ACAMS®

LIECHTENSTEIN INITIATIVE
FINANCE AGAINST SLAVERY & TRAFFICKING

Fighting Modern Slavery and Human Trafficking

Online Training Certificate
Reading Materials
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ACAMS / FAST FIGHTING MODERN SLAVERY AND HUMAN TRAFFICKING ONLINE TRAINING CERTIFICATE

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Introduction

"As the world's bankers, investors, insurers and financiers, financial sector actors have unparalleled influence over global business. The financial sector has a unique role to play in investing in and fostering business practices that help end modern slavery and human trafficking."[1]

Generating over USD 150 billion each year, modern slavery and human trafficking are the third largest source of criminal profits globally. Much of that profit moves through the global financial system. As a result, there are growing expectations and requirements on the financial sector to identify, report, mitigate and even remedy modern slavery and human trafficking risks. This online certificate course, the first of its kind, provides an introduction to the steps that financial sector actors should take to meet these expectations. It covers anti-money laundering and countering the financing of terrorism obligations, ESG, human rights and enterprise risk managements, and draws on insights from industry leaders and recent cases.

The certificate course is co-produced by ACAMS and the Liechtenstein Initiative for Finance Against Slavery and Trafficking (FAST). The FAST Secretariat served as the lead author for these course materials.

For more information

The mission of **ACAMS** is to advance the professional knowledge, skills, and experience of those dedicated to the detection and prevention of money laundering around the world, and to promote the development and implementation of sound anti-money laundering policies and procedures. ACAMS achieves its mission through:

- Developing standards for the detection and prevention of money laundering and terrorist financing;
- Educating professionals in private and government organizations about these standards and the strategies and practices required to meet them;
- Certifying the achievements of its members; and
- Providing networking platforms through which AML/CFT professionals can collaborate with peers throughout the world.

ACAMS sets professional standards for anti-financial crime practitioners worldwide and offers them career development and networking opportunities. In particular, ACAMS seeks to:

- Help AML professionals with career enhancement through cutting-edge education, certification, and training. ACAMS acts as a forum where professionals can exchange strategies and ideas.
- Assist practitioners in developing, implementing and upholding proven AML practices and improve Global Standards and best practices in the industry.

The **Liechtenstein Initiative for Finance Against Slavery and Trafficking** (FAST) – is a public-private partnership mobilizing the financial sector against modern slavery and human trafficking, formed in response to calls from the G7, the G20, the United Nations General Assembly and the United Nations Security Council for governments to partner with the private sector to address modern slavery and human trafficking. In a first phase, from 2018 to 2019, the Initiative convened a **Financial Sector Commission** on Modern Slavery and Human Traffiking, which published the **FAST Blueprint** – a collective action framework for the financial sector to accelerate action to end modern slavery and human trafficking – in September 2019 at the UN General Assembly. In a second phase, a FAST Secretariat based at the **United Nations University Centre for Policy Research** (UNU-CPR), an independent think tank within the UN system, is promoting implementation and dissemination of this Blueprint. For more information, see www.fastinitiative.org.

Learning Objectives

The objectives of the ACAMS/FAST Fighting Modern Slavery and Human Trafficking Certificate are to improve:

- Understanding of modern slavery and human trafficking and their financial footprints;
- Understanding of emerging industry and statutory expectations relating to modern slavery and human trafficking risks;
- Identification of the financial footprints of modern slavery through transactions analysis, red flags and key indicators;
- Management of modern slavery risks through due diligence, transactions analysis, reporting and monitoring, engagement, divestment and derisking;
- Strengthening remedy and other responses through partnerships between industry, law enforcement, civil society and survivors.

About These Reading Materials

These reading materials provide information and resource links to a variety of source material to enlarge participant's knowledge on Modern Slavery and Human Trafficking issues beyond the course content. The guide is not intended to be an expansive collection of documents or database, but an AML practitioner's guide of selected materials which participants may use to supplement the online interactive course material.

The course was prepared by the FAST Secretariat and ACAMS through consultation with a Task Force, comprising:

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- Sara Crowe, *Polaris Project*
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1. What is modern slavery?

1.1. Isn't slavery a thing of the past?

Slavery is illegal. Article 4 of the Universal Declaration of Human Rights states simply: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." Under international law, slavery is illegal at all times, in all places. Yet it is all around us. According to the International Labour Organization (ILO), some 40.3 million people were enslaved in 2016, including 24.9 million subjected to illegal forced labour. Astonishingly, that implies that around 1 in every 185 people alive in 2016 was enslaved that year.[2]

Slavery is present around the globe. While most victims are estimated to be found in Asia and the Pacific, the rate of prevalence is estimated to be highest in Africa. In 2016, an estimated 4.1 million people experienced state-imposed forced labour, 4.8 million people experienced sexual exploitation, and 16 million experienced forced labour exploitation in the private economy. The latter occurred in numerous settings, including domestic work (24 per cent), construction (18 per cent), manufacturing (15 per cent), and agriculture, forestry and fishing (11 per cent).[3]

These are not the only astonishing numbers. Modern slavery is thought to generate around USD 150 billion in earnings annually.[4] This makes modern slavery one of the three most lucrative forms of global organized crime, next to drug trafficking and the trade in counterfeit goods.[5] Much of this dirty money flows through the global financial system.

1.2. Defining modern slavery

Modern slavery is an umbrella term that covers a set of specific legal concepts including forced labour, debt bondage, chattel slavery and other slavery-like practices, as well as human trafficking into one of those conditions of exploitation. Slavery lives on wherever we find situations of labour, domestic and commercial sexual exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception and/or abuse of power.[6] Put another way, even if it is now illegal to 'own' another person, slavery persists where one person exercises the powers (if not the authority) of ownership.[7]

As an umbrella term, modern slavery can encompass a variety of behaviours that are prohibited by criminal law. These range from kidnapping, assault and fraud, to rarer violations, such as slavery, forced labour, debt bondage, servitude, forced marriage and human trafficking. The definition of relevant offences varies from jurisdiction to jurisdiction. Some jurisdictions, such as the United Kingdom (*Modern Slavery Act* (2015)) and Australia (*Modern Slavery Act 2018* (Cth); and *Modern Slavery Act 2018* (NSW)), specifically define the concept of 'modern slavery' in relevant criminal law. Most, however, do not. Instead they criminalize a range of other forms of behaviour.

For more information

The Anti-Slavery in Domestic Legislation database (www.antislaverylaw.ac.uk) provides a database of all domestic legislation dealing with modern slavery and human trafficking offences, as well as signatures and ratifications of international treaties. The database reveals which states have criminalized which forms of conduct covered by the term 'modern slavery'.

Delta 8.7 (www.delta87.org), a Global Online Knowledge Platform, provides country dashboards that provide detailed statistical information about both incidence of different forms of modern slavery and government response.

Slavery

Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. Someone is enslaved when they are treated as if they were owned by another person.[8] Slavery was defined in the 1926 Convention Against Slavery.[9] A 1956 Supplementary Convention defined a range of institutions and practices similar to slavery, including debt bondage, serfdom and forced marriage.[10]

By most estimates, **debt bondage** is the most prevalent form of modern slavery. It is a status or condition where one person has pledged their labour or service (or that of someone under their control), in circumstances where the fair value of that labour or service is not reasonably applied to reducing the debt or length of debt, or the extent and nature of the service are not limited or defined.

Another important form of modern slavery is **forced marriage**. This was also defined by the 1956 Supplementary Convention. It involves marriage where at least one party does not consent.

Forced labour

Forced labour was defined by the ILO Forced Labour Convention, 1930 (No. 29) as "all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily." Typically, people are recruited under false pretences or put into labour bondage because of debt or other forms of coercion. This excludes compulsory military service, normal civic obligations, penalties imposed by a court action taken in an emergency, and minor communal services. 'Work' is typically understood broadly, to include both formal and informal work, and commercial sexual exploitation.

The Convention on Forced Labour was further supplemented with the ILO Abolition of Forced Labour Convention, 1957 (No. 105), which extends the set of reasons for which the imposition of forced labour is prohibited, and a 2014 Protocol (P029), which clarifies states' commitments in relation to prevention of forced labour.

Human Trafficking

Human trafficking, or trafficking in persons, was defined in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, an international instrument connected to the UN *Convention against Transnational Organized Crime*. The Protocol is sometimes referred to as the 'Palermo Protocol' because it was agreed in Palermo, Italy.
It defines trafficking in persons as

> *the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*

Trafficking in persons thus involves a transition of a person into a form of prohibited exploitation, including slavery, forced labour, debt bondage or forced marriage. It can involve physical movement, but does not have to. And it also encompasses removal of organs.

The Palermo Protocol makes clear that coercion, fraud, deception and other forms of pressure outlined in the definition above negate any apparent consent on the part of the victim.
And it also makes clear that children cannot consent to such exploitation.

For more information

More information about how the Palermo Protocol has been implemented worldwide is available at the Human Trafficking Knowledge Portal hosted by the UN Office on Drugs and Crime: https://sherloc.unodc.org/cld/v3/htms/.

Worst forms of child labour

The "worst forms of child labour" are defined by ILO Convention No. 182 (1999), as

a. all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
b. the use, procuring or offering of a child for prostitution, for the production of pornography, or pornographic performances;
c. the use, obtaining or providing of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
d. work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

For more information

More information about the worst forms of child labour see the ILO International Programme on the Elimination of Child Labour (IPEC): https://www.ilo.org/ipec/facts/WorstFormsofChildLabour/lang--en/index.htm%20worst%20forms%20of%20child%20labour

Key international anti-slavery and anti-trafficking provisions

Slavery

Slavery Convention (1926)[11]

UN Supplementary Convention on the Abolition of Slavery (1956)[12]

Forced labour

ILO Declaration on Fundamental Principles and Rights at Work, June 1998.[13]

ILO Forced Labour Convention, C029 (1930).[14]

ILO Protocol to the Forced Labour Convention, P029 (2014).[15]

ILO Abolition of Forced Labour Convention, C105 (1957).[16]

ILO Minimum Age Convention, C138 (1973).[17]

ILO Worst Forms of Child Labour Convention, C182 (1999).[18]

Human Trafficking

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) (2000)[19]

UN Convention on the Rights of the Child (1989)[20]

UN Optional Protocol to the Convention on the Rights of the Child: Sale of Children, Child Prostitution and Child Pornography (2000)[21]

International Humanitarian Law

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relation to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977), Article 4.[22]

UN Optional Protocol to the Convention on the Rights of the Child: Involvement of Children in Armed Conflict (2000).[23]

International Criminal Law

Rome Statute of the International Criminal Court (1998), Articles 7 and 8.[24]

Human rights law

UN Universal Declaration of Human Rights (1948), Article 4.[25]

International Covenant on Civil and Political Rights (1966), Article 8.[26]

International Covenant on Economic, Social and Cultural Rights (1966), Article 10.3 [child labour].[27]

ASEAN Human Rights Declaration (2013), Article 13.[28]

ASEAN Convention Against Trafficking in Persons, Especially in Women and Children (2015).[29]

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Art 4.[30]

European Union Directive on preventing and combating trafficking in human beings and protecting its victims, 2011/36/EU (2011).[31]

Council of Europe Convention on Action against Trafficking in Human Beings (2005).[32]

American Convention on Human Rights (1969), Article 6.[33]

African Charter on Human and Peoples' Rights (1981), Article 5.[34]

African Charter on the Rights and Welfare of the Child (1990), Article 15, 29.[35]

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009), Article 9.[36]

Key anti-slavery and anti-trafficking instruments at the domestic level

Australia (Commonwealth):

Modern Slavery Act 2018.[37]

Australia (New South Wales):

Modern Slavery Act 2018.[38] (under review, not yet in force)

Brazil:

Federal 'Dirty List' (2003) and asset confiscation constitutional amendment (2014);
São Paulo state bill on tax collection.[39]

European Union:

Disclosure of non-financial and diversity information by certain large undertakings and groups 2014 (2014/95/EU).[40]

France:

Devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre 2017 (Loi n° 2017-399).[41]

Netherlands:

Wet zorgplicht kinderarbeid 2019.[42]

United States (Federal):

Dodd-Frank Wall Street Reform and Consumer Protection Act 2010[43]; Trafficking Victims Protection Reauthorization Act 2013 (TVPRA 2013)[44]: Trade Facilitation and Trade Enforcement Act of 2015, H.R. 644;[45] Executive Order 13581 (2011) (National Strategy to Combat Transnational Organized Crime);[46] Executive Order 13627 (2012) (Strengthening Protections Against Trafficking in Persons in Federal Contracts);[47] DoD, GSA and NASA Rule on federal contractors (2015).[48]

United States (California):

Transparency in Supply Chains Act 2010 (Senate Bill 657)[49]

United Kingdom:

Modern Slavery Act 2015.[50]

Ongoing processes

Canada:

Act respecting the fight against certain forms of modern slavery through the imposition of certain measures and amending the Customs Tariff (C-423): would create obligations to report on tmeasures taken to prevent and reduce the risk of forced or child labour and prohibit importation of goods produced wholly or in part by forced labour or child labour.[51]

Germany:

National Action Plan on Business and Human Rights 2016-2020.[52]

Hong Kong:

The Modern Slavery Bill proposes criminal offenses under Hong Kong's Organized and Serious Crimes Ordinance and provides a civil cause of action.[53]

Switzerland:

The Responsible Business Initiative would impose human rights due diligence obligations on Swiss companies. A referendum on Initiative would take place in February 2020 at the earliest unless Parliament agrees to a counter-proposal which could happen as early as October 2019.[54]

United States:

The End Banking for Human Traffickers Act of 2019 (H.R.295) would strengthen AML/CFT rules around human trafficking.[55]

Key anti-slavery and anti-trafficking instruments at the domestic level (cont.)

Relevant databases

- Antislavery Law Database.[56]
- State National Action Plans on Business and Human Rights (OHCHR).[57]
- Global National Action Plans on Business and Human Rights: Forced Labour and Modern Slavery (Danish Institute for Human Rights).[58]
- National Laws and Action Plans Database (Bali Process).[59]
- Legislation Online: Trafficking in Beings (OSCE).[60]
- Together Against Trafficking in Human Beings, Member States (European Commission).[61]
- Delta 8.7 Country Dashboards.[62]
- Labour Exploitation Accountability Database (Focus on Labour Exploitation).[63]

1.3. Where is modern slavery?

Tragically, we find these situations all over the world, interacting with the financial sector in a variety of ways.

Figure 1: Number and Prevalence of Persons in modern slavery by category and region

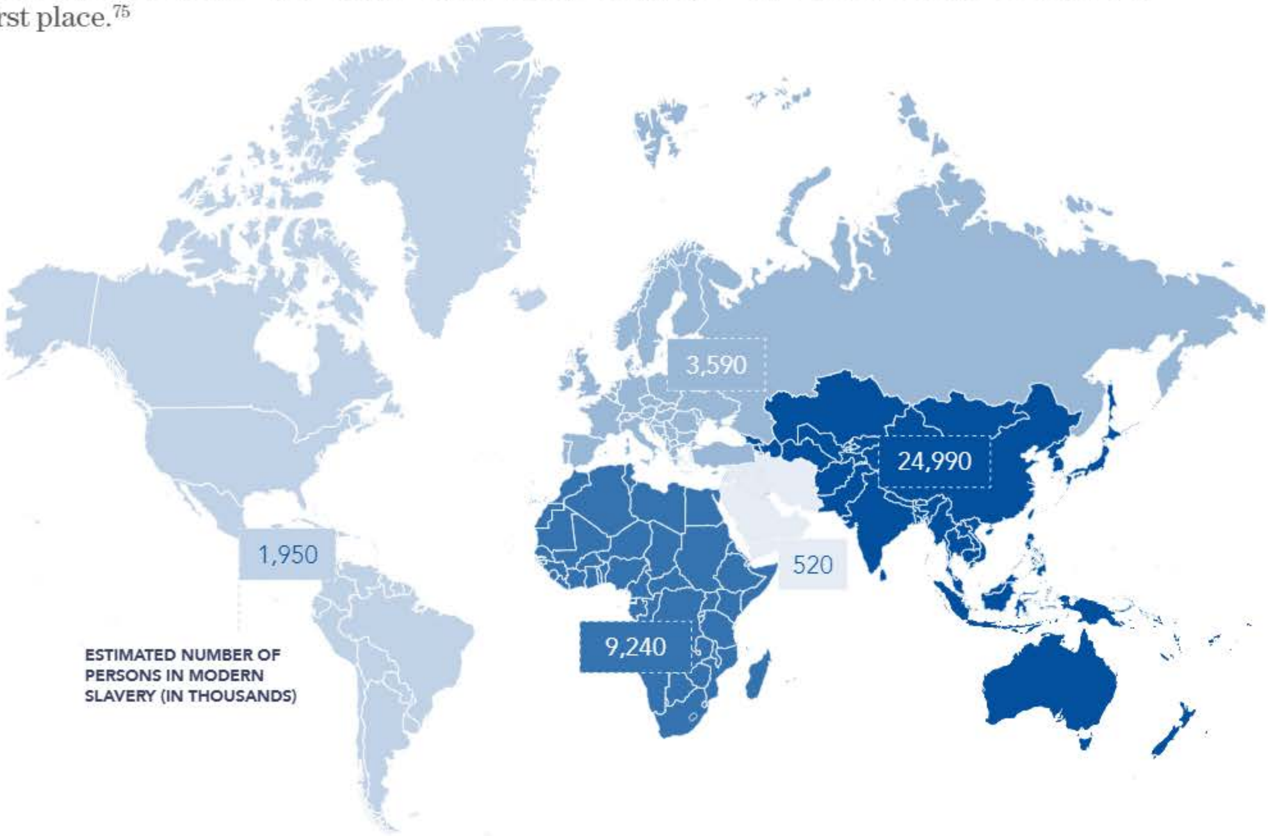
Region	Number of Persons in Forced Labour (in thousands)	Prevalence (per thousand) – Forced Labour	Number of Persons in Forced Marriage (in thousands)	Prevalence (per thousand) – Forced Marriage	Number of Persons in Modern Slavery (in thousands)	Prevalence (per thousand) – Modern Slavery
Africa	3 420	2.8	5 820	4.8	9 240	7.6
Asia and the Pacific	16 550	4.0	8 440	2.0	24 990	6.1
Europe and Central Asia	3 250	3.6	340	0.4	3 590	3.9
Arab States	350	2.2	170	1.1	520	3.3
Americas	1 280	1.3	670	0.7	1 950	1.9

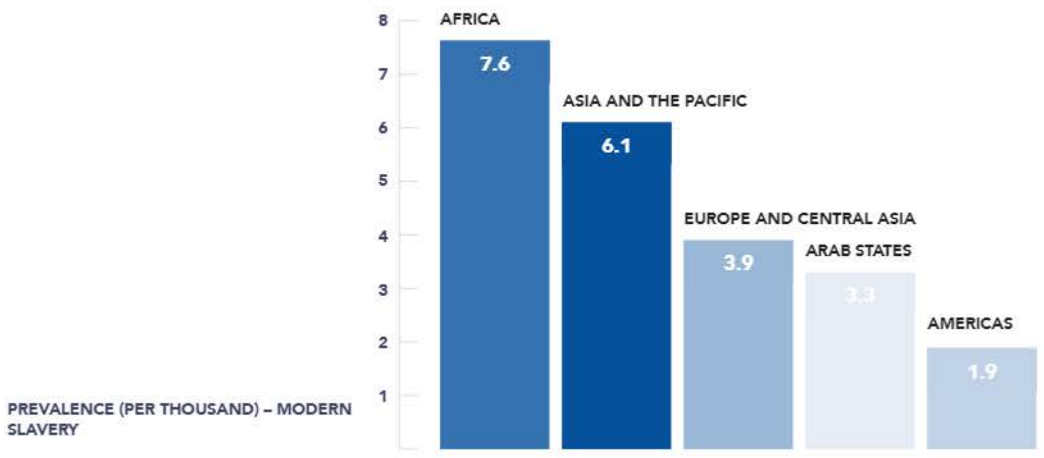
Source: ILO, IOM, Walk Free Foundation, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Geneva, 2016).

According to the 2018 Global Slavery Index, 71 per cent of victims are female, though that varies by sector and type of exploitation. Modern slavery can arise in various contexts.

Forced labour may have been involved in harvesting the fish[64] you bought for dinner at the local supermarket or in manufacturing the smartphone in your pocket.[65] Both are potentially products of publicly listed and traded companies whose stocks are often major holdings for pension funds and other institutional investors. In South-East Asia, palm oil plantations face allegations of forced labour and other socially destructive practices such as environmental violations, which have led recently to major divestments by Citibank[66] and the world's largest sovereign wealth fund, the Norwegian Government Pension Fund Global.[67]

Research has found labour trafficking in large-scale commercially financed primary industries from Australia[68] to Brazil[69] to Eritrea,[70] and at different points in the construction value chain from India[71] to Qatar.[72] This has included projects financed through large commercial loans, project finance and sovereign bond issues.[73] Migrant workers employed in such projects face risks of modern slavery and human trafficking throughout their journeys.[74] Banks and non-banking financial institutions may have insights into these risks, through handling payrolls and worker remittances. Financial institutions may also provide travel loans to workers – which may be used to pay the recruitment fees that can lead them into debt bondage and other forms of exploitation in the first place.[75]





Source: ILO, IOM and Walk Free, *Global estimates of modern slavery: Forced labour and forced marriage* (Geneva, International Labour Office, Geneva), pp. 26-27

Sometimes, as in Libya and Syria, vulnerability to modern slavery is a result of the collapse of state authority, with criminal militias or terrorist groups creating slavery-based economies.[76] This has raised sufficient concern about money laundering and terrorism financing in recent years to attract the attention of the United Nations Security Council, and has even led, in Libya, to the adoption of United Nations sanctions against human traffickers.[77] Banks and other financial institutions play a key role in implementation of those sanctions.

In other cases, such as the Democratic People's Republic of Korea or Central Asia, it is not state collapse but rather state policy that generates modern slavery and human trafficking.[78]
This can create risks for financial sector actors financing firms that rely on such forced labour or buy its products. The Norwegian Export Credit Agency, GIEK, for example has closely examined its investment in the ship construction value chain, after suspected forced labour from the Democratic People's Republic of Korea was identified within it, within Europe.[79]

Modern slavery and human trafficking are not limited to low-income or other 'developing' countries. In the United Kingdom, modern slavery has been found in bed factories[80] and car washes[81] – both likely users of traditional commercial banking services. Researchers at the UK Home Office have identified 17 different 'types' of modern slavery in the cases detected to date.[82] Similarly, in the United States researchers have found 25 different 'types' of modern slavery and human trafficking, in industries as diverse as agriculture, carnivals, forestry and logging, landscaping, manufacturing, health and beauty services, restaurants, massage parlours and domestic work.[83] All use commercial banking and credit services.

For more information

The last authoritative, global estimate of modern slavery was conducted by Alliance 8.7 and the Walk Free Foundation in 2017. It is available as the Global Estimates of Modern Slavery.

Building on that global estimate, the Minderoo Foundation's Walk Free Initiative provides an annual index of modern slavery risks. The most recent is the 2018 Global Slavery Index.

UNODC also periodically publishes a Global Report on Trafficking in Persons.

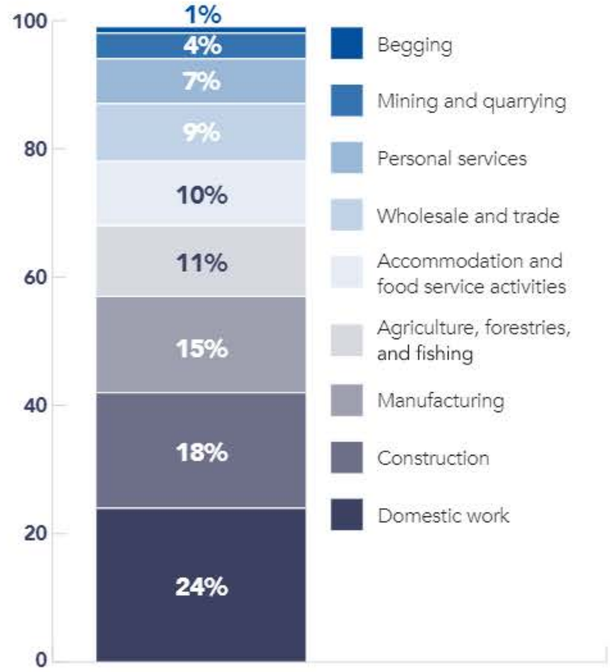
And the US State Department also publishes annual reports on Trafficking in Persons

1.4. What drives modern slavery?

Modern slavery involves the exploitation of vulnerable people for profit and for power. It is made possible by statutory loopholes, enforcement gaps, and business and social practices that tolerate coercion, fraud and deception in commercial and labour relationships.

Modern slavery arises where three drivers converge: 1) vulnerable people; 2) conducive legal, social and physical environment; and 3) exploitation strategies. When these three factors converge, modern slavery is the result. Changes in any one of these three factors can trigger someone falling into modern slavery or human trafficking. We see people becoming more vulnerable to enslavement when there is a sudden changes in a person's situation – such as the loss of a job or income, or the need to pay for expensive healthcare procedures or social rituals, such as weddings or funerals. We see people becoming more vulnerable when there is a sudden change in their environment – because of the eruption of an armed conflict, or because of displacement due to a natural disaster. And we see vulnerability increase when criminal exploiters are introduced to previously stable environments.

One significant shift in the global economic environment in recent years has been the emergence of global value chains. The financial valuation of companies today depends on the market's expectations of companies' future revenue streams. Those revenue streams in turn often depend on complex, often global, value chains and networks. Numerous studies have shown how the structure of particular global value chains and production networks incentivize use of coercion to reduce labour costs at the bottom, through outsize power for lead firms, high levels of subcontracting, and marginality of lowest-tier producers.[84] Deliberate underpayment, impoverishment and debt bondage emerge as recurring management practices by which labour brokers at the bottom of a variety of global supply chains extract marginal profit. This model is adaptable across a range of industrial and economic sectors, exploiting whatever vulnerabilities are to hand at the edge of the production network.[85]



Source: Figure 9, *Modern Slavery Estimates*, ILO

In this sense modern slavery and human trafficking represent a tragic market failure in today's global economy. Our failure to effectively price-in the true social and economic costs of modern slavery leads to the inefficient allocation of capital. Businesses that tolerate or generate modern slavery and human trafficking have lower labour costs and an unfair competitive advantage over those that do not, and they consequently enjoy unfair and unsustainably reduced costs of capital.

Modern slavery also represents a failure by labour markets to provide decent work and support safe and dignified employment opportunities for all. And it is closely associated with the exclusion of many from the global financial system. Large numbers of people (1.7 billion) and micro, small and medium enterprises (200 million in emerging economies alone) lack adequate access to safe, reliable, coercion-free credit and financing. This lack of access reduces resilience to financial shocks and prevents capital accumulation, both of which push people and households into risky borrowing, labour and migration practices, increasing their vulnerability to modern slavery and human trafficking. It also encourages forced marriage as a capital accumulation strategy.

For more information

About specific commodities and goods that are known to be connected to modern slavery, see:

- The List of Goods Produced by Child Labor or Forced Labor, published on an ongoing basis by the US Department of Labor. This is also available in the Sweat & Toil app.
- The list of current Withhold Release Orders imposed by US Customs and Border Protection, involving the detention of goods being imported to the US market, on the basis that they may have been produced with forced labour.
- Verité's Forced Labor Commodity Atlas.

2. How are modern slavery and human trafficking connected to the financial sector?

2.1. Financial vulnerability as a driver of modern slavery

Lack of access to safe and affordable financial products and services heightens the risk of modern slavery and human trafficking.[86] Lack of access to credit can create vulnerability from income and cashflow shocks such as sudden unemployment, medical emergencies, natural disasters and unplanned life events such as weddings, dowry payments or funerals. The financial crises these shocks generate can wipe out household assets and trap families in poverty and unsafe labour and credit arrangements, entered into as a coping strategy.[87] Even before the COVID19 crisis, health emergencies pushed roughly 100 million people globally into extreme poverty every year due to out-of-pocket health expenses,[88] which can heighten risk of modern slavery.[89] Although healthcare insurance coverage is less likely in developing countries than developed countries,[90] the US NGO Polaris has documented how lack of access to affordable healthcare insurance contributes to pathways into sex trafficking even in the United States.[91]

Poorly regulated and predatory financial services can become a gateway to enslavement. Once slavery was abolished as an institution in property law, exploiters had to turn to other mechanisms to coerce their victims into enslavement, forced labour and other forms of exploitation. Debt is often a central means of control. Debt bondage involves someone pledging their labour or service to repay a debt, and then being trapped in that service because the fair value of their labour is not applied to the debt, or other techniques of coercion and fraud are used to keep them indebted and in service. There are perhaps as many as 8 million people in this situation, also known as bonded labour, worldwide.[92]

In situations of debt bondage, the power imbalance between the employer (or creditor) and the worker often increases the worker's vulnerability to further abuse. Employers and creditors can adjust interest rates, make further deductions arbitrarily as penalties for perceived poor performance, and charge high prices for basic goods or working tools resulting in an increase of the debt and the perpetuation of deeply exploitative situations.

In some countries, women and children become trapped in situations of bonded labour because of debt contracted by an authoritative member of the family or as a result of the family's status. Children can also enter into bonded labour by inheriting a debt from a parent or other family member or they can be pledged individually to work in various sectors, often in return for a cash advance to a parent or family member.

These practices are widespread in some agricultural and construction sectors in South Asia, but also arise elsewhere, including in trafficking into commercial sexual exploitation in developed countries. They are also closely connected to supply chains that rely heavily on migrant workers, such as the domestic service and domestic care industries, major infrastructure projects in the Middle East, or seasonal agriculture in developed countries from Australia to Europe.

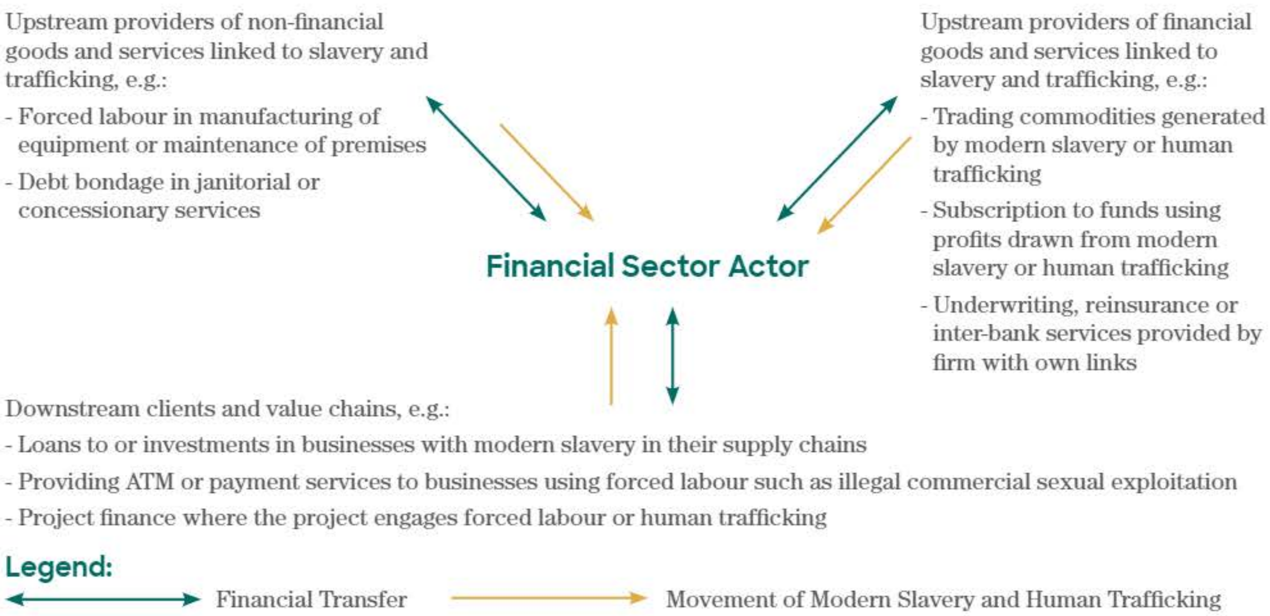
Migrant workers often become trapped in situations of bondage by borrowing money at exorbitant interest rates to pay recruitment fees or by taking an advance payment from intermediaries to secure work in the country of destination. Once migrants arrive in the country of destination they are often forced to work in harsh conditions to pay back debt they have accrued.

2.2. Different types of connections

Financial institutions can encounter modern slavery and human trafficking in both their own operations and in their business relationships. In their **own operations,** financial institutions can be connected to modern slavery or human trafficking in one of two ways:

- First, by engaging directly in this kind of exploitation in their own businesses. Some enterprises – such as brick-kiln operators – that employ people on terms that amount to forced labour or modern slavery may represent these arrangements as loans or debt contracts.[93] In other cases, regular financial institutions could, in theory, engage their own in-house clerical, janitorial, cleaning or food service personnel on terms that amount to modern slavery or human trafficking, though such cases appear to be exceptionally rare.
- Second, and more usually, financial sector organizations may encounter modern slavery or human trafficking during client engagement. There is a growing recognition that bank tellers, for example, are well positioned to identify and report signs of human trafficking.[94]

The other, and more common place, way that financial sector actors may encounter modern slavery and human trafficking is in their **'business relationships'**. Business relationships are addressed in the United Nations Guiding Principles on Business and Human Rights and defined in the OECD Guidelines on Multinational Enterprises – which, together, offer the authoritative standard for responsible business conduct in this area. Business relationships include "relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services."[95] For financial sector actors, 'supply chain' includes both upstream providers, who provide goods and services used by the organization, whether those are financial or non-financial, and downstream recipients of the financial goods and services the organization itself provides – whether clients, or others further down the value chain.



A financial sector actor may find itself connected to modern slavery and human trafficking at any point in these business relationships:

- First, through connections to *upstream providers of non-financial inputs (goods and services) into its own business*. This might include, for example, forced labour in the manufacture or maintenance of equipment, real property or assets used or managed by the organization; or in the third-party cleaning, landscaping or food-service workforce of a firm contracted by the organization.

- Second, through connections to *upstream providers of financial inputs (goods and services)*. Just as car manufacturers rely on the supply of parts manufactured by others further up the supply chain, financial institutions produce services based on upstream financial inputs – such as subscriptions into funds, inter-bank borrowing, underwriting and reinsurance. The providers of these inputs may themselves be connected to modern slavery and human trafficking – especially if they are inputting capital which is itself generated through modern slavery or human trafficking. Another example may involve commodity trading, where the underlying commodities were extracted or produced with modern slavery, forced or child labour, or human trafficking.

- Third, through connections to *downstream clients and value chains*. This includes the entire universe of investment and lending relationships. Institutional investors or hedge funds may own equity stakes in businesses that rely on modern slavery or human trafficking directly, or in their supply chains. Banks may lend to such firms. Insurers may offer policies to cover workplaces, such as fishing vessels, factories or construction sites, that harbour modern slavery. Bond traders may hold bonds issued by corporations or government entities that engage in labour trafficking. Project finance may involve lending to entities that rely on modern slavery or human trafficking for completion of the project. Or financial institutions may provide ATMs or other payment services to business engaged in sex trafficking or forced labour.

2.3. Handling payments and proceeds of crime

Financial institutions can become linked to modern slavery if they handle payments for forced labour or services, or the proceeds of the sale of goods made or services rendered through modern slavery. There are several recent documented incidents of this occurring, leading to major fines.

In Australia, Westpac is facing perhaps the largest anti-money laundering fine in Australian history, due to alleged breaches of its anti-money laundering obligations, relating to use of one of its payment systems for online sexual exploitation of children in The Philippines. This has had a significant and measurable impact on the company's share price, and led to the resignation of both a chief executive and its board chair.[96]

Criminals may also use the financial system to conceal the origins of criminal profits, and to launder those profits. In the United States, Western Union, the global money service business, reached a $94 million settlement with the Arizona state Attorney-General in 2014 relating to breaches of anti-money laundering laws tied to human trafficking, and was fined a further $60 million by New York state authorities in 2018.

What these incidents have also helped reveal is that financial institutions need to guard against use of their payment and deposit systems for two related but different types of modern slavery and human trafficking:

1. Modern slavery and human trafficking that involves exploitation of victims to undertake illegal activities – such as sexual exploitation of children; and
2. Modern slavery and human trafficking that occurs in the context of otherwise legal activities – for example through the use of forced labour in fishing or agriculture.

Later, we will look at how these differences complicate efforts by banks and other financial institutions to identify and manage modern slavery and human trafficking risks.

2.4. Lending to and investing in businesses connected to modern slavery

Financial institutions can also be connected to modern slavery and human trafficking risks by lending to, or investing in, organizations that themselves rely on modern slavery, perhaps deep in their supply chain. As we explore later in the course, there are increasingly rigorous standards around disclosure of these connections by financial institutions.

These connections can in turn be grouped into three different categories based on the causal relationship between the financial sector organization and the modern slavery and human trafficking. An enterprise:

- 'Causes' an adverse impact if the enterprise's activities on their own are sufficient to result in the adverse impact;
- 'Contributes' to an adverse impact if the enterprise's activities, in combination with the activities of other entities, cause the impact, or if the activities of the enterprise cause, facilitate or incentivize another entity to cause an adverse impact. It does not encompass trivial contributions;
- Is 'linked to' an adverse impact if the impact is connected to the enterprise's products, services or operations through a business relationship with another entity, which need not be a direct contractual relationship.[97]

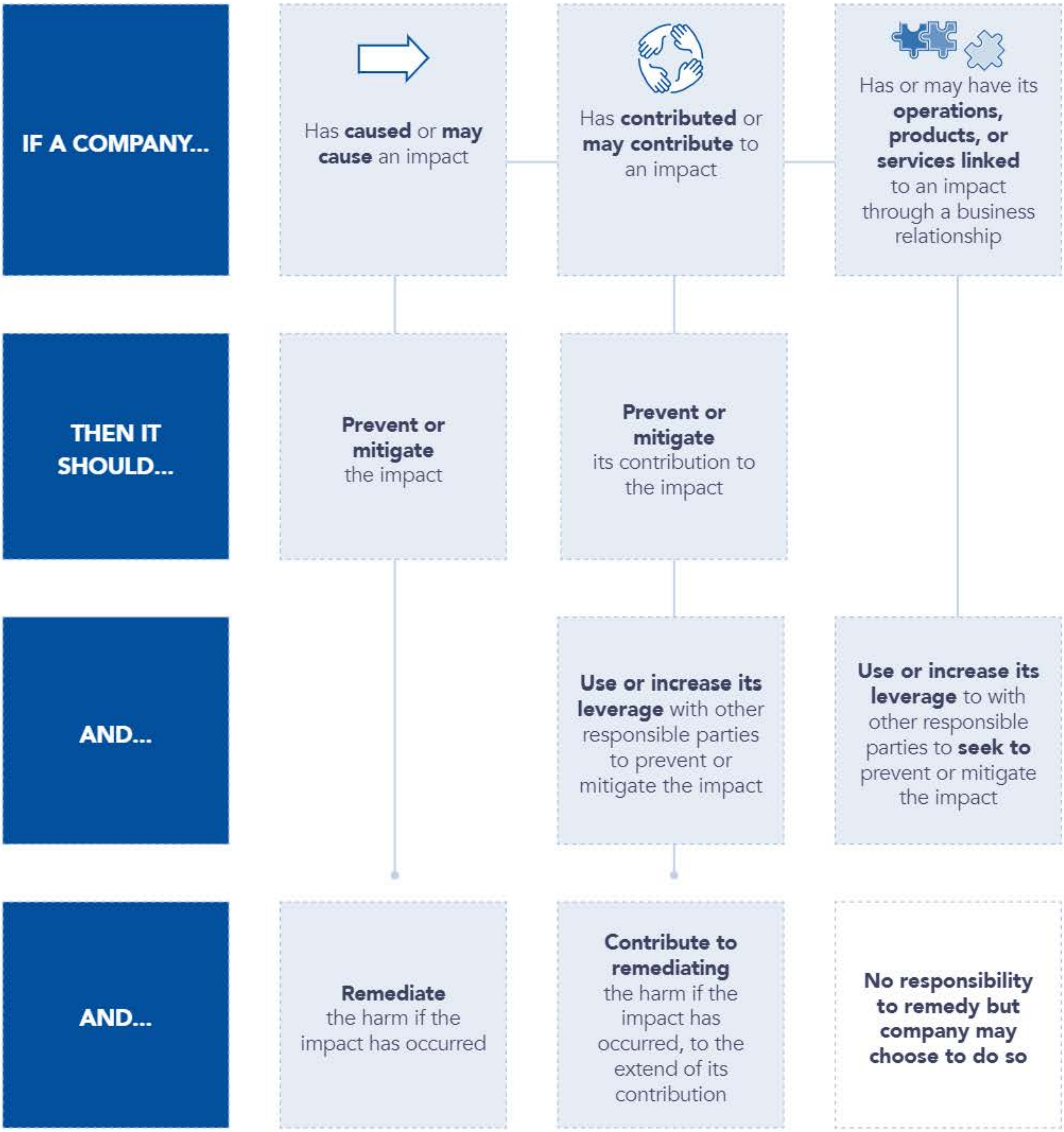
This conceptual framework is established by the United Nations Guiding Principles on Business and Human Rights (UNGPs), the authoritative standard providing guidance to businesses around the world about what they are expected to do when they are connected with different kinds of harms to people.[98] Whether a business causes, contributes to or is linked to a harm determines how it is expected to respond, under UNGP 13:

13. The responsibility to respect human rights requires that business enterprises:

(a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

(b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

The nature of a business's connection to harms such as modern slavery and human trafficking thus determines how a business is expected to use its leverage and provide or enable remedy), as shown in the diagram below.



For more information

The United Nations Guiding Principles on Business and Human Rights were launched in 2011 with the unanimous endorsement of the United Nations Human Rights Council. The framework has since provided guidance to businesses around the world about what they are expected to do when they encounter different kinds of harms to people.

The framework reflects existing human rights obligations of states under international law, and clarifies the expectations for businesses of all sizes, across all industries and in all geographies. The UNGPs apply to all business enterprises, including financial sector, as well as their corporate clients and the companies they invest in (directly or through financial intermediaries), regardless of size, sector, operational context, ownership and structure.[99]

The framework makes clear that when identifying and addressing human rights risks, such as modern slavery and human trafficking risks, the relevant lens is risk to people, rather than risk to business. Nonetheless, where risks to people's human rights are greatest, there is strong convergence with risks to business. Business is encouraged to identify these risks through human rights due diligence, prioritizing the most 'salient' risks, and to use its leverage to mitigate and address these risks. The application of these concepts to the financial sector is explored in more depth later in this course.

The UNGP framework has been incorporated into a rapidly growing body of hard law and policy at the national level, notably including the Modern Slavery Acts adopted in the United Kingdom and Australia, and the mandatory due diligence laws now emerging in some European jurisdictions, notably France and the Netherlands.

For businesses in countries that adhere to the OECD system, the core content of the framework 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.

The OECD has developed significant guidance in this area, notably OECD Due Diligence Guidance for Responsible Business Conduct (2018), the Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises (2017); and the OECD's Due Diligence for Responsible Corporate Lending and Securities Underwriting (2019).

3. Identifying modern slavery and human trafficking risks

3.1. Due diligence: why do it?

The first step in understanding an organization's connections to modern slavery risks is 'due diligence'. Due diligence is about doing your homework on where risks may arise in your own operations or in your business relationships, including as a result of the operations of businesses or individuals to whom your organization lends or in whom it invests. There are numerous reasons to undertake due diligence into modern slavery risks and money-laundering (financial crime) risks associated with it.

First, organizations that identify modern slavery risks and associated financial crime risks are better able to allocate resources to prevent, manage and address those risks. This points to the fact that due diligence is just the first step in a larger enterprise risk management approach – a point we explore further later in the course.

Second, organizations should conduct due diligence because it is a compliance requirement of anti-money laundering (AML) regimes. Jurisdictions around the world require financial institutions (and some other reporting entities) to undertake due diligence to identify risks that they hare handling funds involved in certain 'predicate' offenses.

Third, due diligence leads to reporting to regulators and law enforcement, which helps authorities get a clearer picture of this crime, and take effective action to disrupt and prevent it. Where regulators have incorporated human trafficking reporting into the process of reporting suspicious transactions provided for by AML regimes, there has been a 900 per cent to 1,000 per cent rise in reporting. These reports provide law enforcement important information that can be used in detection and disruption – and in prosecution. It also means that cases can be built on the basis of financial transactions data, sparing victims' the traumatic and dangerous process of having to testify against traffickers, and improving prospects of conviction.[100]

Fourth, modern slavery and human trafficking due diligence and disclosure are an explicit regulatory requirement in a growing number of jurisdictions, including Australia, California, France and the United Kingdom. Proposals for legislation that would institute such reporting is currently under consideration in Canada, the EU, Germany, Hong Kong, Norway and Switzerland.

3.2. Financial crime (AML) due diligence

Most jurisdictions have clear regulatory requirements to conduct due diligence to identify risks of money-laundering and other financial crimes (including corruption and bribery). In many jurisdictions, slavery, human trafficking, forced labour and related crimes are defined as predicate offenses that give rise to these due diligence and reporting obligations. The United Nations Security Council has explicitly called on countries to address human trafficking in their AML regimes. But even where modern slavery and human trafficking are not *explicitly* identified as such predicate offences, those due diligence and reporting obligations are likely to be triggered by the underlying conduct that makes up modern slavery and human trafficking, such as fraud, assault, kidnapping, child abuse and/or sexual violence. Modern slavery is sometimes called a 'crime of crimes' – a crime made up of other crimes. Those other crimes themselves trigger financial institutions AML obligations.

For more information

United Nations Security Council

Statement by the President of the Security Council, S/PRST/2015/25 (16 December 2015).[101]

Resolution 2331 (2016), S/RES/2331 (2016) (20 December 2016), OP 2(c).[102]

Resolution 2388 (2017), S/RES/2388 (2017) (21 November 2017), OP6 & 7.[103]

Resolution 2462 (2019), S/RES/2462 (2019) (28 March 2019), OP 20(a) and 20(d).[104]

Financial Action Task Force

Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations (2012; updated June 2019).[105]

Typically, AML regimes require financial institutions to conduct customer due diligence (CDD) at the beginning of a commercial relationship, during the process of onboarding of a new client, and then periodically thereafter while a relationship remains in place. This often forms a part of a larger system of due diligence into business relationships (covering not only clients but also suppliers, providers and personnel). This can help ensure that financial institutions are not associated with businesses that are serving as fronts for, or otherwise relying on, modern slavery and human trafficking. CDD can reveal modern slavery risk indicators in one of three areas: 1) through client behaviour, during client engagement; 2) through Know Your Customer (KYC) processes; and 3) during the business relationship, for example through transaction pattern analysis.

There are numerous sources of guidance available (see below) that provide examples of such indicators and so-called 'red flags' that should trigger particular attention and enhanced due diligence (EDD) by a financial institution. A recent synthesis of research undertaken by the Organisation for Security and Cooperation in Europe (OSCE), with the support of Finance Against Slavery and Trafficking (FAST), identified a range of indicators in each of these areas, such as:

• Behavioural indicators

- Evidence of physical or emotional abuse of the presenting client by another person
- Third party attempting to fill out paperwork without consulting the client
- ATM usage patterns
- Variations in handwriting
- Use of a third-party ID to attempt to open an account
- Verbal allusions to participation in criminal activity
- Inability to contact the client

• KYC process indicators

- Falsified identification documents or ID reported stolen
- Unreliable address and contact information, including use of multiple addresses
- Address associated with known modern slavery or human trafficking hotspots
- Employer serving as custodian of foreign worker or student
- One agent represents multiple undocumented individuals
- Invalid work contracts or pro forma invitations to conferences, seminars or study tours
- Criminal associations
- Name checks reveal criminal associations, connections to advertisements for illegal services, or sanctions listings

For more information

OSCE, Following the Money: Compendium of Resources and Step-by-Step Guide to Financial Investigations Related to Trafficking in Human Beings (Vienna, 2019).

Bali Process, Policy Guide on Following the Money in Trafficking in Persons Cases (July 2018).[106]

The Asia Pacific Banks Alliance Against Modern Slavery Guide, January 2019.

Polaris, "I Work at a Bank or Money Wire Service: What Can I Do to Combat Human Trafficking", 26 September 2018.

On sanctions

UN:

UN News, "As Security Council imposes sanctions on six human traffickers in Libya, UN chief calls for more accountability" (8 June 2018). Available from: https://news.un.org/en/story/2018/06/1011751. The names of the six listed individuals see the entries marked 7 June 2018 here.

US:

Executive Order 13581 (2011) (National Strategy to Combat Transnational Organized Crime).[107] And see US Treasury Department, "Treasury sanctions Latin American criminal organization" (11 October 2012).

However, different types of exploitation, in different contexts, will generate very different risk indicators. It is therefore crucial for financial institutions to develop their own analysis of risk indicators, based on a review of the different types of modern slavery that they are most likely to be exposed to in their own operations or through their business relationships. There are a number of analyses of how these different types of modern slavery present to financial institutions now available.

For more information

In the US, see Polaris, The Typology of Modern Slavery: Defining Sex and Labor Trafficking in the United States (Washington D.C., March 2017).

In the UK, see Christine Cooper, Olivia Hesketh, Nicola Ellis, Adam Fair, A Typology of Modern Slavery Offences in the UK, UK Home Office, Research Report 93, October 2017.

In Asia-Pacific, see **Mekong Club**, Modern Slavery Typologies for Financial Services Providers (n.d.)

See also the Responsible Sourcing Tool from the US State Department, Verité, Made in a Free World and the Aspen Institute.

3.3. Financial transactions pattern analysis

One of the most important aspects of due diligence into financial crime connected to modern slavery and human trafficking is analysis of the financial transactions undertaken once a customer has been onboarded. Financial institutions typically maintain transaction monitoring programmes that use both internal data and external data providers to monitor for risks of fraud, money laundering, terrorist financing, and other financial crimes. These use pattern analysis to recognize established 'financial typologies' or patterns indicating the possibility of an underlying crime. Significant work over the last decade has provided an increasingly robust and effective set of modern slavery and human trafficking-related financial typologies based on financial transactions pattern analysis.

Alerts may trigger a review or investigation, which gains a complete picture of the suspicion. An investigation will need to evaluate customer and owner backgrounds, areas of operations, and business profile against known MS/HT typologies. Financial institutions may need to review transactions at the relationship level to have a holistic view of the transactional activity. This type of review aggregates data across multiple accounts to evaluate the inflow and outflow of activity and identify relevant patterns. Where a pattern is flagged, further investigation may be required to determine if suspicion is warranted. An effective transaction monitoring system will be configured to ensure parameters and thresholds are built into specific risk scenarios to enable them to more precisely target transaction patterns and behaviours consistent with known modern slavery typologies. Financial institutions will thus need to tailor their indicators, models and risk alerts to meet the risks arising from their own operations and business relationships.

The Financial Action Task Force and OSCE, for example, have identified the following indicators:[108]

Financial pattern indicators sometimes to commercial sexual exploitation

- The account is funded primarily via cash deposits and funds transfers from other individuals;
- Unusual number of unrelated individuals as joint account holders/credit card users;
- Credit card payments for purchases made after the establishments' ordinary hours of business (e.g., strip clubs, massage parlours, beauty salons, model agencies)
- Deposits conducted in one city followed by same-day or next-day withdrawal in another;
- Recurring low-value payments to advertisers, classified services involved in sex industry;
- Funds transfers involving third parties with alternative names provided in brackets;
- Hotel transactions by the same individual for two separate rooms for the same dates;
- Multiple accounts making repeated transfers to the same third party, or numerous individuals reporting similar information (i.e., address and phone number);
- Outbound international funds transfer directed to countries at higher risk for human trafficking or between two countries/areas on a known trafficking route;
- Outbound international wire transfer in an amount commonly associated with a subscription or payment fee (i.e., 9.99 or 29.95) to the jurisdiction of concern for human trafficking, to a company with a name denoting its involvement in the provision of sexual services;
- Frequent purchases in multiples of small amounts of Bitcoin or virtual currencies, directly by the client or through exchanges;
- Fast food, drug stores, clothing stores, beauty stores (e.g. lingerie, make-up): frequent purchases in relatively short timelines and inconsistent with expected activity.

Financial pattern indicators sometimes connected to forced labour

- A property, when looked at on Google Street View, could only comfortably accommodate two or three people at the most, but seems to have more people living there;
- Analysis of ATM activity shows that their ATM usage often occurred at the same machine at the same time suggesting that a third party is in control of their cards;
- Lack of living expenses such as food, petrol, utilities, and rent;
- No evidence of payment of taxes or other fees to a tax authority or other government or regulatory body typically associated with legitimate full-time employment of workers;
- One-way flight purchase from a high-risk country by a non-family member;
- Payments to labour agencies, recruiters or employment websites, based overseas;
- Personnel numbers and costs, if known through the provision of information by the entity, is not in line with wages paid out, or what you know of the entity;
- Repeated transfers of funds to the same third party (where known), often in round amounts; or
- Reports or indication of cheap labour or unfair business practices towards an entity;
- Rate of pay for each pay period is identical (no changes for overtime, vacation, sick leave, bonus payments, etc.) in jobs where that would not be expected;
- Recurring payments for wages at unreasonably low amounts (e.g. below minimum wage);
- Transfers from different regions to person in countries known to be higher risk for trafficking.

Key financial typologies analyses

Financial Action Task Force and APG, Financial Flows from Human Trafficking (July 2018).[109]

FATF-Style Regional Bodies

Africa - Eastern and Southern:

Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), Typologies Project Report on the Vulnerabilities of Money Laundering Related to Trafficking in Persons in the ESAAMLG Region (September 2011).[110]

Asia-Pacific:

APG, APG Yearly Typologies Report: Methods and Trends of Money Laundering and Terrorism Financing (July 2018).[111]

Caribbean:

CFATF, Typologies Report on Human Trafficking and Smuggling of Migrants (2014).[112]

Europe:

Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL), Proceeds from Trafficking in Human Beings and Illegal Migration/Human

Smuggling, MONEYVAL 16th Plenary Meeting, Strasbourg (17-21 January 2005).[113]

Middle East and North Africa:

Middle East and North Africa Financial Action Task Force (MENAFATF), Biennial Typologies Report (2014).[114]

National and regional advisories and guidance

Australia:

AUSTRAC, AUSTRAC typologies and case studies report (2014).[115]

Bali Process:

Bali Process, Policy Guide on Following the Money in Trafficking in Persons Cases (2018).[116]

Canada:

FINTRAC/CANAFE, Operational Alert – Indicators: The Laundering of Illicit Proceeds from Human Trafficking for Sexual Exploitation, FINTRAC-2016-OA003 (2016).[117]

New Zealand:

New Zealand Financial Intelligence Unit, Quarterly Typology Report: Human Trafficking and People Smuggling (April 2017).[118]

United Kingdom:

National Crime Agency, *Red Alert: Potential Indicators of Slavery and Human Trafficking*, A4R13670 (December 2014).[119]

United States:

US Financial Crimes Enforcement Network (US FinCEN), Advisory – Guidance on Recognizing Activity that May Be Associated with Human Smuggling and Human Trafficking, FIN-2014-A008 (September 2014).[120]

3.4. Modern slavery due diligence

In the previous section, we considered how financial institutions can use customer due diligence (CDD) and other aspects of their AML systems to identify financial crimes related modern slavery and human trafficking. A growing number of jurisdictions are, however, going beyond this requirement, and now requiring financial institutions to undertake due diligence to identify – and to report, and in some cases mitigate and address – modern slavery and human trafficking itself, and not just the financial crimes associated with it. This reflects an important shift in the risk management role expected of financial institutions (and other businesses). Due diligence related to modern slavery – and other kinds of human rights harms – aims at identifying and addressing risks to people, and not only risks to business or risks to the financial system.

These due diligence and disclosure obligations (set out earlier, in the figure titled 'Key anti-slavery and anti-trafficking instruments at the domestic level') require financial institutions to undertake an enterprise-wide risk assessment, to identify where their operations or business relationships give rise to modern slavery risks. Yet there are natural limits to what can be expected of financial institutions' due diligence: scarce time, limited resources, unavailable data – and often clients' or investee companies' own lack of knowledge about their supply chains – simply do not allow that. Instead, they must prioritize.[121] But how?

The key is understanding that what matters are risks to people, not risks to the business. This is often framed as a question of understanding both the likelihood of the risks being realized and the '**salience**' of the risk: where people's rights are at risk of the most severe negative impact through the company's activities or business relationships.

Salience is generally broken down into three dimensions:

- scale – how grave the impact would be on those affected;
- scope – how widespread the impact would be; and
- remediability – how hard it would be to put right the resulting harm.[122]

Modern slavery and human trafficking are generally considered to be towards the high end of 'scale'. The gravity of the human rights violations involved in these forms of exploitation is reflected in the strength of the norms against them. Companies often recognize that forced labour, slavery and trafficking are salient issues on which they should focus. A check of the United Nations Guiding Principles Reporting Database, for example, suggests that around 50 per cent identify modern slavery or forced labour as a salient human rights issue.[123]

This means that once a company identifies a risk of modern slavery and human trafficking, they have good reason to focus on it. Within that set, how they prioritize attention and resources will then turn on questions of scope – how many are affected; remediability – whether the harm can be remedied or not; and likelihood of the harm coming to pass.

To make this assessment, an organization must get a secure grasp on where these risks arise – in itself a challenge. One way to go about this is to focus on high-risk entities, sectors and areas. Businesses are just beginning to understand the factors, patterns and dynamics that correlate to this heightened modern slavery and human trafficking risk. There are a number of resources now available (detailed further below) to help guide this process.

FAST's approach to modern slavery risk mapping

An organization looking to identify and map risks of modern slavery and human trafficking within its operations and business relationships should seek specialized guidance and assistance. There are a growing number of specialist guidance organizations operating in this sphere, and financial sector actors can also learn from each other.

In the meantime, to begin to orient themselves financial sector actors may benefit from the online interactive FAST Risk Mapping Tool. Here we lay out the key steps embedded in that tool.

The workflow should be adapted to specific contexts. Many financial sector entities will have two levels of screening when conducting risk mapping or other forms of due diligence. Which steps and factors should be addressed at each level will depend on factors specific to each entity's operations and environment.

Step 1:

Identify heightened risks of modern slavery and human trafficking in own operations or business relationships ('scale'). The aim is to identify risks to people rather than risks to the business. To this end, identify:

- **High-risk locations or contexts** in which your business or linked businesses operate – e.g. state involvement in modern slavery or human trafficking, highly isolated worksites, prisons, refugee and displaced-persons camps, communities affected by conflict or political violence, work with children.
- **High-risk products or service categories.** Use existing analysis of modern slavery typologies and sectoral mapping to identify businesses with which you have a relationship that offer high-risk products or services. Examples of high-risk business lines include construction, cantinas and massage parlours, ship salvage, artisanal mining, domestic service employment agencies, construction labour brokerage, manufacture of 'house-branded' non-resale goods.
- **Known high-risk entities** – i.e. those positively linked to modern slavery and human trafficking through a company's own records, media reports, sanctions lists or government registers.
- **High-risk labour and recruitment arrangements.** Examples include heavy reliance on foreign subsidiary or third-party labour brokers, or migrant or refugee labour; inattention to certification of labour brokers; non-provision of employment contracts in workers' native language; high levels of informalization in the bottom tier of supply chains; endemic short lead and production times; wage inflation not keeping pace with general inflation; non-payment or under-payment of wages; weak protections for labour organization.
- **High-risk supply-chain or market factors,** such as oligopolistic concentrations of purchasing power, high levels of supply-chain fragmentation, or volatility in market demand for low-skill labour.

Step 2:
Within the results identified in Step 1, assess the **scope** of each potential violation – the possible numbers of those affected.

Step 3:
Within the results identified in Step 1, assess the **(ir)remediability** of any potentially resulting harm. (Remedy is discussed later in this course.)

Step 4:
Identify those risks that have the highest combined scale, scope and irremediability.

Step 5:
From amongst these risks, identify those with the **highest likelihood** of the risk being realized. In assessing likelihood, your own entity's response will be germane.

Step 6:
Acquire specialized expert guidance to develop an effective response and understand how to prioritize amongst other risks with lower salience and/or likelihood.

Step 7:
Repeat the process on an ongoing basis, and seek to **expand** the circle of risks addressed.

To complete these steps, consult the following kinds of **resources:**[124]

Internal and client sources
- Supplier contracts and onboarding materials (KYC process, questionnaires).
- Supplier principles, standards, codes of conduct.
- Supplier reporting.
- Industry or sectoral data or mapping.
- Media monitoring + reputational risk screening.
- Watchlists and commercial risk-analysis services.
- Stakeholder engagement, especially survivor and worker engagement.

General guidance on Human Rights Due Diligence
- UN Working Group on Business and Human Rights, Corporate human rights due diligence – Getting started, emerging practices, tools and resources (2018).[125]
- OECD, OECD Due Diligence for Responsible Business Conduct (2018).[126]
- Shift, Human Rights Due Diligence in High Risk Circumstances: Practical Strategies for Businesses (2015).[127]

Modern slavery and human trafficking specific resources

- CDC Group, European Bank for Reconstruction and Development, International Finance Corporation, DfID, Managing Risks Associated with Modern Slavery: A Good Practice Note for the Private Sector (2018).[128]
- Australian Council of Superannuation Investors, Modern Slavery Risks, Rights and Responsibilities: A Guide for Companies and Investors (2019).[129]
- Responsible Investment Association Australasia (RIAA), Investor Toolkit: Human rights with focus on supply chains (2018).[130]
- Walk Free, Risk Screening Tool.[131]
- Ethical Trade Initiative (ETI), Base Code Guidance: Modern Slavery (2017).[132]
- Business and Human Rights Resource Centre, Modern Slavery Registry.[133]

The results of this risk mapping will help your organization identify where its most salient modern slavery risks arise. This will, in turn, allow more effective allocation of resources for enhanced due diligence (EDD) – deeper information gathering on specific higher-risk customers. This can involve further desk review and dialogue with the customer and with stakeholders in its sector and operating settings. This analysis cannot be a one-time effort, but must be refreshed periodically, to ensure accuracy and reliability.

3.5. New approaches: using AI to analyze unstructured data

Transaction analysis to date has uncovered indicators operating at the individual and firm level, rather than at higher levels of trafficking organization. Reporting entities have also struggled to identify cases involving labour exploitation, rather than commercial sexual exploitation, because of the difficulty of identifying proceeds of labour exploitation commingled with legitimate business revenue.[134] Polaris notes that

> *The fractured nature of the labor supply chain… makes it difficult to see a comprehensive picture of the finances of all parties associated – especially when each entity in the chain may utilize different financial institutions… red flag indicators of labor trafficking are so elusive that bank investigations rarely advance far enough to warrant a [request for information from other financial institutions under section 314B of the USA PATRIOT Act].*[135]

The risk is that the indicators and tools that are emerging, based on datasets skewed towards commercial sexual exploitation, which may direct the attention and resources of financial institutions towards those crimes, and leave modern slavery and human trafficking involving other types of forced labour unseen, unreported and unaddressed. Working together, financial sector actors could however identify high-risk sectors, corridors and business structures that require closer AML/CFT attention. Later in the course we look at the opportunities for collaboration that are emerging.

One key development is the use of artificial intelligence (AI) to identify patterns indicative of modern slavery in large, unstructured data sets. In the Netherlands, promising work involving ABN AMRO, the Dutch Inspectorate of the Ministry of Social Affairs and Employment (ISZW) and the University of Amsterdam (UvA) has developed a model using 26 indicators – ranging from financial factors (such as speed of withdrawal of newly deposited funds) to contextual indicators (such as the number of account-holding clients registered at the same address) – to help identify heightened risks of labour exploitation.[136] This data query set has been shared with other banks in the Netherlands. Other initiatives are also emerging involving analysis of remittance activities on the US' south-west border (SWBTrac), and analyzing open source material for indications of modern slavery.

For more information

Code 8.7 is a community of AI researchers, anti-trafficking organizations and survivor organizations dedicated to building survivor-informed, AI-based anti-slavery solutions.

The Anti-Human Trafficking Intelligence Initiative, STAT and the Traffik Analysis Hub all bring together non-government organizations, open source data and AI to provide transactions analysis for the financial sector. Polaris has recently partnered with PayPal to establish a trafficking-focused Financial Intelligence Unit.

Marinus Analytics' Traffic Jam uses AI to assist law enforcement network analysis and investigations, and Giant Oak's GOST tool combines open source and deep web data for threat detection.

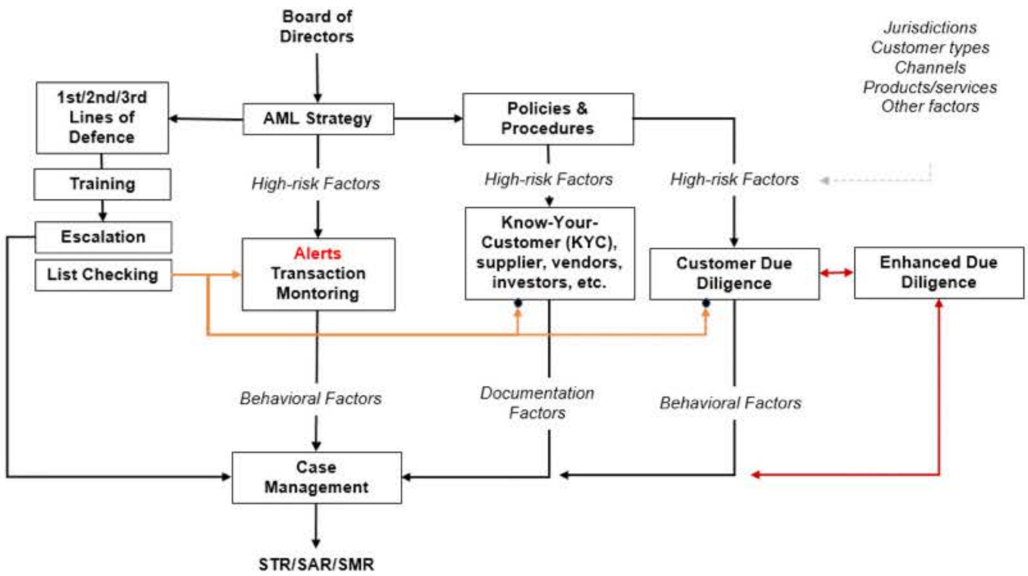
The Economist and EY jointly produced a documentary about some of these efforts, *Tracking the traffickers: Banking on a new way to disrupt crime*

4. Managing modern slavery risks

4.1. Enterprise risk management systems

Modern slavery and human trafficking risks – both those arising from the crime itself, and those arising from money-laundering associated with the crime – need to be systematically managed.

The following diagram below shows what a typical money-laundering risk management system looks like in a financial institution, and could serve as a template for incorporation of modern slavery risks into broader enterprise risk management system. As it shows, to be effective, due diligence arrangements must be nested in a larger set of policies, procedures, governance arrangements, training of staff, and internal controls such as escalation, monitoring and investigations. These need to be regularly reviewed and approved by senior management, which should also have a role in case management in certain high salience cases.



One key question for an organization when incorporating modern slavery risks into an enterprise risk management system is where to set its modern slavery risk appetite. Typically, enterprises aim to drive risks as close to zero as possible, by adopting taking risk mitigation measures. The risk that remains after these measures are taken is known as 'residual risk'.

Risk Assessment Framework

AML/CFT Risks - Mitigation Plan (measures) = Residual Risks

Financial organizations, even in the same industry, will have different residual risks. Enterprise risk management systems typically articulate the level of residual risk that an enterprise is willing to tolerate – 'risk tolerances' – and use these to guide internal decision-making. Risk tolerance statements connect business strategy with execution. A well-articulated risk management plan will measure and control business activity with the use of limits, caps, and triggers across customer and industry types, typically expressed in a risk dashboard. The use of a risk dashboard can also facilitate assurance that the organization's overall risk exposure remains within established tolerances, and be incorporated into investment and lending decisions.

Risk management personnel will need to think carefully about how modern slavery risk operates within such a system. Modern slavery risks pose a number of challenges for effective risk management, including:

- **The need to articulate some areas of 'zero tolerance'.** The most salient risks – where the scope (or impact) of the risk is high, the scale (widespreadness) is high, and any resulting harms would not be remediable – should have a low risk tolerance. For example, where modern slavery is a product of state policy, and is widespread or systematic, there is a risk that it may amount to an international crime. Financing such activity may risk international criminal liability.

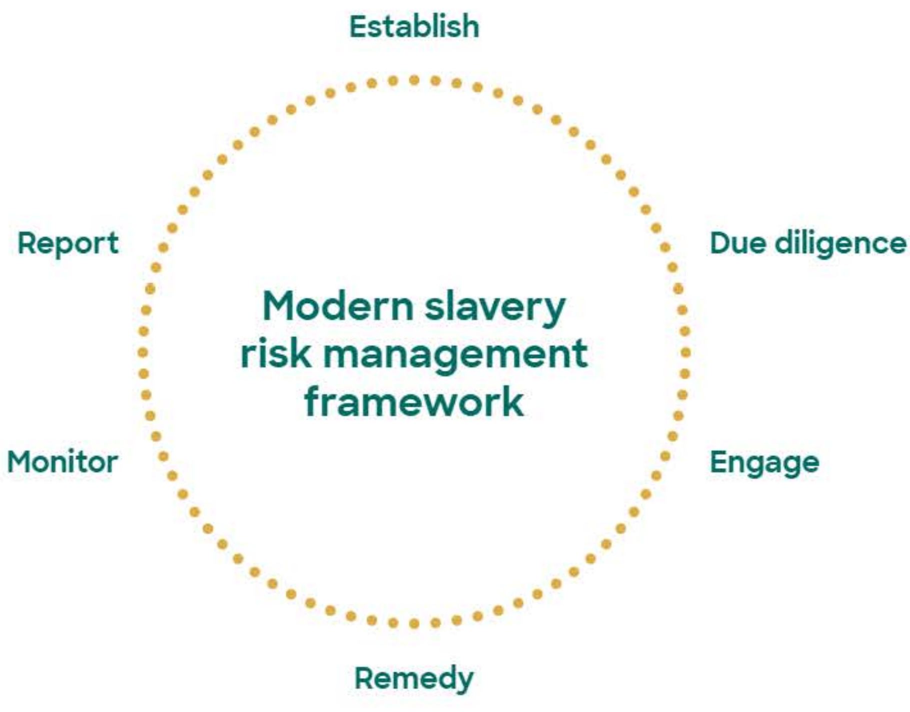
- **A temptation to set 'zero tolerance' too broadly.** Exposure to modern slavery risk can create significant reputational costs for an enterprise, and so it is understandable that some enterprises may prefer to avoid any exposure to these risks. This may not, however, be feasible, even after adoption of all appropriate risk mitigation measures. Certain markets and value chains may, as they currently stand, have endemic modern slavery risk. Mere operation in that market may expose the firm to some residual modern slavery risk. This may be the case, for example, in certain agricultural commodities, where it is difficult for lead firms, end buyers and commodity traders to know the origin of the commodities they own or invest in. In those cases, it may be necessary for firms to take steps to address modern slavery risks not through internal risk mitigation measures, but through external action, including collaborative engagement with other firms to alter the conditions and operation of the value chain or market. We look further into this later in this part of the course, discussing engagement.

- **Mistaking de-risking for effective risk management.** Where a firm identifies that a certain business relationship connects it to modern slavery risks beyond its risk tolerance, it may be tempted to 'derisk' by terminating the business relationship, for example by divesting from a certain company, or, in the AML sphere, by ending a certain client or correspondent banking relationship. This may appear, at first glance, to reduce the firm's connection to modern slavery risk. This may not, however, be correct: the relevant test is whether actions undertaken by the firm cause, contribute or link to modern slavery (and other human rights) harms. In some cases, divestment or derisking by a firm may actually increase risks to people, for example by suddenly removing workers income. In that case, the divestment may have caused increased modern slavery risk – which may mean that the organization has increased its own risk exposure through over-hasty divestment or derisking. In a later section, we look at how organizations can effectively manage risk in these situations.

4.2. A risk management framework

Risk management systems are only effective if they are actively used and effectively governed. This is likely to involve a cycle in six stages:

1. Establishment of the risk management framework, policies, procedures and tolerances, based on initial analysis of most salient risks and how their management could be discharged through existing systems. 'Establishment' is not only a formal process, but will also require internal training to ensure existence of internal human and technological capabilities to operate the framework.
2. Due diligence, on an ongoing basis, to identify modern slavery risks, in client onboarding, deal processes, product development, and across the organization's business.
3. Active engagement to mitigate modern slavery risks to which the organization is connected
4. Remedy of any resulting harms (discussed further below).
5. Ongoing monitoring and review of the performance of the risk management system, including through use of risk dashboards and KPIs.
6. Reporting – both internal and external, including for recommendations on adjustments to the risk management framework, which leads back to the establishment of new tolerances.



Given the seriousness of modern slavery risks if realized – both for victims and for any organization connected to the harm – it is important for senior management to be involved in establishing and overseeing the organization's modern slavery, forced labour and child labour risk management systems. Indeed, in some jurisdictions – including the UK and Australia – board signoff of an annual modern slavery statement is a statutory requirement.[137]

In order for such a process to be managed successfully, management is likely to appoint a competent official to oversee and manage the operation of the modern slavery risk management framework, and should equip her with the resources required to operate such a framework across the organization. Audit functions and committees can play an important role in testing the framework's robustness and performance. This helps ensure effective functioning of the system, reduction of risks to people, and prevention of reputational, legal or regulatory costs to the organization.

For more information

Guidance on reporting in Australia is provided in Australian Department of Home Affairs, *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities* (Canberra, 2019).

Modern slavery statements in the UK are available through the Modern Slavery Registry, which also provides analysis of trends in those reports.

Reporting under the French *loi de vigilance* is explained in Sherpa's *Vigilance Plans Reference Guide.*

4.3. Engagement and leverage

When a company is connected to modern slavery and human trafficking through its business relationships it is expected to use its leverage to seek to prevent or mitigate that harm and, where necessary, build additional leverage.[138] Leverage is all about using influence in relationships to change outcomes. The force of finance lies in its ability to act as a lever by which the systemic performance of the entire global economy can be moved.[139] The aim of engagement and use of leverage is thus not only reduction of risk to the business, but of risk to people.

This may begin, for example, with five questions to a company that may be connected to modern slavery risks:

1. Have you found modern slavery risks in your operations or business relationships?
2. What process did you use to identify these risks?
3. What steps have you taken to address the impacts of these risks on people?
4. What steps have you taken to report your actions?
5. What steps have you taken to prevent re-occurrence?

Beyond initial dialogue, leverage can take a variety of forms, such as filing shareholder proposals, proxy voting, multistakeholder partnerships, and engaging policy actors.
Building and exercising this kind of influence can, of course, be complicated.
There may be limits to the leverage a financial institution can build and use based on client confidentiality, privacy and competition law restrictions.[140] Other factors may also be relevant, including:

- The **nature of the transaction.** The leverage available to an entity providing working capital to a corporate borrower will look very different to the leverage available during operation of a project-financed Special Purpose Vehicle.

- The **share of financing** the financial sector entity provides. Leverage in a syndicated loan context will operate differently to leverage in a bilateral investment. Similarly, the leverage of a majority shareholder is very different to the leverage of a minority shareholder – though minority shareholders should still seek to exercise leverage.[141]

- The financial entity's **control over the other business's management.** The leverage of active manager institutional investors will look quite different to that of passive asset managers and owners. Equally, the leverage of a private equity firm will be different to that of a commodity trader or insurance broker; and that of a general partner will be significantly greater than that of a limited partner. The same institutional investor may have more control over an unlisted or direct private market investment – where it can incorporate these considerations into legal arrangements – than over a publicly listed company, where it may rely more on cooperation with other shareholders to exert influence.

- The **level of dependency** in the relationship. This may be a product of the duration of the relationship, its centrality to the operation of each business, and/or how easily an entity could be replaced by another.[142]

- The financial sector entity's own **organizational profile.** Resource constraints are relevant. A large institutional investor may have quite different leverage to a small private wealth manager, even if its equity position in a third company is the same.

Finance Against Slavery and Trafficking has identified six distinct types of leverage, building on a typology first defined by Shift.[143] These are set out below. Real life examples of each of these types of leverage being used by different financial sector actors can be found online at the FAST Leverage Practice Matrix.

Amongst these, collaborative risk management processes stand out as particularly important for financial sector actors to manage risks that are intrinsic or endemic to particular value chains or markets. Examples include:

- **Collaboration to provide guidance to third parties.** CDC, IFC, the European Bank for Reconstruction and Development, and the UK Department for International Development recently issued written guidance for private equity actors on dealing with modern slavery risk.[144]

- Collective **shareholder actions:** the Interfaith Center on Corporate Responsibility mobilizes Fortune 500 share owners to take joint actions including letter writing and shareholder proposals and motions. These efforts have led to corporate action on issues including trafficking vulnerabilities in an agricultural supply chain.[145] Other minority shareholders, including institutional investors such as ABP and APG in the Netherlands, have also at times agreed to use their shareholder and investor influence jointly to improve corporate social performance.[146]

- Other examples of **active ownership** such as: an effort by PRI members around working conditions in agricultural supply chains,[147] another PRI effort focused on a Thai seafood company with modern slavery risk,[148] or the pressure exerted by a number of pension funds on Daewoo to encourage it to cease purchasing Uzbek cotton produced with forced labour.[149] Similarly, Platform Living Wage Financials (PWLF), a Dutch investor coalition with EUR 2.3 trillion assets under management, encourages and monitors investee companies to address the non-payment of living wages in global supply chains.[150]

- **Industry associations,** such as the Responsible Investment Association Australasia (RIAA), have developed toolkits and guidance.[151] In Switzerland, 22 institutional investors with CHF 395 billion in assets under management have jointly called on the Swiss Parliament to adopt mandatory human rights due diligence legislation.[152]

- Financial sector entities can also **take action with non-financial entities – including civil society and regulators.** Barclays has partnered with civil-society organization Stop the Traffik to provide training and awareness-raising material, including videos, pamphlets and events. In the UK, Fidelis and other insurers are working with a regulator, the Gangmasters and Labour Abuse Authority, to develop standardized modern slavery exclusion clause language. And in the Netherlands, Atradius Dutch State Business (DSB), the export credit guarantee agency, has partnered with relevant government ministries to amplify its influence and address risks.[153]

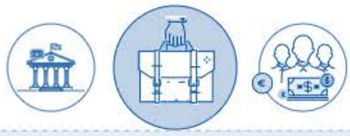
Figure 22: Six types of leverage

1. Traditional commercial leverage

Bilateral leverage

1. **Traditional commercial leverage:** This sits within the activities the company routinely undertakes in commercial relationships, such as contract audits, bidding criteria, loan conditions, commercial incentives, questionnaires and financial incentives.
2. **Broader business leverage:** through non-routine activities such as capacity-building, awareness-raising and bilateral advocacy.

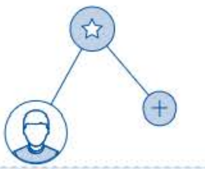
2. Broader business leverage



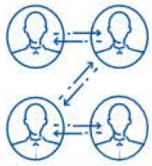
3. Work with one or more business partners

Collaborative leverage

3. **Work with one or more business partners:** Leverage created through collective action with other companies in or beyond the same industry, for example through driving shared requirements of suppliers.
4. **Work with one or more non-commercial partners:** for example involve engaging government, an international organization, a trade union, or civil-society organizations with key information.



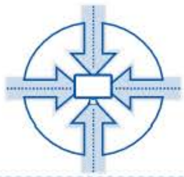
4. Work with one or more non-commercial partners



5. Multi-stakeholder cooperation

System-level leverage

5. **Multi-stakeholder cooperation:** involving both commercial and non-commercial partners to create change across the 'ecosystem'.
6. **Platform leverage:** using a common system platform or operating system, such as a utility, to change the parameters within which other businesses can act.



6. Platform leverage

Original typology by Shift Project, Ltd.

For more information

Real life examples of engagement and leverage by the financial sector

Visit the FAST Leverage Practice Matrix.

International standards and frameworks:

- UN Guiding Principles on Business and Human Rights (2011). See also UN Office of the High Commissioner for Human Rights (OHCHR),[154] Frequently Asked Questions about the Guiding Principles on Business and Human Rights (2014),[155] and The Corporate Responsibility to Respect Human Rights: An Interpretative Guide (2012).[156]
- Organization for Economic Cooperation and Development (OECD), OECD Guidelines for Multinational Enterprises (2011)[157]. See also OECD Due Diligence Guidance for Responsible Business Conduct (2018),[158] Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises (2017),[159] and the forthcoming Guidance for Corporate Lending and Securities Underwriting.[160]
- International Finance Corporation (IFC), IFC Performance Standards on Environmental and Social Sustainability (2012).[161]
- Equator Principles (2013)[162] and Equator Principles – Draft for consultation (June 2019).[163]

Other useful resources:

- UN Working Group on Business and Human Rights, Economic diplomacy as a tool for States to promote corporate respect for human rights (2018).[164]
- CDC Group, European Bank for Reconstruction and Development, International Finance Corporation, UKAID, Managing Risks Associated with Modern Slavery: A Good Practice Note for the Private Sector (2018).[165]
- Institute for Human Rights and Business (IHRB), The Commodity Trading Sector Guidance on Implementing the UN Guiding Principles on Business and Human Rights (2018)[166]
- Responsible Investment Association Australasia (RIAA), Investor Toolkit: Human rights with focus on supply chains (2018).[167]
- CDC Group, ESG Toolkit for Fund Managers: Briefing Note on Human Rights (2016).[168]

4.4. Divestment and derisking

Ultimately, even repeated efforts to build and use leverage in a business relationship may not succeed. At that point, financial institutions may need to consider responsible exit from the business relationship, which may involve exclusion or divestment. When should that divestment or derisking take place?

Emerging practice suggests that it is most effective to be clear upfront – when entering into new business relationships – about the possibility of disengagement should modern slavery risks be identified and unaddressed.[169] This makes the possibility of divestment and exclusion more credible, and can help provide a framework for graduated use of leverage, up until the point of withdrawal from the relationship. This may involve repeated cycling through processes of dialogue, engagement and attempts to address risks and harms. In operational terms, it may involve use of periodic or ongoing monitoring to identify emerging concerns, dialogue and use of leverage with the company to seek to address these concerns, and development of new leverage to try and induce changed behaviour.

The figure below provides a schematic representation of what the path to disengagement, exclusion and divestment may look like.[170] It differentiates between situations in which an organization has leverage and those where it does not, and between crucial; and non-crucial business relationships. the path to divestment will depend in part on how 'crucial' the relationship is to the parties. The more crucial this relationship, the longer may they be expected to draw out mitigation attempts. This is an incremental process, not a binary one.[171]

	Have leverage	Lack leverage
Crucial business relationship	**A** - Mitigate the risk that the abuse continues/recurs - If unsuccessful	**B** - Seek to increase leverage - If successful, seek to mitigate the risk that the abuse continues/recurs - If unsuccessful, consider ending the relationship** or demonstrate efforts made to mitigate abuse, recognizing possible consequences of remaining
Non-crucial business relationship	**C** - Try to mitigate the risk that the abuse continues/recurs - If unsuccessful, take steps to end the relationship*	**D** - Assess reasonable options for increasing leverage to mitigate the risk that the abuse continues/recurs - If impossible or unsuccessful consider ending the relationship*

* Decisions on ending the relationship should take into account credible assessments of any potential adverse human rights impact of doing so.

** If the relationship is deemed crucial, the severity of the impact should also be considered when assessing the appropriate cause of action.

Source: UN OHCHR, 2012, The Corporate Responsibility to Respect Human Rights: An Interpretative Guide, p. 50.

On the other hand, where a harm is very severe or irremediable, there may be an expectation of a more rapid termination of the relationship.[172] And where an entity's leverage is limited and the relationship with the other entity causing the harm is not close or crucial, withdrawal may happen fairly rapidly. For example, in 2018 ABN Amro concluded that it was directly linked to adverse human rights impacts around the Dakota Access Pipeline project; it had not financed the project, but had a relationship with the parent company of one of the pipeline construction companies. Realizing it had no leverage, ABN Amro withdrew from that business relationship.[173]

Yet in some such cases, divestment and derisking may do little to address modern slavery or human trafficking risks buried far down a supply chain, and so divestment and exclusion may be of limited value. Or, worse, divestment could *increase* the risks to people, for example by suddenly removing workers' income and making them more vulnerable to modern slavery. In that case, the divestment may have caused increased modern slavery risk – which may mean that the organization has *increased* its own risk exposure through over-hasty divestment or derisking.

What is critical is to remember the purpose of disengagement: the aim must not be simply to reduce the business's risk exposure, but also to reduce the risk exposure of people. Divestment screens should not encourage divestment as soon as controversy arises; they must instead consider not only what leverage options are available to the business, but also whether withdrawal could, in fact, increase risks to people. Overly rapid divestment from supply chains involving forced labour or child labour could, for example, leave people without access to alternative livelihoods, and leave them with little choice but to undertake perilous migrations or seek work in other dangerous and exploitative circumstances. Exclusion, derisking and divestment should not be seen as necessarily final and permanent, but rather as one stage in a complex process of building and using trust and influence.

There is growing practice in this area from which we can all learn. In 2017, the Norwegian Council on Ethics (an advisory body to the Norwegian Government Pension Fund Global [GPFG]) recommended that GPFG exclude Polish property development company Atal SA from the fund, due to its use of a subcontractor which had used workers from the Democratic People's Republic of Korea at Atal's construction sites. The Council of Ethics explored both Atal's connection to past forced labour violations and the steps it had taken to prevent future ones.[174] And in 2019, Rabobank and Citi withdrew hundreds of millions of dollars of funding from Indofood, an Indonesian food company. This followed investigations by the Roundtable on Sustainable Palm Oil, to which Indofood then belonged, into environmental concerns and exploitative labour practices in Indofood's palm oil operations – including cases of child labour, unpaid workers, precarious employment, gender discrimination and toxic working conditions. In November 2017, RSPO issued a decision requiring Indofood to address worker exploitation.[175] It refused, and RSPO cancelled its membership. The bank divestments followed.[176]

5. Remedying modern slavery harms

5.1. The remedy gap

Remedy is a flexible concept, not limited to compensation or convictions. It may also include an apology, provisions to ensure the harm cannot recur, restitution or rehabilitation, cessation of a particular activity or relationship – or indeed something else agreed by the victim and the entity that caused the harm.[177]

All victims of modern slavery and human trafficking are entitled under international law to an effective remedy.[178] The Palermo Protocol, 2014 ILO Forced Labour Protocol, Council of Europe Convention and EU Trafficking Directive all explicitly recognize the right of trafficking victims to compensation. In the US, the Trafficking Victims Protection Act requires that federal courts order restitution to victims of trafficking in the "full amount of the victim's losses" – including not only out of pocket expenses but also the value of the victim's services.[179]

Yet in reality, access to an effective remedy is the exception, not the rule, for victims of trafficking and modern slavery. The TPVA mandatory restitution orders are honoured only exceptionally.[180] And a recent study of compensation cases in Europe found that while roughly two thirds of the trafficking cases studied resulted in compensation awards, only around 1 in 10 cases resulted in actual pay-outs.[181]

Victims and survivors of modern slavery and human trafficking face a remedy gap. There are numerous barriers to achieving effective remedy:

- Lack of awareness of remedial mechanisms amongst victims and law enforcement.
- Lack of access to legal aid and effective representation.
- Lack of access to status (such as residency) entitling victims to state aid (such as victims of crime compensation).
- Return to countries of origin before the remedial process is complete.
- Inability to enforce any award, including difficulties tracing perpetrator assets.
- The ease for perpetrators of evading enforcement, including by moving assets abroad, or declaring bankruptcy.[182]

Failure to remedy these harms not only prolongs the trauma, there is evidence it also puts survivors at risk of secondary or multiple victimization. So addressing the remedy gap is a question not just of putting victims and survivors to right but also of helping to prevent further modern slavery and human trafficking.

5.2. Remedy expectations

What role do financial institutions and other businesses have to play in addressing this remedy gap? Talk of remedy and compensation makes some financial sector actors understandably nervous. It raises concerns that financial institutions will get stuck with the bill for harms caused by businesses they have a relationship with, but do not control.

Remedial expectations on business are set out in United Nations Guiding Principle 22, which is also mirrored in the OECD Guidelines for Multinational Enterprises:

> *Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.*

Yet even then it is important to be clear that providing – or contributing to the provision of – remedy does not mean that financial institutions must assume the remedial responsibilities of business entities with which they have business relationships. Even where a business recognizes it contributed to harm, that business's remedial role is independent of the role of other contributors – such as companies it has financed.[183] The other contributors' responsibility to provide or contribute to remedy does not disappear just because the financial entity's responsibility to provide or contribute to remedy is triggered. And the financial entity's responsibility is of course limited and proportionate to the extent of its contribution.

What about the situation where the financial institution has not caused or contributed to the realization of modern slavery or human trafficking risks, but is simply linked to those harms through a business relationship with a person or entity that has caused or contributed to the harm? There, the United Nations Guiding Principles make clear that the financial institution is *not* expected to *provide or contribute* to remedy – but they still have a responsibility to *use leverage* to seek to mitigate and address harms.[184] That may include exerting influence over clients, or others, to encourage *them* to provide remedy for harms they have caused or to which they have contributed.[185] In those cases, the question shifts, for financial sector institutions, from how they can provide remedy to how they can enable it.

The first, and perhaps best, way for financial sector entities to meet these expectations is through cooperation with effective, state-based judicial mechanisms – such as courts, usually operating at the national level, occasionally at the international.[186] In fact, businesses are expected to adopt a posture of deference and cooperation to legitimate remedial processes, such as courts, and to cooperate with them to help provide and contribute to effective remedy.[187]

Financial sector entities are crucial to effective financial investigations and to asset freezing and confiscation.[188] Financial investigations can reveal the structure and membership of trafficking organizations, and help investigators and prosecutors identify perpetrators, gatekeepers and victims. Financial evidence can also help prosecutors demonstrate the profit motive and knowledge of traffickers – showing how the proceeds of trafficking and slavery were used, for example. Importantly, financial transaction evidence can reduce the burden on victims by obviating the need for them to go through the traumatic process of providing testimony, by offering alternative corroborating evidence. Financial investigations also open the door to broader charging and higher penalties, and have the potential to provide for satisfaction of compensation and restitution orders made to victims, through asset confiscation. In the United States, for example, what holds back mandatory restitution arrangements in many jurisdictions is often the identification of relevant defendant assets.[189] Financial institution cooperation with judicial processes can help address this limitation.

A second way to meet the expectation of "cooperation … through legitimate processes" is to cooperate with state or international non-judicial processes, such as national human rights institutions, ombudspeople, or labour inspectorates; or institutions such as the National Contact Points (NCPs) established under the framework of the OECD Guidelines for Multinational Enterprises.[190] There have been several recent cases handled by NCPs that establish important precedents regarding the role of financial institutions in providing and enabling remedy. In February 2020, in the case of *ED and ICI v. ANZ*, before the Australian NCP, a settlement was reached in which ANZ agreed to compensate more than 1,000 Cambodian families displaced by a Cambodian company it financed. In *KTNCW et al. v. POSCO*, a 2014 complaint brought simultaneously to the Dutch, Norwegian and the Republic of Korea NCPs, concerning a steel plant and infrastructure development project in India, Dutch and Norwegian pension funds and asset managers were induced to exert leverage on POSCO to get it remedy human rights impacts in the project. And in *Forum Suape et al. v. Atradius Dutch State Business*, the Dutch export credit agency was ordered to use its leverage in its business relationships to seek to prevent and mitigate the harms caused by the dredging activities.[191]

Non-judicial mechanisms have also played an important role in the World Bank system, leading to changed approaches to management of modern slavery, forced labour and related risks in Uzbekistan,[192] and in its funding of the palm oil sector.[193]

Financial institutions and other businesses can also contribute to remedy by establishing their own grievance mechanisms. A 'grievance mechanism' is a process established to allow affected stakeholders to raise complaints or concerns with relevant parties and to have those complaints or concerns addressed and resolved. Grievance mechanisms both support a company's ongoing due diligence – by allowing it to identify oncoming risks, early – and provide a mechanism for addressing adverse impacts. The United Nations has set out a range of characteristics of effective grievance mechanisms,[194] and there is now burgeoning guidance on how to do this effectively.

Financial institutions may already have grievance mechanisms in place to deal with internal or client concerns, which can be adapted to deal with modern slavery and human trafficking risks. The Australian bank Westpac, for example, 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 who 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). The customer advocate's team starts 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.[195]

A central question for a financial entity grappling with remedy questions is whether the available grievance mechanism infrastructure is delivering results, and can go to scale.[196] The reality is that even where the requisite 'grievance mechanism infrastructure' is in place, it may require the engagement and input of other actors to activate the mechanism and operate it successfully.

NGOs, for example, typically play a key role in assisting victims to identify and access grievance mechanisms. Survivors, too, may have an important role to play as sources of expertise and guides.

For more information

Key guidance

- OHCHR, Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse.[197]
- OHCHR, OHCHR Response to Request from BankTrack for Advice regarding the Application of the UN Guiding Principles on Business and Human Rights in the Context of the Banking Sector.[198]
- IFC, A Guide to Designing and Implementing Grievance Mechanisms for Development Projects.[199]
- IRBC Working Group Enabling Remediation, Discussion Paper: Working Group Enabling Remediation.[200]
- Shift, Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights.[201]

Other resources

- BankTrack + Oxfam Australia, Developing Effective Grievance Mechanisms in the Banking Sector.[202]
- Compliance Advisor Ombudsman, Grievance Mechanism Tool.[203]
- Compliance Advisor Ombudsman, A Guide to Designing and Implementing Grievance Mechanisms for Development Projects.[204]
- CSR Europe, Management of Complaints: A Checklist for Effective Grievance Mechanisms.[205]
- CSR Europe, Assessing the Effectiveness of Company Grievance Mechanisms.[206]
- Laura Curtze and Steve Gibbons, Access to Remedy - Operational Grievance Mechanisms.[207]
- Ethical Trading Initiative, Access to Remedy - Practical Guidance for Companies.[208]
- FIDH, Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms.[209]
- Institute for Environmental Security, Better Access to Remedy in Company-Community Conflicts in the Field of CSR: A Model for Company-Based Grievance Mechanisms.[210]
- Caroline Rees, Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned.[211]
- Caroline Rees, Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps.[212]
- SOMO, Using Grievance Mechanisms: Accessibility, Predictability, Legitimacy and Workers' Complaint Experiences in the Electronics Sector.[213]

5.3. Working with survivors

There are numerous ways in which financial institutions can work with, and learn from, survivors of modern slavery and human trafficking.

Survivor experience and expertise has proven to be very useful in helping financial sector actors understand where they connect with, facilitate or contribute to exploitative businesses. Survivors can help guide and direct financial sector actors to a more nuanced understanding of how and where modern slavery and human trafficking money laundering risks may arise.

This is the approach that underpins emerging partnerships such as Project Protect in Canada, a public-private partnership between regulators, financial institutions, law enforcement and others that works to strengthen understanding of human trafficking among member institutions and to increase relevant reporting to the national FIU, FINTRAC/CANAFE.[214]

Survivor engagement can also help financial sector actors develop new and valuable sources of information and risk-monitoring approaches, for example by training branch personnel to spot signs of modern slavery and human trafficking.[215]

Financial institutions also have an important role to play in helping survivors get back on their feet, financially. One aspect of modern slavery and human trafficking that is often overlooked is traffickers' exploitation not only of their victim's bodies and labour, but also their financial identities. Traffickers often use their victims, their accounts, or simply their identities, to create 'mule' accounts and financial instruments (such as credit cards), through which to launder the profits of exploitation. This even extends to using victims' identities to access income tax repayments and other government benefits. This 'muling' approach helps to hide the trafficker's identity, while leaving victims with downside risks.

Having endured exploitation, survivors often discover that their traffickers have hijacked their financial identity or banking products for money-laundering or other criminal purposes, spoiling their credit record and complicating financial recovery. Lack of access to bank accounts has numerous knock-on effects in other parts of daily life, relating to personal identification, acquiring legal employment, accessing and safely storing personal funds, obtaining housing, and saving. Survivors who attempt to open bank accounts may be denied services due risk indicators arising from their financial histories, or simply because they lack required documentation. They can also discover tax debts accrued in their names.[216]

One way to address these complications is through the FAST Survivor Inclusion Initiative, which brings together a dedicated coalition of financial institutions and survivor support organizations to facilitate survivor access to basic banking services, such as checking and savings accounts, and to help survivors' financial recovery to become full financial participants in their communities.

6. The Blueprint and the Pledge

In 2015, the 193 member states of the United Nations adopted the Sustainable Development Goals (SDGs). In SDG 8.7, states committed to take effective measures by 2030 to end modern slavery, forced labour and human trafficking. With at least 40 million people thought to be in modern slavery at the time of writing, that requires reducing the number of victims by over 10,000 per day.

That will only be possible if the financial sector gets involved. The financial sector cannot be expected to end modern slavery and human trafficking, but we *can* expect that modern slavery and human trafficking will not end *unless* the financial sector gets involved. This requires systemic change. But systemic change starts with individuals.

Finance Against Slavery and Trafficking has set out a Blueprint for mobilizing the financial sector against modern slavery and human trafficking, built around 5 Goals and 30 Actions. This provides a collective action framework for the sector. FAST has also created an Implementation Toolkit to assist companies seeking to implement the Blueprint or undertake any of the proposed 30 Actions.

THE FAST BLUEPRINT SUMMARY TABLE

	Actions	
FAST Blueprint Goals	**Act Now**	**Initiate**
Goal 1: Compliance with laws against modern slavery and human trafficking	• Strengthen financial investigations • Involve and learn from survivors • Strengthen use of the AML/CFT and sanctions regimes	• Develop transactions analysis tools • Mobilize the insurance sector • Use public financial regulatory levers – procurement, investment + lending
Goal 2: Knowing and showing modern slavery and human trafficking risks	• Collaborative learning on due diligence • Foster digital and data innovation • Public, intergovernmental reporting and exclusions database (mutual debarment model)	• Taxonomy and harmonized disclosure regimes • Corporate ESG ratings • Collaborative value-chain mapping and shadow pricing modelling
Goal 3: Using leverage creatively to mitigate and address modern slavery and human trafficking risks	• Differentiated leverage guidance • Collaborative leverage in high-risk sectors such as construction • Promote leverage reporting and transparency	• Explore platform leverage • Develop benchmarks and ratings on leverage • Embed leverage in enterprise tech
Goal 4: Providing and enabling effective remedy for modern slavery and human trafficking harms	• Participate in the FAST Financial Access Project's Survivor Inclusion Initiative • Provide and contribute to effective remedies • Cooperate with financial investigations and judicial processes	• Use leverage to enable effective remedy ecosystems • Develop new insurance lines • Investigate other novel modalities
Goal 5: Investment in innovation for prevention	• Invest in digital finance to serve vulnerable populations, e.g. through the FAST Financial Access Project's Vulnerable Populations Initiative • Size investment needs • Promote social finance, such as microfinance	• Strengthen ROI knowledge • Develop anti-slavery bonds and performance loans • E-finance regulatory harmonization

The ACAMS/FAST Pledge allows financial sector actors to make individual or entity-level commitments to take action to undertake any of these actions. Pledgers will receive regular updates on new developments in this field, to assist with their implementation efforts.

For more information

Read the FAST Blueprint

Take the ACAMS/FAST Pledge

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