



RESPONSIBLE SOURCING TOOL

Private
Security
Industry |
Tool 4

PROTECTIONS AGAINST TRAFFICKING IN PERSON¹

Country-Level Review of Legal Protections Against Human Trafficking, Including Forced Labor

States need adequate laws protecting against human trafficking (and other labor abuses) that are supported by robust inspection oversight systems and workforce regulations, which can help mitigate human trafficking risk in their countries. The foundational frameworks for evaluating legal protections around human trafficking in a country should be The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 attached to the UN Convention against Transnational Organized Crime, core conventions from the International Labor Organization, and national law. Understanding the legal frameworks and policies that govern the prevention of human trafficking can help companies assess which

countries in which they operate may have heightened risk of human trafficking or trafficking-related practices. This includes countries that limit access to redress if labor rights violations occur at the worksite.¹ If private security companies employ migrant personnel, understanding the legal frameworks and policies that govern the prevention of human trafficking in migrant personnel's home countries or countries of origin can also help companies assess where trafficking risk might occur since trafficking risk is often linked to the recruitment process that takes place in the worker's home country.

In addition to assessing laws specifically criminalizing human trafficking, or labor laws prohibiting

¹ The United States recognizes two primary forms of trafficking in persons: forced labor and sex trafficking. For the purposes of this and other tools in the set, several terms are used such as "trafficking in persons," "human trafficking," and "forced labor." In relation to these tools, they refer to a crime whereby traffickers exploit and profit at the expense of adults or children by compelling them to perform labor.

the activities that can lead to human trafficking, it is helpful to understand broader legal frameworks around fundamental labor rights — and associated issues, such as corruption — that have implications for risks of human trafficking. For example, it is important to look at aspects of labor law such as freedom of association and collective bargaining rights that have implications for human trafficking risk; although absence of freedom of association and collective bargaining do not indicate instances of human trafficking, together their absence can indicate an overall working climate less favorable to workers, including security personnel, let alone vulnerable workers, putting them at greater potential risk for labor exploitation. Similarly, assessing laws around minimum age requirements and mandatory education can help determine the country-specific context for identifying gaps in legal protections for young workers who may be employed as security personnel; noting legal requirements regarding worker-provided housing can help ensure that personnel are provided accommodations that are consistent with legal standards and in line with those described at the time of contract signing. It is also helpful to

identify which sectors, if any, are exempt from laws relating to labor protection as this can help determine potential areas of increased risk. In some contexts, workers in service sectors such as security may be characterized as temporary, casual, part-time, or contracted workers, resulting in a lack of social and legal protections. The provision of security service work on military bases or associated with Diplomatic employers may also be governed by separate legal frameworks. This tool includes special considerations for such contexts.

The following guiding questions address key topics related to the prevention of human trafficking and the assurance of labor rights. Desk review of freely and publicly available laws and reports can in some cases provide a picture of relevant *de jure* legal frameworks. There are many good publicly available sources of legal information. For example, the [ILO's Database of national labour, social security and related human rights legislation](#) contains records of legislation, including full texts and relevant links, for relevant legislation in many countries. To review a country's legal framework on a particular topic, select "Browse by

country,” and then choose the relevant subject. Other free and public resources, which can help assess a country’s prevention and prosecution efforts, including the reports of the ILO’s [Committee of Experts on the Application of Conventions and Recommendations](#), the U.S. Department of State’s [Trafficking in Persons Report](#), and the U.S. Department of State’s [Country Reports on Human Rights Practices](#).

Please Note: While every effort has been made to ensure the accuracy and reliability of information contained in this review (based on publicly-available information and Verité expertise on these matters), the contents herein do not constitute legal advice or guidance, nor are they intended to replace formal consultation with a legal professional.

RELEVANT INTERNATIONAL DEFINITIONS AND ROLES

There is no single international treaty that operationalizes human rights or humanitarian issues relevant to the private security sector. The Montreux Document is an international intra-governmental agreement describing the obligations and good practices for States in regulating and providing oversight to any private security and/or military companies operating within their jurisdiction, particularly within the context of armed conflicts. However, the guidance within the document can apply in non-conflict situations as well. The document does not focus closely on human trafficking risk but outlines a broader human rights and humanitarian agenda. The document applies to both “military” companies and “security” companies and does not strictly differentiate between the two. In supporting guidance to the document, it is noted that services provided by both types of companies largely overlap in practice, making categorization challenging. Therefore, the Montreux Document can be understood as applying to any company that provides services associated with military activity (such as involvement in conflict) and/or any company that provides more limited security services such as guarding facilities. This document, however, is nonbinding and has no built-in enforcement measures. As a result, it is dependent on member states to enact separate implementation and enforcement policies.

The Montreux Document provides definitions of various “types” of states who may be party to hosting private security personnel and these definitions are critical for understanding national legal frameworks relevant for human trafficking. The three types of states as defined by the Montreux Document are:

1. **Contracting States:** A national government contracting the use of private security services. Contracting States are primarily responsible for upholding all applicable national and international human rights laws, regardless of the Territorial State of operations or the Home State of any firm contracted. In addition to implementing and enforcing existing legal frameworks, they are obligated to enact legislation necessary to prevent grave human rights violations and abuses.
2. **Territorial States:** Countries in whose territory the security contracting firm is operating. This may be the same as the contracting state but in many contexts, particularly in the case of military operations, the Territorial State may be different. The primary obligation of Territorial States is to uphold, to the degree possible, compliance with international human rights frameworks by Contracting States and Home States. However, the document recognizes that there are some areas in which a Territorial State may not be able to exert control or may not have jurisdiction.
3. **Home State:** The country in which the private security firm is incorporated, established, and/or the country which is home to the primary management functions of the firm. Home States are responsible for overseeing, regulating and enforcing human rights compliance of firms established within their jurisdiction – even when the activities of contracted personnel are taking place elsewhere.

For each of the areas below, clients of private security firms should ensure that they take into account the applicable rules for any relevant Contracting, Territorial, or Home State. See Tool 6 for more information on mapping labor supply chains.

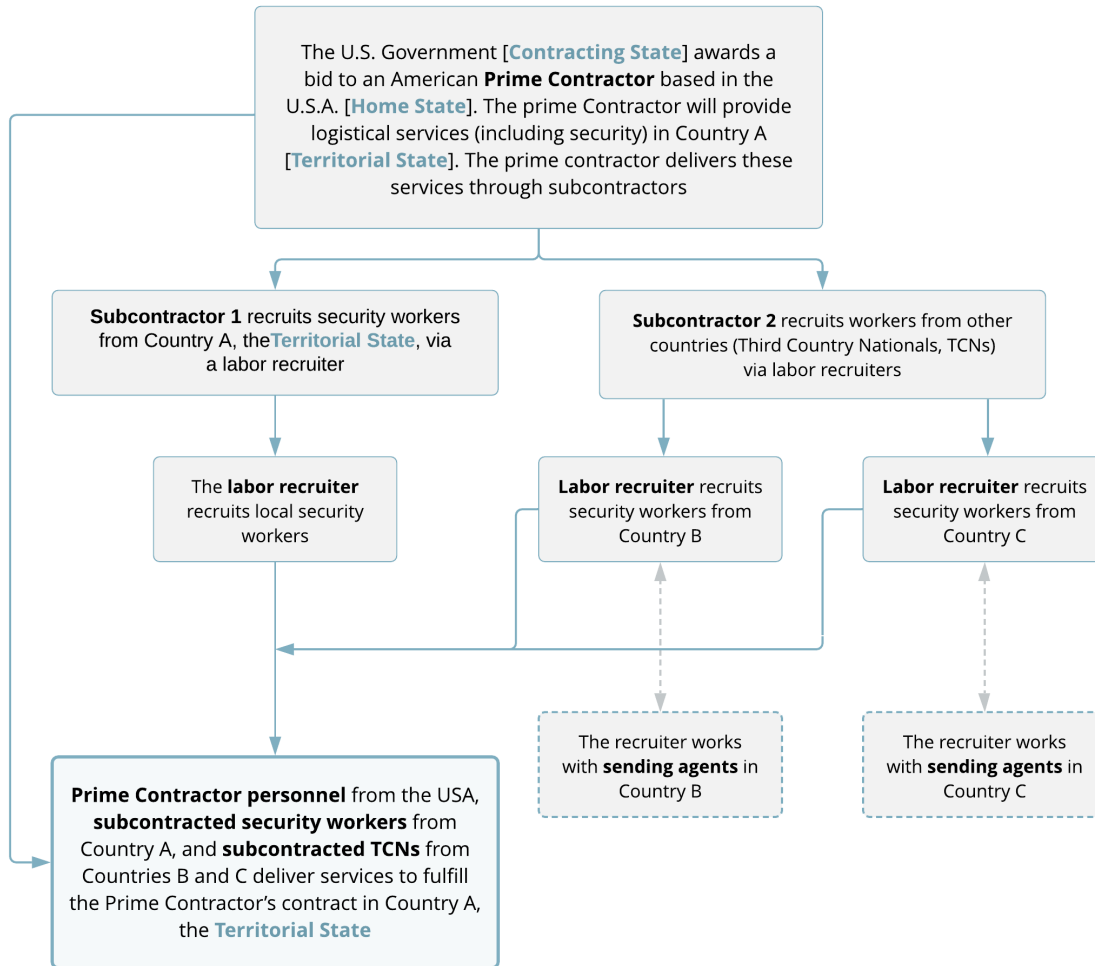


Figure 1: Example of Relationship Between Contracting State, Home State, and Territorial States

The Montreux Document also describes the obligations of private security firms and their personnel. Private security firms are responsible for complying with all relevant national and international laws of Contracting, Territorial, and Home States. Private security personnel are obligated to comply with relevant national and international law – including human rights law – when carrying out their duties. They themselves are typically classified as civilians under international human rights law – even when operating in combat zones – unless “they are incorporated into the regular armed forces of a State or are members of organized armed forces, groups

or units under a command responsible to the State; or otherwise lose their protection as determined by international humanitarian law.”ⁱⁱⁱ With regards to human trafficking these obligations mean that all private security personnel should be protected by anti-trafficking and related legal frameworks. At the same time, private security personnel must not themselves act to perpetrate or enable human rights violations, including human trafficking.

HUMAN TRAFFICKING, INCLUDING FORCED LABOR

Legal and policy frameworks designed to comprehensively address trafficking are imperative for reducing trafficking risk; frameworks must prevent and combat trafficking and prosecute and punish trafficking perpetrators.

Existing Legal Framework

Guiding Question: Does the government have laws prohibiting human trafficking, including forced labor? Does the legal framework establish a specific criminal offense of trafficking in persons?

Government Efforts to Combat Human Trafficking

Guiding Question: Does the legal framework include a national action plan on human trafficking?

Implementation in Practice

Guiding Question: Have there been any prosecutions related to human trafficking, including forced labor, in the past year?

Guiding Question: Are there trainings and resources on human trafficking available to the appropriate officials and personnel?

CHILD LABOR

Child labor is not synonymous with trafficking in persons, but the drivers for both may be similar, including the demand for cheap, exploitable, unskilled labor; poverty; unequal or limited access to education; and exclusionary social attitudes based on caste, gender, immigration status, ethnicity, or other characteristics. Child

labor is generally believed to be less common in the private security sector. However, due to the highly hazardous nature of the work, any employment of an individual under the age of 18 should be considered a Worst Form of Child Labor, therefore validating minimum ages of workers is critical.

There is some evidence that recruiters in various countries target former child soldiers for recruitment into the private security sector due to their experience with firearms and hostile environments in order to supplement their regular personnel. This may not constitute an illegal action, but employers and client companies should understand whether the source countries for security service personnel have a history of using child soldiers in armed conflict and, if so, whether there are rehabilitation programs available for former child soldiers. While the focus here is former child soldiers, it should be noted that child soldiering is a manifestation of human trafficking when it involves the unlawful recruitment or use of child soldiers.

Existing Legal Framework

Guiding Question: Does this country specify a minimum age for employment? Does the law define light work and/or hazardous tasks?

Guiding Question: Does the law prohibit the worst forms of child labor?

Government Efforts to Combat Child Labor

Guiding Question: Does the legal framework include a national action plan on child labor?

Guiding Question: If there is a documented presence of child soldiers or former child soldiers in this country, are there active rehabilitation and reintegration programs available?

Implementation in Practice

Guiding Question: Have there been any prosecutions related to child labor (including worst forms of child labor) in the past year?

LABOR RIGHTS AND CONDITIONS OF WORK

Adequate labor laws, inspection systems, and regulations concerning aspects of working conditions such as minimum and living wage levels, hours and overtime pay, occupational safety and health, and employer-provided housing can help reduce trafficking risk in a

country. When countries do not comply with labor standards, working environments may be more susceptible to violations of labor rights and trafficking risk. In some countries, security sector and other service workers may be specifically exempted from legal requirements around working conditions such as minimum wage and working hours.

Existing Legal Framework

Guiding Question: What labor practices and protections are established by law (minimum wage, working hours and overtime provisions, occupational health and safety)?

Guiding Question: Do exemptions exist specifically for workers in the security sector (for example, around minimum wage, working hours, and/or overtime provisions)?

Guiding Question: Are there laws governing housing standards, especially for worker-provided or worker-arranged housing?

Guiding Question: Does the law provide for a system of labor inspection or oversight? If yes, how adequate were the number and frequency of workplace inspections in the past year?

Guiding Question: Are any sectors exempt from labor rights legislation? If so, which ones?

Implementation in Practice

Guiding Question: Have labor inspections been conducted in the past year?

Guiding Question: Are labor inspectors able to access all worksites and housing relevant to private security personnel (such as military bases or embassy facilities)?

Guiding Question: What is the ratio of inspectors to workers? What is the total number of labor inspectors, or what is the ratio of inspectors to workplaces?

Guiding Question: At what sorts of worksites have labor inspections been conducted?

Guiding Question: Are labor inspectors trained on or otherwise supported in identifying cases of labor trafficking or indicators of labor trafficking in practice?

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

The degree of protection for workers' rights to freedom of association and collective bargaining provide important information about the potential risk of human trafficking and other labor abuses. Where workers are not able to advocate for themselves, or do not have the right to associate freely or bargain collectively, the risk of adverse and potentially exploitative working conditions may rise.

Existing Legal Framework

Guiding Question: Is the freedom of association legally guaranteed?

Guiding Question: Are private security personnel in this country excluded from the right to form or join a union? Are *migrant* or *non-citizen* private security personnel working in this country excluded from the right to form or join a union?

Contracted Workers & Security Personnel

Contracted and sub-contracted personnel and workers are common throughout the private security sector. Private security companies may contract personnel themselves and/or sub-contract a smaller or separate company. In some cases, it can be particularly challenging for contracted and sub-contracted workers to effectively organize, even if they are legally allowed to do so, due to the fact that they are not technically employed by the company or entity ultimately responsible for their working conditions.ⁱⁱⁱ In some countries, migrant workers may have some protected rights to freedom of association but not be guaranteed the right to bargain collectively or strike. In addition to facing structural and legal hurdles, contract workers' ability to join unions or otherwise organize can be hampered by the amount of time workers can interact with each other at any one company or employer as their labor provider moves them from assignment to assignment. Finally, migrant workers and guest workers may be barred from full participation in unions or collective bargaining.

Guiding Question: Is the right to collective bargaining protected?

Guiding Question: Are there restrictions on types of workplaces or sectors where collective bargaining can occur? Are certain types of workers excluded from bargaining collectively?

Implementation in Practice

Guiding Question: What percentage of the national workforce is unionized? What percentage of the workforce in various sectors is unionized?

Guiding Question: What percentage of workers are covered by collective bargaining agreements?

MIGRANT WORKERS' RIGHTS

Countries with immigration policy frameworks that restrict the rights or movements of migrant workers may pose a risk for human trafficking. For example, policies that tie work visas to particular employers may prevent workers from leaving exploitative or abusive employment situations for fear of losing their legal immigration status. Policies that restrict the ability of migrant workers to associate, organize, or collectively bargain similarly weaken protections for migrant workers from potential exploitation or abuse. In the absence of bilateral agreements, migrant workers' home country governments are in a weak position to enforce reasonable limits on recruitment fees or advocate for their citizens' rights in the migrant workers' country of destination.

Existing Legal Framework

Guiding Question: Are migrant, domestic, seasonal, and informal economy workers included in the work and labor protections mentioned above?

Guiding Question: Is this country a party to any bilateral or regional agreements about foreign employment or migrant workers? If so, what is the nature of any labor rights provisions included in the agreement(s)?

Guiding Question: Do Third Country Nationals (TCNs) employed in foreign embassies in a host country have the right to labor protections (under host country or embassy country laws)?

JUSTICE SYSTEM

In order for states to investigate instances of trafficking, apprehend traffickers, and prosecute them, there must be justice systems that function effectively and fairly. Strong

justice systems that address the prosecution of perpetrators, protect victims, and ensure equal and fair access for all can contribute to reducing trafficking in persons risks at a country level.

Existing Legal Framework

Guiding Question: Do justice system institutions and procedures exist to assist victims of human trafficking?

Guiding Question: Do criminal justice institutions have mandates that encompass human trafficking?

Guiding Question: Does this country restrict legal standing or access to justice institutions for marginalized groups, including women, minorities, foreign citizens, and stateless persons?

Guiding Question: Does this country provide legal aid for indigent parties?

Guiding Question: Are there any active bans on hiring/recruitment between relevant home countries of TCN security personnel and the responsible country of employment?

Guiding Question: Do TCNs have access to an embassy from their home country to report situations of labor exploitation or human trafficking? Do TCNs have documents that enable them to leave their place of employment (such as a military base)?

Considerations for Engaging Migrant Security Personnel in Active Conflict Zones

This tool offers a general framework for assessing human trafficking risk at a country-level based on legal frameworks and adherence to international labor rights standards which can, in many cases, be applied to the private security industry. However, there are some instances in which the type of country-level risk assessment described in this tool may not be as relevant for private security companies.

For example, some private security companies are contracted by governments to provide services on army bases in other countries. Third Country Nationals may be directly employed and overseen by non-U.S. company subcontractors, further

separating them from the oversight of the prime contractor and military of the government who has contracted the company.

In some such instances, the labor laws of the government/country contracting the private security company may not apply extraterritorially on overseas bases. Nevertheless, companies have a responsibility to ensure that their personnel's human rights and basic labor rights are upheld while they work on the base and countries may have separate laws or acts that do apply, particularly in the case of work-related injuries; for example, The Defense Base Act and the War Hazards Compensation Act applies to contract workers (regardless of nationality) working on U.S. government projects.^{iv} Further, companies should consult any government policy directives outlining workers' rights on army bases.

Guiding Question:

Have the following ILO core conventions been ratified by this country?

Protocol or Convention	Ratified and In Force?
Trafficking in Persons:	
<p>UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000</p> <p>This is one of three protocols to the Convention against Transnational Organized Crime, known as the Palermo Protocols. It is a global, legally binding instrument that defines trafficking in persons and is intended to enable international cooperation for investigating and prosecuting trafficking in persons and to protect and assist trafficking victims.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Forced Labor:	
<p>P29: Protocol to the Forced Labour Convention, 1930</p> <p>Emphasizing the urgent need to eliminate forced and compulsory labor in all its forms and manifestations, the Preamble explains that the</p>	<input type="checkbox"/> Yes

<p>Protocol seeks to address gaps in the implementation of Convention No. 29 by reaffirming that measures of prevention, protection and remedies are necessary to achieve the effective and sustained suppression of forced or compulsory labor.</p> <p>The measures to be taken for the prevention of forced or compulsory labor include:</p> <ul style="list-style-type: none"> a) educating and informing people, especially those considered to be particularly vulnerable, in order to prevent their becoming victims of forced or compulsory labor; b) educating and informing employers, in order to prevent their becoming involved in forced or compulsory labor practices; c) undertaking efforts to ensure that: <ul style="list-style-type: none"> i. the coverage and enforcement of legislation relevant to the prevention of forced or compulsory labor, including labor law as appropriate, apply to all workers and all sectors of the economy; and ii. labor inspection services and other services responsible for the implementation of this legislation are strengthened; d) protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process; e) supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labor; and f) addressing the root causes and factors that heighten the risks of forced or compulsory labor 	<input type="checkbox"/> No
Migrant Workers:	
<p>C143: Migrant Workers (Supplementary Provisions) Convention, 1975^v</p> <p>Establishes that the “basic human rights of all migrant workers” should be respected by ratifying nations. Requires ratifying nations to “systematically seek to determine whether there are illegally employed migrant workers on its territory” and whether migrants are subjected to</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

employment conditions that contravene national laws or regulations, or other agreements whether international, multilateral, or bilateral. It also outlines that migrants working legally should not be “regarded as in an illegal or irregular situation” and should be treated without prejudice. Requires ratifying nations to establish a “national policy designed to promote and guarantee...equality of opportunity and treatment” regarding employment and occupation, social security, trade union participation, freedoms and cultural rights for migrant workers and their families.

ILO CONVENTIONS AND INTERNATIONAL PROTOCOLS & STANDARDS

The International Labour Organization (ILO), a UN body, produces conventions that establish international labor standards and determine the legally binding principles that must be upheld by ratifying countries. When ratified by member countries, these conventions bind them to uphold the principles therein. There are eight core conventions that establish internationally accepted standards for freedom of association, the elimination of child labor and forced labor, and the elimination of discrimination in the workplace.

While the ratification and enforcement of a convention does not guarantee ideal conditions in a country, it does suggest an institutional and legislative commitment to upholding international standards. Conventions, whether ratified in a country or not, can further serve as a benchmark for good practice. [The Information System on International Labour Standards](#) allows you to search by country or convention for ratifications.

Guiding Question: Have the following ILO core conventions been ratified by this country?	
ILO Convention	Ratified and In Force?
Forced Labor:	
C29: Forced Labor	

<p>Obligates countries to suppress the use of forced or compulsory labor “in all its forms” with exceptions for military service, civic or emergency duties, and as the result of a court conviction (so long as the labor is supervised by a public authority and not hired out to private individuals or companies). Forced or compulsory labor is defined as work or service exacted from any person under the menace of penalty and for which the person has not volunteered.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>C105: Abolition of Forced Labor</p> <p>Forbids forced labor used “as a means of political coercion” or as punishment for “holding or expressing political views” or for participating in strikes.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Freedom of Association and Collective Bargaining:	
<p>C87 Freedom of Association and Protection of the Right to Organize</p> <p>Establishes the right of workers and employers to join organizations of their own choosing without prior authorization; and the right of organizations to draw up their own rules and constitutions, elect their own representatives, and organize their own affairs without outside intervention. It calls for protection of workers’ organizations from governmental interference and from being dissolved or suspended by administrative authority; and calls for the right to affiliate with international organizations of workers.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>C98 Right to Organize and Collective Bargaining</p> <p>Grants workers the right to adequate protection against anti-union acts such as dismissals, and against business interference; and encourages countries to take measures to promote collective bargaining.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Equality and Non-Discrimination:	
<p>C100 Equal Remuneration</p> <p>Establishes the principle of equal remuneration for men and women for work of equal value.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

<p>C111 Discrimination</p> <p>Forbids any distinction, exclusion, or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Child Labor:	
<p>C138 Minimum Age</p> <p>Sets the minimum age for work at 15 years of age (although countries with insufficiently developed economies and educational facilities can qualify for “exception” status with a minimum working age of 14). The convention permits light work (defined as work that is not likely to be harmful and does not interfere with schooling) for 13- to 15-year-olds.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>C182 Worst Forms of Child Labor</p> <p>Obligates countries to take effective steps towards eliminating the worst forms of child labor (slavery, debt bondage, work in the sex or drug trades, or any other physically or morally harmful work).</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

International Measures

In 2008, the International Committee of the Red Cross and the Swiss Initiative on Private Military and Security Companies released the [Montreux Document](#), based on UN agreements previously signed by the U.K., France, Germany, the U.S., and China. It outlines states’ responsibility for defense contractors’ conduct and provides recommendations for states that employ defense contractors in military operations.

ENDNOTES

ⁱ The methodology used to develop this tool is based on the [methodology](#) Verité developed with the American Bar Association Rule of Law Initiative for Verité's Trafficking Risk in Sub-Saharan African Supply Chains subsite.

ⁱⁱ *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*. International Committee of the Red Cross and Federal Department of Foreign Affairs, Swiss Confederation, 17 Sept 2008, www.montreuxdocument.org/pdf/document/en.pdf.

ⁱⁱⁱ Shamir, Hila. "Unionizing Subcontracted Labor." *Theoretical Inquiries in Law*, vol. 17, no. 1, 2016, <http://www7.tau.ac.il/ojs/index.php/til/article/view/1378>.

^{iv} Li, Darryl. "Offshoring the Army: Migrant Workers and the U.S. Military." *UCLA Law Review*, vol. 124, 2015, www.uclalawreview.org/pdf/62-1-3.pdf.

^v Defines migrant worker as: "a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker."