

Secretariat Briefing Paper 2

TACKLING MODERN SLAVERY AND HUMAN TRAFFICKING AT SCALE THROUGH FINANCIAL SECTOR LEVERAGE

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Shift

LIECHTENSTEIN
INITIATIVE

FOR A FINANCIAL SECTOR COMMISSION ON
MODERN SLAVERY AND HUMAN TRAFFICKING

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About Shift

Shift is the leading center of expertise on the UN Guiding Principles on Business and Human Rights. Shift's global team of experts works across all continents and sectors to challenge assumptions, push boundaries, and redefine corporate practice, in order to build a world where business gets done with respect for people's dignity, everywhere and all the time. Shift is a non-profit, mission-driven organization, headquartered in New York City. Visit shiftproject.org and follow us at [@shiftproject](https://twitter.com/shiftproject).

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ABOUT THE BRIEFING PAPER SERIES

This is the second Briefing Paper for the Financial Sector Commission on Modern Slavery and Human Trafficking. The Briefing Papers provide a starting-point for Commission deliberations. The aim is to provide a common base of information, and to point to issues Commissioners may wish to address and some of the solutions they may begin to consider.

The first paper, which supported the first meeting of the Commission in New York on 20-21 September 2018, provided a basic introduction to the ways in which the financial sector encounters and relates to modern slavery, forced labour and human trafficking, and considered the compliance issues raised for different actors in the sector. These include anti-money-laundering and counter-terrorist financing (AML/CFT) compliance concerns; and compliance with emerging anti-slavery supply chain transparency frameworks.

This second Briefing Paper, made available to Commissioners prior to the second meeting in Liechtenstein on 20-21 January 2019, focuses on responsible lending and investment practices, exploring what guidance, tools and solutions are available to financial sector actors seeking to lend and invest in ways that reduce modern slavery and human trafficking risks. The paper focuses on:

- exploring the relevance of the UN Guiding Principles on Business and Human Rights, the authoritative global standard on the responsibility of business to respect human rights;
- current and leading practices among public and private financial institutions in implementing these expectations; and
- opportunities to harness the UN Guiding Principles and related efforts to support the goals of the Commission.

The third Briefing Paper will be available prior to the third meeting in Australia in the second quarter of 2019. It will address the role of financial innovation to prevent modern slavery and human trafficking, encompassing innovation in business models, instruments and financial technology.

INTRODUCTION AND SUMMARY OF AREAS FOR ACTION

The Liechtenstein Initiative for a Financial Sector Commission on Modern Slavery and Human Trafficking was established with a clear ambition: to explore, develop and rapidly scale up meaningful actions the global financial sector can take to more effectively prevent and address modern slavery and human trafficking.

The first meeting of the Commission explored the role of compliance with regulatory regimes and other legal requirements in meeting this objective, including anti-money-laundering, counter-terrorist financing, and anti-slavery reporting and compliance regimes. The Commission's discussion highlighted the critical role of regulatory approaches and further opportunities to strengthen these tools, but equally the limitations of a purely compliance-based approach.

This second Briefing Paper picks up where the first discussion left off:

Is the financial sector doing all that it can *beyond* compliance to assess and address the risk of modern slavery and human trafficking that financial institutions might be connected to through their operations, products and services?

This paper aims to lay the foundations for the Commission's second discussion, in Liechtenstein on 20-21 January 2019, by exploring the role that the United Nations Guiding Principles on Business and Human Rights (UNGPs) can play in supporting the ambition of the Commission to push beyond the boundaries of compliance towards creative financial sector action to prevent and address modern slavery and human trafficking.ⁱ

The Commission Secretariat collaborated with Shift in the development of this Briefing Paper. Shift is the leading non-profit centre of expertise on the UNGPs and has extensive experience working with public and private financial institutions to put the UNGPs into practice, from leading commercial and investment banks to the world's largest public pension funds and their asset managers.ⁱⁱ

The UNGPs have the potential to support the kind of transformational change the Commission is seeking in this area. There are four main reasons for this.

1. The UNGPs help shift the conversation from purely voluntary notions of what a financial institution might do to what all businesses, including financial institutions, should do to tackle the most severe risks to people connected to global value chains.
2. The UNGPs recognize the reality that negative impacts on people are a feature of the global economy, and expect businesses to systematically engage with that reality to try to mitigate and address those risks over time, rather than seeking simply to 'de-risk' the business by severing connections to these impacts when they are discovered - an almost impossible task for any large financial institution.
3. The UNGPs help bring greater rigour to the "S" (or social component) in current environmental, social and governance (ESG) due diligence approaches by investors, and to typical environmental and social (E&S) due diligence in the project finance and broader corporate lending context.
4. Finally, like the work of the Commission, the UNGPs seek to drive change at the level of better outcomes for affected individuals, as rapidly as possible and at global scale.

In the first section of this paper, we explore how the UNGPs are relevant to the Commission's ambition to prevent and address modern slavery and human trafficking at scale through the financial sector.

In the second section, we share broad observations and specific examples of what implementation of the UNGPs and related efforts by financial institutions looks like in practice today, including leading approaches, recurring challenges and immediate opportunities that the Commission may want to exploit.

In the third section, we conclude with some initial ideas for the Commission to consider as it seeks to identify rapid, meaningful and scalable action by the financial sector on modern slavery and human trafficking, harnessing the potential of the UNGPs. These ideas can be clustered into the following five broad areas for action:

- 1. Embracing a responsibility to take action throughout extended value chains:** What role could the Commission play in helping the financial sector to more fully embrace the scope of responsibility for severe impacts throughout extended value chains - and specifically the risk of modern slavery and human trafficking? Could this shift the debate towards the practical approaches that could best help financial institutions address these impacts in practice?
- 2. Focusing attention on the highest-risk relationships:** What role could the Commission play in supporting the development of more effective tools to help financial institutions efficiently and effectively identify those relationships that pose the greatest modern slavery risk, across portfolios that may include tens of thousands of business relationships? Can the Commission define an industry expectation that every financial institution should conduct this type of due diligence, using these shared - even open-source - analytical tools and approaches?
- 3. More effective action to mitigate severe risks in different types of financial relationships:** In what ways could the Commission help to standardize an expectation of meaningful action by financial institutions once they have identified heightened risks of modern slavery and human trafficking? Could the Commission play a role in encouraging the development of good practices for financial institutions in using leverage across diverse financial products and services, to help set expectations and drive meaningful action by clients and portfolio companies?
- 4. Enhancing the role of financial institutions in ensuring remedy for victims:** Could the Commission help to drive an industry commitment to using leverage to help enable remedy when specific instances of modern slavery or human trafficking are identified, helping the industry focus not only on preventing future harm, but also remedying past harm for those impacted? Again, could the Commission play a role in encouraging the development of good practices highlighting the range of roles and actions that financial institutions can take in support of this objective across different types of financial products and services?
- 5. Thinking responsibly about the role of new financial products and services:** What role could the financial sector play in developing new products and services for at-risk populations, which could help to reduce vulnerability to some of the underlying factors that can drive modern slavery and human trafficking? What would be the impact of positioning such new products and services not only as a voluntary social good, but also as helping to meet financial institutions' responsibility to respect human rights?

1. HOW ARE THE UNGPS RELEVANT TO THE WORK OF THE FINANCIAL SECTOR COMMISSION?

This section briefly explains the status of the UNGPs, the core concepts underlying them, and their connection to other relevant frameworks, notably the UN Sustainable Development Goals (SDGs).

A. What are the UNGPs?

The UNGPs are the authoritative global standard on business and human rights. They set out the respective duties of states and responsibilities of business for preventing and addressing harm to people connected to business operations and global value chains. The UNGPs are an active standard, meaning that they focus on specific actions that states and businesses should take to meet these expectations in practice, and that they encourage a proactive and strategic approach to the management of human rights risks and impacts. Businesses will always manage risks to the business, but the UNGPs expect businesses to identify and take action on the most severe risks to people connected to their operations and value chains as well.

The UNGPs were developed under the stewardship of the former Special Representative of the UN Secretary-General on Business and Human Rights, Harvard Professor John Ruggie, following a six-year period of global research, multi-stakeholder consultations, and pilot testing.ⁱⁱⁱ They were launched in 2011 with the unanimous endorsement of states in the UN Human Rights Council. Their implementation within the UN system and beyond is promoted through the UN Working Group on Business and Human Rights (of which Commissioner Anita Ramasastry is a Member), and the work of the Office of the High Commissioner for Human Rights.^{iv}

B. What is their status? Are the UNGPs voluntary or mandatory?

As a resolution of the UN Human Rights Council, the UNGPs are not legally binding. However, they are also not voluntary, as there is no 'signing up' to the UNGPs needed in order for their expectations to apply. They reflect existing human rights obligations on states under international law. And they apply to all businesses of all sizes, across all industries, in all geographies, including financial institutions, as well as their corporate clients and the companies they invest in (directly or through financial intermediaries).

While the UNGPs are therefore not purely voluntary, there is no singular body charged with enforcing their expectations or 'adjudicating' whether businesses and other organizations have met their expectations. However, they are increasingly being incorporated into a rapidly growing body of hard law and policy at the national level, some aspects of which were explored in the first discussion paper, such as the UK Modern Slavery Act and the French Duty of Vigilance Law. In Australia, it is anticipated that the government will shortly issue guidance for business under the new Modern Slavery Act 2018 that aligns reporting expectations with the UNGPs. For businesses in OECD adhering countries, the core content of the UNGPs is incorporated into the OECD Guidelines for Multinational Enterprises and businesses may be held to account through state-based National Contact Points (usually established in ministries of trade or finance) for alleged breaches of those Guidelines.^v

Importantly, the process of global consultation that informed the UNGPs means that they reflect a broad consensus among states, business, civil society, investors and other stakeholders. In the seven years since their endorsement, a growing number of industries have sought to closely align their standards and frameworks with the expectations of the UNGPs, including in the extractives, apparel, ICT, consumer products and food and beverage sectors.

In the financial sector, leading initiatives in the investment space, notably the UN Principles for Responsible Investment (UN PRI – led by Financial Sector Commission Chair Fiona Reynolds), reference the UNGPs’ expectations. On the lending side, these expectations are most established in the area of project finance through private sector standards like the IFC Performance Standards and the Equator Principles and, in the public sector, the OECD Common Approaches for Export Credit Agencies.

We are now starting to see the UNGPs being applied to financial institutions’ operations more broadly, such as through the OECD’s guidance for institutional investors, and the UNEP Financial Initiative’s draft Principles for Responsible Banking, developed by 28 leading banks from five continents representing more than USD \$17 trillion in assets.^{vi} We discuss these developments in more detail in section 2.

As a result, ‘enforcement’ of the UNGPs currently occurs through a number of business drivers to respect human rights in practice, including:

- compliance with the growing body of national regulations and policy aligned with the expectations of the UNGPs;
- growing pressure from investors to manage social (including human rights) impacts effectively, connected to increasing recognition of the correlation between ESG performance and financial performance;^{vii}
- growing experience of the business case for respecting people’s basic dignity in ensuring more productive workplaces and maintaining a strong ‘social license to operate’ with affected communities;
- international business partners setting expectations on social (including human rights) issues and then cascading these down through their value chains;
- awareness of the reputational risk to businesses from negative media coverage and NGO and trade union campaigns with much more rapid pick-up globally; and
- alignment with corporate values, with businesses wanting to be seen as a responsible neighbour, business partner of choice, or attractive employer (particularly in relation to attracting and retaining millennial talent).

C. What is different about the UNGPs?

Here we highlight three important dimensions of the UNGPs that differentiate them from other approaches.

- 1. A responsibility to take action:** The first is the nature of the ‘responsibility’ of businesses under the UNGPs. Responsibility in the UNGPs does not mean legal liability, except where specific expectations have been incorporated into national laws. The UNGPs deliberately aim to change the prevailing dynamic, whereby companies too often wait until the risk of legal liability becomes concrete before taking action to address risks to human rights, by acknowledging human rights risk mitigation as a strategic imperative.
- 2. The scope of responsibility:** Under traditional understandings of corporate social responsibility (or CSR), business ‘responsibility’ was seen as limited to impacts that a business might cause or contribute to directly, or which it could most easily control or influence often by employing the outdated concept of a company’s ‘sphere of influence’. In practice, this meant responsibility was generally seen as limited to impacts occurring in a company’s own operations and in direct contractual relationships and first-tier suppliers. By contrast, the UNGPs focus on wherever impacts are occurring in connection with a company’s operations, products or services (and the value chains associated with those).

Through the concept of 'linkage', the UNGPs extend a business's responsibility to any negative impacts the business might be connected to through its operations, products or services, at either end of the value chain. What a business is then expected to do about these impacts and risks varies according to how it is connected and how severe the impact is on those who are or could be affected – as we explore further later in this Briefing Paper.

- 3. Focus on outcomes for people:** The third important dimension of the UNGPs is their clear focus on better outcomes for people. The UNGPs are grounded in 'principled pragmatism': they do not expect businesses to simply eliminate all connections to negative impacts. Rather, they ask businesses to take reasonable measures to assess and understand which are the most severe risks to people that the business could be connected to, and, where resources are limited, to focus effort on engaging with business partners and other entities in the value chain to seek to improve outcomes for people in those areas.

A focus on outcomes for people: The Case of ANZ in Cambodia

A recent example involving ANZ bank highlights the UNGPs' focus on outcomes for people versus de-risking the business. In 2014, a complaint was filed against ANZ with the Australian National Contact Point under the OECD Guidelines for Multinational Enterprises, alleging a failure by the bank to meet its responsibilities to conduct due diligence in connection to a Cambodia sugar company implicated in land grabs. As reputational risks escalated in 2014, ANZ decided to disengage from its relationship with the Cambodian company. The bank was harshly criticized by stakeholders in Cambodia and international civil society organizations for existing the relationship, rather than staying engaged and seeking to use its leverage to improve the situation for affected stakeholders.

Following the NCP's public rebuke in its final statement in October 2018, ANZ is now considering paying compensation to affected stakeholders. ANZ's acts and omissions, including its failure to enable remedy for victims of the land grabs became a focus of shareholder action at its most recent AGM in December 2018.

The UNGPs challenge businesses to reconsider superficially appealing 'zero tolerance' approaches to complex human rights abuses occurring deep in their value chains such as modern slavery, as these may in practice result in protecting the business while leaving affected individuals and communities the same, if not worse off (see the ANZ example in the box above).^{viii} While disengagement can be an important tool, its purpose under the UNGPs is not to 'de-risk' the business by immediately terminating a connection to a risky business relationship; rather it should be seen as one measure among a broader suite of approaches to using and building leverage to try to change the behaviour of those causing harm. Thus, the UNGPs encourage new and creative approaches to systemic issues, rather than allowing current limitations to define tomorrow's practice.

D. What action is expected of companies under the UNGPs?

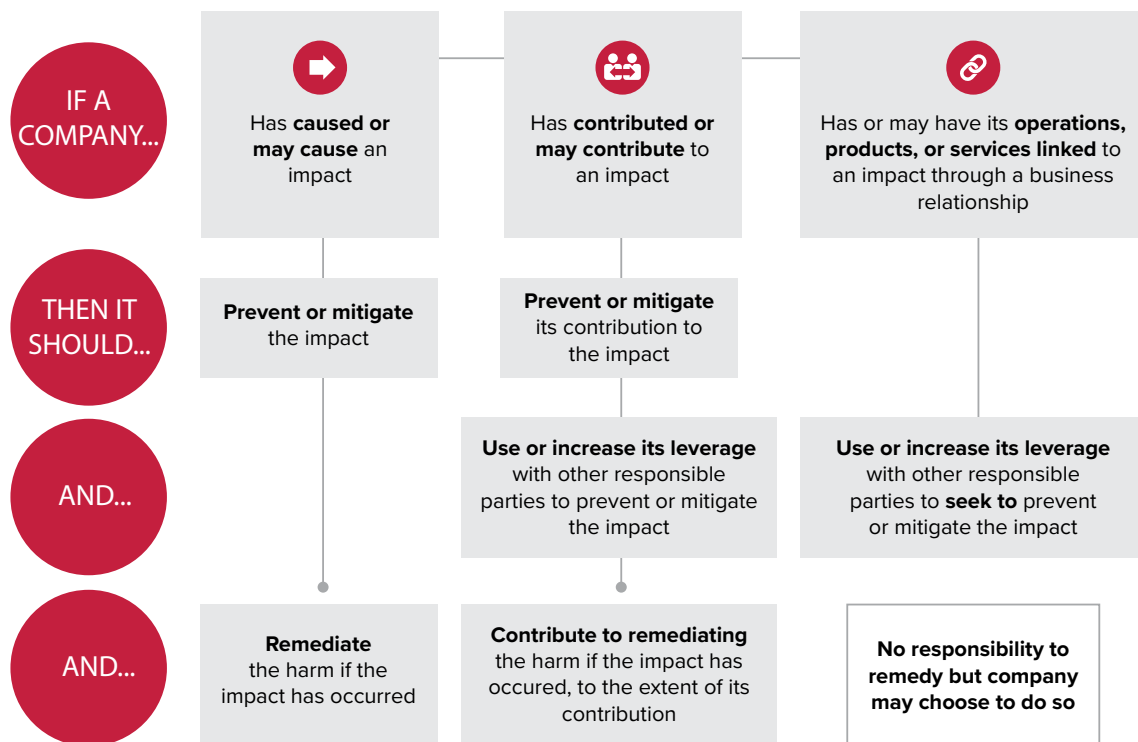
In meeting the expectations of the UNGPs, businesses should:

- adopt a policy commitment and embed it throughout the organization;
- conduct human rights due diligence (HRDD); and
- provide or participate in appropriate remedy processes.^{ix}



The graphic above outlines the steps involved in HRDD. In brief, these are as follows:

- Businesses should start by identifying and assessing risks to people that might be connected to their operations, products or services, throughout the value chain. This includes both actual and potential negative impacts.
- Businesses should then prioritize the most severe human rights impacts (or 'salient human rights issues') for action, where resource limitations prevent a business from tackling all identified risks at once (which will often be the case). Modern slavery and human trafficking will frequently be 'most severe' and thus salient human rights impacts.
- Businesses should take appropriate action to mitigate the salient human rights issues. Defining what is appropriate will depend on how the business is connected to the impact. If a company directly causes or contributes to an impact, it has one set of responsibilities for action. Where a company is linked to a harm through a business relationship (either contractual or not, first-tier or more remote in the value chain), it should *use leverage* to seek to influence the behaviour of the entity causing the harm, and build more leverage where needed, often through collaboration with others. These differentiated expectations are summarized in the graphic below, and explored further below.



- Where actual impacts occur, businesses should play appropriate roles in seeking to ensure that those who are harmed are made whole again. Remedy can take many forms in order to effectively address the harm that someone has suffered (we discuss this further in section 2). Again, the appropriate role for a business will depend on its connection to the impact.
- Finally, businesses should track the effectiveness of their efforts to assess and address the most severe impacts on people, and communicate about those efforts with relevant stakeholders.
- HRDD involves understanding impacts and risks from the perspective of the people who are or could be affected. Meaningful stakeholder engagement is therefore critical to conducting effective HRDD, particularly during the assessment and tracking phases.

E. How do the UNGPs relate to state frameworks, such as national regulation or the SDGs?

One of the duties of states under the UNGPs is to set an appropriate regulatory context for business, including by incentivizing, supporting or requiring respect for human rights. Laws and regulations are an important tool for states in meeting this duty. However, it is still a relatively small number of jurisdictions that have enacted specific measures, and these have tended to focus (to date) on the communication and disclosure aspect of human rights due diligence. Moreover, such laws may be limited in their effectiveness if businesses take a very narrow, compliance-based mindset to their implementation. The UK Modern Slavery Act, for example, has been effective in focusing business attention on the issue of modern slavery and human trafficking, including at Board level. But as Secretariat Briefing Paper 1 explored, there are real questions about the extent to which it has led to

meaningful changes in practices by companies. For many, it has simply meant having a boilerplate statement that complies with the Act's requirements.^x As efforts continue to evaluate existing laws, identify those measures that can drive more meaningful action by business to address human rights risks, and ensure a leveling of the playing field through new regulatory developments, the UNGPs still expect business to take action on severe risks - without waiting for a comprehensive legal requirement to do so.

Like the UNGPs themselves, the UN Sustainable Development Goals (SDGs) are the product of intergovernmental agreement. The SDGs set a range of goals for individual and collective state action to achieve systemic impact on a set of critical social and environmental challenges. They have also been used to mobilize government collaboration with private and civil society actors, and have gained traction across the international business community. However, businesses essentially have free rein to choose where they want to focus, leading to a risk of 'cherry picking' individual issues that may be entirely disconnected from the greatest risks to people inherent in a company's operations, value chain or business model.

The UNGPs provide a lens through which a business can perceive how to maximize its contribution to achieving the SDGs.^{xi} In practice, many businesses will best be able to contribute to achieving the SDGs by robustly addressing the most severe negative impacts they are already connected to across their value chain, rather than developing innovative new products or services. Doing this at scale - for example, by driving respect for labour standards through a business's global supply chain - could have a transformative, positive impact on people's lives that goes well beyond the effects of a new social development project or a business product.^{xii}

The UNGPs therefore occupy an interesting space within the context of state-based compliance regimes and action plans to implement the SDGs. They establish a responsibility on business, not a choice, to focus on mitigating the most severe harms to people throughout their extended value chains, regardless of the current legal framework in a country. At the same time, they can help bring rigour and greater impact to business initiatives around the SDGs, which are currently much more widely recognized in C-suites than are the UNGPs.

F. How can the UNGPs support achievement of the objectives of the Financial Sector Commission?

Mainstream lending and investment practices have tended to focus on risks in direct client relationships. However, for many financial institutions (and their clients and investee companies), that will not be where the greatest risks of modern slavery and human trafficking lie. The use of exclusions, de-risking and blacklists in both investment and lending contexts, including where whole sectors (such as tobacco) are deemed too risky, remains a relatively blunt tool. Moreover, in choosing where to focus screening and assessment processes, and subsequent engagement about risks, financial institutions are usually reliant on data and analytics providers whose approaches to social risk are often grounded in limited and reactive metrics (discussed further below). Current tools clearly have a role to play, but cannot alone provide the foundation for financial sector action at scale needed to address the problem of modern slavery.

In conclusion, how do the UNGPs help the Commission meet its objectives?

- **Legitimacy:** The UNGPs are an accepted global framework that can be used as the basis for discussion with any government. They apply universally to businesses, regardless of size, sector or geography with no 'sign on' needed. In the financial sector, leading institutions are already working hard to implement ESG and/or E&S due diligence, and the UNGPs can bring greater rigour to the social component of both, which is often the weakest leg. Other industries - for example, the extractives, apparel and electronics sectors - are already ahead of the financial sector in embracing this understanding of business responsibility, and have taken significant steps to align industry standards and expectations with the UNGPs.^{xiii}
- **Scale:** The UNGPs set out a responsibility on businesses to reach beyond direct relationships, where modern slavery may be less likely for many large financial institutions, and deep into the value chains of clients, customers and portfolio companies, where it is more likely.
- **Severity:** Modern slavery and human trafficking are very severe human rights impacts. There is already an expectation under the UNGPs that businesses focus on preventing and addressing these particular risks throughout their value chains.
- **Leverage:** The UNGPs expect financial institutions (and other businesses) to take proactive steps to try to address salient human rights risks, and to be as creative and collaborative as necessary to be effective in practice - as banks in the Dutch Banking Sector Agreement have begun to do (discussed further in the box on page 19).
- **Outcomes for People:** Discovering impacts such as modern slavery or human trafficking in a business's value chain can trigger instinctive reactions. Businesses may default towards creating as much distance as possible from the issue, to reduce the risk to the business from any connection. However, both the Commission and the UNGPs are seeking solutions that do not simply guard against the risk of a financial institution being connected to an instance of modern slavery or human trafficking, but rather try to change the situation of the more than 40 million people globally experiencing conditions of modern slavery. That requires moving away from de-risking to strengthened engagement with clients and portfolio companies to try to achieve better outcomes for people, which is at the heart of the UNGPs' approach.

2. FINANCIAL SECTOR IMPLEMENTATION OF THE UNGPs: CURRENT APPROACHES, LEADING PRACTICES, AND OPPORTUNITIES

In this section, we look at how financial institutions have approached four areas of implementation with regard to the UNGPs:

- The scope of their responsibility to respect human rights;
- Identifying and prioritizing the most severe risks to people;
- Taking appropriate action by building and using leverage;
- Remedy, and their role in connection to it.

For each, we look at the expectations of the UNGPs as they apply to the financial sector, specific challenges financial institutions might face in meeting those expectations, examples of both common and leading practices, and further opportunities for impact that the Commission could potentially leverage.

A. The scope of financial institution responsibility

Expectation: The UNGPs expect financial institutions to undertake due diligence that extends beyond impacts in the immediate operations of direct client relationships or portfolio companies to identify the most severe risks to people that their clients or portfolio companies might be connected to in turn. The responsibility to undertake this due diligence applies regardless of the type of financial product or service, so it includes direct investment, index funds, corporate lending, project finance, supply chain finance, commodity trading, and retail banking, to name a few. The OECD has confirmed this broad scope of application of the responsibility to respect human rights, noting in its due diligence guidance for institutional investors that it had “previously concluded ... that a relationship between an investor and investee company including a minority shareholding can be considered a ‘business relationship’ under the OECD Guidelines.”^{xiv}

However, implementation will naturally look different across these very different financial relationships, based on factors including the different types of information available to screen and assess risks, the timeframe within which the transaction is occurring, and the leverage that the financial institution has or may be able to build with the company. To date, most attention has focused on project finance-related transactions, on a sub-set of sectors within broader corporate lending portfolios, and on ESG due diligence within the socially responsible investment (or SRI) community.

Challenges: The financial sector has generally been slower than other sectors to embrace this understanding of the scope of responsibility. This has impeded the emergence of collaborative approaches by the sector to meaningfully tackle severe risks like modern slavery and human trafficking deeper in company supply chains. There are several potential reasons for this:

1. ESG expectations and E&S due diligence approaches in the financial sector predate the UNGPs. As a result, many financial institutions may believe that they are already appropriately managing social risks, even though these approaches may no longer be fully aligned with international expectations – and increasingly with leading practice.
2. Financial institutions face practical limitations in undertaking the type of due diligence expected by the UNGPs given current resources and tools.
3. Some financial institutions may be concerned about potentially creating new types of liability by accepting a broader scope of responsibility in connection with impacts that they cannot control or be confident they can manage.
4. It is true that some types of financial relationships stretch the practical implications of this extended scope of responsibility. For example, where passively owning a single share of a listed company's stock activates a company's responsibility to try to use leverage in connections with the most severe impacts throughout that company's value chain, what action should an investor realistically take?

Leading Practice in Committing to the UNGPs

While the UNGPs are not purely voluntary, and financial institutions do not need to sign on them for them to apply, an increasing number of financial institutions are formally committing to the UNGPs in public statements or policies. Examples from the private sector include commercial banks like Citi, ABN AMRO, ING, Westpac, BNP Paribas, Barclays, Mizuho and MUFG.

Public sector examples include export credit agencies (such as GIEK in Norway and Atradius DSB in the Netherlands), development finance institutions (including CDC in the UK, FMO in the Netherlands and Finnfund), public pension funds like the Swedish AP Funds and asset managers like PGGM.

4 of the institutions mentioned above are the home institutions of Financial Sector Commissioners: ABN AMRO, AP2, Barclays and CDC. Additionally, the UN supported Principles for Responsible Investment, from which the Chair, Fiona Reynolds, hails, also support financial institutions' commitment to the UNGPs.

Current practices: There are four broad categories of common practices in this area among public and private financial institutions.^{xv}

1. A small but growing number have embraced the extended scope of responsibility implied by the UNGPs and are developing and testing approaches to putting this into practice across their portfolios. They are focusing their efforts on developing better tools for screening for severe human rights impacts, more creative approaches to leverage, and re-envisioning roles for financial institutions in ensuring remedy (discussed further below).
2. A larger group have recognized the relevance of the UNGPs, are open to the conversation, but are actively wrestling with what it would mean to put these expectations into practice. This is particularly true in the project finance space, which includes the more than 90 financial institutions that commit to the Equator Principles, which set the standard for environmental and social due diligence in project finance (drawing heavily on the IFC Performance Standards).

In project finance-related transactions, due diligence has typically focused on a narrower set of first-tier relationships where there is some form of control by the client, and has also been weak in looking at the extent to which broader contextual risks heighten risks to people (for example, through discrimination against vulnerable groups like migrant workers or indigenous peoples). Several high-profile recent cases have demonstrated the limitations of current E&S approaches in the project finance area, including notably the Dakota Access Pipeline case in the US, and the Agua Zarca hydropower project in Honduras, where extremely severe impacts occurred despite E&S due diligence having taken place according to current industry practices.^{xvi}

3. A small but vocal group of financial institutions have raised questions at the policy level about the scope of their human rights responsibilities in the OECD and in other forums such as the United Nations Environment Programme Finance Initiative (UNEP FI). They are seeking to draw clearer lines that can minimize business risk by limiting their responsibility for certain types of financial relationships (based, for example, on their lack of 'proximity' to an impact) and by circumscribing their role in remedy, which is seen almost interchangeably with legal liability. While recognizing the practical challenges that banks currently face in meeting the expectations of the UNGPs (as noted above), the implications of this position for the people ultimately affected by severe harms like modern slavery is deeply concerning. Some members of the 'Thun Group' (an informal group of banks looking at implementation of the UNGPs) are among this small cohort. A recent paper by the UK security think tank RUSI (commissioned by the home institution of Commissioner Amol Mehra, the Freedom Fund) analyzes the critical reaction to the Thun Group's 2017 discussion paper, providing a helpful overview of the contours of the debate.^{xvii}
4. By far the largest group of financial institutions are simply not yet aware of these expectations. In our experience, awareness of the UNGPs is greatest among development finance institutions in the global North, OECD export credit agencies, and major European, US and Japanese commercial banks. Among investors, not surprisingly, the conversation has largely been driven by socially responsible investors,^{xviii} including public pension funds and their asset managers; although more mainstream investors like BlackRock have been engaged through, for example, discussions in the OECD on applying these expectations to institutional investors.

Opportunity: A significant amount of energy is currently being spent on debating - and in some cases seeking to limit - the boundaries of a financial institution's responsibility when people are harmed by the activities of businesses it is connected to through various financial relationships. These conversations are clearly not contributing to better outcomes for people. There is an opportunity to shift this conversation away from theoretical debates and towards practical approaches - building a shared understanding of the current limitations in ESG tools and practice and working collaboratively on new approaches to overcoming these barriers - as the recent paper by RUSI also urges.

There is also an opportunity for much greater socialization of these concepts. In the mainstream investor community this could include identifying aspects of good corporate governance that are connected to better human rights risk management as a way of connecting the 'S' in ESG more closely to the Governance component, which can attract the attention of mainstream investors. Shift is actively exploring this and related questions of measuring meaningful company human rights performance through a multi-year collaborative project funded by Norges Bank Investment Management.^{xix}

In the banking space, UNEP FI's draft Principles for Responsible Banking were developed by 28 leading banks from five continents representing more than USD \$17 trillion in assets, including ICBC (China's largest bank) as well as Malaysian, South African and Brazilian banks. Under the principles, signatory banks commit to increase their positive impacts while addressing their most significant negative impacts on people (and the environment) connected to their activities, products and services. The Implementation Guidance references the expectations of the UNGPs, providing a clear hook for further socialization of responsibility in line with the UNGPs with a diverse group of financial institutions.

Recognizing responsibility throughout the value chain: ABN AMRO and the Diamond Value Chain

The primary approach of Dutch bank ABN AMRO to meeting its responsibility to respect human rights is to ensure that its clients are themselves conducting good due diligence. To do so, ABN asks questions about its corporate clients' capacity and the effectiveness of a range of key management systems related to respecting human rights. But in the case of ABN's financing of the diamond industry, for example, the bank's clients are smaller enterprises or individuals, engaged in diamond trading, far removed from known severe impacts deeper in the value chain. Yet ABN recognized a responsibility to address these types of impacts the bank is connected to, not through its clients, but through its clients' extended value chains, where the risks are particularly severe, and where ABN's own clients may lack capacity and leverage. To do so, ABN has been piloting new approaches to value chain mapping, starting with the diamond value chain.

The bank began by mapping the key stages of the diamond value chain, with as much information as it could about who the main actors were, where different activities were taking place, what the most severe risks to people were at different stages, and existing mitigation measures. This mapping led to several insights:

- There was much that the E&S team did not know about the sector, and the process became a tool to engage others internally and externally in a collaborative process to build a shared analysis of the human rights risks.
- The process highlighted the most severe risks, which challenged common assumptions and forced the bank to become much more creative in its approach to leverage, engaging with actors beyond its immediate clients.
- Rather than a business obstacle, the process was seen by the business and its clients as bringing a new form of value to the banking relationship, by demonstrating ABN's capacity to help all actors manage risks in the value chain.
- This approach has become the basis of a key workstream in the multi-stakeholder Dutch Banking Agreement (discussed further below), where the parties are collaboratively mapping specific value chains, prioritizing risks, and building and using leverage for commodities including cocoa, palm oil, and gold.

B. Identifying and prioritizing the most severe risks to people

Expectation: The UNGPs recognize the challenge of scale that many businesses face, with massive potential exposure to human rights impacts through tens or hundreds of thousands of business relationships. They therefore ask businesses to identify their salient human rights issues - the most severe human rights risks that the business could be connected to. A financial institution would therefore be expected to have the tools in place to screen its portfolio for the highest-risk relationships through this lens.

Challenges: There are several challenges confronting financial institutions in implementing this approach. These include the following.

1. **Scale:** The most significant challenge for financial institutions in implementing this expectation is scale, followed by the sheer diversity of financial products and services. Financial institutions may be connected to several thousand companies directly through their corporate lending or investment portfolios, and those businesses in turn will be connected to exponentially more. Many E&S and ESG due diligence systems flag a limited number of sectors, broad geographies or types of transactions (based on financial thresholds) for heightened assessment. This approach can leave large sections of a portfolio 'out of scope', which may be sectors with high risks of modern slavery in their supply chains (for example, apparel, construction or electronics companies).

We frequently see limitations in the resources available for due diligence across such a portfolio, with heavy reliance on a relatively small E&S teams. Those teams are often already dealing with hundreds of flagged transactions per year, albeit only within pre-defined sectors or certain types of transactions. The front-line role of screening the wider portfolio often falls to relationship managers or those in similar roles who may have conflicting incentives and can lack the experience and/or guidance needed to know what to look for and how to follow up on identified risks.

Leading practices in assessing severe risks

- Several development finance institutions are going beyond the requirements of the IFC Performance Standards to include both contextual risk analysis and supply chain risks as part of their due diligence approaches.
- Swedish pension fund AP1 is using its leverage with data analytics providers to demand better tools for screening for human rights risks.
- The asset manager PGGM is undertaking more proactive due diligence in specific business lines to better identify higher-risk relationships, based on the most severe risks throughout the value chain.
- UN PRI is providing tools to investors to better understand and then engage on severe labour risks in agricultural supply chains, using the expectations of the UNGPs.
- Shift is working with several commercial banks to develop more nuanced screening approaches to identifying higher-risk relationships for severe human rights impacts across their portfolios, including forced labour and modern slavery.

2. Lack of predictive analytics: There is much more to be done to provide financial institutions with robust tools for analyzing social risks. Current practice tends to rely upon relatively superficial indicators whose predictive value may be quite limited, such as: the existence of certain corporate policies (sometimes with specific phrases in them that companies can easily game in order to meet the latest benchmark or rating); numbers of audits or hours of staff or supplier training conducted; or whether there have been public allegations against a company (even though high-profile companies are both likely to have better capacity and systems to manage risks, and to be the targets of public allegations).

Another common approach is to rely upon clients' or portfolio companies' adherence to various certification schemes. However, experience shows that such schemes are often much weaker on social, including human rights, than environmental performance. Certification can be a compelling way to demonstrate the chain of custody of a product (such as timber, minerals, or seafood), but is much less likely to be able to reliably confirm the labour and other conditions under which those commodities were produced.

None of these proxy indicators get us to the heart of business capacity and commitment, nor to the real human rights risk exposure of a company based on its business model and footprint. Shift's collaboration with Arabesque S-Ray (described in the box below) is one attempt to address this gap, but more are needed.

Building Better Tools for Investors: A Shift / Arabesque S-Ray Collaboration

Shift's publicly available UNGP Reporting Database provides a detailed mapping of company disclosures to offer insight into how companies understand and manage risks to human rights. Launched in 2015, the Database's content is rigorous but its scale is limited to around 150 companies. By partnering with Arabesque S-Ray®, an organization that uses big data and machine learning to evaluate companies' ESG performance, Shift will scale the public Reporting Database to over 7,000 companies and support Arabesque S-Ray's development of a public human rights score for each company.

3. Lack of access to relevant data: In other cases, financial institutions may not be leveraging existing data in service of HRDD. For instance, data analytics providers will have access to a company's specific operating contexts, often a helpful proxy indicator of risks connected to a business, but we have seen financial institutions unable to access that data directly when considering general corporate purposes loans or investments in a listed equity. Equally, the compliance regimes of financial institutions (such as AML and Know Your Customer processes) may be generating valuable data, but internal silos and regulatory obstacles may create barriers to leveraging that data in broader due diligence processes.

Current practices: Several public and private financial institutions are piloting approaches to human rights due diligence in the project finance, broader corporate lending, private equity, and export credit areas.^{xx} This involves building on current ESG and E&S practice by focusing on key risk factors that can lead to heightened human rights risks. These factors are: the type of business activity (and nature of the business model); the business partners connected to the client or portfolio company's operations; the likely presence of vulnerable populations in connection with the client's operations or value chain; and the specific operating contexts in which the company is present.^{xxi} While these factors produce compelling insights when applied to project finance and some private equity contexts, they become more challenging to apply at scale across a corporate lending portfolio, let alone in other types of financial product or service.

Opportunity: Based on our work with a variety of different types of financial institutions, we believe there is a real need to equip the financial sector with more nuanced tools that could more effectively highlight relationships within a portfolio that pose heightened risks of severe human rights impacts, and specifically modern slavery and human trafficking. This could include:

- Better guidance on where to look for potential connections to modern slavery (i.e., the overlay of geographic, sector-based, and business model risk factors);
- Developing better predictive tools for assessing a company's capacity to manage the risk of modern slavery in its own value chain; and
- Strengthening the ability of certification schemes to account for particular social impacts, such as connections to modern slavery.

C. Taking appropriate action - using and building leverage

Expectation: The UNGPs expect that when a financial institution is connected to a severe human rights risk, it should use its leverage to seek to prevent or mitigate that harm, and where necessary, build additional leverage. For financial institutions, leverage will obviously look different when applied to different types of financial products and services. Leverage is about creativity, encapsulating all of the tools that could influence others to change harmful or risky practices or behaviours.

Case example in Leverage: GIEK

GIEK, the Norwegian export credit agency, provides an interesting example of effective leverage in practice - in particular for a smaller institution with a relatively small E&S staff. One of GIEK's focus industries is ship-building, where GIEK has recognized that the most severe impacts connected to GIEK's clients are labour impacts (including forced labour) in shipyards and in particular, at the stage of hull construction. GIEK's human rights policy commitment includes an explicit statement that GIEK will use leverage to seek to address impacts throughout the value chains connected to its clients.

GIEK exercises its leverage directly with hull construction yards, with whom it has no direct commercial relationship. Rather, GIEK's leverage is based on: alignment between relationship managers and the E&S team; the power of personal engagement and a translation of social risks into the language of business opportunity for clients; recognized expertise in the industry; and the role GIEK is playing in bringing other financial institutions along.

Challenges: One of the challenges we have encountered in our work with financial institutions is the fear of becoming less competitive by engaging on human rights risks. ESG concerns can sometimes be perceived as obstacles to the business, rather than enablers of business and in some cases can lead to a financial institution losing business (particularly in the commercial banking space). This is expressed by some financial institutions as a concern about a level playing field, where those that seek to take action on social impacts may miss out on business opportunities to the advantage of financial institutions not raising these issues.

There can also be more structural challenges to the exercise of leverage inherent in certain types of financial transactions, such as taking a minority equity position, short-term trade financing, or some forms of commodity trading. There may be narrow windows of time or limited legal grounds for financial institutions to exercise leverage directly with a client or investee company in connection with human rights risk factors. Financial institutions have begun to recognize some of these challenges but have not yet fully explored or understood what good practice can look like in using and building leverage.

Current practices: The primary tools for exercising leverage that we see financial institutions using are threefold:

1. **Exclusionary practices**, where banks or investors exclude entire sectors deemed too risky or specific companies within a given sector based on their performance in managing specific environmental, social or human rights risks. Depending on the particular approach taken by the financial institution, the use of exclusions can either be seen as primarily about de-risking the business, or as part of a broader approach to exercising leverage (see box below on the Norwegian Pension Fund Global's exclusion list).

Disengagement as Leverage? The Norwegian Pension Fund's Exclusion List

The Norwegian Pension Fund Global (managed by Norges Bank Investment Management) draws a significant amount of its leverage from its well-known public exclusion list. Companies can be excluded due to their sector/what they produce (such as cluster munitions) or due to their conduct, based on recommendations issued by the independent Council on Ethics. In the case of disengagement from individual companies (rather than objectionable sectors), what differentiates 'de-risking' the Fund from building and exercising leverage to address human rights risks? Part of the leverage comes from the important signaling role that the list plays in the broader investment community because of the size and prominence of the Fund's holdings, encouraging other investors to ask similar questions. But equally important are the less-highlighted tools of the Council on Ethics for issuing 'observations' (which can put businesses on notice) and considering 're-inclusion', which can create powerful incentives for change in companies that have been excluded.

2. Engagement practices, including engagement through active ownership and stewardship in the investor space, and the more general practice among financial institutions of raising questions with clients or investee companies, particularly when allegations arise. We see many indications that this role is in fact very valuable. Simply asking the right questions can put an issue on a company's internal radar where it is not already an area of focus, or, more importantly, tip the scales for internal champions within companies where the issue is already known. In practice, when financiers express interest or concern this can help the business see social risks as material risks, leading to a different type of response.

In project finance, lenders often include contractual requirements for E&S impact assessments and resulting corrective action plans, as well as reporting and monitoring clauses, which can build leverage for ongoing engagement. Investors have sought to build leverage through collaboration, including shared engagement strategies in different sectors. (See examples of collaborative approaches to building leverage to address specific risks in the boxes below).

We also see financial institutions using leverage by providing resources for their clients to better manage specific risks. Of particular note in this regard, a group of financial institutions including CDC (home institution of Commissioner Mark Eckstein) and the IFC recently supported the publication of a good practice note for the private sector on managing modern slavery risks.^{xxii}

Building Leverage Through Collaboration in Banking: The Dutch Banking Sector Agreement

The Dutch Banking Sector Agreement developed out of a multi-stakeholder process involving leading Dutch commercial banks and the Dutch development finance institution, civil society and government stakeholders. In the Agreement, the parties commit to several interesting approaches to leverage through collaboration:

- The parties are jointly mapping value chains of several commodities (cocoa, palm oil, gold) to align on which severe human rights risks the banks should prioritize and identify new approaches to building and using leverage to address those risks.
- The parties committed to developing a shared risk database, matching industry sectors with specific operational contexts and specific human rights risks.
- The Dutch Banking Association, the industry association representing Dutch banks, has established an expert advisory panel to review cases and generate shared learning about good due diligence practices.
- The parties are cataloguing approaches to leverage for banks across the different areas of corporate lending and project finance.

Building Leverage through Collaboration among Investors

There are several examples of institutional investors building leverage through collaboration, jointly targeting sectors and issues and providing clear and consistent messaging in engagement.

- **Human rights performance in the extractives sector:** UN PRI coordinated a collaborative engagement on human rights in the extractives sector through which a group of 53 investors representing US\$7 trillion in assets under management engaged with 32 oil and gas and mining companies for two years on how those companies were operationalizing the UNGPs. The investors released a public outcomes document about the impact of the engagement.
- **Human rights disclosure:** A coalition of investors representing USD \$5.3 trillion in assets under management support the UN Guiding Principles Reporting Framework, co-developed by Shift and Mazars, to encourage more meaningful disclosure by companies on how they are managing human rights risks. Individual investors in the coalition like Hermes Investment Management, Boston Common Asset Management and NEI are actively using the Framework to engage clients in longer-term improvement processes.

3. **Influencing policy dialogue.** This includes investors playing advocacy roles to support regulatory approaches, for example in investor support for the UK and Australian Modern Slavery Acts, and the active role some commercial banks are playing in strengthening standards in industry or multistakeholder initiatives, such as in the Roundtable on Sustainable Palm Oil (RSPO). It also includes advocacy by both banks and investors in the current review of the Equator Principles to strengthen protection for specific rights such as Free, Prior and Informed Consent (FPIC) for indigenous peoples.

Opportunity: The financial industry has been effective in developing approaches to build and use engagement-based leverage in some types of financial products and services (primarily project finance-related transactions), but much less so in others. There is an opportunity to further develop the leverage toolkit for financial institutions by identifying ways that they can drive meaningful action by companies to address instances or risks related to modern slavery and human trafficking, adapted to different financial relationships, products and services.

In addition, there is room for much greater industry alignment around leverage, by engaging voices in the financial sector that may not yet have been as active in raising human rights issues - whether or not in explicit human rights language. Developing better tools for evaluating human rights risk exposure and management capacity (as highlighted above) would also help to equip financial institutions with the smart questions that can drive meaningful action by companies, making the use of leverage more effective in practice.

D. Remedy

Expectation: The UNGPs expect that where a business causes or contributes to a harm, it should provide or cooperate in providing remedy for that harm. “Remedy” in the human rights context means putting affected individuals back in the position they were in before a harm, or as close to that position as possible. Remedy can take many forms, including – but not limited to – financial compensation. Other forms can include apology, accountability for wrong-doers, guarantees of non-repetition, reinstatement and restitution. Where a business is *linked* to a harm, as will be the case for many financial institutions with regard to impacts in the value chains of their clients and portfolio companies, the business is not expected to provide remedy directly. However, the business *is* expected to use leverage to seek to prevent the harm from continuing or recurring; this can include directing its leverage towards ensuring remedy is provided by the responsible entity.

Challenges: The nature of financial institutions’ connections to severe impacts has made it more challenging to think about their role in remedy than is typically the case in other sectors. Other parties (clients, investee companies, or entities in their extended value chains) are most likely to be responsible for causing or contributing to a harm, and will therefore have the primary responsibility for remedy. In practice, financial institutions that are linked to severe human rights impacts are often far away from where impacts occur, and facts on the ground may be disputed.

Financial institutions have therefore often defaulted to more forward-looking approaches, such as focusing on steps to strengthen the relevant company’s social risk management capacity to try to ensure that similar impacts do not recur. But if the entity responsible for the harm does not shoulder its responsibility for remedy, as often happens, then affected stakeholders are left without redress.^{xxiii}

Current practices: In the project finance space, it is standard practice to ask about the existence of grievance mechanisms at the client or project level. Grievance mechanisms are intended to enable people negatively impacted in connection with a company’s operations to raise their concerns and have them addressed by the business. Increasingly, this expectation of client-level grievance mechanisms is entering into corporate lending relationships and is influencing ESG ratings in the investor community. More interestingly, we are now seeing efforts by some financial institutions to move beyond simply assessing the existence of grievance mechanisms to assessing their effectiveness in practice – and in a way that is not just asking the client for its own opinion about the utility of its grievance mechanism, but demanding evidence of what actual and potential users of the mechanism think about it. The Australian Modern Slavery Act’s requirement that companies report on the effectiveness of measures they are taking to address identified modern slavery risks may also encourage such an approach.

In the development finance space, there is growing experience with bank-level grievance mechanisms, building on the IFC’s model of both a complaints and compliance assessment function.^{xxiv} There is also an active push from civil society advocates for other types of financial institutions to develop bank-level grievance mechanisms.^{xxv} Such mechanisms can play an important role as a second-line response, when local grievance processes are not, or are not perceived as, effective. Bank-level mechanisms have been effective in highlighting actual impacts and holding financial institutions accountable to lapses in their own due diligence requirements. However, in many cases they have faced challenges in ensuring better outcomes for affected stakeholders because they have not been able to engage those parties responsible for directly causing the harm in the process.

Opportunity: The understanding of the role a company can play in remedy in linkage situations is beginning to shift. We see growing recognition of the potential for businesses (including financial institutions) to play a critical role in enabling remedy, rather than providing or contributing to remedy directly, when they are linked to a harm through their business relationships. This means using leverage not just for forward-looking measures, but also for ('backward-looking') remedy. This is creating the space for a far more interesting conversation about the appropriate roles and practical steps financial institutions can take to support remedy for affected stakeholders where severe impacts occur.

Shift frames this as thinking about a 'remedy eco-system' - rather than 'a grievance mechanism' - where different actors have different roles to play to help ensure access to remedy.^{xxvi} For financial institutions, this would mean at least two things:

1. The need to bring a sharper focus to the institution's preparedness for remedy, that is, ensuring that effective pathways exist for victims and building the necessary leverage with business relationships up front to ensure a commitment and capacity for remedy should impacts occur.
2. The importance of recognizing the variety of roles that financial institutions can play when impacts occur to enable remedy in practice. This can include pushing a client on the need for remedy; supporting credible processes for investigation and resolution that consider the victim's interests and needs; and providing new products and services that could help those who have been impacted by modern slavery and human trafficking to access the financial system and help avoid the harms they have suffered from compounding, including through access to finance or to employment.

While we have seen that this approach has significant resonance among both financial industry and civil society representatives, financial institutions are still working to fully understand and articulate the practical steps financial institutions could take in support of an eco-system approach.^{xxvii}

Strengthening Bank-level Grievance Mechanisms: Learning From Experience in Consumer Banking?

A number of commercial banks have existing experience in bank-level grievance mechanisms in the retail banking space, where there is a direct and immediate relationship with the consumer. In Australia, the recent Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has turned a spotlight on financial institutions' practices in engaging with consumers in that country. As a result, leading Australian commercial banks have been stepping up efforts to meet their responsibility towards consumers. For example, Westpac has strengthened its consumer banking complaints architecture in various ways, including ensuring that its Customer Advocate who oversees the mechanism pays particular attention to customers that may be the most vulnerable (such as those lacking financial literacy or in difficult personal circumstances due to mental health issues or situations of domestic violence). Importantly, the Customer Advocate's team start from a presumption that the complainant is right and that it is up to the business to disprove the individual's claim if it can. Shifting the 'burden of proof' in this way can have a profound effect on how effective a company grievance mechanism is, given the information and other asymmetries between users of such a mechanism and the company.

3. CREATING IMPACT AT SCALE: ISSUES FOR THE COMMISSION'S CONSIDERATION

In Part 2 of this Briefing Paper, we identified some of the opportunities we see to scale up the role that the financial sector could play in addressing severe human rights risks, and specifically modern slavery and human trafficking, drawing on the global expectations of the UNGPs. In none of these areas is the financial sector starting from scratch. Rather, there are opportunities to build upon leading practices and newer initiatives across different parts of the sector and to create greater alignment and collaboration across its participants.

Commissioners may wish to consider the following questions:

- a. What role could the Commission play in helping to shift the debate from the nature of financial sector responsibility for severe human rights impacts to the practical actions financial institutions could take? What would be the effect of embracing responsibility for impacts throughout extended value chains, and focusing energy on the practical approaches that could best help financial institutions take meaningful action to address those risks?
- b. What role could the Commission play in setting an industry expectation for, and/or encouraging investment in, better screening and assessment tools to identify those relationships, transactions, or investments at higher risk of being connected to modern slavery and human trafficking?
- c. Are there ways the Commission could help break down barriers between compliance regimes and current ESG and E&S approaches, so that relevant data could be more effectively leveraged in ESG and E&S analysis to identify those higher-risk companies to then focus further due diligence on?
- d. Could the Commission play a role in developing the effective follow-up questions and proxy indicators once heightened risk areas are identified, and making these due diligence questions standard practice across the industry, appropriately adapted to different types of financial products and services? What would be the effect if every financial institution screened its portfolio for the risk of modern slavery and human trafficking, using these shared analytical tools?
- e. In what ways could the Commission help to standardize the expectation for meaningful action by financial institutions once they have identified heightened risks of modern slavery and human trafficking? Could the Commission play a role in helping to develop good practices in leverage across different types of financial products and services, to help set expectations and drive meaningful action by clients and portfolio companies?
- f. Could the Commission help to drive an industry commitment to using leverage to enable remedy when specific instances of modern slavery or human trafficking are identified, bringing a focus not only to preventing future harm, but to remedying past harm? What would be the range of roles and actions that could be taken in support of this objective of a 'remedy eco-system' across different types of financial products and services?
- g. What role could the financial sector play in developing new products and services for at-risk populations, which could help to reduce vulnerability to some of the underlying factors that can drive modern slavery and human trafficking? Could the Commission help position such new products and services for at-risk populations not only as a voluntary social good, but also as helping to meet financial institutions' responsibility to respect human rights?

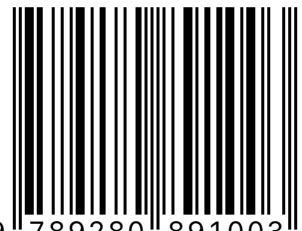
ENDNOTES

- i. Available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
- ii. For more about Shift and our work with financial institutions, see: <https://www.shiftproject.org/fis/>.
- iii. For the collected work and documentation of the former SRSG's mandate, see <https://www.business-humanrights.org/en/un-secretary-generals-special-representative-on-business-human-rights>.
- iv. See <https://www.ohchr.org/en/issues/business/pages/wghrandtransnationalcorporationsandotherbusiness.aspx>.
- v. See <http://mneguidelines.oecd.org/>.
- vi. The public consultation version is available at <http://www.unepfi.org/banking/bankingprinciples/>. See the Implementation Guidance on principles 1 and 2 in particular.
- vii. For example, see the following Harvard working papers: Robert Eccles, Ioannis Ioannou and George Serafeim, "The Impact of Corporate Sustainability on Organizational Processes and Performance," November 2014, available at https://www.hbs.edu/faculty/Publication%20Files/SSRN-id1964011_6791edac-7daa-4603-a220-4a0c6c7a3f7a.pdf; and John Ruggie and Emily Middleton, "Money, Millennials and Human Rights – Sustaining "Sustainable Investing", June 2018, available at https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/working_papers/CRI69_FINAL.pdf.
- viii. For the Final Statement of the Australian NCP, as well as statements from both the company and civil society organizations, see <https://www.business-humanrights.org/en/australian-ncp-concludes-anzs-action-not-in-line-with-the-companys-human-rights-policy-in-phnom-penh-sugar-case>.
- ix. For authoritative guidance on the expectations of HRDD see that available from UN OHCHR, available at https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf, the UN Working Group on Business and Human Rights, available at <https://www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDDueDiligence.aspx>, and the OECD, available at <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.
- x. As discussed in James Cockayne and Julie Opperman, "Secretariat Briefing Paper 1: Financial Sector Compliance to Address Modern Slavery," September 2018 at p. 14, available at https://www.financialsectorcommission.org/wp-content/uploads/2018/09/Financial-Sector-Commission_Secretariat-Briefing-Paper-1.pdf.
- xi. The UN Working Group on Business and Human Rights has also highlighted this opportunity, see https://www.ohchr.org/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf.
- xii. Shift recently produced a compendium of case studies showing how bringing the perspective of the UNGPs to business action on the SDGs can help lead to this kind of transformative change: <https://www.shiftproject.org/sdgs/>.
- xiii. For examples of how these sectors have elaborated guidance on how the provisions of their standards that are aligned with the UNGPs apply to their members, see examples from mining at <https://www.icmm.com/en-gb/society-and-the-economy/mining-and-communities/human-rights>, from apparel at https://www.ethicaltrade.org/sites/default/files/shared_resources/eti_human_rights_due_diligence_framework.pdf, and from electronics at <http://www.responsiblebusiness.org/media/docs/RBAPracticalGuide.pdf>.
- xiv. See OECD, *Responsible Business Conduct for Institutional Investors*, 2017, at p. 9, available at <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>. The OECD has an entire workstream on applying the OECD Guidelines (or the principles of 'Responsible Business Conduct') to the financial sector, see <http://mneguidelines.oecd.org/rbc-financial-sector.htm>, and is currently developing guidance on applying these principles in corporate lending contexts.
- xv. For a helpful recent study, with a focus on the bank lending community, see Jo Webb and Tom Keatinge, "Leaning in: Advancing the Role of Finance Against Modern Slavery," December 2018, available at https://rusi.org/sites/default/files/20181212_leaning_in_webb.pdf.
- xvi. Shift was recently asked to provide advice to the Equator Principles Association on how to achieve greater alignment between the Equator Principles and the UNGPs. A public summary of this advice is forthcoming.
- xvii. Note xv above, at pp. 23-28.
- xviii. Such as the investors participating in the Investor Alliance for Human Rights, <https://investorsforhumanrights.org>, and the investors representing over USD \$5.3 trillion in assets under management backing the UN Guiding Principles Reporting Framework, <https://www.ungpreporting.org/framework-guidance/investor-statement/>.
- xix. See <https://www.shiftproject.org/valuing-respect/>.
- xx. For a practical application in the private equity context, see CDC's guidance for portfolio managers: <https://toolkit.cdcgroup.com/e-and-s-briefing-notes/human-rights>.
- xxi. For more on these risk factors, see our report on Human Rights Due Diligence in High-Risk Circumstances, 2014 at https://www.shiftproject.org/media/resources/docs/Shift_HRDDinhighriskcircumstances_Mar2015.pdf. This report drew on a collaboration with the IFC and has influenced individual financial institution practice as well as relevant standards (such as the OECD Common Approaches).
- xxii. Authored by Ergon and ETI, with the support of CDC, EBRD, IFC and DFID, "Managing Risks Associated with Modern Slavery: A Good Practice Note for the Private Sector," December 2018, available at <https://assets.cdcgroup.com/wp-content/uploads/2018/12/03105819/Managing-Risks-Associated-with-Modern-Slavery.pdf>.
- xxiii. This reality has helped to fuel the policy-level debate in the OECD and other forums over how financial institutions are connected to impacts. That is, if it can be argued that financial institutions contributed to impacts, rather than being linked to them, then financial institutions would have a responsibility in more situations to contribute to remedy directly.
- xxiv. See, for example the Independent Complaints Mechanism shared by the Dutch, French and German DFIs: <https://www.fmo.nl/independent-complaints-mechanism>.
- xxv. See Oxfam Australia and BankTrack's recent report, *Developing Effective Grievance Mechanisms in the Banking Sector*, available at https://www.banktrack.org/download/developing_effective_grievance_mechanisms_in_the_banking_sector/2018_pa_002_bank_report_faweb2_3.pdf.
- xxvi. See our 2014 report on this topic: Shift, "Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights," May 2014, available at <https://www.shiftproject.org/resources/publications/remediation-grievance-mechanisms-corporate-responsibility-respect-human-rights/>.
- xxvii. Shift has been providing expert support to the Dutch Banking Agreement's Working Group on Enabling Remedy to explore the roles banks might play in this approach to a remedy ecosystem, and expects the Working Group to publish a paper on this topic in the spring of 2019.

Secretariat Briefing Paper 2

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