

# *Developments in the Field*

## *Working with the Financial Sector to Correct the Market Failure of Modern Slavery*

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**Keywords:** Modern Slavery, Human Trafficking, Capital Markets, Finance, Forced Labour, Remedy, Human Rights

### I. INTRODUCTION

The prohibition of slavery is one of the strongest norms in international law.<sup>1</sup> Yet, with over 40 million people estimated to be in forced labour and forced marriage as of 2016, it is clear that this prohibition is poorly enforced.<sup>2</sup> Now, the global COVID-19 pandemic is likely to further exacerbate risks of modern slavery and human trafficking, increasing people's vulnerability to exploitation and disrupting response efforts. A new initiative organized by the governments of Liechtenstein, the Netherlands, Australia and United Nations University seeks to mobilize the financial sector to tackle this problem.

Like many human rights abuses linked to corporate activity, modern slavery is in part the tragic result of a market failure: a failure by markets to accurately price in the social costs of production. In the case of modern slavery, the prices of goods – from cocoa to precious metals to fast fashion – fail to reflect the true social costs of the labour exploitation involved in their production. These are significant. UK researchers estimate every case of modern slavery costs the UK public purse over GBP 328,000;<sup>3</sup>

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<sup>1</sup> Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Leiden: Brill, 2012); *Belgium v Spain* [1970] ICJ Rep 3, 33.

<sup>2</sup> International Labour Organization, International Organization for Migration and Minderoo Foundation Walk Free Initiative, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Geneva: International Labour Office, 2017).

<sup>3</sup> Sasha Reed et al, 'The Economic and Social Costs of Modern Slavery', *Research Report 100* (London: UK Home Office, 2018) 25.

while a recent International Monetary Fund (IMF) paper suggests that child marriage costs countries around 1 per cent of their GDP.<sup>4</sup>

As appreciation of these externalities grows, there is growing compliance pressure on firms to identify and address modern slavery risks in their operations and business relationships. This has given rise to corporate disclosure requirements specific to modern slavery, increased attention by investors to environmental, social and corporate governance concerns and a growing focus on forced labour in trade regulation.<sup>5</sup>

Financial sector actors stand in a unique position to strengthen efforts to tackle modern slavery. Working together, they can ensure that these risks and costs are properly identified, managed, and priced into the cost of capital, using their leverage to encourage business practice that prevents these risks crystallizing in the first place, and remedies these harms where they do occur and they are linked to them. The financial sector also has unique opportunities for prevention. Evidence shows that financial exclusion prevents capital formation through savings and reduces resilience to financial shocks, which in turn encourages risky labour and migration practices.<sup>6</sup> Strengthened financial inclusion could therefore have a significant impact on vulnerability to slavery and trafficking.

## II. A FRAMEWORK FOR COLLECTIVE ACTION

The potential for financial sector mobilization is at the heart of the new Liechtenstein Initiative for Finance Against Slavery and Trafficking (the 'FAST Initiative').

The first phase of the FAST Initiative involved a year-long consultation by a Financial Sector Commission, consisting of 25 experts from finance, the anti-slavery movement, and the business and human rights field. This group was convened by the Prime Minister of Liechtenstein, Foreign Ministers of Netherlands and Australia, and Professor Muhammad Yunus, the Nobel laureate and microfinance pioneer. Beginning consultations in 2018, the Commission ultimately produced a report, *Unlocking Potential: A Blueprint for Mobilizing Finance Against Slavery and Trafficking*, released at the United Nations General Assembly in September 2019. Drawing on the United Nations Guiding Principles on Business and Human Rights (UNGPs) and Organisation for Economic Co-operation and Development (OECD) Guidelines, the 'FAST Blueprint' – as the report is now known – proposes a collective action

<sup>4</sup> Pritha Mitra et al, 'Does Child Marriage Matter for Growth?', IMF Working Paper WP/20/27 (February 2020), <https://www.imf.org/~media/Files/Publications/WP/2020/English/wpica2020027-print-pdf.ashx> (accessed 3 July 2020)

<sup>5</sup> European Commission, 'EU acts on Illegal Fishing: Yellow Card Issued to Thailand While South Korea and Philippines are Cleared' (21 April 2015), [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_15\\_4806](https://ec.europa.eu/commission/presscorner/detail/en/IP_15_4806) (accessed 3 July 2020); U.S. Customs and Border Protection, 'CBP Issues Detention Orders against Companies Suspected of Using Forced Labor' (1 October 2019), <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-orders-against-companies-suspected-using-forced> (accessed 3 July 2020); U.S. Customs and Border Protection, 'CBP Issues Withhold Release Order on Tobacco from Malawi' (1 November 2019), <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-tobacco-malawi> (accessed 3 July 2020).

<sup>6</sup> Financial Sector Commission on Modern Slavery and Human Trafficking, *Unlocking Potential: A Blueprint for Mobilizing Finance Against Slavery and Trafficking* (New York: United Nations University, 2019), <https://www.fastinitiative.org/the-blueprint/>, 30–31.

framework based on five goals and thirty actions. To aid in Blueprint implementation, the Commission also released a series of tools dealing with financial investigations, risk-mapping, and good practice in leverage, available at the Initiative's website, [www.fastinitiative.org](http://www.fastinitiative.org).

The Blueprint covers a diverse array of financial sector connections to modern slavery and human trafficking, ranging from handling proceeds of crime, to investment decision-making, to the role of fintech. Detailed discussions of the actions required to implement the five FAST goals explore issues ranging from pre-competitive collaboration to facilitate due diligence, to best practice in divestment, to use of investor leverage to enable remedy.

### III. IMPLEMENTING THE FAST BLUEPRINT

The second phase of work by the Liechtenstein Initiative involves implementation of the Blueprint, through a range of sector-led projects and initiatives.

The FAST Secretariat, based at the United Nations University Centre for Policy Research, has recently launched a free online training certificate, based on the Blueprint.<sup>7</sup> The course is a collaboration with the Association of Certified Anti-Money Laundering Specialists (ACAMS). Over 3,000 financial sector professionals from more than 116 countries took the course in the first two months after its release.

Banks have engaged quickly. Under the auspices of the FAST Survivor Inclusion Initiative, 12 banks in four countries, including Bank of America, Barclays, Citi, HSBC and Wells Fargo are working with survivor support organizations to facilitate survivor access to bank accounts, to help prevent revictimization and enable remedy. Over 400 survivors were assisted in the first 5 months of the project, and a new collaboration between the FAST Initiative and the European Banking Federation will promote Blueprint implementation across the region.

Investors are also increasingly engaged. Explicitly referencing the FAST Blueprint, Humanity United, Freedom Fund and UBS Optimus Foundation launched a pooled fund, *Moving Markets*, to fund projects aimed at strengthening investor use of reliable social metrics addressing forced labour. Funded projects address issues ranging from Sustainability Accounting Standards Board (SASB) metrics to systems thinking in the post-COVID-19 period.

Meanwhile, in the UK, drawing on the FAST Blueprint and backed by the support of the UN-backed Principles for Responsible Investment, charity fund manager CCLA has convened a group of investors to develop better policies, processes and procedures for engagement with invested companies, to help them identify then address modern slavery in their operations and business relationships. This *Find It, Fix It, Prevent It* model, based on peer learning and support, is rapidly proliferating, with chapters also being established in the Netherlands and in the Asia-Pacific.

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<sup>7</sup> ACAMS, 'Fighting Modern Slavery and Human Trafficking', <https://www.acams.org/modern-slavery-human-trafficking-training/> (accessed 3 July 2020).

Another implementation effort involves regulators. Also in the Asia-Pacific, a collaboration between the FAST Initiative and the Minderoo Foundation's Walk Free project, will engage the 49 countries and international organizations involved in the Bali Process on People Smuggling, Trafficking in Persons, and Related Transnational Crime, to promote Blueprint implementation in relation to specific high-risk sectors. The FAST Blueprint has already informed the Hong Kong Legislative Council's deliberations on proposed new anti-trafficking legislation,<sup>8</sup> and has been presented to policy actors in forums ranging from the US Treasury and US Chamber of Commerce to the Organization for Security and Co-operation in Europe (OSCE) to the World Economic Forum in Davos.

#### IV. CONCLUSION

The ongoing market failure that allows modern slavery and human trafficking to persist can be addressed and corrected. Efforts to build back better after the COVID-19 pandemic and the resulting economic fall-out will need to focus on the risks of those most vulnerable to such forms of exploitations. The financial sector cannot end modern slavery and human trafficking on its own, but it is unrealistic to think we can end modern slavery and human trafficking without active financial sector engagement and leadership.

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<sup>8</sup> Dennis Kwok, 'Remarks at the UN Forum on Business and Human Rights', organized by the UN Working Group on Business and Human Rights, 26 November 2019.