Briefing Paper

Bridging the Gap: Financial Sector Action to Prevent Trafficking in Persons

LIECHTENSTEIN INITIATIVE | FINANCE AGAINST SLAVERY & TRAFFICKING

Introduction

Last year, UN Secretary-General António Guterres reflected in his Call to Action for Human Rights on the origin of the Organization and its mission, namely, to protect populations from different threats. He stressed that "the best form of protection is to avert such threats in the first place." Prevention was singled out not merely as one priority among many, but as *the* priority.

With at least 25 million people in forced labour - and likely more due to the pandemic and other global crises - modern slavery,[1] including human trafficking, remains a grave threat today. And global statistics are trending in the wrong direction - child labour, for example, has risen for the first time in two decades, notably in the Global South.

Prevention is at the core of the UN Global Plan of Action to Combat Trafficking in Persons (Global Plan of Action). Eleven years after its launch, we see considerable progress on awareness raising in the private sector, especially in the Global North. However, more needs to be done to galvanize the private sector in both the Global North and the Global South to put commitments into practice. Achieving the Sustainable Development Goals relating to modern slavery in the current timeframes requires both collective and effective preventative action.

To fully realize its goal of prevention, the international community must harness the power and influence of the financial sector. As the Financial Sector Commission on Modern Slavery and Human Trafficking noted:

> Financial sector actors have unparalleled influence over global business and entrepreneurialism. They have a unique role to play in investing in and fostering business practices that help to end modern slavery and human trafficking. Finance is a lever by which the entire global economy can be moved.[2]

1. Modern slavery is an umbrella term that covers a set of specific legal concepts including forced labour, the worst forms of child labour, debt bondage, chattel slavery and other slavery-like practices, and human trafficking.
2. *Unlocking Potential: A Blueprint for Mobilizing Finance Against Slavery and Trafficking* (United Nations University Centre for Policy Research: New York, September 2019).

On the occasion of the third high-level meeting of the General Assembly on the appraisal of the Global Plan of Action, United Nations University Centre for Policy Research's Finance Against Slavery and Trafficking (FAST) Initiative is providing a synthesis of enduring trafficking challenges and gaps that can be addressed in significant part through financial sector actions within the framework of the Global Plan of Action. Evidence of trafficking in global value chains are presented along with analysis of the corresponding gaps in the implementation of the Global Plan of Action. The observations and recommendations presented draw on the FAST *Blueprint for Mobilizing Finance Against Slavery and Trafficking (Blueprint)*, UN Office of Drugs and Crime (UNODC)'s *Global Report on Trafficking in Persons 2020*, and national, regional, and international legislative developments to identify:

(1) the main challenges and opportunities for improving impact;
(2) emerging practice from the financial sector; and
(3) recommendations to strengthen the implementation of the Global Plan of Action.

I. Main Challenges and Opportunities for Improving Impact

Human trafficking can occur in every country and all sectors, but it is a hidden crime and its global prevalence is difficult to measure. Trafficking risks, drivers, and trends, however, can be identified through comprehensive analyses of data reported by Member States, evidence gathered by civil society organizations and trade unions, and disclosures by companies, banks, and investment funds, among others.

The UNODC *Global Report on Trafficking in Persons 2020* highlighted several important findings: (1) Migrants accounted for a substantial portion of detected victims in most regions; (2) At least half of the cases UNDOC examined from 148 countries involved victims who were targeted because of economic need; (3) In low income countries, children accounted for half of the identified victims and most were trafficked for forced labour; and (4) COVID-19 has increased the risk of trafficking among the vulnerable populations due to massive unemployment, closure of schools and a lack of social protection measures.

To increase the effectiveness of their anti-trafficking measures, Member States may wish to consider greater focus on addressing the causal and contributing factors that place vulnerable populations at greater risk of exploitation. This includes improving ethical labour and recruitment practices, confiscating illegal profits and assets to provide remedy to victims, denying capital to illicit businesses, and helping vulnerable populations, victims, and survivors secure decent work and an adequate standard of living.

The UNODC Report concludes with several policy considerations that are consistent with the findings of research conducted by FAST and others.[3] Under "strengthen supply chain integrity," it notes, " the private sector [...] plays a pivotal role in the fight against trafficking by conducting due diligence with respect to their supply chains and promoting regular controls on labour standards." Implicit in this recommendation is the crucial role of the financial sector in conducting its own human rights due diligence as well as ensuring its clients conduct adequate due diligence.

Besides human rights due diligence, there is a wide spectrum of preventative actions the financial sector can take to prevent trafficking, including but not limited to, addressing the lack of transparency in the sector's value chains; providing or enabling effective remedy to avoid revictimization of survivors; and reducing vulnerable populations' risk of trafficking and exploitation through financial inclusion interventions.

Challenges

The financial sector faces some major challenges in its efforts to address trafficking in persons. These include access to data on trafficking risks and abuses throughout the value chain; de-risking that increases trafficking risks for vulnerable populations; client confidentiality rules limiting access to justice and remedy; and minimal provision of remedy whether directly to victims or through corporate clients.

3. https://www.fastinitiative.org/resources/

Some challenges like access to data and client confidentiality require Member States to enact or amend laws to require certain disclosures by firms. Others like de-risking and remedy may need a smart mix of voluntary guidance and legal requirements.

The FAST *Blueprint* notes that financial institutions often de-risk (terminating a relationship with a business partner to avoid risk exposure) as a response to regulatory pressure to disassociate with human trafficking risks. FAST's consultations suggest a need to be cautious about the potential for financial sector institutions to unintentionally increase trafficking risks for vulnerable populations through de-risking practices. Anti-Money Laundering (AML)/ Combating the Financing of Terrorism (CFT) regulators can help address the risks to victims and survivors, and workers, by issuing guidance on how financial institutions can take a human rights-based approach when dealing with trafficking cases. Such an approach could include exercising leverage on clients and correspondent banks to effectively address the trafficking issues, and to remain vigilant and continue to monitor these entities for suspicious behaviour. It could also include complying with AML/CFT rules in a manner that ensures financial inclusion for survivors.

Opportunities

Member States can improve the financial sector's impact on trafficking through legal reforms and other measures, as highlighted below.

Human rights due diligence

The financial sector can help combat modern slavery in global value chains through compliance with mandatory public reporting and human rights due diligence laws. Existing laws on transparency in global value chains have been important in raising business awareness on the modern slavery agenda and ushering in new industry expectations on modern slavery policies. These laws can be strengthened and scaled to incentivize the development of policies in line with international standards, increase their implementation throughout global value chains, and make effective remediation of adverse impacts the rule rather than the exception. Recent developments at the national, regional, and international levels could help address the current gaps in policy and practice.

The European Union is considering a region-wide instrument on human rights due diligence as well as a social taxonomy for sustainable finance disclosures. At the international level, Member States are considering a treaty on business and human rights that would potentially cover financial institutions. On the horizon are potential amendments to the UK Modern Slavery Act and the Australian Modern Slavery Act (Commonwealth Act) that could bring stricter requirements on companies operating in those jurisdictions, including financial institutions, and carry penalties for non-compliance. The regulatory sandbox for digital finance and the documented risks of unregulated microfinance are other areas in which Member States can work to protect vulnerable populations from trafficking and other forms of modern slavery.

Integrating finance into coordinating structures

In some countries, inter-agency bodies on human trafficking include civil society organizations in their membership. Financial regulators, however, appear to be seldomly included.[4] At the regional level, most inter-governmental coordinating bodies on human trafficking do not appear to regularly include officials and agencies responsible for the financial sector. Expanding these coordinating bodies at the national and regional levels to regularly include financial regulators would facilitate greater cooperation with the financial sector in addressing modern slavery and trafficking and would strengthen their capacity to prevent, address, and remediate these crimes.

4 The Dutch International Responsible Business Conduct agreements covering banks, pension funds, and insurance companies are a notable exception. These time-bound agreements may form a useful basis for longer-term initiatives.

Incorporating survivor perspectives

The Palermo Protocol, Target 8.7 of the Sustainable Development Goals, and the UN Guiding Principles on Business and Human Rights all centre their frameworks on the primacy of rights-holders, victims, and vulnerable populations in policy interventions relating to modern slavery, human trafficking, and related violations. Yet, many national, regional, and international policies on trafficking and related exploitation could better reflect the interests of survivors. Member States can formulate more effective anti-trafficking policies by prioritizing and integrating survivor perspectives and needs through inclusive and ethical partnerships with survivor support organizations, civil society organizations, and trade unions.

Strengthening multilateral frameworks and cooperation

In 2018, the Conference of the Parties to the UN Convention against Transnational Organized Crime (UNTOC) established a review mechanism for the implementation of UNTOC and its Protocols, including the Palermo Protocol. This much needed peer review process will begin assessing State parties' progress on prevention of human trafficking in 2026. Article 9(5) of the Palermo Protocol notes that State parties must adopt or strengthen legislation or other measures to discourage the demand for trafficked and exploited labour. All State parties can improve their preventative efforts by addressing the role of their financial sector in trafficking and the 2026 review is an opportune moment for the reviewing States to assess progress in this regard. With five years left before the review, there is still time for all State parties, especially the States under review, to adopt the necessary measures to ensure their financial sector discourages the demand for trafficked labour. The reviewing States may wish to call on those States under review that fail to act to strengthen their measures relating to the financial sector and trafficking in global value chains.

In jurisdictions where the law prohibits the importation of goods produced by forced labour, human trafficking, or other forms of modern slavery, customs authorities can cooperate with financial intelligence units (FIUs) by sharing relevant information on the identities of corporations or individuals suspected of causing, contributing to, or otherwise being linked through a business partner to the proscribed abuses. FIUs can then share relevant information under public-private partnerships with relevant financial institutions to identify and potentially seize assets or proceeds. Subsequent judicial or administrative processes could then compensate the victims and survivors. This form of cooperation could be elaborated in an update to the Customs-FIU Cooperation Handbook jointly published by the Egmont Group and the World Customs Organization. These two organizations are well positioned to advance a multilateral approach to leveraging anti-money laundering and import control authorities for human rights protection purposes.

II. Emerging Practice from the Financial Sector

FAST, and other like-minded organizations, have identified meaningful and innovative ways the financial sector can support efforts to prevent modern slavery.

Improving transparency through stock exchange guidance

In December 2021, FAST, Walk Free, and the Stock Exchange of Thailand will jointly publish *Guidance on Modern Slavery Risks for Thai Businesses*. The guidance, the first of its kind in Thailand and across South-East Asia, responds to the FAST Blueprint's recommendation to use market regulation, including environmental, social and governance (ESG) guidance, to enforce the ban on human trafficking, forced labour, and other forms of modern slavery. It provides Thai companies listed on the Stock Exchange of Thailand with an overview of modern slavery, including in the Thai context, modern slavery risks across eight Thai industries, and a checklist for companies to use in assessing and disclosing modern slavery risks in their sustainability reports. The checklist provides an overview of actions that companies should take to address risks, targeted questions, and guidance on information that should be disclosed to investors and other stakeholders. The impact of mandatory reporting largely depends on the issues covered and the quality of information provided by companies. This guidance, if implemented faithfully, will result in a clearer picture of modern slavery risks, the actions taken to address them, and the remedy gap to be filled in Thailand.

Strengthening investor and corporate action on modern slavery

The Investors Against Slavery and Trafficking Asia-Pacific (IAST APAC) is an investor-led project launched in 2020 by First Sentier Investors, Aware Super, Australian Super, Fidelity International, Ausbil Investment Management, and the Australian Council of Superannuation Investors. With USD 4.27 trillion in funds under management, IAST APAC uses its influence and leverage to reduce modern slavery risks through policy advocacy and engagement with companies based in the Asia-Pacific region, and engagement with Australian companies on their reporting under the Australian Modern Slavery Act (Commonwealth Act). Walk Free supports this investor coalition as IAST APAC's Secretariat and FAST serves as a knowledge partner. With its singular focus on modern slavery and trafficking, and its membership comprised of asset owners and asset managers in the Asia-Pacific region, the initiative is primed to catalyse more action from Asian investors and improve the conduct of businesses in the region with the highest prevalence of modern slavery in the world.

Increasing financial inclusion for survivors

Since 2019, over 2,000 bank accounts have been opened for survivors in the UK, Canada, and the US, through the Survivor Inclusion Initiative, a FAST-led consortium of banks and survivor support organizations focused on the reintegration of survivors into the formal financial system. In 2022, FAST will be expanding the initiatives for survivor inclusion to countries and regions in the Global South, prioritizing engagement, consultation and partnership in Africa, Latin America, and the Caribbean. Financial exclusion

- exclusion from financial services or products - is not only a consequence of the experience of being trafficked or exploited, but also a factor that increases future vulnerability to the risk of experiencing modern slavery and human trafficking for survivors, as well as populations made vulnerable by poverty, inequality and other structural, sociopolitical and environmental issues. To respond to the increasing need to both address and prevent modern slavery and human trafficking, FAST will lead on developing specific evidence-based and needs-led regional, cross-border and in-country financial sector interventions to increase protection for vulnerable populations and provide and enable remedy for victims and survivors.

Increasing access to remedy through bank grievance mechanisms

In 2019, ABN AMRO began consulting with civil society organizations, trade unions, academics, and other stakeholders about the options for a bank grievance mechanism that could enable remedy for affected populations in direct linkage cases. In 2020, they began testing their new grievance procedure with simulations based on real cases. The bank acknowledged the importance of partnering with civil society organizations and trade unions in publicizing the grievance mechanism and ensuring affected communities have access to the mechanism when their rights are violated. They also recognized a client's unwillingness to cooperate in remedial processes could prevent the provision of remedy to affected populations. In these cases, ABN AMRO noted it would flag internally the client's lack of participation as a concern in their client due diligence process.

In early November, ANZ Bank launched a Grievance Mechanism Framework to assess and respond to human rights-related complaints, including allegations of trafficking, associated with its institutional or corporate ending customers. Civil society organizations and other stakeholders participated in the bank's 18-month consultation process. It lays out how ANZ will respond to complaints, including aiming to resolve the complaint with its client, and contributing directly to remediation of harms where appropriate. It also creates a channel through which the bank can receive recommendations aimed at improving its human rights policy and due diligence processes. The Framework further reflects ANZ's commitment to reporting on the type of complaints received and their outcomes. While ANZ cannot accept a complaint about a client when the client does not agree to disclose the existence of a lending relationship, it has publicly stated its expectation on clients to consent to disclosure such relationships, and it has committed to exercising leverage when they do not.

III. Recommendations for Member States

1. Ensure preventative interventions are survivor-informed and centered on the needs of survivors.

Survivors, due to their lived experience, are in the best position to determine whether preventative measures are fit for purpose. They have a nuanced understanding of the entire cycle of trafficking, especially the multiple vulnerabilities of survivors both pre- and -post trafficking. Furthermore, survivors are rights-holders who are the ultimate arbiters of whether remedies provided by those responsible for the trafficking are effective in making them whole. Governments must meet the needs of survivors in all laws and other measures developed to prevent trafficking in persons.

2. Regulate business conduct with respect to trafficking, including mandating effective remedy, in global value chains at the international, regional, and national levels.

Voluntary measures alone are insufficient to secure the level of business compliance with international standards needed to achieve Target 8.7 of the of the Sustainable Development Goals. The recent trend of regulating business conduct in global value chains has already yielded promising results. The private sector is acting with more urgency and the right of victims to an effective remedy is at the centre of many legislative debates and proposals. Governments should continue to regulate business conduct with respect to trafficking in global value chains, including through the potential UN treaty on business and human rights, regional and national legislation mandating human rights due diligence, and sustainable finance disclosure rules.

3. Ensure human trafficking policy coherence, especially between agencies responsible for finance and agencies responsible for human rights, and regularly involve financial regulators in inter-agency and inter-governmental bodies on trafficking in persons.

The State duty to protect human rights includes ensuring all government agencies and institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates. Achieving greater anti-trafficking policy coherence, especially between the agencies responsible for finance that tend to be less familiar with human rights concepts and those with an obvious mandate to protect human rights, is thus crucial to addressing gaps or inconsistencies in government actions that prevent States from fulfilling their human rights obligations with respect to modern slavery. Greater policy coherence at the national level necessarily includes regularly involving financial regulators in inter-agency bodies on trafficking. At the regional level, States can also strengthen their efforts to protect human rights by regularly including their financial regulators in inter-governmental bodies dealing with trafficking issues.

4. Foster partnerships with financial sector actors.

The financial sector plays a vital role in combatting trafficking and more public-private partnerships should be developed for that purpose. Public-private partnerships in the anti-money laundering realm should explicitly tackle human trafficking, in all its forms, and utilize all available tools and resources to help compensate and restore victims and survivors. Banks and digital finance providers can help public authorities reduce the risk of trafficking and forced labour through cooperation in the implementation of new regulations mandating electronic payments for vulnerable populations working in high-risk, cash-based sectors. Such cooperation could include reporting suspicious activities as well as increased financial education and training for vulnerable groups.

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