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Forced labour: What investors need to know

This briefing provides information on the risks and implications of forced labour in company operations and supply chains. It highlights the role for investor engagement in addressing this global problem.

Forced labour and human trafficking are problems that many would like to think have been eradicated and left in the past. Unfortunately these abhorrent practices still exist. According to the International Labour Organization (ILO), 21 million people are victims of forced labour globally with 90% of the cases occurring in the private sector.[1] Not simply an issue confined to the illegal economy, there are significant numbers of workers treated as commodities and exploited as part of multinational business supply chains. Domestic work, agriculture, construction, manufacturing, hospitality, cleaning, entertainment and apparel are among the sectors most affected.[2,3]

In particular, the palm oil and fishing industries in Asia and construction projects in the Middle East are considered high risk and since 2013, companies in these industries have faced high profile allegations of forced labour from the media, NGOs and other organisations.[4] Reports have emerged of workers, often vulnerable migrants, being beaten, threatened and forced to work under hazardous conditions. In Thailand, ongoing forced labour in the fishing industry remains a source of great international concern despite legal reforms and arrests.[5]

As made clear by the United Nations Guiding Principles on Business and Human Rights, companies have a responsibility to respect human rights within their operations and wider areas of impact. Regulations such as the California Transparency in Supply Chains Act (2010), the EU Non-Financial Reporting Directive (2014), and the UK's Modern Slavery Act (2015) have turned a spotlight on forced labour and other human rights issues in supply chains and have highlighted the moral imperative to prevent forced labour and human trafficking, as well as the major financial and reputational risks for companies of these practices.

Regulations drive transparency and transparency drives better practice. While governments and law enforcement play a critical role, increasingly the private sector and institutional investors are being called on to ensure that forced labour in supply chains is identified and addressed. Guidance around the new Modern Slavery Act explicitly calls on investors to encourage "a race to the top".[6]

This briefing explores key issues related to forced labour and highlights how investors can engage with companies to ensure they identify, monitor and prevent the use of forced labour in their supply chains and operations.

Forced labour and investors

- Forced Labour occurs in numerous sectors including agriculture and manufacturing and may enter supply chains of multinational companies.
- Investors may be exposed to substantial financial risks from companies operating within high risk industries or countries.
- Companies are increasingly required to report how they address forced labour risks in their supply chains and operations.
- Investors can play a valuable role in protecting vulnerable workers by pushing for transparency and engaging with companies to improve policies and practices.

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> “Forced labour generates an estimated $150 billion USD in illegal profits each year.

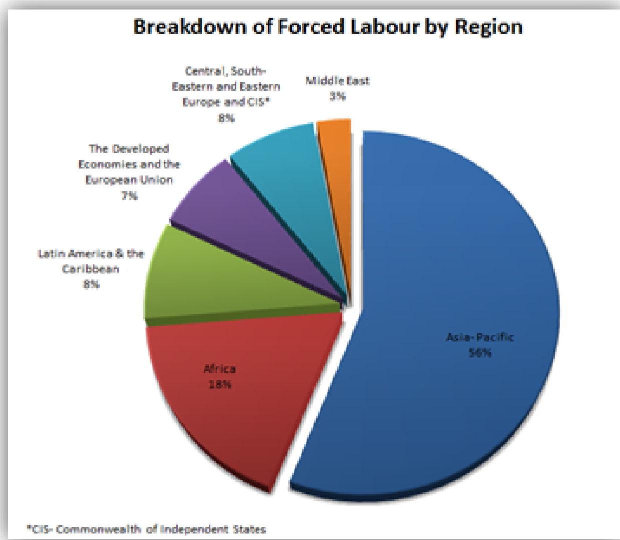
Forced labour in supply chains: A global problem

Forced labour, modern slavery, debt bondage and human trafficking are closely related forms of exploitation though not identical in a legal sense. However, most situations of slavery or human trafficking are covered by the ILO’s definition of forced labour which refers to work undertaken involuntarily under threat of a penalty. This definition includes situations in which persons are forced to work through the use of violence or by other means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities.[7] The ILO has identified specific indicators to help identify instances of forced labour.

Prevalence of forced labour

The full scale of forced labour is unclear but according to ILO estimates, forced labour in the private economy generates an estimated $150 billion USD in illegal profits globally per year with $99 billion USD as a result of commercial sexual exploitation and $51 billion USD from forced economic exploitation.[8] The Asia Pacific region has the highest number of people in forced labour, with 11.7 million people or 56% of the global total followed by Africa with 3.7 million (18%).[9]

Migrant workers and indigenous people are particularly vulnerable. According to ILO estimates, nearly half of forced labour victims have migrated within their country or across borders before ending up in forced labour.[10] Victims are frequently drawn from minority or socially excluded groups and with 60 million people forcibly displaced currently, the largest number in history, the number of people at risk is growing.[11]



Source: International Labour Organisation, Profits and Poverty: The Economics of Forced Labour, ILO, 2014

In the United States there are an estimated 60,000 forced labourers.[12] Victims of forced labour have been identified in domestic work and home healthcare, the food service industry, construction and agriculture, nursing, factories and garment-manufacturing among other sectors. Exploited workers include US citizens as well as foreign nationals, predominately from Mexico, the Philippines and Thailand.

In the UK, Home Office findings suggest that there are between 10,000 and 13,000 potential victims of forced labour.[13] Individuals most at risk include migrant workers, illegal migrants, asylum seekers

International Labour Organization (ILO) indicators of forced labour

- Abuse of worker’s vulnerability, e.g. disabilities, language barrier
- Deceptive recruitment practices
- Isolation, e.g. held in remote locations
- Intimidation and threats
- Withholding of wages
- Excessive overtime
- Abusive working and living conditions
- Restriction of movement
- Physical and sexual violence
- Retention of identity documents e.g. passports
- Debt bondage

Source: ILO (2012) ILO indicators of Forced Labour. Special Action Programme to combat Forced Labour (SAP-FL) and vulnerable individuals such as the homeless and people with learning difficulties.

Supply Chain vulnerabilities

As supply chains become more complex and multi-layered, the risk of labour abuses at some stage along the chain grows. In particular, significant risks exist across industries at the commodity and raw material levels with risks also affecting processing, manufacturing, warehousing and transport.

Company challenges: Nestlé

In 2015, Nestlé voluntarily highlighted forced labour in its own supply chain when it released the results of an internal investigation into practices on prawn farms and fishing boats in Thailand.[14]

In a move welcomed for its transparency, the company's investigation found that the Thai seafood industry, the third largest in the world, suffers from widespread human rights abuses, including the use of child labour. As a result, Nestlé along with other European and US companies that purchase seafood from Thailand are exposed to a substantial risk of forced labour in their supply chains. An investigation by the Associated Press using U.S. customs records claimed that shrimp from abusive Thai factories had entered the supply chains of large food retailers and restaurants such as Whole Foods, Red Lobster and Wal-Mart.[15] The affected companies subsequently rebutted the claims or indicated that they were conducting thorough reviews of their supply chains.[16]

In 2015, The European Commission began formal dialogue with Thai authorities and stipulated corrective measures to address illegal fishing practices in the seafood industry.[17] However, to date these measures have not been fully implemented and the European Commission is considering a trade ban on Thailand's seafood industry.[18] Discussions are ongoing and a decision is expected shortly.

Modern global supply chains are by their nature complex and hard to oversee, but this doesn't absolve companies from responsibility to act. Nestlé has rolled out an action plan to strengthen controls over their supply chains, but problems still persist. The company admitted that there could be forced labour practices or human rights abuses in the Brazilian coffee plantations supplying their coffee beans because forced labour is an endemic problem in Brazil, and they were not able to track all of the plantations that could be sub-suppliers to the plantations they purchase from.[19]

Sectors at risk

Forced labour is most prevalent in labour intensive sectors where regulatory oversight is weak. Sectors that are vulnerable include agriculture, apparel & footwear, construction, food & beverage, manufacturing and mining.

> “ Forced labour is most prevalent in labour intensive sectors where regulatory oversight is weak.

Agriculture is considered higher risk as migrant and seasonal farmworkers, including children, are often victims of trafficking or exploitative and illegal labour brokers. There are linkages across industries as for example, cotton produced by forced labour may enter supply chains for not only clothing companies but also food manufacturing via cottonseed oil. Timber produced by countries such as Peru, Brazil and Myanmar (Burma) may enter the supply chains of construction companies. Some higher risk industries with examples of key products are shown in Figure 1 below.

Figure 1: Higher Risk Industries including key products and source countries

Incidences of forced labour may turn up in industries that may not have traditionally been considered high risk, for example, a recent investigation by the consultancy Verité, found that forced labour practices were widespread in the Malaysian electronics industry.[20] Twenty-eight percent of all workers in the study sample were found to be in situations of forced labour. Many large international brands source their electronic components from Malaysia[21] which means products such as televisions, computers and smartphones sold in the US, UK and other EU countries may have elements produced by forced labour.

The Malaysian palm oil sector has also been identified by the US Department of Labor as an industry where forced labour occurs.[22] Palm oil production affects many global agribusiness and food companies and Malaysia and Indonesia account for almost 90% of global production.[23] The allegations of forced labour have led to questions being raised about whether Malaysia should be included in the Trans-Pacific Partnership, a US-led free trade deal with 12 key countries across south-east Asia.[24]

Cleaning up supply chains: The regulatory approach

Legislators and regulators have been active in trying to tackle the risks of forced labour in businesses and supply chains. In 2014, governments across the globe committed to combat forced labour through a new international agreement, the ILO Forced Labour Protocol.[25] Various jurisdictions have implemented or revised legislation to tackle forced labour. Investors need to be aware of the relevant legislation and the requirements companies now face. Key legislation includes the California Transparency in Supply Chains Act (2010), the UK's Modern Slavery Act (2015) and the EU Non-Financial Reporting Directive (2014).

> "Investors can play a valuable role in protecting vulnerable workers by pushing for transparency and engaging companies to improve policies and practices.

All of the legislation requires increased transparency which will force companies to say what they are doing to address the risk of forced labour occurring within their supply chains. In practice, cleaning up supply chains depends heavily on the level of government enforcement and the commitment of the business community to comply with regulation. To date companies' reporting compliance has been highly variable, leaving a clear role for investors to raise the issue of forced labour in supply chains so as to drive up compliance with these new laws.

Brazil's "Dirty List"

Forced labour has been prevalent in Brazil for many years, mainly within the country's extensive agricultural, construction and garment industries. Brazil makes up an important emerging market for many investors as well as a sourcing location for many multinational companies, such as Nestlé.

Since the 1990s the Brazilian government has been active in addressing forced labour not only through legislation but with investigating incidences of forced labour and prosecuting companies accordingly. One of the strongest tools was Brazil's "Lista Suja: The Dirty List" which named companies that had been fined over the previous two years for using forced labour.

Companies on the list were effectively blacklisted, with state-backed banks unable to offer them loans, and sales of their products restricted.[26] The process of identifying companies to be included in the list was considered to be very thorough and credible and the list was widely used in the business community to spur responsible sourcing. The last published Dirty List included 609 companies and individuals.[27]

As a result of the government's focus on eradicating forced labour, it has been reported that 44,000 workers have been rescued from forced labour between 1995 and 2012 with the victims receiving a total of $35 million in compensation.[28]

But in late 2014, the Supreme Court ordered the labour ministry to suspend publication of the list, following a lawsuit filed by the Associação Brasileira de Incorporadoras Imobiliárias (Abrainc), the real estate developer's association, which represented many of the organisations on the list. Abrainc argued the list was unconstitutional. The Dirty List continues to be suspended. While there have been attempts to recreate the list most notably by the NGO Repórter Brasil, this resource has been effectively closed due to corporate lobbying.

California's Transparency in Supply Chains Act

The main US law specifically targeting forced labour in supply chains is the California Transparency in Supply Chains Act (SB 657) which came into effect in January 2012.[29] SB 657 requires companies to publish a disclosure statement that indicates the efforts they are making to eradicate human trafficking and slavery from their supply chains. The businesses covered by the Act are retailers or manufacturers that do business in California and have annual worldwide gross receipts exceeding $100 million. In April 2015, California's Attorney General published guidance on how to comply with the Act.[30] However, research published by KnowTheChain in September 2015, found that out of a sample of 500 companies, 47% still do not disclose adequate information.[31] Further details of the Act can be found in Appendix 1.

UK Modern Slavery Act

Following the implementation of SB 657, supply chain transparency regulation has also been introduced in the UK. The Modern Slavery Act (MSA) applies to all large businesses that carry out business in the UK.[32] As of October 2015, companies with a turnover of £36 million or more are required to publish an annual slavery and human trafficking statement of the steps they have taken to ensure that slavery and human trafficking are not taking place in their business or in any of their supply chains.[33] The requirement to publish a statement only applies for financial years ending on or after 31 March 2016, but companies should already be preparing their approach to compliance. A review conducted by the Business & Human Rights Resource Centre of 75 early disclosers found that the majority of companies' statements do not yet fully comply with the Act's requirements.[34] Only 22 statements met the minimum requirements. Further details on the Act's requirements can also be found in Appendix 1.

EU Non-Financial Reporting Directive

Introduced in November 2014, by the Council of Europe and EU Parliament, eligible companies, who are required to produce strategic reports, will also have to include more specific and detailed information on human rights (among other things) than would have previously been the case. The directive aims to improve the transparency of EU companies in terms of non-financial information, requiring companies with more than 500 employees to disclose relevant social and environmental information in their annual report. The new requirements will come into force during 2016, with companies required to publish their first reports from 2017.

Emerging Legislation

Whilst California's SB 657 applies at the state level, there is a US federal law in the pipeline, as described in the Business Supply Chain Transparency on Trafficking and Slavery Act of 2015 (H.R. 3226/S.1968), which will require companies to make disclosures similar to those required by SB 657.[35] The proposal was introduced to the House of Representatives on 27 July 2015 and is being considered.

Other related legislation include the US Executive Order (13627) Against Slavery and Trafficking which is intended to address forced labour embedded in products procured by the US Government; the US Foreign Corrupt Practices Act and the Customs and Trade Enforcement Act; the UK Bribery Act; the UN Guiding Principles for Business and Human Rights which encourages human rights due diligence and the OECD Guidelines on Multinational Enterprises. There have also been calls for supply chain legislation in other jurisdictions e.g. Canada and Australia.[36,37]

With the Olympic Games due to be held in Brazil in 2016, there are concerns that the weakening of legislative tools amidst a deteriorating economic background will result in a surge of worker exploitation before the Games.

Risks for investors

Forced labour is a global problem affecting many industries. It is one of several human rights risks that can have widespread impacts on companies' operations and business development. These impacts include supply chain disruptions, financial penalties, legal and compliance issues, reputational damage, reduced consumer demand and lack of employee engagement.[38] Supply chain disruptions typically reduce productivity and result in unanticipated delays in production. Together with the loss of trust in the company brand these disruptions could impact directly on the revenue of the company.

For long-term investors, in particular, the main financial implications stem from legal and reputational risks. The regulatory approach facilitates transparency and investors should assess the possible risks and be vigilant in managing these risks within their portfolios.

Legal risks

Although larger companies are subject to the reporting requirements outlined in the previous section, smaller companies also face risks in their supply chains. Any company can be prosecuted if forced labour is found in their organisation, regardless of size. Most cases of forced labour are pursued by authorities as criminal matters, and companies could face severe financial penalties. Investors are generally not exposed directly to fines imposed by regulators but would be exposed to the impact these fines would have on company operations and profits.

Legal risk can also arise from lawsuits raised by employees and other stakeholders. Traditionally the actual victims of forced labour have had limited access to financial compensation. This is changing, with increasing recognition that victims of forced labour can bring lawsuits against the companies that conduct the exploitation.[39]

In 2015, US marine-services company Signal International LLC lost the first of a dozen civil lawsuits filed against it by Indian citizens who were misled about the opportunity to obtain good jobs in the U.S. repairing oil rigs and equipment damaged by Hurricane Katrina, but instead became victims of forced labour.[40] Signal was ordered to pay $20 million in compensation and later filed for bankruptcy. Major public pension funds, the Teachers' Retirement System of Alabama and the Employees' Retirement System of Alabama owned more than 47% of Signal, which was based in Mobile, Alabama. The pension funds invested in Signal before the company's labour trafficking came to light in lawsuits and at the time of the bankruptcy filing stood to lose approximately $70 million. More recently, in March 2016, the Thai processing factory Golden Prize Tuna Canning agreed to pay $1.3 million in compensation to migrant workers who had been subject to labour abuses.[41] The agreement was reached following a strike by over 1,000 affected workers which led to negotiations being carried out between company representatives, government officials, military officers and migrant worker leaders. Thailand is the third largest exporter of seafood worldwide as such their fish and fishery products affect a significant proportion of multinational supply chains.

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In the US, a consumer raised a lawsuit against a company due to alleged human rights violations in their supply chain.[42] The case, Sud v. Costco Wholesale Corp. alleged that Costco and its suppliers sold prawns from Thailand derived from a supply chain that included slavery and human trafficking. The case was subsequently dismissed as the prawns in question were found to be sourced from Vietnam and Indonesia, not Thailand.[43] Further lawsuits have followed against Nestlé, Mars, and their Thai exporters; while all have been dismissed, it demonstrates the growing awareness of consumers about this issue and potential legal risks. Additionally, it highlights the benefits of transparency: the court found that Nestlé had been sufficiently open about the steps it was taking to mitigate its supply chain risks, and had therefore not misled its consumers.

Reputational risks

Due to the international attention that accusations of forced labour can generate, companies that do not take adequate steps to address the risks within their business and supply chains, are exposed to reputational risks in a number of ways. There is the risk of damage to the company brand and loss of consumer trust, with consequent threats to revenue. There is also the potential for increased regulatory scrutiny and the risk of a damaged company and sector reputation from the regulator's perspective.

A company's reputation and the value of its shares are at risk, particularly if it operates in a consumer-facing sector or country that is already under scrutiny in relation to forced labour issues. Consumer-facing companies can also be affected by allegations against suppliers, and be required to respond to those, underlining the need to understand supply chains and manage risks.

In May 2016, U.S. Customs and Border Protection seized imports of stevia, a low calorie sweetener imported by PureCircle, after it obtained information that the products were made by convict labour in China.[44] PureCircle, an LSE listed company, subsequently released a statement disputing the allegations, but also indicated that "there could be some impact on sales and profit in the current financial year". On release of the statement, shares in PureCircle dropped by 10%. The seizure of the goods affected not only PureCircle but also companies further along the supply chain. As stevia is increasingly used by leading beverage companies, Coca-Cola was forced to respond to PureCircle's news and confirmed that it had not received stevia produced by forced labour, and company policy prohibited the use of forced labour in its operations and supply chains.

In 2005, the Environmental Justice Foundation exposed child labour and forced labour practices in the state controlled production of cotton in Uzbekistan.[45] Uzbekistan exports 70% of its cotton, with China being the biggest purchaser followed by Bangladesh. As a result Uzbek cotton made its way into the supply chains of European and US clothing retailers. According to the Cotton Campaign,[i] companies purchasing Uzbek cotton allegedly helped to support the Uzbek regime, along with banks that provided financial support to importers of Uzbek cotton.[46] The Cotton Campaign thereby called upon companies to remove Uzbek cotton from their supply chains. Companies who weren't proactive in addressing this issue were subject to the risk of a tarnished reputation.

Additional allegations against companies in high risk sectors are likely to emerge as the media and civil society pay particular attention to these issues, and transparency legislation produces new information. For example, investigations by the Associated Press (AP) and the Guardian helped to increase scrutiny on the seafood industry and the companies involved.

Companies that operate without a clear understanding of their supply chains remain vulnerable to reputational damage, which could also affect the reputation of entire sectors as was the case with the food industry during the horsemeat scandal in 2013 and the fashion industry after the collapse of Rana Plaza in Bangladesh. Forced labour brings the same kind of risk to companies and their reputations.

Guidance for investors

1. Know your investments – Seek out comprehensive information regarding company practices and policies.
2. Carry out a risk assessment – Publicly available benchmarks, reporting statements and other tools can help investors identify high risk industries and companies.
3. Minimise your risk – Encourage at-risk companies to adopt practices that minimise risk, considering divesting from high risk companies that do not make adequate commitments to improve or manage risk.
4. Maximise your opportunities – Understand the market opportunities presented by companies that perform well against their peers.
5. Keep up to date – There is a lot of movement in the legislative arena. Keep up to the date on the emerging legislation and the requirements companies will face.
6. Have a positive impact – Engage with policymakers as well as companies to press for best practice. Support collaborative investor initiatives to maximise impact. Engage with companies to improve their policies and practices as reflected in the relevant benchmarks.

i | Cotton Campaign, a global coalition of labour, human rights, investor and business organisations was established to improve human rights in Uzbekistan, particularly within the cotton sector

The role for investors

A focus on tackling forced labour protects vulnerable workers and helps prevent human rights abuses. Investors can play a valuable role in defeating forced labour by encouraging companies to be open about their attempts to combat these persistent problems. Greater transparency enables stakeholders, including investors, to create a benchmark for firms. Leaders would benefit and laggards would feel pressure to improve.

Risk assessment

To facilitate effective engagement, investors should conduct a risk assessment prior to engaging with companies directly. Some investors are already taking steps to tackle the issue, e.g. Norges Bank Investment Management has strengthened its focus on human rights by polling their portfolio companies on slavery issues to make sure the companies it invests in follow ethical standards.[47] It is expected that other investors will follow suit.

The US Department of Labor maintains a list of goods and their source countries which it has reason to believe are produced by child labour or forced labour in violation of international standards. It is useful for investors to be aware of the high risk goods that could enter companies' supply chains. The 2014 list is included in Appendix 3.

Investors can also monitor allegations and incidents related to human rights, including forced labour, against specific companies, as well as companies' responses on the Business & Human Rights Resource Centre website: https://business-humanrights.org/.

Asset owners can question asset managers to understand risks within their portfolios.

Questions for asset managers:

- What proportion of the investment portfolio is invested in industries that are at high risk for forced labour?
- What is your approach to engaging with companies on the issue of forced labour?
- Do you monitor companies' compliance with current legislation on forced labour?
- Do you engage with policy makers on the issue of forced labour?

Integration of benchmarking into investment decisions

Benchmarks on companies' policies, processes and performance provide investors with information to direct investments towards companies that perform well against human rights standards and away from those who do not.

Investors who wish to consider the risks of forced labour in their decision making processes have often been faced with the challenge of what is best practice and what sources of data they can rely on. To fill this gap, KnowTheChain is working to produce benchmarks for companies in various sectors on their efforts to address forced labour in their supply chains. The benchmarks will assess companies on seven themes: commitment and governance; traceability and risk assessment; purchasing practices; recruitment; worker voice; monitoring; and remedy.[48] The benchmarks require companies to show, for example, that they have engaged with stakeholders such as trade unions on the issue of forced labour; they have demonstrated an awareness of the labour risks associated with short-term contracts and other cost reduction measures; and that they have assessed the risk of forced labour at potential suppliers before entering into contracts.

> “ With an average score of just 39/100, the ICT sector as a whole must do far more to address forced labour.

The first sector assessed was the Information and Technology (ICT) sector with the benchmark released in June 2016 followed by two further benchmarks on Apparel & Footwear, as well as Food & Beverage later in the year. The ICT benchmark assessed 20 companies including Apple, HP and Microsoft.

In addition to benchmarks which dive deep on specific issues, there are emerging cross-cutting assessments of company human rights performance; The Corporate Human Rights Benchmark (CHRB) is currently working on the first-ever ranking of the world's largest publicly listed companies on their human rights performance.[49] It will rank the top 500 globally listed companies on their human rights policy, process and performance. The initial ranking of the first 100 companies is expected to be available in November 2016.

KnowTheChain benchmarks

To drive awareness and continued corporate action on the issue of forced labour in supply chains, this year KnowTheChain will be assessing corporate policies and practices across three sectors: information and communications technology (ICT), food & beverage, and apparel & footwear.

Investors can use the benchmarks to inform their investment decisions, as well as their active ownership strategies, such as shareholder resolutions, individual and collaborative engagement. The benchmark identifies leading and lagging companies, and provides an analysis of companies' strengths and weaknesses in comparison to their peers. It also provides a framework of policies and practices needed to manage forced labour, and leading practices investors can point companies towards. The benchmark can be used to engage policy makers, as it provides an overview of corporate action on forced labour from companies in different countries.

KnowTheChain's 2016 ICT benchmark identified that with an average score of just 39/100, the ICT sector as a whole must do far more to address forced labour. It is positive to see that ICT companies have taken steps to trace their supply chains beyond their first-tier suppliers. However, further efforts are needed from companies to assess forced labor risks, address the risk of exploitation through the recruitment process and ensure workers have a voice throughout their supply chain.

Engaging with companies

Companies who choose to embed positive human rights practices in their core operations are likely to provide higher quality investment opportunities and improved investor returns. Investors can play a key role in encouraging companies to adopt best practice in reporting, risk management and supply chain management. Best practice in reporting involves companies examining their supply chain practices and making disclosures that are tailored to those practices. The California Attorney General's resource guide can help companies draft and modify their statements to comply with the California Transparency in Supply Chains Act. The guidance provides model disclosures and is clear that best practice involves more than just "oblique and vague statements".[50]

> "As a result of this initiative, more than 200 companies including Tesco, Wal-Mart, Marks & Spencer have committed to not sourcing cotton from Uzbeskistan.

Investors can also encourage companies to adopt practices that minimise risk and consider divesting from those who following engagement do not make adequate commitments to improvement. The Interfaith Center on Corporate Responsibility (ICCR), a collaboration of over 300 shareholder organisations, works with companies across a broad range of industries, to eradicate human rights abuses in their operations and supply chains. In 2013, the ICCR produced a statement of principles and recommended practices to assist companies in addressing human trafficking and modern slavery, and continues to engage with companies directly on these issues.[51]

Through asking strategic questions, investors could gain greater understanding of company practices.

Questions for companies:

- How do you integrate forced labour considerations into your business strategy and planning?
- What steps are you taking to identify and manage the risk of forced labour in your direct operations and supply chains?
- What steps have you taken to increase transparency in this area?
- What training do you provide to your employees on forced labour?
- How do you engage with affected stakeholders?

Filing and supporting shareholder resolutions

Another form of engaging with companies is raising and/or supporting shareholder resolutions on human rights issues. In 2013, McDonald's faced a shareholder resolution that would have required the company to report on its procedures for identifying and analysing human rights risks in its operations. The resolution specifically questioned the issue of underage labour and McDonald's Supplier Code of Conduct which forbids the use of forced labour. The resolution received 28% of votes cast, not enough to pass, but it was effective in bringing the issue to top-level consideration in the company.

In 2015, shareholder resolutions related to human rights issues were raised with US companies including Amazon, Expedia, Facebook, Sears Holdings, Kroger, Urban Outfitters and Staples.[52] In 2016, ICCR members filed 20 human rights and human trafficking resolutions, a slight increase over the previous year.[53]

Collaborative engagement

Investors can also influence company behaviour through collaborative engagement via established investor networks and other forums. Following the investigation into Uzbek cotton, the Responsible Sourcing Network (an initiative of As you Sow) established the Cotton Pledge guidelines for companies to avoid forced labour systems such as those in Uzbekistan and more recently Turkmenistan.

As a result of this initiative, supported by institutional investors, human rights organisations and others, more than 200 companies including Tesco, Wal-Mart, Marks & Spencer, have committed to not sourcing cotton from Uzbekistan.[54,55]

The guidelines call on companies that use cotton in their products to "Publicly commit to avoid cotton from Uzbekistan and Turkmenistan while it is produced with state-orchestrated forced labour. For Uzbekistan, companies should sign the Cotton Pledge "to not knowingly source Uzbek cotton for the manufacturing of any of our products until the Government of Uzbekistan ends the practice of forced child and adult labour in its cotton sector"."[56] Other steps involve communicating the policy effectively with suppliers, removing the biggest Uzbek cotton traders from their supplier lists and checking compliance with the policy. The final step is to provide documentation of all the prior steps the company has taken.

> "Following PRI coordinated investor engagement, labour reporting and practices improved at 23 of the 34 target companies.

Another example is the collaborative investor engagement on labour practices in agricultural supply chains, coordinated by the Principles for Responsible Investment (PRI) from 2013-2015.[57] Over the course of 16 months, investors engaged with 34 large global food and beverage companies on labour related issues such as forced labour, with the aim of improving areas ranging from supplier code of conduct, to traceability and grievance mechanisms. An analysis at the end of the engagement showed improvements at 23

Supporting Sustainable Development

Investors can play an important role in supporting companies' progress in the area of human rights. The eradication of forced labour has been enshrined in the Sustainable Development Goals (SDGs), which were ratified by 193 governments at the UN in 2015. SDGs can therefore act as another lever to assist in managing forced labour issues.

Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

8.7 Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.

of the companies. One of the largest areas of improvements was governance, i.e. having high-level internal accountability for implementation of social responsibility goals. Improvements could also be seen in the areas of purchasing practices – companies are both taking action in case of supplier non-conformance, as well as providing capacity building to their suppliers and incentivising supplier best practice. Further it was positive to see that a few companies now report on supplier names and remediation activities, two areas none of these companies had reported on in 2013. PRI continues to coordinate investor engagement on the topic.

Another pathway for collaborative engagement is on the upcoming human rights benchmarks. Collaborative engagement initiatives informed by these benchmarks would be an effective mechanism for investors to encourage best practices and challenging laggards on their performance relative to their peers.

Engaging with policy makers

There is a lot of movement in the legislative area. Investors need to be aware of emerging legislation and the requirements companies will face, particularly as companies may be exposed to fines or sanctions for poor practices.

> "Investors played a key role in pressing parliament for the enactment of the UK Modern Slavery Act

In addition, investors can be very effective at engaging with policymakers directly to ensure that the regulatory environment supports ending forced labour. For example, investors played a key role in pressing parliament for the enactment of the UK Modern Slavery Act. In 2014, a group of 21 investors coordinated by Rathbone Greenbank Investments, with a combined total of £940 billion in assets under management co-signed a statement in support of the inclusion of a 'Transparency in Supply Chains' clause in the UK Modern Slavery Bill (now the UK Modern Slavery Act 2015).[58] The investors also supported the clause being applied to companies with an annual turnover of more than £36 million as opposed to a higher threshold. As a result of investor support, these items became part of the Act.

Similarly, investors are engaging with policymakers on the proposed US Business Supply Chain Transparency on Trafficking and Slavery Act of 2015. Over 100 investors representing public pension funds, unions, faith institutions, and socially responsible asset management firms representing over $1 trillion USD in assets under management, sent a statement to the U.S. Senate Committee on Banking, Housing and Urban Affairs, and the House of Representatives Financial Services Committee urging strong bi-partisan support for the proposed law.[59]

Conclusion

Transparency is essential for markets to function satisfactorily. Legislation in the area of business and human rights, including on forced labour, is a positive step but it is only as effective as its implementation. If companies are not pressed to report their steps to address human right abuses, relevant information may be withheld from investors and consumers who may unknowingly support these transgressions. It is promising that investors are engaging with policymakers on forced labour, but there is scope for more direct involvement with companies. In light of the new and emerging reporting requirements, it is timely for investors to engage more systematically with companies to address forced labour, and emerging tools such as company benchmarks can support investors in doing so.

Forced labour is a form of exploitation that many thought had been eradicated. Sadly, this is not the case. However, by understanding the issue and the risks, and engaging with companies and policy makers, investors can play a significant part in finally ridding the world of this unacceptable practice.

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This briefing was designed by Colette G. St-Onge, Digital Campaigns Officer, ShareAction.

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About ShareAction

ShareAction (Fairshare Educational Foundation) is a registered charity that promotes Responsible Investment practices by pension providers and fund managers. ShareAction believes that Responsible Investment helps to safeguard investments as well as securing environmental and social benefits.

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About KnowTheChain

KnowTheChain is a resource for businesses and investors who need to understand and address forced labour abuses within their supply chains. It benchmarks current corporate practices, develops insights, and provides practical resources that inform investor decisions and enable companies to comply with growing legal obligations while operating more transparently and responsibly.

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Appendix 1 - Legislation

California's Transparency in Supply Chains Act

California's Transparency in Supply Chains Act (SB 657) requires companies to disclose through a link on their website's homepage their efforts to eradicate slavery and human trafficking from their direct supply chain for tangible goods offered for sale. If a company subject to the law has no website, it must provide written disclosures within 30 days of receiving a written consumer request for the information. The Act does not specify how often companies need to update their disclosures.

Companies are required to post disclosures related to five specific areas: verification, audits, certification, internal accountability, and training. The disclosures must include at a minimum the extent that the company:

1. engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery, and if this verification was not conducted by a third-party, that fact must also be stated;
2. conducts audits of suppliers to evaluate their compliance with company standards for trafficking and slavery in supply chains, and if this audit was not independent and unannounced, that fact must also be stated;
3. requires direct suppliers to certify that materials incorporated into the product comply with the slavery and human trafficking laws of the countries in which they are doing business;
4. maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking;
5. and provides training on slavery and trafficking to employees and management with direct responsibility for supply chain management.

The California Attorney General has exclusive authority to enforce SB 657 and may file a civil action against non-compliant companies.

UK Modern Slavery Act

To comply with the UK Modern Slavery Act (MSA), businesses must produce an annual statement, approved by the board of directors, that describes the steps they have taken to ensure that slavery and human trafficking is not taking place in any of their supply chains or their own business, or they must disclose that they have taken no such steps. The MSA is not prescriptive with respect to the type of information to be included in the statement, but it suggests the following items:

- the organisation's structure, its business and its supply chains;
- its policies in relation to slavery and human trafficking;
- its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- its effectiveness in ensuring that slavery and human trafficking is not taking place in its business and supply chains, measured against such performance indicators as it considers appropriate;
- the training about slavery and human trafficking available to its staff.

The MSA is broader than SB 657 in four respects[60]: (i) there is no minimum 'footprint' threshold for 'carrying out business', (ii) it applies to all sectors, not just retail and manufacturing, (iii) it applies to both the sale of goods and the supply of services, and (iv) the turnover threshold of £36 million is lower. However, the reporting obligation is broadly similar as for example SB 657 and the MSA do not require companies to report on instances of possible forced labour in its supply chain. Rather, they both simply require a company to disclose what, if any, steps it has taken to ensure there is no slavery in its supply chains. Sanctions for non-compliance with the MSA are limited to the commencement of civil proceedings for an injunction compelling the organisation to prepare a statement.[61] The Act and associated guidance encourage consumers, investors, and NGOs to hold companies to account where they are not taking credible action.

Appendix 2 - Resources and good practice

In addition to the work by governments, organisations including the Business and Human Rights Resource Centre, Anti-Slavery International, the CORE coalition, the ICCR, STOP THE TRAFFIK and KnowTheChain offer substantial information that can help companies and investors understand forced labour risks and take effective steps to address them.

Anti-Slavery International	http://www.antislavery.org
Business & Human Rights Centre	http://business-humanrights.org
CORE Coalition	http://corporate-responsibility.org
Interfaith Center for Corporate Responsibility (ICCR)	http://www.iccr.org/our-issues/human-rights/resources
International Labour Organisation (ILO)	http://www.ilo.org
KnowTheChain	http://www.knowthechain.org
Resources for Responsible Recruitment (Verité initiative)	http://www.responsiblerecruitment.org/resources
STOP THE TRAFFIK	http://www.stopthetraffik.org

Appendix 3 - US Department of Labor: List of goods produced by forced labor

Afghanistan	Bricks
Angola	Diamonds
Argentina	Garments
Bangladesh	Dried Fish
Benin	Cotton
Bolivia	Brazil Nuts/Chestnuts • Cattle • Corn • Peanuts • Sugarcane
Brazil	Cattle • Charcoal • Garments • Sugarcane • Timber
Burkina Faso	Cotton • Gold
Burma	Bamboo • Beans • Bricks • Jade • Palm Thatch • Physic Nuts/Castor Beans • Rice •Rubber • Rubies • Sesame • Shrimp • Sugarcane • Sunflowers • Teak
China	Artificial Flowers • Bricks • Christmas Decorations • Coal • Cotton • Electronics • Fireworks • Footwear • Garments • Nails • Toys
Colombia	Coca
Cote d'Ivoire	Cocoa • Coffee
Congo, Dem. Rep	Cassiterite • Coltan • Gold • Wolframite
Dominican Republic	Sugarcane
Ethiopia	Hand-Woven Textiles
Ghana	Fish
India	Bricks • Carpets • Embellished Textiles • Garments • Hybrid Cottonseed• Rice
Jordan	Garments
Kazakhstan	Cotton
Malawi	Tobacco
Malaysia	Electronics • Garments • Palm Oil
Mali	Rice
Nepal	Bricks • Carpets • Embellished Textiles • Stones
Niger	Cattle
Nigeria	Cocoa • Granite • Gravel
North Korea	Bricks • Cement • Coal • Gold • Iron • Textiles • Timber
Pakistan	Bricks • Carpets • Coal • Cotton • Sugarcane • Wheat
Paraguay	Cattle
Peru	Brazil Nuts/Chestnuts • Gold • Timber
Russia	Pornography
Sierra Leone	Diamonds
South Sudan	Cattle
Tajikistan	Cotton
Thailand	Fish • Garments • Shrimp
Turkmenistan	Cotton
Uzbekistan	Cotton
Vietnam	Garments

Data extracted from the U.S. Department of Labor's List of Goods Produced by Child Labor or Forced Labor (2014): http://www.dol.gov/ilab/reports/pdf/tvpra_report2014.pdf

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