

THE
**COLOURED GEMSTONES
WORKING GROUP**



Forced Labour

GUIDANCE
2021

TDi

Sustainability

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Introduction to this Guidance

This Guidance has been designed to introduce you to the topic of forced labour and to accompany you through the process of implementing an Anti-Forced Labour commitment.

This Guidance includes:

- **An explanation** of the topic of forced labour;
- **A description of the key steps** that you can take to implement an Anti-Forced Labour commitment;
- **A glossary** containing an explanation of key terms (highlighted in yellow) relating to the topic of forced labour.

Explanation of Forced Labour

The International Labour Organization (ILO) defines **forced labour** as work or service that is demanded from someone under the threat of a penalty, and which the person has not voluntarily or freely agreed to do. Forced labour can thus be understood as work that is performed involuntarily and under the menace of any penalty.

Modern slavery is a non-legal umbrella term comprising the forms of exploitation, such as slavery, practices similar to slavery, forced labour, the worst forms of child labour and human trafficking. The term 'modern slavery' is sometimes used as a synonym for forced labour.

There are three key types of forced labour:

- **Bonded labour**, sometimes called debt bondage, occurs when a workers pledges their labour (or that of their family members) as security to repay a loan or wage advance from an employer or labour recruiter, where the terms of repayment are not clear and the loan provider does not intent to ever declare the loan repaid. Bonded labour traps workers in debt to a particular employer for years, sometimes even passing from generation to ge-

neration.

- **Indentured labour** happens when a third party, often a parent or guardian, offers a worker in exchange for money. These workers are forced to work for either a fixed time, or until the proprietors decide they have received fair value.
- **Prison labour** is involuntary work done by prisoners who have not been convicted in a court of law and whose work is not supervised by a public authority. It also includes involuntary work done by prisoners for the benefit of a private business.

Human trafficking, which often occurs for forced labour purposes, is defined 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.”¹

Forced labour occurs in countries everywhere,

exists in formal and informal economies, and can be found in the supply chains of large corporations and small-scale enterprises businesses alike. In 2017, the Global Estimates of Modern Slavery estimated there to be around 24.9 million people in forced labour around the world. Among them, 16 million are exploited in the private economy, with women and girls disproportionately affected.²

It's important to note that forced labour does not necessarily involve physical violence or sexual abuse. Most victims of forced labour suffer multiple forms of coercion from employers or recruiters and end up in situations where they cannot leave their job without being penalised or threatened. While such threats may be physical in nature, they may also include threats of deportation, restricted movement, confiscation of passports, or debt bondage.

Forced labour in global supply chains

It is an unfortunate reality that instances of forced labour have been identified in the gemstones and jewellery industry, at all stages in the supply chain. Businesses may be linked to forced labour

¹ United Nations Human Rights Council, Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children, and Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime. Accessed 30 November 2020. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TransnationalOrganizedCrime.aspx>

in several ways. Although they may not be aware of it, businesses may be involuntarily linked to forced labour, for example, by recruiting human trafficking victims or by other illegal practices such as debt bondage schemes. They may also be indirectly linked, as well, without even realizing it. Sub-contracting and complex supply chains can make it difficult for businesses to detect forced labour in their supply chains. The presence of labour recruiters in supply chains, in combination with downwards pressures on costs, can lead to the exploitation of workers as businesses seek to maximise profits. Business' buyers may negotiate lower prices or may put pressure on suppliers for a short turnaround time, which drastically increases the risk of slavery.

It is important to understand that all exploitation is a complex issue. Forced labour in supply chains is built into global systems in two ways: First, it is systemic in the sense that it occurs when global dynamics (such as poverty and globalisation) create a supply of highly exploitable workers, while there is a simultaneous business demand for their labour. Second, it is systemic in the way in which businesses operate. For example; research suggests that the charging of recruitment fees and expenses to migrants' workers is a significant contributor to human trafficking and forced labour in global supply chains. Limited labour protections and irresponsible sour-

² International Labour Organization, Global Estimates of Modern Slavery: Forced Labour and Forced Marriage. Accessed 30 November 2020. https://www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm

cing practices are other structural ways in which businesses contribute to forced labour in their supply chains.

Indicators of Forced Labour

The ILO has defined 11 indicators of forced labour that you can use to help identify instances in your supply chain. If you find evidence of a single indicator, there may be unfair labour practices present. Evidence of two or more indicators suggests a heightened risk of forced labour. These indicators are:

- **Abuse of vulnerability:** meaning people who lack knowledge of the local language or laws, have few livelihood options, belong to a minority religious or ethnic group, have a disability or have other characteristics that set them apart from the majority population, making them vulnerable to abuse.
- **Deception:** meaning a failure to deliver what has been promised to the worker, either verbally or in writing.
- **Restriction of movement:** meaning being locked up and guarded to prevent workers from escaping at work or while being transported.
- **Isolation:** meaning isolated in remote locations or behind closed doors, denied contact with the outside world.
- **Physical and sexual violence:** meaning labourers, their family members and close associates subjected to actual physical or sexual violence.
- **Intimidation and threats:** meaning, for

example, the use of physical violence, denunciation to immigration authorities, loss of wages or access to housing or land, further worsening of working conditions or withdrawal of “privileges” such as the right to leave the workplace.

- **Retention of identity documents:** meaning the retention by the employer of identity documents or other valuable personal possessions, if workers are unable to access these items on demand and if they feel that they cannot leave the job without risking their loss.
- **Withholding of wages:** meaning wages are systematically and deliberately withheld as a means to compel the worker to remain and deny him or her of the opportunity to change employer.
- **Debt bondage:** meaning working in an attempt to pay off an incurred or sometimes even inherited debt.
- **Abusive working conditions:** meaning workers enduring living and working conditions that they would never freely accept, such as overcrowded and unhealthy conditions without any privacy.
- **Excessive overtime:** meaning working excessive hours or days beyond the limits prescribed by national law or collective agreement, including being denied days off.

Forced Labour: Points to Consider

Formal consent of an employee to work

does not always guarantee that the employee is working voluntarily. If the consent to work was given under the pretence of violence or retaliation, for example, no voluntary work is taking place.

Compulsory overtime to meet production deadlines is not considered forced labour if it stays within the legal limits set out in national legislation or collective agreements. Forced labour occurs if overtime exceeds the weekly or monthly limits allowed by law and is made compulsory.

If a person is not free to leave employment without threat or penalty, they are in forced labour regardless of whether or not you give them full wages, benefits, or other forms of compensation.

Key Regulations

In most countries, laws and regulations regarding forced labour are enshrined in national legislations, which may pose requirements for businesses for the purpose of preventing, protecting and remedying forced labour, and to report on such actions taken. This is the case, for example, of the Modern Slavery Act adopted in the United Kingdom and Australia, of the California Transparency in Supply Chains Act in the United States, and of the Duty of Care Law in France.

In 2014, the ILO adopted the Protocol of 2014 to the Forced Labour Convention, 1930, a legally binding instrument that establishes ILO member States' obligations to prevent forced labour, protect victims, and provide them with access to remedies.

The Convention enjoys nearly universal ratification. In any case, because freedom from forced labour is also a fundamental human right, and the elimination of all forms of forced labour is included in the ILO Declaration on Fundamental Principles and Rights at Work, and because all ILO member states have to respect the principle of the elimination of forced labour regardless of ratification of the conventions, it is likely that your country has adopted laws or regulations to implement such conventions.

For human trafficking specifically, key legal instruments at the international level include the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children and the UN Protocol against the Smuggling of Migrants by Land, Air, and Sea, both supplementing the UN Convention against Transnational Organized Crime.³

³ United Nations Office on Drugs and Crime, Convention Against Transnational Organized Crime, <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

FOCUS ON MIGRANT WORKERS

Migrant workers are particularly vulnerable to forced labour, especially if they have illegal or restricted employment status, are economically vulnerable or belong to an ethnic group subject to discrimination. Employers or labour recruiters may exploit these vulnerabilities by using deceptive recruiting practices, charging recruitment fees, or withholding identity documents and threatening deportation. Under such conditions, migrant workers may agree to paying large fees to secure employment, where they end up in forced and bonded labour situations.

Recruitment

A major cause of forced labour throughout global supply chains involves deceptive recruitment practices and the charging of recruitment fees. As migrant workers are most often impacted by this exploitation, practices for responsible recruitment were enshrined in the Dhaka Principles for Migration with Dignity, established by the Institute for Human Rights and Business. The Dhaka Principles aim to enhance respect for the rights of migrant workers from the moment they are recruited, through their employment overseas, to when they return back to their home countries.

The 12 Dhaka Principles are:

1. All workers are treated equally and without discrimination.
2. All workers enjoy the protection of employment law.
3. No fees are charged to migrant workers.
4. All migrant worker contracts are clear and transparent.
5. Policies and procedures are inclusive.
6. No migrant workers' passports or identity documents are retained.
7. Wages are paid regularly, directly and on time.
8. The right to worker representation is respected.
9. Working conditions are safe and decent.
10. Living conditions are safe and decent.
11. Access to remedy is provided.
12. Freedom to change employment is respected, and safe, timely return is guaranteed.⁴

If your business employs migrant workers, you should always abide by the Dhaka Principles. If you use a third party to recruit your migrant workers, you should:

- Know who these workers are and where they come from;
- Ensure that their recruitment was completely legitimate, done without deception, coercion or recruitment fees;
- Develop a company policy on recruiting migrant workers; and,
- Only engage reputable recruitment and employment agencies.

⁴ Institute for Human Rights and Business, The Dhaka Principles for Migration with Dignity (2012) www.ihrb.org/dhaka-principles

Implementation

There are a variety of steps all businesses can take to address forced labour:

A

Commit to a workplace free from forced labour



PLAN

1 WRITE AN ANTI-FORCED LABOUR POLICY

Write an Anti-Forced Labour Policy that clearly communicates to your staff, suppliers, customers and business partners that your business takes the issue of forced labour seriously. An Anti-Forced Labour Policy of this nature will formalise your business's vision and commitment to a responsible supply chain.

In particular, your Anti-Forced Labour Policy, at a minimum, should include the following commitments:

1. A commitment to never engaging or supporting forced labour.

This should include all forms of modern slavery, including bonded labour, indentured or involuntary prison labour as defined by ILO Convention 29. Here, you should also highlight this expectation throughout your supply chain, indicating that your company will potentially terminate business with any business partner that uses forced labour.

2. **A commitment to never engaging or supporting human trafficking or any other type of deceptive recruitment and/or bonded labour practices.** This requirement should be clearly communicated to labour recruiters, agencies and providers with whom your business works.
3. **The prohibition of any employee or contractor from using, or threatening to use, violence or penalties or intimidating practices.**

B

Implement your commitments



DO

2 ASSIGN THE RESPONSIBILITY

Assign the responsibility of overseeing your Anti-Forced Labour commitment. Your business should be able to demonstrate that it takes forced labour seriously. To this end, at least one person within your business should be responsible for finding out all applicable law and ensuring that your business is compliant. It is therefore important to appoint someone to be responsible for understanding these laws and for the general oversight of your system. The person you assign will depend on the size and scale of your business. In smaller companies, this responsibility might fall on someone familiar with applicable law, such as a Human Resources Manager or a Hiring Manager. In any case, this person will be responsible for monitoring all applicable laws and regulations and for reviewing relevant policies and procedures every year, to ensure that your company continues to comply with changing laws and adequately addresses forced labour.

3 RETURN ORIGINAL COPIES OF EMPLOYEE DOCUMENTATION

Ensure that your business never retains the original copies of employee's personal documentation. This includes identity papers or passports, and other personal items such as school certificates. It is considered best practice to give workers free access to a secure place where they can keep their valuables and personal documents while at work. This may be in safety deposit boxes, if your employees need to have important documents stored securely.

4 ENSURE FREEDOM OF MOVEMENT

Ensure that all workers are working in voluntary situations by never restricting their freedom of movement. This includes both in the workplace and in on-site housing. This means that workers can leave their workstation for specific purposes, such as going to the washroom, having a break or seeking medical attention. Under no circumstances can you restrict access to food, water, toilets or medical care in the workplace as a way of disciplining workers. If workers stay in employer-provided housing, there should be no unreasonable restrictions of movement.

5 VERIFY RECRUITERS

If you use labour recruiters, only use those with formal business licenses or certification by the relevant authority. Ensure that workers are not charged a recruitment fee as part of the recruitment process by any third-party agencies your business

uses, or by your business directly. If workers are charged a recruitment fee as part of the recruitment or hiring process, they should be fully reimbursed by your business.

6 CARRY OUT DUE DILIGENCE

Carry out due diligence to ensure your recruiters' practices do not put workers at risk of human trafficking or deceptive recruitment practices – this is particularly important if migrant workers are involved. A due diligence process should include assessing contractors, suppliers, agencies or labour providers for forced labour, if such business partnerships exist. This should be included in your general human rights due diligence. Furthermore, you may monitor your own operations as well as those of any contractors, suppliers, agencies or labour providers by:

- Holding regular worker interviews or surveys;
- Conducting desktop reviews of policies and procedures to confirm the right controls are used (this may include reviewing employee contracts).

7 ENSURE THERE IS NO COMPULSORY OVERTIME

If overtime occurs to meet production deadlines, it must never exceed the weekly or monthly limits allowed by law and it is never made compulsory.

8 USE STANDARD EMPLOYMENT CONTRACTS

Use standard employment contracts, including statutory and collectively agreed terms, working hours and wages. Employment contracts are a necessary tool in order to prevent forced labour. Employees must understand the contract and must be given a final copy.

9 PAY WAGES DIRECTLY

Use a payments system wherein wages are paid directly to the worker and never replaced by in-kind remuneration or given directly to a third party, such as a recruitment agency. This payment system should never allow for the withholding of any part of an employee's salary, benefits or property to force them to continue working. It is vital that you nor your business partners defer or withhold any part of a worker's wage payments to try and make them work for longer.

10 ALLOW REASONABLE EMPLOYMENT TERMINATION

Prohibit any action that prevents employees from terminating their employment after reasonable notice or as established by applicable law. If a notice period is not specified in a contract, you may ask the employee to keep working for a fixed period of time until you can find a replacement. Make sure, however, that the worker is free to decline your request without threat of retaliation. Your business should never withhold any part of any worker's salary, benefits, property or documents in order to force them to continue working.

11 WRITE AN ANTI-FORCED LABOUR PRACTICES PROCEDURE

Write an anti-forced labour practices procedure to formalise the aforementioned steps and designate day-to-day activities. A written procedure will help ensure that your staff have the guidance they need to integrate your policy into your business activities. In particular, the procedure should detail the responsibilities of the person responsible for oversight of your anti-forced labour commitment, such as a human rights manager.

12 TRAIN YOUR STAFF

Train your staff to make sure they are aware of your Anti-Forced Labour policies and procedures. All relevant staff should be trained to ensure they are all aware of their obligations and how to follow policies and procedures correctly. Relevant staff may include those in your human resource's department, such as those responsible for hiring employees, and on-the-ground site managers. In addition, all employees should be trained on how to use your grievance mechanism to report any suspected infringements.



Monitor and review your Anti-Forced Labour commitment



CHECK

13 REGULARLY MONITOR, REVIEW, UPDATE

Regularly monitor, review, and where necessary update your Anti-Forced Labour commitment, including: the activities that are performed by the relevant staff and your policy and procedure to identify any areas in need of potential improvement and to ensure that your system is up to date.

Forced Labour Glossary

Forced labour:

Forced labour can be understood as work that is performed involuntarily and under the menace of any penalty. Forced labour is work or service that is demanded from someone under the threat of a penalty, and which the person has not voluntarily or freely agreed to do.

Modern slavery:

Modern slavery is a non-legal umbrella term comprising the forms of exploitation, such as slavery, practices similar to slavery, forced labour, the worst forms of child labour and human trafficking. The term 'modern slavery' is sometimes used as a synonym for forced labour.

Bonded labour:

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fixed time, or until the proprietors decide they have received fair value.

Prison labour:

Prison labour is involuntary work done by prisoners who have not been convicted in a court of law and whose work is not supervised by a public authority. It also includes involuntary work done by prisoners for the benefit of a private business.

Human trafficking:

Human trafficking, which often occurs for forced labour purposes, is defined 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.”⁵

⁵ United Nations Human Rights Council, Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children, and Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TransnationalOrganizedCrime.aspx>

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