



VERITÉ

FAIR LABOR. WORLDWIDE.

Understanding the Policy Context of Hiring, Human Trafficking and Modern-Day Slavery

A BRIEF FOR RESPONSIBLE BUSINESS



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INTRODUCTION

This Policy Brief offers a guide on the human rights policy context in which brokers operate, for companies that want to become involved in policy advocacy on issues of labor brokers and migration. It introduces the role of labor brokers in the global economy and common red flags for broker abuses; summarizes key instruments on brokers, trafficking and migration; and identifies and analyzes common standards provided by these instruments and other authoritative sources. Finally, it provides a road to further action by listing key sources and forums on these issues.

What Is a Labor Broker?

Labor brokers act as middlemen in recruitment and hiring, facilitating a connection between potential workers and their eventual employers. In some cases brokerages are substantial, well-organized companies while in others they are informal in their structure and outreach. Brokers can be involved in multiple stages of the supply chain, from [commodity production](#) to the provision of workers for the manufacturing of goods. In all cases their presence in the recruitment and hiring “supply chain” increases the vulnerability of migrant workers to various forms of forced labor and other human rights violations once on-the-job.ⁱ

The intersection between labor brokers and forced labor at the commodity level is particularly prevalent in some commodities, including timber and fish. See Verité’s research [here](#).

Labor brokers are known by many names, including private employment agencies (PrEAs), recruitment and placement services, and labor market intermediaries.

Red Flags for Abusive Labor Broker Practices

As the International Labor Organization (ILO) has noted, “the trend towards subcontracting, with often complex and unregulated chains, and towards the greater use of recruiting intermediaries, can be important factors behind abusive practices.”ⁱⁱ While many labor brokers operate as legitimate businesses, the regular use of labor brokers indicates a high risk of trafficking and forced labor. Verité has identified the following list of “red flags” for human rights violations that can arise with the outsourcing of recruitment and hiring to labor brokers.

What Should You Look For? Red Flags of Vulnerability to Broker-Induced Hiring Traps

Setting the Stage

- ☒ Migrant worker population at the worksite
- ☒ Extensive use of labor brokers to hire and manage migrant workers
- ☒ Use of temporary contract “guest worker” programs

Learn more about the risks for businesses due to the human rights violations of brokers in Verité’s Fair Hiring Framework for Responsible Business.

The Bait: Recruitment & Hiring

- ☒ Deception or false promises made regarding terms and conditions of employment, including job type, length of contract, salary and benefits
- ☒ Workers are charged illegal or excessive recruitment fees by brokers
- ☒ Fraudulent practices used in charging other fees, e.g. for travel, health, or documentation
- ☒ Contract substitution
- ☒ Fraudulent visa practices
- ☒ Workers hold substantial loans with excessive interest rates & onerous financing schemes

The Switch: Revealed in the Workplace

- ☒ Labor broker is the on-site manager of migrant workers
- ☒ Identity documents, passports, or other valuable personal possessions are confiscated or withheld
- ☒ Excessive, unexplained or illegal deductions are made from workers' salaries that result in induced indebtedness
- ☒ Wages are withheld, delayed, or unpaid
- ☒ Employer maintains control over workers' bank accounts
- ☒ Workers are forced to lodge financial deposits or "security" fees, e.g. as "runaway insurance"
- ☒ Workers tied to a single employer
- ☒ Freedom of movement is curtailed: imprisonment or physical confinement in the workplace or related premises, e.g. employer-operated residences
- ☒ Irregular migrants report being threatened with denunciation to authorities
- ☒ Limitations on freedom to terminate employment
- ☒ Workers are required to assume cost of repatriation

Though international conventions are ratified individually, the standards and principles which they contain are considered to be "indivisible, interdependent, and interrelated."

THE POLICY CONTEXT

Understanding the Policy Context

The policy framework relating to the regulation of labor brokers and protection of migrant workers consists of international human rights law, bilateral agreements, and domestic law.

In Focus

An example of a multilateral approach can be found in the Association of South East Asian Nations (ASEAN) Declaration on the Protection and Promotion of the Rights of Migrant Workers, which sets out obligations for both source and destination countries. For host countries, these include facilitating access to the local justice system for migrant workers and for home countries these include increasing efforts to regulate the recruitment industry.

International human rights law primarily comprises international conventions, which, when signed and ratified by national governments, become legally binding. While a treaty does not apply within a country which has not chosen to ratify it, its provisions set international standards. The interpretation of these conventions is influenced by non-binding documents by the organizations or committees within the United Nations framework which oversee the conventions. Because international human rights law applies across numerous policy contexts and legal systems, treaty provisions allow for the means of application of international law to be decided at the national level. Additionally, as only States can be party to these treaties, they generally specify actions to be taken by government actors only.

Bi- or multilateral agreements are made between two or more states, generally outside of the United Nations framework. These agreements may facilitate migration between countries, provide for the safe return of victims of trafficking, or address other issues.

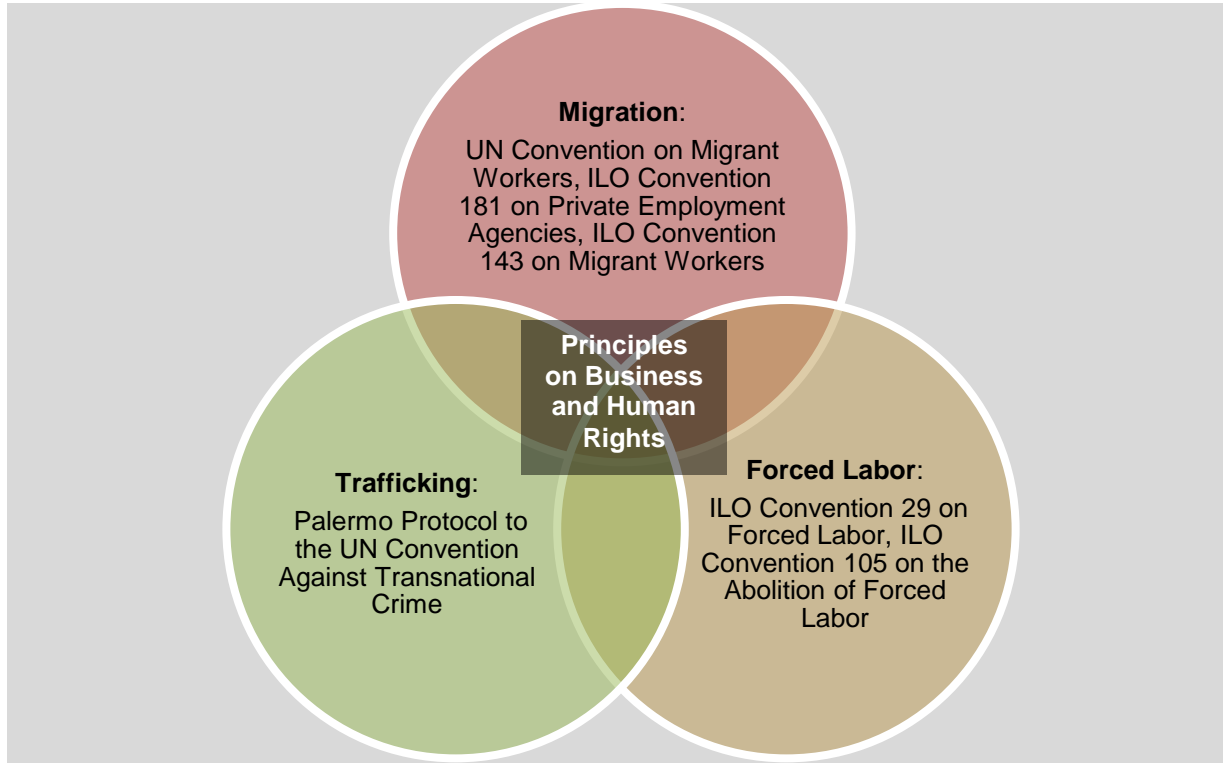
Domestic law establishes independent regulations or, when relevant international human rights law has been signed, elaborates on the implementation of that international law within the national context. Ideally, domestic law should incorporate the standards expressed in international law; however, in some cases international standards may not be signed or, if signed, not incorporated into domestic law in practice. At a minimum, companies and labor brokers should

observe all domestic regulations. A proactive approach would also go above and beyond domestic law to acknowledge and observe international standards.

Migration, Trafficking in Persons, and Forced Labor

Policy on labor brokers sits at the intersecting issues of labor migration, trafficking in persons¹, and forced labor². An analysis of the policy context reveals that while key documents address each of these issues, no single document is sufficient. Each of the documents listed in the diagram below is outlined in the next section.

Key International Policy Instruments on Forced Labor, Trafficking and Migration



¹ Trafficking in persons is defined by the Palermo Protocol as “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.”

² ILO Convention 29 defines forced labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

Challenges and Flaws

With the key exception of ILO Convention 181, the majority of international instruments on migration, trafficking, or forced labor do not directly address the role of labor brokers. However, this should not lead to the conclusion that there is a dearth of international policy or interest in brokers. Rather, parties to treaties have the responsibility to ensure that its terms are met, including through the regulation of labor brokers as appropriate. The Policy Issues section herein highlights different concerns that can be read into these instruments.

There are clear challenges and gaps in the policy framework. For instance, while instruments on trafficking and forced labor enjoy broad international support, support for laws protecting the rights of migrant workers is heavily weighted toward countries of origin rather than host countries, creating a large obstacle for their effective implementation. One of the only instruments to specifically address brokers, International Labor Organization (ILO) Convention 181, is little signed. Of the relevant instruments, the United States is party only to the Palermo Protocol and ILO Convention 105 on the Abolition of Forced Labor. Another flaw is that instruments tend to implicitly target brokers working in the formal sector, ignoring the large percentage that operates informally. Similarly, most agreements highlight the use of brokers in international rather than domestic/internal labor migration.

In Focus

The ILO offers the following general guidelines for businesses seeking to protect against the presence of forced labor in their supply chains:

“Within their sphere of influence and to the best of their ability, employers that engage private employment agencies to recruit members of their workforce shall take measures to:

- Ensure that such agencies do not engage in fraudulent practices that place workers at risk of forced labour and trafficking for labour exploitation;
- Prevent the abuse of workers contracted by such agencies, for example by ensuring that such workers receive adequate protection in relation to wage-related matters, working hours, overtime and other working conditions;
- To the greatest extent possible, ensure that fees or costs related to recruitment are not borne by workers but by the contracting company;
- Use only those recruitment agencies that are licensed or certified by the competent authority.”

ILO – Combating Forced Labor: A Handbook for Employers and Business

Policy Issues

This section summarizes key human rights issues that may be linked with broker abuses. It seeks to integrate approaches to key issues and to identify points of cohesion and divergence. Topics are taken from the red flags listed above, and from the content of policy documents themselves.

☑ The Human Rights of Migrants

The UN Convention on the Rights of All Migrants and Their Families (1990) states that “[m]igrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration.” This extends to all conditions of work, from housing conditions to freedom from discrimination. ILO Recommendation 188 on Private Employment Agencies contains similar wording, but specifies that principles of non-discrimination apply from the first stages of the hiring process, requiring that agencies be prohibited

...from drawing up and publishing vacancy notices or offers of employment in ways that directly or indirectly result in discrimination on grounds such as race, colour, sex, age, religion, political

opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership of a workers organization.ⁱⁱⁱ

Convention 181 places particular emphasis on ensuring that standards on minimum age for work are upheld and that no child labor is used by brokers.^{iv}

In sum, labor brokers can be legitimately used to help fill labor shortages in the host country, but any use which seeks to circumvent minimum labor laws is illegitimate. The UN Convention on the Rights of All Migrants and Their Families (1990) covers both regular and irregular migrants- one of the reasons that many host countries, including the United States, have yet to ratify it.

☑ Registration and Monitoring of Brokers

According to the ILO, every country should establish procedures for the registration and regulation of labor brokers. Navigating these restrictions can be difficult, as rules vary from country to country and will likely vary between home and host countries. Groups operating as de facto brokers may actually be banned from doing so. “For instance, country-of-origin governments typically bar travel agencies from engaging in recruitment. However, field studies in Brazil, Bangladesh and the Philippines reveal that many travel agents facilitate migration despite the ban.”^v

Further complicating the issue of identifying legitimate labor brokers is the issue of subcontracting.

Private recruitment agencies rarely work on their own, but rather use a host of mostly informal sub-agents or brokers to find prospective migrants or employers, creating additional layers of intermediaries. Most Bangladeshi recruitment agencies work with brokers in destination countries, many of them Bangladeshi, Indian or Pakistani. These brokers typically work for factories looking for employees from overseas...Essentially the intermediaries of intermediaries, sub-agents or brokers are not formally connected to the agencies they work with and rarely are accountable to them or to the migrants they eventually help to deploy.^{vi}

Public List of Registered Brokers

One way in which governments can help migrant workers assess whether they are working with a reputable broker is by issuing a list of eligible and ineligible brokers, such as the one published by the U.S. Department of Labor, updated quarterly. <http://www.dol.gov/whd/reg/statutes/FLCList.htm>

The presence of a large group of sub-contracted actors is one sign that brokers may be operating outside of the bounds of legality.

☑ Recruitment Fees

Recruitment fees charged to workers are perhaps the single most important indicator in assessing labor brokers, because exorbitant fees so often lead to situations of debt bondage or to other forms of coercion on the job. However, international instruments stop short of a blanket prohibition against the use of fees, which may include “expenses for documentation, visa arrangements, medical examination or air travel.”^{vii}

Specifically, Article 7 of ILO Convention 181 on Private Employment Agencies states:

1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.
2. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.
3. A Member which has authorized exceptions under paragraph 2 above shall, in its reports under article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefor.^{viii}

The wording of this Article leaves considerable room for maneuver. While requiring that fees be charged only when “in the interest of the workers concerned” and that any use of fees be the exception rather than the rule, what cases merit exception is left to the State. The ILO does provide a rationale for this arrangement in its Guide to Private Employment

Agencies, in which it states that fees may be difficult to collect from employers based abroad or may be justified as a means of competing with illicit or corrupt providers.³

This, however, is only acceptable as long as safeguards to protect jobseekers from exploitation are introduced and the amount of fees is regulated. In order to ease the implementation and monitoring of fees collected from jobseekers, a ceiling should be fixed in the legislation.^{ix}

In practice, a just application of this clause would require active oversight on the part of the relevant authority, factors not frequently available within sending country governments.

While ILO 181 does allow fees in some cases, the consensus of the overall body of literature is that fees should not be used or that employers should bear the cost of any unavoidable charges. For example, in its Handbook for Businesses and Employers, the ILO recommends that “to the greatest extent possible, ensure that fees or costs related to recruitment are not borne by workers but by the contracting company.” The International Business Leaders Forum also advises company payment of placement fees as a means of reducing workers’ risks.^x

Unregarded in official instruments and policy documents is the linked issue of worker debt to pay fees. While the ILO suggests that fees be capped, there is no explicit guideline, for example, on if or what circumstances under which brokers should be permitted to act as facilitators in providing migrants with funds. Cases in which brokers may offer advances to workers as a hook are similarly unaddressed.

☑ Employment Contracts

Contracts represent the point where many workers’ expectations diverge from what they have been promised. A detailed contract, made available to workers in a language which they understand, is the first step in ensuring that situations of forced labor, trafficking, or other abuses are avoided.

The ILO’s recommended contents of contracts include:

- Description of the job, site of employment and duration of contract;
- Basic and overtime remuneration;
- Regular working hours, rest days, holidays;
- Transportation clauses to country/place of employment, and return;
- Employment injury and sickness compensation, emergency medical care;
- Valid contract termination grounds;
- Settling of dispute clause;
- Non-cash compensation and work related benefits.^{xi}

If a broker does not possess or is unwilling to provide this information, it is a good indication that the agency is not fulfilling its obligations under ILO Convention 188, which include to not “knowingly recruit, place or employ workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind” and to “inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment.”^{xii} This last requirement is not absolute, but case studies compiled by Verité and numerous other institutions indicate that the provision of contracts that a worker can easily understand is an industry best practice.

³ Circumstances which Agunias (2009) links with willingness to pay high recruitment fees are: “if the job carries prospects for settlement abroad, if it is difficult to migrate via social networks or illegally, and if there are far more workers seeking to go abroad than there are contracts available.”

✓ Visa Terms

Like the issue of worker fees, conditions of work visas are debated. The UN Convention on Migrants' Rights indicates that a worker should not be "deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfill an obligation arising out of a work contract," but goes on to qualify "unless fulfillment of that obligation constitutes a condition for such authorization or permit."^{xiii} In many cases, employment constitutes a requirement for migrants and may even be linked to a particular employer. This creates dependence on the part of workers on their employer and helps set the stage for a situation of forced labor.

For this reason the ILO has suggested that states adopt "measures to ensure that migrant workers lawfully within the country enjoy equal treatment with nationals regarding employment and training opportunities after a reasonable period of employment, and, upon loss of their employment, are allowed sufficient time to find other work in accordance with Convention No. 143 and its Recommendation No. 151."^{xiv} Regardless, the law of many countries may not be in line with this recommendation.

✓ Storage of Personal Data and Identification Documents

Workers should have free access to their personal documents and data before, after and during their period of employment.

The issue most frequently at play is control of worker's identification and migration documents, particularly passports and visas. Without these documents workers are likely to be considered illegal if stopped by police or immigration officials, and are at risk of being expelled from the country. The confiscation of documents and consequent threat of this scenario can lead to situations of involuntary labor. The ILO Convention of Migrant's Rights states that it is

...unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.^{xv}

This principle is widely agreed upon.

Workers also have the right to see what data brokers maintain on their personal and professional histories. The ILO recommends that "[m]easures should be taken to ensure that workers have access to all their personal data as processed by automated or electronic systems, or kept in a manual file. These measures should include the right of workers to obtain and examine a copy of any such data and the right to demand that incorrect or incomplete data be deleted or corrected."^{xvi}

✓ Due Diligence

Increasingly companies' social responsibilities are seen to extend through their relationships with third parties, including labor brokers. Most recently the United Nations Secretary-General's Special Representative on Business and Human Rights published Guiding Principles (currently in draft form) which formalized this responsibility.^{xvii}

Principle 12 of these Guiding Principles indicates that business responsibility "applies across a business enterprise's activities and through its relationships with third parties associated with those activities." In the commentary, it states that "a business enterprise's leverage over third parties becomes relevant in identifying what it can reasonably do to prevent and mitigate its potential human rights impacts or help remediate any actual impacts for which it is responsible." According to the Principles, businesses should have codes of conduct "appropriate to their size and circumstances that enable them to identify, prevent, mitigate and remediate any adverse human rights impacts they cause or contribute to through their activities and relationships." The draft goes on to detail reporting requirements in Principle 14, which includes the stipulation that the "statement" be "reflected in appropriate operation policies and procedures to embed it throughout the business enterprise." While the nature of due diligence for each company would vary according to its size, if an initial assessment reveals that labor broker abuse is an area of "heightened human rights risk" then efforts would be increased proportionately.^{xviii}

For more information on putting due diligence on labor brokers and corporate responsibility into practice, see Verité's Fair Hiring Toolkit and Fair Hiring Framework for Responsible Business.

The ILO offers some basic principles to guide business action on forced labor specifically, including:

- The Human Have a clear and transparent company policy, setting out the measures taken to prevent forced labor and trafficking. Clarify that the policy applies to all enterprises involved in a company's product and supply chains;
- Train auditors, human resource and compliance officers in means to identify forced labor in practice, and seek appropriate remedies;
- Provide regular information to shareholders and potential investors, attracting them to products and services where there is a clear and sustainable commitment to ethical business practice including prevention of forced labor;
- Promote agreements and codes of conduct by industrial sector (as in agriculture, construction and textiles), identifying the areas where there is risk of forced labor, and take appropriate remedial measures;
- Treat migrant workers fairly. Monitor carefully the agencies that provide contract labor, especially across borders, blacklisting those known to have used abusive practices and forced labor;
- Ensure that all workers have written contracts, in language that they can easily understand, specifying their rights with regard to payment of wages, forced overtime, retention of identity documents, and other issues related to preventing forced labor;
- Encourage national and international events among business actors, identifying potential problem areas and sharing good practice;
- Contribute to programmes and projects to assist, through vocational training and other appropriate measures, the victims of forced labor and trafficking;
- Build bridges between governments, workers, law enforcement agencies and labor inspectorates, promoting cooperation in action against forced labor and trafficking;
- Find innovative means to reward good practice, in conjunction with the media.^{xix}

In Focus

The California Transparency in Supply Chains Act

The California Transparency in Supply Chains Act¹, which comes into effect in January 2012, applies to companies which operate primarily in California, fall in the retail or trade sectors, and which have over \$100 million in annual worldwide gross receipts. It requires that retailers and manufacturers publicly disclose their process of due diligence for assuring that no goods made with slave labor enter their supply chains.

Relevant companies are required to supply on their websites information pertaining to identifying forced labor and trafficking through: verification of product supply chains by third parties, supplier audits, whether the suppliers have considered the materials incorporated into the product comply with similar procedures, and what measures are taken in the advent that suppliers do not comply requirements on forced labor or trafficking. By making these efforts publically available, the goal of the legislation is to promote consumer awareness and influence on forced labor and trafficking.

CHALLENGES TO EFFECTIVE REGULATION OF LABOR BROKERS

Due to the global nature of industry, labor brokers may operate between regulatory gaps, particularly when no bi- or multilateral treaties are signed between home and host countries. Common challenges include:

✓ Government Capacity

Government labor inspectors may not be trained to identify cases of forced labor or may simply lack the capacity to carry out such monitoring effectively. Even in the United States, 2008 reporting on the Department of Labor by the Office of Government Accountability found that the DOL “often failed to record complaints received, to use existing tools to increase compliance, and to adjust its priorities in response to new data.”^{xx}

✓ Prosecution of Labor Brokers

Conditions that lead to trafficking or forced labor are often spread among several different actors in the recruitment, hiring and management of migrant workers. This makes it difficult for government investigators and prosecutors to make a case that proves the guilt of just one of the parties with a charge such as trafficking or forced labor. For example, a recruitment agency may instigate a situation of debt bondage through the charging of high fees and deception about job salary and type; but if the actual debt is held not through the broker but through an unrelated lending agency, it may be difficult to find the broker legally responsible.

Fortunately, due to the internationally accepted definition of trafficking in the Palermo Protocol, more cases of trafficking can now be prosecuted as criminal offenses regardless of the jurisdiction.

In Focus

Brokers and Conflict: An Emerging Issue

In 2007, reports emerged that the \$600 million American embassy being constructed in Iraq was constructed in part with forced labor. Forced labor was introduced by construction contractors, who brought in third-country nationals, falsely informing them that they were to work in Dubai. Their passports were then confiscated. Cases were documented with workers from Nepal and Sri Lanka, all of whom had been recruited through labor brokers.¹

The question of the obligations of labor brokers and companies using brokers to supply labor during times of conflict is infrequently addressed and there are few case studies to draw on. Nevertheless, the high profile case of Iraq and the more recent outbreaks of violence across the Middle East and North Africa have made the debate more immediately relevant. Former UN High Commissioner for Human Rights Mary Robinson has highlighted the vulnerabilities of migrants in Libya and stated that situations of conflict require a stronger human rights due-diligence process.¹ In this she echoed the UN Guiding Principles on Business and Human Rights, which maintain that business responsibilities are not mitigated by situations of conflict. While there are currently no agreed-upon criteria that specifically pertain to labor brokers and conflict, companies should be prepared address this emerging issue.

See:

Brown, Amy. “Baghdad Bound: Forced Labor of Third-Country Nationals in Iraq.” Reuters 2008.
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WHERE TO GET INVOLVED

Verité: Help Wanted Initiative

The Verité Help Wanted site includes a compendium of research reports on the roles of labor brokers around the world, educational materials on forced labor and brokers in commodity production, and practical tools for businesses to monitor their own programs.

www.verite.org/helpwanted

Business for Social Responsibility: Migration Linkages Initiative

A program to help protect the rights of migrant workers that cross international borders. The initiative helps to connect businesses with civil society, international organizations, labor unions and governments, with the aim of increasing transparency in global migration and promoting responsible business practices.

<http://migrationlinkages.bsr.org>

Institute for Human Rights and Business: Business and Migration Initiative

The Business and Migration initiative seeks to develop a set of core principles for safe migration. These principles are being developed through a series of multi-stakeholder roundtables on business and migration issues with brands, suppliers, NGOs, brokers and governments. Once the principles are developed, the Initiative will work to promote and embed them with governments, international organizations, trade associations and other relevant stakeholder groups.

<http://business-migration-initiative.org/>

International Labor Organization (ILO): Special Action Program to Combat Forced Labor

This Program works to raise global awareness and understanding of forced labor. It has developed a set of guidance and training materials on key aspects of trafficking and forced labor. The Program is building a Global Business Alliance Against Forced Labor and works closely with business leaders through the International Organization of Employers. The Program is also active in Better Work, a joint effort of the ILO and the International Finance Corporation to develop global tools for businesses and pilot them in Jordan, Lesotho and Vietnam.

<http://www.ilo.org/sapfl/AboutSAPFL/lang--en/index.htm>

http://www.ilo.org/global/programmes-and-projects/WCMS_084616/lang--en/index.htm

International Organization for Migration (IOM): Business Advisory Board

The IOM's Business Advisory Board aims to "identify and exchange ideas and analysis on global issues relevant to migration and business and develop practical solutions to operational problems."

http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/partnerships/docs/bab_tor_200601.pdf

United Nations Global Compact: Human Rights and Business Dilemmas Forum

The Global Compact is a UN-sponsored public-private initiative which promotes [ten key principles](#) in environmental, human rights, labor and anti-corruption for businesses. Membership in the Global Compact involves commitment to the principles, incorporation of the principles into company-wide decision making procedures, and annual reporting. Members have access to internal forums on challenges and experiences of incorporating the principles. The Human Rights Dilemmas Forum highlights instances of problems and approaches to issues such as forced labor, trafficking and migration.

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

KEY SOURCES

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http://www.migrationinformation.org/datahub/migration_development/readings.pdf

United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) *Human Trafficking and Business: Good Practices to Prevent and Combat Human Trafficking*. 2010. http://www.ilo.org/sapfl/Informationresources/NonILOpublications/lang--en/docName--WCMS_142722/index.htm

ANNEX: KEY POLICY DOCUMENTS

ILO Core Conventions

The policy context for regulating the operations of labor brokers is grounded in the [ILO core conventions](#), which address freedom of association, collective bargaining, forced labor, the minimum age of work and worst forms of child labor, equal remuneration and discrimination. The ILO considers these eight conventions to be “fundamental,” and jointly they are ratified by 86 percent of ILO member countries.^{xxi} The principles in these conventions underlie all other policy instruments on labor issues. As such they provide key standards to determine whether a labor broker is operating fairly and legitimately. The following outlines the main standards of the core conventions.

[Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#)

Article 2 sums up the spirit of the convention: “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.” The specific inclusion of the phrase “without any distinction whatsoever” indicates that this right should be applied as broadly as possible. Therefore, migrant workers who obtain contracts through brokers should retain the right to freedom of association.

[Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#)

Workers both have the right to join organizations of their choosing and to participate in these organizations without interference by employers or government agencies. Government employees are subject to some restrictions, but as few, if any, brokers provide workers for the public sector, in general all migrants should be able take full advantage of this right.

[Forced Labour Convention, 1930 \(No. 29\) and Abolition of Forced Labour Convention, 1957 \(No. 105\)](#)

The prohibition of forced labor, addressed in more detail below, is of particular concern for labor brokers. Signatories, which include most ILO member states, are obligated to suppress forced labor “in all its forms” including workers subject to forced labor due to brokers.

[Minimum Age Convention, 1973 \(No. 138\) and Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#)

Convention No. 138 requires that states set a minimum age under which all work is prohibited, an age that “shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years” with permissible exceptions made for “light work” for children aged 13-15 which is not harmful to child health or development. Convention No. 182 goes further, naming a number of sectors in which children under the age of 18 are not permitted to work, including prostitution, illicit activities such as drug smuggling, all forms of forced labor including debt bondage, or any work “likely to harm the health, safety, or morals of children.” Each signatory is responsible for developing a list of activities to be applied nationally which specifies activities which fall under this definition. Common health and safety restrictions include work in mines and agricultural work with pesticides.

Informal labor brokers who arrange for domestic positions have been known to arrange positions for child workers, for example, in fishing in Ghana and gold mining in Benin. Underage children may also work alongside their parents; for example, in palm oil production in Indonesia. Children who have obtained work through brokers are at high risk of trafficking.

[Equal Remuneration Convention, 1951 \(No. 100\) and Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#)

Convention No. 100 refers specifically to equal remuneration between men and women for work of equal value. Convention No. 111 refers more broadly to issues of discrimination “due to race, colour, sex, religion, political opinion, national extraction or social origin” which may effect either remuneration or effect equality of treatment in any other way. In the context of labor brokers, the principles of these conventions may be violated through, for example, the preference of

males over females for high paying jobs. It could also be argued that the prohibition of discrimination based on “national extraction” would prohibit paying migrants who have obtained positions abroad through brokers at a lesser rate than nationals of the country in which they are working.

Other International Human Rights Law

UN Convention on the Rights of All Migrant Workers and Their Families, 1990.^{xxii}

The UN Convention on the Rights of Migrant Workers and Their Families, also known as the Convention on Migrant Workers, establishes that fundamental human rights protections apply to international migrant workers. The convention applies to both legal and irregular migrants and, as the name applies, to the spouses and dependent children of migrant workers.

While the convention does not specifically reference labor brokers, it makes particular reference to the need to protect migrant workers from slavery and forced labor and provides protections against unlawful interference with a worker’s communications, imprisonment for failure to fulfill contractual obligations, the confiscation or destruction of personal documents, and payment and other conditions less than nationals of the host State.

This treaty is overseen by the Committee on Migrant Workers, a group of independent experts elected by states. States which sign this convention are required to submit reports on their progress in implementing its provisions. The treaty also allows for individuals from member countries to make complaints through an individual complaint mechanism. For a full list of countries which have signed or ratified this treaty, click [here](#). The United States is not a party to this convention.

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, commonly referred to as the Palermo Protocol for the city in which it was first adopted, is a protocol to the Convention against Transnational Organized Crime. It is from the Palermo Protocol that the most widely accepted definition of trafficking in persons is drawn.

The provisions of the Palermo Protocol lay out comprehensive strategies to address trafficking in persons for labor, sex, and organ harvesting. The instrument requires that States take positive action to prevent trafficking, including through bi- or multilateral cooperation, addressing poverty and other root causes of trafficking, and tackling demand for trafficking. The Protocol also places a strong emphasis on the recovery of victims of trafficking and the possibility of granting them compensation.

The U.S., along with [141 other countries](#) and eligible organizations, has signed the Palermo Protocol, making it one of the most widely-recognized instruments relevant to the evaluation of labor brokers and human rights.

ILO Convention 29. Forced Labor Convention, 1930 and ILO Convention 105. The Abolition of Forced Labor Convention, 1957.

ILO Convention 29 defines forced labor and requires that state parties seek to suppress its use. Forced labor is as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” ILO Convention 105 goes further, requiring the abolition of forced labor in all its forms.

The conventions on forced labor are somewhat unique in that their provisions provide for the criminalization of the practice of forced labor in all its forms, meaning that “forced labor goes beyond a corporate social responsibility (CSR) issue, in the sense of a voluntary commitment by companies to improve business practices. It is a binding legal obligation, failing which a company can be liable to criminal prosecutions and sanction.”^{xxiii}

Conventions 29 and 105 are among the most highly-ratified of all human rights instruments, with [174](#) and [169](#) ratifications respectively. The United States has ratified the latter.

ILO Convention 143 Migrant Workers (Supplementary Provisions) Convention, 1975.

The Convention on Migrant Workers is a precursor to the Convention on the Rights of Migrant Workers. It addresses international migration for labor. Parties to the Convention are required to take measures to end clandestine and illegal migration, particularly through the prosecution of traffickers. The Convention also states that legal migrants should not lose their status due to a loss of employment.

Twenty-three countries have ratified the convention, most of which are countries of origin for migrant workers rather than countries of destination.

ILO Convention 181. Private Employment Agencies Convention

The Private Employment Agencies Convention is one of the only instruments to directly address labor brokers. First among the contributions the Convention makes is the establishment of a definition of PrEA as any agency or individual which offers:

- (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;
- (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") which assigns their tasks and supervises the execution of these tasks;
- (c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.

Unlike other relevant treaties, Convention 181 also sets out specific requirements for the regulation and evaluation of employment agencies. These include: the prohibition of the placement of workers in hazardous employment or the charging of placement fees except where permissible by law, the requirement to provide job information to workers in their own language, and the recommendation to establish bilateral agreements between sending and host states in the case of international labor brokers. Measures including monitoring and compliance mechanisms are required to ensure that brokers do not provide child labor. Further details on implementation, for example on brokers' responsibilities to ensure non-discriminatory practices in placement, are left to the domestic law of the State party.

The Convention should be read alongside the non-binding ILO Recommendation 188. Private Employment Agencies Recommendation. These supplemental recommendations state that workers should be provided with written contracts and that agencies should not prevent the transfer of workers into a situation of permanent employment.

Convention 181, while integral to the development of standards on the regulation of labor brokers, is not widely ratified, having received only 23 ratifications as of January 2011. The U.S. is not a signatory. The convention revises the Fee-Charging Employment Agencies Convention (Revised), 1949, and the Fee-Charging Employment Agencies Convention, 1933.

Non-Binding International Human Rights Instruments and Guidelines

ILO Multilateral Framework on Labor Migration: Non-binding Principles and Guidelines for a Right-based Approach to Labor Migration

This non-binding framework complements ILO conventions on migrant labor and private employment agencies by offering concrete guidance and case studies on the implementation of those treaties' provisions. The framework is geared toward government actors, addressing in more detail actions for the protection of migrants' human rights.

Measures addressed by the Multilateral Framework include: the prohibition of the retention of identity documents of workers, the provision of training for workers prior to departure, the requirement of providing assistance to migrant workers for the defense of their rights, and, importantly, regulations for recruitment and placement services. The latter recommends that States establish a certification system for brokers; that these agencies respect migrants' rights; that migrants receive "understandable and enforceable contracts"; that legislation incorporate enforcement mechanisms and

sanctions for agencies; and that a system be put in place to provide remuneration for workers who have been deceived or had their rights otherwise violated by brokers.

Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

Also known as the MNE Declaration, the Tripartite Declaration was a precursor to the Guiding Principles on Business and Human Rights, outlined below. The Declaration focuses on the role of business and human rights in developing countries with the central message of ensuring that multi-national corporations, regardless of where they are operating, should seek to ensure that basic worker protections are met. Crucially, this was among the first major instruments to assert that this responsibility should be maintained even, or especially, in those countries where governments do not fulfill their obligations to protect against labor abuses. Referring specifically to the examination of grievances, the Declaration states that this “is particularly important whenever the multinational enterprises operate in countries which do not abide by the principles of ILO Conventions pertaining to freedom of association, to the right to organize and bargain collectively, to discrimination, to child labour and to forced labor.”

Guiding Principles on Business and Human Rights

The UN Secretary General’s Special Representative on Business and Human Rights was tasked to make a review of existing international human rights law and interpret the responsibilities of businesses within this structure. The resulting Principles on Business and Human Rights outline these responsibilities, both in regards to the obligations of States to oversee the effects of business and human rights and in regards to the direct roles of businesses themselves. The Principles were released in March 2011, to be endorsed by the UN Human Rights Council in June 2011.

A number of the Principles had implications for businesses’ relations with labor brokers. These included Principle 13, which establishes that companies should “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.” The commentary specifically related this to third party operations. The Principles also elaborate on the concept of due diligence in human rights monitoring and reporting. Both of these principles could be extended to labor brokers.

OECD Guidelines for Multinational Corporations

The Organization for Economic Cooperation and Development’s Guidelines form another authoritative source of the international human rights responsibilities of businesses. They are recommendations formed by OECD member states for businesses, and as such, non-binding. Among the General Policies listed are to “encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *Guidelines*.” In the section on Employment and Industrial Relations, the Guidelines go further, stating that companies should not only refrain from the use of child and forced labor, but actively “contribute to [their] effective abolition.”

In a recent addition to the Guidelines, the OECD has published [Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#). This supplement, developed as a response to the role of minerals in the ongoing conflict of the Democratic Republic of the Congo, applies the guidelines to conflict zones. Due to the high-risk nature of mineral sourcing, the Due Diligence Guidance is more thorough in some respects than the Guidelines; for example in repeatedly requiring supply chain investigations down to the mine level. It also specifically lists forced and child labor as key issues.

Bilateral Agreements

Bilateral agreements between common countries of origin and destination can help make existing broker regulations more effective, reduce the opportunity for unscrupulous brokers to take advantage of migrants’ need to navigate complex cross-border administrative protocols, and lessen the overall risk undertaken by migrants in accepting jobs overseas. Bilateral agreements can also help to fill the gaps for countries that have not signed relevant international agreements.

The Government of the Philippines

The Philippines is among the world's largest countries of origin for migrant labor. Of the millions who travel abroad to work each year, many make arrangements through labor brokers. Because of the dependence on migrant labor, and the remittances that come with it, the government of the Philippines has taken a position of leadership in establishing protections for its migrant workers in their journeys abroad. This has been accomplished in part through setting licensing requirements for the type of companies allowed to conduct recruitment activities. Another key aspect of its programming has been the establishment of bilateral agreements with destination countries. As of 2009 the Philippines had signed over eighty different bilateral agreements.^{xxiv} In general, these contain: means of cooperation between nations; sharing of information and technical expertise; and the formation of a Joint Committee tasked with overseeing that the agreement's provisions are carried out successfully.^{xxv} One agreement with Taiwan, in the form of a Memorandum of Understanding, "allows employers in Taiwan to directly hire Filipino workers without the intervention of manpower agencies."^{xxvi}

Read more about bilateral labor agreements and other laws on private recruitment agencies in the Philippines here:

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