

# CHTCS QUARTERLY JOURNAL

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# ABOUT US



Counter Human Trafficking Compliance Solutions (CHTCS) is a global compliance and advisory company that provides on-site assessments, improvement plans, training, research, and supply chain transparency required for corporations to combat human trafficking, forced labor, and modern slavery. We offer a wide array of services designed to help corporations understand intricate legislative policies and mitigate risk within their global supply chain.

Educating corporations and corporate counsels on the business risks associated with human trafficking, forced labor, and modern slavery within supply chains, and promoting the adoption of counter-human trafficking corporate policies and adherence to human trafficking legislation and regulations.

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## PROBLEM SOLVING

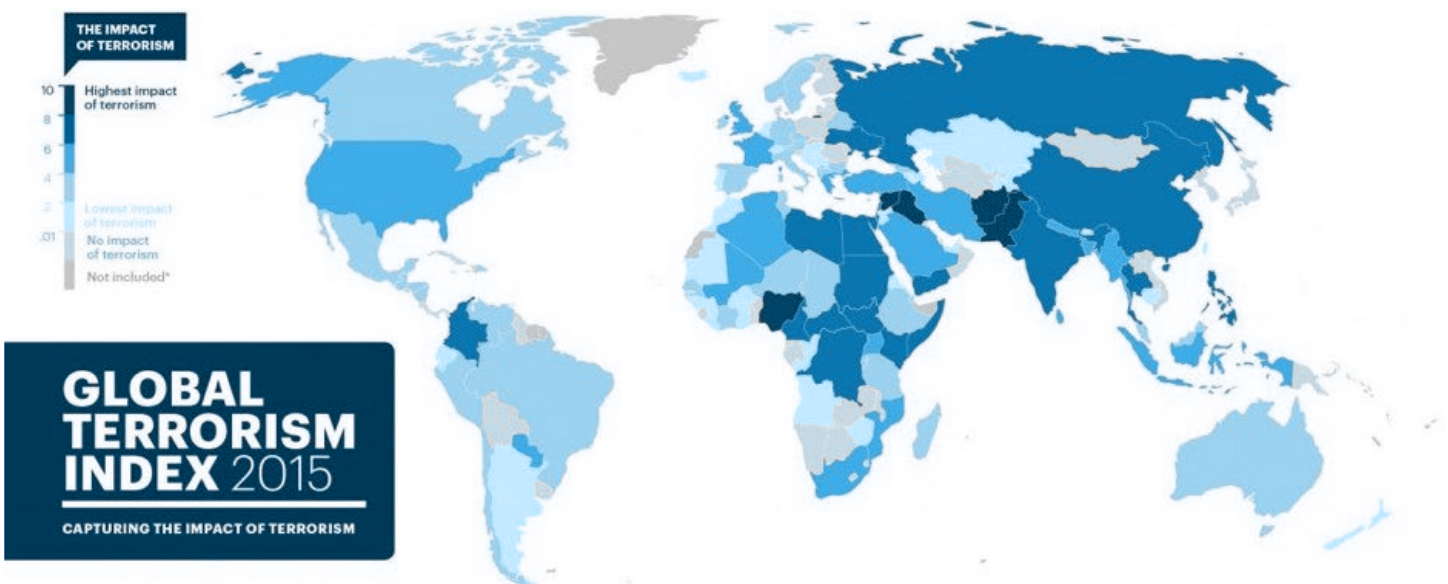
Is your supply chain funding terror?

The disparate data from a supply chain can be a puzzling burden for all levels of management. Having a quality enterprise resource planning (ERP) tool may assist with daily operations, but it's a haystack of data with potential risks. Corporations want to know how to identify the unique risks of Corporate Social Responsibility (CSR) and potential security risks while maintaining healthy operations from top to bottom.

**CHALLENGE:** Potential funding of terrorism within a supply chain is a very real concern if operations are affected by a conflict zone. Conflict regions are notorious for instable economic conditions and adjacent regions become embroiled with similar consequences. The exponential

effects of population displacement, organized crime, gangs, and terror organizations negatively affect: source materials, transportation, working conditions, and the overall supply chain.

This unique problem has a compounding effect for business and is developing into a concern for both CSR and security. In conflict regions, human rights abuses are a mechanism of terror and a known source of income for terror groups like the Islamic State (IS). With the increasing influence of independent terrorist organizations such as IS, corporations need to ensure their supply chains aren't unwittingly supporting human trafficking or becoming susceptible to security threats like terrorism.



Global Terrorism Index 2015, Institute for Economics and Peace

**SOLUTION:** Proactive measures against potential funding of terrorism require a business to create an effective supply chain evaluation beyond an ERP. The comprehensive evaluation would verify legitimate businesses do not inadvertently encourage human trafficking or fund terror. Several key components include identifying; regional risks, potential illicit funding opportunities, and supply chain deficiencies.

As a result, an inclusive supply chain report would deliver clarification and resolve against unintentionally funding terror. The solution report should withstand supply chain anomalies and pivot simultaneously with current events.

**PROBLEM SOLVED:** Sometimes the atmospheric challenges to a supply chain are dependent on a supply source, but other challenges are less innate to operations. The economic consequence of terrorism immediately affects business, although the underlying human rights effects are not as evident. Only by implementing an organic view of the supply chain with a dynamic analytical solution and physical inspections can a business confidently protect its supply chain from funding terror or supporting human trafficking. The core services of [Counter Human Trafficking Compliance Solutions](#) offer a comprehensive suite of capabilities to assist any supply chain against the dangers of terrorism.

## Historical UN Security Council Meeting Addresses Human Trafficking



December 16, 2015, UN Security Council debate on human trafficking

With increasing armed conflict attributed to terrorist and criminal networks trafficking in persons, the Security Council for the United Nations held a historical debate on human trafficking and modern-day slavery last December.

The United Nations has led a series of human rights efforts in support of human trafficking with the Human Rights Council, formerly the UN Commission on Human Rights, but last month's first Security Council debate is a strong warning sign to armed groups conducting human trafficking. The UN Security Council, under the UN Charter, is the enforcement arm given the authority to investigate and mediate, dispatch a mission, appoint special envoys, or request services of other UN offices against human rights violations. When dealing with grave human rights violations, often in conflict areas and similar to those experienced by guest speaker Nadia Murad Basee Taha, a Yazidi woman who spoke on behalf of her freedom being trafficked by ISIL forces, the Security Council can opt for enforcement measures, such as economic sanctions; arms embargoes, financial penalties and restrictions; travel bans; a blockade; or even military action.

In the circumstance of ISIL, it will be difficult for the UN to enforce a diplomatic solution because doing so would require a vast, well-organized policy for human trafficking. Such a policy would necessitate a strong global partnership with private sector and civil society involvement. A priority for the Security Council will be developing supply chain measures that verify no human trafficking is occurring within conflict zones.

### QUARTERLY HEADLINES

News impacting your CSR

#### UNITED KINGDOM'S MODERN SLAVERY ACT 2015

- As of October 2015, the Transparency in Supply Chain Provisions will require UK businesses to publish an annual statement if they have an annual turnover above £36-million. The statement must confirm the steps taken to ensure that slavery and human trafficking are not taking place in the business (or in any supply chain) or declare that no steps to confirm the existence of slavery or trafficking have been taken.

#### TRANS-PACIFIC PARTNERSHIP

- Labor conditions such as debt bondage and forced labor are under scrutiny with the partnership opening trade in Malaysia, Singapore, Brunei, and communist Vietnam.

#### LITIGATION TRENDS

- Punitive consumer class action lawsuits are becoming a trend against manufacturers and retailers failing to abide by the California Transparency in Supply Chains disclosure statements or their internal supplier policies. A number of class-action lawsuits have been filed in California over the past year.

### UN GLOBAL COMPACT

A call for companies to align business strategies and operations with universal principles on human rights, labor, environment and anti-corruption, and to take actions that advance societal goals.

#### FIVE ESSENTIAL ELEMENTS:

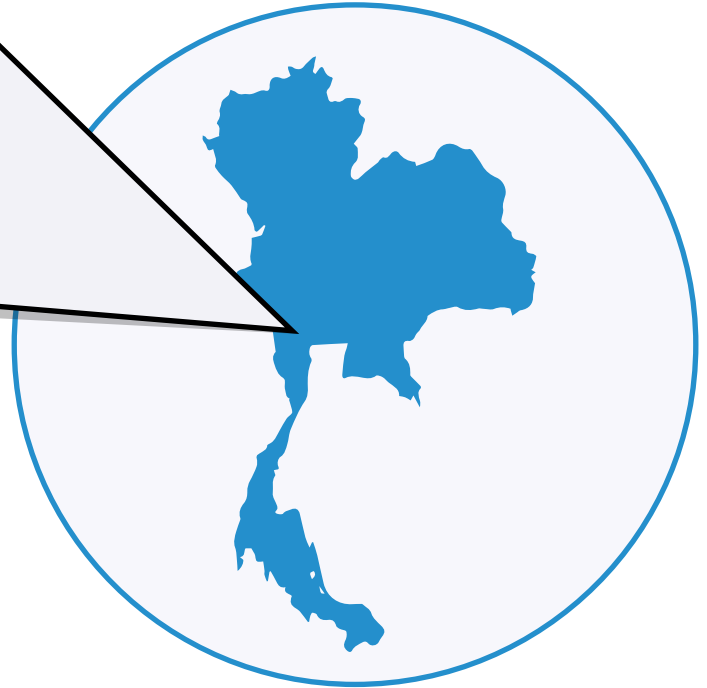
- Principled Business
- Strengthening Society
- Leadership Commitment
- Reporting Progress
- Local Action



# THAILAND: TIER 3

## A Trafficking In Persons Feature

**BACKGROUND:** In light of the recent litigation trends against Costco, Thai Union, and Whole Foods, we are featuring Thailand for this issue's Trafficking In Persons Feature. Thanks to recent in-depth reporting, consumers are now educated about forced labor methods in the fishing industry. As a result of recent lawsuits, businesses are looking for guidance in how to define responsibility.



### SLAVERY IN YOUR SEAFOOD

Investigations have found multiple cases of human trafficking, slavery, and rights abuses in Thailand's fishing industry and supply chain.

#### THE MONEY

Value of Thailand's seafood industry (2013)

**\$ 6,900,000,000**

Exports to U.S. and EU (2013)

**\$ 2 500,000,000**

#### THE PEOPLE

**145,000**

working in fishing industry.

80% of those are migrant workers.

**200,000**

estimated un registered people working on fishing vessels.

#### THE CATCH

**4,200,000**

tons of fish and seafood each year.

**3,800,000**

tons of "trash" fish produces only 600 kilos of farmed shrimp.

#### THE BOATS

**57,141**

registered fishing boats.

**"Ghost Ships"**

unregistered vessels could number the tens of thousands.

SOURCE: International Labour Organization for Migration; Fisheries Department, Thai Ministry of Agriculture and Cooperatives; US State Department; Environmental Justice Foundation; RaksThai Foundation.

### ANTI-TRAFFICKING LAWS & REGULATIONS:

*Thailand's Anti-Trafficking In Persons (ATP) Act*

**SECTION 6:** Addresses the acts of force, fraud, or coercion for the purpose of exploitation similarly to U.S. anti-trafficking legislation.

**SECTION 7:** Details the offender acts and may affect business operations if found complicit;

1. supporting the commission of an offense of trafficking in persons;
2. aiding by contributing property, procuring a meeting place or lodge, for the offender of trafficking in persons;
3. assisting by any means so that the offender of trafficking in persons may not be arrested;
4. demanding, accepting, or agreeing to accept a property or any other benefit in order to help the offender of trafficking in persons not to be punished;
5. inducing, suggesting or contacting a person to become a member of the organized criminal group, for the purpose of committing an offense of trafficking in persons.

According to the ATP Act, corporate responsibilities are not defined and international laws remain vague, however, as seen in current litigation actions and the recent U.S. Department of Justice Memorandum: Individual Accountability for Corporate Wrongdoing, the concepts of responsibility are being redefined.

# THAILAND: TIER 3

A Trafficking In Persons Feature

## SUPPLY CHAIN CONCERNS

### MAIN EMPLOYMENT SECTORS OF TRAFFICKED PERSONS

Fishing  
Low-End Garment Production

Seafood Processing  
Domestic Work

### SOURCE COUNTRIES OF TRAFFICKED PERSONS

Cambodia  
Vietnam

Lao PDR  
Uzbekistan  
Myanmar

Southern China  
Russia

### DESTINATION COUNTRIES FOR TRAFFICKED PERSONS

Australia  
Bahrain Brunei  
Canada  
Germany  
Indonesia  
Israel  
Japan  
Korea

Kuwait  
Libya  
Malaysia  
Maldives  
Qatar  
Saudi Arabia

Singapore  
South Africa  
South Korea  
Taiwan  
Timor Leste  
The UAE  
The USA  
Vietnam

### KEY VULNERABILITIES FOR BUSINESS

Officials Complicit in Trafficking  
Debt Bondage  
Large Undocumented Migrant Community

Cheap Labor  
Illegitimate Labor Brokers

## THAILAND'S ANTI-TRAFFICKING IN PERSONS ACT

### OFFENSE

Trafficking in  
Persons

Offense of trafficking  
in persons committed  
against a child whose age  
exceeds 15 years but has  
not reached 18 years

Offense of trafficking  
in persons committed  
against a child not over  
15 years of age

### PENALTY RANGES

Imprisonment for  
4 to 10 years  
+8,000 - 2000,000 Baht

Imprisonment for  
6 to 12 years  
+120,000 - 240,000 Baht

Imprisonment for  
8 to 15 years  
+160,000 - 300,000 Baht

# CSR COMPLIANCE CHALLENGES

## Complying with the Yates Memorandum



Sally Yates of the U.S. Department of Justice ("DOJ") recently issued a memorandum detailing the DOJ's increased commitment to pursue individuals engaged in corporate wrongdoing. The memo will likely affect the manner in which companies conduct internal investigations and interact with government prosecutors. Much speculation surrounds the significance and overall impact of the Yates Memo to companies and their corporate compliance measures, but the memo will clearly affect the manner in which companies conduct internal investigations and interface with government prosecutors.

The Yates Memorandum is the product of a working group dedicated to examining the best approach to investigate corporate fraud and identify culpable individuals at all levels in corporate cases. In pursuit of identifying individual corporate wrongdoing, the Memo provides attorneys with guidance for illegal corporate conduct as well as civil corporate matters. The guidance in the Yates Memo identifies six "key steps" to enable DOJ attorneys "to most effectively pursue the individuals responsible for corporate wrong":

- First, in order to qualify for any cooperation credit, corporations must provide to the Department all relevant facts relating to the individuals responsible for the misconduct;
- Second, criminal and civil corporate investigations should focus on individuals from the inception of the investigation;
- Third, criminal and civil attorneys handling corporate investigations should be in routine communication with one another;
- Fourth, absent extraordinary circumstances or approved departmental policy, the Department will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation;
- Fifth, Department attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases, and should memorialize any declinations as to individuals in such cases; and
- Lastly, civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay.

Based on the substantial challenges unique to pursuing individuals prior to the Yates Memo, DOJ attorneys prosecuting corporations sought enhanced fines and penalties resulting in little personal liability in exchange for financial settlements with bespoke corporations. Under the guidance of the Yates Memo, DOJ prosecutors are now "seeking accountability from the individuals who perpetrated the wrongdoing" in an effort to "incentivize changes in corporate behavior" thus promoting "the public's confidence in our justice system."

Beyond instilling protocol for Corporate Social Responsibility, businesses will want to develop a line of defense for senior management and board members by establishing a robust compliance program that provides adequate oversight and support. Prior to responding to government scrutiny, a business can develop a proactive response with the following measures both internally or with third-party resources;

- Implement a robust ethics and compliance program designed to deter, identify, and remediate violations of laws and regulations, coupled with equally robust employee training and grievance mechanisms;
- Dedicate resources to provide extensive management support of compliance efforts to include active oversight by management, up to the board level.
- Document and certify the company and executives are operating the company in an ethical and compliant fashion.

The heavy responsibility of implementing a protocol and protecting senior management and board members from personal liability exposure will fall unto the Compliance Officer. The newest priorities, as stated by the Yates Memorandum and enforced by the Attorney General's Office of the United States, demonstrate the increasing maze of corporate compliance requirements. Navigating the delicate compliance concerns related to corporate social responsibility matters such as fair wages, forced labor, human rights, and other social interest topics is going to become a priority from the compliance manager up to C-Suite level management.

U.S. Department of Justice, Office of the Deputy Attorney General, Individual Accountability for Corporate Wrongdoing

# CAUSE & EFFECT

## Review of Business CSR Practices with Lessons Learned

### Landmark Human Trafficking Case Ends with Bankruptcy



**CAUSE:** Signal International, LLC is a Mobile, AL based marine construction firm specializing in large ocean-going structures like offshore drilling rigs, production platforms, and barges. In the wake of the destruction left by Hurricane Katrina in 2005, the company hired 500 welders, pipe fitters, and ship fitters from India under the H-2B guest worker programs. Signal International required the Indian employees to pay the company \$35 per day for housing, food, and transportation costs and then housed the employees in cramped trailers located in isolated, fence-enclosed areas on Signal's yards. Each trailer housed 24 workers in close quarters causing unsanitary living conditions.

**EFFECT:** As a result of what CEO Dick Marler described as "naïve" actions, Signal International was sued in 2011 by the Indian guest workers for labor trafficking. Earlier this year, a jury found Signal International liable for a \$20 million settlement. The marine-services company filed for bankruptcy in order to avoid additional trials and damage awards. Signal International has since apologized to the Indian guest workers as part of the trafficking settlement: "Signal was wrong in failing to ensure that the guest workers were treated with the respect and dignity they deserved," the company announced. "Signal deeply regrets the living conditions the guest workers were subjected to, and is sorry for its actions."<sup>1</sup>

#### H-2B GUEST WORKER PROGRAM:

- Permits employers to temporarily hire non-immigrants to perform nonagricultural labor or services in the United States.
- Requires the employer to attest to the Department of Labor that it will offer a wage that equals or exceeds the highest of the prevailing wage, applicable Federal minimum wage, the State minimum wage, or local minimum wage.

#### HUMAN RIGHTS VIOLATIONS:

- False promises of a different job
- Restrictions on movement
- Confiscation of wages
- Document confiscation
- Debt manipulation

## JUST THE FACTS

### Profiteering from slave labor

- At least 15 companies were sued in 2014-2015 for human trafficking, forced labor, and/or modern slavery.
- The lifetime profit on a brick-making slave in Brazil is \$8,700 and \$2,000 in India.
- A sex trafficker profits \$18,000 in Thailand and \$49,000 in Los Angeles over the lifetime of the sex slave.
- The annual profit of a forced labor slave in the European Union is \$35,000.

HumanRightsFirst.org, *Signal International Apologizes to Trafficking Victims*



# OPERATING PROCEDURES

## Guidance for Business and Human Rights

### Protect, Respect, and Remedy

With the adopted “*Protect, Respect, and Remedy*” framework for Business and Human Rights, the Human Rights Council has implemented a three pillar concept. The framework has been endorsed by a wide range of stakeholders to include the *International Chamber of Commerce (ICC)*, *International Organization of Employers (IOE)*, and *Business and Industry Advisory Committee to the OECD (BIAC)*. Corporate responsibility is addressed directly with **respect to human rights**, which means to act with due diligence to avoid infringing on the rights of others.

A company can use a wide range of paradigms or frameworks to address human rights activity, such as business ethics, community relations, public policy, and compliance. Human rights is an issue of increasing strategic concern for businesses, and it is not solely driven by specific events but by mitigating risks in advance and as a business opportunity through successful risk management. The development of an effective grievance mechanism with respect to human rights and risk management is part of a company's corporate responsibility.

When companies analyze their policies, they discover that a wide range of human rights policies already exist, but they do not traditionally see these activities through a human rights lens. It is critical for companies to know precisely the additional requirements that a human rights approach brings to issues that at first sight seem familiar.

### CSR CHECK

Does your company have a management person responsible for:

#### ☐ A. SOCIAL SUSTAINABILITY

Related to the practices that contribute to the quality of life of both employees and communities that could be impacted by the company's operations

#### ☐ B. BUSINESS CONDUCT AND COMPLIANCE

Related to the principles that guide business conduct in its relations towards its business partners and customers

#### ☐ C. ENVIRONMENTAL SUSTAINABILITY

Related to practices that contribute to the quality of the environment on a long-term basis

### CHTCS ASSESSMENT;

The impact of a dedicated sustainability compliance manager in your supply chain is an essential part of a company's corporate social responsibility plan. A company with designated CSR sub-category management is at a minimum considered a Level 2 company in the CHTCS assessment.

### FOUR ELEMENTS OF DUE DILIGENCE

1. A statement policy articulating the company's commitment to respect human rights;
2. Periodic assessment of actual and potential human rights & impact of company activities and relationships;
3. Integrating these commitments and assessments into internal control and oversight system; and
4. Trafficking and reporting performance.

United Nations' “Protect, Respect, and Remedy” Framework for Business and Human Rights

### GVMT GUIDANCE

U.S. Government Compliance

#### FAR / DFAR changes

The 2015 amendments to the anti-trafficking provisions in the Federal Acquisition Regulation;

- Apply to all federal contracts and subcontracts awarded after March 2, 2015.
- Contractors must implement a compliance plan for any portion of a contract in excess of \$500,000.
- Contractors may not deny an employee access to the employee's identity.
- Contractors may not use fraudulent hiring practices or recruiters that don't comply with local labor laws of the country.
- Contractors may not charge employees recruitment fees.
- Contractors may not provide housing that fails to meet host country safety standards.
- Contractors may not fail to provide employees an employment contract.

GVMT Guidance Content – Federal Acquisition Regulation, Section 22.17; Defense Federal Acquisition Regulation Supplement, Section 252.222-7007

### DO YOU KNOW WHO YOU DO BUSINESS WITH?

The Counter Human Trafficking Compliance Solutions Journal is a newsletter published by the CHTCS Intelligence Division. The CHTCS Journal is issued four times a year and provides updates for C-Suite level decision making in support of terrorism and human trafficking risk management of the supply chain. The CHTCS Journal serves to strengthen current corporate social responsibility policies.

We welcome feedback and suggestions for articles in future issues.

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# **KNOW WHO YOU DO BUSINESS WITH**

The CHTCS Journal is published by the CHTCS Intel Team, which is comprised of tenured military and business analysts with intimate knowledge and direct experience dealing with human trafficking, forced labor, and modern slavery.

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