in their sector. In 2013 and 2014 international organizations intensified their efforts to promote what is now being labelled “fair” or “ethical” recruiting.

8.1.1 The ILO’s focus on recruitment agencies

The ILO regards ratification and implementation of the Private Employment Agencies Convention, 1997, Convention No. 181, as a key way of preventing abuse from occurring in the course of recruitment (notably of migrant workers). However, the Convention has not yet been widely ratified.²¹⁶ It specifies that, “*Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers*” (Article 7.1). If respected, this provision should stop workers being put into debt bondage by recruitment agents. The ILO has also published technical advice on how States can monitor the recruitment of migrant workers to check that trafficking in human beings is not occurring.²¹⁷

In several regions the ILO worked with governments and its social partners (employers’ and workers’ organizations) to develop coalitions or alliances that would improve recruitment practices. For example, in the Russian Federation a non-commercial partnership of private recruitment agencies, the International Association on Labour Migration (IALM), was set up in 2003, consisting initially of 20 Russian private agencies that were licensed to recruit Russian nationals to work abroad, along with employment agencies based in other CIS Member States (in 2014 the IALM was reported to have 17 corporate members in the Russian Federation, along with individual members). In 2005, as part of an ILO project on “Combating trafficking

in human beings and its consequences in the form of forced labour in Central Asia and the Russian Federation”, a code was drafted at a workshop in Moscow to promote good practice in the recruitment of migrant workers. This was approved by the IALM Council, discussed by the IALM’s member organizations and subsequently adopted by the IALM’s Annual General Meeting.²¹⁸

IALM members made a commitment to observe national migration and labour legislation standards, as well as relevant international conventions, and not to allow trafficking in human beings for labour exploitation to occur. Agencies that signed the code stated that they “*do not offer any illegal forms of recruitment*”, they “*do not allow any discrimination while searching for and choosing candidates on the basis of sex, race, ethnicity, belief, age or political views*”, and that they “*inform the candidate about the distribution of responsibilities for the implementation of the terms of recruitment between the agencies themselves and the employer in the country of destination*”. “*Agencies do not allow agreements with employers that consider illegal channels of transportation and illegal forms of using the candidate’s labour*”.²¹⁹ However, the code was not accompanied by any compliance or verification mechanism.

8.1.2 Businesses against human trafficking: the Athens Ethical Principles

The *Athens Ethical Principles against Human Trafficking* were developed in 2006.²²⁰ This was a set of seven principles, committing the signatories to take

218 Кодекс деловой этики членов НП «Международный Альянс “Трудовая Миграция” (Code of Ethics of the IALM), available at <<http://ialm.ru/pages/id64.html>>, accessed 29 July 2014.

219 Ibid.

220 The *Athens Ethical Principles* (or “seven ethical principles of the Athens Action Plan”) were accessed 3 July 2014 at <<http://www.unglobalcompact.org/resources/70>>. The seven principles are:

1. Explicitly demonstrate the position of zero tolerance towards trafficking in human beings, especially women and children for sexual exploitation;
2. Contribute to prevention of trafficking in human beings including awareness-raising campaigns and education;
3. Develop a corporate strategy for anti-trafficking policy which will permeate all our activities;
4. Ensure that our personnel fully comply with our anti-trafficking policy;
5. Encourage business partners, including suppliers, to apply ethical principles against human trafficking;
6. In an effort to increase enforcement it is necessary to call on governments to initiate a process of revision of laws and regulations that are directly or indirectly related to enhancing anti-trafficking policies;
7. Report and share information on best practices.

216 By August 2014, Convention No. 181 was in force in 27 States, including 18 OSCE participating States.

217 See, ILO Special Action Programme to Combat Forced Labour, *Trafficking for Forced Labour. How to Monitor the Recruitment of Migrant Workers. Training Manual* (Geneva, 2005).

action within their businesses and attaching special priority to measures to stop women being trafficked for the purpose of sexual exploitation. The Principles were accompanied by a longer commentary,²²¹ but remained a voluntary declaration of intent, rather than a commitment accompanied by any compliance or verification procedure. To sign up to the *Athens Ethical Principles*, a company simply filled in a form online. They were signed initially by 45 businesses and efforts were made to persuade others to sign.

In 2010 a protocol to the *Athens Ethical Principles* was issued at the time of an international conference on human trafficking held in Luxor, Egypt (*The Luxor Protocol*, subtitled *Implementation Guidelines to the Athens Ethical Principles: Comprehensive Compliance Programme for Businesses*).²²² This suggested what actions needed to be taken by a business to ensure the Principles were respected. It recommended that businesses should “*Seek independent external monitoring and verification of compliance with the company’s code of conduct/standards at least annually, including unannounced audits, from a reputable/recognized organization*”.²²³ The Protocol went further than many other similar sets of commitments, calling on businesses to develop a zero tolerance policy towards trafficking in human beings which “*Prohibits patronizing persons in prostitution while on official business travel*”.²²⁴

During the Luxor conference, *The Luxor Protocol* was endorsed by 23 businesses²²⁵ and in 2013 the UN Human Rights Council encouraged business to support the *Athens Ethical Principles*, along with the UN Global Compact.²²⁶

One of the first companies to sign the *Athens Ethical Principles* and *The Luxor Protocol*, a US-based company,

Manpower Inc.,²²⁷ interpreted the *Principles* to mean that the company would not do any business “with any entity, which benefits in any way from human trafficking”. Manpower is a recruitment agency which, in the year that it publicly supported the *Principles*, was reported to have placed 4.4 million people in permanent, temporary or contract positions,²²⁸ so a major player in terms of recruitment.

Manpower reported that it felt it was contributing to reducing human trafficking by carrying out its routine work, i.e., “*by providing legitimate work opportunities, applying relevant standards and regulations, and by launching employment programs in partnership with a number of governments*”.²²⁹ Evidently, the mere fact that a migrant worker is recruited in accordance with legal procedures and enters a new country with a legal work visa is not a guarantee that he or she will not be subjected to coercion and forced labour.²³⁰ However, it can be an important safeguard. In individual countries, Manpower Inc. became involved in particular anti-trafficking initiatives. For example, in Argentina it signed an agreement in 2007 with the International Organization for Migration (IOM) to provide counselling and job training to victims of trafficking with the aim of supporting their successful reintegration process and reducing the likelihood of their being re-trafficked.²³¹

At the end of 2006, as a personal initiative, a senior manager in Manpower Inc., David Arkless, sent a letter to the heads of the 1,000 largest world corporations inviting them to endorse the *Athens Ethical Principles*.²³² He subsequently reported that many of the businesses he contacted failed to respond or were reluctant to take a stand explicitly against human trafficking, considering that their business was not in any way connected with the issue or that, by mentioning it, they might be associated with the crime. Several years after the *Athens Ethical Principles* were adopted,

221 *Commentary to the Athens Ethical Principles*, <<http://www.codiatic.org/CommentedAthensprinciples.pdf>>, accessed 18 December 2009 but no longer available in 2014 (a draft of the Commentary, substantially the same as the final version, was accessed on 2 July 2014 at <<http://www.bibalex.org/english/media/files/athens.pdf>>).

222 *The Luxor Protocol* was accessed on 3 July 2014 at <<http://www.unglobalcompact.org/resources/70>>. The NGO that initially issued the Protocol, End Human Trafficking Now, was backed by Suzanne Mubarak, the wife of President Mubarak, who was deposed in 2011. The NGO appears no longer to exist.

223 *Ibid.*, paragraph 2 and point 4 (Employee training).

224 *Ibid.*, point 2.

225 *The List of Endorsements* was accessed on 24 May 2011 at <<http://www.endhumantraffickingnow.com/documents/Luxor/Background%20docs/Signatories%20of%20the%20Luxor%20Protocol.pdf>>, but was no longer available in 2014.

226 UN Human Rights Council, Resolution 23/5, ‘*Trafficking in persons, especially women and children: efforts to combat human trafficking in supply chains of businesses*’, in *Report of the Human Rights Council on its twenty-third session, A/HRC/23/2* (27 August 2013).

227 Manpower Inc., with its headquarters in the United States (US), reportedly operates in 80 countries and territories. See <<http://www.manpower.com/social/trafficking.cfm>>.

228 Manpower Inc., *2007 Annual Report*.

229 Case Studies. *Dilemma: Mobilising business against human trafficking*, <http://human-rights.unglobal-compact.org/doc/UNGC_Trafficking_CaseStudy_Manpower.pdf>, accessed 18 December 2009.

230 For example, on a number of occasions, officials of legally recognized employment agencies recruiting Thai workers to work in the US have been charged with trafficking or abusing the migrants.

231 ‘Private sector’, <<http://www.iom.int/jahia/Jahia/partnerships/private-sector/lang/en>>, accessed 28 June 2010.

232 D. Arkless, Manpower Inc. President (Corporate and Government Affairs), presentation to the Private-Public Partnership to Fight Human Trafficking in Bahrain, 2–3 March 2009, <http://files.shareholder.com/downloads/MAN/798370380x0x277993/a7394a57-3a82-4b62-afcf-2a5965d48b0e/david_speech.pdf>, accessed 3 July 2014.

those responsible reportedly considered introducing a system of inspection and independent verification. Apart from all the practical challenges that have been described in previous chapters with respect to compliance in general, they detected significant reluctance among some of the businesses that had signed the *Athens Ethical Principles* to go further. They concluded that it would be better to press individual businesses to introduce a meaningful system of self-certification than to lose the support of businesses which were unwilling to embark on a system of independent verification.²³³

In 2012 nine multinational businesses launched the Global Business Coalition against Human Trafficking (gBCAT), a business-only coalition with several specialist advisors.²³⁴ With the mission “*To mobilize the power, resources and thought leadership of the business community to end human trafficking, including all forms of forced labor and sex trafficking*”, the Coalition reckons to identify and prevent forced labour in supply chains and operations and also to raise awareness of company policies to combat sex trafficking, notably in travel and tourism.

However, while multinational businesses well known in the field of recruitment and employment take steps to respect international standards, other, much smaller businesses operate in unregulated markets and are less scrupulous. An ILO author has observed:

“*Although major private employment firms such as Adecco or Manpower act as brokers at both ends of the labor market—low and highly skilled—they have largely abstained from recruiting migrant workers. This has created a niche for small firms that were often set up by immigrants themselves and who quickly turned into important suppliers of migrant labour in many industries [...]*”²³⁵

Three years after the *Athens Ethical Principles* were developed, several UN agencies carried out together a “Private Sector Survey on Human Trafficking”, which confirmed that relatively few businesses around the world felt that human trafficking posed a serious threat to the security of their global supply chain (only 20 per cent of the respondents). Nevertheless, a surprisingly large proportion, just under 60 per cent,

reported having a company policy that addressed human trafficking in some way.²³⁶

8.1.3 CIETT Code of Conduct

The International Confederation of Private Employment Agencies (CIETT) adopted both a Charter of Private Employment Agencies and a *CIETT Code of Conduct*²³⁷ in 2006, intended to be observed by all private employment agencies belonging to the Confederation. This focuses on the positive benefits that private employment agencies can deliver. At the operational level, the main provision in the Charter which could be expected to prevent human trafficking and debt bondage is the CIETT’s reiteration of the principle that, “*Private employment agencies should not charge directly or indirectly any fees or costs to workers for job-finding services*”, as stipulated in the ILO’s *Private Employment Agencies Convention (1997)*.

The European Confederation of Private Employment Agencies (EUROCIETT) adopted a Code of Conduct of its own in 2006, also containing a commitment not to charge job seekers fees or payments. The accompanying text does not mention human trafficking, but requires that, “*Members shall also ensure that migrant workers are well informed in advance of their rights within the country of destination*”.²³⁸

Neither CIETT nor EUROCIETT has a process for monitoring whether the standards stipulated are respected by their members or not. However, their members operate in the regulated recruitment market. Once again, the measures implemented voluntarily in the regulated market tend to be ignored by smaller businesses operating at the unregulated or informal end of the market, whom it may only be possible to influence by greater regulation or by improving the bargaining power of the migrant workers who seek their services.

8.1.4 NGO initiatives to influence the recruitment industry

Several NGOs have played significant roles in trying to change recruitment practices. Two have been

233 Personal communication with David Arkless, 31 January 2011.

234 Founding members on the board in June 2014 were Carlson, Cision, Coca-Cola, Delta, Ford, LexisNexis, Microsoft, NXP and Travelport. See <<http://www.gbcat.org/>>, accessed 3 July 2014.

235 B. Andrees, “Trafficking for Forced Labour in Europe” in B. Andrees and P. Belser (eds.), *Forced Labor. Coercion and Exploitation in the Private Economy* (Colorado, Lynne Rienner, 2009), p. 93.

236 UN Global Compact, ILO and UN.GIFT, *Human Trafficking: Everybody’s Business* (March 2009), <http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2009_03_27/Story_Survey_Final.pdf>, accessed 3 July 2014.

237 See <http://www.ciett.org/fileadmin/templates/ciett/docs/CIETT_Code_Conduct.pdf>, accessed 3 July 2014.

238 *EUROCIETT members’ commitment towards a well functioning European labour market*, <http://www.eurociett.eu/fileadmin/templates/eurociett/docs/Eurociett_Code_of_Conduct.pdf>, accessed 3 July 2014.

particularly prominent in recent years. The first, Verité Inc., based in the US, carries out social audits and provides training to businesses on methods to prevent exploitation in the workplace. In 2010 Verité launched a public campaign, entitled “Well Made”, about migrant workers who have been trafficked and the action recommended to stop such cases from occurring.²³⁹ Since then, Verité has published numerous reports and manuals²⁴⁰ on measures businesses can take to prevent human trafficking occurring in the recruitment process and dedicated a website²⁴¹ to the issue of fair recruitment. Reporting in 2013 on how trafficking-related activities in global supply chains include corruption, exposing businesses to prosecution under anti-corruption legislation in the State where they are based, Verité stresses that “Oversight of third party labor providers is key” and recommended that risk assessments should examine any foreign supplier’s contract labour arrangements.²⁴² Nevertheless, such oversight remains weak in many countries.

In 2012 an NGO operating in the business and human rights sector, the Institute for Human Rights and Business, summarized a set of ten principles relating to migration for employment in ten *Dhaka Principles for migration and human rights*.²⁴³ They are described as “a roadmap that traces the worker, through employment, to the end of contact and provides key principles that employers and migrant recruiters should respect at each stage of the process to ensure migration with dignity”. Principle 1 starts with “No worker fees for recruitment”, while the others include “Non-retention of passports and ID [government-issued identity] documents” and “Safe and timely return guaranteed”.

8.1.5 Initiatives by intergovernmental organizations

Alongside efforts by the ILO (see 8.1.1), other international organizations have promoted bilateral agreements about the movement of migrant workers and specific measures to protect such migrants from harm. For example, in 2005 national organizations from eight countries in Asia supplying or recruiting

migrant workers were convened by UNIFEM and agreed a *Covenant of Ethical Conduct and Good Practices of Overseas Employment Service Providers*.²⁴⁴ This committed them to supporting, “Any [...] efforts, campaign or program [...] against illegal recruitment, human trafficking, or, for that matter, any policy that will jeopardize, disturb or violate the human rights of migrant workers, particularly women migrant workers [...]”. They also agreed to work towards,

“Regional agreements to stop violation to [sic] migrant workers through (i) advocacy with governments of labor sending and receiving countries to sign treaties, covenants and/or binding international agreements or understanding, or (ii) inter-country or regional agreements and understanding involving national associations of overseas employment service providers and counterpart organizations, in order to stop discrimination against foreign workers, and provide better, responsive, uniform, equitable, and timely protection and welfare to women migrant workers.”

However, almost a decade later, the number of bilateral binding agreements between these governments is negligible and protection for women migrant workers in the eight countries is still patchy.

In the South Caucasus, as in other regions of the world with high rates of emigration, the ILO contributed to the production and dissemination of information guides about the situation in countries which are known to be popular destinations for migrants from countries in the region. In Georgia, for example, guides were produced about five countries (Russian Federation, Turkey, Greece, Germany and Austria) in co-operation with labour specialists in the countries concerned.²⁴⁵

Some recruitment agencies escape standard regulation altogether as they are ostensibly recruiting marriage partners (usually women) for people abroad, rather than workers. In some cases, marriage bureaux have facilitated human trafficking (see 8.1.7 below).

The OSCE issued a *Guide on Gender-Sensitive Labour Migration Policies* in 2009, which suggested ways in which the issue of gender should be taken into

239 Verité, *Help Wanted. Hiring, human trafficking and modern-day slavery in the global economy* (2010).

240 E.g., Verité, *Fair Hiring Toolkit*, at <<http://www.verite.org/helpwanted/toolkit>>, accessed 4 July 2014, available in English and Spanish.

241 See <<http://www.responsibleemployment.org/>>.

242 Verité, *Corruption and Labor Trafficking in Global Supply Chains* (December 2013).

243 *Dhaka Principles for migration and human rights*, <<http://www.ihrb.org>> and <<http://www.dhaka-principles.org/>>, accessed 3 July 2014. As mentioned in footnote 156, the Institute for Human Rights and Business was also joint author of a European Commission guide for businesses operating in the employment and recruitment agencies sector on implementing the UN *Guiding Principles on Business and Human Rights*.

244 UNIFEM Regional Consultation of Recruitment and Placement Agencies on Good Practices to Protect Women Migrant Workers, 14–15 November 2005, Bangkok, Thailand. The text of the Covenant is available at <http://www.unifem-eseasia.org/docs/Covenant_ethical_conduct.pdf>, accessed 4 July 2014. The eight countries represented by national associations were: Bangladesh, Cambodia, Indonesia, Jordan, Lao PDR, Nepal, Philippines and Sri Lanka.

245 See the ‘Informed Migration’ website in Georgian, at <<http://www.informedmigration.ge/cms>>, accessed 30 July 2014.

account in governments' migration policies, both in the countries from which women migrate and those where they seek work, to reduce the likelihood that women migrants are trafficked. This includes a model employment contract for domestic workers, as well as ethical recruitment codes for use in the health sector. Among its many recommendations, the Guide suggests that, *"The validity of a work visa should not be limited to a specific employer and migrant workers should be allowed to change their place of employment to reduce dependency on a particular employer"*.²⁴⁶ In the 1990s this ability to change place of employment/ employer was shown to be an important way of protecting migrant domestic workers in the United Kingdom from abuse including forced labour (they had previously been required to remain in the employment of whichever employer they had entered the United Kingdom with).²⁴⁷ Practice by governments varies. For example, in the Russian Federation, work visas are reported not to tie a migrant worker to one employer,²⁴⁸ whereas the practice of tying work visas to a particular workplace was reported to continue in the US in 2014.

Reporting to the UN Human Rights Council in 2014, the UN Special Rapporteur on the human rights of migrants recommended that States *"Refrain from using sponsorship systems that make immigration status conditional on one given employer, as this creates a precarious status, restricts freedom of movement, increases vulnerability to exploitation and abuse, and leads to forced labour"* and *"Protect migrants against unfair dismissals, and refrain from tying visas to the employer, so that migrants can find a new job in case their employment is terminated"*.²⁴⁹

246 OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (Vienna, 2009), p. 3.

247 M. Gower, *Immigration: migrant domestic workers*, Standard Note reference SN/HA/4786, House of Commons Library (United Kingdom) (25 March 2010), <<http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snha-04786.pdf>>, accessed 23 May 2011 (no longer available in 2014). The authorities of this State nevertheless decided to withdraw the right to change employers from migrant domestic workers. Two years later, an NGO monitoring the situation of migrant domestic workers reported, *"Since 6 April 2012 migrant domestic workers have entered the UK [United Kingdom] on a 6 month long non-renewable visa and are prohibited from changing their employer [...] Two years on from the implementation of the tied visa it is clear that the tying of workers to their employers has resulted in the increased exploitation and abuse of migrant domestic workers in the UK"* (Kalayaan, *Still enslaved: The migrant domestic workers who are trapped by the immigration rules* (London, April 2014), <<http://www.kalayaan.org.uk/documents/tied%20visa%202014.pdf>>, accessed 7 July 2014).

248 Under the terms of the Russian Federation's Federal Law on Migration Registration of Foreign Citizens and Stateless Persons (entered into force on 15 January 2007), see 'Migration registration of foreign citizens in the Russian Federation' (18 October 2010), <http://www.fms.gov.ru/useful/migrate/index_eng.php>, accessed 23 May 2011, but no longer available in 2014.

249 UN Human Rights Council, *Report of the Special Rapporteur on the*

In 2013 the *Addendum* adopted to the OSCE's 2003 *Action Plan to Combat Trafficking in Human Beings* called on participating States to promote *"clear criteria, in compliance with the national law, for the official registration of recruitment and placement agencies, and monitoring the activities of such agencies in an effort to prevent all forms of THB and exploring possibility of removing the recruitment fees charged to employees"*.²⁵⁰

While the principle that workers should not have to pay fees to private employment agencies who find them jobs is stated clearly in ILO Convention No. 181 on Private Employment Agencies, it is notable that surprisingly few States have committed themselves to enforcing this. Furthermore, practice is less clear, for it remains legitimate to ask migrant workers to pay (or repay) a variety of costs, while not paying a fee for the services of an agency or intermediary (on the grounds that such a fee should be paid instead by the business or individual who hires the migrant worker). The UN Special Rapporteur on trafficking in persons, Joy Ngozi Ezeilo, has pointed out that, *"Evidence collected over the past decade indicates that a substantial proportion of the workers who are trafficked and subjected to forced labour are contract workers who are not recruited or employed directly by the business for which they are working (on a work site, such as a farm or construction site). Instead, they are supplied by an agency or intermediary"*. She recommended that,

"In such circumstances, States should consider regulating the activities of recruitment agents and agencies. If they decide not to introduce a system of regulation, States still have a responsibility to ensure that recruitment agents and agencies are not contributing to human trafficking, both by checking on the effectiveness of any system of self-regulation practiced by the employment industry and ensuring that suitably trained law enforcement officials are available to investigate whenever abuses are reported".²⁵¹

In early 2014, several international organizations launched campaigns to promote fairer recruitment practices. The ILO developed a *"fair recruitment strategy"* and hosted a workshop about its initiative,

human rights of migrants, François Crépeau, *Labour exploitation of migrants*, A/HRC/26/35 (3 April 2014), paras. 90 and 91.

250 OSCE Permanent Council, *Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*, PC.DEC/1107/Corr.1 (6 December 2013), Section III (prevention), article 1.9.

251 UN Human Rights Council, *Report submitted by the Special Rapporteur on trafficking in persons, especially women and children*, Joy Ngozi Ezeilo, A/HRC/23/48 (18 March 2013), para. 65.

considering a draft set of Principles and Guidelines for a Rights-Based Approach to Fair Recruitment by Private Employment Agencies. The IOM launched an “International Recruitment Integrity System” (IRIS), calling for “a global partnership to fight unfair recruitment” that would involve an accreditation and compliance system.²⁵² For Europe, the European Institute for Crime Prevention and Control published, in mid 2014, a set of guidelines intended to prevent abusive recruitment.²⁵³

8.1.6 Regulation (of recruitment) by national governments and self-regulation

In some countries, governments have taken the initiative to regulate recruitment or employment agencies. For example, following the deaths of 23 Chinese migrant workers in 2004, the United Kingdom adopted the *Gangmasters (Licensing) Act 2004*. This law was intended to address concerns that existing controls on labour providers, known as ‘gangmasters’, were ineffective. The Act created a compulsory licensing system for gangmasters and other employment agencies supplying workers for agricultural activities, gathering shellfish and related processing and packaging activities. It also established a special agency, the Gangmasters Licensing Authority, to issue licences and investigate possible violations of the Act. Although the initial intention of the law was to curb the exploitative activities of agricultural gangmasters, it applies generally to employment agencies operating in the agricultural and shellfish sectors, and to companies, unincorporated associations and partnerships active in these sectors. The United Kingdom’s *Employment Agencies Act 1973* had already made it illegal for agencies to charge workers for finding them employment. Since 2005 there have been numerous calls in the United Kingdom for the mandate of the Gangmasters Licensing Authority to be extended to other sectors of the economy where migrant and contract labour is common (and abuse is also reported), but the Government has not yet agreed to do so. Indeed, the Gangmasters Licensing Authority saw its budget reduced in line with other parts of the public administration.

The possibility of a similar regulation has been discussed in other European States, such as the Netherlands, but the authorities have preferred to rely on self-regulation by the recruitment industry. Evidently

252 In partnership with the International Organization of Employers (IOE), the Government of Alberta (Canada) and others. See <<http://iris.iom.int/news-and-downloads>>, accessed 2 July 2014.

253 HEUNI, *Guidelines to prevent abusive recruitment, exploitative employment and trafficking of migrant workers in the Baltic Sea region*, publication 78. L. Sorrentino and A. Jokinen (Helsinki, 2014).

voluntary codes can discourage activities associated with human trafficking if widely observed by recruitment businesses, even though they might not be as effective as regulation by law. An example of a voluntary code is one adopted in Armenia in 2010 by the country’s association of private employment agencies shortly after it was set up.²⁵⁴ This followed a period of high emigration to work outside the country, with Government policy still premised largely on a presumption that the State was to be involved in organizing such migration, while in reality most migrant workers depended on unofficial brokers and unregistered agencies. The voluntary code adopted by the Republican Union of Employers and Private Employment Agencies Sectorial Union stipulates that “*Members shall not charge directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for the services directly related to temporary assignment or permanent placement*”. Once again, the provision is good, but it was not accompanied by any procedure to ensure it was respected.

The ILO has developed manuals indicating what represents good practice in voluntary codes adopted by private employment agency associations and how governments can monitor or regulate their activities.²⁵⁵

8.1.7 Towards better practice among agencies recruiting people for marriage

In addition to recruitment and employment agencies, other organizations seek to recruit people (mainly women) for other purposes, notably *au pairs* and marriage partners. Recruitment or brokering for these purposes evidently introduces a range of other considerations which are not considered here in detail.

Once evidence became available that some marriage agencies were responsible for placing women in abusive situations (and that some were involved in human trafficking), measures were taken in some countries to regulate them, particularly those regarded as advertising “mail order brides”. In the US, for example, the *International Marriage Broker Regulation Act of*

254 Republican Union of Employers and Private Employment Agencies Sectorial Union *Code of Conduct of Private Employment Agencies* (June 2010), <<http://www.pea.am/Standarts.aspx?lang=eng>>, accessed September 2011 but no longer available in 2014. See also, Astghik Injeyan, *The Role of Private Employment Agencies in the Process of Regulation of Labor Migration from Armenia*, PASOS – Policy Association for an Open Society (Yerevan, 2012), a <<http://pasos.org/wp-content/uploads/2012/10/astghik-injeyanPASOS.pdf>>.

255 See ILO, *Guide to Private Employment Agencies – Regulation, monitoring and enforcement* (Geneva, 2007); and ILO, *Trafficking for Forced Labour. How to monitor the recruitment of migrant workers (Training Manual)* (Geneva, 2006), available in various languages.

2005 (IMBRA) was passed to impose regulations on mail order bride companies and to prevent abuse and exploitation of “mail order brides” after a few tragic cases.²⁵⁶

In one country from which women have sought to emigrate for the purpose of marriage, Belarus, efforts have been made to identify good practice. A meeting in Belarus in March 2010 (on the topic of “Business Responses to Human Trafficking in Belarus”) reviewed good practice and opportunities for businesses to take action to stop human trafficking, focusing on agencies which enable women to go abroad to work or to get married. One of the businesses represented was among some 20 businesses in Belarus that reportedly had licences to act as marriage agencies.²⁵⁷

8.2 Influencing the Tourism and Travel Sector (with Codes)

Issues about commercial sexual exploitation have prompted responses in the tourism sector over a long period, notably because of concerns expressed since the 1980s about sex tourism, especially the sexual exploitation of children by tourists visiting countries other than their own. There has been international consensus that children under 18 should never be recruited into prostitution (for any such recruitment is considered to constitute trafficking in children for the purpose of sexual exploitation), while there is less agreement on standards concerning travellers who pay for commercial sex with other adults. The commitments made by businesses in the tourism and travel sector have focused mainly on protecting children and are the subject of this chapter.

Already in 1996, the International Hotel & Restaurants Association (IH&RA) adopted a resolution in which they suggested to their members that they should “[...] consider measures to prevent the use of their premises for the commercial sexual exploitation of children” and “to prevent ease of access to child prostitution or child pornography”. In 1998 it conducted a campaign with the same message.

In the meantime, the first World Congress against Commercial Sexual Exploitation of Children, held in Stockholm in 1996, called for the adoption of

voluntary ethical codes of conduct to stop the sexual exploitation of children. The International Federation of Tour Operators (IFTO) subsequently adopted a *Code of Conduct against the Sexual Exploitation of Children*.

In 1999 the UN World Tourism Organization (WTO) adopted a *Global Code of Ethics for Tourism* which condemned “*The exploitation of human beings in any form, particularly sexual, especially when applied to children [...]*”.²⁵⁸ It urged “*public and private stakeholders in tourism development*” to co-operate in implementing its principles and monitoring their application (article 10).

These initiatives were essentially statements of intent. It was not until 2001 that a scheme was developed to check on compliance, described below.

8.2.1 Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism

Following the first World Congress, the main NGO involved in organizing the event, End Child Prostitution, Child Pornography, and Trafficking in Children for Sexual Purposes (ECPAT²⁵⁹), and businesses operating in the tourism sector (initially those based in Scandinavia) began developing a *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism* (subsequently referred to as “*The Code*”). In this case, the international standard to be followed was clear: no-one aged under 18 should be involved in prostitution in any circumstances.²⁶⁰ *The Code* was adopted in 2001, committing tourism businesses to the following actions:

1. “To establish an ethical policy regarding commercial sexual exploitation of children.
2. To train the personnel in the country of origin and travel destinations.
3. To introduce a clause in contracts with suppliers, stating a common repudiation of commercial sexual exploitation of children.
4. To provide information to travellers by means of catalogues, brochures, in-flight films, ticket slips, homepages, etc.
5. To provide information to local “key persons” at the destinations.
6. To report annually”.²⁶¹

256 Tahirih Justice Center, *Summary of the International Marriage Broker Regulation Act of 2005*, <<http://www.tahirih.org/site/wp-content/uploads/2009/03/imbrasummary.pdf>>, accessed 4 July 2014.

257 The roundtable was organized by an NGO, La Strada Belarus, with support from the IOM, and was attended by some 30 people from businesses, some involved in tourism, government, NGOs and international experts.

258 *Global Code of Ethics for Tourism*, Article 2.3, <<http://ethics.unwto.org/en/content/global-code-ethics-tourism>>, accessed 4 July 2014.

259 ECPAT International, an international NGO based in Bangkok (Thailand). See <<http://www.ecpat.net>>.

260 See: United Nations, *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, A/RES/54/263 (25 May 2000).

261 The Code is available at <<http://www.thecode.org>>, accessed 4 July 2014.

The Code specified the actions necessary to stop exploitation from occurring and was accompanied by a system for checking whether these actions were being carried out. ECPAT developed a training curriculum for organizations intending to implement *The Code*. To begin with, the number of businesses which agreed to implement *The Code* remained relatively low, reaching 54 (in 17 countries) by September 2004. It then increased rapidly to 241 by April 2005 and 601 by November 2007. By June 2014 *The Code* was being implemented by over 1,300 companies from 66 countries.²⁶² The countries include the Russian Federation and numerous other OSCE participating States, such as Bulgaria, Montenegro and Spain. The Code has been signed by exceptionally high numbers of companies in countries where there has been a heightened perception that the commercial sexual exploitation of children is a threat that can be avoided, such as Costa Rica.

The secretariat of *The Code* was set up as an independent not-for-profit organization in 2004 and has been based successively in Madrid, New York and (now) Bangkok.

8.2.2 Verification procedures

The Code's website used to contain the comment that any code requires a verification procedure, saying, "International practice shows that for securing the credibility of voluntary Codes of Conduct and of the companies adopting such codes, the implementation has to be followed up and controlled, both internally by the company and externally by independent evaluators".²⁶³ Indeed, it was clear from the late 1990s that those involved were determined to avoid a process which could be exploited for propaganda purposes or which might provide a façade, under which exploitation was going on as usual. However, it is not yet clear that enough has been achieved.

The compliance procedure consists primarily of self-regulation, with tour operators and hotel chains that sign *The Code* agreeing to carry out internal checks (to determine if *The Code* is being respected)

and submitting annual reports to the secretariat of *The Code* that are published on its website. The reporting process started in 2002 and involves reporting on *The Code's* six provisions. Under #2 (training), for example, businesses report on how many staff have been trained (e.g., the Accor Hotel Chain, implementing *The Code* in 36 countries, reported that nearly 32,000 staff receiving relevant training in 2013²⁶⁴).

Based on the reports received, the secretariat of *The Code* compiled a collection of examples of how *The Code* was implemented by different tour operators, referred to as a "good practice database".²⁶⁵ In 2010 this contained examples of company policies, training for staff, model clauses inserted into the contracts with suppliers (stipulating common repudiation of sexual exploitation of children on hotel premises) and information materials and annual reports.

8.2.3 Assessment of the compliance procedure and potential for improvement

UNICEF started funding *The Code* in 2004 and in 2012 published an assessment of *The Code's* work and recommendations for improvement.²⁶⁶ This was based in part on data collected in three countries, Costa Rica, the Netherlands and Thailand. The assessment noted, for example, that *The Code's* impact was more noticeable in large hotel chains than small ones and that the lack of adequate support for implementation at the local level (in principle in the form of a "Local Code Representative") inhibited its spread.

Concerning the systems for monitoring and checking that businesses committed to respecting *The Code* actually did so, the UNICEF assessment reported that *The Code* Secretariat felt that a lack of resources limited its monitoring and reporting system and that, as a result, it relied almost entirely on self-reporting by businesses. One of the assessment's recommendations was that *The Code's* management should "Consider what measures could be in place to enhance compliance with *The Code* requirements, and what processes could be put in place to address situations where companies are not in compliance".

262 A list of almost 1,100 companies which have signed *The Code* was accessed at <<http://www.thecode.org/who-have-signed/>> on 4 July 2014 along with a list of over 40 'Top Members' and 189 businesses with the status of 'Members'. The OSCE participating States in which companies have signed *The Code* are reported to be: Albania, Austria, Bulgaria, Canada, Denmark, Finland, France, Germany, Hungary, Italy, Montenegro, Netherlands, Norway, Romania, Russian Federation, Spain, Sweden, Switzerland, United Kingdom and the United States.

263 *The Reporting Process*, <http://www.thecode.org/index.php?page=4_1>, accessed 15 January 2010 but no longer available in 2014.

264 Accor Hotel HQ, *Annual Report 2013*, at <<http://thecode.force.com/publicPdf?id=0019000000GxgFgAAJ&year=2013>>, accessed 4 July 2014.

265 <http://www.thecode.org/index.php?page=4_4>, accessed 15 January 2010, but no longer available in 2014.

266 UNICEF Innocenti Research Centre, *Assessing The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism: Discussion Paper* (Florence, 2012), <http://www.unicef-irc.org/publications/pdf/ids_codeofconduct2.pdf>, accessed 4 July 2014.

Since 2012, more emphasis is reported to have been given to checking that businesses supporting *The Code* submit annual reports. In addition, external consultants are reported to have carried out occasional spot checks to observe whether a business that claims to respect all *The Code's* principles is actually implementing them in practice. Local *Code* representatives are also reported to visit businesses committed to implementing *The Code* from time to time to discuss possible difficulties being encountered and to check that *The Code's* principles are being adhered to.²⁶⁷

8.2.4 Experience of implementing The Code in particular countries or businesses

In addition to the reports submitted by travel businesses about their implementation of *The Code*, hotels and travel agencies around the world have reported publicly on the steps they have taken to stop sexual exploitation from occurring on their premises. Most of the initiatives that have been publicized were intended to stop the sexual exploitation of children, rather than either sexual exploitation of adults or commercial sex more generally. However, some hotels tell their guests that they may not take anyone who is not a registered hotel guest to their hotel room. While this policy is usually justified as increasing the security of guests (by avoiding unknown people wandering around and potentially stealing items from hotel rooms), it also has the effect of deterring guests from bringing either adults or children onto the premises for the purpose of commercial sex.

For example, a major international hotel chain, Carlson, signed *The Code* in 2004. Its Policy on the Protection of Children from Sexual Exploitation condemns all forms of commercial sexual exploitation of children and pledges the company's directors, officers, supervisors and employees to "Avoid or cease doing business with any organization which knowingly participates in any way in the sexual exploitation of children".²⁶⁸ Another hotel chain, Accor, has been a vocal participant in campaigns against the commercial sexual exploitation of children.²⁶⁹ By 2009 it had signed *The Code* on behalf of its businesses operating in 34 countries and was a member of *The Code's* board. It focused

on particular countries or regions at particular times (for example on nine countries, including Romania, in 2009, and on sub-Saharan Africa in 2010).²⁷⁰

In Bulgaria, where tourism boomed during the last decade in resorts on the Black Sea, a series of businesses signed *The Code* in 2005 as a result of a joint initiative by the Bulgarian State Agency for Child Protection, a Bulgarian NGO (Animus Association²⁷¹), the OSCE and an Austria-based international NGO, the Institute for Integrated Tourism and Development (Institut für Integrativen Tourismus und Entwicklung), also known as "Respect".²⁷²

8.2.5 Addressing the wider human rights impacts of tourism

Concerns about abuse for which the tourism industry may be held responsible are by no means restricted to the commercial sexual exploitation of children, though this issue has received a high level of attention. Responding to the wider requirements of the UN *Guiding Principles on Business and Human Rights*, a Roundtable on Human Rights in Tourism developed an Implementation Guideline for Tour Operators,²⁷³ committing member organizations in Austria, Germany and Switzerland to respect a wide range of human rights, including the core ILO conventions (i.e., including a ban on the use of forced labour). The Roundtable's website offers five half-hour tutorials to tour operators on ways to respect the various commitments made.

8.3 An international code of conduct for private security businesses

The rapid expansion of private sector involvement in military and security issues during the first decade of the century, notably in countries such as Afghanistan and Iraq, resulted in a range of criticisms being levelled against such businesses. Private security businesses had reportedly been implicated in human trafficking occurring for a variety of purposes (relating to forced prostitution as well as forced labour).

267 Personal communication in July 2014 with the General Manager of *The Code*.

268 The Carlson policy was accessed 23 May 2011 at <<http://www.thecode.org/dokument/images/downloads/442-1dCarlsonPolicy.pdf>>, but was no longer available in 2014.

269 See Accor, 'Protection de l'enfance', <<http://www.accor.com/fr/developpement-durable/priorites-ego/protection-de-lenfance.html>>, accessed 23 May 2011 but no longer available in 2014. Accor, based in France, operates brands such as Sofitel, Novotel, Mercure, Ibis, Parthenon and CWT.

270 <<http://www.desti-nations.net/homepage/cases/actions-of-the-accor-hotels-fight-against-sexual->>, accessed 26 January 2010 but no longer available in 2014.

271 The member organization in Bulgaria of La Strada, the European NGO Network against Trafficking in Human Beings.

272 M. Petrova, *Presentation to the Side Event on Anti-Trafficking Programme of the 13th OSCE Economic Forum*, Prague, 23–27 May 2005, <<http://www.osce.org/node/14856>>, accessed 4 July 2014.

273 Arbeitskreis Tourismus und Entwicklung (Working Group on Tourism and Development), *Human Rights in Tourism. An Implementation Guideline for Tour Operators* (October 2013), <http://www.menschenrechte-im-tourismus.net/fileadmin/user_upload/Menschenrechte/RT_Human_Right_in_Tourism_ENG_02.pdf>, accessed 28 July 2014.

In 2008 the Swiss Federal Department of Foreign Affairs and the International Committee of the Red Cross convened a meeting with States, which resulted in the adoption of the *Montreux Document on Pertinent International Legal Obligations and Good Practices*

*for States related to Operations of Private Military and Security Companies during Armed Conflict.*²⁷⁴ This was an intergovernmental document intended to promote respect for international humanitarian law and human rights law whenever private military or security companies are present in armed conflicts. It was followed two years later, in 2010, by a process which involved 50 private security firms themselves meeting in Switzerland to agree an *International Code of Conduct for Private Security Service Providers* (known as 'ICoC'), intended to be applied by businesses operating across the world in the security sector.²⁷⁵ By June 2014, 708 businesses were reported to have signed this. The *Code* was not intended specifically to prevent human trafficking, but rather to address a variety of concerns in a sector whose activities had been widely criticized in recent years. The *Code* set minimum standards and also contained a commitment to establishing, within 18 months, “objective and measurable standards” for realizing the standards and “external independent mechanisms for effective governance and oversight, which will include Certification of Signatory Companies’ compliance with the Code’s principles and the standards derived from the Code”.

In February 2013, signatory companies, civil society, and governments reportedly agreed to the Articles of Association, founding the Oversight Mechanism of the ICoC, although this appeared not to be available publicly in 2014, so no details of the ICoC’s compliance and verification process are included in this study.

The Security Service Providers’ Code imposes an obligation on companies signing it not to use slavery or forced or compulsory labour, not to engage in trafficking in persons and to require their personnel not to engage in trafficking in persons. It contains a definition of trafficking which is broadly in line with the definition in the UN Trafficking Protocol, although it makes use of a term based in US law (“involuntary servitude”), while not, as US Government policies do, seeking to embrace all cases of commercial sex in its definition.²⁷⁶ However, it also includes a paragraph on “Sexual Exploitation and Abuse or Gender-Based Violence”, which specifies that companies will “not benefit from, nor allow their Personnel to engage in or benefit from, sexual exploitation (including, for these purposes, prostitution)” (Article 38). Advocates of sex workers’ rights may well object to this article, but by separating the provisions about sexual exploitation and those on human trafficking, this code avoids falling into the trap of endless arguments about precisely what constitutes trafficking and whether prohibiting the purchase of sex really represents a way of preventing trafficking or is actually targeted against a different pattern of abuse altogether.

274 The Montreux Document was accessed 6 August 2014 at <<http://www.icrc.org/eng/resources/documents/misc/montreux-document-170908.htm>>. It was jointly finalized by 17 States in 2008 and has subsequently been supported by 33 others, along with the EU, the OSCE and NATO.

275 The text of the Code is available in English and Russian at <<http://www.icoc-psp.org>>, accessed 7 July 2014 and also available in French, German and Spanish at <<http://business-humanrights.org/en/conflict-peace/special-initiatives/initiatives-on-private-military-security-companies/international-code-of-conduct-for-private-security-service-providers-icoc-a-process-aimed-at>>.

276 “For the purposes of this Code, human trafficking is the recruitment, harbouring, transportation, provision, or obtaining of a person for (1) a commercial sex act induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or (2) labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, debt bondage, or slavery” (article 39).

CHAPTER 9: EXAMPLES FROM ONE REGION: BUSINESS COMMITMENT TO CORPORATE SOCIAL RESPONSIBILITY IN THE COMMONWEALTH OF INDEPENDENT STATES AND OTHER FORMER STATES OF THE SOVIET UNION

This chapter provides an overview of business codes in several post-Soviet States that started developing market economies in the early 1990s. They have faced both the positive impact of globalization and its less desirable side effects, such as increased labour migration, demand for cheap and unprotected labour, abuse of migrants' vulnerability by unscrupulous employers and cases of human trafficking. The countries concerned have demonstrated a general readiness to adopt the concept of corporate social responsibility, though without necessarily expecting the private sector to play a more active role in combating forced and child labour and human trafficking. This situation reflects the widely spread assumption that it is primarily the responsibility of law enforcement agencies to deal with such problems, and that existing legal provisions should be sufficient to prevent and combat both forced labour and trafficking in human beings in any country. Corporate social responsibility continues to be regarded principally as requiring the private sector to contribute to charity or to support social development, protection of the environment and anti-corruption in the places where companies are based. Their activities have a positive effect, but they are not adequate to meet the challenges of trafficking in human beings and forced labour. At the same time, there have been good examples of targeted human rights policies, the involvement of trade unions and NGOs (such as an Integration Centre "Migration and Law" in Moscow) in combating forced labour and violations of labour rights, and close attention to related issues, such as discrimination and inequality. The chapter contains some observations and recommendations consistent with the recommendations provided for the OSCE participating States at the end of the paper, in chapter 12.

Post-Soviet countries, having embarked on developing market economies in the early 1990s, and facing the impact of globalization, increased the attention given to the issue of corporate social responsibility (CSR) in a significant way. First codes of conduct and special guidelines for business in the CIS states, step by step, brought the new business community closer to existing international standards, familiarizing the private sector with human rights, including the labour rights of employees and business partners. Companies and

corporations were modifying their image in line with the ILO's core Conventions, making efforts to exclude discrimination, to ensure labour rights, to provide freedom of association, and to outlaw the use of forced or child labour (not only by themselves, but also by their contractors and subcontractors). Corruption, one of the major challenges, was also duly addressed as a priority in these initial documents.²⁷⁷

9.1 Commitments in business codes in the Russian Federation

For example, in 1998, the Chamber of Commerce and Industry of the Russian Federation introduced *Twelve Principles for Business in Russia*²⁷⁸ that proclaimed certain ethical values, such as "honour is more valuable than profit", "respect for others", "refraining from violence or threat of violence as a means to achieving a business goal", "not conducting business beyond your means", "trust as the basis of enterprise", "competing properly", "observing the law", "joining forces with like-minded", "working for the good of humanity", "inflicting the minimum damage on the environment in business", "resisting criminality and corruption", and "tolerance to representatives of other cultures, creeds and countries". In some ways, the Twelve Principles inherited the traditional format and style of Russian business.

It is not surprising that codes drafted in this period were a long way from addressing forced labour or promoting the role of the business community in preventing human trafficking. On the verge of the Millennium, not many were aware of the link between labour

277 A detailed chronology reflecting the step-by-step engagement of Russian business in the corporate social responsibility movement is available in multiple Russian sources, but also in other studies undertaken by non-Russian experts, for example in some Japanese Research: Satoshi Mizobata, *Business Society and Corporate Social Responsibility: Comparative Analysis in Russia and Japan* (Kyoto University, May 2011), <<http://www.kier.kyoto-u.ac.jp/DP/DP774.pdf>>, accessed 31 July 2014.

278 Independent Directors Association (IDA) and the Russian Institute of Directors (RID), *Business Ethics. Guidelines for Russian Companies* (Moscow, 2004), <<http://www.ita.doc.gov/goodgovernance/adobe/IDARIDBusEthicsGuidelinesEng.pdf>>, accessed 15 July 2014. The Guidelines report that as early as 1912, a full 12 years before the US, the Russian business community adopted nationwide its first code of ethics, *Seven Principles Governing Business in Russia*, which set forth the fundamental ethical traditions in enterprise in the country.

migration and trafficking in human beings for labour exploitation, or of the potential role of the private sector in its prevention. Prior to the adoption of the *UN Convention against Transnational Organized Crime* and the first internationally agreed definition of trafficking in persons in 2000, more could not be expected. As mentioned above, an assumption was made by business and others that Constitutions, Labour Codes and the associated legal framework were sufficient to respond.

Within a few years, the rapid evolution of trafficking in human beings, the development of new forms of exploitation and an increase in forced labour cases resulting from trafficking became apparent. The situation among the post-Soviet States – a growing market for cheap and unprotected migrant labour, gradual transformation of countries of origin, transit and destination into those where all three parameters (plus internal trafficking) coexist on equal footing – meant that the prevailing patterns of trafficking in human beings for labour exploitation seem to have reached much the same level as patterns of trafficking in human beings in other OSCE participating States²⁷⁹. According to the ILO, trafficking in human beings for labour exploitation has become “the predominant form of trafficking” (in the CIS), as had previously happened “in some Western European countries”.²⁸⁰

In the CIS region, the dynamic entry of Russian companies into the international market provided strong incentives to initiate corporate social responsibility activities. There followed a chain of documents that updated ethical principles and began referring to international human rights standards. For example, the 2002 Corporate Governance Code²⁸¹ provided a general framework limited to the protection of the interests of all shareholders and did not focus on the human rights of employees. A year later, in 2003, the Corporate Business Ethics Charter²⁸² adopted by the Russian Union of Industrialists and Entrepreneurs (RSPP) included (as ethical standards for business activities) two provisions that might have an indirect impact on the prevention of forced labour and trafficking in human beings: to “*proceed from the real*

meaning of laws, avoid employing various interpretations contrary to their spirit and abstain from using formal procedures to achieve the goals incompatible with corporate ethical standards”; and to “*refrain from actions that build up social tension within society*”. Later on, the RSPP began co-operating with “Business Russia” (Delovaya Rossiya), an all-Russia public organization, and the all-Russia Public Organization of Small and Medium Business “Pier of Russia” (Opora Rossiya) within a Joint Commission on Corporate Ethics designed to deal with conflicts by assessing the actions of the parties involved and their compatibility with ethical principles formulated in the Charter.

The year 2004 marked a turning point in the development of the concept of corporate social responsibility in Russia. Efforts by the business community, media, academia and NGOs led to the adoption of the *Social Charter of Russian Business*,²⁸³ a set of basic principles for responsible business activity. This remains a major reference point for business ethics and corporate social responsibility. It is said to draw from “*fundamental human values, norms of international law, the Constitution and laws of the Russian Federation, and take(s) into account [...] the social impact of [...] activities*”. Directly related to the question of business and human rights is the recognition of “*the labour rights of employees as an integral part of human rights*” and readiness to “*observe the rights of employees as defined by the law*”. The Charter states explicitly: “*We do not allow at our enterprises forced labour, child labour, and we stand for their elimination*”. Parties to the Charter agreed to “recognize the inviolability of human rights” and not to allow violations (or what the UN *Guiding Principles* now call ‘adverse human rights impacts’). They also agreed to build decision-making systems, taking into account the observance of these rights, including: the right to equal opportunities and non-discrimination; the right to security; the right to health; the right to a favourable environment; the right to education; the right to the freedom of religion and freedom of speech; labour rights of employees; the right to information; and other rights related to the activities of the companies.²⁸⁴ In other words, the Charter corresponded with the UN Global Compact’s ten basic principles.²⁸⁵

279 For more details see, ILO, *The Cost of Coercion* (2009), Chapter on “Trafficking in human beings in Europe and Central Asia”, pp. 20–22.

280 Ibid.

281 Independent Directors Association (IDA) and the Russian Institute of Directors (RID), *Business Ethics. Guidelines for Russian Companies* (Moscow, 2004), <<http://www.ita.doc.gov/goodgovernance/adobe/IDARIDBusEthicsGuidelinesEng.pdf>>, accessed 15 July 2014.

282 The Corporate Business Ethics Charter (Хартия корпоративной и деловой этики) was accessed 31 July 2014 at <http://ars-rspp.ru/files/ethics/docs/ars_rspp_khartiya_korporativnoy_i_delovoy_etiki.pdf>.

283 See, Agency for Social Information, *Russian Business and the UN Global Compact. Social Responsibility in Practice*, UNDP, Agency for Social Information, RSPP and UN Global Compact (2007), <http://www.undp.ru/publications/GC_3_en.pdf>, accessed 10 July 2014.

284 Ibid.

285 The UN Global Compact, the Social Charter of Russian Business, and the Global Reporting Initiative (GRI): Consistency of Principles and Indicators, <[http://europeandcis.undp.org/uploads/public/file/Global%20Compact%20and%20Social%20Charter_RSPP_Russia\(1\).pdf](http://europeandcis.undp.org/uploads/public/file/Global%20Compact%20and%20Social%20Charter_RSPP_Russia(1).pdf)>.

Individual companies contributed to efforts taken under the *Social Charter of Russian Business* by developing and adopting their own codes of conduct, some of which give explicit attention to human rights issues. A UNDP publication, *Russian Business and the UN Global Compact*,²⁸⁶ commending companies for their good practice, cited the example of RUSAL, one of the world's largest aluminium businesses, which clearly stated the company's position on human rights observance. Almost every chapter of its non-financial report starts with an acknowledgement of corporate responsibility in an aspect of human rights, such as: personal freedoms and equal opportunities; strictly adhering to the norms of business ethics and law; not accepting illegitimate payments and not using unethical forms of influence with business partners; providing timely and objective information to employees on issues related to their work with the company; and providing opportunities for participation in decision-making and corporate management. RUSAL reportedly "[...] prohibits any use by the company's business units of child labour and forced or mandatory labour. In the very near future the company will review its operations with respect to the risk of child labour and forced labour that may be in use at newly acquired facilities, especially those in developing economies".²⁸⁷

The same UNDP publication reports that several companies have given more attention to the issues of forced and child labour than others. For example, Polyus Gold (part of the Interros Group) "does not employ persons less than 16 years of age and complies with the requirement of the Labour Code of the Russian Federation (Article 265), which prohibits employment of persons less than 18 years of age in harmful and/or dangerous working conditions".²⁸⁸ The company uses no forced labour and strictly adheres to the regulations prohibiting the use of female workers in difficult and dangerous working conditions. A company owned by Interros, though not involved in mineral extraction, but rather in media and entertainment, the Prof-Media Company, is reported to maintain "high standards of compliance with the provisions of international conventions and agreements, the Constitution of the Russian Federation and the Russian labour laws".²⁸⁹ The Prof-Media Company is reported to have made a commitment not to enter into partnership or commercial relationships with organizations that violate the Constitution and the labour laws of the Russian Federation

concerning the use of forced and child labour or with those that are involved in labour discrimination.

Other businesses repeat similar guarantees that they do not use child labour or forced labour. One, SUEK (the Siberian Coal Energy Company) reports that it prohibits the use of mandatory overtime labour. When employees are hired, they are reportedly informed about their work schedule, because an individual's labour contract may involve irregular working hours or shift work. Employees are said to receive fair compensation for overtime work in accordance with the provisions of the Russian Labour Code. The company also says it complies fully with the provisions of Russia's child labour regulations and with ILO Convention No. 138 on the Minimum Age for Entry into Employment. Another mineral extraction business, the LUKOIL Oil Company, reported having its own Social Code and said it gave equal consideration to the economic, ethical and social aspects of its operations. "The company strives to be aware of and take special precautions against the accrual and use of assets derived from the use of mandatory labour, child labour, drug dealing, or from activities that damage human health [...]".²⁹⁰

The commitments stated by businesses in the Russian Federation are undoubtedly encouraging, albeit not matched by the development of systems to check that the commitments are respected in practice. However, it is not clear that the UNDP publication took into account the evidence available about the reported use of either child labour or forced labour occurring in the Russian Federation when it asserted that, "It is noteworthy that problems arising from the use of forced labour and child labour that are addressed in Principles 4 and 5 of the Global Compact are less typical of Russia in comparison to many other developing countries".²⁹¹ The UNDP report implied that the main risk concerning the use of forced labour was likely to occur among suppliers overseas. For this, it offered practical advice: "All companies and businesses are advised to consider these practices as possible risks for suppliers, especially if the companies have operations in countries where forced and child labour are widespread". It advised companies with such supply chains to consult international NGOs operating in the countries concerned.

286 Agency for Social Information, *Russian Business and the UN Global Compact. Social Responsibility in Practice* (2007).

287 Ibid.

288 Ibid.

289 Ibid.

290 Ibid.

291 Ibid. For evidence about cases of forced labour reported several years before the UNDP publication, see, ILO, *Forced Labour in the Russian Federation Today. Irregular migration and trafficking in human beings*, E. Tyuryukanova (2005).

The UNDP publication also provides examples of action to stop corruption being required by business codes of conduct. One example is the RAO UES of Russia Open Procurement Operation System. In 2004 the system was developed further: the Management Board of RAO UES of Russia approved a procurement standards system that set standards concerning procurement methods, selection criteria and procedures, management, etc. Open bidding was recognized as the main method for procurement. Similarly, RUSAL is reported to state clearly: “*Bribes, offers of money and other illegal payments made in order to sign new contracts or extend the term of existing business agreements are contrary to ethical practices, illegal and strictly prohibited*”.²⁹²

The ILO, in its 2009 global report, *The Cost of Coercion*, recognized that in Europe and Central Asia “*a number of employers’ organizations have addressed forced labour and trafficking at the national level. They have sought to tackle these concerns through a series of measures including awareness-raising and capacity-building programmes for members and cross-border cooperation to deal with regional and global problems of human trafficking and exploitation of migrant workers*”.²⁹³ These initiatives did not involve adopting codes or making public commitments to respect human rights, but were nevertheless significant.

For example, in 2008, the Federation of Employers of Ukraine, in co-operation with the ILO, the EU and the ICMPD, hosted a regional workshop for Bulgaria, Romania, Moldova and Poland on strategies against trafficking in human beings and forced labour. This workshop reviewed the links between labour migration and human trafficking, the role of recruitment agencies, good practice in developing National Action Plans to combat forced labour, and the role of corporate social responsibility and supply chain management. Similar events were organized by employers’ organizations in Georgia and Eastern Asia. In Russia, a Manual was published on *Business and Human Rights* (a compilation of articles describing human rights discourse, human rights law, reasons for the business community to observe human rights, integration of human rights into the companies’ activities, rights at work, freedom of association, prohibition of discrimination, forced labour, safe labour conditions, fair and sufficient remuneration, respect for private and family life, and civil rights). The Manual also addressed questions about supply chain management and social responsibility in the context of human rights, human

rights in non-financial reporting, protection of consumers’ rights, and best practice related to corporate social responsibility.²⁹⁴

Joining the UN Global Compact²⁹⁵ indicated an increased level of responsibility of post-Soviet corporations and NGOs. By 2014, the list of organizations participating in the Global Compact contained, among others, companies and civil society organizations from Azerbaijan, Armenia, Belarus, Georgia, Moldova, Kazakhstan, Kyrgyzstan, Russia, and Ukraine, as well as the Baltic States.²⁹⁶

The engagement of Russian businesses in the UN Global Compact created a new ethical context and provided an impetus for introducing its standards by more and more companies and regular non-financial reporting on adherence to the Global Compact’s principles. By 2007 it became possible to speak about a UN Global Compact network in Russia.²⁹⁷ In 2008, a new UNDP publication, *From Russia with Love. A National Chapter on the Global CSR Agenda*,²⁹⁸ assessed the maturity of corporate social responsibility practices in Russia and the role of corporate social responsibility in the development of companies and their strategic goals and priorities (though the role of the private sector in the prevention of forced labour and trafficking in human beings was not made explicit and these issues were not yet directly addressed). Further long-term steps by the UNDP were incorporated in a five-year project (2009–2014) designed to provide

294 See, Agency for Social Information (Агентство социальной информации), *Business and Human Rights. A Practical Guide (Бизнес и права человека: практическое пособие)* (Moscow, 2009), <<http://rspp.ru/12/12631.pdf>>, accessed 15 July 2014. On the topic of forced labour, the guide comments on pages 59 and 60, “*One should not think that forced labour means nearly slavery, and if a company is not involved in trafficking in human beings [literally, the text refers to “the slave trade”], it does not risk violating the prohibition on forced labour. Forced labour or obligatory labour may also be somehow remunerated*”. However, the manual suggests that a company has very limited responsibility with respect to the practice of other businesses in its supply chain: “[...]the area of the responsibility of the company as an employer for the protection of human rights is limited by its employees and is not spreading towards its contractors, subcontractors, clients, partners, etc. The company is responsible for the protection of the human rights of its permanent and temporary employees”. This assertion is evidently not consistent with the UN *Guiding Principles on Business and Human Rights* that were adopted subsequently.

295 See ‘The Global Compact: Network Russia’, <<http://www.undp.ru/index.php?iso=RU&lid=1&pid=51>>, accessed 15 July 2014.

296 <http://www.unglobalcompact.org/ParticipantsAndStakeholders/business_associations.html>; also: <<http://www.unglobalcompact.org/participants/search?commit=t&country%5B%5D=171&page=7>>, accessed 30 May 2014.

297 See <<http://www.undp.ru/index.php?iso=RU&lid=2&pid=154>>. See also the UNDP brochure “Russian Business and UN Global Compact”: <http://www.undp.ru/publications/GC_3_en.pdf>

298 Accessed 11 July 2014 at <<http://www.slideshare.net/Management-Thinking/from-russia-with-love-a-national-chapter-on-the-global-csr-agenda>> and also: <<http://www.undp.ru/index.php?iso=RU&lid=1&cmd=publications1&id=8>>

292 Ibid.

293 ILO, *The Cost of Coercion* (2009), p. 53.

the participants of the Global Compact network with recommendations of a strategic nature,²⁹⁹ as well as some priorities (for example, for 2012–2013 it was a priority for these Global Compact participants to integrate into their business commitments the 10 Global Compact principles related to human rights, labour relations, protection of the environment and anti-corruption measures).³⁰⁰

A detailed examination of codes developed by business in the Russian Federation shows both good examples of the engagement of companies in the promotion of human rights and prevention of abuse, and less good cases, indicating serious set-backs in the overall approach to the impact of business on human rights. Businesses in the oil and mineral extraction sector are reported to have made strong commitments to respect human rights. In contrast, those in the construction sector, where labour abuses have been reported with particular frequency, have been left behind. Initiatives involving private recruitment agencies in the Russian Federation were reported in chapter 8 of the paper.

9.1.1 Commitments by businesses in Russia's oil and mineral extraction sectors

Among those who have taken on board a positive approach to human rights are, for example, Magnezit Company (which mines and processes minerals, specializing in high temperature technologies) with its Code of Ethics³⁰¹ promoting “*respect for human rights and freedoms regardless of race, nationality, social position, political convictions and legal status*” and clearly stating that it “*shall permit [...] no manifestation of discrimination for political, religious, national, gender or any other reasons, in payment for labour and promotion*”. Another good example can be found in the Open Joint-stock Company Oil and Gas RussNeft's Code of Business Ethics³⁰² that, *inter alia*, adheres to the “*know your contractor*” principle “*to minimize the risk of business relationships with contractors who may be involved in corrupt activities*” and “*conducts inspections of contractors to define the nature of their own anti-corruption procedures and/or policies, their willingness to adhere to ethical principles and requirements of the company as well as to provide mutual support for ethical conduct of business and prevention of*

corruption; monitors transactions with contractors in compliance with ethical principles and requirements of the company; and makes reasonably possible efforts to include in the treaties signed by the company provisions aimed at preventing bribery, corruption and legitimization of income obtained by illegal means”.³⁰³

Sakhalin Energy Investment Company included a chapter on its human rights policy³⁰⁴ in its Code of Business Ethics.³⁰⁵ This contains references to the major human rights instruments (the Universal Declaration of Human Rights, core ILO Conventions, UN *Guiding Principles on Business and Human Rights*, The UN Global Compact Principles, ISO 26000 Guidance on Social Responsibility and Voluntary Principles on Security and Human Rights) and not only the recognition of human rights enshrined there, but the requirement that “[*All contractors and subcontractors shall comply with this policy*”. It also contains a chapter on money laundering.³⁰⁶ The code requires that “*All employees [...] understand the human rights issues where they work and follow Company's commitments, standards and policies on this topic*”. Sakhalin Energy is also known for its position on equal opportunities (“*We will not tolerate unlawful employment discrimination of any kind*”; “*Sakhalin Energy will not tolerate harassment in the workplace*”), its whistleblowing policy and mechanism (a Whistle Blowing Focal Point), and its harassment and discrimination procedure (an e-mail address “*where employees and stakeholders may raise concerns and report instances of potential non-compliance with these principles*”).

An assessment by the Business and Human Rights Resource Centre (an NGO), while remaining critical of others in the region, was complimentary about Sakhalin Energy's practices:

“*Given the widespread lack of access to remedy for victims of corporate abuses, it is significant that Russian firm Sakhalin Energy Investment Company has developed a whistle blowing/grievance procedure. It reportedly provides an independent channel enabling employees, contractors, suppliers and their staff, joint venture partners and members of the community to raise any concerns if they believe*

299 <<http://www.undp.ru/index.php?iso=RU&lid=1&cmd=publications1&id=8>>.

300 Ibid.

301 Magnezit, *Code of Ethics*, <<http://magnezit.ru/en/about/codeofethics/>>, accessed 29 July 2014.

302 *Code of Business Ethics of OAO NK RussNeft* (2012), <http://eng.russneft.ru/code_of_business_ethics_eng>, accessed 29 July 2014.

303 Ibid.

304 <http://www.sakhalinenergy.com/en/social_responsibility/human_rights.wbp>, accessed 29 July 2014.

305 <<http://www.sakhalinenergy.ru/media/7b6d27f5-a39d-4725-ac11-b35c799f455a.pdf>>, accessed 29 July 2014.

306 This states, “*You must make proper enquiries about the origin of all monies and property we receive or procure, and of the appropriateness of the destination of money we forward in any way on transactions in which you are involved*”.

the company's business practices are having a detrimental impact on the community, the environment or on their quality of life".³⁰⁷

A June 2011 report written on behalf of John Ruggie, the UN Special Representative on business and human rights, noted that Sakhalin Energy was one of four companies in the world which conducted a pilot project to test the practical applicability of a set of principles for effective non-judicial grievance mechanisms.³⁰⁸ Sakhalin Energy reportedly submitted a letter to the Special Representative in 2011 commending him for his achievements in clarifying the corporate responsibility to respect human rights and committing the company to incorporating the new *Guiding Principles* into its own operations.³⁰⁹

Norilsk Nickel also belongs to those companies that have a well-elaborated human rights policy in its Code of Business Ethics: *"The Company [...] is committed to observe human rights in accordance with the Constitution of the Russian Federation, ILO Conventions, and the national legislation of the countries where it operates. The Company strictly adheres to the principle of prohibiting any form of discrimination, making sure that every worker has equal opportunities to realize their labour rights regardless of sex, age, race, nationality, origin, financial and social status, job position, place of residence, religious orientation, political convictions, or any other circumstances unrelated to their professional skills".³¹⁰* The same code states that *"Norilsk Nickel strictly complies with the requirements of the Labor Code of the RF [Russian Federation] prohibiting employees under the age of 18 to work in harmful and/or hazardous work conditions, and observes the norms which prohibit women from working in demanding and hazardous working conditions in the mining industry. Following provisions of international declarations and conventions, as well as the Russian*

Constitution, the Company under no circumstances permits the use of child labour at its entities".

9.1.2 Strong commitments by a logistics business

Another Russian company that has formulated its human rights policy in a Code of Ethics is Med-Aspect, a business distributing medicines. The code³¹¹ proclaims that *"[...] none of our colleagues will be an object for discrimination on the basis of age, race, origin, sex, sexual orientation, disability, political views, religion, marital status, physical or mental health. We will not accept any manifestations of insulting dignity and honour of a person, distribution or demonstration of insulting and discriminating material".* The company recognizes that *"all employees have fundamental human rights of which they should be aware, these rights should be recognized and respected and applied to all equally. No one should be punished physically, or be an object for physical, sexual, psychological and verbal persecution or violence. Forced labour, exploitation, serfdom are categorically prohibited. Med-Aspect supports and observes human rights and guarantees that in its activities it will not violate human rights either directly or indirectly".*

9.1.3 The relative lack of progress in the construction sector

As mentioned above, there are other, quite different examples, featuring a complete absence of human rights components in the commitments and codes of companies or their associations. It is hard to say to what extent the lack of attention to human rights protection is systemic in construction and other sectors of the economy and also whether this makes them prone to cases of forced labour and labour exploitation resulting from trafficking in human beings. The Charter of Builders of Russia³¹² adopted in 2007 by the Association of Builders of Russia sets ethical rules concerning: the strengthening of self-regulatory mechanisms; the development of civil society; the principles of the rule of law, honesty and fairness; respecting the rights and interests of citizens investing in construction and purchasing housing; agreeing to abide by the law and uphold a higher morality than the commercial profits in the builders' profession; mutual respect, friendship, solidarity and mutually beneficial co-operation; contributing to the high social status of the builder's profession; and taking care to

307 Business and Human Rights Resource Centre, 'Business & human rights in Eastern Europe & Central Asia – A round-up of recent developments' (April 2013), <<http://business-humanrights.org/sites/default/files/media/documents/eeca-regional-briefing-final-apr-2013.pdf>>, accessed 15 July 2014.

308 Caroline Rees, *Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned*, A project conducted by the Corporate Social Responsibility Initiative on behalf of the Special Representative of the UN Secretary-General for Business and Human Rights (Harvard Kennedy School, 2011), <<http://business-humanrights.org/sites/default/files/media/documents/ruggie/grievance-mechanism-pilots-report-harvard-csri-jun-2011.pdf>>, accessed 29 July 2014.

309 Business and Human Rights Resource Centre, 'Business & human rights in Eastern Europe & Central Asia – A round-up of recent developments' (April 2013).

310 Norilsk Nickel, *Promotion of Stakeholder Dialogue. 2012 Corporate Social Responsibility report*, pp. 84–86, <http://www.nornik.ru/_upload/NN_20082013.pdf>, accessed 29 July 2014.

311 <<http://www.med-aspect.ru/Doc/Kodeks.pdf>>, accessed 29 July 2014.

312 <<http://www.a-s-r.ru/tabid/272/Default.aspx>>, accessed 29 July 2014.

increase the reputation of builders, and taking all necessary measures in order to exclude any activities that could discredit it. This is the content of the code of an umbrella association at the federal level.

Similar examples can be found at the local level in the construction sector: for instance, in Russia's Mari-El Republic, A Code of Builders' Business Ethics³¹³ adopted in 2006 focuses on the ethical relationship between investors and other participants in the construction process and mentions the importance of refraining from any action that may discredit the profession due to low quality work or the violation of an agreement. Like the federal level code, it did not refer to the working conditions of employees.

In view of the vulnerability of workers in the construction sector and reports of the exploitation and abuse of workers, these commitments have proved inadequate.

No doubt, there is nothing wrong in adhering to these principles, but taking into account the vulnerability of employees (especially labour migrants) in the construction sector, this is not sufficient, to put it mildly. Prior to the 2014 Sochi Olympics, an NGO, Human Rights Watch, reported serious violations of labour rights in the construction sector:

“*Migrant workers said employers subjected them to a range of abuses and exploitation, including: failing to pay full wages, excessively delaying payment of wages, and in some cases failing to pay any wages at all; withholding identity documents, such as passports and work permits; failing to provide employment contracts, or failure to respect terms of a contract; and requiring excessive working hours and providing little time off*”.³¹⁴

In light of these allegations and the involvement of construction workers in building facilities for the 2018 World Cup in Russia, some serious concerns were raised by the International Trade Union Confederation and its Russian affiliates. The latter fear that new FIFA (the international governing body of association

football) laws may lead to exploitation of Russian and non-Russian (migrant) workers in the run up to the 2018 World Cup.³¹⁵

In this context a report published about the construction sector by the ILO and the European Bank for Reconstruction and Development (EBRD) in 2009 suggested that it was relatively unlikely that a new code for the construction sector would be respected, though it could become a significant step forward in the prevention of cases of forced labour. The report expressed concern that “*the codes of corporate responsibility adopted today by Russian companies are mainly focused on ‘classic’ issues of corporate governance, i.e. improving co-operation with shareholders and partners rather than relations with employees (which companies see as being addressed by other means such as collective bargaining) [...] Codes are often merely a declaration of intentions and do not contain clear commitments or compliance monitoring mechanisms*”.³¹⁶

Researchers collecting information for the ILO/EBRD report had surveyed the opinion of businesses in the construction sector about the potential usefulness of a code of conduct for the sector. “*Approximately three out of ten companies believed that adoption of the Code of Conduct would not be of any use for their company*”.³¹⁷ Almost two thirds expressed the view that it was unlikely that the construction sector would adopt a sector-wide code of conduct (rising to three quarters among small companies).

Commenting on the way that conditions in the construction sector could potentially facilitate human trafficking, the report noted that, “[*W*]hile it is true that forced labour exists mainly in the informal or unregulated part of the labour market, it can affect mainstream business through complex supply chains and the irregular employment of workers, in particular migrant workers who were trafficked. Wherever forced labour occurs, it is often accompanied by violations of other fundamental labour rights”.³¹⁸

313 <http://www.google.ru/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CBsQFjAA&url=http%3A%2F%2Fsoyuz.gsrme.ru%2Ffiles%2Fdocs%2Fbuild_codex.doc&ei=hx_YU_TBOMP-ygPe-4D4Dw&usg=AFQjCNGlPlnAsRR4Cl4fYgZ7H8N-HW7mBrQ&bvm=bv.71954034,bs.1,d.bGQ&cad=rjt>, accessed 29 July 2014.

314 Human Rights Watch, *Race to the bottom: Exploitation of migrant workers ahead of Russia's 2014 Winter Olympic Games in Sochi* (February 2013), p. 1. Human Rights Watch reported that, in several cases it had documented, employers retaliated against foreign migrant workers who protested against abuses by denouncing them to the authorities, resulting in the workers' expulsion from Russia.

315 Business and Human Rights Resource Centre, *Regional Briefing on Eastern Europe and Central Asia* (May 2014), reporting that a regulation adopted by the Duma in 2012 “*effectively allows FIFA and its partners, including Russian and multinational companies, to set working conditions outside the framework of Russian law*”, <<http://business-humanrights.org/media/documents/eeca-regional-briefing-may-2014.pdf>>, accessed 15 July 2014.

316 ILO and the European Bank for Reconstruction and Development (EBRD), *Preventing Forced Labour Exploitation and Promoting Good Labour Practices in the Russian Construction Industry* (Geneva, 2009).

317 Ibid.

318 Ibid.

9.1.4 Public reporting by businesses in the Russian Federation on their progress towards meeting their commitments

While the publication by businesses of their annual accounts or other financial information is an established tradition, reporting on non-financial matters, such as progress with respect to human rights commitments, is relatively new. The RSPP states that it has received 485 non-financial reports from 136 organizations since 2000, of which 225 focus on social issues.³¹⁹ The RSPP webpage on Sustainability Reporting lists the companies that have published non-financial information and the categories of information concerned (“environmental”, “social” “sustainable development”, “integrated” and “industry reports”).

The key non-financial issue on which businesses have reported concerns their efforts to combat corruption. In 2012 the RSPP, the Chamber of Commerce and Industry of the Russian Federation (the CCI of Russia), the All-Russian Business Association “Delovaya Rossiya” (Business Russia), and the OPORA Russia All-Russian Non-Governmental Organization of Small and Medium-sized Business signed the “Anti-Corruption Charter of Russian Business”.³²⁰

A 2009 article about non-financial reporting by Russian companies noted the relative priority given to different human rights-related issues mentioned in non-financial reports. The main topic was labour relations (mentioned in over 90 per cent of the reports assessed), while the right to a safe environment was mentioned in 30 per cent of the reports and the rights of indigenous peoples in 12 per cent. One business reported on the workers’ right to make products that were safe.³²¹ The author, Ljubov Alenicheva, observed that this approach was consistent with the reporting requirements of both the UN Global Compact and the Global Reporting Initiative’s Sustainability Reporting Framework.³²²

319 RSPP, ‘Sustainability Reporting’, <<http://www.rspp.ru/simplepage/475>>, accessed 31 July 2014.

320 The Charter (in Russian) was accessed 29 July 2014 at <<http://media.rspp.ru/document/1/8/d/8db23446b6f50286ec4faa5a85023232.pdf>>. The Charter is open to anyone to sign.

321 Ljubov Alenicheva (Любовь Аленичева), ‘Human rights in Russian companies’ non-financial reports’ (‘Права человека в нефинансовых отчетах российских компаний’), in Agency for Social Information (Агентство социальной информации), *Business and Human Rights. A Practical Guide (Бизнес и права человека: практическое пособие)* (Moscow, 2009), p. 93.

322 For details of the Global Reporting Initiative’s Sustainability Reporting Framework, see ‘Reporting Framework Overview’, <<https://www.globalreporting.org/reporting/reporting-framework-overview/Pages/default.aspx>>, accessed 31 July 2014.

Businesses that do publish reports on non-financial matters have thus confined themselves to issues which they reckon to be of direct concern and have consequently not reported in any detail on issues such as trafficking in human beings or forced labour. Nor have they yet begun reporting on initiatives to influence the behaviour (and respect of human rights) of businesses in their value chains. Some reports contain brief statements stating that “there were no cases of discrimination” or “forced and child labour is not allowed”. However, they provide no further details.³²³ Only rarely do reports acknowledge that certain human rights issues have yet to be addressed properly.

A comparison of the information available about the occurrence of forced labour and other abuses of human rights with the information available on the RSPP website³²⁴ (listing various industrial sectors and the companies operating in each sector, together with codes that they have adopted), suggests that forced labour and other human rights abuses occur relatively seldom in the sectors where the concept of corporate social responsibility has been embraced. The exceptions are the construction sector (involving housing) and food processing (mainly small enterprises), both of which employ relatively higher proportions of migrant workers than other sectors.³²⁵ In contrast, there are many sectors in which corporate social responsibility reporting does not occur (or only rarely) and there is a virtual absence of codes or other business commitment to standards concerning working conditions or labour rights, many of them sectors that rely on cheap labour (including migrant or subcontracted labour) rather than a highly qualified workforce and high technology.³²⁶ Among these there are sectors where reports have suggested that

323 See, for example, reports from the housing sector, which refer to the human rights parameters of company activities and state simply that there were no cases of discrimination, no cases of forced labour and child labour, and no cases of corruption (Новая городская инфраструктура Прикамья, Отчет о социальной и экологической ответственности 2012 [Report on social and environmental responsibility 2012], <<http://www.youblisher.com/p/675464-Otchet-o-sotsialnoy-i-ekologicheskoy-otvetstvennosti-2012-g/>>), accessed 29 July 2014).

324 RSPP, ‘Section 1: Strategies, codes, policies, standards and concepts in the field of corporate responsibility’, <<http://www.rspp.ru/simplepage/134>>, accessed 15 July 2014.

325 Among those now reporting routinely on their corporate social responsibility activities are businesses in the following sectors: oil and gas production, energy, metallurgy and mining, machinery and equipment manufacture, chemicals, oil and chemicals, perfume production, food processing, finance and insurance, construction, transport and roads.

326 These include businesses involved in: wood-processing, the cellulose and paper industry, textiles, garment and sewing, shoe production, telecommunications, the retail trade, restaurants, the hospitality sector, media, agriculture and forestry, and other service industries.

trafficking in human beings occurs,³²⁷ and where this issue ought to be a priority for businesses to take action to stop trafficking in human beings or forced labour from occurring (such as wood-processing, the garment industry, retail trade, restaurants, the hospitality sector, the construction sector, and agriculture and forestry). However, these are also sectors which have relatively less frequent contact with businesses in other regions of the world where corporate social responsibility and business commitments to respect human rights are a priority.

Other sources support this assessment. For example, the All-Russia Quality Organization, a member of the International Committee for Corporate Social Responsibility, has commented that the vast majority of small and medium-sized enterprises in Russia “have no idea of CSR. Their social responsibility is limited to the intention to observe all laws regulating social relationships”.³²⁸

9.2 Developments in some other States in the region

The human rights component in the non-financial reporting of businesses based in other post-Soviet countries is broadly similar. For example, the most popular issues mentioned in non-financial reports in Ukraine are reported to be: working conditions and human capital development, protection of the environment, philanthropy, and local community engagement, while human rights issues are mentioned only indirectly.

9.2.1 Ukraine

The concept of corporate social responsibility has received wide recognition in many post-Soviet countries. In the case of Ukraine, a study undertaken by Ievgeniia Stepanenko on corporate social responsibility in the country before the events of late 2013 and early 2014, observed that the concept (of corporate social responsibility) and measures to put it into

practice had been taken on board by some specific categories of business. She typified these as “*branches of multinational corporations that have international corporate strategies, with requirement for all countries to contribute to sustainable development; [...] companies that realize the barriers for long-term development in the market and try to transform them into opportunities through the mechanisms of CSR; mostly export-oriented companies that are interested in legitimization of their business in the West, where Corporate Social Responsibility has long been the rule [...]; [...] companies for which ‘CSR is an integral part of the PR [public relations] strategy and a source to increase reputational value’*”.³²⁹ The study points out that “*the Ukrainian government is a large-scale consumer itself, which enables it to set CSR as key criteria in selecting companies that are going to perform state contracts. In construction industry companies win tenders for large projects based on the company’s performance in [C]SR field and general sustainability*”.

Though a few corporations and companies limited their vision of what corporate social responsibility involved to compliance with legal norms (such as paying taxes), which they described as a “socially responsible behaviour”, the study identified areas of apparent progress in charitable activities, increases in attention to environmental issues, the development of partnerships and initiatives in forming a triangle of “business-government-society” (notably the development of a preliminary version of a National Strategy on Corporate Social Responsibility). Stepanenko’s study notes the issues which have been the main priorities for businesses in Ukraine to tackle, which do not include either trafficking in human beings or forced labour (or other issues specific to labour rights, with the exception of combating gender-based inequality and discrimination).³³⁰

The study, based on Ukrainian sources,³³¹ provides examples of information technology (IT) companies that are actively involved in dealing with issues in the education system and building partnerships with

327 See: ILO, *Forced Labour in the Russian Federation Today. Irregular migration and trafficking in human beings*, E. Tyuryukanova (2005); Prosecutor General’s Office of Russia, *Combating Trafficking in Human Beings in the Russian Federation*. Scientific Report by the Academy of the Prosecutor’s General Office of Russia (2009), <http://lib.znate.ru/pars_docs/refs/62/61646/61646.pdf>, accessed 1 August 2014; and Civic Chamber of the Russian Federation and Presidential Council for Civil Society and Human Rights, ‘XXI Century Slavery – Moscow’, Recording of joint public hearing on 19 November 2012, <<http://top.oprf.ru/news/9577.html>>, accessed on 1 August 2014.

328 All-Russia Quality Organization (Всероссийская организация качества), ‘Corporate Social Responsibility’, <<http://www.ksovok.com/text.php>>, accessed 15 July 2014.

329 Ievgeniia Stepanenko, *Corporate Social Responsibility in Ukraine* (Stockholm, 2012), <<http://www.diva-portal.org/smash/get/diva2:552583/FULLTEXT01.pdf>>, accessed 15 July 2014. For more details, see CSR Ukraine Community, <<http://www.svb.org.ua/reviews/tendentsii-cto-dvizhet-cto-tormozit-kso-v-ukraine>>.

330 Ibid.: The study notes that the “*Main CSR challenges for Ukraine are: raising public awareness on CSR concept and its principles, combating gender-based inequality, discrimination, fighting HIV/AIDS, tuberculosis, corruption, protecting biodiversity and forest cover, combating soil erosion and water pollution, increasing energy efficiency*” (Ukrainian companies use three times as much energy to produce the same output as companies in the European Union).

331 Such as Корпоративная социальная ответственность, Украина, <<http://sostav.ua/news/2012/04/23/9/48706/>>, accessed 29 July 2014.

universities through a trade association, “IT-Ukraine”, and co-operation between a Ukrainian company, System Capital Management, and the British Council to develop new types of professional standards in their key industries: mining and metallurgy, the energy sector, and journalism.

More than 30 universities have had courses on corporate social responsibility as one of the options for a Bachelor level degree in the field of Economics and the Management of Organizations. In September 2013, the Ukrainian Global Compact Network conducted a business and human rights coaching course for companies in Kyiv on how to implement corporate social responsibility in a manner that respects human rights and is in line with the UN *Guiding Principles*. The objectives were to raise awareness about the relevance of human rights for companies, specific corporate risks associated with human rights and instruments for assessing impacts and developing strategy.

The Centre for CSR Development where 21 Ukrainian companies are members became a national partner of CSR Europe (the European network of CSR-oriented organizations).³³² The Ukrainian company, DTEK, was the first member from a CIS State to join CSR Europe (a European network for corporate social responsibility). The Centre for CSR Development established a partnership with the World Business Council for Sustainable Development (based in Geneva, Switzerland), which allowed it to represent the corporate social responsibility activities of Ukrainian businesses at the international level.

Metinvest, a member of the UN Global Compact since 2010, was recognized by Ukrainian sources as a socially responsible company that invests actively in the implementation of social, charitable and corporate programmes in the country. Its Code of Ethics³³³

states that “*Metinvest agents, consultants, contractors and suppliers are encouraged to follow similar principles and policies*”. Later on, it specifies that “*To the maximum extent possible, supervisors and managers are also to make sure their contractors, agents, consultants, suppliers and other business partners are those who follow the requirements similar to those of this Code*”. It does not allow “*the use of abusive, discriminatory, degrading, or aggressive comments and jokes referencing physical, racial, ethnic, sexual, language, religion, political and other differences and peculiarities*”. Issues of sexual harassment are addressed in the provision forbidding employees from making “*explicit sexual hints, jokes, gestures, or [...] the use of various kinds of ambiguous touches*”, as well as the distribution of “*pictures, photos and other materials of derogatory or discriminatory character, or which insult the honour and dignity of an individual*”. The code prohibits discrimination based on “*any origin, social and property status, race and nationality, sex, language, political views, religion, type of employment, place of residence*” as well as any other form of discrimination and, in general, any violations of human rights.

Carlsberg Ukraine was a case study in Stepanenko’s study. It is reported to have policies prohibiting any form of forced labour, including work to pay off debt, as well as payment for professional training, slave labour and human trafficking. It banned child labour and stresses that it does not allow this practice under any circumstances.³³⁴ A policy on labour and human rights is intended to protect Carlsberg Ukraine employees from any physical, verbal, sexual or psychological harassment, threats or violence in the workplace from both colleagues and managers. The company was reported to comply with the norms of working hours and overtime in accordance with the current legislation of Ukraine, and to guarantee rest, provide free health insurance and other rights.

A business that is part of the Carlsberg Group, Slavutich, was reported by the US-Ukraine Business Council to have addressed issues concerning possible exploitation by other businesses in its supply chain by adopting a code of conduct for its suppliers.³³⁵ This stipulates several compulsory requirements that must be met by its partners, including labour and human rights (requirements of working conditions), occu

332 See CSR Europe, <<http://www.csr-ukraine.org/?lang=en>>, accessed 29 July 2014; and also Kontrakti.ua, Гвардія. Рейтинг соціально відповідальних компаній України – 2012, <<http://companies.kontrakty.ua/rankings/207-gvardiya-rejting-socialno-otvetstvennykh-kompanijukrainy-2012.html>>, accessed 29 July 2014. The list of Ukrainian businesses reported by this survey to be implementing corporate social responsibility in a positive way includes DTEK (with a focus on healthcare, education, culture and sports; and the development of the business environment); System Capital Management Group (with a focus on development of staff, safety and health of employees, the environment, the development of the host-communities); Arcelor Mittal Krivoy Rog; Kyivstar, a signatory to the UN Global Compact since 2006 (focussing on sustainable development of economic, environmental and social performance); Carlsberg Ukraine and some others.

333 Adopted in 2013 and available in English at <http://www.metinvestholding.com/upload/metinvest/report/27/en_Code_of_Ethics_RUS.pdf>, accessed 29 July 2014, and in Russian at <http://www.metinvestholding.com/upload/metinvest/Code_of_Ethics_RUS.pdf>.

334 Трудові Права Та Права Людини, <http://en.carlsbergukraine.com/images/resources/labour%20rights_ua_preview.pdf>, accessed 29 July 2014.

335 US-Ukraine Business Council, ‘Slavutich Adopts Code of Conduct for Suppliers’, 30 June 2011, <<http://www.usubc.org/site/corporate-social-responsibility-csr/corporate-social-responsibility-csr-150>>, accessed 29 July 2014.

pational health and safety, environment, business ethics and business transparency. Another compulsory requirement is that suppliers should not participate in any form of corruption, racketeering, theft or any other means of undue influence on officials and/or the courts. One of the key points of the code also stipulates that the supplier's business practices comply with Ukrainian legislation, especially with regard to meeting applicable tax laws.

Another brewery, the Obolon Corporation, has published five annual sustainability reports and adopted a Code of Ethics in 2012, which includes policies on human rights and gender equality.³³⁶ Obolon's gender diversity plan provided for specific actions to ensure equal opportunities for both male and female employees.

A business operating in the communications sector, MTS-Ukraine, adopted a Code of Ethics and Business Behaviour³³⁷ guaranteeing that staff will not face any discrimination with regard to employment, skill improvement, promotion, disciplinary actions, etc. It also provides protection against discriminatory behaviour, insulting or scornful behaviour and other forms of oppression. It guarantees safe working conditions and observance of all state norms in employer-employee relations. The code reiterates a complete prohibition on child labour and forced labour.

While some business codes in Ukraine mention bans on forced labour, no information appears to be available about the systems being put into place to confirm that such bans are observed (and, more widely, little information is published by businesses about the measures taken to implement their commitments). As in many countries, the underlying assumption by business seems to be that "it doesn't happen here, but only abroad", so strong implementation techniques appear not to be considered necessary.

The data collected on corporate social responsibility issues and codes of conduct in Ukraine refer to the situation prior to the dramatic events from December 2013 onwards, which have evidently had a substantial impact on business activities in the affected regions. In this context it is most relevant that the UN *Guiding Principles* point out: "Some of the worst human rights abuses involving business occur amid conflict over the

control of territory, resources or a Government itself"³³⁸ and "Some operating environments, such as conflict-affected areas, may increase the risks of enterprises being complicit in gross human rights abuses committed by other actors (security forces, for example)".³³⁹ It is encouraging that in this particular situation the Centre for CSR Development convened representatives of some 60 companies operating in Ukraine in June 2014 to consider the implications for business of operating in areas affected by armed conflict. They adopted 33 recommendations, one of which addresses issues of working in hazardous conditions, but which are not otherwise relevant to forced labour or trafficking in human beings.³⁴⁰

9.2.2 Belarus

Information available on progress achieved by Belarus in promoting corporate social responsibility in general, and its human rights component in particular, is rather limited.³⁴¹ The Charter of Corporate and Business Ethics³⁴² adopted in 2004 by four organizations (the Belarus Confederation of Industrialists and Entrepreneurs [employers], the Belarus Scientific-Industrial Association, the Belarus Union of Employers and the Union of Non-commercial Organizations) considers that the development of an efficient market economy requires a society based on the rule of law and the creation of a stable system of corporate relations based on equality and fair competition.³⁴³ The Charter proclaims adherence to generally recognized moral rules and norms and features a voluntary obligation to abide by corporate ethics in business and society-related activities: honesty and fairness, equality of various forms of property (state owned or privately owned),

336 Obolon Public Stock Corporation, *On the Way to Sustainable Development*. Sustainability Report 2013 (Kyiv, 2013); see also, <<http://obolon.ua/eng/corporate-responsibility/staff/>>, accessed 29 July 2014.

337 <http://company.mts.com.ua/eng/code_ethic_business.php>, accessed 29 July 2014.

338 Commentary on Guiding Principle 7. See UN Human Rights Council, *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31 (21 March 2011).

339 Commentary on Guiding Principle 23.

340 *33 Recommendations for Social Responsibility in Conflict Times*, developed by participants of the open air brainstorming discussion "CSR in times of conflict" initiated by the Centre for CSR Development, <<http://csr-ukraine.org/en/news/social-responsibility-in-conflict-times-businesses-look-for-joint-solutions/>>, accessed 29 July 2014.

341 Recent general information is available in an article comparing approaches to corporate social responsibility in Belarus and neighbouring Lithuania. See, Danuta Diskienė and Jovita Seiliūtė, 'Corporate social responsibility: comparative analysis of the state of play in Lithuania and Belarus', in *Ekonomika* (2012), Vol. 91(3), <<http://www.vu.lt/leidyba/dokumentai/zurnalai/EKONOMIKA/Ekonomika%2091%203/129-146.pdf>>, accessed 30 July 2014. The authors report that businesses in Belarus told them that the media in their country provided them with little information about the issue.

342 <<http://www.br.minsk.by/index.php?article=21190>>, accessed 29 July 2014.

343 *The Need for Ethics* (2004), <<http://www.br.minsk.by/index.php?article=21190>>, accessed 29 July 2014.

avoiding formal procedures inconsistent with ethical norms, agreeing not to commit actions that could increase social tension, contributing to the development of social partnership, maintaining a business' reputation, encouraging parties to find ways to solve conflicts of interest, environmental problems and social conflicts, while also agreeing to provide assistance to colleagues in need, etc.

A more recent study in Belarus provides updated information.³⁴⁴ The study is based on research in 2008 and 2011 about the main forms taken by corporate social responsibility in Belarus, the motives of businesses that make voluntary commitments, and regional specificities, as well as the potential for further development. The authors noted that corporate social responsibility was still perceived by businesses primarily to involve charity, voluntary contributions to development, compliance with national legislation, the promotion of staff policies and the protection of the environment. Nevertheless, the study noted a positive trend, with more and more companies reporting on activities related to corporate social responsibility.

9.2.3 A common approach in the South Caucasus (Armenia, Azerbaijan and Georgia)

Much more specific in terms of the prevention of forced labour and human trafficking are the codes of conduct prepared by national employers' organizations in the three South Caucasus countries under the terms of two regional projects co-ordinated by the ILO (in which the OSCE was a partner).³⁴⁵ The projects that ended in 2011 were designed to contribute to the progressive reduction of trafficking in human beings in these three countries through capacity building and empowerment.

The ILO provided technical assistance for developing the guiding principles for codes to be adopted by employers' organizations in this region, against trafficking in human beings and forced labour. Together with employers' organizations, the ILO organized a Regional Workshop for Employers' Organizations

from the South Caucasus and Destination Countries on Strategies against Human Trafficking and Forced Labour. This was followed up by a series of workshops in each country. The employers' codes of conduct to prevent forced labour and human trafficking contain some general provisions common to each country, while some are specific to each national context. The provisions include an introduction stating that the code, based on the national legislation and international instruments, is not a substitute for national legislation, but a voluntary instrument to promote private initiatives to complement and support compliance with the law. The codes are also described as a management tool to help employers play an effective role in preventing forced labour and trafficking in their operations. The codes provide guiding principles, such as compliance with the law, prevention of coercion in employment (freedom of employment, termination of employment, policy excluding any threat or violence, harassment and intimidation, coercion in wage payment, including debt bondage). They address trafficking in human beings and labour migration (migration for employment, non-discriminative recruitment of migrant workers), and are intended to prevent document retention and other abuses (for example, the codes clearly state that no fee will be charged for the recruitment to the workers directly or indirectly). The codes oblige employers belonging to the employers' organization adopting a code to sign a written contract with the employees in a language that they understand and with a description of their labour rights, including wages, working hours, and conditions of termination). The implementation of the codes is intended to be ensured by the provisions being integrated into core management policy and practice among the companies that agree to it, along with widespread awareness of the codes' provisions, relevant training on their application, and complaint and grievances procedures.

The Georgian Employers' and Business Association (GEA) adopted a Code of Conduct on Prevention of Trafficking in Human Beings and Forced Labour in 2010.³⁴⁶ The code was developed by the GEA in co-operation with the ILO and employers' organizations in Georgia. It was reported to be open for signature by any interested employers and businesses, but no information appears to have been published to indicate how many employers have signed it or about its impact on workers.

344 V. Symkhovich, E. Danilova, S. Romanova, *Social Responsibility of Contemporary Belarus Business* (Социальная ответственность современного белорусского бизнеса) (Minsk, 2012).

345 The two projects were entitled "Development of a comprehensive anti-trafficking response in Armenia, Azerbaijan and Georgia" (2007–2009) and "Strengthening of comprehensive anti-trafficking responses in Armenia, Azerbaijan, and Georgia" (2010–2011). Both were joint projects undertaken by the ILO with other international organizations (the first with the OSCE and the International Centre for Migration Policy Development (ICMPD) and the second with OSCE, ICMPD and IOM). General information about the first project is available at <http://www.ilo.org/sapfi/Projects/WCMS_082035/lang-en/index.htm>, accessed 30 July 2014.

346 ILO, 'Employers' Code of Conduct on Trafficking in Human Beings and Forced Labour signed in Georgia', 7 December 2010, <<http://www.ilo.org/public/english/region/eurpro/moscow/news/2010/1207.htm>>, accessed 30 July 2014.

In Armenia, the employers' code of conduct was signed in 2011.³⁴⁷ It was prepared by the Republican Union of Employers of Armenia in consultation with the ILO under the Southern Caucasus regional project. It requires labour contracts to be put in writing. The code was signed by the Union of Employers and 15 private employers. The same Union of Employers adopted an Action Plan for 2013 that contains a chapter on migration and trafficking.³⁴⁸ The Action Plan is a part of the Union of Employers' "Fight against Human Exploitation and Trafficking" project, running from 2013 to 2015. The project is reported to include provisions to address labour migration issues and to improve aspects of the way that private employment agencies function.

The regional project was intended to lead to the adoption of a code of conduct for the National Confederation of Entrepreneurs' (Employers) Organizations of the Azerbaijan Republic (AEC), and involved workshops in Baku and elsewhere. By the time the project ended in 2011, discussions about a draft were continuing. While the project was ongoing, international organizations, including the ILO, had expressed concern about the situation of 700 migrant workers from countries in South East Europe who were alleged to have been subjected to forced labour on construction sites in Azerbaijan.³⁴⁹

9.2.4 Moldova

Substantial numbers of Moldovans who have migrated abroad in search of employment are reported to have been trafficked.³⁵⁰ The UN Global Compact was launched in Moldova in 2006 and by 2010 was reported by the UNDP to have 57 member organizations in the country. However, business activities within Moldova have focused on ending child labour, rather than

promoting codes or commitments by Moldovan-based businesses that might reduce the number of trafficking cases. This appears to be due to a perception that the recruitment of Moldovans who are exploited abroad is done by criminals, rather than legitimate businesses such as registered private recruitment agencies.

With respect to child labour, the national employers' organization, the National Federation of Employers in Agriculture and Food Industry of the Republic of Moldova (FNPAIA), reportedly took the initiative to ensure that all the businesses represented in the association, which could potentially be employing children, understood what the requirements of the country's laws were, as well as good practice at international level. With ILO support, a Code of Conduct for Employers on the Elimination of the Worst Forms of Child Labour in Agriculture and the Food Industry was developed and adopted in 2007.³⁵¹ The Code committed the FNPAIA to setting up a Special Committee with a Monitoring Team that was to consist of representatives from each FNPAIA member-organization. The Committee was to be responsible for monitoring on how each member organization complies with this Code, by means of spot checks carried out by the Monitoring Team. The Code also contained provisions about the remedial measures to be taken by any member organization that was found to be employing children in circumstances that contravened the Code.³⁵² Here then is an example of a commitment to respect specified standards, backed up by a monitoring system and a further commitment to remedial measures which are consistent with internationally-recognized human rights (avoiding doing harm to the person who has been exploited and making the best interests of the child a primary consideration).

9.2.5 A focus on children in Central Asia: Kazakhstan and Uzbekistan

Like other countries in Central Asia, Kazakhstan has faced criticism over the involvement of children in agricultural work, so the issue of child labour has received more attention than forced labour or

347 ILO, 'Employers' Code of Conduct signed in Armenia', 3 February 2011, <<http://www.ilo.org/public/english/region/eurpro/moscow/news/2011/0203.htm>>, accessed 30 July 2014.

348 The Republican Union of Employers of Armenia (RUEA), *Action Plan 2013* (December 2012), <http://www.unece.org/fileadmin/DAM/ceci/icp/Review/Studies/RUEA_Action_Plan_2013_English.pdf>, accessed 30 July 2014.

349 See *Report of the [ILO] Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 100th Session, 2011, page 219. The Report contained details of the allegations concerning the workers who had been recruited elsewhere to work in Azerbaijan. In June 2014, 13 people were reportedly charged in Bosnia and Herzegovina with offences related to this case (see 'Žrtve iz BiH vodili u Azerbejdžan, eksploatisali i držali u nečovječnim uvjetima', 27 June 2014, <<http://www.klix.ba/vijesti/bih/zrtve-iz-bih-vodili-u-azerbejdzan-eksploatisali-i-drzali-u-necovjecnim-uvjetima/140627009>>, accessed 6 August 2014).

350 See OSCE OSR CTHB, *Report by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to the Republic of Moldova, 31 October – 3 November 2011*, SEC.GAL/147/12 (19 July 2012).

351 The Code is available at: <http://www.ilo.org/public/english/dialogue/actemp/downloads/projects/code_conduct_en.pdf>, accessed 5 August 2014.

352 Part 6 of the Code on 'Implementation and Monitoring' stipulates that, "Should the Monitoring Team find out that an employer uses the worst forms of child labour, it will require that such employer undertakes immediate measures to rectify the situation based on the best interest of the child. The Monitoring Team will not demand the employer to immediately remove the child without considering the future of the child. The employer will find a satisfactory solution, taking into account child's age, social situation, education. All measures will be aimed at improving, not worsening the situation of the child".

trafficking in human beings.³⁵³ A framework agreement was signed by the Government of Kazakhstan, employers' organizations and workers' organizations for the period 2009 to 2011, along with sectoral and regional commitments to end child labour. Kazakhstan has also had a technical co-operation agreement with the ILO's International Programme on the Elimination of Child Labour (IPEC).³⁵⁴ In August 2012, the Ministry of Education and Science reportedly issued an order allowing children of migrant workers, including seasonal workers, to attend educational institutions with the same rights as citizens of Kazakhstan. This provision should contribute to preventing children of migrant workers from being subjected to forced labour.

As in other countries, the ILO has supported the introduction of a Child Labour Monitoring System (CLMS) to identify child labourers and children at risk of being recruited into child labour, to assess the risks and hazards involved, to refer children to relevant services and viable alternatives, to check that children in inappropriate work are withdrawn from it and to ensure that the root causes of children's involvement in child labour are identified and addressed.

As in Moldova, employers in Kazakhstan have played a major role, for example in action plans to address child labour in the vegetable and tobacco growing sectors in the Almaty region. A consultation among employers and business organizations (the Confederation of Kazakhstan Employers and the Kazakhstan Goods Manufacturers and Exporters Union), supported by the Asian-American Partnership, resulted in the publication of a reference guide for employers on how to respond to cases of child labour.³⁵⁵

Chapter 3 outlined some of the challenges that Uzbekistan has faced as a result of reports that children were being forced to harvest cotton and mentioned the authorities' co-operation with the ILO in monitoring cases of child labour during the 2013 cotton harvest. A

three-year programme of technical co-operation that was signed by the ILO and the Uzbek authorities in April 2014, as part of the ILO's Decent Work Country Programme (DWCP), foresees that, "*In cooperation with employers' organizations, roundtables will be convened to increase awareness of employers on forced labour*".³⁵⁶

9.3 Concluding observations related to this region

Apart from managing their core business and making a profit (or doing so without making a loss), the priorities for businesses concerning their social responsibilities are likely to be determined by their owners (often shareholders, but sometimes the government), the consumers or other businesses that buy from them, by government policies and, to some extent, by broader public opinion. Consequently, it is no surprise, for example, that implementing anti-corruption measures is reported to be a greater priority for businesses based in the Russian Federation than combating trafficking in human beings. Similarly, it is no surprise that the business sectors in post-Soviet States that have embraced the concept of "business and human rights", as well as corporate social responsibility, tend to be high technology ones that do not depend on cheap labour, along with businesses that are routinely in contact with others in North America or Western Europe.

Both governments and intergovernmental organizations have a responsibility to change the climate in the sectors of their economies where companies have been slow to understand their responsibility to respect human rights. In particular, they can encourage businesses in sectors where abuses of labour rights are reported with the greatest frequency to implement pro-active measures to stop such abuse, notably in the case of trafficking in human beings and forced labour.

Numerous relevant recommendations are contained in publications by international organizations cited in this paper. For example, a UNDP report recommends that, "*For the problem of forced labour companies must work out verification procedures through cooperation with trade unions and non-governmental organizations which will provide a comprehensive overview of the hiring procedures and working conditions in specific organizations*".³⁵⁷ The same report comments that

353 On reports of both forced and child labour, and subsequent remedial measures, see: Human Rights Watch, "*Hellish Work*". *Exploitation of Migrant Tobacco Workers in Kazakhstan* (2010); and Verité, *Farm Level Assessment of Adherence to PMI GAP [Good Agriculture Practices] Standards in Kazakhstan* (April 2011), Report to Philip Morris International, <http://www.verite.org/sites/default/files/images/Verite_Report_for_PMI_on_Kazakhstan-2_May_2011.pdf>.

354 See ILO-IPEC Contributions to Eliminate the Worst Forms of Child Labour in Kazakhstan, 2005 – 2013, ILO IPEC (Almaty, 2013), and (US) Department of Labor, 'Social Programs to Eliminate or Prevent the Worst Forms of Child Labor', <<http://www.dol.gov/ilab/reports/child-labor/kazakhstan.htm#programs>>, accessed 29 July 2014.

355 *Quick Reference Guide for Employers*. How employers can eliminate child labour, <<http://www.krrk.kz/broshuradt.html>>, accessed 29 July 2014.

356 ILO, *Decent Work Country Programme of the Republic of Uzbekistan for 2014–2016* (April 2014), <http://www.ilo.org/public/english/region/eurpro/moscow/countries/files/dwcp_uzb_2014_2016_en.pdf>, accessed 30 July 2014.

357 Agency for Social Development, *Russian Business and the UN Global Compact. Social Responsibility in Practice* (2007), p. 14.

*“international organizations believe that the principle of eliminating child and forced labour should be included among the corporate principles that are used in all contracts with partners and subcontractors. This principle should be used in monitoring the labour practices of partners and suppliers.”*³⁵⁸

As Russia was one of the five co-sponsors of the June 2011 UN Human Rights Council resolution endorsing the *Guiding Principles on Business and Human Rights*³⁵⁹ (and had co-sponsored the UN Human Rights Council resolution authorizing the mandate of the UN Secretary-General’s Special Representative on business and human rights), further steps to be taken to promote business policies to respect human rights would be natural. The scheduled visit to Russia of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises (postponed in 2013), whose tasks include promoting the dissemination and implementation of the *Guiding Principles*, could provide a good opportunity and also contribute to the preparation of a national action plan for the promotion and implementation of the *Guiding Principles on Business and Human Rights*. The same recommendations could be relevant to other post-Soviet countries, notably those participating in the UN Global Compact. More specific recommendations addressing the elimination of forced labour and human trafficking were adopted by all OSCE participating States, including the CIS Member States, in 2013 (in addition to the various decisions of the OSCE Ministerial Council, comprising the political commitments to combat trafficking in human beings), recognizing the private sector as a crucial partner in efforts to eliminate trafficking in persons and all forms of modern-day slavery.

358 Ibid.

359 Along with Argentina, India, Nigeria and Norway.

CHAPTER 10: LESSONS LEARNED AND DEVELOPING GOOD PRACTICE

As the previous four chapters demonstrate, ample advice is available for businesses which want to ensure that human trafficking does not occur in their workplace or value chains. Indeed, the current challenge to businesses in OSCE participating States that want to carry out human rights due diligence or to guarantee that human trafficking is not occurring is that the amount of advice available is mesmerizing. At the same time, there has been virulent criticism of a strategy that relies on auditors to check that voluntary codes are being respected. This was accentuated by the tragic loss of life reported in several South Asian factories in 2012 and 2013, even though no evidence was made public to suggest that the garment workers who were killed had been trafficked.

10.1 The main challenge to business codes: compliance and verification

Commenting soon after the Rana Plaza disaster in 2013, a representative of an NGO specializing in corporate social responsibility summarized the challenges to the conventional approach being taken by Western retailers in ten points:

1. **“Codes of conduct are not working.**
2. **Brands cannot hide behind their sourcing companies.**
3. **Brands cannot hide behind industry initiatives.**
4. **Providing poor people with increased incomes is no justification for abysmal labour practices.**
5. **The tragedy cannot be separated from corruption.**
6. **Workers are an important part of the solution.**
7. **There is a major disconnect between compliance departments and the procurement process.**
8. **Responsible brands will tell us why they are in Bangladesh.**
9. **Trade rules need to favour developing countries but also protect human rights.**
10. **We are now at a turning point.”**³⁶⁰

The author thought the “turning point” should be a “wake up call” for businesses and consumers alike that

pay low prices for imported garments. This, he argued, required a public explanation by businesses on how they could market clothes for such low prices (without the prices intrinsically resulting in abuse).

The difficulty for businesses which now want to make a commitment to respect human rights (or specifically to prevent the use of forced labour) is that the main compliance method has become discredited, but has not yet been replaced by anything that is manifestly more effective.

Nevertheless, some lessons are clear. It is important that the procedures used to exercise due diligence and to verify compliance should be adapted to the national context and to the circumstances of businesses operating at quite different scales—both multinationals and small and medium-size business enterprises. This does not imply that businesses in certain countries can claim that the notion of independent monitoring or inspection is alien to their culture, but rather that compliance procedures do not have to be based on models developed by multinational businesses or organizations based in North America and Western Europe (though so far independent models for ensuring compliance have not emerged in other regions). Nor does verification have to be carried out by companies based in these regions of the world.

There are numerous challenges, however, concerning compliance. They concern the cost, the wide variety of codes and methods used for checking on compliance and the risk that the audits or other checks that are used do not reveal meaningful information.

Some of the systems for checking compliance described in chapter 7 are relatively costly. This means that prominent brands, which regard the possibility of one of their suppliers being denounced for trafficking or other workplace abuse as a high risk to their business, are willing to pay relatively large amounts of money to ensure that their suppliers respect the standards set in a code, as this is a rational way of minimizing risk and maximizing profits. However, expensive systems for checking on compliance are unlikely to be regarded as worth paying for by businesses which do not perceive the risks to be so serious.

In such cases, independent verification can be organized at the national or local level and there are likely

³⁶⁰ Richard Welford, ‘Ten lessons from the Bangladesh tragedy’, *CSR Asia Weekly*, <<http://csr-asia.com/csr-asia-weekly-news-detail.php?id=12251>>, accessed 8 July 2014.

to be advantages to involving workers' representatives (particularly representatives of workers who may have been trafficked or subjected to forced labour, such as migrants) in agreeing an appropriate process for verifying compliance.

One complication for an exporting business (mentioned above in section 7.2.4) is that the different companies it supplies in other countries probably all use different codes and compliance procedures. This results in extra expenses for the exporter in meeting different requirements. So, it seems sensible for organizations representing businesses and workers in a particular country to discuss the pros and cons of different verification methods and to press foreign companies to agree to a single standard for use in their country.

The key principles are that the organization or individuals checking compliance should be competent, independent and willing to learn from the substantial experience already acquired in other parts of the world.

Being "independent" does not necessarily mean that those checking for compliance have to come from an entirely separate organization or specialized company (though some multi-stakeholder initiatives consider external verification essential): even if they do, they still have to be paid for their services and on this basis, like conventional auditors, they too come under criticism for not being fully independent. However, it does mean that the arrangements surrounding their remuneration have to ensure (and be seen to ensure) their complete independence, so that there is no incentive for them to hide or understate any problems they come across. In some cases there are distinct advantages to doing the checking in-house: not just because it is cheaper, but also because those involved are more likely to be familiar with where risks are greatest and because there is less danger of confidential information being leaked. However, as the *Guiding Principles* point out, "*Human rights due diligence [...] will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations*" (Principle 17).

10.2 The importance of focusing on the rights of "the most vulnerable workers"

Whatever the findings of individual audits are, and whatever information about the implementation of a code is published, it requires an evaluation and impact assessment to know with greater certainty whether the measures announced to stop human trafficking

or other abuse have been effective. While individual businesses receive reports from their social auditors or other monitors, they do not usually publish any observations about the effectiveness of the methods used. In contrast, some multi-stakeholder initiatives have published assessments of the overall impact of their efforts to uphold labour standards.

The example of the Ethical Trading Initiative (ETI)

The ETI (described in 7.2.4 above) was the subject of an impact assessment by academics between 2003 and 2006, involving case studies on 25 supplier sites and interviews with 418 workers in manufacture and agriculture in five countries. As well as observing that "*ETI members' codes cover at least 20,000 suppliers and many workers have benefited directly, particularly on health and safety issues [with positive changes noted on 20 of the 25 sites that were visited]*",³⁶¹ it noted that "*It has been harder to make inroads into some areas of the Base Code, such as freedom of association and discrimination, and to reach certain groups of workers*". The same assessment noted that, "*In general, permanent and regular workers benefited most from codes of labour practice, with migrant and contract workers experiencing little change or having poorer conditions*".

As migrant and contract workers are precisely the workers who are most likely to have been trafficked, this implies that codes of labour practice have been less effective in confronting such abuse than in overcoming other types of workplace abuse. A follow-up publication argued that much more focus was "needed on addressing the rights of the most vulnerable workers" and that, if sustainable benefits were to reach all workers involved in producing goods for export, a suitable remedy would be for businesses which buy from sources around the globe to "better integrate the principles of ethical sourcing into their own business practices".³⁶² This would include linking code compliance to "buyer incentive systems, enhancing supplier relations, ordering and pricing systems". It also recommended that, "*Social auditors need to be much more vigilant about including casual migrant and contract workers in monitoring, and engaging with trade unions and NGOs who are aware of the use of such workers*".

361 S. Barrientos and S. Smith, "Key findings: the scope of labour codes and how workers benefit", *The ETI code of labour practice: Do workers really benefit?* (Institute of Development Studies, University of Sussex, 2006), <<http://www.ethicaltrade.org/sites/default/files/resources/Impact%20assessment%20summary.pdf>>, accessed 1 July 2014.

362 *Corporate Codes of Labour Practice. Can the Most Vulnerable Workers Benefit?* Institute of Development Studies, IDS Policy Briefing, Issue 35 (April 2007).

10.3 Ensuring advice is available in the right language and in appropriate form

Information about the methods that businesses can use in order to ensure that internationally recognized human rights standards are respected in their workplaces needs to be available in a form and language which is relevant and accessible to businesses in OSCE participating States, including recruitment and employment agencies and a wide range of other businesses. This is particularly important in countries which have relatively little experience of corporate social responsibility beyond traditional philanthropy, let alone putting stronger measures into place. Relevant information has sometimes been made available by international organizations (for example, the OSCE organized training in corporate social responsibility for Ukrainian businesses during 2009). However, more focused information is available from specialist institutions. For example, in 2009 the Danish Institute for Human Rights' Human Rights and Business Project published a special handbook for Chinese companies, in Standard Chinese as well as English. Its starting point is that, "*The basic norms of Corporate Social Responsibility [...] have prevailed in China for 2,500 years*".³⁶³ It refers to both international standards and initiatives which are essentially Chinese, basing its approach to convince Chinese businesses with the argument that corporate social responsibility is not a purely foreign invention.

363 M. H. Jensen and J. Yeh, *Towards Global Citizenship – A Handbook for Chinese Companies Promoting Global Standards and Rights*, Human Rights and Business Project (Copenhagen, Danish Institute for Human Rights, 2009), <<http://humanrightsbusiness.org>>, accessed 2 February 2010 but no longer available in 2014. In 2011, a report entitled *Human Rights and the Corporation. The development of the Human Rights Compliance Assessment* was made available in Kyrgyz at <http://www.newtactics.org/sites/newtactics.org/files/Human%20rights%20and%20the%20Corporations_in%20Kyrgyz.pdf>, accessed 14 June 2011, but this was no longer available in 2014.

CHAPTER 11: INITIATIVES BY INTERNATIONAL ORGANIZATIONS CONCERNING PROCUREMENT AND STAFF PERSONAL PURCHASING DECISIONS

11.1 International Organizations

In the past decade intergovernmental organizations responsible for the deployment of international forces have developed codes of conduct intended to stop sexual abuse and sexual exploitation, aimed at all the forces they deploy (supplementing measures taken by national governments with respect to their contingents serving abroad). However, as noted above (6.7) with respect to national armed forces, the measures that are needed to discourage demand that fosters exploitation should go beyond a focus on sexual exploitation and should discourage other forms of exploitation as well, in particular influencing procurement policies and any arrangements with sub-contractors who provide workers. The relevant organizations should take responsibility for ensuring compliance with rules and regulations, as should managers and commanders.³⁶⁴

11.2 United Nations Codes

Both the UN and regional intergovernmental organizations impose a series of obligations on their staff, which are designed to prevent their involvement in human trafficking or sexual exploitation. However, the standards for staff in cases of economic exploitation (e.g., with respect to the employment of domestic workers) are less well defined. When the issue of child labour was in the spotlight during the 1990s, UN organizations such as UNICEF adopted specific standards concerning their procurement policies.

11.2.1 UN Procurement

After several years of discussion, the UN adopted a UN-system-wide Supplier Code of Conduct³⁶⁵ in 2013 and issued guidelines for use at country level.³⁶⁶ The Code of Conduct addresses issues of human rights,

labour, environment and anti-corruption. It makes no reference to trafficking in persons, but point 5 states that “*The UN expects its suppliers to prohibit forced or compulsory labour in all its forms*”. The monitoring process is concerned mainly with value for money rather than monitoring whether this prohibition is respected.

11.2.2 United Nations Staff

The staff of the UN are required to respect the terms of various codes of conduct issued by their organizations. Over the past decade, the UN’s main focus has been on curtailing cases of sexual exploitation and sexual abuse by UN staff, which were reported with alarming frequency, especially in some African countries where UN peacekeepers were deployed.

The general *Standards of conduct for the international civil service*³⁶⁷ are clear in stating that, “*The private life of international civil servants is their own concern and organizations should not intrude upon it*” (paragraph 38), while “*The privileges and immunities that international civil servants enjoy are conferred upon them solely in the interests of the organizations. They do not exempt international civil servants from observing local laws [...]*” (paragraph 39). However, in 2003 the UN Secretary-General issued a bulletin entitled *Special Measures for Protection from Sexual Exploitation and Sexual Abuse*.³⁶⁸ This was designed to prevent the involvement of UN peacekeepers and staff in cases of sexual abuse or sexual exploitation, rather than in human trafficking in general. In the absence of a definition of the term “sexual exploitation” in international law, the bulletin specified that,

“*For the purposes of the present bulletin, the term ‘sexual exploitation’ means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Similarly, the term ‘sexual abuse’ means the actual or*

³⁶⁴ UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking. Commentary* (New York and Geneva, 2010). Guideline 10 states that “*States, intergovernmental and non-governmental organizations are responsible for the actions of those working under their authority and are therefore under an obligation to take effective measures to prevent their nationals and employees from engaging in trafficking and related exploitation*”.

³⁶⁵ The Code of Conduct is available at <http://www.un.org/depts/ptd/pdf/conduct_english.pdf>, accessed 4 July 2014.

³⁶⁶ These were accessed (in English) on 4 July 2014 at <https://www.ungm.org/Areas/Public/Downloads/Common_UN_Procurement_at_the_Country_Level_English_v2.03.pdf>.

³⁶⁷ Reissued in 2002 and available at <<http://icsc.un.org/resources/pdfs/general/standardse.pdf>>, accessed 4 July 2014.

³⁶⁸ Secretary-General’s Bulletin 2003/13, *Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, ST/SGB/2003/13 (9 October 2003), <<http://www.un.org/Docs/journal/asp/ws.asp?m=ST/SGB/2003/13>>, accessed 4 July 2014.

threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions” (section 1).

Standards for all UN staff set by the UN Secretary-General’s 2003 bulletin

- (a) Sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal;
- (b) Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence;
- (c) Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited. This includes any exchange of assistance that is due to beneficiaries of assistance;
- (d) Sexual relationships between United Nations staff and beneficiaries of assistance, since they are based on inherently unequal power dynamics, undermine the credibility and integrity of the work of the United Nations and are strongly discouraged;
- (e) Where a United Nations staff member develops concerns or suspicions regarding sexual exploitation or sexual abuse by a fellow worker, whether in the same agency or not and whether or not within the United Nations system, he or she must report such concerns via established reporting mechanisms;
- (f) United Nations staff are obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse. Managers at all levels have a particular responsibility to support and develop systems that maintain this environment.

He also set out the procedures for UN missions to follow to enforce these standards. The *UN Staff Regulations and Rules* (2009) state (in Regulation 10.1) that “*Sexual exploitation and sexual abuse constitute serious misconduct*” and that the “*Secretary-General may impose disciplinary measures on staff members who engage in misconduct*”.³⁶⁹ The Secretary-General’s bulletin and staff rules indicated together certain activities which were clearly prohibited, including any “*Exchange of money, employment, goods or services for sex*”, whether or not those who provided sex were doing so consensually or not. This standard was reiterated two years later in *A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations*, which states that, “*United Nations standards of conduct prohibit sexual activity with prostitutes [...]*”.³⁷⁰ This is

369 *UN Staff Regulations and Rules*, ST/SGB/2009/7 (21 October 2009), <<http://www.un.org/esa/cdo/hr/RULES%20AND%20REGULATIONS/Staff%20Rules%20JY9.pdf>>, accessed 1 August 2014.

370 *A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations* (paragraph 44), a report prepared by Prince Zeid Ra’ad Zeid Al-Hussein, Permanent Representative to the UN of Jordan, in ‘Letter dated 24 March 2005

concerned primarily with prohibiting sexual abuse (of adults as well as children) and contains no reference to trafficking in human beings for other purposes. It recommended that the UN General Assembly authorize the establishment of a “*professional investigative capacity to investigate allegations of sexual exploitation and abuse and misconduct of a similar grave nature against all categories of peacekeeping personnel*” (paragraph 32).

11.3 Organization for Security and Co-operation in Europe (OSCE)

The 2003 OSCE *Action Plan to Combat Trafficking in Human Beings* stipulated (in section 8.3 on prevention) that,

“*In order to ensure that staff of OSCE field operations do not engage in or in any way knowingly facilitate trafficking in human beings, and to fulfil the norms contained in part 4 of the OSCE Code of Conduct which is an integral part of the Staff Regulations, the Secretary General will draft comprehensive staff instructions [...]*”.³⁷¹

As a result, OSCE Staff Instruction No. 11/2004 was issued on *Preventing the Promotion/Facilitation of Trafficking in Human Beings*. In seeking to prevent OSCE staff from playing any role in facilitating human trafficking or paying for the services of a trafficked person, the Staff Instruction contains five definitions. Four follow standard definitions in international law concerning trafficking in human beings (along the lines of Article 3 of the UN Trafficking Protocol, quoted in chapter 1). The Staff Instruction also contains a fifth definition, one of “sexual exploitation”. This says,

“*Sexual exploitation is defined as any exchange of money, employment, goods or services for acts of a sexual nature or other forms of humiliating, degrading or exploitative sexual behaviour*”.³⁷²

from the Secretary-General to the President of the General Assembly’, A/59/710 (24 March 2005), <<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SE%20A%2059%20710.pdf>>, accessed 4 July 2014.

371 In addition, Section 11 of the OSCE Action Plan on ‘Investigation, law enforcement and prosecution’ requested the OSCE’s Office of Internal Oversight, “to maintain data on investigations into offences related to trafficking in human beings by mission members and all subsequent related actions taken thereon. The Secretary General is requested to report regularly to the Permanent Council on measures taken to implement regulations in cases of breaches of the Code of Conduct while respecting the privacy of alleged perpetrators”.

372 OSCE, *Staff Instruction 11/2004*, 5(e), ‘Definitions’, in *Preventing the Promotion/Facilitation of Trafficking in Human Beings* (Vienna, 22 January 2004), <<http://legislationline.org/documents/action/popup/id/8539>>, accessed 25 February 2011. This definition of sexual exploitation is different, for example, to that contained in the UN Secretary-General’s Bulletin 2003, issued a few months earlier (*Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, ST/SGB/2003/13, 9 October 2003).

The implication for OSCE staff was much the same as for UN staff as a result of the UN Secretary-General's bulletin issued a few months earlier (see above). The main difference is that this time *“the exchange of money [...] for actions of a sexual nature”* was defined as “sexual exploitation”, which it had not previously been defined as such in international law, so staff were prohibited from making such payments, including if they came from or were located in a country where doing so was legal.

Section 6 of the Staff Instruction outlines the standards expected of OSCE officials “when in Mission Areas” or attending conferences and other events in their official capacity (para. 3). It says,

- a) “OSCE officials shall recognize and respect the inherent dignity of each individual and shall refrain from any behaviour which could harm a person physically or psychologically.
- b) OSCE officials shall promote an environment that prevents trafficking in human beings including sexual exploitation through the adoption of high moral and ethical standards and the demonstration of these standards to others.
- c) OSCE officials shall not engage in any activity that promotes trafficking in human beings including sexual exploitation.
- d) OSCE officials shall not visit or patronize any establishment or premises including any bar, café, bath, massage salon or club which could reasonably be expected of having connections, in any way, with trafficking in human beings including sexual exploitation.
- e) OSCE officials shall not establish or maintain professional or personal relationships with anyone who promotes or facilitates, or who could reasonably be suspected of promoting or facilitating trafficking in human beings including sexual exploitation”.

The same section stipulates that any violation of these standards would be regarded as *“serious misconduct and shall constitute grounds for disciplinary measures, up to and including summary dismissal”*. It also specifies that, *“The public solicitation of any act of a sexual nature or other forms of humiliating, degrading or exploitative sexual behaviour shall be considered as an aggravating circumstance”*.

The following year, the OSCE Ministerial Council, meeting in Ljubljana, expressed concern that personnel serving on international peacekeeping forces or other international missions, including the OSCE, *“could be a contributing factor to the demand side of the trafficking cycle”*.³⁷³ It called on participating

States furthermore *“to take appropriate action necessary to prevent sexual exploitation and abuse, as well as cases of forced labour, by military and civilian personnel”* deployed in peacekeeping forces or in international missions (point 3). It also reaffirmed the importance of implementing the Code of Conduct for OSCE Officials and Staff Instruction 11 addressing trafficking in human beings, and called on participating States *“to improve, where necessary, measures to prevent military and civilian personnel deployed abroad to peacekeeping forces or other international missions, as well as OSCE officials, from engaging in trafficking in human beings or exploiting victims of trafficking”* (point 4). Finally, the Ministerial Council,

“Tasks the OSCE Secretary General to report annually to the Permanent Council on the implementation of this decision in regard to the Code of Conduct for OSCE Officials and Staff Instruction 11, in accordance with provision III 11.1 of the OSCE Action Plan to Combat Trafficking in Human Beings” (point 7).

When the OSCE's Permanent Council adopted the *Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later* in Kyiv in December 2013, it committed the OSCE to taking further action to enforce these standards. The Addendum states that,

“The relevant OSCE executive structures will update, within existing resources, the relevant internal regulations to ensure that no activities of the OSCE executive structures, including contracts for goods and services, contribute to any form of THB;”

and

“The relevant OSCE executive structures will update the relevant internal regulations to ensure that the OSCE personnel understand their duties and responsibilities and receive relevant training, in particular with regard to the employment of domestic workers”.³⁷⁴

11.4 Similar efforts by NGOs and businesses

Some codes adopted by international NGOs (i.e., NGOs which operate in various countries in addition to the one where they are based) have prohibited staff from employing children in various capacities, notably as domestic workers. For example, the child protection

³⁷³ OSCE Ministerial Council, *Decision No. 16/05 Ensuring the Highest Standards of Conduct and Accountability of Persons Serving on International Forces and Missions*, MC.DEC/16/05 (6 December 2005).

³⁷⁴ OSCE Permanent Council, *Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*, PC.DEC/1107 (6 December 2013), Chapter III. Work to implement these provisions was ongoing in mid 2014.

policy adopted by World Vision Australia prohibits World Vision personnel from hiring children as “house help” or providing shelter for children in their homes. The accompanying explanation points out that, *“providing employment for a minor may be culturally acceptable and provide benefits not otherwise available to the child, [but] the hiring of minors may lead to misunderstandings and is inconsistent with World Vision’s efforts to ban exploitative child labour”*.³⁷⁵

Many businesses have a code of conduct to govern their employees’ conduct at work, insisting, for example, on financial probity or confidentiality about the content of their work. While international organizations, sport associations and governments have developed codes of conduct for their staff to influence how they behave outside their workplace, such initiatives by businesses are much rarer. However, some businesses regard criminal convictions as grounds for dismissal (or another internal disciplinary measure).

Both the managers of some international businesses and some NGOs have expressed concern that business staff who travel as part of their job are routinely involved in paying for sex in locations that they visit and that this may increase rates of human trafficking. One NGO, Stop the Traffik, ran a website entitled “Business Travellers against Human Trafficking”³⁷⁶, which stated that, *“Business travellers can be a part of the problem buying sexual services from those held as slaves, or part of the solution reporting suspicious activities and showing hotels and businesses that they will not be associated with those who are complicit in this crime”*. Among the various codes adopted or prepared by businesses, the only one that puts a special focus on business travellers is the Luxor Protocol to the *Athens Ethical Principles* (see 8.1.2 above).

There is evidence that voluntary initiatives concerning migrant domestic workers have helped reduce cases of abuse, including trafficking and labour exploitation, although some observers reckon that reinforcing the legal obligation of employers to respect a set of minimum employees’ rights would be more effective. In countries as varied as Bangladesh and the United Kingdom, organizations representing migrant

domestic workers or seeking to protect their rights have developed model contracts for domestic workers, which specify a set of minimum rights for the employee.³⁷⁷ These either replace contracts that did not mention the employee’s rights or, in the case of children working in Bangladesh, a situation in which employees were given no contract at all.³⁷⁸

375 World Vision Australia, *Child Protection Policy*, updated September 2009, <<http://www.worldvision.com.au/AboutUs/OurPolicies/ChildProtection.aspx>>, accessed on 1 March 2011. Already in the mid 1990s, World Vision UK’s child protection guidelines specified that, *“Seconded or overseas contract staff should not hire children as house help”*, quoted in J. Durai, *Helping Business to Help Stop Child Labour* (London, Anti-Slavery International, 1996).

376 See <<http://www.ungift.org/ungift/en/stories/business-travelers-against-human-trafficking-.html>>, accessed 7 July 2014.

377 The model contract in the United Kingdom, developed by an NGO, Kalayaan, was accessed 7 July 2014 at <<http://www.kalayaan.org.uk>>.

378 Other ways of reducing the likelihood that migrant domestic workers will be trafficked or held in servitude are outlined in: OSCE OSR CTHB, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, Occasional Paper Series no. 4 (Vienna, 2010).

CHAPTER 12: CONCLUSIONS AND RECOMMENDATIONS

This paper demonstrates that there are many measures that businesses can take to help stop human trafficking and related labour exploitation from occurring in their workplaces or those of the businesses which supply them. At the same time, States have a duty to take action pro-actively to ensure that workers who are migrants from another country (or from another part of the same country) are not trafficked, coerced, or forced to work in particular jobs or in particularly harsh conditions.³⁷⁹ Such action could take the form of regulation or other administrative measures to oversee the recruitment of workers from other countries (or from distant parts of the same country).

The OSCE should view action by business to reduce adverse impacts on human rights (in general) as one specific strategy to address trafficking in human beings, though one which brings additional benefits to other categories of human rights. Rather than asking businesses to focus narrowly on measures to stop human trafficking and the exploitation associated with human trafficking, the OSCE should therefore support participating States in calling for action by businesses to address the full spectrum of human rights abuse, while making it a special priority to stop trafficking in human beings from occurring. This in turn requires participating States to take action to adopt an appropriate framework within which businesses are required to operate.

12.1 Recommendations already made to OSCE participating States

In December 2013 the OSCE's Permanent Council adopted the *Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*. The Addendum recommended the following action (for participating States) at the national level:

“*Encouraging the private sector, trade unions and relevant civil society institutions, to promote codes of conduct to ensure the protection of the human rights*

and fundamental freedoms of workers throughout the supply chain in order to prevent the exploitative situations that foster trafficking in human beings”.³⁸⁰

As an inherent aspect of seeking implementation of this recommendation, the relevant OSCE structures³⁸¹ should support participating States in reviewing whether businesses based in their country pay adequate attention to the human rights impact of their activities (or those of their business partners and suppliers) and whether the government itself could do more to encourage businesses to adopt suitable standards and to report publicly on their experience of achieving such standards.

The relevant OSCE structures should also continue pursuing the strategy set out in the 2003 OSCE *Action Plan to Combat Trafficking in Human Beings*, by emphasizing once again to “countries of destination” (of migrants) among participating States the importance of addressing the links between demand for inexpensive migrant labour and a “problem of unprotected, informal and often illegal labour [...]”.³⁸² By failing to check whether their country's minimum standards for labour rights are being respected by employers of migrant workers (including those in the informal sectors, such as employers of live-in domestic workers), States effectively encourage a market for cheap, unregulated labour and condone, albeit indirectly, the use of human trafficking. The OSCE should help promote more substantial protection for everyone employed in the sectors where forced labour or human trafficking have been reported.

Along with implementing the recommendation in the *Addendum* to its own Action Plan, the OSCE could also draw the attention of participating States to a recommendation made to all UN Member States in March 2013 by the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, who urged States to,

³⁷⁹ In December 2013, the UN General Assembly, in its resolution 68/179, requested all States “to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers’ labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association” (United Nations, *Resolution Protection of migrants / adopted by the General Assembly, A/RES/68/179* (28 January 2014), para. 4 (j)).

³⁸⁰ OSCE Permanent Council, *Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*, PC.DEC/1107 (6 December 2013), Chapter III, para. 1.7.

³⁸¹ I.e., the OSCE Secretariat and Institutions, the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, and OSCE field operations.

³⁸² OSCE Permanent Council, *Decision No. 557/Rev.1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005), chapter IV, para. 3.2. The Action Plan was adopted by Permanent Council Decision No. 557 on 24 July 2003.

“Develop laws, programmes and initiatives that motivate businesses to proactively comply with their responsibility to prevent and combat trafficking in persons, such as tax incentives, product certification and labelling”.³⁸³

The combination of encouraging the adoption of suitable commitments in business codes and urging participating States to develop suitable laws, programmes and initiatives that will persuade businesses to take action against human trafficking means the OSCE should henceforth play a significant role in facilitating the implementation of the *Guiding Principles on Business and Human Rights*. This will involve mobilizing various parts of the OSCE itself and co-operating with other international organizations in assisting participating States to implement “the State duty to protect human rights” identified in the *Guiding Principles*, including initiatives to ensure that workplaces are the subject of the rule of law and that a suitably qualified organization of workplace law enforcement officials is established, trained and provided with suitable resources in every participating State to uphold the rule of law in the world of work (i.e., by investigating possible violations of workers’ rights, rather than focusing on the migration status of the workers concerned).

The *Addendum* also reflects provisions in the *Guiding Principles* that require business to provide workers with appropriate ways of reporting possible cases of human trafficking or of abuses of labour rights. It calls for action at national level to encourage

“[A]ccessible complaint mechanisms and relevant information for workers to enable them to notify the authorities on abusive practices that foster trafficking in human beings, and taking measures to prevent such abuses”.³⁸⁴

Part I of the *Guiding Principles* focuses on “the State duty to protect human rights” and points out that “States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations” (Principle 2). The four practical steps that the *Guiding Principles* suggest (in Principle 3) to States to meet their duty to protect are:

- (a) “Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts”.

The *Addendum* adopted in December 2013 also calls for action at the national level to promote

“[C]lear criteria, in compliance with the national law, for the official registration of recruitment and placement agencies, and monitoring the activities of such agencies in an effort to prevent all forms of THB and exploring possibility of removing the recruitment fees charged to employees”.³⁸⁵

Rather than expecting recruitment and employment agencies to take exactly the same measures as other businesses, the OSCE could follow up its previous recommendations concerning migration by enabling participating States to assess whether more needs to be done to address weaknesses in the business models used by employment agencies and labour providers operating in their territory.³⁸⁶ Evidently, as noted earlier, States have a responsibility to ensure that the legal framework within which private employment agencies and other labour providers or recruitment agents act is appropriate to ensure that human trafficking does not occur, as well as to check that they all act within the law.

12.2 Further recommendations for OSCE participating States

Chapter 6 outlines measures that OSCE participating States are already under an obligation to take with respect to business. It would also be appropriate for participating States to support private sector businesses, business organizations, trade unions and

383 UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum, Expert consultation on human trafficking and global supply chains*, A/HRC/23/48/Add.4 (4 March 2013).

384 OSCE Permanent Council, *Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*, PC.DEC/1107 (6 December 2013), Chap. III, para. 1.8.

385 I.e., codes of conduct “to ensure the protection of the human rights and fundamental freedoms of workers throughout the supply chain in order to prevent the exploitative situations that foster trafficking in human beings”, as required by: OSCE Permanent Council, *Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*, PC.DEC/1107 (6 December 2013), Chapter III, para. 1.9.

386 Such as the advice in OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (Vienna, 2009).

relevant civil society institutions in developing and disseminating codes as referred to in the *Addendum*.³⁸⁷

In addition, this paper identified a range of other measures that OSCE participating States should consider taking with respect to business based or operating in their territory.

12.2.1 Public statements by senior government officials

It is vital for senior government officials to state publicly that trafficking in human beings and the exploitation of workers, including migrants from other countries, is always unacceptable (and to repeat this message from time to time). Many parts of the world have already seen a shift from government officials considering that they should defend their country's reputation (denying reports of human trafficking or forced labour, even in the face of substantial evidence) to officials acknowledging that such cases occur and calling for more action by employers, as well as law enforcement officials, to stop it.

12.2.2 A properly resourced labour inspectorate

The mandate of labour inspectorates (or whichever other branch of law enforcement has responsibility for detecting workplace offences) has sometimes proved inadequate to detect trafficking cases, so States should review and update the mandates of such bodies, as well as ensuring that they have adequate resources to visit workplaces (including isolated ones), to interview workers (in appropriate conditions to ensure the confidentiality of interviews, with the services of interpreters, where necessary) and to detect and investigate possible cases of human trafficking or other exploitation.³⁸⁸

12.2.3 Allow migrant workers to change employer

Both the OSCE Guide that recommends that, “*The validity of a work visa should not be limited to a specific employer*” and a recent UN Special Rapporteur's identical recommendation were mentioned above (8.1.5). Participating States are encouraged to avoid issuing visas or work permits that bind a migrant to a particular employer and reduce her or his right or opportunity to terminate their employment and to change employer.

³⁸⁷ OSCE Permanent Council, Op. Cit., Section III, article 1.7.

³⁸⁸ Further technical advice on the way that labour inspectors can detect and investigate cases of forced labour is available in ILO, *Forced Labour and Human Trafficking. A handbook for Labour Inspectors*, B. Andrees (Geneva, 2008).

12.2.4 Regulate recruitment agencies

There are strong reasons to believe that regulation of private employment agencies (recruitment businesses) may be more effective than self-regulation as a method to prevent human trafficking from occurring in the recruitment industry. A UN Special Rapporteur

has made a straightforward recommendation: “*Governments must effectively regulate the recruitment industry*”.³⁸⁹ On this issue, as on others, participating States could embark on a series of steps, first to find out what happens in practice in the recruitment sector, next to promote self-regulation and, if this is not effective, to enact regulatory legislation. At a minimum, every participating State should consider whether regulation of the recruitment sector would increase the level of protection (against being trafficked or exploited) available to workers, in particular protection against being deceived (i.e., offered one job, salary or set of conditions before travelling to take up a job, and a significantly different set upon arrival), obliged to pay a fee (directly or indirectly) for being recruited (in contravention of international standards), obliged to take a loan which puts them into debt bondage, or otherwise to take on work which they are not entitled to leave.

12.2.5 Promoting meaningful commitments by business and effective compliance methods

As this paper has noted, businesses are faced with a confusing array of codes and commitments on human rights issues and, if anything, by an even more complicated menu of options concerning compliance and verification methods. The following steps by participating States should contribute to reducing such confusion.

- i. In carrying out the responsibilities outlined for States in the UN *Guiding Principles on Business and Human Rights*, participating States should ensure that businesses are aware of the potential weakness of commitments made by businesses if these are not backed up by any compliance procedure, and of the danger that they may be accused of mouthing empty words or even hypocrisy.
- ii. In States where businesses do not have easy access to information about good practice concerning compliance methods, relevant government ministries could support efforts to identify and promote such good practice. This is

³⁸⁹ UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants*, François Crépeau. *Labour exploitation of migrants*, A/HRC/26/35 (3 April 2014), para. 68.

particularly relevant for participating States where businesses operating in sectors where trafficking in human beings has been reported are not yet familiar with the responsibilities of business to respect human rights and do not know how to carry out due diligence.

- iii. Participating States should promote good practice with respect to compliance and verification methods. This does not mean telling business precisely how to verify that appropriate standards are respected; it would mean ensuring businesses have access to evidence about what methods have not proved effective, as well as to information about good practice.
- iv. A lesson from the introduction of codes to uphold labour standards around the world is that auditors or others cannot do this without consulting and involving the workers who are concerned most directly. This does not mean that every business which wants to adopt a code has first to enter into negotiations with workers' representatives, but rather that it is essential to develop a line of communication with workers, particularly any who may be particularly vulnerable to abuse. Indeed, if it is only national workers who belong to a trade union in a particular workplace, and not migrant workers as well, it would be particularly important to talk to migrant workers and not only trade union representatives, when collecting information about labour rights.
- v. Independent verification can be organized at national or local level and there are likely to be advantages to involving workers' representatives (particularly representatives of workers who may have been trafficked or subjected to forced labour, such as migrants) in agreeing an appropriate process for verifying compliance.
- vi. To avoid what may be known as "compliance fatigue" (with different auditors visiting the same business and checking the same businesses compliance against different sets of standards), organizations representing businesses and workers in a particular country should be encouraged to discuss the advantages and disadvantages of different verification methods and to press foreign companies to agree to a single standard for use in their country.

12.2.6 Requiring public reporting by business: progressive implementation of business responsibilities

The UN *Guiding Principles* suggest that businesses should report publicly on the action they take to address "adverse human rights impacts" in their

business activities, including their value chains. While it would be premature and unrealistic to impose this obligation on all businesses, it would be appropriate for participating States to adopt a progressive approach, to start by pressing larger businesses (and parastatal organizations, whether or not they are considered to be businesses) to report publicly both on how they have carried out human rights due diligence and what action they have taken to address any "adverse human rights impacts" in their business (not only possible cases of human trafficking), including their value chains.

In States where certain categories of business are already required to publish annual reports or public statements that consist of more than financial information (their accounts), the authorities could require businesses to report explicitly on measures taken to stop trafficking in human beings from occurring (or to check whether it occurs), along with other actions related to human rights impacts. This could include being obliged to report if they have taken no relevant action.

A stepped approach would make it more feasible for businesses to implement the measures necessary to confirm that trafficking in human beings does not occur in their workplaces or value chains. For example, the relevant authorities could proceed with the following steps:

- i. Require a specific category of businesses to include information on their possible human rights impact and any remedial steps taken in a published annual report about the businesses activities (such as businesses with a turnover above a specified minimum amount, which might vary from country to country, or companies quoted on an official stock exchange);
- ii. Add a requirement that such reports specify explicitly what measures have been taken to ensure that the business and those in its value chain do not practice trafficking in human beings, forced labour or any practice similar to slavery;
- iii. Require specific categories of business to provide details about the minimum workplace standards observed and the checks and audits used to anyone to whom they sell their products or services (i.e., to others in their value chain or to final consumers)—not mere labels guaranteeing that a product "is not made by forced labour", but details of the standard guaranteed and the verification method used.

States themselves require the capacity to monitor the contents of reports made public by businesses

(or certain categories of business), i.e., officials with appropriate expertise. This approach requires each State to become familiar with the level of action in the business community and the sectors in which human rights due diligence is already occurring and where action appears to have stalled. For example, in the Russian Federation businesses operating in the oil and gas sector have reported taking action³⁹⁰ while in some other sectors (for example, commercial agriculture and the entertainment industry) no action has been reported.

Evidently, if trafficking in human beings or forced labour has been reported (or even merely alleged) in a particular sector of the economy (for example, the textile and garment sector), it should be a priority to persuade businesses in this sector to report publicly on their human rights due diligence activities. If these appear inadequate to resolve the human right abuse being reported, the State evidently has a duty to take more pro-active measures.

12.2.7 Action with respect to products imported from other countries, which may have been produced with forced labour

The obligations under article 9 of the UN Trafficking Protocol (to discourage demand) are not limited by the Protocol to discouraging demand related to goods or services in a particular territory. When there is credible evidence that particular goods being imported have been produced wholly or partially by trafficked persons in another country, the relevant authorities of a participating State evidently have an obligation to take action. In doing so, they could consult with the authorities of the State where human trafficking is reported, with relevant businesses in their own country and also with relevant international organizations to assess whether appropriate (and sufficient) remedial action is already being taken in the State where human trafficking is reported to occur.

There are a range of possible sources of information about cases of trafficking in human beings (or of exploitation associated with trafficking) that both government officials and businesses can consult. In addition to reports issued by the OSCE, international organizations issue a range of reports which contain relevant information, including:

1. Reports prepared by three different UN Special Rapporteurs (on trafficking in persons, especially women and children; on contemporary forms of slavery; and on the human rights migrants), including their annual reports to the UN Human Rights Council and reports on visits to specific States;³⁹¹
2. The annual reports on the Application of International Labour Standards by the ILO Committee of Experts on the Application of Conventions and Recommendations, which include country-specific chapters about the ILO's two forced labour conventions;
3. Reports by treaty-monitoring bodies, such as the (UN) Human Rights Committee and the Council of Europe's GRETA (Group of Experts on Action against Trafficking in Human Beings).

Some governments also issue relevant reports. For several years the US Government has published a *List of Goods Produced by Child Labor or Forced Labor*. For example, the 2010 report specified 85 goods from 28 countries that the US Department of Labor's International Labor Affairs Bureau believed were produced by forced labour in violation of international standards.³⁹² The 2013 report mentioned 101 goods from 38 countries which were similarly reported to be produced by forced labour in violation of international standards.³⁹³ It did not specify which companies were reported to be using forced labour, however, meaning that consumers (including businesses importing goods from the countries listed) are not given enough information to choose a different company in the same source country, one that is not reported to be using forced labour. In effect, if the information provided is used to inform consumer decisions, it allows them to boycott products from certain countries, meaning that, if adequate care is not taken, ethical businesses that do not use forced labour may be penalized as much as those that do.

³⁹⁰ Business and Human Rights Resource Centre, 'Workers and Minorities Bear the Brunt of Abuse', Business and Human Rights in Eastern Europe and Central Asia (May 2014), <<http://business-humanrights.org/en/business-human-rights-resource-centre-releases-its-second-eastern-europe-central-asia-regional-briefing#c98768>>, accessed 7 July 2014.

³⁹¹ For example, a 2012 report on a Mission to Thailand by the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, noted that "*The trafficking of men, women and children for labour exploitation is growing in scale in various sectors, including agricultural, construction, fishing, seafood processing, manufacturing and textile industries. In particular, the trafficking of migrant men and boys for labour exploitation on fishing boats is notoriously widespread*" (see UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum, Mission to Thailand, A/HRC/20/18/Add.2* (2 May 2012)).

³⁹² US Department of Labor (Bureau of International Labor Affairs), *The Department of Labor's List of Goods Produced by Child Labor or Forced Labor* (Washington DC, Department of Labor, 2010).

³⁹³ US Department of Labor (Bureau of International Labor Affairs), *List of Goods Produced by Child Labor or Forced Labor* (Washington DC, Department of Labor, 2013), <<http://www.dol.gov/ilab/reports/child-labor/list-of-goods>>, accessed 7 July 2014.

Some lists are issued by NGOs and updated periodically.³⁹⁴ However, they usually focus on goods in international trade, meaning that, when forced labour occurs in the supply chain of goods that are not exported, it is more likely to be overlooked.

12.3 Co-operation with other organizations

Even if responsibility within the business community for taking many steps lies principally with individual businesses, it is clear that relevant international organizations, government ministries and national-level business organizations can play a useful role in providing training and convening discussions about the most relevant standards to prioritize and the most appropriate methods to use for implementing these and for monitoring implementation. Other types of organizations, such as trade unions, worker coalitions and consumer groups, can help point the way. While “bottom up” initiatives by individual businesses might appear preferable to “top down” ones imposed by governments, there would be important economies of scale if models that are appropriate in a particular country could be made available for a wide range of businesses to consider adopting.

In the same way that individual businesses are advised to work closely with others in order to address human trafficking, so it will remain important for the OSCE to work with other international organizations which have initiated action in this field. The importance of co-operation among a wide range of stakeholders was emphasized in the *Addendum* adopted to the OSCE *Action Plan* in December 2013. This specifies that,

“*The SR/CTHB [OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings] will further promote and facilitate, within existing resources, all forms of co-operation among OSCE participating States, including at the bilateral and regional level, where appropriate, and collaboration with major international bodies and entities engaged in combating trafficking in human beings, as well as relevant NGOs*”.³⁹⁵

The experience of businesses in Europe and North America suggests that it is helpful for businesses operating in the same sector of the economy, which are usually competitors, to co-operate in adopting common standards. This is easiest to arrange when a trade association already exists and can urge its members to support a new set of standards. This process too could be encouraged by government ministries and international organizations, for example for sectors of the economy where trafficking in human beings or related exploitation has been reported, such as commercial agriculture and construction. Co-operation and mutual accountability between States are reported to have been more effective when relatively few States are involved (i.e., much smaller groupings than the entire OSCE).³⁹⁶ The same principle may apply to initiatives involving businesses as well: if too many businesses are involved, the initiative becomes impersonal and the degree of mutual accountability is reduced and the initiative may be less effective.

394 For example, a “*Products of slavery*” poster was published by Anti-Slavery International in 2009, <http://www.antislavery.org/english/what_we_do/working_with_business/products_of_slavery.aspx>, accessed 7 July 2014.

395 OSCE Permanent Council, *Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*, PC.DEC/1107 (6 December 2013), Chapter V.

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