



RESPONSIBLE SOURCING TOOL

Food & Beverage | Tool 4

PROTECTIONS AGAINST TRAFFICKING IN PERSONS¹

Country-Level Review of Legal Protections Against Human Trafficking

It is important for states to have adequate laws protecting against human trafficking and other labor abuses that are supported by robust inspection oversight systems and workforce regulations in order to mitigate the risk of human trafficking 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, 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 source countries in their supply chains may have a heightened risk of traffickingⁱ and can provide insight into the types of issues that may arise at worksites in those countries.

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

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.

context for identifying gaps in legal protections for young workers; noting legal requirements regarding worker-provided housing can help ensure that workers 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. Many types of worksites in food and beverage supply chains are characterized as seasonal, temporary, casual, part-time, or contracted, resulting in a lack of social and legal protections.

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.

HUMAN TRAFFICKING

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

- Does the government have laws prohibiting forced labor, slavery, and/or human trafficking? Does the legal framework establish a specific criminal offense of trafficking in persons?

Government Efforts to Combat Human Trafficking

- Does the legal framework include a national action plan on human trafficking?

Implementation in Practice

- Have there been any prosecutions related to human trafficking for forced labor — including child trafficking for forced labor — in the past year?
- Are there trainings and resources on human trafficking available to the appropriate officials and personnel?

CHILD LABOR

While child labor is not synonymous with trafficking in persons, 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 or factors. Child labor and worst forms of child labor are widespread in informal economic sectors. Moreover, in some countries, the legal minimum age for employment in specific sectors, like the agricultural sector, is lower than in other sectors, creating different legal requirements across sectors. If children are not required to attend school, or if attending school proves too expensive due to enrollment fees and associated costs, there may be many more underage workers in the labor force.

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?

Guidance on Definitions of Child Labor and Worst Forms of Child Labor

Most children engaged in agriculture are unpaid family members contributing to crop production on family farms or rented land. Some children work with parents, other family members, or on their own in waged agricultural jobs. Piece rate wages are a common driving force for children working in the agriculture sector; if a worker is paid based on the amount or weight of produce harvested, family members, including children, may be recruited to help increase that amount. In such cases, those family members do not receive their own wages but contribute to the overall piece rate wage the contracted worker receives. Other driving forces include poverty, limited access to education (especially if migrant, stateless, or refugee children are denied access to public education), and, in some contexts, cultural expectations that children will participate in and contribute to agricultural activities.

In smallholder agricultural contexts, it is important to distinguish between child work, child labor, and worst forms of child labor. The ILO defines child work as “children’s or adolescents’ participation in work that does not affect their health and personal development or interfere with their schooling” and includes such activities as “helping their parents around the home, assisting in a family business or earning pocket money outside school hours and during school holidays.” The ILO defines child labor as “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.” Such work could include activities that are dangerous and/or that interfere with schooling or access to schooling. Child labor could, in extreme forms, also include children who are “enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities.” Finally, the ILO defines worst forms of child labor as “as all forms of slavery or practices similar to slavery procuring or offering of a child for prostitution [or] pornography, procuring or offering of a child for illicit activities...work [that] is likely to harm the health, safety or morals of children.”ⁱⁱⁱ

Determining whether a type of task performed by a child is child work, child labor, or a worst form of child labor can depend on the age of the child, the hours involved in the task, conditions under which tasks are performed, and the specific country context.

Verité guidance suggests that children between 13 and 15 (or who are above the minimum age for light work according to a country’s laws) may engage in light work on

family farms. Children below 18 can work in the agriculture sector as long as they do not engage in hazardous work, have adult supervision during work, and, for those between the ages of 12 and 14, do not work for more than two hours per day. Working hours should not interfere with school attendance or school work.

Government Efforts to Combat Child Labor

- Does the legal framework include a national action plan on child labor?

Implementation in Practice

- 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.

Existing Legal Framework

- What labor practices and protections are established by law (minimum wage, working hours and overtime provisions, occupational health and safety)?
- Are there laws governing housing standards, especially for worker-provided or worker-arranged housing?
- 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?
- Are any sectors exempt from labor rights legislation? If so, which ones?

The question of exemption from the law is particularly important for the food and beverage sector. In many countries, the agricultural sector is classified as seasonal and thus exempt from labor rights legislation that govern inspectorate systems, overtime provisions, and minimum wage laws. In some cases, agricultural workers may receive

piece rate wages, which, even if paid accurately, may not amount to minimum wage. The payment of sub-minimum wages can be a red flag for human trafficking risk.

- Guiding Question: Are there any commodity-specific regulatory or governing bodies?

Implementation in Practice

- Have labor inspections been conducted in the past year?
- 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?
- At what sorts of worksites have labor inspections been conducted?
- 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

- Is the freedom of association legally guaranteed?
- Are certain types of workers excluded from the right to join a union?

Contracted and sub-contracted workers are common throughout food and beverage supply chains; they may work in agricultural production, ground transport of processed goods and fresh produce, or in food retail settings. 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, agricultural workers may have some protected rights to freedom of association but not be guaranteed the right to bargain collectively or to strike.^{iv} In addition to facing structural and legal hurdles, agricultural workers' ability to join unions or otherwise organize can be hampered by the seasonal nature of agricultural work, which limits the amount of time workers interact with each other and any one company or employer as they move to different farms and regions depending on the crop schedules. Finally, migrant workers and guest workers may be barred from full participation in unions or collective bargaining.

- Is the right to collective bargaining protected?
- 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

- What percentage of the national workforce is unionized? What percentage of the workforce in various sectors is unionized?
- What percentage of employees 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 guestworkers' 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' origin country governments are in a weak position to enforce reasonable limits on recruitment fees or advocate for their citizens' rights in the migrant destination country.

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)?

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 TIP risks at a country level.

Existing Legal Framework

- Do justice system institutions and procedures exist to assist victims of human trafficking?
- Do criminal justice institutions have mandates that encompass human trafficking?
- Does this country restrict legal standing or access to justice institutions for marginalized groups, including women, minorities, foreign citizens, and stateless persons?
- Does this country provide legal aid for indigent parties?

ILO CONVENTIONS AND INTERNATIONAL PROTOCOLS & STANDARDS

The International Labor Organization (ILO), a UN body, produces legally binding conventions that establish international labor standards and determine the principles that must be upheld by ratifying countries. These conventions can be ratified by member countries, which binds 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

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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.

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

| ILO Convention | Ratified and In Force? |
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| Forced Labor: | |
| ILO 29 Forced Labor 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. | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| ILO 105 Abolition of Forced Labor Forbids forced labor used “as a means of political coercion” or as punishment for “holding or expressing political views” or for participating in strikes. | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Freedom of Association and Collective Bargaining: | |
| ILO 87 Freedom of Association and Protection of the Right to Organize 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. | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| ILO 98 Right to Organize and Collective Bargaining 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. | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Equality and Non-Discrimination: | |
| ILO 100 Equal Remuneration Establishes the principle of equal remuneration for men and women for work of equal value. | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| ILO 111 Discrimination | |

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| <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>ILO 138 Minimum Age 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>ILO 182 Worst Forms of Child Labor 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 |

Have the following additional international protocols, standards, and ILO conventions been ratified by this country?

| Protocol, Standard, or Convention | Ratified and In Force? |
|--|--|
| Trafficking: | |
| <p>The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 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 assists trafficking victims.</p> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Agriculture: | |
| <p>Safety and Health in Agriculture Convention, 2001 (No. 184) Obligates employers to provide for the safety and health of temporary, seasonal, and permanent workers (including ensuring that activities and equipment comply with health and safety standards and providing appropriate training and instruction) and requires a national policy on safety and health in agriculture, which includes inspections of agricultural workplaces. The convention gives workers the right to be instructed in health and safety matters and to remove themselves from workplace activities in which they believe there is an imminent and serious risk to health and safety without retaliation. If an employer is required to provide housing to workers, the convention notes that laws</p> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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| <p>governing that housing should meet the minimum accommodation standards. The Safety and Health in Agriculture Code of Practice offers advice on how to implement this convention.</p> | |
| <p>Labour Inspection (Agriculture) Convention, 1969 (No. 129) Requires a system of labor inspection in agricultural undertakings where employees or apprentices work; nations who ratify the convention may also decide to inspect agricultural undertakings where tenants, sharecroppers, members of co-operatives, and/or family members of the operator of the agricultural undertaking work.</p> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <p>Plantations Convention, 1958 (No. 110) and Protocol of 1982 (P110) Covers provisions for the recruitment, employment, benefits and compensation, and housing conditions of employees on a plantation, defined as “any agricultural undertaking regularly employing hired workers which is situated in the tropical or subtropical regions and which is mainly concerned with the cultivation or production for commercial purposes of coffee, tea, sugarcane, rubber, bananas, cocoa, coconuts, groundnuts, cotton, tobacco, fibers (sisal, jute and hemp), citrus, palm oil, cinchona or pineapple.” Requires a licensed recruiter or employer to cover the costs of transporting the worker to the workplace and of repatriation. Limits the timeframe of employment on a plantation (1-3 years depending on the nature of the journey to reach the workplace and whether or not the worker is accompanied by family members). Specifies that wages should be governed by national laws, adhere to minimum wage law, and only include deductions proscribed by national law. Requires at least 25 hours of consecutive rest in every seven-day period. Guarantees employers and employees the right to associate and provides for anti-union discrimination.</p> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <p>Right of Association (Agriculture) Convention, 1921 (No. 11) This convention establishes that “the same rights of association and combination” apply to workers in agriculture just as they apply to industrial workers. Nations that ratify the convention must ensure that those rights are secured for agricultural workers and work to remove any provisions that restrict their access to those rights.</p> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <p>Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) Establishes that ratifying nations will create a system for determining appropriate minimum wages for agricultural workers. The specific minimum amount and method for determining it is up to each ratifying nation and should be determined through a consultative process involving representatives of employers and workers (if such entities exist). If national laws allow, partial payment of minimum wages may be made “in the form of allowances in kind,” as long as this form is</p> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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| <p>“customary or desirable.” Nations that ratify the convention are also required to ensure that the minimum wage rate is being appropriately followed through providing supervision, education on the wage rate, inspection, and sanctions when necessary.</p> | |
| <p>R132-Tenants and Share-croppers Recommendation, 1968 (No. 132)</p> <p>This Recommendation applies to agricultural workers who are not remunerated by a fixed wage, i.e. tenants or those who are remunerated with shares of produce. Seeks to assure that tenants, share-croppers, and other similar categories of workers have access to land, stability, and security. Outlines best practices concerning mutually agreed upon contracts, amount of rent (adjustable to actual harvest yields), minimum share of produce to which sharecroppers are entitled, provision of adequate housing when customary or necessary, and the authorization for tenants and sharecroppers to use land to produce food for themselves and their families.</p> | |
| Migrant Workers: | |
| <p>Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)^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 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.</p> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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 “What is Child Labour?” International Labour Organization. <https://www.ilo.org/ipec/facts/lang--en/index.htm>

ⁱⁱⁱ Hila Shamir. “Unionizing Subcontracted Labor.” *Theoretical Inquiries in Law* 17(1):299-256. 2016. <http://www7.tau.ac.il/ojs/index.php/til/article/view/1378>

^{iv} Kirk Makin. “Farm workers have no right to unionize, top court rules.” *The Globe and Mail Inc.* May 1, 2018. <https://www.theglobeandmail.com/news/national/farm-workers-have-no-right-to-unionize-top-court-rules/article578141/>

^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.”