

Identifying and prosecuting Trafficking in Human Beings (hereinafter, THB) is often very difficult because of the fear of the victims to testify in a criminal proceeding. Therefore, it is fundamental that there is cooperation among states, at all levels and with a holistic plan of action. However, we usually forget the major role that legal persons can play in combating THB, despite studies showing the importance of companies in this globalized crime. According to a report prepared by the Ashridge Centre for Business and Sustainability at Hult International Business School and the Ethical Trading Initiative, 77 per cent of companies think that there is a credible reason to believe that modern slavery occurs in their supply chains[1]. We cannot demonstrate the real data of the use of corporations to commit THB but it is clear that THB, by its very nature, it is often committed within company's activities and there are companies that are most at risks, such as industries involving agriculture, migrant workers or seasonal product cycles. Therefore, trafficking is a liability for all companies and that liability could be in many countries not only moral but also civil, administrative or even criminal. For this reason, companies should be aware of the responsibility that they have in the fight against THB and the serious consequences for them if their employers or their managers are involved in this type of crime. Apart from punishment, they would suffer a huge non-material damage as a result of the process.

I. Background of the Company's Criminal Liability

Pope Innocent IV established the *Societas delinquere non-potest* principle in order to prevent the papal excommunication of civil or business corporations, cities and legal entities for offences committed by one of its members[2]. The principle was later consecrated in most of the European systems of criminal laws. The notion of guilt has been considered as a concept of personal nature and therefore a company could not be criminally responsible for a crime until the 19 century, when the corporate criminal liability was set in the Common Law. The Netherlands became the first Civil Law country to introduce it into its criminal system in 1950, and nowadays most European countries have accepted that possibility. There exists a worldwide trend to corporate criminal liability[3].

We must take into account that we live in a globalized world, where corporations operate worldwide, which directly implies a high risk of being involved in cases of modern slavery or THB.

II. Legal instruments establishing corporate liability in relations to THB

There has traditionally been some reluctance to attribute to companies liability for crimes

committed by their managers or even by their employers. However, corporate liability has been considered a fundamental instrument against organized crime as established in the United Nations Convention against Transnational Organized Crime. Article 10 obliges each State Party to adopt and establish the liability of legal persons for participation in serious crimes involving an organized criminal group, including THB. The liability of legal persons may be criminal, civil or administrative; the main point is that it must be effective, proportionate and dissuasive.

In the same vein, both the Council of Europe Convention on Action against Trafficking in Human beings of 16.5.2005^[4] and the Directive 2011/36 on preventing and combating trafficking in human beings require the Member States to establish corporate liability. Specifically, according to articles 5 and 6 of the aforesaid Directive, all Member States shall take the necessary measures to ensure that legal persons can be held liable for THB committed for their benefit by any person, who has a leading position within the legal persons based on a power of representation of this legal person, an authority to take decisions on behalf of the legal person or an authority to exercise control within the legal person. Those measures shall ensure effective, proportionate and dissuasive sanctions, with criminal or non-criminal fines and penalties. Furthermore, it must be ensured that companies can be held liable for a lack of supervision or control, and what constitutes, in my opinion, the fundamental issue in order to use companies as mechanisms for fighting THB.

With regard to domestic legislation, I would like to make a brief reference to the UK Modern Slavery Act of 2015 and the California Transparency in Supply Chains Act of 2010. Both instruments impose obligations on large corporations in order to avoid THB in their supply chains, what constitutes major progress with regard to the fight against THB for labour purposes. Therefore, it would be desirable, in my view, to expand that type of regulations to other countries.

According to Section 54 of the UK Modern Slavery Act 2015, all companies with an annual turnover that exceeds £36m shall be required to make available a slavery and human trafficking statement for each financial year. That annual statement must address a full of organisational details such as the organisation structure, training about slavery, its policies in relation to slavery and human trafficking, the parts of its business and supply chains where there is a risk of THB and its due diligence processes.

With regard to the California Act, it requires retailers and manufacturers doing business in California (that have over \$100 million in global revenue) to prominently disclose, on

company websites, the extent to which, if any, the company engages in specific activities to detect and prevent forced labour and human trafficking in their supply chains—verification, auditing, certification, internal accountability, and training. Thus, companies should implement due diligence programs with effective internal controls, with an identification of areas at risks and with the implementation of specific policies in order to address those risks[5]. Otherwise, they can be in many states criminal responsible for modern slavery or human trafficking and we can imagine the devastating effect that it could bring to them.

Despite those regulations, THB cases against corporations remain too low. It is a relatively recent issue, with several obstacles such as the extraterritorial application of corporate criminal liability, evidentiary issues and the problems derived from subcontracting with complex corporate structures[6].



III. Main Companies at Risk

As already mentioned, human trafficking is considered a form of transnational organized crime, which includes displacement of people from their own countries or regions. THB crimes are often committed in more than one country by organized criminal groups[7]. However, smuggling of and trafficking should be differentiated. According to professor Anis Bajrektarevic there are four differentiating elements: (i) an exploitation and usage of the trafficked person over a long period of time; (ii) inter-dependency that forms a strong (brothers-in-arms like) linkage, between trafficked victim and organized crime groupings; (iii) eligibility for further networking (recruitment for criminal purpose); (iv) very often trafficking itself is not a voluntary movement, but in the case of smuggled persons it always occurs voluntarily[8].

Therefore, it is usual that companies are used as means for THB, in the process of recruitment, transportation or exploitation.

According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Conventions against Transnational Organized Crime Trafficking in persons “shall mean 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”.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Therefore, THB offences can be committed by different activities and each of them can involve a particular kind of company. For instance, while recruitment is usually committed on the Internet through false jobs postings, receipt of persons can be performed in hotels. Therefore, I am going to analyse which companies are most at risk stemming of the UN definition and differentiating between the various stages of the THB.

First stage: Recruitment

The initial stage of the THB process consists of the recruitment. It can be done by several means, and it depends on the purpose of the offence. However, there are usual forms of recruitment, both on THB for labour exploitation and in sexual exploitation.

Social networks play a fundamental role in the recruitment phase and for that reason, it is extremely important to implement in those companies effective THB detections systems. It appears that 89% of 12-17-year-olds love to chat on the Internet: class-mates, chat rooms or webnets. These are perfect points for traffickers, who use false identities to lure potential victims to a meeting^[9].

With regard also to the Internet, it is common to make use of false jobs advertisements placed on it. It seems to be difficult to detect that type of simulated jobs, but it is also possible to implement different channels for identifying presumed traffickers. The false contracts, and the patterns are always similar. The companies that operate on the Internet should be on the lookout for signs of THB.

Nevertheless, it cannot be ignored that the identification on the Internet is very difficult. The anonymity and mass audience of online services increases both the discretion and profitability of the services but complicates the fight against the recruitment. For that reason, in my opinion the companies that operate on the Internet should increase the delivery of information to users in relation to the THB. Companies should expose the risk of being victim of THB and they should explain the traditional methods used by traffickers. Furthermore, companies should also provide users with direct contacts of the company specialized in the fight against THB, representing intermediaries between users and police authorities.

Finally, private employment agencies, as labour recruiters, have an important role in this

first stage of THB. Therefore, the issue of labour recruitment and the responsibilities of governments and employers to protect workers from exploitation were at the centre of the 103 debate of the International Labour Conference, which led to the adoption of the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour Recommendation 2013 (No.203). As specific provision, it is recommended the promotion of coordinated efforts by relevant government agencies, including efforts to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion[10].

In the same row, the International Labour Organization and the United Nations Office on Drugs and Crime (UNODC) call on governments, social partners, businesses, other international agencies, and all concerned stakeholders, to strengthen their efforts to address abusive and fraudulent recruitment practices in statement rendered in June of 2015 in which series of actions were requested:

1. Adopt and strengthen, criminal laws and other regulatory measures, to address the entire spectrum of fraudulent and abusive recruitment practices that may lead to trafficking in persons;
2. Raise awareness amongst recruiters, private employment agencies and employers in the private and public sectors on due diligence and best practices on how to eliminate abusive and fraudulent recruitment practices;
3. Enable cooperation among relevant government agencies, workers' organisations, employers' organisations and represent- actives of private employment agencies; promote strategic partnerships between the public and private sectors, and facilitate exchange of good practices within common migration routes;
4. Create complaint mechanisms and ensure that migrant workers who have experienced abusive and fraudulent recruitment practices or subsequent exploitation, gain access to justice and effective remedies, such as compensation;
5. Ensure the Right to Freedom of Association, maximise collective bargaining coverage and support trade unions in their efforts to organize workers, including migrant workers, to better protect them from exploitation during or resulting from the recruitment process.
6. Foster the transparent and participatory negotiation, conclusion and effective implementation of bilateral and regional agreements, rooted in international standards, as well as other specific mechanisms to ensure improved international coordination and cooperation and to close regulatory and enforcement gaps across common labour migration routes.

7. Ensure that national mechanisms to regulate the recruitment of migrant workers are integrated into labour migration policies and relevant bilateral and regional agreements, to ensure coherence between national laws and policies governing labour recruitment and the broader policies relating to employment, skills, and education.
8. Promote the ratification of relevant UN and ILO Conventions, in particular the recently adopted Protocol of 2014 to the Forced Labour Convention, 1930; the Trafficking in Persons Protocol; the Private Employment Agencies Convention, 1997 (No 181); the Migration for Employment Convention, 1949 (No 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No 143) to ensure proper recognition and regulation of labour recruiters and employment agencies



Image: GBFR

Second Stage: Transition

According to the UN Protocol, it must be punished not only the recruitment, but also the

transportation, transfer, harbouring or receipt of persons. One of the main characteristics of THB, and which distinguishes it from another forms of exploitation, is the transition stage. Victims are transported to the place of exploitation, either within the country or outside the country of origin of the victim, but in every case, apart from their families and friends, what makes them more vulnerable. Modern slavery requires that people are moved from one place to another and for that reason. It is important to adopt measures to prevent THB in all kind of transport firms, hotels and hosting's companies.

Victims can be transported by land, sea and air. All shipping companies should be aware of the fights against THB. They can be responsible for human trafficking if they do not adopt any measure to avoid that the traffickers use their services to commit their criminal activities. Consequently, companies that depend on transport as part of their values chains, or that are supplying transportation services, must face the risk of being complicit in modern slavery[11]. For instance, there have been several scandals of smuggling and THB using trucks among the world[12], with fatal endings in some cases. To deal with such situations, it was created the Truckers Against Trafficking (TAT) with the mission to educate, equip, empower and mobilize members of the trucking and bus industries to combat human trafficking[13]. Its main goals are to saturate trucking and related industries with TAT materials, partner with law enforcement and government agencies to facilitate the investigation of human trafficking and marshal the resources of their partners to combat THB. Similarly, the International Transport Worker's Federation is trying to make people aware of the risk of low cost-holidays. Exploitation often happens at tourist destinations, hotels are anonymous and publicly accessible, making them likely venues for prostitution and crime. And even more anonymous would be new companies, which operate on online leasings or rentings short-term lodging such as apartments or homestays. However, tourism and hospitality stakeholders are often unaware of signs, contributing unknowingly to sex trafficking and the transportation of human beings[14], despite being likely to intervene not only in the second stage but also in the third phase of THB.

Third stage: Exploitation

Exploitation could be for several purposes but it shall include, according to the Palermo Protocol, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

This phase is what justifies the existence of THB and where the companies have more risk to be responsible for the crime. In contrast with the previous stages, where it is complicated to attribute criminal responsibility to the companies, at this stage, companies should have

strong mechanisms of THB detection and specially, those companies that are most at risk.

According to a study elaborated by NGO Verité in 2016, eleven sectors were found to be the most likely to have a risk of human trafficking globally^[15]: agriculture, construction, electronics, fishing and aquaculture, forestry, healthcare, hospitality, housekeeping/facilities operation, mining and basic metal production and textile and apparel manufacturing. But there are also additional risk factors. Particular products, such as those that have seasonal cycles, certain business processes, for instance in long and complex supply chains, the use of certain vulnerable groups, such as women and children, and other operations in countries deemed as high risk. The study is mainly focused on the companies' role attending to their supply chains. In the context of the sexual exploitation, we cannot forget the situation of bars, clubs, escort agencies and brothels, due to the fact that they constitute an important focal point for human trafficking. It is clear that in many occasions the owner of that kind of business would be responsible for trafficking. But in many other cases, it would be difficult to make them responsible for the scenario of a THB victim working in their establishments, especially when they are big commercial premises. And for that reason, it is fundamental to have the possibility to attribute to that business any kind of liability, whether civil, administrative or criminal. Nonetheless, the seriousness of the offence and the high risk of having workers which are victims of THB in such kind of an industry justifies, in my opinion, the attribution of criminal responsibility to that business or even to the owners, in cases of absolute lack of control.

Conclusions

Trafficking in human beings is a global problem and one of the world's most abhorrent crimes. It must be fought by land, sea and air, and with use of all the instruments of the rule of law. The fight against this crime must involve several actors with a multifaceted response. Otherwise, we will not be able to eradicate this shameful crime.

It is crucial that small, medium and large companies are involved in the fights against human trafficking. The aim of the traffickers consists of earning money and to that end they often need corporations. Therefore, if we achieve the goal of preventing the utilization of companies to commit THB, we would be able to put traffickers in a difficult situation. Corporations are a fundamental element in the fight of all globalized crimes. We should emphasize that companies can and should play a vital role in preventing human trafficking.

At this point, there are already many companies that they are aware of the risks of being involved in a case of THB and take their responsibility for it. There are major initiatives in

this area. For instance the aforementioned Truckers Against Human Trafficking or the European Alliance Bankers against Trafficking in Human Beings, which created a practical toolkit with “red-flag indicators”[\[16\]](#).

With the globalization of business, international compliance is a necessity. The global nature of companies with subsidiaries, affiliates, and vendors all over the world provide great opportunities but also great risks of being liable for the actions of their staff[\[17\]](#). However, there are many companies that are not conscious of the risks that they take if they do not implement effective measures against THB.

There is currently a worldwide trend to corporate criminal liability and it is only a matter of time we start prosecuting companies which are responsible for human trafficking. Judicial authorities, policymakers, press and civilian play an important role related to corporate liability. We should promote the awareness of companies of the necessity of the implementation of due diligence programs with effective internal controls, with the identification of areas at risks and with the implementation of specific policies in order to address those risks, and to avoid labour exploitation.

It is the responsibility of all of us to combat THB with the involvement of all the possible actors.

An early version of this text has been presented at the OSCE Conference (18 Alliance against Trafficking in Persons, Vienna 2018)

The views and opinions expressed in this article are those of the authors and do not necessarily reflect the views of The Kootneeti Team

BIBLIOGRAPHY

- LAKE Quintin, MACALISTER Jamie, BERMAN Cindy, GITSHAM Matthew, PAGE Nadine, “*Corporate Leadership on Modern Slavery*”, Hult research in partnership with the ethical trading initiative, November 2016
- BRODOWSKI Dominik, DE LOS MONTEROS DE LA PARRA Manuel Espinoza, TIEDEMANN Klaus, “*Regulating Corporate Criminal Liability: An Introduction*”, Springer International Publishing Switzerland, 2014

- OECD, “ *Liability of legal Persons for Corruption in Eastern Europe and Central Asia*”, 2015
- Sherman Jeffrey, COMM B, BRAITHWAITE Colin, “*Risk assesment tools for effective internal controls*”, First reference, September 2008
- KIOTOU Athanassia P., “*Trafficking in human beings:Internet recruitment*”, Council of Europe, 2007
- RODRIGUEZ LOPEZ Silvia, “ *Criminal liability of Legal Persons for Human Trafficking Offences in International and European Law*”, Journal of Traffikcing and Human Exploitation, Paris Legal Publishers, 2017
- FORSTER Bruce, “ *Human Trafficking:A Transnational Organized Crime Activity*”, American International Journal of Contemporary Research, Vol.3 No.1,January 2013,
- BAJREKTAREVIC Anis, “*The Palermo Convention, Ten Years After - toward the Universal Criminal Justice*”, GHIR (Geopolitics, History, International Relations) Addleton Academic Publishers NY, Volume 3(1) 2011, p.44
- ANDREES Beate, NASRI Alix, SWINIARSKI Peter,“*Regulating labour recruitment to prevent human trafficking and to foster fair migration, models challengues and opportunities*”, International Labour Organization 2015
- TRIER HANSES Thomas, “ *Transport-The risk of complicity in modern slavery*”,Sirius Publications, 2016, p.2
- Carolin L, Lindsay A, Victor W (2015) Sex Trafficking in the Tourism Industry.
- DEPARTMENT OF STATE, “ Trafficking in persons report 2015”, United States of America
- BIEGELMAN Marin, R.BIEGELMAN Daniel, “ Foreign corrupt practices act compliance guidebook:protection your organization from bribery and corruption”, Wiley Corporate F&A,2010.

[1] LAKE Quintin, MACALISTER Jamie, BERMAN Cindy, GITSHAM Matthew, PAGE Nadine, “*Corporate Leadership on Modern Slavery*”, Hult research in partnership with the ethical trading initiative, November 2016, p.9.

[2] BRODOWSKI Dominik, DE LOS MONTEROS DE LA PARRA Manuel Espinoza,

TIEDEMANN Klaus, “ *Regulating Corporate Criminal Liability: An Introduction*”, Springer International Publishing Switzerland, 2014, p.1.

[3] OECD, “ *Liability of legal Persons for Corruption in Eastern Europe and Central Asia*”, 2015,p.9

[4] Article 20 of the Council of European Convention on Action againts Traffiking in Human beinfs, Warsaw,16.5.2005.

[5] D. Sherman Jeffrey, COMM B, BRAITHWAITE Colin, “*Risk assesment tools for effective internal controls*”, First reference, September 2008,p.2

[6] RODRIGUEZ LOPEZ Silvia, “ *Criminal liability of Legal Persons for Human TRaffiking Offences in International and European Law*”, Journal of Traffiking and Human Exploitation, Paris Legal Publishers, 2017, p.105-110

[7] A.FORSTER Bruce, “ *Human Trafficking:A Transnational Organized Crime Activity*”, American International Journal of Contemporary Research, Vol.3 No.1,January 2013, p.1

[8] BAJREKTAREVIC Anis, “*The Palermo Convention, Ten Years After - toward the Universal Criminal Justice*”, GHIR (Geopolitics, History, International Relations) Addleton Academic Publishers NY, Volume 3(1) 2011, p.44

[9] SKIOTOU Athanassia P., “*Trafficking in human beings:Internet recruitment*”, Council of Europe, 2007, p.27

[10] ANDREES Beate, NASRI Alix, SWINIARSKI Peter,“*Regulating labour recruitment to prevent human trafficking and to foster fair migration, models challengues and opportunities*”, International Labour Organization 2015, p.3.

[11] TRIER HANSES Thomas, “ *Transport-The risk of complicity in modern slavery*”, Sirius Publications, 2016, p.2.

[12] <http://www.bbc.com/news/world-europe-34073534>.

<http://www.bbc.com/news/world-us-canada-40696306>.

[13] <http://truckersagainsttrafficking.org/>.

[14] Carolin L, Lindsay A, Victor W (2015) Sex Trafficking in the Tourism Industry. J

Tourism Hospit 4:166. doi:10.4172/2167-0269.1000166.

[15] DERPARMENT OF STATE, “ Trafficking in persons report 2015”, United States of America, p.23.

[16]

<https://uk.reuters.com/article/banks-trafficking/bank-staff-will-red-flag-trafficking-suspects-with-powerful-new-tool-idUKL8N1HW3J4>

[17] T. BIEGELMAN Marin, R.BIEGELMAN Daniel, “ Foreign corrupt practices act compliance guidebook: protection your organization from bribery and corruption”, Wiley Corporate F&A,2010,p.g31.

CERTIFICATE COURSE IN INTERNATIONAL RELATIONS

SIX-WEEK ONLINE COURSE IN INTERNATIONAL RELATIONS
BY THE KOOTNEETI

JOIN TODAY!

team@thekootneeti.com
courses.thekootneeti.in
(+91) 120 4565994

The views and opinions expressed in this article are those of the author and do not necessarily reflect the views of The Kootneeti Team

Facebook Comments