Corruption & Labor Trafficking in Global Supply Chains

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In this white paper, Verité outlines how trafficking-related activities in global supply chains include corruption, bribery, and other conduct that could result in liability for companies subject to Foreign Corrupt Practices Act (FCPA) jurisdiction. It also provides guidance on how and where companies should respond to the specific compliance risks associated with labor trafficking.

Verité's on-the-ground research, risk assessments, and monitoring work in global supply chains routinely uncover situations where unethical labor brokers and corrupt government officials are instrumental in greasing the wheels of labor trafficking. The foreign subsidiaries, franchisees, joint ventures, and suppliers of global multinationals who end up employing trafficked migrant workers frequently express ignorance of the continuing—and largely hidden—scourge of modern day slavery that affects over 20 million people.

Is there a direct connection between the corrupt practices occurring in the foreign migrant labor supply chain and the type of red flags associated with human trafficking and forced labor? Yes. These red flags include: deception regarding employment terms and conditions, illegal or unethical placement fees charged to foreign contract workers, unexplained fees and costs, lack of transparency, and workplace practices such as passport retention and "runaway insurance" deposits.

It is becoming increasingly clear that the routes and mechanisms used by traffickers to subject vulnerable foreign contract workers to forced or bonded labor exposes certain U.S. and even foreign companies and persons to potential liability under the FCPA.

The Foreign Corrupt Practices Act

The FCPA has two primary sections. The first section makes it illegal to bribe foreign officials, and the second section imposes record keeping and internal accounting requirements upon publicly traded U.S. companies. The FCPA's anti-bribery provisions make it illegal to bribe foreign officials in order to obtain or retain business or to secure any improper advantage. Specifically, the FCPA prohibits payments, offers or gifts of money or anything of value, with corrupt intent, to a "foreign official." The Department of Justice (DOJ) and Securities and Exchange Commission (SEC), who enforce the FCPA, construe its requirements very broadly.

The DOJ's recently issued guidance on the FCPA reaffirms that payments to foreign government officials such as border control, immigration or law enforcement to gain an improper business advantage or to secure or maintain business can give rise to liability regardless of whether there was actual knowledge of wrongdoing or purposeful avoidance of such knowledge. The FCPA makes it clear that "willful blindness" or "deliberate indifference" to red flags will be sufficient to establish criminal knowledge of corrupt practices.

U.S. companies including foreign subsidiaries, franchisees, joint venture entities, or even suppliers that use third party employment agencies or labor brokers run the risk of potential FCPA liability. The risk arises from the fact that these entities rely on employment agencies and labor brokers who must interact with foreign officials to obtain work and travel permits, visas, etc. Any interaction with a foreign official creates potential for exposure under the FCPA. Outsourcing of the employment and management of foreign contract workers by a supply chain participant will not insulate a company from potential FCPA liability where corrupt payments result in an indirect or direct benefit such as cheap migrant labor.

"Corruption is a global problem. In the three decades since Congress enacted the FCPA, the extent of corporate bribery has become clearer and its ramifications in a transnational economy starker. Corruption impedes economic growth by diverting public resources from important priorities such as health, education, and infrastructure. It undermines democratic values and public accountability and weakens the rule of law. And it threatens stability and security by facilitating criminal activity within and across borders, such as the illegal trafficking of people, weapons, and drugs. International corruption also undercuts good governance and impedes U.S. efforts to promote freedom and democracy, end poverty, and combat crime and terrorism across the globe."

—A Resource Guide to the U.S. Foreign Corrupt Practices Act (by the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission)

It is important to note that under the FCPA, a parent company may be liable for bribes paid by its subsidiaries, agents and others working on its behalf under a variety of legal theories, including traditional agency principles. This means that a U.S. company can be held accountable for the actions or failures of its subsidiaries, agents, employees, and its U.S. officers and directors can also be held personally liable.

Labor trafficking-related activities that violate the FCPA

Companies subject to the FCPA need to understand that the agents and brokers they hire may be paying bribes to an assortment of players in the foreign labor supply chain including sub-agents and labor department officials involved in immigration, border control, and law enforcement. Often these commissions or bribes may be funded by excessive fees charged to workers which are almost invariably illegal and so excessive that workers take on considerable debt at usurious interest rates in order to secure what they were fraudulently led to believe would be well paying contract jobs. The unfortunate workers who have been deceived end up in a forced or bonded labor situation, effectively and commonly working for free for months or even years to pay off their debt, often to the very "agents" who engineered their exploitation in the first instance. Moreover, kick-backs are frequently paid to those in the workplace who choose the agent or broker over others, thus creating the potential for liability under other applicable laws and regulations, including those laws and regulations that target commercial bribery.

The DOJ consistently takes the position that FCPA responsibilities extend to a wide range of third parties in supply chains including agents, business partners and even suppliers where an "improper business advantage" accrues to the U.S. connected company. The concept of improper business advantage is very broadly defined and can include indirect or direct financial benefits such as cheap labor used in the manufacture of its products. Companies cannot afford to ignore signs that suppliers, agents, or intermediaries may be engaged in trafficking-related activities that violate the FCPA. Avoiding knowledge of the conduct of third parties in the supply chain will not reduce a company's potential liability.

The nexus between corruption and labor trafficking is not new

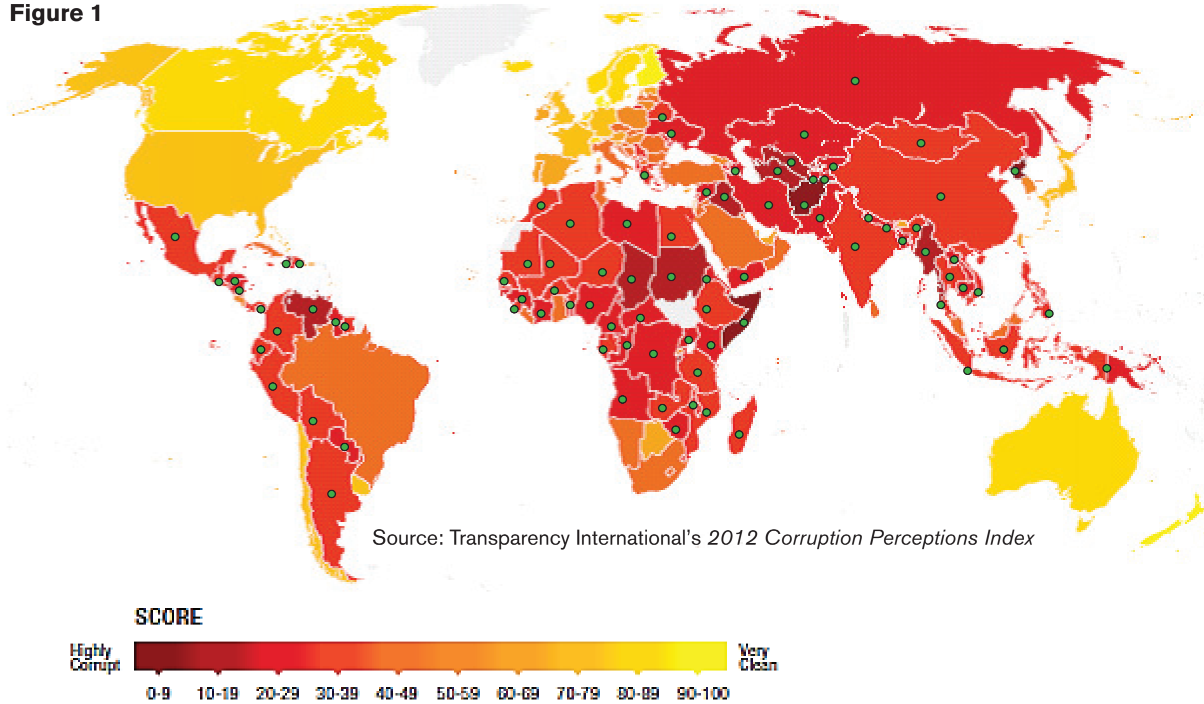
There is a high correlation between public sector corruption and trafficking in persons for labor exploitation. Many sending countries that Verité knows to be labor trafficking hot spots, including Indonesia, Thailand, Vietnam, Bangladesh, India, Myanmar, Nepal, Mexico, Guatemala, Ecuador, and the Philippines also rank among the lowest on Transparency International's 2012 Corruption Perceptions Index. Globalization and the opening up of new markets and borders generates a supply of migrant workers eager to escape poverty and unemployment in their home sending countries and meet the labor shortages in receiving countries in Southeast Asia and the Middle East in particular. This supply-demand equation creates a "high return-low risk" venture for labor traffickers. Labor trafficking is an insidious and often hidden abuse. Victims are rarely identified and few offenders ever held to account.

According to a research study undertaken by Zhang and Pineda (2008), the presence of corruption in a country is a significantly stronger predictor of human trafficking than other poverty-related causes. The study revealed that corruption was the only variable that consistently correlated closely with the U.S Department of State Trafficking in Persons (TIP) annual ranking report of countries, and was statistically significant. If Transparency International's 2012 Corruption Perceptions Index map is overlain with findings of the U.S State Department's 2012 TIP report, the result is a clear visual connection between corruption and trafficking–the majority of the most corrupt states (shaded in dark red in Figure 1 on the next page) also appear on the State Department's list of countries with severe human trafficking issues.

It is estimated that trafficked workers generate $32 billion annually in illicit profits for perpetrators. According to the ILO, labor trafficking is the third most lucrative global criminal enterprise behind illegal drugs and arms. Both public and private sector corruption facilitates and obscures the abuse of vulnerable foreign migrant workers and directly contributes to the growth of a transnational criminal enterprise, increasingly run by regional and global networks.

From a global perspective, the United Nations Office on Drugs and Crime states unequivocally that "trafficking in persons and corruption are closely linked criminal activities."

Figure 1



Source: Transparency International's *2012 Corruption Perceptions Index*

● Level 2, Level 2 Watch List & Level 3 Countries, U.S. Department of State 2012 Trafficking in Persons Report

Corruption in "sending" countries

Nepal provides an example of how corruption links with trafficking. In that country, to send workers abroad legally, domestic recruitment agencies must provide the Department of Foreign Employment with a "demand letter" from the receiving country employer, a guarantee letter from the recruitment agency, power of attorney, an employment contract, a service contract between the agency and the client, and evidence of life insurance. After verifying these documents, the Labor Department stamps each worker's passport signifying permission to migrate. Nepal's Foreign Employment Act 2007 regulates the operation of recruitment agencies and registered agents who facilitate the migration of foreign workers and assigns responsibility to the Department of Foreign Employment for all matters pertaining to foreign employment. According to a research study conducted on issues related to the recruitment of migrant workers from Nepal by Manandhar & Adhikar (2010), the Department has actually become a breeding ground for corruption due to overcentralization and inefficiency. These findings are consistent with Verité's 2012 report on Labor Brokerage and Nepali Migrant Workers. Each step in the process outlined above represents an opportunity to extract a bribe or corrupt payment. The study, undertaken for the World Bank, conservatively estimated that corruption in the foreign employment industry in Nepal amounted to over NPR 17.2 billion per year (USD $194.7 million).

This endemic corruption and inefficiency pushes many migrant workers to opt for unofficial channels into foreign employment–individual or local "agents" who function outside the legal framework. A study conducted by the Asia Foundation in 2012 reveals that these unlicensed and unregulated agents work in concert with recruitment agencies in Nepal, India and other receiving countries to use fraudulent passports, visas and contract documents to smuggle migrants into manufacturing, construction and service jobs in Southeast Asia and the Gulf States. The sad irony is that in their efforts to avoid the inefficiency and corruption of the "official" route, the foreign migrant's undocumented status actually significantly increases their vulnerability to forced and bonded labor at the hands of unscrupulous agents.

Undocumented foreign migrants who enter destination countries illegally, even if trafficked, have little recourse to law enforcement if subjected to forced or bonded labor because they will likely be treated as criminals as opposed to victims. The threat of denunciation to immigration authorities or law enforcement in the receiving country often becomes the "threat or menace of penalty" that can constitute forced or involuntary labor.

A transnational problem

In May of 2012, in an attempt to decrease fraudulent broker activities and discourage corruption, the Department of Foreign Employment in Nepal made the verification of migrant workers' documents by Nepali missions abroad or by chambers of commerce of concerned countries mandatory before giving final approval to Nepali citizens to migrate abroad for work.

Malaysia is one of the largest receiving countries of migrant workers in Southeast Asia. After Qatar, it is the top destination for Nepali migrant workers who are commonly subjected to fraud and deception by Nepalese recruiters, exploitation and abuse by their Malaysian employers and brokers, and are made vulnerable due to their immigration status. In an attempt to mitigate the risk of fraudulent documentation and corrupt payments, Malaysia introduced a "calling" visa for incoming migrant workers–companies must seek permission from the Malaysian Ministry of Home Affairs to provide visas to proposed foreign contract workers.

It is highly unfortunate that these reforms have in fact created further opportunities for corrupt practices. Fraudulent demand letters–purportedly from employers in Malaysia–are used to secure calling visas, permission to migrate and ultimately work permits. The fake documents are frequently of such poor quality that they could only have been accepted if accompanied by a bribe or inducement.

Nepal is not alone. Corruption in the foreign employment sector is present in most sending countries. For example, government officials from the Philippines Overseas Employment Administration and three labor brokers were charged with trafficking 100 Filipino workers and violation of the Anti-Graft and Corrupt Practices Act in 2011. The criminal complaint alleged that the government officials accepted kick-backs for turning a blind eye to the brokers' operations and expired licenses.

How corruption facilitates labor trafficking

A typical recruitment path for migrant workers in a sending country is for legally registered agencies located in major population centers to use district or regional agents, who in turn work with unregistered sub-agents at the village level. Village agents may also have a well-developed network with agencies in transit and receiving countries and even with human resource managers, general managers, and supervisors at end-user employers.

Prospective migrant workers, many of whom are illiterate or have attained only low levels of formal education, have to prepare so many documents that it is practically impossible to complete the process without depending on the services of agents and middlemen. Innumerable documents such as birth certificates, citizenship certificates, passports, visa stamps, work permits, contract letters, health certificates, insurance, training certificates, orientation certificates, air tickets, and parental approval (in the case of female workers from some countries) have to be prepared before departure. Unscrupulous agents buy fake documents on the black market and bribe government officials to facilitate the efficient and profitable flow of migrant workers.

Labor brokers or agents in the supply chain frequently collude with corrupt government officials to enable the physical transportation of foreign migrants. In countries like Thailand, for example, where the border provinces contain a high concentration of immigration and police checkpoints, it would be practically impossible to transport migrants by land to workplaces without the cooperation of corrupt government officials. Corruption can amount to bribes to turn a blind eye or, in some cases, corrupt officials partnering with or even leading broker operations. An ILO study conducted in 2006 directly implicates police officers in some countries of transporting illegal migrants to workplaces.

Corruption in receiving countries

Employers in receiving countries frequently auction off contracts for the recruitment and selection of foreign contract workers. Contracts are awarded to the agencies that can supply foreign contract labor at the lowest cost. In many cases, the agencies do not charge the employers any fees for the recruitment and selection of foreign contract workers. Verité frequently uncovers situations where facility management personnel allegedly accept illicit payments from agents or brokers offering their services as a contract labor provider.

This auction process adversely affects workers' wages, because agencies try to outbid each other to provide the largest amount of workers at the lowest hourly cost to employers. Nepali law, for example, establishes that workers cannot be sent abroad for jobs paying below the minimum wage set by the Nepali government. To circumvent these regulations, agencies in Nepal bribe Labor Department officials to approve the applications of workers who will be earning less than the legal minimum wage or use fraudulent contracts to secure Labor Department approval and immigration clearance. Upon arrival in the destination country, workers are required to sign a different contract by the receiving country broker with less favorable terms and conditions and are told that the Nepali contract is not valid. Contract substitution like this is a major red flag indicator of forced or bonded labor.

Some of the inherent features of foreign employment transactions make them highly susceptible to corruption. The one-off nature of the transaction, involvement of unknown foreigners living in distant places, the maze of bureaucracy in the preparation of travel documents, involvement of layers of middlemen and agents, tight deadlines, and informality of the transactions all create a ripe environment for corruption. The foreign migrant employment process is further complicated by the limited supply and high demand for jobs in receiving countries. Corruption in countries like Nepal, India, Bangladesh, Indonesia and the Philippines is a root cause of the forced and bonded labor that occurs in the factories and on the farms and plantations of receiving countries in Southeast Asia and the Middle East in particular, which also have high levels of corruption.

How should companies respond?

The FCPA significantly affects the way companies subject to the Act do business abroad. Major companies whose subsidiaries or third party agents paid bribes to foreign officials have been the subject of criminal and civil enforcement actions, resulting in large fines and suspension and debarment from federal procurement contracts. In some cases, employees and officers have been imprisoned. FCPA investigations often cost tens of millions of dollars.

In 2012, 12 companies settled FCPA enforcement actions, paying a total of $259.4 million in fines and penalties. Sixteen individuals were sentenced to prison. In 2011, 15 companies paid $508.6 million; in 2010, 23 companies paid $1.8 billion; in 2009, 11 companies paid $644 million; and in 2008, 11 companies paid $890 million.

A tailored risk assessment is the first step in detecting and preventing human trafficking and forced labor in an extended global supply chain as well as the FCPA exposure that such practices create. Companies should understand not only their product supply chain, but also the labor supply chain that feeds workers into those factories and farms. It is important to focus on high risk countries where subsidiaries, franchisees, and top tier suppliers or subcontractors have operations involving commodities, components or services associated with human trafficking and forced labor. These abuses are complex, and their manifestation is frequently subtle and hidden—particularly where there are subcontractors, business agents, or labor brokers in the supply chain.

In order to assess the potential exposure to human trafficking and forced labor in their supply chain and the attendant FCPA risk, companies first need to understand the enabling or risk factors such as a concentration of migrant labor from certain sending countries and the presence of labor brokers deep in the supply chain. Companies must also be vigilant in watching for red flags such as excessive or above-market fees, or business conducted in countries with a significant reputation of corruption.

Foreign Contract Worker (FCW) risk assessments conducted by Verité for major global companies routinely uncover trafficking and labor abuses, particularly in Southeast Asia and the Middle East. These confidential comprehensive risk assessments of foreign subsidiaries, franchisees, and supplier operations in a wide variety of sectors frequently identify numerous violations of business and ethics codes of conduct and host country law. Workers pay illegally high recruitment fees funded by loans, are forced to accept unlawful terms and conditions of employment, are deceived about the type of work and where they will be working, have their passports confiscated, and cannot voluntarily terminate their contract without incurring significant financial penalties.

Oversight of third party labor providers is key

Focused risk assessments should examine the foreign entity's contract labor arrangements. Lack of an effective process for the selection, evaluation and oversight of recruitment agencies and labor outsourcing providers at all stages of the labor supply chain almost inevitably leads to both legal and code of conduct non-compliances, and is closely correlated with the presence of indicators of forced and bonded labor in facilities that employ foreign migrant workers. Host country employment agencies or labor providers frequently use long-term source country "partners" to pool and select foreign contract workers. Providers in the receiving country invariably claim that they are not aware of the process undertaken by their source country partners in the recruitment and transit phases. Facility contracts with their providers rarely address these third party relationships nor effectively hold providers accountable for legal or code violations.

The informal networks that populate most foreign migrant labor supply chains create the environment and opportunity in which both public and private corruption flourish at the expense of vulnerable workers. In order to adequately identify and evaluate the risk of liability under the FCPA, companies need to ensure that they trace the labor supply chain back to the source country from the facilities where workers are subjected to fees and deposits, passport retention, penalties for early termination, restricted movement and other red flag practices. Holding foreign subsidiaries, franchisees and suppliers accountable for the entire foreign contract labor supply chain is the single most effective step a company can take to mitigate the risk of FCPA liability for corrupt practices associated with labor trafficking.

An emerging compliance regime

Supply chain transparency for companies with extended global supply chains is becoming increasingly important as consumers, stakeholders and governments demand details of the systems and sources that deliver goods and services.

The California Transparency in Supply Chains Act 2010, which applies to manufacturers and retailers with global annual revenues of over $100 million that do business in California, requires companies to disclose actions taken to detect and address the presence of forced labor and human trafficking in their supply chains. The Executive Order "Strengthening Protections against Trafficking in Persons in Federal Contracts," signed by President Obama in September 2012, will require federal contractors and subcontractors to take specific proactive preventive measures to detect and eliminate human trafficking and forced labor in their supply chains. Compliance with these measures is revealing the presence of corruption and bribery in global supply chains.

This emerging regulatory regime converges with anti-corruption and anti-bribery compliance in a way that makes it vital that companies subject to the FCPA incorporate labor trafficking and forced labor into their overall compliance programs.

Who is Verité?

Verité is an international not-for-profit training, consulting and research NGO that has been a leader in supply chain social responsibility and sustainability since 1995. For its work, Verité was the winner of the Schwab Social Entrepreneur of the Year Award in 2011 and the Skoll Award for Social Entrepreneurship in 2007.

For more information on Verité's Forced Labor and Human Trafficking Prevention Programs, please contact Declan Croucher at +1.413.253.9227 or dcroucher@verite.org.

Resources

Verité, Fair Hiring Toolkit (www.verite.org/helpwanted/toolkit)
Verité, An Ethical Framework for Cross-Border Labor Recruitment, 2012
Verité, Forced Labor Commodities Atlas (www.verite.org/Commodities)

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