



# THE OBLIGATIONS OF PRIVATE SECTOR COMPANIES UNDER NATIONAL AND INTERNATIONAL LAW AND STEPS THEY CAN TAKE TO ACTIVELY REDUCE RISK OF TRAFFICKING-IN-PERSONS



## I. Introduction:

Modern slavery and trafficking in human beings are a global phenomenon that affects a growing number of victims. While it is difficult to provide accurate figure, the International Labor Organization (ILO) estimates that 40 million people<sup>1</sup> are victims of modern slavery (including human trafficking) around the world, of which over half (25 million) are exploited for their forced labor<sup>2</sup>. The ILO estimates that 16 million people are exploited in the private sector, especially in sectors like domestic work, construction and agriculture.<sup>3</sup> Workers face a common set of hazards and harms, including dangerous work environments, verbal and physical abuse, low and withheld wages, etc.

Trafficking in persons exists today in every country and every economic sector. No workplace or community is immune to human trafficking. Not only the government and Civil Societies but also the business community has a part to play in the struggle against trafficking in persons. They can do so by adopting preventative policies, eliminating goods and services produced using trafficked labor.

The private sector plays a vital role in preventing slave-like practices in their industries. Government inspectors and law enforcement agencies usually identify abuses once they have occurred or when they are ongoing but private sector self-policing, if effective, can help prevent the harm from occurring in the first place. Therefore, the private sector provides an additional tool that can facilitate earlier intrusion in or prevention of human trafficking abuses.

### ***What is Corporate Social Responsibilities (CSR)?***

Corporate social responsibility (CSR) is a self-regulating business model that helps a company be socially responsible to itself, its stakeholders, and the public. By practicing corporate social responsibility, companies can be aware and conscious of the kind of impact they are having on all aspects of society.

International Organization for Standardization (ISO) defines CSR<sup>4</sup> as *"the responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behavior. This behavior should: contribute to sustainable development, including health and the welfare*

*of society, take into account the expectations of stakeholders be in compliance with applicable law and consistent with international norms of behavior be integrated throughout the organization and practiced in its relationships."*

The International Labor Organization (ILO) defines CSR as:<sup>5</sup> *"a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law."*

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1 Global estimates of modern slavery: Forced labour and forced marriage International Labour Office (ILO), Geneva, 2017, pg. 5  
2 Ibid  
3 Ibid, pg. 10

4 <https://e-csr.net/definitions/csr-definition/#iso-2600-official-definition-of-csr>, accessed on 6th August, 2019.  
5 Guayacon, Fredy (2019), Socially Responsible Labour Practices, the ILO's approach to CSR, Decent Work for Competitive and Sustainable Enterprises, Ho Chi Minh City, pg. 6

CSR is not a voluntary means but a requisite obligation, because corporations, just like individuals, should be accountable concerning the societal impact of their operations and business conduct. Corporations are accountable to society and have obligations to provide the public good and respect human rights. Today, the conception that private companies should behave not just legally, but ethically, is called ‘corporate social responsibility’. CSR is not only about companies making financial donations to charities or good causes, but more importantly, how companies and their operations can make a positive rather than a negative impact on the world.

The private sector companies play a critical role in combating human trafficking. Business owners not only have a responsibility to make sure that their employees are paid a fair wage, know their rights, and are working willfully, but they are also uniquely positioned and should be responsible for ensuring that their suppliers and production lines are free from slave labor. The private sector can help fight forced labor and slavery internationally. It’s generally up to the corporations to self-police and to prioritize eliminating slavery from their global supply chains.

## II. International Laws:

### 1. The Universal Declaration of Human Rights (1948)

Universal Declaration of Human Rights (UDHR) includes various provisions that protect the rights of workers as human rights and also puts obligations for private sector companies to assure those rights such as:

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.<sup>6</sup> Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.<sup>7</sup> Everyone, without any discrimination, has the right to equal pay for equal work.<sup>8</sup> Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human

dignity, and supplemented, if necessary, by other means of social protection.<sup>9</sup> Everyone has the right to form and to join trade unions for the protection of his interests.<sup>10</sup> Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.<sup>11</sup>

This Declaration calls on every individual and every part of society to promote respect for human rights through education and teaching. This includes governments, individuals, and also the private sector. This is important when looking at trafficking and forced labor especially when we look at corporate social responsibility.

### 2. UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) (also called the Palermo Protocol)

The Protocol breaks down trafficking into three elements: *The act* (what is done), *the means* (how it is done) and *the purpose* (why it is done). It identifies ways to protect and help the people who have been trafficked. The Protocol also identifies ways to prevent trafficking, especially for the most common victims, women, and children. Employers and businesses have an opportunity to play a pivotal role in the fight against human trafficking. They are well placed to provide effective and sustained action in the community, at the workplace, and in the global economy.

### 3. OECD Declaration on International Investment & Multinational Enterprises, 2000

The Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries (the OECD members plus Argentina, Brazil, and Chile). They provide voluntary principles and standards for responsible business conduct, in a variety of areas including employment and industrial relations, human rights, environment, information disclosure, competition, taxation, and science and technology. The Declaration consists of four elements:<sup>12</sup>

*The Guidelines for Multinational Enterprises*: are recommendations on responsible business conduct addressed by governments to

6 UDHR 1948, Article 4

7 Ibid, Article 23 (1)

8 Ibid, Article 23 (2)

9 UDHR 1948, Article 23 (3)

10 Ibid, Article 23 (4)

11 Ibid, Article 24

multinational enterprises operating in or from adhering countries. Observance of the Guidelines is supported by a unique implementation mechanism: adhering governments- through their network of National Contact Points- are responsible for promoting the Guidelines and helping to resolve issues that arise under the specific instances procedures.

**National Treatment:** A voluntary undertaking by adhering countries to accord to foreign-controlled enterprises on their territories' treatment no less favorable than that accorded in like situations to domestic enterprises.

**Conflicting requirements:** Adhering countries shall co-operate to avoid or minimize the imposition of conflicting requirements on multinational enterprises.

**International investment incentives and disincentives:** adhering countries recognize the need to give due weight to the interest of adhering countries affected by laws and practices in this field; they will endeavor to take measures as transparent as possible.

#### 4. **The UN Guiding Principles on Business and Human Rights (the "Framework"), 2011**

The UN Guiding Principles on Business and Human Rights emphasized the corporate responsibility to respect human rights and required that businesses seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships. The Framework introduced the distinction between the State's obligation to protect human rights, and that of the private sector to respect them. These Guiding Principles are grounded in recognition of:

States' existing obligations to respect, protect and fulfill human rights and fundamental freedoms;

The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all

applicable laws and to respect human rights; and

The need for rights and obligations to be matched to appropriate and effective remedies when breached.

Principles 11 to 24 of the Guiding Principles relate to the responsibility of corporations to protect Human rights.

#### 5. **The United Nations Global Compact**

The UN Global Compact is a policy for businesses that deal with human rights, labor issues, the environment, and dishonest business practices. The Compact might be considered as a 'learning network' for business and is designed to promote 'responsible corporate citizenship'. When a business signs on to the Compact, it is expected to change its business operations. There are ten rules/principles in the Global Compact that companies are asked to agree to. These are divided into four categories:<sup>13</sup>

##### **Human Rights:**

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.

##### **Labor:**

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labor;

Principle 5: the effective abolition of child labor; and Principle 6: the elimination of discrimination in respect of employment and occupation.

##### **Environment:**

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and

12 <https://www.oecd.org/investment/investment-policy/oecddeclarationanddecisions.htm>, accessed on 6th August, 2019

13 <https://www.unglobalcompact.org/what-is-gc/mission/principles>, accessed on 9th August, 2019

diffusion of environmentally friendly technologies.

### ***Anti-Corruption:***

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

## **6. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises (2003)**

The Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises, also known as 'the Norms', do not have the same status as a UN treaty but there is hope that one day the Norms will become a legal tool. Right now, governments are responsible for promoting and protecting human rights. However, the Norms recognize that companies also have a responsibility in promoting and securing the human rights found in the Universal Declaration of Human Rights.

The Norms includes important sections such as: General promises, Right to equal opportunity and the right to non-discrimination, Right to safety and protection, Rights of workers, Respect for national independence and human rights, Promises to protect the consumer (customer), Promises to protect the environment, General ways of putting these promises into action. Companies also need to set up a system for workers to file complaints. The Norms explains ways of preventing human rights violations and ways of correcting bad behavior.

## **7. The Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy "MNE Declaration" 1977**

The Tripartite Declaration is a voluntary tool that includes governments, employer and employee organizations (labor organizations) and companies. The Declaration has five sections: General Policies, Employment, Training, Conditions of Work and Life, and Industrial Relations.

The Tripartite Declaration works as a guide for companies, governments and labor organizations to help improve the lives of people

and communities. The Declaration not only asks companies to stop practicing certain bad labor practices, but it also asks companies to play a bigger part in improving local labor situations. The Declaration asks companies to provide useful training for employees that will help the development of their country. The Declaration is important because it helps workers to improve their skills which will help them to continue to support their families. The section on the condition of work and life looks at preventing exploitation. The section is divided into different parts such as Payment, Benefits and conditions of work, Minimum age, Safety, and health.

## **8. Fundamental Principles**

In 1998, the International Labor Organization adopted the Fundamental Principles. This document is important because members of the International Labor Organization are committed to respecting, promoting and supporting four fundamental rules/principles and rights at work. There are four principles within the Fundamental Principles:

1. Freedom of association and the right to collective bargaining (unions)
2. Ending all forms of forced or compulsory labor
3. Ending child labor
4. Ending discrimination at work

## **9. Guidelines for Multinational Enterprises (1976)**

Guidelines for Multinational Enterprises give companies details on how to conduct their businesses. The goal of the Guidelines is for companies to make positive contributions to society, the environment, and the economy in the places in which they operate. The Guidelines also call on companies to respect the human rights of those affected by their business activities. Companies should also work together with governments to resolve problems and to develop policies and laws. The Guidelines allow for complaints against companies and also provide ways to assess situations, find solutions, and decide whether further actions are needed.

## **II. National Laws:**

Corporate social responsibility is an obligation, beyond that required by the law and economics,

for a firm to pursue long term goals that are good for society. The continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workers and their families as well as that of the local community and society at large.

## 1. Constitution of Nepal 2015

The Constitution of Nepal (2015) has ensured basic human rights as fundamental rights under the part 3. It has ensured rights such as right against exploitation which states that every person shall have the right against exploitation<sup>14</sup> and also no one shall be subjected to trafficking nor shall one be held in slavery or servitude.<sup>15</sup> Similarly, the constitution has also provided with the right to labor which provides that every laborer shall have the right to fair labor practice.<sup>16</sup>

## 2. Labor Act 2017

The new Labor Act 2017 of Nepal has provided various provisions such as Provisions Relating to Workers, Employment, Trainees and Apprentices, part-Time Workers, Work Permits, Working Hours, Remuneration, Leave, Provident Fund, Gratuity and Insurance, Labor Provider, Occupational Safety and Health, Fair Labor Practices, Settlement of Individual Disputes, Settlement of Collective Disputes, etc. The Act is implemented to all the companies in Nepal. The Labor Act 2017 has taken a great stride in making workplace more safe and inclusive.

## 3. Industrial Enterprise Act (IEA) 2016

As per IEA, the CSR Requirement is applicable to all (i) medium industries; i.e. industries having investment in fixed assets exceeding NPR 100,000,000 but less than NPR 250,000,000; and large industries; having investment in fixed assets exceeding of NPR 250,000,000) and (ii) cottage industries and small industries having annual turnover more than NPR 150,000,000. The IEA makes it mandatory to allocate at least one percent (1%) of the *annual profit* to be utilized for CSR.<sup>17</sup> The

fund created for CSR is to be utilized based on annual plans and programs but in the sectors that are prescribed under the Act, however, such sectors are yet to be specified by the Act. The progress report of the utilization of the fund collected for CSR is required to be submitted to the relevant government authorities registered within three months from the expiry of the financial year.<sup>18</sup> The IEA penalizes the industries at the rate of 0.75% of the annual revenue for failure to comply with the CSR obligation.<sup>19</sup>

### *CSR for Banks and Financial Institutions:*

According to the circular for Bank and Financial Institutions (BFIs) issued by Nepal Rastra Bank, it is mandatory for banks and financial institutions to set up a corporate social responsibility (CSR) fund and allocate at least one per cent of their net profit. According to the circular, BFIs can spend on social projects in education, health, natural disaster management, environment protection, culture promotion, improvement of infrastructure on rural areas, income skills development for socially deprived sector, financial literacy and programs related to consumer protection, among other direct and indirect expenditures. However, they have to make open calls for proposals and select the project from among the specialized organizations working in such areas.

### **III. Steps that Private Sector Companies can take to actively reduce risk:**

Members of the private sector have to realize the contributions it can make to the fight against trafficking, and some of the biggest multinational companies, like Google and Microsoft, are taking serious steps to join this effort. However, entrepreneurs like small businesses and start-ups are just as important in the fight against trafficking. Existing small companies can take steps to ensure that their supply chains are free of forced labor, can join anti-trafficking networks, and can help spread the word in their communities. Trafficking survivors can also receive training that will allow them to start their businesses, providing them with the

14 Constitution of Nepal 2015, Article 29 (1)

15 Ibid, Article 29 (3)

16 Ibid, Article 34

17 The Industrial Enterprises Act 2016, Section 48 (1)

18 Ibid, Section 48 (2)

19 <http://www.pioneerlaw.com/news/existing-laws-on-corporate-social-responsibility>, accessed on 8th August, 2019

economic stability that goes a long way to ensuring that they are no longer vulnerable to trafficking.

There are many things that employers and businesses can do at enterprise, industry and national levels to address human trafficking in effective and sustainable ways. Companies may wish to start with a risk assessment to determine their level of exposure to human trafficking. A high incidence of abuse reported in a particular country or region may give companies cause to consider assessing their risk of negatively impacting human rights.

The steps that Private sector companies can take in mitigating Human Trafficking can be as follows:

### ***B. Risk assessment and policy***

- Identify risks and opportunities and priorities for action against human trafficking.
- Conduct a risk or impact assessment on human trafficking.
- Develop a clear policy that explicitly prohibits human trafficking.
- Ensure that the policy applies to both company operations and the supply chain, including business partners like private employment agencies.
- Integrate the policy into agreements and contracts with suppliers and business partners.

### ***C. Training***

- Train Corporate Responsible managers, human resource personnel and other relevant company representatives on human trafficking, i.e. how to identify it and the measures to address it
- Consider providing joint training and awareness-raising exercises with business partners, including suppliers.

### ***D. Monitoring and measuring the impact***

- Establish measures to effectively monitor suppliers and subcontractors.
- Extend monitoring to include agencies that provide contract labor, especially across international

borders.

- Consider using third party groups to ensure anti-trafficking policies are being applied.

### ***E. Taking corrective action***

- Develop appropriate mechanisms for taking corrective action before a problem occurs.
- If a case of human trafficking is suspected within the company's sphere of influence, to the greatest extent possible, provide for the protection of victims and support their rehabilitation and reintegration.
- Co-operate with victim service providers and contribute to programs that assist former victims, for example through reintegration schemes.

### ***F. Action in the community***

- Help raises awareness about human trafficking in your industry or community of operation.
- Launch a global, national or local campaign in co-operation with the media to promote awareness of the issue and support prevention programs.
- Support national or international events to identify key issues in the fight against human trafficking and to share good practice.
- If you are a business or trade association, establish a task force on human trafficking to raise awareness amongst your members and within your industry.
- Build bridges between government, law enforcement agencies and civil society groups to promote joint action against human trafficking.
- Participate in re-integration and prevention programs by providing skills development, job training and/or employment opportunities to former victims of human trafficking and persons vulnerable to trafficking.

### ***G. Communications and reporting***

- Communicate anti-trafficking policies and procedures to employees and business partners.
- Report to stakeholders on the performance and progress of anti-trafficking activities and engagement

#### IV. Conclusion and Recommendation:

We must all insist that supply chains are free from human trafficking and other forms of exploitation. We are already seeing signs of change. A growing number of companies are taking action in their supply chains; more governments are developing new policies and regulatory mechanisms for greater business accountability. Civil society also plays a critical role in advocating for migrants' rights and ensuring they have access to the protection and assistance services they need. While these positive trends are encouraging, much more needs to be done. The private sector will play an ever-increasing role in the fight against trafficking, as more and more people become aware of the impact of trafficking on their lives, and their indirect involvement.

Beyond strengthening their due diligence, companies can and must take responsibility for harm perpetrated against their workers and ensure that all possible steps are taken to assist victims of trafficking in their recovery – which they can do by working closely with governments, civil society organizations, international organizations, and the victims themselves. States bear the primary responsibility to address human trafficking and protect trafficked victims. By establishing stronger connections between the private sector and public efforts to help victims of trafficking, together we can do the work of rebuilding broken lives.

The role of private sector companies includes facilitating access to victim services and support systems such as medical or psychosocial care; relocating victims to new job environments; offering a voluntary return to countries of origin; support for recovery, rehabilitation, and reintegration where possible. Businesses should also ensure they have established feedback loops so that they can

continually improve reporting mechanisms, protection for whistle-blowers, and prevention of further harm.

Taking an active role in the fight against human trafficking can present companies with a significant opportunity to be identified as leaders amongst industry peers and within society at large.

#### **Recommendations:**

- ▶ Capable companies can make a difference in the life of the people especially in the life of trafficking victims in society. Private sector companies can focus on CSR activities for creating awareness among the people in society focusing on the victims of human trafficking or who are vulnerable to trafficking.
- ▶ Showing the company's values and reach out to support organizations that already fight such criminal activity.
- ▶ **Reinforce the company's policies**, establishing an anti-human trafficking task force, comprising colleagues from all regions and functions.
- ▶ Making and ensuring a code of conduct that encourages employees, partners, and the broader business community to take a stand against human trafficking.
- ▶ Employee engagement is critical, therefore, companies can introduce Businesses Ending Slavery and Trafficking (BEST) Employers Alliance training, to help employees better understand and recognize the issue.
- ▶ Companies can create fundraising events and other events such as cycle rides, and marathons for contributing anti-human trafficking campaigns and/or supporting trafficking victims.

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