

Principles for Addressing Trafficking, Forced Labour and Slavery in Supply Chains: POLICY BRIEF #4

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 #4: public regulation to protect workers' rights, migrants' rights and labour standards is crucial to combatting trafficking, forced labour and slavery in 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 role of public regulation to protect worker's rights, migrants' rights and labour standards

Practices associated with TFLS in supply chains do not take place in a vacuum. Where evidence of such practices emerge, they are often the tip of the iceberg, revealing that labour rights are not being protected and labour standards are not being enforced. In an overall environment where workers are not able to exercise freedom of association, nor to ensure that their health and safety is protected, nor to obtain a living wage, it is more likely that practices associated with TFLS will emerge. Preventing practices associated with TFLS thus necessitates a commitment to protecting a wider range of labour rights and labour standards.

Working through supply chains is a critical pathway for protecting labour rights and improving labour relations and labour conditions. Yet, while private initiatives can complement and reinforce public regulation, they cannot substitute for it. An adapted version of Shamir's (2012) recommendations for a 'labour paradigm,' adapted here, offers a useful starting point for considering how public regulation of labour and employment impacts upon practices associated with TFLS:

1. Eliminate 'binding arrangements' such as tied visa (guestworker and kafala) schemes
2. Guarantee the right to unionize
3. Extend and enforce the application of labour and employment laws
4. Reduce recruitment fees and the power of middlemen
5. Ensure that migrant workers have access to labour rights

In Qatar, for example, the kafala sponsorship system, centred on visas tied to a specific employer (reinforced by other rules requiring permission from employers to leave the country and prohibiting membership in unions), guarantees that workers become highly dependent on their employer and thus have little effective access to justice in the arena of labour rights and standards. There is a broad consensus that the system 'facilitates forced labour and a range of other abuses' (Amnesty International 2015).

In India, the proposed Labour Code on Wages Bill 2015 allows for a range of deductions and allowances from workers' salaries, practices strongly associated with forced labour (see Bhattacharjee pp. 49-50). The problem also occurs 'at home' in Europe. One example from the UK is that while the Modern Slavery Act was adopted in 2015, this was only shortly after the domestic worker visa was modified in 2012 to tie workers' status to an individual employer, in spite of complaints that this would contribute to 'modern slavery' (see Ewins 2015; DemandAT 2016). Rather than undermining anti-TFLS measures with policies that erode the rights of migrants and other workers, anti-TFLS initiatives should be accompanied by broader efforts to protect, extend and enforce labour rights and labour standards. The last recommendation in Shamir's paradigm noted above has been expanded from her initial proposal, which was restricted to workers reporting violations. This is because low levels of reporting suggest that the order needs to be reversed: a commitment to ensuring labour rights and standards for all migrants is required to allow more workers to speak up.

In Jordan, for example, migrant workers were barred from membership in unions until the law was changed in 2010, thanks to advocacy by trade unions. In the garment industry, where a majority of workers are migrants, the General Trade Union of Workers in Textile, Garment and Clothing Industries has since negotiated a collective agreement covering migrant workers (who are still not fully covered by labour law) and are now working to implement the agreement. The union reports that in the course of their work, they regularly identify trafficked workers in the garment sector as well as other sectors who they refer to official channels.

Concerns around TFLS and broader labour rights and standards can also form part of trade, aid and diplomacy carried out by governments and multilateral bodies. Again, there have unfortunately been cases where the opposite is true, as in the World Bank's Doing Business Indicators which 'proclaimed a wide range of labour regulations to be nothing more than a hindrance to investment' and 'gave highest ratings and best rankings to countries having the least labour regulations' (Bakvis 2009:419,425; see also Benjamin et al. 2010, Lee et al. 2008, and Berg and Cazes 2008). As noted above, however, many bilateral and multilateral trade agreements reference core labour standards. A law passed in the US in 2016 is also notable for closing a major loophole in the 1930 Tariff Act – which prevents the import of goods made with convict, forced and/or indentured labour. Anyone with reason to believe that merchandise produced in violation of the Act is being or is likely to be imported may contact the Customs and Border Protection agency. Such trade-related measures offer an important tool for advocates. However, they are also at risk of being used instrumentally to achieve unrelated political or trade-related aims. The first seizure of goods resulting from the amended Tariff law over allegations of prison labour, for example, was of soda ash from China. Soda ash from China

was simultaneously the object of a trade dispute (Fernholz 2016) and subsequent seizures under the Act all appear to have been from China (CBP 2016).

A final area we expect to grow in this regard is institutional procurement, as there appears to be significant interest in building upon existing and recent initiatives (OSCE 2016). The US Federal Government is often cited as the world's largest purchaser (and has acted in this area through Executive Orders and Federal Acquisition Regulation). The EU itself has also identified this as an arena for action through Directive 2014/24/EU. Other governments and public bodies (such as universities and international NGOs) are also acting in this area and more may wish to institute policies around TFLS in regards to their institutional purchasing practices. Institutional procurement offers a promising arena in that governments and other large purchasers can leverage buying power more immediately than individual consumers are able to. The challenges in this arena relate to the information upon which such decisions might be made (e.g, who gathers it, at what level of detail, and on what basis) and the degree to which corporations in turn are knowledgeable and transparent about their supply chains. Institutional procurement, then, should be geared towards ongoing engagement and improvement.

¹ A representative of this organization serves on the Advisory Board for this research project.

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