

Thematic Report: Corporations¹



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I. Introduction

Overview

Regardless of a government’s obligations to prevent, prosecute, and protect against TIP, it may not always be in the best position to conduct TIP-related due diligence. On the other hand, companies—whether they be national or international firms—are uniquely positioned to ensure that TIP is not used in the supply chains of their products; thus, requiring companies to monitor their own supply chains to ensure compliance with anti-trafficking laws may be an efficient way to handle TIP on a global scale.

Governments can aid this process by improving their legal schemes in a manner that allows them to mandate corporate compliance with TIP standards. For instance, if entities and legal persons (or the directors, shareholders, and/or officers) can be held liable for violations of criminal or civil law, that may help to deter firms from engaging in practices that use or increase the risk of TIP. Part II of this Report discusses the extent to which countries have such laws that permit the corporate veil to be pierced.

It is important to note whether countries impose rigorous requirements relating to corporate formation and dissolution. A lack of such regulation, combined with a lack of oversight into firms’ activities, may inadvertently allow for the proliferation of firms that engage in illicit activities. Thus, while laws on corporate formation and dissolution may not need to be unduly burdensome, some level of regulation may help to keep traffickers from creating shell companies to hide their illicit activities. Part III of this Report discusses the countries’ laws on incorporation.

Corporate social responsibility initiatives, and supply chain transparency initiatives, are a direct way of asking companies to specifically monitor and regulate their supply chains to ensure that products are sourced and produced fairly and ethically. Where corporate social responsibility is only voluntary, companies that are incentivized to participate in such schemes may be less likely to use TIP, and more likely to exercise due diligence with respect to supply chain monitoring. Parts IV-V discuss the countries’ frameworks relating to corporate social responsibility and supply chain transparency.

Finally, countries’ contract laws often govern employment and recruitment relationships between workers and their employers. Such contracts may be used to bind workers to terms and conditions that are unfair, improperly represented to the worker, presented in a manner that the worker may not be able to understand (e.g., in a different language), or entered into under duress. Laws that render contracts void or voidable where such malfeasances occur may help to prevent TIP and

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forced labor; Part VI notes circumstances under which the countries in this Report render contracts void or voidable.

The statements and analysis contained herein are the work of the American Bar Association's Rule of Law Initiative (ABA ROLI). They address, by and large, the *de jure* legal framework in Eritrea, Ethiopia, Ghana, Lesotho, Malawi, Namibia, Uganda, and Zambia. This Report is based primarily on desk review of freely and publicly-available laws and reports, supplemented in portions by the knowledge of ABA ROLI's local affiliates. Please note that the materials discussed in this Report capture only the legislative and policy framework of the relevant countries; *de facto* implementation of these laws may be at issue in some, if not all, of these states.

II. Liability of Legal Persons for Violations of Law

Eritrea

The Penal Code of the State of Eritrea lays out the circumstances under which corporations (and other legal entities) are liable for criminal acts.² A “body corporate or business organization” is liable for the conduct of directors, officers, and employees with authority over formulation or implementation of corporate policy, while they are acting within the scope of their authority. This is true for crimes of negligence and strict liability, even though no such director, officer, or employee may be held individually liable for the same offense.³

Eritrea’s jurisdiction over extrajudicial conduct by domestically-incorporated entities appears limited. For criminal conduct occurring outside of Eritrea, only “serious offenses,” as defined under Eritrean law, committed by “a person present in Eritrea after the commission of the offence” are punishable in Eritrean courts.⁴ However, serious offenses against Eritrean citizens, permanent residents, or internationally protected persons (and their families) in the service of Eritrea create grounds for liability. Civil suits can be brought in Eritrean courts if the defendant has its head office, or other principal seat of business, or otherwise carries on business in Eritrea.⁵

The law does not appear to create any specific causes of action against business corporations for engaging in TIP activities. Any legal person who has caused damage to others shall make it good,⁶ including infringements of specific and explicit provisions of law. Thus, any violations of Eritrea’s TIP-related laws could create grounds for civil litigation against the corporation.⁷ However, it is unclear whether shareholders, directors, or officers of the entity could be held personally liable for the corporation’s debts in such an action.

Ethiopia

In Ethiopia, juridical persons can be held liable for criminal acts.⁸ The Trafficking in Persons Proclamation (TIP Proclamation), for example, criminalizes trafficking, assisting in trafficking, migrant smuggling, and assisting or facilitating migrant smuggling for all persons, natural and juridical.⁹ Many other laws—including, for example, the tax laws—also create liability for legal persons.¹⁰ Although corporations themselves may be held criminally liable in Ethiopia, directors

² Penal Code of the State of Eritrea, art. 40, *available at* <http://www.refworld.org/pdfid/55a51ccc4.pdf> (last visited July 22, 2017) [hereinafter Penal Code].

³ *Id.* at art. 40.

⁴ *Id.* at art. 44.

⁵ Civil Procedure Code of the State of Eritrea, art. 34, *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101052/121588/F882481615/ERI101052.pdf> (last visited July 22, 2017) [hereinafter Civil Procedure Code].

⁶ Civil Code of the State of Eritrea, arts. 1597-1602 [hereinafter Civil Code].

⁷ Penal Code, *supra* note 2, at arts. 12(4), 24(3), 78.

⁸ The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414 of 2004, § 34, *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/et/et011en.pdf> (last visited July 21, 2017) [hereinafter Criminal Code].

⁹ Proclamation to Provide for the Prevention and Suppression of Trafficking in Person and Smuggling of Migrants, No. 909 of 2015, *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101059/126622/F-402220324/ETH101059.pdf> (last visited July 21, 2017) [hereinafter Proclamation No. 909/2015].

¹⁰ Criminal Code, *supra* note 8, at §§ 34, 599.

and officers may not be held personally liable. Furthermore, although the law does not require a corporation's officers or directors to comply with any particular standard of human rights or ethics, business licenses may be suspended for failure to meet, for example, any sanitary conditions, environmental protection measures, safety measures, and quality control measures that are otherwise specified in the business license.¹¹

Ghana

Legal persons, such as corporations, may be held criminally and civilly liable for violations of state law: "Any act of the members in general meeting, the board of directors, or a managing director while carrying on in the usual way the business of the company shall be treated as the act of the company itself; and accordingly the company shall be criminally and civilly liable therefor to the same extent as if it were a natural person."¹² However, acts of officers and agents are not deemed to be acts of the company unless the company officially authorized the acts or held the person(s) out as having authority to act in the matter.¹³

The HTA does not explicitly create liability for legal persons. However, a "body of persons", including a corporate body, a firm, or a union or group of workers can be held liable for offenses committed under the Labor Act, and each director of a corporation, partner of a firm, or member of a union can be deemed to have committed the offense unless they can prove they had no knowledge of it or tried to prevent it.¹⁴ It is unclear whether officers who are not directors can be held liable under these provisions. The penalty for forced labor under the Labor Act, however, is only a fine that cannot exceed 250 'penalty units'.¹⁵

Lesotho

Under Lesotho law, legal persons (e.g., corporations) can be held liable for violations of the State's laws. The Penal Code provides that, if a person acting on behalf of a corporation commits an offense, the corporation can be held liable in two ways:¹⁶ firstly, where an offense is created by statute with the express or implied intention of making corporations as well as natural persons liable; and secondly, when the person who commits the offense is a person charged with the direction of the affairs of the corporation.¹⁷

Punishment is provided for under the statute that establishes the offense.¹⁸

While these laws provide for liability of the corporation, it is has not been determined whether, and

¹¹ Commercial Registration and Business Licensing Proclamation, Proclamation No. 686 of 2010, § 37(1), available at <https://chilot.files.wordpress.com/2011/01/686-commercial-registration-and-business-licensing-ae.pdf> (last visited July 21, 2017) [hereinafter Proclamation No. 686/2010].

¹² Companies Act 179 of 1963, § 139, available at <http://laws.ghanalegal.com/acts/id/17/companies-act> (last visited July 17, 2017).

¹³ *Id.* at § 140.

¹⁴ Labor Act no. 651 of 2003, § 173, available at <https://www.ilo.org/dyn/natlex/docs/SERIAL/66955/63431/F1429852156/GHA66955.pdf> (last visited July 17, 2017).

¹⁵ *Id.* at § 116.

¹⁶ Penal Code Act, No. 6 of 2012, § 28, available at <http://www.wipo.int/edocs/lexdocs/laws/en/ls/ls022en.pdf> (Aug. 3, 2017).

¹⁷ *Id.*

¹⁸ *Id.*

on what grounds, officers, directors and shareholders of a corporations can be held legally liable for an entity's violations of state laws.

Malawi

A number of Malawian laws provide that corporate entities can be held liable for criminal offenses. For instance, the Penal Code provides that, where an offence is committed by any company or other legal entity, every person who has responsibility for or in the control or management of the affairs or activities of that entity shall be guilty of that offence, and may be punished accordingly;¹⁹ however, this is not a blanket rule, and certain Penal Code provisions may not establish liability for legal persons.

Other laws that create corporate liability for criminal acts include the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act,²⁰ the Environmental Management Act, the Capital Market Development Act, and the Workers Compensation Act. The Capital Market Development Act specifically criminalizes the submission of securities reports containing false information, market manipulation, and insider trading. Under this legislation, corporate entities may be prosecuted and fined, and their directors may be imprisoned.²¹

Namibia

Namibian law generally creates criminal liability for legal persons.²²

Natural persons acting in an official capacity may be held liable for violations of other laws. For example, the Financial Intelligence Act provides that directors, controllers, or partners of legal entities, or individuals who are responsible for the management of the entity's affairs, may be held liable for the offenses of a company under the Act, unless they can prove that the offense was committed "without his or her consent or connivance and that he or she exercised such diligence to prevent the commission of the offense as he or she ought to have exercised."²³ Such individuals may be prosecuted for offenses under the Financial Intelligence Act even if a legal person has not been convicted; nor does the prosecution of an individual limit the liability of the entity.²⁴

¹⁹ Malawi Penal Code, Ch. 7:01, art. 24, *available at* <https://srhr.org/abortion-policies/documents/countries/01-Malawi-Penal-Code.pdf> (last visited July 23, 2017) [hereinafter Penal Code].

²⁰ Money Laundering, Proceeds of Serious Crime Terrorist Financing Act No. 11 of 2006, *available at* <https://www.rbm.mw/Home/GetContentFile/?ContentID=3753> (last visited July 23, 2017) [hereinafter Money Laundering Act].

²¹ CORPORATE GOVERNANCE TASK FORCE, CODE OF BEST PRACTICES FOR CORPORATE GOVERNANCE MALAWI (2010), *available at* [http://www.track.unodc.org/LegalLibrary/LegalResources/Malawi/Laws/Code%20of%20Best%20Practice%20for%20Corporate%20Governance%20\(2001\).pdf](http://www.track.unodc.org/LegalLibrary/LegalResources/Malawi/Laws/Code%20of%20Best%20Practice%20for%20Corporate%20Governance%20(2001).pdf) (last visited July 23, 2017) [hereinafter CODE OF BEST PRACTICES FOR CORPORATE GOVERNANCE II]; Penal Code, *supra* note 19; McSyd Hubert Chalunda, *Anti-Corruption Bureau of Malawi, in* CORPORATE CRIME AND THE CRIMINAL LIABILITY OF CORPORATE ENTITIES IN MALAWI: RESOURCE MATERIAL SERIES NO. 76, 66, 72 (2008).

²² Criminal Procedure Act, No. 51 of 1977, *available at* http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=85750&p_classification=01.04 (last visited July 31, 2017).

²³ Financial Intelligence Act, No. 13 of 2012, § 65(1), *available at* <https://www.fic.na/uploads/Acts/Financial%20Intelligence%20Act/Financial%20Intelligence%20Act%2013%20of%202012.pdf> (last visited July 31, 2017).

²⁴ *Id.* at §§ 65(2)-(4).

To the extent that the Prevention of Organized Crime Act (POCA) defines an “enterprise” broadly to include “any individual, partnership, corporation, association, or other person or legal entity, and any union or group of individuals associated in fact”,²⁵ entities may be able to be held liable for TIP offenses. However, POCA does not explicitly state that this is the case.

Under the Child Care and Protection Act (CCPA), electronic communications service providers operating in Namibia may be held liable for an offense if they are or become aware that their systems are being used for the storage or transmission of information related to the trafficking of children.²⁶ However, it is not clear whether the CCPA creates liability for the providing entity or its officers.²⁷

Uganda

Although the Prevention of Trafficking in Persons Act does not expressly address corporate liability with respect to trafficking violations, the Penal Code permits corporations to be held liable for violations of the criminal law. Specifically, the definitions section of the Penal Code states that “‘person’ and ‘owner’ and other like terms when used with reference to property include corporations of all kinds and any other association of persons capable of owning property, and also when so used include the Government.”²⁸

Zambia

The Anti-Human Trafficking Act (AHTA), does not hold non-natural persons criminally liable for offenses under the act.²⁹ The AHTA also does not create a civil cause of action against non-natural persons.³⁰

The Prohibition and Prevention of Money Laundering Act (Money Laundering Act) provides that non-natural persons may be held liable and fined for violations of its provisions.³¹

Under the AHTA, shareholders may be held liable to the extent that they are involved in the

²⁵ Prevention of Organised Crime Act, No. 29 of 2004, § 1(d), *available at* https://laws.parliament.na/cms_documents/prevention-of-organised-crime-3a3a391a4a.pdf (last visited July 31, 2017) [hereinafter POCA].

²⁶ Child Care and Protection Act, No. 3 of 2015, § 203(2), *available at* <http://www.lac.org.na/laws/2015/5744.pdf> (last visited July 31, 2017) [hereinafter CCPA].

²⁷ *See id.* at §§ 203(3)-(4).

²⁸ Uganda Penal Code Act of 1950, § 2(t), *available at* http://www.wipo.int/wipolex/en/text.jsp?file_id=170005 (last visited July 19, 2017).

²⁹ The Penal Code Act, No. 42 of 1930 (*as amended* 2005), art. 2, *available at* <http://www.parliament.gov.zm/sites/default/files/documents/acts/Penal%20Code%20Act.pdf> (last visited Aug. 5, 2017); *see generally* The Anti-Human Trafficking Act, No. 11 of 2008, *available at* <http://ilo.org/dyn/natlex/docs/MONOGRAPH/79940/86184/F202769530/ZMB79940.pdf> (last visited Aug. 5, 2017) [hereinafter AHTA].

³⁰ *See generally* AHTA, *supra* note 29; Companies Act, No. 26 of 1994, arts. 7(1)-(2), *available at* <http://www.parliament.gov.zm/sites/default/files/documents/acts/Companies%20Act.pdf> (last visited Aug. 5, 2017) [hereinafter Companies Act].

³¹ The Prohibition and Prevention of Money Laundering Act, No. 14 of 2001, art. 3, *available at* http://www.decambia.gov.zm/downloads/Act_14_of_2001.pdf (last visited Aug. 5, 2017).

commission of any crime under the Act, or know that the money they make available is being used for the furtherance of the crime.³² Directors and officers of an entity may be held liable for a corporate act where it is proved that the act was committed either with the consent of the director or officer, or due to the negligence of the director or officer.³³

³² AHTA, *supra* note 29, at arts. 13-15.

³³ *Id.* at art. 13.

III. Compliance with Laws on Incorporation

Eritrea

There are no restrictions on who can incorporate in Eritrea. While there are requirements regarding capital, registration, and licensing, ABA-ROLI researchers are unaware of any other requirements regarding corporate structure or governance.³⁴ Moreover, the legal oversight mechanisms appear limited to internal controls. For instance, the Transitional Commercial Code of Eritrea contains provisions for the appointment of independent auditors to ensure compliance with corporate articles and bylaws.³⁵

Ethiopia

For corporations other than a share company, the law requires the submission of Articles of Association and a Memorandum of Association.³⁶ Where a foreigner is involved, that foreigner must submit an investment permit for foreign nationals.³⁷ If one of the corporation's shareholders is a juridical person, then the certificate of incorporation, the articles of association, and the memorandum of association must also be submitted.³⁸ Ethiopia does not place restrictions on who may form a corporation within the country, although minors may not engage in trading activities without family council authorization.³⁹ The law does, however, restrict foreigners from investing in certain areas.⁴⁰

The law in Ethiopia also requires persons who engage in businesses more to obtain business licenses; these are only issues where registration preconditions are met.⁴¹ Authorities may close businesses that operate without a license.⁴² Furthermore, the law prohibits corporations from engaging in activities other than those declared in their business license, and the law provides for inspection in areas where directives require certain professional competencies.⁴³

Ghana

Companies are prohibited from carrying on their business outside the authorized scope of their Regulations; these regulations are required when incorporating and state the nature of the business and/or its objectives.⁴⁴ Courts are empowered to issue injunctions against a company's *ultra vires* actions upon application by a member of the company or certain debtholders.⁴⁵

³⁴ Berhane Woldu, *Investment in Eritrea*, ERITREA – MINISTRY OF INFORMATION (Jan. 20, 2012), <http://www.shabait.com/categoryblog/8210-investment-in-eritrea> (last visited July 22, 2017).

³⁵ *Id.*

³⁶ Proclamation No. 686/2010, *supra* note 11, at § 6(7).

³⁷ *Id.* at § 10(4).

³⁸ *Id.* at § 11(1)(d).

³⁹ Commercial Code of the Empire of Ethiopia, Proclamation No. 166 of 1960, § 13, *available* <http://www.wipo.int/edocs/lexdocs/laws/en/et/et014en.pdf> (last visited July 21, 2017).

⁴⁰ *Id.* at § 100.

⁴¹ Proclamation No. 686/2010, *supra* note 11, at § 31.

⁴² *Id.*

⁴³ *Id.* at §§ 34, 39, 44.

⁴⁴ Companies Act, *supra* note 12, at § 25.

⁴⁵ *Id.*

Lesotho

Lesotho does not maintain an oversight mechanism to ensure corporate compliance with the requirements for incorporation. However, the law does impose sanctions for violations of the requirements of incorporation, including making materially misleading statements and falsifying or destroying documents.⁴⁶

Malawi

The Companies Act provides that two or more persons associating for any lawful purpose may form a corporate entity by (1) subscribing their names to a memorandum of association, and (2) registering the entity under the provisions of law.⁴⁷ A memorandum of association must contain the name of the company, the nature of the objects for which it has been established, and a number of requirements related to the liability of the company and what should happen with its assets upon dissolution.⁴⁸ Companies may alter their memoranda of association by special resolution; amendments to the object and purpose of the company are permitted under law;⁴⁹ however, amendments must be re-certified by the registrar.⁵⁰

Whether any penalties attach to a failure to meet incorporation requirements, or a failure to comply with the memorandum of association, are unclear. However, civil and criminal penalties may arise out of a number of violations of the Companies Act.⁵¹

Namibia

ABA ROLI has not determined what oversight mechanisms exist to secure compliance with Namibia's laws on incorporation, which are laid out in the Companies Act.⁵²

Uganda

The Uganda Companies Act generally provides that a corporation may not be formed without the existence of a Memorandum of Association that states the company's name, its objects, the liability of its members (if any), and the amount of share capital involved in the incorporation (if any).⁵³ Companies may not alter the conditions of a Memorandum of Association except as provided in the Companies Act, which lays out the following requirements for alterations to a company's object:⁵⁴ (i) the application must be made pursuant to a special resolution; (ii) within twenty-one days of the

⁴⁶ Companies Act, No. 18 of 2011, Part XX, available at <http://www.lesotholii.org/ls/legislation/act/2011/18> (last visited Aug. 3, 2017).

⁴⁷ Companies Act, Ch. 46:03, art. 4, available at <http://www.wipo.int/edocs/lexdocs/laws/en/mw/mw024en.pdf> (last visited July 23, 2017).

⁴⁸ *Id.* at art. 6.

⁴⁹ *Id.* at arts. 8-10.

⁵⁰ *Id.* at art. 19.

⁵¹ *See, e.g., id.* at arts 345-350.

⁵² Companies Act, No. 28 of 2004, §§ 64-67, available at <http://www.wipo.int/edocs/lexdocs/laws/en/na/na012en.pdf> (last visited July 31, 2017).

⁵³ Companies Act of 2012, §§ 3, 4(1), available at <https://www.ebiz.go.ug/wp-content/uploads/2016/01/Companies-Act-2012.pdf> (last visited July 19, 2017).

⁵⁴ *Id.* at § 6.

passage of the resolution; (iii) with confirmation by a court.⁵⁵ It is not clear that any penalties attach to a failure to meet the requirements of these provisions; however, civil and criminal penalties may arise in cases where misstatements are made in a prospectus inviting the public to subscribe to a company's shares or debentures.⁵⁶

The regulations governing agencies that recruit workers for employment outside Uganda give notice that a recruitment agency's license may be revoked if they engage in "the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of Uganda."⁵⁷ These regulations also state that other conduct related to trafficking is grounds for the revocation of business licenses.⁵⁸ According to the U.S. State Department, Uganda has not attempted to prosecute any agencies for their role in the fraudulent recruitment of Ugandan workers.⁵⁹

Zambia

Zambian law provides that corporations may have articles of incorporation that lay out restrictions on company business and regulate company conduct.⁶⁰ Where companies do not write their own articles of incorporation, the Companies Act provides that public or private share-limited companies will be deemed to have adopted Zambia's Standard Articles if they do not otherwise exclude or modify them;⁶¹ however, these Standard Articles make no mention of TIP or any TIP-related practices.⁶²

ABA ROLI has not identified whether Zambian law imposes any specific oversight mechanisms to ensure corporate compliance with incorporation requirements; however, to the extent that penalties are provided for false statements relating to the Companies Act, companies may incur liability for violations of the laws on incorporation.⁶³

⁵⁵ *See id.* at §§ 7(1), (2).

⁵⁶ *Id.* at §§ 45-46.

⁵⁷ *See* Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations of 2005, reg. 19(x) (Grounds for suspension or revocation of license), *available at* <https://www.ulii.org/node/23682> (last visited July 19, 2017).

⁵⁸ *See generally id.* at reg. 19 (grounds for license revocation include withholding a passport, wrongfully withholding pay, recruitment through fraud or coercion, etc.).

⁵⁹ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 380, *available at* <https://www.state.gov/documents/organization/258882.pdf> (last visited July 19, 2017).

⁶⁰ Companies Act, *supra* note 30.

⁶¹ *Id.* at art. 7.

⁶² *Id.* at Schedule I.

⁶³ *Id.* at art. 381.

IV. Corporate Social Responsibility Initiatives

Eritrea

There do not appear to be any requirements for corporations or boards to adopt ethical, human rights, or Corporate Social Responsibility standards, nor does the State of Eritrea incentivize companies to implement such standards.

Ethiopia

Ethiopia does not require businesses to undertake any corporate social responsibility initiatives, and it does not provide businesses with particular investment incentives related to corporate social responsibility.

Ghana

ABA ROLI was unable to locate any Ghanaian legislation that specifically requires officers and directors of companies to comply with human rights standards, or mandates companies to undertake corporate social responsibility initiatives on TIP.

In its National Gender and Children Policy of 2004, the Ministry of Women and Children's Affairs specified that it would encourage the private sector to promote gender equity and abide by international labor conventions and provisions in the Children's Act relating to child labor, among other suggestions.⁶⁴ However, ABA ROLI is unable to assess what impact, if any, this policy has had on corporate social responsibility initiatives.

Lesotho

Lesotho law generally does not require or incentivize corporations to undertake corporate responsibility initiatives.

However, corporations established under the Lesotho National Plan for Tourism must consider the impact of their operations on agriculture, land management, local communities and the environment.⁶⁵ Furthermore, all companies seeking a license to conduct industrial activities must submit public health, occupational safety and environmental impact reports along with their license applications.⁶⁶

Malawi

ABA ROLI has not identified any laws that require corporate officers and directors to comply with human rights and/or ethical standards.

⁶⁴ MINISTRY OF WOMEN AND CHILDREN'S AFFAIRS, NATIONAL GENDER AND CHILDREN POLICY § 8.4.8 (2004), *available at* <https://www.hsph.harvard.edu/population/womenrights/ghana.gender.04.pdf> (last visited July 17, 2017).

⁶⁵ Tourism Act, No. 4 of 2002, § 5, *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/ls/ls019en.pdf> (last visited Aug. 3, 2017).

⁶⁶ Industrial Licensing Act, No. 10 of 2014, § 4, *available at* http://www.lesotholii.org/files/Industrial%20Licensing%20Act,%202014_0.pdf (last visited Aug. 3, 2017).

However, professionals representing the Chambers of Commerce of Malawi, the Society of Accountants in Malawi, the Malawi Law Society, and the Malawi National Bank have produced a Code of Best Practice for Corporate Governance in Malawi. The Code creates obligations for managers and employees of a corporation to the larger society and community within which the corporation operates.⁶⁷ However, the Code is not legally binding, and relies only on the publicity factor associated with Corporate Social Responsibility initiatives to secure compliance.

A second code of corporate governance that was drafted in 2010 similarly requires the board of a company to take into consideration wider societal interests and other circumstances as part of its decision making processes. Additionally, it calls upon company owners to ensure that their organizations are good corporate citizens, and operate in sustainable ways. Again, these provisions are also voluntary.⁶⁸

Namibia

ABA ROLI has not identified any national laws or policies that encourage or require Namibian businesses or entities that do business in Namibia to engage in corporate social responsibility initiatives.

Uganda

The Prevention of Trafficking in Persons Act (PTIP Act) expressly requires that “[e]very member of the community” must report instances of human trafficking.⁶⁹ However, it does not expressly impose obligations on corporations to do the same.⁷⁰ Researchers did not identify any legal obligations for business entities to verify that their employees have not been trafficked; nor did researchers identify legal requirements for businesses to conduct anti-TIP training.

Zambia

Zambia has a Citizens Economic Empowerment Act that addresses a number of corporate social responsibility obligations.⁷¹ For instance, the Act obliges private and public entities to identify and eliminate barriers in their employment policies and practices, implement measures designed to further workplace diversity and inclusiveness, and make reasonable accommodations where necessary for employees.⁷² The Act also establishes a Commission for Citizens’ Economic Empowerment to ensure that companies make mandatory contributions to national pension schemes, that foreign investors engage in joint ventures with citizen-owned firms, and that firms

⁶⁷ CODE OF BEST PRACTICES FOR CORPORATE GOVERNANCE I, *supra* note 21.

⁶⁸ Code of Best Practice for Corporate Governance II, *available at* http://www.ecgi.org/codes/code.php?code_id=341 (last visited July 23, 2017).

⁶⁹ The Prevention of Trafficking in Persons Act of 2009, § 10, *available at* <https://www.ulii.org/ug/legislation/act/2015/7> (last visited July 19, 2017).

⁷⁰ The PTIP Act refers to the liability of a “person” under the Act, but does not define “person.”

⁷¹ Citizens Economic Empowerment Act, No. 9 of 2006, *available at* <http://www.zambialii.org/zm/legislation/act/2006/9/cea2006284.pdf> (last visited Aug. 5, 2017).

⁷² *Id.* at art. 13(1).

have codes of good practice that are consistent with the objectives of the Act.⁷³

⁷³ *See generally id.*

V. Supply Chain Transparency and Accountability

Eritrea

Eritrea's legal framework does not address transparency or accountability in either domestic or global trafficking supply chains. It also does not have laws require businesses to have anti-TIP policies in their supply chains.

Businesses are not required to report or disclose efforts to prevent, identify, or address trafficking in their supply chains, or to evaluate product supply chains for TIP risks, or to provide TIP training to employees.

Ethiopia

Ethiopia's legal framework does not address transparency or accountability in either domestic or global trafficking supply chains. It also does not have laws require businesses to have anti-TIP policies in their supply chains.

Businesses are not required to report or disclose efforts to prevent, identify, or address trafficking in their supply chains, or to evaluate product supply chains for TIP risks, or to provide TIP training to employees.

Ghana

ABA ROLI was unable to locate Ghanaian legislation requiring companies to report or disclose any efforts they take to prevent, identify and/or address TIP in their supply chains, or to conduct verification of product supply chains to evaluate TIP risks.

Lesotho

The Anti-Trafficking in Persons Act of 2011 (Anti-TIP Act) includes provisions relevant to TIP in supply chains. Specifically, the Act allows the government to institute border control measures in order to examine persons, vehicles, or goods that might have some involvement with trafficking.⁷⁴ Other than this provision in the Anti-TIP Act, no Lesotho laws have been identified that set specific procedures for identifying goods and services whose supply chains might involve TIP.

No Lesotho law appears to directly address transparency and accountability in global supply chains. The Anti-TIP Act can be construed to address accountability in supply chains to the extent that it holds corporations liable for facilitating or procuring TIP by another party, although the entity must have knowledge and intent for liability to attach.⁷⁵ However, this requires knowledge and intent on the part of the corporation in order for it to be held liable.

The act does not require businesses to impose anti-TIP policies in their supply chain management; nor does it require the government to refuse to contract with entities that are discovered to use TIP

⁷⁴ See Anti-Trafficking in Persons Act, No. 1 of 2011, §§ 14-17, available at https://www.unodc.org/res/cld/document/anti-trafficking-in-persons-act--2011_html/Lesotho_TIP_Act_2011.pdf (last visited Aug. 3, 2017).

⁷⁵ *Id.* at § 5.

in their supply chains.

Malawi

Malawi does not have any specific laws to prohibit the government from procuring goods and services from suppliers or contractors that engage in TIP or TIP-related practices.

ABA ROLI was unable to locate Malawian national legislation requiring companies to report or disclose any efforts they take to prevent, identify, and/or address TIP in their supply chains, or to conduct verification of product supply chains to evaluate TIP risks.

Namibia

ABA ROLI has not identified any national laws or policies that encourage or require the monitoring of supply chains for Namibian businesses; nor has ABA ROLI identified any national laws or policies that prohibit the government from engaging in transactions with entities that are known or suspected to use TIP or TIP-related practices in their supply chains.

Uganda

ABA ROLI was unable to locate Ugandan national legislation requiring companies to report or disclose any efforts they take to prevent, identify, and/or address TIP in their supply chains, or to conduct verification of product supply chains to evaluate TIP risks.

Zambia

The Common Market for Eastern and Southern Africa (COMESA), of which Zambia is a member, provides that Zambian exporters may receive preferential trade treatments as long as they remain in compliance with COMESA's Rule of Origin procedures.⁷⁶

ABA ROLI has been unable to identify any other laws or procedures in Zambia that would require companies to engage in supply chain analysis to identify TIP or TIP-related practices; nor has it identified any rules or regulations that would prohibit government entities from engaging in contracts with firms that employ TIP or TIP-related practices in their supply chains.

⁷⁶ Common Market for Eastern and Southern Africa Treaty art. 48, Nov. 5, 1993, *available at* www.wipo.int/wipolex/en/other_treaties/text.jsp?file_id=173329 (last visited Aug. 5, 2017); Protocol on the Rules of Origin for Products to be Traded between the Member States of the Common Market for Eastern and Southern Africa, *available at* http://etradeportal.go.ke/media/comesa_rules.pdf (last visited Aug. 5, 2017).

VI. Contract Law

Eritrea

Eritrea generally allows contracts to be voided for duress, fraud, or capacity.

Contracts are voidable if brought about by a party's "unjustified threat" against another party.⁷⁷ The threat must be so imminent and serious that the first party has no reasonable alternative; it is "unjustified" if the threatened action is unlawful in itself, or if it is wrongful to use the action to obtain the conclusion of the contract.⁷⁸

The fraud of a party to the contract, including language, practices, or disclosure, can render a contract voidable. Non-disclosure can be fraudulent, if the party should have disclosed the relevant information under reasonable commercial standards of fair dealing.⁷⁹

A party, or its representative, may void a contract if it lacked legal capacity to enter into the contract in the first place.⁸⁰

The law does not limit the rights of women, minority groups, stateless people, or foreigners to enter into contracts.

Ethiopia

Contracts entered into under duress or undue influence are voidable.⁸¹ Duress is said to exist when the person who entered into the contract under the assumption that the person, or the persons next of kin, were threatened with a serious or imminent danger to life, person, honor, or property.⁸² Such duress must be such that it would impress a reasonable person, taking into account the age, sex, and position of the contracting parties.⁸³ A contract is signed under undue influence when it was signed under a threat to exercise a right, or a "reverential fear".⁸⁴

Contracts may also be invalidated on grounds of fraud, where a party resorts to deceitful practices so that the other party would not have entered into the contract, had that other party not been deceived.⁸⁵ Lastly, contracts entered into by those without legal capacity, such as contracts with minors, are considered void.⁸⁶

Ethiopia does not place any restrictions on the ability of women, minority groups, stateless people, or foreigners to contract freely.

⁷⁷ Civil Code, *supra* note 6, at art. 1361.

⁷⁸ *Id.*

⁷⁹ *Id.* at art. 1360.

⁸⁰ *Id.* at art. 1357.

⁸¹ Civil Code of the Empire of Ethiopia, Proclamation No. 165 of 1960, § 1696, *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/et/et020en.pdf> (last visited July 21, 2017)

⁸² *Id.* at § 1706.

⁸³ *Id.*

⁸⁴ *Id.* at §§ 1708-09.

⁸⁵ *Id.* at § 1704.

⁸⁶ *Id.* at § 313.

Ghana

Fraudulent contracts appear to be voidable under Ghanaian common law. In *KPEGLO v SCOA Motors*, the Chief Justice of the Supreme Court stated that “a contract obtained by fraudulent misrepresentation is voidable, not void; it is valid until it is avoided, and it is voidable, at the option of the party defrauded.”⁸⁷

ABA ROLI did not find legislation that specifically voids or renders voidable contracts for indentured labor. However, under the Labor Act of 2003, forced labor—defined as work or service exacted from a person under threat of penalty, and for which that person has not offered himself or herself voluntarily—is prohibited.⁸⁸ Presumably, therefore, contracts for forced labor are illegal under Ghanaian law.

ABA ROLI was not able to confirm whether unfair substitutions for previous contracts are void or voidable. Because there is a minimum age for employment,⁸⁹ presumably children younger than the minimum age are unable to legally enter into contracts for employment.

Lesotho

Lesotho law provides that certain contracts are void or voidable in a variety of situations. Under the Labor Code, contracts for foreign service (a contract made within Lesotho that is to be performed in whole or in part outside Lesotho) are void if entered into under coercion or undue influence.⁹⁰ The Labor Code also prohibits foreign contracts where any recruited person is found by an attesting officer to have been recruited by misrepresentation, fraud, illegal pressure or mistake, and where the recruited person is under the age of 18.⁹¹

With respect to foreign service contracts, substitutions for a previous contract are regulated, but unfair substitutions are not necessarily void or voidable.⁹² Substitution must be authorized by an attesting officer or labor representative who is satisfied that the substituting party fully understands the nature of the transaction, and that his or her consent to the substitution is not a result of coercion, undue influence, misrepresentation, fraud or mistake.⁹³ It is a criminal offense where any person, without first entering into a foreign service contract under the Labor Code: (a) employs or engages, or knowingly assists in the employment or engagement, of any person with the intention that, when so employed or engaged, such person shall work outside Lesotho; or (b) induces or attempts to induce any employee to proceed outside the limits of Lesotho for the purposes of employment.⁹⁴

Lesotho does not appear to place any legal restrictions on women, minority groups, stateless people

⁸⁷ *Kpeglo v SCOA Motors*, (1962) 2 G.L.R. 82, available at <http://cases.ghanalegal.com/cases/detail/kpeglo-versus-scoa-motors> (last visited July 17, 2017) (internal citations omitted; furthermore, ABA ROLI is unable to determine whether this opinion has been superseded, overruled, reversed, and/or questioned.).

⁸⁸ Labor Act, *supra* note 14, at §§ 116-117.

⁸⁹ See *infra* Part IX (Labor Rights) for further discussion.

⁹⁰ Labour Code, Order No. 24 of 1992, Part XI, available at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/31536/64865/E92LSO01.htm> (last visited Aug, 3, 2017).

⁹¹ *Id.*

⁹² *Id.* at § 163.

⁹³ *Id.*

⁹⁴ *Id.* at § 145.

or foreigners to contract freely.

Malawi

ABA ROLI has been unable to review any publicly-available specific provisions of statutory law that address when contracts may be rendered void or voidable, or specific case law that discusses the issue. However, because the Constitution provides for the continued application of the common law that had existed when it entered into force,⁹⁵ and because Malawi was a British colony, it is possible that the basic contract principles of English common law remain in effect unchanged in Malawian law and jurisprudence.

Namibia

ABA ROLI has been unable to review any publicly-available specific provisions of statutory law that address when contracts may be rendered void or voidable, or specific case law that discusses the issue. However, to the extent that Namibia's civil law systems derive from the English law,⁹⁶ it is possible that general common law principles relating to contract voidness or voidability exist within Namibian jurisprudence.

Uganda

To the extent that a corporation (or a natural person) might seek to enforce some aspect of a trafficking arrangement by contract, Uganda law recognizes various defenses that might apply. For example, if a party entered into a contract as a result of undue influence, fraud or misrepresentation, the contract is voidable at the option of the party whose consent was improperly obtained.⁹⁷ In addition, in order for a contract to be valid under Ugandan law, parties to the contract must have legal capacity, which includes being at least 18 years old.⁹⁸

Zambia

ABA ROLI has not identified any publicly-available provisions of statutory law that address when contracts may be rendered void or voidable. However, in the Zambian High Court case of *Joan v Hodgson*, the Court makes multiple references to the principles of English contract law;⁹⁹ as a result, it is possible that those principles generally apply in Zambian law and jurisprudence.

⁹⁵ Constitution of Malawi, 1994, art. 200, available at https://www.constituteproject.org/constitution/Malawi_1999.pdf (last visited July 23, 2017).

⁹⁶ Hilya Nadago, *UPDATE: Researching Namibian Law and the Namibian Legal System*, GLOBALEX (Jan. 2013), available at <http://www.nyulawglobal.org/globalex/Namibia1.html> (last visited July 31, 2017).

⁹⁷ Contracts Act of 2010, §§ 13–15, available at <https://www.ulii.org/ug/legislation/act/2015/7-4> (last visited July 19, 2017).

⁹⁸ *Id.* at § 11.

⁹⁹ *Joan v Hodgson*, 2007/HK/433, High Court of Zambia, at J15-22, available at <https://www.zambialii.org/zm/judgment/high-court/2011/38/45.%20Hudgson%20-%20Judgment.pdf> (last visited Aug. 5, 2017) (note that ABA ROLI has been unable to confirm whether this case has been overturned or otherwise voided).