

Principles for Addressing Trafficking, Forced Labour and Slavery in Supply Chains: POLICY BRIEF #1

Introduction

This series of Policy Briefs results from research on initiatives (policies, programs and other actions) to address Trafficking, Forced Labour and/or Slavery (TFLS) in and through supply chains. This is a fast-growing field of intervention which our research has sought to map and understand. Based on this research, we recommend four principles for addressing TFLS in and through supply chains. In this policy brief, we focus on Principle #1: it is time to go ‘beyond compliance’ to responsibility for ethical supply chains.

Four principles for addressing TFLS in and through supply chains

1) It is time to go ‘beyond compliance’ to responsibility for ethical supply chains:

In order to effectively tackle practices associated with TFLS in supply chains, responsibility must be understood to include not only culpability and liability, but the duty to address injustices from which we might benefit. Lead firms should take responsibility for improving conditions for workers within their supply chains – and policy should promote this.

2) Initiatives need to be enforceable and have significant consequences:

Voluntary efforts to address TFLS in supply-chains are unlikely to be effective without enforcement mechanisms which result in significant consequences for violations (or failure to achieve targets).

3) Genuine worker participation is critical:

Wherever possible, trade unions and other workers’ organizations should be substantively involved in formulating, implementing and monitoring initiatives at the TFLS-supply chain nexus.

4) Public regulation to protect workers’ and migrants’ rights and labour standards is crucial:

Practices associated with TFLS in supply chains do not take place in a vacuum. Addressing them necessitates a broader commitment to labour rights and labour standards. Private initiatives can complement and reinforce public regulation, but not substitute for it.

Data collection and analysis

This project has involved intensive desk-based research complemented by fieldwork. Initiatives at the TFLS-supply chain nexus include the following, which typically reference Core Labour Standards, including freedom from forced labour: 1) International Framework Agreements (IFAs) negotiated between Global Union Federations (GUFs) and Transnational Corporations (TNCs); 2) bilateral and multilateral trade agreements; and 3) individual company codes of conduct. In addition, 97 initiatives at the TFLS-supply chain nexus have been identified. These initiatives are diverse: a range of actors (companies, NGOs, governments, multilateral bodies, etc.) are involved in these initiatives, they are being developed and applied in various industries, they operate at different scales and in different locations, and they take a number of forms. In order to understand this diversity, we have classified each initiative according to a number of factors including those listed above. To further consider the implications of these diverse initiatives, we have conducted three case studies investigating how selected initiatives are playing out on the ground. Each case study has involved a period of fieldwork: electronics in Malaysia; construction in Qatar; and agriculture in the US.

The question of responsibility and liability in supply chains

When evidence of TFLS is identified within a supply chain, many firms respond by pointing to suppliers' unauthorised subcontracting (see LeBaron 2014) and/or governments' inadequate enforcement of labour laws. In so doing, firms are seeking to protect themselves from two intersecting risks: liability¹ and reputational risk. If we are to effectively address practices associated with TFLS, however, we need to move towards a broader notion of responsibility, one which includes the idea that if we benefit from injustices we have a duty to address these. The OECD² Guidelines for Multinational Enterprises, for example, state that firms should '*contribute to the elimination of all forms of forced or compulsory labour*' (emphasis added). Making ethical choices need not come at the expense of profitability; while investment may be necessary at the outset, there are likely to be returns on this investment. Committing to transforming labour relations and labour conditions along the supply chain would radically reduce the risk of TFLS and therefore limit potential liability and reputational damage for businesses. Indeed, the experience of the Fair Food Program in the US (see Policy Brief #3) demonstrates the efficacy of a 'high road' approach: firms associated with the program³ have benefited economically from market incentives and increased stability of the workforce.

Lead firms should therefore assume responsibility for identifying and changing the systemic factors leading to practices associated with TFLS as well as providing remedies to affected workers and communities. Where industries and/or source regions are characterised by poor labour practices and/or TFLS, there is a particular responsibility to take proactive measures. In some cases, companies may choose to avoid sourcing specific goods from particular regions in light of such concerns – but they should also consider whether it is more appropriate to: ensure that potential suppliers have adequate resources to provide decent working conditions; choose suppliers with credible social certification; and/or support suppliers to achieve such certification.

The growing number of initiatives at the TFLS-supply chain nexus reflects an increasing expectation that firms, along with governments and civil society, share responsibility for the issue. Many of the initiatives we identified, however, are only a first step. Our analysis of 97 initiatives at the TFLS-supply chain nexus reveals that much of the activity relates to *supply chain monitoring* and *employer guidance*, often in combination. Examples include the introduction of (industry-wide or multi-industry) language or standards around TFLS in supply chains, tools to identify (the risk of) TFLS in supply chains, and written guidance on indicators of TFLS. Thus the most common area of activity involves defining, identifying and reporting on TFLS in supply chains. Alongside this, we have also observed a proliferation of trainings and consultancy around TFLS in supply chains. This area of activity represents the integration of concerns around TFLS into the broader field of Corporate Social Responsibility (CSR) – providing only a platform for change from which further actions might be taken. More substantive actions are needed.

In this regard, we note another area of rapidly increasing activity around labour market intermediaries. Many lead firms have identified an increased risk of TFLS associated with the outsourcing of employment by supplier companies and/or recruitment fees paid by workers to access jobs in supplier companies, which create indebtedness. For example, in the wake of a report documenting widespread forced labour among migrant workers in the electronics industry in Malaysia (Verité 2014), there has been a rapid shift towards requiring suppliers to: transition to direct employment of workers; prohibit the payment of recruitment fees by workers; and reimburse recruitment fees to workers where they have been paid. This is reflected in actions taken by Apple, Hewlett Packard and the Electronic Industry Citizenship Coalition. This is not limited to the electronics industry: Patagonia, for example, had instituted similar requirements in their 2014 Migrant Worker Standard while a recent report by Walk Free (2014) recommends these requirements as part of all Codes of Conduct (see IHRB 2013 for further examples). While the future of the Trans-Pacific Partnership is uncertain, the proposed agreement would require Malaysia to address recruitment fees and practices. This is a welcome trend which begins to acknowledge the contributions and sacrifices made by workers within fragmented and dispersed supply chains.

It is not yet clear, however, whether or how lead firms instituting such requirements of suppliers will contribute to the direct costs of recruitment. Beyond the direct costs, however, the aim of eliminating recruitment fees and eliminating the outsourcing of employment is to address the power imbalances which leave workers vulnerable to abusive and exploitative practices. Thus there is a related question about improving wages and working standards; again, it is not clear whether lead firms will respond to this dynamic by taking on some additional costs, or how they might do so. Thus while we welcome policies which require suppliers to prohibit the payment of recruitment fees by workers and to hire workers directly, this needs to be matched by a commitment to share the costs of compliance and the commitment to ensure decent work and payment. Policy can play a key role in these dynamics through regulation of subcontracting. Voluntary principles such as the United Nations' (UN's) Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises can be built upon in moving towards a legally binding instrument⁴ which includes lead firms but also other actors in the supply chain.

References

Human Rights First (2015) *Corporate Liability and Human Trafficking*. Human Rights First: New York.

IHRB (Institute for Human Rights and Business) (2016) *Corporate Liability for Forced Labour and Human Trafficking*. Institute for Human Rights and Business: London.

IHRB (Institute for Human Rights and Business) (2013) *Fees and IDs: Tackling recruitment fees and confiscation of workers' passports*. IHRB: London.

LeBaron G (2014) Subcontracting is Not Illegal, but Is It Unethical? Business Ethics, Forced Labor, and Economic Success. *The Brown Journal of World Affairs* 20(11): 237–249.

Verité (2014) *Forced Labor in the Production of Electronics Goods in Malaysia: A Comprehensive Study of Scope and Characteristics*. Verite: Amherst, MA.

Walk Free Foundation (2014) *Tackling Modern Slavery in Supply Chains: A Guide 1.0*. Minderoo Foundation: Dalkeith, WA, Australia.

Funding

The research leading to these results has received funding from the European Union Seventh Framework Programme [FP7/2007-2013] under grant agreement n° [612869].

¹ Two recent reports have outlined the potential ways in which companies may be liable for TFLS in their transnational supply chains (IHRB 2016; Human Rights First 2015) Of note is that the Council of Europe Convention on Action Against Trafficking in Human Beings requires each party to ensure that 'any legal person (including a company) can be held liable for a criminal offence that is committed for its benefit' (IHRB 2016:8).

² Organisation for Economic Co-operation and Development

³ Participating buyers in the program include companies based in Europe such as Sodexo and Compass. See: <http://www.fairfoodprogram.org/partners/>

⁴ The UN Human Rights Council, in its resolution 26/9, has established an intergovernmental working group 'to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.' The International Labour Organisation, in its 2016 'Resolution concerning decent work in global supply chains' has also committed to 'identify the salient challenges of governance to achieving decent work in global supply chains' and 'consider what guidance, programmes, measures, initiatives or standards are needed to promote decent work and/or facilitate reducing decent work deficits in global supply chains' which may also include consideration of a legally binding instrument.