

Principles for Addressing Trafficking, Forced Labour and Slavery in Supply Chains: POLICY BRIEF #2

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 #2: initiatives to combat trafficking, forced labour and slavery in supply chains need to be enforceable and have significant consequences.

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.

Enforceability of initiatives

While there are only a handful of initiatives mandating disclosure of information from companies, this is an important area to consider as it is likely to grow. We note with concern that clear enforcement mechanisms and significant consequences appear to be missing in some of these. The California Transparency in Supply Chains Act and the supply chain provisions of the UK's Modern Slavery Act have both garnered significant attention, requiring major firms to provide information on their efforts to combat trafficking and/or slavery in their supply chains. The innovative aspect of these laws is that they apply to the whole supply chain, including business conducted abroad. While we cannot yet evaluate the impact of these laws, scholars have formulated significant critiques; analyses suggest that neither law is likely to ameliorate or eradicate forced labour and human trafficking (Eckert 2013; Prokopets 2014) and that a high percentage of statements submitted in accordance with the UK Modern Slavery Act are superficial (Ergon Associates 2016:1). Overall, preliminary analyses therefore suggest that on their own and *in their current form* disclosure requirements are unlikely to have a substantial impact.¹

The key issue here is that these laws do not stipulate enforcement mechanisms through which companies covered by them would suffer any significant consequences for failure to change conditions within their supply chains. Yet it is possible to go further than the California and UK disclosure legislation, as demonstrated in Brazil where targeted and effective labour inspections have been combined with forward-thinking legislation and civil society initiatives. Over the course of two decades, 45,000 workers have been 'liberated' from degrading conditions, exhaustive workdays, and restrictions on their mobility (MPT 2015), mainly thanks to a dedicated team of labour inspectors carrying out specialised inspections in response to complaints or suspicions of 'slave labour' (as it is referred to in the country). In 2003 the government began publishing a 'Dirty List' of companies and individuals responsible for slave labour. This has served as an important reference point for the National Pact to Eradicate Slave Labour, launched in 2005. Through the Pact, major companies have pledged not to use suppliers appearing on the list, with banks similarly pledging not to extend finance to those on the list. Public finance bodies such as regional development banks have instituted similar policies. The National Pact has clear enforcement mechanisms with significant consequences. Appearing on the 'Dirty List' may mean losing a significant share of a firm's market and/or losing crucial access to finance. Signatories to the National Pact can be, and have been, temporarily suspended or definitively excluded from the Pact for failing to make changes within their supply chains to address slave labour (see also Policy Brief #3 on the Fair Food Program). The government has recently ceased to update the list as a result of legal battles (with updates being published by the NGO Repórter Brasil² in the interim) and the current Temer administration is likely to reverse some of the government efforts to combat slave labour. Brazilian civil society should be supported in attempts to secure and advance the gains that have been made (Douglas 2016), but it also continues to be the case that there is much to be learned from the Brazilian experience, and this has been recognized internationally (Costa 2009).

The importance of clear enforcement mechanisms with significant consequences for non-compliance is a lesson which applies not only to disclosure initiatives, but also more broadly to the diverse field of initiatives which has emerged at the TFLS-supply chain nexus. Efforts to address TFLS in supply-chains are unlikely to be effective without an enforcement mechanism, and one with significant consequences for violations or failure to achieve targets.

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¹ These laws may also be used creatively by advocates to take advantage of and perhaps strengthen the interpretation of the Acts, such as in the class-action lawsuits filed by consumer rights firm Hagens Berman, under the California Act (Reuters 2015). The impact of related efforts thus needs to be monitored alongside the direct impacts of the laws.

² A representative of this organization serves on the Advisory Board for this research project.