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# Leaning In

Advancing the Role of Finance Against  
Modern Slavery

Jo Webb and Tom Keatinge

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RUSI Occasional Paper, December 2018



**Royal United Services Institute**  
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# Executive Summary

**I**N RECENT YEARS, the financial sector has become an increasingly high-profile contributor to efforts to identify and disrupt modern slavery and human trafficking. Specific financial sector-led initiatives, such as Canada's Project PROTECT,<sup>1</sup> have emerged; and multilateral efforts such as those convened by the UN University or the Bali Process have included a significant emphasis on the role of the financial sector.<sup>2</sup> Furthermore, in advanced markets such as Europe and the US, financial institutions are increasingly making clear and unequivocal commitments to their human rights responsibilities, and are incorporating policies to identify modern slavery and human trafficking into their financial crime compliance operating models, to good effect.<sup>3</sup>

As this paper will explore, a range of mainly external factors have led the financial sector to commit itself to the fight against modern slavery and human trafficking. The commitment shown by the industry should be welcomed, as it supplements the existing work of governments and NGOs.

But can this commitment from the financial sector go further – beyond financial crime compliance and transaction monitoring – by using the provision of finance as a force for good to effect change in the operational and value-chain behaviour of their clients? The UN Guiding Principles on Business and Human Rights (hereafter referred to as the UN Guiding Principles) require that businesses 'should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved'.<sup>4</sup> A 2013 worldwide survey of financial institutions – conducted two years after the publication of the UN Guiding Principles – revealed that 60% were 'aware' of the UN Guiding Principles, but understanding of their use to identify and/or assess human rights issues was mixed.<sup>5</sup> While recognising that there is a range of human rights impacts that are relevant to the banking sector, this paper focuses specifically on modern slavery and human trafficking. It evaluates whether more action and commitment

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1. See Financial Transactions and Reports Analysis Centre of Canada, 'Project PROTECT: Public Service Renewal in Action', November 2017, <<http://www.fintrac.gc.ca/emplo/psr-eng.asp>>, accessed 2 August 2018.
  2. See, for example, United Nations University, 'Strengthening the Multilateral Response to Modern Slavery', <<https://unu.edu/projects/strengthening-the-multilateral-response-to-modern-slavery.html>>, accessed 6 August 2018; The Bali Process, 'About the Bali Process', <<https://www.baliprocess.net/>>, accessed 6 August 2018.
  3. See, for example, HSBC, 'Challenging the Human Traffickers', 18 July 2017, <<https://www.hsbc.com/news-and-insight/insight-archive/2017/challenging-the-human-traffickers>>, accessed 6 August 2018.
  4. Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Guiding Principles on Business and Human Rights', 2011, p. 14.
  5. Chintal Barot, Carey Bohjanen and Magdalena Stroe, 'Environmental and Social Risk Due Diligence in the Financial Sector: Current Approaches and Practices', May 2013, p. 23.

are required – and whether this is possible – from the sector, particularly in the form of using leverage provided by the provision of finance to clients to encourage the raising of standards in the field of human rights, in line with activity on environmental risks. In reviewing whether the financial sector’s activity in some cases furthers – rather than diminishes – the prevalence of modern slavery and human trafficking, the paper evaluates what responsibility should be taken by the sector to mitigate negative impacts throughout their corporate client portfolio (and through their clients’ value chains). It also addresses the practical and economic challenges associated with this prescription of responsibility and the potential to make a significant positive contribution to the realisation of human rights.

Building on RUSI’s previous work on the role financial institutions can play in disrupting human trafficking,<sup>6</sup> this paper seeks to determine the extent to which the financial industry could and should take greater responsibility for addressing modern slavery and human trafficking, moving beyond the current compliance and anti-financial crime-based responses, recognising the tremendous power that finance and financial institutions have to create positive human impacts.

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6. Tom Keatinge and Anne-Marie Barry, ‘Disrupting Human Trafficking: The Role of Financial Institutions’, *Whitehall Report*, 1-17 (March 2017).

# Introduction

**T**HERE WERE AN estimated 40.3 million people living in modern slavery in 2016, according to figures published by the International Labour Organization (ILO) and the Walk Free Foundation, in partnership with the International Organization for Migration (IOM).<sup>1</sup> Modern slavery encompasses a range of slavery practices, with forced labour accounting for the largest proportion, estimated to affect 24.9 million people, 16 million of whom were in the private economy.<sup>2</sup> The growing recognition of the size and scale of the issue has galvanised governments, civil society and businesses into exploring mechanisms to identify, mitigate and prevent modern slavery within business supply chains.

With the International Labour Organization (ILO) reporting illegal profits from sexual exploitation and forced labour to be an estimated \$150 billion dollars annually,<sup>3</sup> the recognition that illicit funds generated from these activities will likely emerge in the global financial system has also prompted the financial sector to explore ways to tackle this issue. At the international level, bodies such as the Financial Action Task Force (FATF) have brought focus to the financial flows related to human trafficking,<sup>4</sup> and domestic initiatives such as the UK's Joint Money Laundering Intelligence Taskforce (JMLIT) and Canada's Project PROTECT have sought to mobilise the financial sector in support of law enforcement efforts to identify and disrupt the proceeds and beneficiaries of this crime.<sup>5</sup>

In its March 2017 paper, *Disrupting Human Trafficking: The Role of Financial Institutions*, RUSI's Centre for Financial Crime and Security Studies noted several ways in which a financial institution could contribute to the identification, disruption and prevention of modern slavery and human trafficking, including:

- Using its branch presence to act as 'eyes on the street' by training staff to spot signs of modern slavery and human trafficking;

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1. International Labour Organization (ILO) and Walk Free Foundation, in partnership with the International Organization for Migration (IOM), *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Geneva, International Labour Office: 2017).
2. *Ibid.*
3. ILO, *Profits and Poverty: The Economics of Forced Labour* (Geneva: ILO, 2014), p. 13.
4. The Financial Action Task Force (FATF), 'Financial Flows from Human Trafficking', July 2018.
5. On the JMLIT, see UK National Crime Agency, 'Joint Money Laundering Intelligence Taskforce (JMLIT)', <<http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/joint-money-laundering-intelligence-taskforce-jmlit>>, accessed 2 August 2018. On Project PROTECT, see Financial Transactions and Reports Analysis Centre of Canada, 'Project PROTECT: Public Service Renewal in Action', November 2017, <<http://www.fintrac.gc.ca/emplo/psr-eng.asp>>, accessed 2 August 2018.

- Using its considerable transaction-monitoring and client-screening capabilities to identify suspicious activity that might be indicative of human trafficking or modern slavery, including use of typologies to identify high-risk client profiles;
- Ensuring that its own supply chain, for example contractors used for cleaning or catering services, is free of modern slavery; and
- Using its leverage over its clients to drive up anti-modern slavery standards and to avoid contributing to potential modern slavery and human trafficking by making responsible lending and financing decisions. For example, undertaking due diligence on, and monitoring the activity of, clients with business models where instances of modern slavery have been found to occur or outsourcing to countries with a high migrant workforce or known exploitative practices.<sup>6</sup>

While the first three points are unlikely to be controversial, the fourth point appears to be less universally accepted. Indeed, in 2017, as will be explored later in this paper, there was considerable public debate between the Thun Group of Banks and John Ruggie, author of the UN Guiding Principles on Business and Human Rights (hereafter referred to as the UN Guiding Principles), regarding the circumstances under which financial institutions may be obliged under the UN Guiding Principles to exercise leverage over those benefiting from their financial services.<sup>7</sup>

The consideration of human rights in business is a broad topic covering issues related to labour standards, workers' rights, human rights, anti-bribery and corruption, the environment, privacy, consumers, and corporate governance. These issues may be associated with business operations, supply chains and other business relationships. It is, however, not the purpose of this paper to review the entire business and human rights landscape. Rather, in building on Tom Keatinge and Anne-Marie Barry's 2017 *Whitehall Report*, the focus and purpose of this paper is to:

- Gain insight into current financial sector thinking relating to the role and responsibility of financial institutions in contributing to the human rights agenda. Specific attention is paid to the growing expectations on businesses to identify, prevent, mitigate and account for how they address their impact in relation to modern slavery and human trafficking;
- Contrast this identified position with the longer-standing and more clearly evidenced commitment of the financial sector when considering finance and environmental risks, identifying if, where and why gaps exist; and
- Determine recommendations as to how financial institutions can more closely align their approach to human rights (specifically modern slavery and human trafficking) with their evident commitments and programmes in relation to the environmental agenda.

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6. Tom Keatinge and Anne-Marie Barry, 'Disrupting Human Trafficking: The Role of Financial Institutions', *Whitehall Report*, 1-17 (March 2017), pp. 17-18.

7. The Thun Group is an informal group of banks working together to further the understanding of the UN Guiding Principles within the context of banking and consider how they may be applied across the range of different banking activities. See UBS, 'Get All the Facts', <<https://www.ubs.com/global/en/ubs-society/our-documents.html>>, accessed 11 August 2018.

In considering this field, it is important to specify the particular areas of the financial sector under analysis. The finance industry covers a number of different disciplines, each with their own particular approaches, business models and leverage opportunities. This paper does not focus on all sub-sectors of the finance industry. Given the growing number of resources that already exist to promote responsible investment – for example, the Principles for Responsible Investment (PRI);<sup>8</sup> the OECD’s Responsible Business Conduct for Institutional Investors;<sup>9</sup> and the UN Alliance for SDG Finance (focused on the UN’s Sustainable Development Goals, hereafter referred to as the SDGs)<sup>10</sup> – to keep the assessment focused, and to build on Keatinge and Barry’s previous work,<sup>11</sup> this paper is weighted towards the lending community within the banking sector. Nonetheless, the principles discussed in this paper are widely applicable across the broader financial industry.

## Audience and Methodology

This paper is primarily aimed at practitioners within financial organisations focused on implementing, or considering the implications of, due diligence for responsible lending and developing measures for creating a positive impact on business and supply-chain integrity. It is not intended to provide step-by-step due diligence guidance or act as a toolkit for modern slavery risk management. Rather, the authors endeavour to provide a grounding for discussion about further financial sector engagement with combating modern slavery and human trafficking, to supplement the commendable work that has been undertaken thus far, noting the expanding number of different functions, roles and business units within banks that may bear some responsibility for ensuring business integrity. We also draw on and refer to ongoing work within the responsible investment and lending community that has begun to address this topic.<sup>12</sup>

This paper also provides valuable insight for other financial actors not included in the scope of this study, as well as policymakers, enforcement professionals, regulators, NGOs that engage

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8. See Principles for Responsible Investment, ‘What are the Principles for Responsible Investment?’, <<https://www.unpri.org/pri/what-are-the-principles-for-responsible-investment>>, accessed 11 August 2018.
  9. OECD, ‘Responsible Business Conduct for Institutional Investors: Key Considerations for Due Diligence Under the OECD Guidelines for Multinational Enterprises’, 2017.
  10. The UN Alliance for SDG Finance is a joint initiative of the UN Global Compact, the UN Environment Programme Finance Initiative and the Principles for Responsible Investment, focused on financing the SDGs. See United Nations Global Compact, ‘UN Alliance for SDG Finance’, <<https://www.unglobalcompact.org/take-action/action/globalallianceforsdgfinance>>, accessed 20 August 2018.
  11. Keatinge and Barry, ‘Disrupting Human Trafficking’.
  12. Forthcoming work in this area includes revisions to the Equator Principles (EPs); the OECD’s ‘Due Diligence for Responsible Business Conduct in General Corporate Lending and Securities Underwriting’; and a practical guidance note on managing modern slavery risks by CDC Group, the UK Department for International Development (DFID), the European Bank for Reconstruction and Development (EBRD) and the International Finance Corporation (IFC).

with the business community, and the range of sectoral or multi-stakeholder initiatives<sup>13</sup> that work at the intersection of modern slavery and finance.

The research for this paper was conducted during the first half of 2018. It included a broad literature review covering government policy papers, voluntary principles and standards for responsible business conduct, NGO documents, and guidance documents for financial and modern slavery professionals. It also included 35 interviews with subject-matter experts across government, civil society and the financial sector, representing a range of expertise including modern slavery, environmental and social risk advisory, social impact, and legal and corporate affairs. This research was also supported by a consultation workshop held in June 2018 and a peer-review process involving a cross-section of stakeholders.

## Definitions

Before progressing, it is worth providing some definitional guidance in this broad and complex landscape.

**Modern slavery** is an umbrella term that includes forced labour, debt bondage, human trafficking, child slavery and exploitation, and slavery-like practices such as servitude, forced and early marriage and descent-based slavery. Out of the 24.9 million people held in forced labour, 16 million are exploited in the private sector, encompassing forms of forced labour imposed by private individuals, group or companies in all sectors except the commercial sex industry.<sup>14</sup> For the purposes of this paper, the authors have chosen to focus on the slavery and labour exploitation issues that are most linked to forced labour in global business supply chains.

**Human trafficking** is defined 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’.<sup>15</sup> While human trafficking is included under the umbrella of ‘modern slavery’, the banking sector has typically preferred the term ‘human trafficking’, particularly where anti-money laundering techniques are applied to support the identification and disruption of this crime. Thus, the term ‘human trafficking’ is included along with references to ‘modern slavery’ throughout the paper.

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13. Examples include but are not limited to organisations such as Alliance 8.7; Better Work; Institute of Human Rights and Business; Shift; and the Ethical Trading Initiative.

14. ILO and Walk Free Foundation, *Global Estimates of Modern Slavery*.

15. UN General Assembly Resolution 55/25, 8 January 2001, A/RES/55/25.

**Forced labour** is defined by the ILO Forced Labour Convention as ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’.<sup>16</sup>

**Debt bondage** 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 length and nature of the service is not limited or defined. Although not included under the definition of forced labour under the ILO Forced Labour Convention, debt bondage can be a form of forced labour, and the two practices overlap. ILO estimates in 2017 suggest that 51% of the 16 million people in forced labour in the private economy were in debt bondage,<sup>17</sup> and it remains one of the most prevalent forms of modern slavery, despite being banned in international law and most domestic jurisdictions.<sup>18</sup>

**The Sustainable Development Goals (SDGs)**, also known as the Global Goals or the 2030 Agenda, were developed by the United Nations Development Group and adopted by UN member states in September 2015. They consist of 17 goals covering the three dimensions of sustainable development: economic growth; social inclusion; and environmental protection. The goals act as the ‘post-2015 development agenda’, each having specific targets to be achieved over the 15 years between 2015 and 2030.<sup>19</sup>

**Environmental, social and governance (ESG) risk** is a generic term used by banks, investors, stock exchanges and other actors active in capital markets to both denote risk associated with certain forms of non-financial risk, and to evaluate the commitment of companies to upholding environmental, social and governance norms. Within banking, the term ‘E&S’ is also common and is preferred in this paper.

**Sustainable finance** is the provision of finance to investments taking into account environmental, social and governance considerations.

**Know your customer (KYC)** is the phrase universally applied in financial institutions to the process of verifying the identity and understanding the operations of prospective clients prior to providing them with access to financial services. KYC files are updated periodically during the lifetime of a client relationship to ensure they remain accurate.

**Human rights due diligence** is a perpetual risk-management process that a reasonable and prudent company must follow to identify, prevent, mitigate and account for how it addresses its adverse human rights impacts. Reporting includes four key steps: assessing actual and

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16. ILO, Forced Labour Convention, No. 29, 1930, Art. 2.

17. ILO and Walk Free Foundation, *Global Estimates of Modern Slavery*.

18. UN Human Rights Council, ‘Report of the Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences’, A/HRC/33/46, 4 July 2016.

19. UN General Assembly Resolution 70/1, 25 September 2015, A/RES/70/1.

potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed.<sup>20</sup>

**Leverage** is the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact.<sup>21</sup>

A company's **value chain** encompasses the activities that convert input into output by adding value. It includes entities with which it has a direct or indirect business relationship and which either:

- supply products or services that contribute to the company's own products or services (commonly known as supply chain) or
- receive products or services from the company, for example, clients and consumers.

**Supply-chain compliance and integrity** refer respectively to the legal and ethical/moral considerations related to a company's supply chain. These are vital components of how a business demonstrates it is doing business responsibly and/or manages risks to its reputation. Where used in this paper, the term 'supply-chain integrity' relates to both the values within the supply chain and the integrity of the mapping and monitoring process undertaken by the company.

The paper proceeds as follows: Chapter I assesses the modern slavery landscape as it relates to the financial sector and its client relationships, differences in understanding of responsibilities and the sector's responses; Chapter II assesses the financial sector's approach to environmental and social risks; Chapter III addresses due diligence processes for modern slavery and human trafficking; Chapter IV offers opportunities for the sector to address modern slavery and human trafficking through methods such as leveraging client relationships; and chapter V concludes by offering recommendations to the financial sector as well as policymakers and civil society, in an effort to harness and advance the existing commitment demonstrated by financial institutions in the fight against modern slavery and human trafficking.

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20. UN Guiding Principles Reporting Framework and Shift and Mazars LLP, 'Human Rights Due Diligence', 2015, <<https://www.ungpreporting.org/glossary/human-rights-due-diligence/>>, accessed 20 August 2018.

21. UN Guiding Principles Reporting Framework and Shift and Mazars LLP, 'Leverage', 2015, <<https://www.ungpreporting.org/glossary/leverage/>>, accessed 20 August 2018.

# I. Surveying the Landscape

**T**HE BANKING SECTOR, including both retail and corporate operations, has engaged with the issue of human rights via bodies such as the Thun Group since the UN Guiding Principles were published in 2011. To date, the sector's most evident engagement with the issues of modern slavery and human trafficking has been the recent increased focus on staff awareness training, compliance with anti-money laundering (AML) legislation via human trafficking-focused transaction monitoring investigations, and monitoring and managing its own supply chain. As this chapter will explore, several factors are encouraging a broadening of this focus, including a combination of hard law; soft law, such as universal declarations, codes of conduct and principle-based frameworks; and third-party developed corporate benchmarks. Additionally, investor and consumer attitudes placing importance on business behaviour and the recognition of the positive impact that the sector could have are encouraging more attention on this topic.

Challenges in defining the role of responsible business, and in applying that definition to the financial sector, are receiving more focus. Historically, and to some extent still today, the application of a narrow interpretation of fiduciary duty in the investment management sector,<sup>22</sup> a narrow construction of a bank's role in a contractual relationship with its customer, and limits on perceptions of social and environmental issues as sufficiently serious risks (in contrast to a well-defined regulatory issue) have generally limited the role of the financial sector to providing capital with a focus on financial returns, classifying environmental and social (E&S) issues as non-financial risks.<sup>23</sup> However, frameworks such as the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises (OECD MNE Guidelines), the UN Global Compact, and the SDGs clearly outline frameworks for responsible business, applicable across all business sectors, including financial services.<sup>24</sup> They provide blueprints and recommendations to help enterprises avoid and address adverse impacts that may be associated with their operations, supply chains and other business relationships.

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22. The Principles for Responsible Investment (PRI) describe fiduciary duties as the obligations to 'ensure that those who manage other people's money act in the interests of beneficiaries, rather than serving their own interests. The most important of these duties are ... loyalty [and] ... prudence'. See Rory Sullivan et al., 'Fiduciary Duty in the 21st Century', United Nations, September 2015, p. 11.
  23. Sullivan et al., 'Fiduciary Duty in the 21<sup>st</sup> Century', p. 78.
  24. Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Guiding Principles on Business and Human Rights', 2011; OECD, *OECD Guidelines for Multinational Enterprises*, 2011 Edition (Paris: OECD Publishing, 2011). The UN Global Compact is a voluntary initiative based on CEO commitments to implement universal sustainability principles and to take steps to support UN goals; UN, 'About the Sustainable Development Goals', <<https://www.un.org/sustainabledevelopment/sustainable-development-goals/>>, accessed 20 August 2018.

However, although the responsibility to respect human rights, and specifically the requirement to prevent and address issues of modern slavery, is becoming more widely understood, debate continues on the application of this responsibility to the financial sector. The concept of 'causing, contributing or directly linked to' (see Box 1) is a foundational principle of the UN Guiding Principles and one which is applicable to all businesses, including those in the financial sector. It seeks to better define the relationship between business and potential human rights impacts, taking measures to both avoid and address negative impacts where they occur. This responsibility applies to businesses' own operations and to their business relationships, including those throughout their supply chain.

**Box 1: Causing, Contributing or Directly Linked To**

The UN Guiding Principles is the key document for businesses related to implementing the UN's 'Protect, Respect and Remedy' framework. Proposed to the UN Human Rights Council by UN Special Representative John Ruggie, the framework was unanimously approved in 2008, laying out three pillars:

- The state duty to protect against human rights abuses by third parties, including business;
- The corporate responsibility to respect human rights; and
- Greater access by victims to effective remedy, both judicial and non-judicial.

The 'causing, contributing or directly linked to' explanation is set out in one of its foundational principles on corporate responsibility to respect human rights, which states:

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.

*Source: OHCHR, 'Guiding Principles', p. 14.*

The application of these principles appears to be far from universal across all business sectors, with varying levels of awareness, understanding and implementation of the UN Guiding Principles or the OECD MNE Guidelines.<sup>25</sup>

As the debate with the Thun Group illustrates – explained in more detail in Chapter III – the application of the expectations laid out in the UN Guiding Principles to the financial sector has created interpretation challenges alongside the existing due diligence and risk management terminology as defined and already practiced by the financial sector. Specifically, this relates to the extent to which financial institutions can be deemed responsible for causing, contributing or being directly linked to human rights impacts through the provision of finance. Consequently, what the associated responsibilities should be are also disputed. In addition to this debate on the definition of responsibility, instances of modern slavery and human trafficking are often embedded deep within supply chains, or shrouded by complex and informal relationships, making links challenging to uncover even in more straightforward business relationships. A parallel of this would be the proposition of end-buyers being held accountable for the actions of their suppliers, which is more evident within project finance where there is a direct business link between the actions of the offender and the capital provided by the bank.

Furthermore, there is a tension between the relationships and common practice challenges in the implementation of risk-management frameworks such as the Equator Principles (EPs) and the underlying International Finance Corporation's Performance Standards and frameworks such as the UN Guiding Principles, which specifically elevate the severity of human rights risks above other social risks.<sup>26</sup> These tensions and challenges include a heightened focus on environmental issues, the use of frameworks that do not have human rights as their reference point, and an adherence to social risk performance standards at the risk of excluding human rights considerations that are not explicitly mentioned.<sup>27</sup>

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25. Barot, Bohjanen and Stroe, 'Environmental and Social Risk Due Diligence in the Financial Sector', p. 7.

26. 'The Equator Principles (EPs) is a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects and is primarily intended to provide a minimum standard for due diligence and monitoring to support responsible risk decision-making'; see Equator Principles, 'The Equator Principles', <<http://equator-principles.com/about/>>, accessed 20 August 2018; 'IFC's Environmental and Social Performance Standards define IFC clients' responsibilities for managing their environmental and social risks'; see International Finance Corporation, 'Performance Standards', 2012, <[https://www.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards](https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards)>, accessed 22 August 2018; OHCHR, 'Guiding Principles'.

27. CDC Group, 'E&S Briefing Notes – Human Rights', p. 5, <[https://toolkit.cdcgroup.com/assets/uploads/Human\\_Rights\\_V03.pdf](https://toolkit.cdcgroup.com/assets/uploads/Human_Rights_V03.pdf)>, accessed 3 October 2018.

These challenges are increasingly being addressed by a number of workstreams and consultations. These include revisions to the EPs<sup>28</sup> and the creation of sector guidance, such as the OECD's forthcoming 2019 guidance, *Due Diligence for Responsible Business Conduct in General Corporate Lending and Securities*, that aims to provide support to financial sector organisations in implementing the OECD MNE Guidelines, in particular with regard to key due diligence considerations.<sup>29</sup> Despite concerns raised by professional services and financial sector professionals – largely due to anti-trust client confidentiality – and liability concerns, and doubts raised by observers outside the sector about the ability of financial institutions to effectively and economically implement deeper and more progressive due diligence, there have been a number of collaborative successes within the financial sector.<sup>30</sup>

The Thun Group is an informal group of banks which, despite recent criticism, initially received much praise for their proactive approach to addressing human rights risks in a banking context. They first came together in 2011 to share expertise and experience to support the integration of the UN Guiding Principles into the policies and practices of banking institutions. The Dutch Banking Sector Agreement,<sup>31</sup> which will be discussed in greater detail later in the paper, is a more recent example of a forward-thinking sectoral programme that has seen collaboration between Dutch banks, government, unions and civil society. This agreement is aimed at achieving a material positive impact for people whose human rights are potentially being infringed in relation to the activities of clients of the Dutch banking sector, and to search for solutions to problems that an adhering bank cannot solve by itself.

Financial sector engagement relating to tackling modern slavery and human trafficking is a relatively recent phenomenon that thus far has been limited in scope. Nevertheless, during the research for this paper and building on Keatinge and Barry's earlier publication,<sup>32</sup> the authors have identified several factors – including increased regulation and transparency, stakeholder pressure and perceived conflation of government and private sector responsibilities – that should encourage the financial sector to continue developing its commitment to tackling modern slavery and human trafficking beyond the status quo.

## Regulation

In recent years, regulatory developments, examples of which are included in Box 2, have increasingly required businesses to engage with issues of modern slavery and human trafficking,

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28. The EPs were last updated in 2013. See Equator Principles, 'Review of the Equator Principles – Towards EP4', 16 March 2018, <<http://equator-principles.com/ep4/>>, accessed 3 October 2018.

29. OECD, 'Due Diligence for Responsible Business Conduct in General Corporate Lending and Securities', forthcoming.

30. Authors' interviews with banking professionals, London, 27 and 29 March 2018; authors' telephone interviews with NGO representatives, 19 April 2018 and 1 May 2018.

31. Social and Economic Council (SER), *Dutch Banking Sector Agreement on International Responsible Business Conduct Regarding Human Rights* (The Hague: SER, October 2017).

32. Keatinge and Barry, 'Disrupting Human Trafficking'.

particularly through the inclusion of specific clauses addressing transparency in supply chains and extra-territorial reach. Other mechanisms, such as the use of customs controls to stop the importation of goods made with forced labour, AML regulations where human trafficking is listed as a predicate offence, and non-financial reporting directives, have also been used to harness business responses to modern slavery issues.<sup>33</sup>

#### **Box 2: Selected Modern Slavery Legislation**

##### **California Transparency in Supply Chains Act 2010**

The California Transparency in Supply Chains Act 2010 came into effect on 1 January 2012, requiring every retailer and manufacturer doing business in California (defined as annual in-state sales of at least \$500,000 or 25% of total sales) with an annual turnover of \$100 million or more to publicly disclose its efforts to eradicate slavery and human trafficking from its direct supply chain.

##### **UK Modern Slavery Act 2015**

The UK Modern Slavery Act 2015 defines criminal offences of human trafficking, slavery, forced labour and servitude and provides for sentences of up to life imprisonment. It lays out victim protection provisions and created the role of the UK Anti-Slavery Commissioner.

Article 54, which addresses transparency in supply chains, requires commercial organisations carrying on a part of their business in the UK and with an annual turnover of £36 million or more to produce an annual slavery and human-trafficking statement disclosing what steps they have taken in each relevant financial year to prevent and address slavery and human trafficking in their business and supply chains. Transaction risks and AML are referenced in the Home Office's Practical Guide in relation to banks and financial institutions. Statements should be signed by a director, approved by the board of directors (or equivalent management body) and be accessible from the front page of the company's website.

##### **French Duty of Vigilance Law**

A new French law, 'Devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre', makes it compulsory for French société anonyme companies (French public limited companies) with more than 5,000 employees (or more than 10,000 if headquartered outside France) to establish and implement mechanisms to prevent adverse human rights, health and safety and environmental

33. See 'Trade Facilitation and Trade Enforcement Act 2015 (US)'; FATF, 'Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants', July 2011; European Parliament and the Council of the European Union, 'Council Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 Amending Directive 2013/34/EU as Regards Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups', *Official Journal of the European Union* (L330/1, 15 November 2014).

impacts with respect to their own operations, subsidiaries and supply chains. It recommends that plans be developed, in partnership with relevant stakeholders, which include risk alert and effectiveness monitoring mechanisms.

#### **Australian Modern Slavery Act 2018**

Australia's proposed Modern Slavery Act 2018 will require organisations with revenue of AUD\$100 million or more, and the Australian government itself, to report on modern slavery risks in their business and global supply chains. Requirements on reporting entities include the publication of an annual modern slavery statement and reporting on all potential modern slavery risks and practices in their own operations and supply chains. It is anticipated that statements will be made publicly available in a central government repository. Further guidance regarding specific compliance obligations will be released later this year.

*Sources: 'California Transparency in Supply Chains Act 2010 (California)'; 'California Revenue and Taxation Code 2011 (California)', section 23101; 'Modern Slavery Act 2015 (UK)'; UK Home Office, 'Transparency in Supply Chains etc. A Practical Guide', 2017; 'LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (France)'; Parliament of Australia, 'Modern Slavery Bill 2018', <[https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6148](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6148)>, accessed 11 October 2018; Norton Rose Fulbright, 'Modern Slavery and Human Trafficking: A Comparative Analysis of Existing and Emerging Legislation in the United Kingdom, Australia, Hong Kong and Singapore', March 2018.*

In addition, the wider move by businesses – either voluntarily or mandated by, for example, stock exchanges or industry-wide standards – towards regular non-financial reporting has led companies to apply increasingly impact-focused frameworks to their programmes that go beyond their previous philanthropic focus.<sup>34</sup> Although legislation, such as the UK Modern Slavery Act, is often criticised for lacking teeth due to the absence of penalties for companies that fail to comply, it has nonetheless increased awareness of operational, legal and reputational risks linked to modern slavery risks, and has led many companies to look more closely at the standards of their first-tier suppliers and beyond.<sup>35</sup> The requirement that a company's modern slavery statement be signed by a director and approved by the board of directors raises responsibility for addressing modern slavery and human-trafficking issues to a senior leadership level and focuses attention on the directors' duties to exercise reasonable care, skill and diligence.<sup>36</sup>

34. See, for example, Sustainable Stock Exchanges Initiative (SSE), 'About the SSE', <<http://www.sseinitiative.org/about/about-the-sse/>>, accessed 6 August 2018; International Capital Markets Association, 'Green Bond Principles: Voluntary Process Guidelines for Issuing Green Bonds', June 2018; Loan Market Association, 'Green Loan Principles: Supporting Environmentally Sustainable Economic Activity', 21 March 2018.

35. Lindsay Fortado, 'Slavery is a Weak Link in Corporate Supply Chains', *Financial Times*, 22 June 2017.

36. 'Companies Act 2006 (UK)'.

It also provides licence to investors and business partners to review business responses and modern slavery statements as part of their own due diligence or investment decisions. Despite not purchasing goods for resale, financial institutions that meet the UK Modern Slavery Act criteria and turnover thresholds are equally obliged to provide such a statement.

In addition to increasing government-mandated pressure on businesses to engage with modern slavery and human trafficking, there is also a growing trend of strategic litigation against parent companies for human rights abuses by their subsidiaries abroad.<sup>37</sup> An example of this can be seen in a potentially ground-breaking case where foreign claimants have initiated proceedings for modern slavery abuses against Canadian-headquartered Nevsun Resources, which holds a controlling share in an Eritrean mining company where abuses were alleged to have occurred.<sup>38</sup> This development highlights that organisations cannot assume that different standards are applicable or acceptable overseas. In another example, a class action lawsuit against US maritime services company Signal International Limited resulted in the company being ordered to pay \$14 million in compensation to workers recruited from India, who alleged being subject to trafficking, fraud, racketeering and discrimination. The company later filed for bankruptcy.<sup>39</sup> Two major Alabama public pension funds stood to lose \$70 million at the time of the bankruptcy filing, highlighting that modern slavery issues in client or investee supply chains can certainly be financially material.<sup>40</sup>

## Transparency

The increased transparency mandated by new regulatory requirements, such as those already outlined above, provides the financial sector with greater insight into the businesses and projects that they are financing.

A 2016 study by Hult Research and the Ethical Trading Initiative highlights the potential investment risks linked to modern slavery: '77% of companies think there is a likelihood of modern

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37. Howard Corney and Lauren Roberts, 'African Insights: UK Parent Company Liability', Macfarlanes, 5 June 2018, <<https://www.macfarlanes.com/insights/2018/african-insights-uk-parent-company-liability/>>, accessed 20 August 2018.

38. Perrin Grauer, 'Supreme Court Decision on Vancouver Mining Company Could Have International Human Rights Impact, Expert Says', *StarMetro Vancouver*, 25 June 2018.

39. Kurian David et al. vs. Signal International LLC et al., 'Civil Action', United States District Court Eastern District of Louisiana, 2:08-cv-01220-JCZ-DEK Document 288, 8 December 2008. \$14 million in damages was awarded to the first five workers; see ACLU, 'Federal Jury Awards \$14 Million to Indian Guest Workers Victimized in Labor Trafficking Scheme by Gulf Coast Shipyard and its Agents', press release, 18 February 2015, <<https://www.aclu.org/news/federal-jury-awards-14-million-indian-guest-workers-victimized-labor-trafficking-scheme-gulf?redirect=human-rights/federal-jury-awards-14-million-indian-guest-workers-victimized-labor-trafficking-scheme>>, accessed 5 November 2018.

40. ShareAction, 'Forced Labour: What Investors Need to Know', Investor Briefing, June 2016.

slavery occurring in their supply chains' and '42% of companies see the length and complexity of supply chains as one of the strongest barriers to effectively addressing modern slavery'.<sup>41</sup>

There have also been demands for the financial sector to be more transparent and accountable, and to provide a greater level of detail in human rights reporting around the risks and impacts within client portfolios, such as in modern slavery statements, rather than limiting reporting to their own businesses and supply chains.<sup>42</sup> This poses a perceived challenge for financial institutions that are faced with a tension between demands for such transparency and a legal and regulatory commitment to client confidentiality. However, a number of banks are finding ways to report generally on their risk areas and are seeking client approval to report on specific cases.<sup>43</sup> Parties adhering to the Dutch Banking Sector Agreement sought and received legal guidance on options for banks to display greater transparency about their human rights policies and practices, including releasing information anonymously or with the client's consent.<sup>44</sup>

## Stakeholder Pressure

It is not only regulation that emphasises the importance of the role of the financial sector. Governments and an array of multilateral efforts aimed at combating financial crime, including the FATF,<sup>45</sup> have increasingly recognised the financial sector as a tool for enhancing implementation in a range of policy initiatives, including to bolster efforts to combat modern slavery and human trafficking.

Civil society has also increased its focus on the financial sector, encouraging it not only to accept responsibility for its activities through due diligence, leverage and remediation (notwithstanding the current lack of authoritative guidance on 'responsibilities' for the banking sector), but also to advance activities that can result in real impact. This includes investing in projects that

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41. Hult Research and Ethical Trading Initiative, *Corporate Leadership on Modern Slavery: How Have Companies Responded to the UK Modern Slavery Act One Year On?* (Berkhamsted and London: Hult Research and the Ethical Trading Initiative, 2016), pp. 8, 13.

42. Chris Cartmell and Elizabeth Mason, 'The UK's Modern Slavery Act and Corporate Liability: Does it Go Far Enough?', *Global Banking and Finance Review*, 12 August 2017.

43. See UN Guiding Principles Reporting Framework, 'Database & Analysis of Company Reporting', <<https://www.ungpreporting.org/database-analysis/>>, accessed 20 August 2018.

44. Nauta Dutihl, 'Dutch Banking Sector Agreement on International Responsible Business Conduct Regarding Human Rights: Legal Report on the Possibilities for Increased Transparency in Light of the Adhering Banks' Client Confidentiality Obligations', 29 June 2017, <<https://www.imvoconvenanten.nl/~media/files/imvo/banking/news/nautadutilh-legal-report.ashx>>, accessed 3 October 2018.

45. FATF, 'Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants'.

support the global trend towards fairer labour practices,<sup>46</sup> disinvesting from companies involved in projects with negative human rights impacts,<sup>47</sup> and providing more disclosure on credible and comparable workforce information that can help to highlight potential labour exploitation. One such initiative is ShareAction's Workforce Disclosure Initiative,<sup>48</sup> which promotes more transparency from listed companies on comparable workforce information, to enable investors to engage with companies on decent work<sup>49</sup> initiatives.

Campaigning organisations, such as BankTrack,<sup>50</sup> seek to hold the financial sector to account for human rights impacts linked to the provision of finance. They have encouraged banks to improve human rights standards regarding their clients through more thorough and ongoing due diligence, conditional financing, provision of effective grievance mechanisms, and remediation where issues occur.<sup>51</sup>

Also worthy of note is Shift,<sup>52</sup> a not-for-profit organisation focused on the implementation of the UN Guiding Principles. The organisation has been actively involved in a number of developments where financial institutions' due diligence intersects with human rights. They work with both public and private sector financial institutions to drive human rights due diligence beyond immediate business partnerships and into the supply chains of their client relationships.<sup>53</sup>

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46. Boundless Impact Investing, 'Labor Lens Investing: The Business Case for Fair Labor Practices', March 2018.

47. Friedrich Jergitsch and Sebastian Allerberger, 'Human Rights Issues: How Will They Impact the Financial Sector in the Future?', *Financier Worldwide*, September 2017.

48. ShareAction is a charity committed to promoting responsible investment. The Workforce Disclosure Initiative seeks to increase company disclosure on comparable workforce information that investors can use to inform company engagement. See ShareAction, 'Workforce Disclosure Initiative: Promoting Transparency from Listed Companies', <<https://shareaction.org/wdi/>>, accessed 20 August 2018.

49. 'Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men'. See ILO, 'Decent Work', <<https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>>, accessed 10 November 2018

50. BankTrack, 'Human Rights Briefing Paper: How Banks Contribute to Human Rights Violations', December 2017.

51. Ryan Brightwell and Daisy Gardener, 'Developing Effective Grievance Mechanisms in the Banking Sector', BankTrack and Oxfam Australia, July 2018.

52. Shift is a US-registered 501(c)3 not-for-profit organisation founded by members of the team who worked on the development of the UN Guiding Principles and focused on their implementation.

53. See Shift, 'Supporting Financial Institutions to Implement the Guiding Principles', <<https://www.shiftproject.org/resources/collaborations/supporting-financial-institutions-implement-guiding-principles/>>, accessed 20 August 2018.

Stakeholder pressure is largely led by a belief that the financial sector has the ability to create both positive impact and long-term financial return, two objectives that are not mutually exclusive. Larry Fink, president of the world's largest asset manager, BlackRock, has noted that there are heightened public expectations on companies to respond to broader societal challenges: '[t]o prosper over time, every company must not only deliver financial performance, but also show how it makes a positive contribution to society. Companies must benefit all of their stakeholders, including shareholders, employees, customers, and the communities in which they operate'.<sup>54</sup>

Lise Kingo, executive director of the UN Global Compact, also asserts this in her 2018 Annual Letter, stating that '[h]ealthy societies and healthy markets go hand-in-hand'.<sup>55</sup> This principle is embedded in the SDGs as part of the implementation measures across goals 1–16, as well as specifically in goal 17, which focuses on collaboration and partnerships.<sup>56</sup>

## Blurring Government and Business Responsibilities

As Georg Kell, founder and former executive director of the UN Global Compact, noted in his 2017 speech at the ESG Integration Summit,<sup>57</sup> the line between the role of governments, historically seen as responsible for society's wellbeing and the preservation of common resources, and the role of business – the goal of which is to maximise economic profit for their shareholders, often with a short-term time horizon – has become increasingly blurred.

For example, following US President Donald Trump's decision to withdraw the US from the Paris Agreement, 2,700 leaders of US businesses, cities and states pledged to continue working towards the goals of the Paris Agreement regardless of the president's decision.<sup>58</sup> In Kell's view, a paradigm shift in the responses of the financial sector is underway, with an emerging recognition that the integration of sustainability criteria could lead to better long-term financial performance. In his speech, he proposed that '[w]e have now reached a point where it is possible to create real catalytic synergies', assessing that the boundaries between public and private interests are increasingly blurred and that 'future success will lie in the ability to recognize the overlap'.<sup>59</sup>

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54. Blackrock, 'Larry Fink's Annual Letter to CEOs: A Sense of Purpose', <<https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>>, accessed 20 August 2018.

55. UN Global Compact, 'Executive Update: United Nations Global Compact Annual Letter 2018', <<https://www.unglobalcompact.org/news/4341-01-24-2018>>, accessed 20 August 2018.

56. Each SDG within the 2030 Agenda for Sustainable Development is supported by a number of indicators. The global indicator framework was adopted by the General Assembly on 6 July 2017; see UN General Assembly Resolution 71/313, 6 July 2017, A/RES/71/313.

57. Georg Kell, 'ESG Not a Fad', speech given at ESG Integration Summit, Stockholm, 29 August 2017.

58. See Bloomberg Philanthropies Support LLC, 'America's Pledge', 2018, <<https://www.americaspledgeonclimate.com/>>, accessed 11 August 2018.

59. Kell, 'ESG Not a Fad'.

However, as indicated by some of the people interviewed as part of the research for this paper – particularly from the financial sector – it is important to recognise that amidst this growing global trend, and that while there are overlapping interests, this is not driven by a move for governments to outsource their responsibilities to businesses or absolve themselves of their own duties to respect human rights.<sup>60</sup>

As this chapter has illustrated, many issues are leading businesses, including the financial sector, to engage with the issue of human rights in general – and modern slavery and human trafficking in particular.

Initiatives such as the previously discussed UN Global Compact, the UN Guiding Principles, the OECD MNE Guidelines and the recently launched OECD Due Diligence Guidance for Responsible Business Conduct all seek to embed governance and human rights into core business strategy and practices. The increasing demand for these initiatives is also signalled by the growing number of supporting frameworks to help business and investors engage on a range of sustainability issues, including the Global Reporting Initiative;<sup>61</sup> Sustainability Accounting Standards Board (SASB);<sup>62</sup> and corporate benchmarks such as The World Benchmarking Alliance,<sup>63</sup> the Corporate Human Rights Benchmark,<sup>64</sup> and KnowTheChain,<sup>65</sup> which seek to measure and compare business process and performance on sustainability, human rights and modern slavery.

Although a number of the interviewees who participated in the research for this paper believe that the financial sector can still increase its understanding of modern slavery issues and resulting operational commitment to the implementation of the UN Guiding Principles, the growth of activity in this space is nevertheless encouraging.<sup>66</sup> And while the UN Guiding Principles were crafted at a high level to provide a framework for identifying and responding to actual and

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60. Authors' interviews with banking professionals, London, 27 and 29 March 2018; authors' telephone interview with civil society representative, 5 April 2018.

61. The Global Reporting Initiative (GRI) is an independent organisation founded in 1997 that created the first and most widely adopted global standards for sustainability reporting.

62. Established in 2011, the Sustainability Accounting Standards Board (SASB) is an independent, private sector standards-setting organisation dedicated to enhancing the efficiency of the capital markets by fostering high-quality disclosure of material sustainability information that meets investor needs.

63. The World Benchmarking Alliance was founded by partners Aviva, the UN Foundation, Index Initiative, and the Business Council for Sustainable Development to develop, fund, house, and safeguard free, publicly available corporate sustainability benchmarks aligned with the SDGs.

64. The Corporate Human Rights Benchmark is a collaboration led by investors and civil society organisations to provide open and public benchmarks of corporate human rights performance.

65. KnowTheChain is a resource for companies and investors to understand and address forced labour risks within their global supply chains, through benchmarking current corporate practices and providing resources.

66. Authors' interviews with civil society and governmental organisations: London, 29 March 2018; telephone, 29 March 2018, 19 April 2018, 1 May 2018, and 14 June 2018.

potential impacts in all sectors, their application to matters such as modern slavery and human trafficking in an environment increasingly focused on impact (such as through SDG 8.7<sup>67</sup>) should lead to significant benefits. As a result, the financial sector in advanced markets such as Europe and the US is increasingly incorporating policies to address modern slavery and human rights into certain areas of its business strategies.

However, as the next chapter will explore, the uneven focus and commitment of the financial sector with matters related to modern slavery and human trafficking means that the full potential of financial sector engagement with this element of human rights impact has yet to be realised.

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67. SDG 8.7 provides specific targets and indicators for ‘effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms’; see UN General Assembly Resolution 70/1.

## II. Analysing Performance

**T**HE PREVIOUS CHAPTER addressed the various factors that are encouraging private sector business – including the financial sector – to place greater focus on modern slavery and human trafficking. An examination of this commitment in the banking sector suggests that there is significant engagement with the modern slavery and human trafficking agenda from an AML perspective,<sup>68</sup> whereas the situation regarding corporate lending is more opaque. Further research for this paper revealed challenges relating to the depth of E&S due diligence and scrutiny of clients’ supply-chain activities, time and resource pressures and quality of and compliance with modern slavery reporting requirements.

For example, fewer than a quarter of banking sector organisations in the UK that have reported under the Modern Slavery Act are compliant with the minimum requirements set out by the Act,<sup>69</sup> and the quality of modern slavery statements, across a range of sectors, has been questionable.<sup>70</sup>

Table 1 and Figure 1 below, based on data compiled by the UK Modern Slavery Registry, provide descriptive statistics on banking sector reporting compliance with the UK Modern Slavery Act, compared with the complete population of statements. This underlines that although the sector’s performance is relatively better than the overall population, for a sector that is focused on compliance and promoting an increasingly public profile on modern slavery and human-trafficking issues, performance remains disappointing. Compliance figures in the table and graph show compliance with the minimum reporting requirements of the UK Modern Slavery Act (approval, signature, and link on homepage).

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68. As evidenced by the banking industry’s engagement with public–private partnership initiatives such as the UK’s JMLIT and Canada’s Project PROTECT.

69. As per details listed on the UK Modern Slavery Registry, an independently operated central registry of UK modern slavery statements operated by the Business and Human Rights Resource Centre. Analysis checks compliance against minimum requirements of the UK Modern Slavery Act that statements are signed by the director, approved by the board of directors (or equivalent management body) and available on the company’s homepage on the internet. Further details about this analysis can be found at <[https://www.modernslaveryregistry.org/pages/numbers\\_explained](https://www.modernslaveryregistry.org/pages/numbers_explained)>, accessed 19 June 2018.

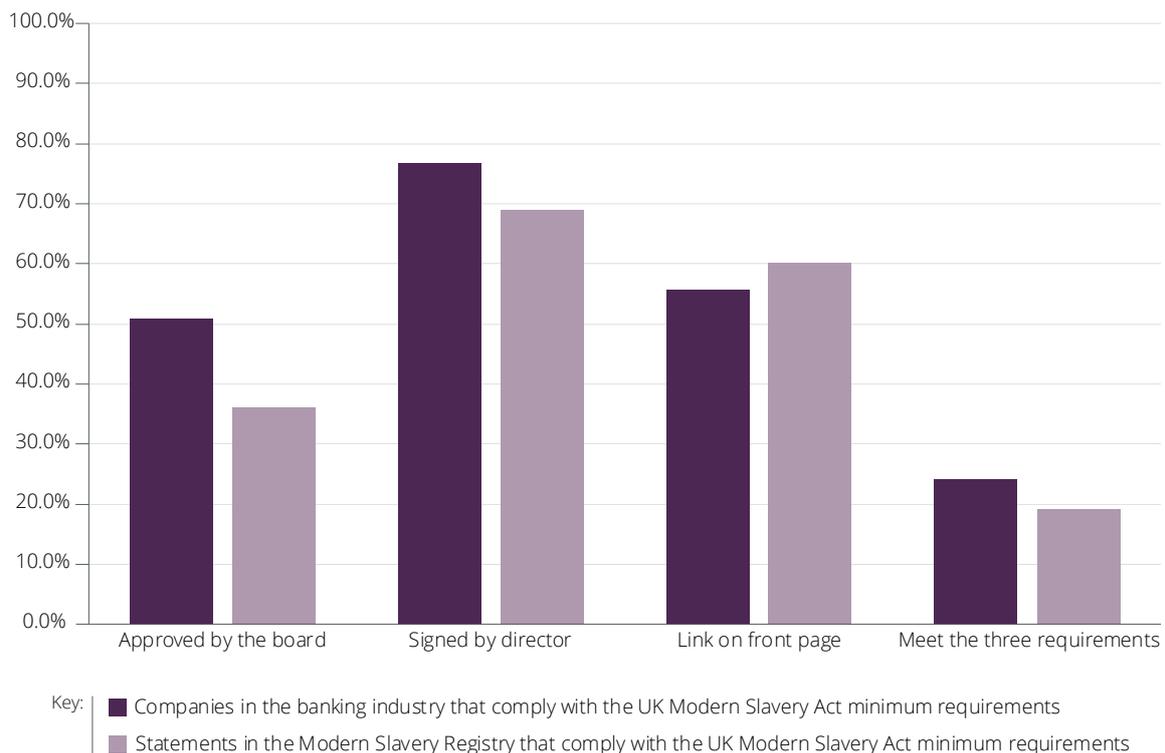
70. Author telephone interviews with representatives from civil society, 5 April 2018, 1 May 2018, 8 May 2018, 19 May 2018, and 21 May 2018; Business and Human Rights Resource Centre, ‘First Year of FTSE 100 Reports Under the UK Modern Slavery Act: Towards Elimination?’, 2017; Ergon, ‘Modern Slavery Statements: One Year On’, April 2017.

**Table 1:** Banking Sector Compliance with Minimum Reporting Requirements of the UK Modern Slavery Act

	Banking Industry	Total Companies
Approved by the board	51%	36%
Signed by the director	77%	69%
Link on front page	56%	60%
Meet the three requirements	24%	19%

Source: UK Modern Slavery Registry, June 2018.

**Figure 1:** Banking Sector Compliance with Minimum Reporting Requirements of the UK Modern Slavery Act



Source: UK Modern Slavery Registry, June 2018.

In addition, a 2017 review of modern slavery statements issued by FTSE 100 companies indicates that only 11% of organisations featured in the top half of the tiering of statements by quality, with no financial institutions featured among them. No organisations met the necessary minimum

criteria to be graded in the top tier.<sup>71</sup> Few financial sector organisations provided detailed reporting to illuminate due diligence activities or evidence of scrutinising clients' supply-chain activities – which runs the risk of modern slavery statements being perceived as a compliance exercise rather than a proactive process to identify, address and monitor issues. Consistent with Keatinge and Barry's research from 2017,<sup>72</sup> these statements are principally focused on highlighting in-house operations such as AML, staff training and policies for companies' own supply chains, with some examples of high-level due diligence on jurisdiction and industry risk, albeit with a limited focus on the specific context for the financial sector's business. Furthermore, reports are often not clear on which subsidiaries or which time periods are covered, or what future activities are planned in response to identified risks.<sup>73</sup>

As evidenced by UK Modern Slavery Act statement analysis,<sup>74</sup> while the Act has clearly raised awareness, definitional confusion remains in combination with a poor understanding of how to transform the identification of modern slavery and human-trafficking risks into actions. Subsequent independent analysis in 2018 suggests that 'reporting in terms of content, scope and detail has remained the same with no appreciable change in quality'.<sup>75</sup> The recently released 2018 review of modern slavery statements issued by FTSE 100 companies published by the Business and Human Rights Resource Centre reinforces this picture, noting little change from previous assessments with most companies still publishing 'generic statements committing to fight modern slavery, without explaining how'.<sup>76</sup> The average overall score was only 31%, with many banks and financial institutions clustered around or below this figure, and only HSBC Holdings PLC scoring relatively better at 44%.<sup>77</sup> Due to the still-limited scope of statement analysis, other work is ongoing to expand this pool.<sup>78</sup> Furthermore, identification of risks is primarily reliant on public reports and information provided by organisations such as the Global Slavery Index, the ILO and industry reports. There is little evidence of proactive, independent analysis. The result is that despite modern slavery emerging as a key reputational risk to some

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71. Business and Human Rights Resource Centre, 'First Year of FTSE 100 Reports', p. 4. For an explanation of the grading methodology, see pp. 6–7.

72. Keatinge and Barry, 'Disrupting Human Trafficking'.

73. Business and Human Rights Resource Centre, 'First Year of FTSE 100 Reports'.

74. *Ibid.*

75. Ergon, 'Modern Slavery Reporting: Is There Evidence of Progress?', October 2018, p. 2.

76. Business and Human Rights Resource Centre, 'FTSE 100 & the UK Modern Slavery Act: From Disclosure to Action', 2018, pp. 3–4.

77. *Ibid.*, pp. 3–4, 6. For an overview of the FTSE 100 ranking, see pp. 6–7.

78. The UK Modern Slavery Act research project is organised by the Walk Free Foundation and has provided a set of metrics for assessors (university partners) to use to evaluate the quality of modern slavery statements that are produced by companies in accordance with the Modern Slavery Act. More information is available through WikiRate, a collaborative research tool used by universities and NGOs using structured and unstructured data; see WikiRate, 'UK Modern Slavery Act Research', <[https://wikirate.org/UK\\_Modern\\_Slavery\\_Act\\_Research](https://wikirate.org/UK_Modern_Slavery_Act_Research)>, accessed 9 November 2018.

consumer-facing brands, it appears that for the financial sector, the issue is perhaps more of a compliance risk than necessarily a consumer-driven reputational risk.

Further analysis of performance is provided by benchmarking organisations, which have conducted analysis to provide benchmarks of corporate practice and performance for human rights (Corporate Human Rights Benchmark) and forced labour risks (KnowTheChain). These benchmarks are primarily indicators of transparency and public reporting on the actions of businesses and organisations, not necessarily on their human rights performance and impact. They cover sectors such as agriculture, apparel, extractives and information and communication technology (ICT), but not financial institutions as relates to their own human rights performance and transparency. These benchmarking organisations seek to provide information to companies and investors to encourage a ‘race to the top’ on human rights and modern slavery practices and performance, relying on competitive business behaviours and the principle that most companies will not want to be seen as behind their peers in responding to these issues. Sector benchmarking is a useful tool for investors to understand ‘the maturity of human rights approaches of invested companies’,<sup>79</sup> and also to provide specific sectoral insights to support financial sector due diligence on modern slavery. However, the lack of a human rights or modern slavery benchmark for the financial sector makes it difficult to compare company performance driven by corporate policies and programmes, rather than by the inherent risks in client lending portfolios which may cover a range of countries and sectors. Because of the length of the chain of responsibility involved in the financial sector, and the differential nature of risk and responsibility for investments and lending, revisions to the methodology of these benchmarks would be required to make them applicable to the financial sector. Furthermore, should a benchmark be created, the need for an adapted methodology means that comparative analysis to measure financial sector performance against other industries will be challenging. As such, resources are more likely to be focused on sectoral initiatives in the short term rather than a benchmark for the financial sector.

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79. Corporate Human Rights Benchmark, ‘Progress Report’, April 2018, p. 2.

# III. From Definitions to Actions

**T**HE EXTENT TO which the financial sector continues to grapple with tensions between human rights frameworks and the structure of the industry is underlined by debate surrounding the 2017 Thun Group discussion papers.<sup>80</sup> In 2013 the Thun Group of banks released a first discussion paper on the implications of the corporate responsibility to respect human rights as outlined in the UN Guiding Principles Articles 16–21.<sup>81</sup> In its second paper published in 2017, Thun further developed this work and elaborated on UN Guiding Principles Articles 13 and 17. The first version of the 2017 paper, released in January, was viewed by some as seeking to distance the sector from responsibilities arising from Articles 13 and 17 of the UN Guiding Principles.<sup>82</sup> The paper stated that, ‘[u]nder UNGP 13, a bank would generally not be considered to be causing or contributing to adverse human rights impacts arising from its clients’ operations because the impact is not occurring as part of the bank’s own activities’ and that any remediation should therefore be the responsibility of the client and not the financial institution.<sup>83</sup> Given the centrality of this debate to the subject of this paper, it is worth pausing to review the key issues.

The Thun Group is an informal group of bank representatives that work together with the primary purpose of i) furthering understanding of the UN Guiding Principles on Business and Human Rights within the context of banking and, ii) considering how they may be applied across the range of different banking activities. Since its first meeting in 2011, the Thun Group’s focus has been on sharing expertise and experience to support the integration of the UN Guiding Principles on Business and Human Rights (UNGPs) into the policies and practices of banking institutions.<sup>84</sup>

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80. Thun Group of Banks, ‘Discussion Paper on the Implications of UN Guiding Principles 13 & 17 in a Corporate and Investment Banking Context’, January 2017; Thun Group of Banks, ‘Paper on the Implications of UN Guiding Principles 13b & 17 in a Corporate and Investment Banking Context’, December 2017.
81. Thun Group of Banks, ‘UN Guiding Principles on Business and Human Rights Discussion Paper for Banks on Implications of Principles 16–21’, October 2013.
82. A number of responses to the Thun Group papers from NGOs and human rights experts can be found on the website of the Business and Human Rights Resource Centre; see Business and Human Rights Resource Centre, ‘Thun Group of Banks Releases New Paper on Implications of UN Guiding Principles for Corporate & Investment Banking’, <<https://www.business-humanrights.org/en/thun-group-of-banks-releases-new-discussion-paper-on-implications-of-un-guiding-principles-for-corporate-investment-banks>>, accessed 5 November 2018.
83. Thun Group of Banks, ‘Discussion Paper on the Implications of UN Guiding Principles 13 & 17 in a Corporate and Investment Banking Context’, p. 6.
84. *Ibid.*, p. 5.

Following on from their 2013 discussion paper on the implications of the UN Guiding Principles for banks,<sup>85</sup> the Thun Group discussion paper released in January 2017 was strongly criticised by a range of civil society organisations,<sup>86</sup> as well as by the UN Working Group on Business and Human Rights and by John Ruggie, the author of the UN Guiding Principles,<sup>87</sup> for seeking to oversimplify where banks may ‘generally not be considered to be causing or contributing to adverse human rights impacts arising from [their] clients’ operations’ or to absolve the banking sector of responsibility for negative human rights impacts arising from these instances.<sup>88</sup>

In addition, the January 2017 paper from the Thun Group attempted to specifically clarify that:

[Its] analysis of the degree to which a bank may be considered ‘linked’ to a human rights impact caused or contributed to by a bank’s client should not be interpreted to imply that a bank has any liability (or is deemed to accept any liability) whatsoever for any such human rights impacts.<sup>89</sup>

This paragraph raised specific concerns, as one commentator noted.<sup>90</sup> While it is correct that linkage is distinct from liability, the underlying tension within the paper arises from the understanding of responsibility outlined by the UN Guiding Principles and the paper’s position on liability. A key part of the friction within the debate on ‘causing, contributing and direct linkage’ is the relationship between contribution and obligations of remedy. The focus within the January 2017 paper in clarifying these relationships within a banking sector context shows that leading banks within the industry have a more sophisticated understanding of the issues than indicated by overall sector performance. However, this is also in part the reason for the raised stakeholder concerns that the effort is intended to avoid the consequences of conceding an obligation of remedy.

Additional discussion papers, such as the paper published by Debevoise & Plimpton and Enodo Rights (hereafter known as the Debevoise paper), have also strayed into challenges when trying

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85. Thun Group of Banks, ‘UN Guiding Principles on Business and Human Rights’.

86. Open letter dated 22 March 2018 from 19 international civil society organisations addressed to the Thun Group of Banks, <[https://www.banktrack.org/download/letter\\_from\\_banktrack\\_and\\_18\\_others\\_to\\_thun\\_group\\_participants\\_on\\_december\\_2017\\_update/180322\\_thun\\_group\\_cso\\_letter.pdf](https://www.banktrack.org/download/letter_from_banktrack_and_18_others_to_thun_group_participants_on_december_2017_update/180322_thun_group_cso_letter.pdf)>, accessed 20 August 2018.

87. John Ruggie, letter to Roel Nieuwenkamp, 6 March 2017, <<https://www.business-humanrights.org/sites/default/files/documents/OECD%20Workshop%20Ruggie%20letter%20-%20Mar%202017%20v2.pdf>>, p. 2, accessed 20 August 2018.

88. Thun Group of Banks, ‘Discussion Paper on the Implications of UN Guiding Principles 13 & 17 in a Corporate and Investment Banking Context’, p. 6.; David Kinley, ‘Artful Dodgers: Banks and their Human Rights Responsibilities’, Sydney Law School Research Paper No. 17/17, March 2017.

89. Thun Group of Banks, ‘Discussion Paper on the Implications of UN Guiding Principles 13 & 17 in a Corporate and Investment Banking Context’, p. 3.

90. Kinley, ‘Artful Dodgers’.

to provide a practical definition for ‘causing, contributing or directly linked to’.<sup>91</sup> The Debevoise paper was intended to address the ‘uncertainty regarding how businesses should structure human rights due diligence and when they should engage in remediation, increasing the risk to businesses for failing to align their activities with the Guidance’.<sup>92</sup> It suggested definitions to enable businesses to anticipate when they are, or might be, involved with a particular adverse human rights impact. However, in his letter to the OECD Working Group on Responsible Business Conduct, Ruggie criticised the use of new language by both the Thun Group’s January 2017 paper and the Debevoise paper, including ‘materially increases’ and ‘proximity’, as ‘unhelpful’, and challenged the proposed interpretations of ‘directly linked’ being only relevant in cases where a relationship of ‘mutual commercial benefit’ exists.<sup>93</sup>

In December 2017, an updated Thun Group paper amended and clarified their position based on input from stakeholders to reference that (apart from asset-specific financing), in the majority of cases, the services provided to clients by a bank will be to corporate level (for example, a loan for general corporate purposes or bond or equity underwriting).<sup>94</sup> Other elements, while not materially altered, were rephrased for clarity and to avoid misinterpretation. The December 2017 paper focuses on situations where banks may be directly linked to negative human rights impacts under UN Guiding Principle 13b, while acknowledging that ‘certain financial products and services may under exceptional circumstances reach the level of contribution’.<sup>95</sup>

Ruggie, who had publicly criticised the Thun Group position in the January 2017 paper, commented that he was pleased to see that in their December 2017 paper, they ‘acknowledge that there are circumstances under which the financial services they provide to their clients may contribute to human rights harm’.<sup>96</sup>

He also noted that ‘[a] logical next step would be to collaborate with stakeholders in identifying actual and/or hypothetical fact patterns illustrating those circumstances’.<sup>97</sup>

However, while financial sector representatives acknowledge that they have the opportunity to participate in remedy, the Thun Group did not address obligations for provision of remedy, an omission which was criticised in the January paper.<sup>98</sup> While the December paper notes that ‘pursuant to UNGP 22, a bank may take a role in providing for remediation but would not be

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91. Debevoise & Plimpton and Enodo Rights, ‘Practical Definitions of Cause, Contribute, and Directly Linked to Inform Business Respect for Human Rights: Discussion Draft’, 9 February 2017.

92. *Ibid.*, p. 3.

93. Ruggie, letter to Roel Nieuwenkamp.

94. Thun Group of Banks, ‘Paper on the Implications of UN Guiding Principles 13b & 17 in a Corporate and Investment Banking Context’, p. 7.

95. *Ibid.*, p. 3.

96. Quote provided to authors via email by John Ruggie, 31 October 2018.

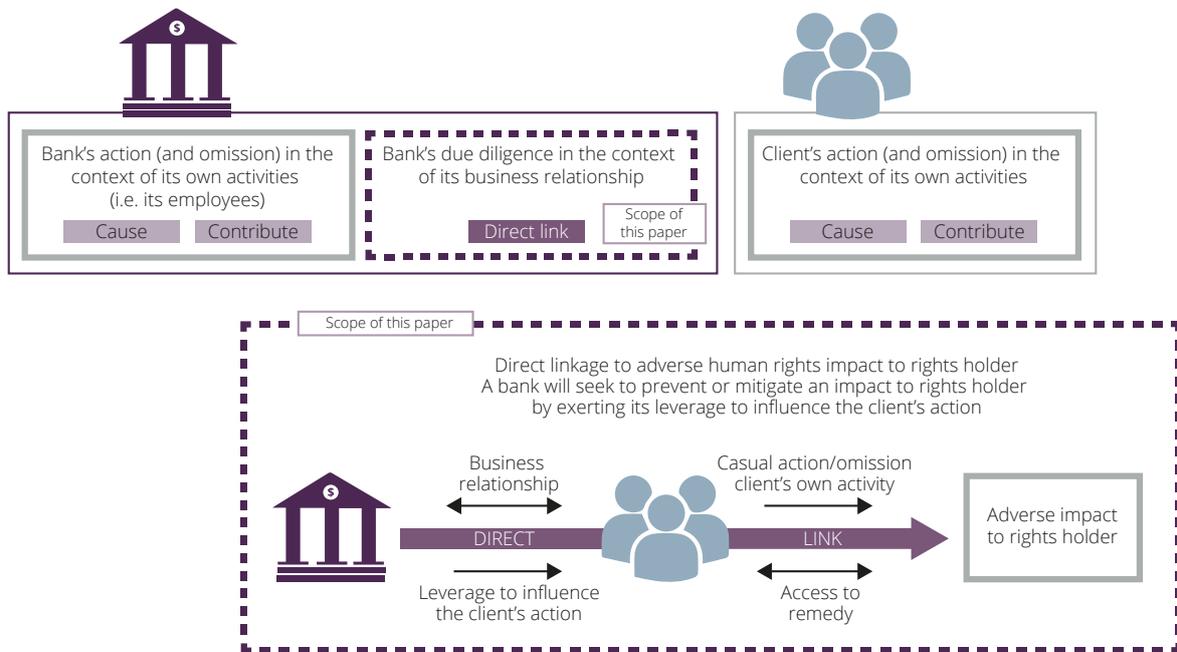
97. *Ibid.*

98. The authors are grateful to the banking sector representative who provided insight on this through peer review, August 2018.

required itself to do so', the primary issue is that scoping everything into the category of linkage, as per the January paper, avoids the need for provision of remedy, rather than disagreement with the assertion that banks are not responsible for remediation.<sup>99</sup>

Figure 2 shows the Thun Group's representation of direct linkage to adverse human rights in a banking sector context through a client relationship, which puts forward that a bank's responsibility extends to leverage – in other words, attempting to influence the client – but does not address direct provision of remedy in the event of identified human rights impacts.

**Figure 2:** Thun Group Representation of Direct Linkage to Adverse Human Rights in a Banking Sector Context



Source: Thun Group of Banks, 'Paper on the Implications of UN Guiding Principles 13b & 17 in a Corporate and Investment Banking Context', p. 6.

Interviews conducted by the authors for this paper suggest that this position stems in part from an understandable fear of setting a precedent for accepting responsibility for remediation of impacts caused by client activity which could result in legal and financial liability.<sup>100</sup> In practice, liability principles have not caught up with conceptions of human rights due diligence. They still fail to recognise the existence of a spectrum, rather than a binary relationship, between

99. Thun Group of Banks, 'Paper on the Implications of UN Guiding Principles 13b & 17 in a Corporate and Investment Banking Context', p. 3.

100. Authors' interviews with NGO and professional services representatives, telephone, 1 May 2018 and 14 June 2018; London, 19 June 2018.

contribution and linkage to negative human rights impacts, where banks can directly influence their risk exposure through more robust human rights due diligence. Ruggie underlines this point, noting:

There is a continuum between contribution and linkage. A variety of factors can determine where on that continuum a particular instance may sit. They include the extent to which a business enabled, encouraged, or motivated human rights harm by another; the extent to which it could or should have known about such harm; and the quality of any mitigating steps it has taken to address it.<sup>101</sup>

The challenging question for the financial sector is how to prioritise and resource an increased scope and scale of due diligence to uncover the potential risks, harms and human rights impacts of its operations, across the entire corporate client lending portfolio, where data is limited and clients' policies may be lacking.

The OECD's Responsible Business Conduct for Institutional Investors recognises that there is a limit on the extent to which a company's business relationships create responsibility. Nevertheless, the company 'should seek to influence or encourage that entity to prevent or mitigate the adverse impacts'.<sup>102</sup>

The Thun Group discussion paper from December 2017 also suggested that banks' role in these cases is to influence their client,<sup>103</sup> rather than support any direct remediation. This acknowledges a key area where the financial sector can drive impact through its leverage, which is explored further in Chapter V.

This discussion has increased the profile of this issue, drawing in actors from civil society, government and the financial sector, seeking to define and clarify the responsibilities of the financial sector regarding adverse human rights impacts in their clients' supply chains. Yet to date, little consensus on responsibilities and action has emerged.

However, some financial institutions are starting to look not only for better ways to strengthen their due diligence and framing of E&S factors – and specifically modern slavery and human-trafficking risks – but also how to take a broader view on the assessment of these risks.

For example, the Dutch banking sector demonstrates some impressive industry and individual company engagement with the issues of modern slavery and human trafficking. ABN Amro, a major commercial and business bank in the Netherlands, has recognised that the traditional,

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101. Ruggie, 'Comments on Thun Group of Banks Discussion Paper on the Implications of UN Guiding Principles 13 & 17 in a Corporate and Investment Banking Context', 21 February 2017, <<https://www.business-humanrights.org/sites/default/files/documents/Thun%20Final.pdf>>, accessed 20 August 2018.

102. OECD, 'Responsible Business Conduct for Institutional Investors', p. 12.

103. Thun Group of Banks, 'Paper on the Implications of UN Guiding Principles 13b & 17 in a Corporate and Investment Banking Context', pp. 15–16.

high-level approach to human rights due diligence – namely, identifying high-risk sectors and countries – may allow a bank to identify modern slavery risks in, for example, Southeast Asian seafood sourcing, but is less likely to uncover more specific risks such as private individuals that run illicit recruitment agencies in cities like Amsterdam where the bank has many clients. In the view of ABN Amro, what the traditional high-level approach to human rights due diligence is less likely to expose – in this case illicit recruitment agencies in cities like Amsterdam – arguably represents a greater leverage opportunity for the bank, given its business profile.<sup>104</sup>

ABN Amro looks at its business operations not only from a human rights perspective in line with the UN Guiding Principles recommendations for prioritisation of the most severe actual or potential impacts, but has also adjusted its human rights due diligence approach from a modern slavery perspective to take account of contextual issues that do not fit into a standard high-risk country and industry risk-based approach as often used in large-scale financial sector E&S due diligence. The bank recognises that companies involved in human trafficking in ‘destination countries’ such as the Netherlands are often small, operate under the radar and should not be ignored just because of their size or because they only operate in the Netherlands.<sup>105</sup>

Collaboration between the state’s duty to protect and the corporate responsibility to respect human rights can enable the prosecution of perpetrators and effective remedy for victims. This is highlighted through the creation of the Dutch Banking Sector initiative, an ‘exceptional agreement’ which is the first of its kind worldwide between NGOs, government and a national banking sector concerning the implementation of the UN Guiding Principles and the OECD MNE Guidelines.<sup>106</sup>

This collaborative approach and increased domestic due diligence mean that participating banks are also better placed to provide any information that they have to law enforcement authorities, which may facilitate more successful prosecutions of human-trafficking or modern slavery cases.

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104. Maria Anne van Dijk, Marijn de Haas and Ruben Zandvliet, ‘Banks and Human Trafficking: Rethinking Human Rights Due Diligence’, *Business and Human Rights Journal* (Vol. 3, No. 1, January 2018), pp. 105–111.

105. *Ibid.*, pp. 107–109.

106. SER, ‘Banks, Unions, NGOs and Government Working Together on Human Rights’, 28 October 2016, <<https://www.ser.nl/en/publications/news/20161028-dutch-banking-sector-agreement.aspx>>, accessed 20 August 2018.

**Box 3: The Dutch Banking Sector Agreement**

The Dutch Banking Sector Agreement, signed in 2016, is a multi-stakeholder initiative between the Dutch banking association (an organisation of 13 individual banks), the government, trade unions and civil society. The agreement commits Dutch banks to a course of action to ensure respect for human rights in line with the UN Guiding Principles and the OECD MNE Guidelines. This agreement is part of the Dutch 'covenant process' looking to implement international responsible business conduct agreements in place of legislation (although legislation has not been ruled out should there be limited progress). Three agreements have been signed as part of this process thus far for the garment and textile sector, the banking sector and the gold sector.

Key elements of the agreement are summarised below:

- Extending activity beyond the traditional focus on project finance to cover worldwide corporate lending activities (with a potential to extend into further banking activities).
- Moving beyond policy commitments with an aim to strengthen human rights due-diligence processes.
- A commitment to develop a publicly available database that can provide reliable information about human rights risks and serve as one of the sources of the banks' due diligence, and also to undertake a series of public value chain risk-mapping exercises.
- A commitment to increased transparency on client screening and investment portfolios.
- Reporting improvements, working towards 'reporting in line with or equivalent to the UN Guiding Principles Reporting Framework'.
- Recognition of responsibility to provide remedy, including improved client engagement on human rights issues.
- Proposed creation of an independent expert advisory mechanism that can support banks in handling complaints.
- Setting up a complaints mechanism for actual or potential victims of human rights violations.
- Further work to be undertaken on how banks can build and use leverage.
- Establishing a multi-stakeholder steering committee and an independent monitoring committee setting out in detail how disputes between the parties are to be resolved.

*Sources: SER, Dutch Banking Sector Agreement on International Responsible Business Conduct Regarding Human Rights; Key elements summary adapted from Shift, 'Dutch Banks, Government, Unions and Civil Society Sign Groundbreaking Agreement on Business and Human Rights', 2 November 2016, <<https://www.shiftproject.org/news/banking-agreement-netherlands-business-human-rights/>>, accessed 20 August 2018.*

The first annual report from the Dutch Banking Sector Agreement has now been published, which highlights solid progress, including improvements in grievance mechanisms and access for non-clients as well as collaboration on mapping of cocoa supply chains in order to highlight

areas of bank leverage. It also puts forward some further areas for attention, including the creation of an external monitoring committee, increasing leverage and enabling remediation.<sup>107</sup>

So far, this depth of collaboration has not been replicated in other jurisdictions, with efforts limited at most to informal working groups. According to NGO representatives interviewed as part of the research for this paper, key to the Dutch success is the government-led activity to develop semi-voluntary sector-based agreements on how to address risks relating to international responsible business conduct, along with a willingness on the part of the public and private sectors to work together.<sup>108</sup> The success that is emerging in the Netherlands is encouraging those involved to endeavour to export their model via bodies such as the EU and the OECD.<sup>109</sup>

The absence of similar initiatives in other national contexts is perhaps surprising given existing banking sector engagement efforts to identify and disrupt modern slavery and human trafficking through AML initiatives, financial intelligence-sharing mechanisms and public–private sector collaborations as reviewed in Keatinge and Barry’s previous human-trafficking research.<sup>110</sup>

As this chapter has highlighted, despite the increasing pressure on private sector businesses to embrace responsible business conduct – specifically as relates to human rights including modern slavery and human trafficking – the financial sector in many cases still faces tensions in determining how such commitments translate into a financial sector context.

As illustrated above, initial civil society analysis of modern slavery statements revealed disappointing levels of early compliance with the Modern Slavery Act and a lack of depth and ambition in the content and quality of financial sector statements that has primarily promoted AML and supply-chain work in relation to human trafficking. Leading banks are increasingly incorporating their role as financiers into their modern slavery statements, but a lack of detail in reporting of due diligence processes only allows for a limited understanding of the effectiveness of modern slavery and human trafficking-related risk assessment of client activities.

The Dutch Banking Sector Agreement highlights some innovative approaches to due diligence which will be explored in the next chapter focused on current and emerging practices for managing modern slavery risks and how they compare to the more established due diligence procedures for environmental risks in existing and prospective clients’ operations.

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107. IRBC Agreements and SER, ‘Dutch Banking Sector Agreement’, E-magazine, July 2018, <[https://banking-annual-report.internationalrbc.org/en\\_US/7418/110101/cover.html](https://banking-annual-report.internationalrbc.org/en_US/7418/110101/cover.html)>, accessed 6 November 2018.

108. Author telephone interviews with NGO representatives, 1 May 2018; 21 May; 14 June 2018.

109. SER, *Dutch Banking Sector Agreement on International Responsible Business Conduct Regarding Human Rights*, p. 30.

110. Keatinge and Barry, ‘Disrupting Human Trafficking’.

## IV. A Variable Focus?

**T**HE LEVEL OF financial sector engagement with the social element of E&S risk – specifically human trafficking and modern slavery – appears to contrast with the sector’s activity in addressing environmental risks and its willingness to use client leverage and influence to drive positive change.

This chapter will consider why the clear commitment informing programmes that the sector has adopted towards assessing and addressing environmental issues is less evident when it comes to social and human rights issues including modern slavery and human trafficking. There is expansive evidence that financial institutions are committed to ensuring their services meet ‘environmental’ expectations, but less definitive and practical evidence exists of engagement with the ‘social’ agenda. Not only does this imbalance highlight gaps in E&S risk management frameworks, but it also presents a number of opportunities for action to identify, mitigate and protect against modern slavery risks and to create positive impacts.

As detailed in this chapter, there are some evident reasons for this variation in approaches, including: emphasis of environmental priorities by global frameworks and initiatives; sector- and issue-specific reporting requirements; financial sector understanding and awareness of social and modern slavery risks; data access and availability to support due diligence; and organisational structures and financial sector culture. There are also very real and practical challenges for the financial sector in addressing the complexities of modern slavery risk due diligence that potentially covers thousands of business clients, sometimes in transactional activity with very rapid execution times and potentially with inherently limited leverage.

### Global Frameworks and Industry Initiatives

Global initiatives such as the Paris Agreement have provided an impetus and profile for sustainability initiatives that prioritise the environment. Although a number of political leaders – notably in the UK, France and Australia – and UN-based initiatives emphasise addressing modern slavery and human trafficking, the bulk of sustainable finance efforts continue to focus on environmental issues, driving market focus towards investments in more environmentally-friendly technologies and the creation of a low-carbon economy.<sup>111</sup> The EU High-Level Expert Group on Sustainable Finance’s report makes limited reference to social dimensions of sustainable finance beyond mention of social impact bonds (SIBs) and noting that EU legislation does not have a clear and standardised definition of social factors and social risks,

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111. European Commission, ‘Sustainable Finance’, 2018, <[https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance_en)>, accessed 20 August 2018.

and recommending clarification.<sup>112</sup> Specific proposals from the European Commission focus on a unified taxonomy for environmentally sustainable economic activity, improving E&S disclosure requirements for institutional investors and creating new carbon benchmarks.<sup>113</sup>

Industry initiatives such as the Green Bond and Loan Principles that provide guidance for fundraising initiatives with an environmental focus have encouraged this prioritisation of environmental issues in the financial sector, although SIBs and sustainability bonds have now also been introduced to the market and volumes are increasing, from a low base.<sup>114</sup>

While environment-focused initiatives have been to the fore, the imbalance is gradually being addressed. For example, the 2018 annual meeting of world leaders at the United Nations General Assembly saw the launch of the Financial Sector Commission on Modern Slavery and Human Trafficking, also known as the Liechtenstein Initiative. This initiative is specifically focused on engagement with the financial sector and was launched by Liechtenstein, Australia and the UN University Centre for Policy Research. It brings together human-trafficking survivors, financial sector actors and regulators, and civil society and inter-governmental organisations to create a roadmap for the global financial sector to tackle these crimes.<sup>115</sup>

## Sector- and Issue-Specific Reporting Requirements

The Equator Principles risk-management framework for determining, assessing and managing environmental and social risks, despite offering a balance in focus across E&S issues through its foundation on the International Finance Corporation's (IFC) Performance Standards,<sup>116</sup> does

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112. EU High-Level Expert Group on Sustainable Finance, 'Financing a Sustainable European Economy: Final Report 2018 by the High-Level Expert Group on Sustainable Finance', 2018. Social bonds raise funds for new and existing projects that target positive social outcomes, see International Capital Market Association (ICMA), 'Social Bonds Principles (SBP)', <<https://www.icmagroup.org/green-social-and-sustainability-bonds/social-bond-principles-sbp/>>, accessed 20 August 2018.

113. Council of the European Union, 'Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EU) 2016/1011 on Low Carbon Benchmarks and Positive Carbon Impact Benchmarks', *Official Journal of the European Union* (COM/2018/355, 24 May 2018); European Commission, 'Proposal: Commission Legislative Proposals on Sustainable Finance', 24 May 2018, <[https://ec.europa.eu/info/publications/180524-proposal-sustainable-finance\\_en](https://ec.europa.eu/info/publications/180524-proposal-sustainable-finance_en)>, accessed 20 August 2018.

114. Green, Social and Sustainability Bonds are any type of bond instrument where the proceeds will be exclusively applied to eligible environmental and/or social projects. They are regulated instruments subject to the same capital market and financial regulation as other listed fixed-income securities. See ICMA, 'Green, Social and Sustainability Bonds', <<https://www.icmagroup.org/green-social-and-sustainability-bonds/>>, accessed 3 October 2018.

115. Liechtenstein Initiative, 'About the Commission', <<http://www.financialsectorcommission.org/about-the-commission/>>, accessed 3 October 2018.

116. IFC's Environmental and Social Performance Standards (2012) define IFC clients' responsibilities for managing their environmental and social risks. IFC Performance Standard 2 has a requirement to

not appear to be balanced in implementation. For example, the Equator Principles expressly specify a requirement to report greenhouse gas (GHG) emissions and analyses of alternatives to reduce GHG emissions, but make no explicit reference to modern slavery or the need for specific performance indicators or reporting mechanisms for addressing modern slavery issues.

Given that the Equator Principles are primarily designed for a narrow set of project finance-related transactions, they stop short of advocating supply-chain transparency. Likewise, the IFC Performance Standards (unlike the UN Guiding Principles) only require a focus on (typically) the top tier of the supply chain and/or where a client exercises control or influence, missing deeper scrutiny of supply chains where greater forced labour risks are likely to exist. The Equator Principles model is not generally considered appropriate for broader corporate client portfolio management, although a number of banks do use this model or the underlying IFC Performance Standards in their wider management of environmental and social risks. In contrast to the limitations of the IFC Performance Standards, the UN Guiding Principles start from the perspective of where the most severe risks to people are and then look at what an institution can reasonably do about minimising and addressing those risks.

Sector-specific frameworks such as the Task Force on Climate-Related Financial Disclosures (TCFD) have also been developed to focus financial sector attention on climate issues to help markets measure and manage climate change risks.<sup>117</sup> Again, there remains a lack of an equivalent structure for modern slavery and human trafficking-related issues. The TCFD framework supports quantification of financial impacts, through business and value chain operations, highlighting a number of challenges in ensuring material issues are reflected in financial filings. These echo concerns raised in disclosing modern slavery impacts, namely: limited knowledge of climate-related issues within organisations, which may inhibit the identification of such risks; the tendency to focus mainly on near-term risks without paying adequate attention to risks that may arise in the longer term; and the difficulty in quantifying climate-related risks.<sup>118</sup>

## Understanding and Awareness

Much of the driving force for the apparent imbalance in E&S approaches stems from the fact that environmental parameters have been discussed for longer and are therefore better understood and incorporated into financial decisions than social issues. Governance and integrity issues are also well understood by the financial sector, given their link to compliance regimes, anti-bribery and corruption and AML regulations. In comparison, social risk indicators and the availability of data relevant to modern slavery and human trafficking are much less developed and harder to measure. While measuring outputs may help in understanding how to adjust inputs to reduce

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avoid the use of forced labour.

117. Task Force on Climate-Related Financial Disclosures (TCFD), 'Final Report: Recommendations of the Task Force on Climate-Related Financial Disclosures', June 2017.

118. TCFD, 'Implementing the Recommendations of the Task Force on Climate-Related Financial Disclosures', June 2017.

carbon emissions, the same principle cannot be applied to forced labour and human-trafficking outputs to determine how many people were exploited.

Furthermore, there is a need for a more precise definition of the ‘S’ within E&S assessments to recognise that the current approach blends two distinct ‘social’ issues – namely community and other social considerations – with labour issues that are clearly defined in international and national law. This need for a more nuanced definition of social risks is fundamental to modern slavery, which appears where labour standards are flouted.

This lack of data, detailed due diligence into specific slavery-related issues and the complex, multi-dimensional nature of modern slavery risks, fuels a vicious circle impeding the gathering of data on the topic, thus hampering the development of further understanding and action. For example, due to the complex and hidden nature of labour exploitation, modern slavery risks are often under-reported or undetected in audits, furthering the challenge financial institutions face in learning how to include modern slavery and human trafficking in their E&S risk management.

## Data Access and Availability

As indicated above, availability of data and metrics, and the relative ease of their collection, have supported better visibility, monitoring and measurement of environmental issues. In contrast, despite the work of government bodies, such as the US Department of State’s Trafficking in Persons Report,<sup>119</sup> and organisations such as the ILO and the Global Slavery Index, there is a lack of codified data on social issues and a common repository for storing slavery and trafficking-related information, which makes it difficult to create an analytical baseline. The Alliance 8.7 Knowledge Platform launched at the 2018 UN General Assembly was created specifically to address this issue by fostering understanding and collection of the most useful data, evidence, and news on modern slavery and human trafficking to support effective policymaking.<sup>120</sup>

Information required to pinpoint modern slavery and human-trafficking risks at a company-specific level is difficult to source, often being limited to country- or industry-level analysis.<sup>121</sup> Modern slavery guidance is still only available for a limited number of sectors and commodities.<sup>122</sup>

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119. US Department of State, ‘Trafficking in Persons Report June 2018’, <<https://www.state.gov/j/tip/rls/tiprpt/>>, accessed 22 August 2018.

120. Delta 8.7 is a project of the United Nations University – Centre for Policy Research (UNU-CPR) launched at the 2018 UN General Assembly.

121. Examples of country-level risk data for modern slavery include: The Global Slavery Index, ‘Modern Slavery: A Hidden, Everyday Problem’, <<https://www.globalslaveryindex.org/>>, accessed 20 August 2018; US Department of State, ‘Trafficking in Persons Report June 2018’. An example of modern slavery risk data by industry is the Sustainability Accounting Standard Board (SASB), ‘SASB Materiality Map’, <<https://materiality.sasb.org/>>, accessed 20 August 2018.

122. Examples of modern slavery risk data by commodity/industry include: US Department of Labor and the Bureau of International Labor Affairs, ‘List of Goods Produced by Child Labor or Forced Labor’,

Many organisations source risk information from multiple providers in an attempt to develop a holistic picture of country, sector, product and enterprise risk, but this approach is potentially flawed due to data gaps created by incomplete coverage and methodological differences between providers.

Other data inputs include the results of client questionnaires, intended to collect information across a whole range of environmental, social and governance issues. These tend to result in broad overview data, providing only a high-level view of trafficking and slavery issues, and engaging only with clients' policies rather than their on-the-ground activity or performance. Other modern slavery risk inputs, such as country and sector guidance, are often generalised and reported separately, meaning that with the exception of well-reported endemic industry issues (cotton from Uzbekistan or shrimp from Thailand), modern slavery risks may not pass the escalation thresholds for additional due diligence.

The result is that the nuanced and contextual approach required to assess systemic characteristics of modern slavery that can increase vulnerability to exploitation is often absent.<sup>123</sup> Furthermore, the diagnostics for forced labour-related issues do not lend themselves to a check-box approach. Analysis needs to consider a range of issues in combination, including: sectors with fluctuating demand for low-skilled labour; patterns of sub-contracting and outsourcing, particularly to countries with low labour costs; and jurisdictions with a weak rule of law, high levels of economically disadvantaged people, and/or a high percentage of foreign migrant workers and low levels of supply-chain transparency. These can be combined with more contextual issues such as worker engagement mechanisms or whether the business is on a migratory route, which can increase the risk of refugees being exploited while working in the informal sector.<sup>124</sup> Increasingly, connections are being made regarding the correlation between human trafficking and corruption data that could also be helpful as an additional or proxy data source in the identification of modern slavery risks.<sup>125</sup>

Due to the complex layers of business relationships, lack of transparency, and the variance in approaches to risk and responsibility for investments and lending, setting specific transparency requirements on some key drivers of modern slavery may be the most useful and pragmatic starting point. Specific indicators of modern slavery and human-trafficking risk should be called

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<<https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>>, accessed 20 August 2018; SASB, 'SASB Materiality Map'; Verité, 'Commodity Atlas', <<https://www.verite.org/commodity-atlas/>>, accessed 20 August 2018.

123. See Humanity United, 'Performance Report: Systems Thinking', <<https://humanityunited.org/performance-report-2016/>>, accessed 20 August 2018.

124. Ethical Trading Initiative, 'Syrian Refugees Working in Turkey's Garment Sector', <<https://www.ethicaltrade.org/programmes/syrian-refugees-working-turkeys-garment-sector>>, accessed 20 August 2018.

125. Heather Odell and Leighton Joyce, 'On Thin Ice: Proving What We Know to be True: An Examination of the Nexus Between Human Trafficking and Corruption', Liberty Shared, October 2018.

out, particularly in countries where governance and the rule of law are weak, and in sectors where prevalence of risk is high, such as those involving mobile vulnerable populations and supply of goods and services involving multiple and complex systems and processes.

A challenge is presented when banks take a due diligence approach that is proportionate and scaled to the perceived risks, as this may result in complex issues such as modern slavery, which require a more nuanced approach, remaining undiscovered.

This is equally true within business supply chains, which, although typically built on longer-term contractual relationships, allowing for greater leverage and supply-chain transparency, suffer from the same challenges. Where banks rely on information from their clients to complete due diligence, flaws and gaps in client modern slavery risk-assessment processes will automatically be replicated in the bank's analysis.

More detailed E&S assessments are another source of data, but these only occur in a minority of cases and are often outsourced to an external company or consultant. Traditional social compliance audits<sup>126</sup> have been found to provide poor assessments of modern slavery issues,<sup>127</sup> and the interviews conducted as part of the research for this paper cite third-party capacity gaps in the understanding of labour standards issues.<sup>128</sup> In addition, auditor selection is likely to be prioritised in favour of those auditors with environmental expertise in line with financial sector priorities, further diminishing the ability to identify modern slavery-related cases at audit.

Finally, due to the scarcity of modern slavery risk data, gaps in company reporting, and the suitability of risk-based models for identifying modern slavery issues, many cases do not meet the threshold for further investigation and are thus overlooked.<sup>129</sup>

## Organisational Structures and Culture

Consistent with the issues raised above, individuals interviewed for this research indicated that financial institutions have more in-house expertise on environmental and governance (related to compliance and integrity) risks than on social issues.<sup>130</sup> Social risk assessment appears to be primarily focused on risks to communities affected by major infrastructure projects, without the nuanced approach required to conduct due diligence of extended supply chains or to

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126. Social compliance audits (also known as social responsibility audits) are a monitoring process to ensure compliance with local law as well as international codes and standards for corporate social responsibility. Most social compliance audits typically focus on working conditions, labour and health and safety issues.

127. Sedex, 'Guidance on Operational Practice and Indicators of Forced Labour', June 2017.

128. Authors' telephone interview with representative from civil society organisation, 21 May 2018.

129. van Dijk, de Haas and Zandvliet, 'Banks and Human Trafficking'.

130. Authors' interviews with banking professionals, London, March 2018.

specifically target modern slavery.<sup>131</sup> Furthermore, E&S risk teams are usually poorly resourced, typically only consisting of a handful of staff operating apart from their much better-resourced compliance colleagues. These E&S risk teams usually operate an 'end-to-end' process, in contrast to financial crime compliance colleagues focused on the filing of suspicious activity reports with the national Financial Intelligence Unit.

Due diligence methods are equally siloed. AML and compliance teams have embraced new ways of working to tackle the illicit proceeds of modern slavery and human trafficking,<sup>132</sup> having benefited from a considerable investment in staff and other resources in response to the failings identified across the industry by enforcement action. These new approaches include techniques such as media monitoring for customer names associated with modern slavery, victim data anonymisation and aggregation, and use of proxy datasets to assist with the creation of human-trafficking risk indicators that can be used to interpret a bank's transaction data. These techniques, predominantly used by financial crime compliance and investigation teams, would also serve E&S teams well.<sup>133</sup>

A lack of staff and investment, and the breadth of topics covered, means that E&S risk and due diligence teams often need support from front line relationship managers – both to highlight and escalate potential issues as well as to communicate and implement suggested actions to clients to prevent or mitigate risk. This reliance on front line staff creates a conflict of interest in business decision-making and places a risk-management emphasis on employees with no specialist knowledge of modern slavery and human-trafficking risks. Furthermore, it assumes they understand their client's exposure to modern slavery risk and have the appropriate leverage to encourage changes in client policies and practices.

## Business Model and Processes

The research for this paper highlighted that risk-based models are driven by the need to systematise, scale and streamline business decisions in an increasingly efficiency-led, highly competitive, resource-constrained and time-pressured environment where clients are often looking for swift lending decisions.<sup>134</sup> This can create pressure that is not conducive to a more critical review of client and supply-chain operations and has the potential to drive business opportunities towards lenders with less stringent requirements. In fact, the representative

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131. The OECD's 'Due Diligence Guidance for Responsible Business Conduct' of 2018 states that due diligence should be commensurate with the severity and likelihood of the adverse impact. Issues such as modern slavery will likely require tailored approaches. Where it is not feasible to address all identified impacts at once, an enterprise should prioritise the order in which it takes action based on the severity and likelihood of the adverse impact, rather than on commercial criteria. The significance, or severity, of an adverse impact is understood as a function of its scale, scope and irremediable character.

132. Keatinge and Barry, 'Disrupting Human Trafficking'.

133. Liberty Shared, 'On Thin Ice'.

134. Authors' telephone interview with professional services representative, 24 May 2018.

of one financial institution interviewed for this research cited a particular case where asking ‘awkward’ human rights-related questions had them removed from a deal by their client – the deal continued without them as other banks chose not to ask similar human rights-related questions.<sup>135</sup> In contrast to many industry sectors, the finance industry provides only high-level transparency regarding its modern slavery due diligence processes. But what is clear is that the due diligence undertaken by the financial sector can vary widely in scope.

Outside large-scale project finance, due diligence is predominantly risk based, favouring red flags and policy checklists during the approval process undertaken when new clients are taken on by a bank rather than ongoing deal-by-deal assessments. Although due diligence processes typically commence with a one-off ‘start of relationship’ screening with annual reviews, there is little capacity for continuous, ongoing proactive checks to be carried out as circumstances and potential adverse impacts change.<sup>136</sup> This approach, therefore, typically focuses on high-risk countries and sectors, as well as client size as an indicator of financial sector exposure, and only those deals exceeding set thresholds are likely to be escalated for further due diligence by specialist E&S risk teams. Unless a material modern slavery or trafficking issue arises during the lifetime of a financing arrangement, there may be no indication of whether the due diligence process is effective.

Observers claim that this approach is simply a box-ticking exercise with social and environmental criteria often only being considered at the last minute before a deal is closed, providing insufficient time for adequate due diligence.<sup>137</sup> This can be the result of failures in internal communications or part of the wider financing structure where a bank is not the lead arranger of a deal but is brought into it at very short notice, often relying on the due diligence undertaken by the lead financing banks.

A key issue appears to be that investigations and due diligence fail to penetrate sufficiently the complex supply chains outside of core client operations that can expose them to hidden and uncontrollable risks. Reliance on the client for due diligence information runs the risk of receiving a ‘rose-tinted’ view of their supply chains, incorporating gaps from clients’ own flawed due diligence, and reducing exposure to credible alternative perspectives from other stakeholders and information sources, including, in exceptional circumstances, impacted communities and workers. While debate is still ongoing as to who bears the responsibility for client supply-chain due diligence, the UN Guiding Principles refer to ‘know and show’<sup>138</sup> and the OECD Due Diligence Guidance for Responsible Business Conduct discusses the concept of

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135. Authors’ interview with banking professional, London, 27 March 2018.

136. OECD, ‘Responsible Business Conduct for Institutional Investors’.

137. Authors’ interviews with a range of experts from banking and civil society, London, 29 March 2018 and 16 May 2018; and telephone, 1 May 2018 and 21 May 2018; RSK, ‘The ESG Due Diligence Dilemma’, 21 March 2018, <<https://www.rsk.co.uk/item/1103-the-esg-due-diligence-dilemma.html>>, accessed 20 August 2018.

138. OHCHR, ‘Guiding Principles’.

‘could or should have known’<sup>139</sup> to illustrate the degree of foreseeability of an adverse impact or potential for adverse impact that an organisation should have been aware of and would be able to mitigate against.

As this chapter has highlighted, despite the various factors discussed in Chapters II and III, a range of fundamental issues account for and proliferate the variable focus paid by financial institutions between environmental and modern slavery risks. Practitioners suggest that introducing another set of decision requirements and more subjectivity into their due diligence would be challenging and would reduce the efficiency of decision-making and auditing of their processes. They also suggest that while environmental challenges can often be solved by engineering solutions, and primarily use data- and formula-driven assessments, addressing social and modern slavery risks is far more complex.<sup>140</sup> However, current under-resourced approaches, shallow penetration into supply chains, a lack of consensus on impact measurements, and reliance on scant and superficial data and insights are insufficient tools to uncover the true extent of modern slavery risks in the relationships funded by the financial sector. The next chapter sets out opportunities to improve and embed engagement with modern slavery risks into financial sector due diligence processes by allocating resources more intelligently to the most significant risks and impacts on people (not just businesses).

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139. OECD, ‘Responsible Business Conduct for Institutional Investors’.

140. Authors’ interviews with banking professional, London, 27 March 2018, and NGO representative, telephone, 1 May 2018.



## V. Opportunities for Impact

**A**S WAS DEMONSTRATED in the previous chapter, financial institutions face a number of cultural and structural obstacles to strengthening their processes and responses towards modern slavery and human-trafficking risks.

This chapter explores the extent to which the financial sector has the opportunity to use the influence and leverage it has with clients to enhance responses to modern slavery and human trafficking. By using financial levers such as loan conditions, positive loan incentives through interest rate discounts,<sup>141</sup> advocacy and shareholder activism, and client-mandated impact investing and other mechanisms of influence and leverage, the financial sector has the ability to accelerate progress that would take much longer to reach businesses organically through cascading supply-chain messages.

A range of opportunities exist for financial institutions to make a more meaningful contribution to the global effort to tackle modern slavery and human trafficking. These include harnessing client leverage more effectively; setting clearer expectations of their clients; greater acceptance of responsibility by the financial sector; cross-sector collaboration; enhanced due diligence methodologies; and internal organisational changes and cultural enhancements, all of which have the power to elevate the financial sector's response to modern slavery and human trafficking.

Consistent with the spirit of the SDGs, leading voices are increasingly looking to the influence of the financial sector to drive positive developments in the global effort to combat modern slavery and human trafficking.

The 2018 annual letter to CEOs from Blackrock Chairman and Chief Executive Larry Fink announced the world's largest asset manager's plans to double its investment in its stewardship team and increase engagement with the companies in which it invests. Blackrock's goal is to achieve 'deeper, more frequent, and more productive conversations', applying greater emphasis on sustainable long-term growth and the need for companies to focus on social purpose as well as financial returns.<sup>142</sup> As Fink wrote, '[y]our company's strategy must articulate a path to achieve financial performance. To sustain that performance, however, you must also understand the societal impact of your business'.<sup>143</sup>

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141. For example, the three-year \$500-million sustainability-linked loan for Olam – a Singapore-based food trader – that will reward the trader with lower interest rates if it hits more than 50 pre-determined ESG targets. See Emiko Terazono, 'Olam Secures \$500m in Sustainability-Linked Funding', *Financial Times*, 26 March 2018.

142. Blackrock, 'Larry Fink's Annual Letter to CEOs'.

143. *Ibid.*

Views such as his, and the growing willingness of some in the financial sector – particularly asset managers – to use the provision of finance to exploit their leverage via engagement with governments and businesses, shareholder activism and divestment (as a last resort),<sup>144</sup> suggest that opportunities exist for others in the financial industry to likewise commit greater effort to developing mechanisms and approaches for tackling social risks with the same energy that they dedicate to environmental risks.

## Set Expectations

Clearly articulated expectations are lacking in two key areas in relation to addressing modern slavery and human trafficking.

First, beyond the need to comply with a limited number of statutory requirements (for example the UK's Modern Slavery Act) and the compliance imperative of identifying any suspicious transaction activity linked to the proceeds of crime, there is no agreed or tailored guidance on the extent to which the financial sector is responsible for or should use its client relationships to address modern slavery risks.<sup>145</sup> Indeed, notwithstanding its engagement with human rights issues since 2011, the position the Thun Group took in 2017 suggests that guidance that proposes broadening or deepening of due diligence requirements and responses may be met with resistance without extensive work to support operational and aligned industry implementation.

Second, given the apparent imbalance in relative focus applied by many banks to clients that represent either environmental or social risks, financial institutions put limited pressure on clients that might be harbouring modern slavery or human-trafficking risks.

These deficits in expectations and understanding are clearly linked and need to be addressed at a global policy level. A failure to act in a coordinated fashion will simply displace abuse towards members of the financial sector community that are less focused on human rights risks.

Global policy bodies, such as the G20 and the Financial Stability Board,<sup>146</sup> that have embraced and supported finance-related elements of the SDGs, such as financial inclusion, should more

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144. Roel Nieuwenkamp, 'The Force of Finance for Responsible Business: How the Financial Sector Could and Should Contribute to Responsible Business Conduct', OECD Insights, <<http://oecdinsights.org/2016/06/06/finance-for-responsible-business-conduct/>>, accessed 20 August 2018.

145. Section 54 of the UK's Modern Slavery Act 2015 addresses 'transparency in supply chains, etc'. However, banking professionals interviewed for this research suggested that interpretation as relates to financial institutions can be narrowly drawn to exclude all responsibility beyond the bank's own supply chain (such as caterers and cleaning staff).

146. See, for example, Mark Carney, 'Mark Carney: The Sustainable Development Goal Imperative', speech given at the UN General Assembly, High-Level Thematic Debate on Achieving the Sustainable Development Goals, New York City, 21 April 2016, <<https://www.bis.org/review/r160523b.htm>>, accessed 22 August 2018.

actively recognise the ability of the financial sector to contribute to the global effort to tackle human rights abuses such as modern slavery and human trafficking, and should lend their influence to the uptake of the UN Guiding Principles.

Finally, while encouraging good practice is important, so too is enforcing laws and regulations where they exist. The extent to which the financial sector dramatically enhanced its compliance resources and procedures following the enforcement action related to AML failings and facilitating sanctions evasion, including the imposition of billions of dollars of fines, taken against banks such as HSBC and BNP Paribas,<sup>147</sup> suggests that a greater focus on regulatory enforcement action would encourage more substantial investment by banks in this field.

## Take Responsibility

The seeming reticence of many in the financial sector to take responsibility for the impacts inherent in the provision of finance runs contrary to a growing number of global social and business norms. This can be most clearly seen in the argument put forward by the Thun Group in relation to defining the sector's responsibility for remediation.

Although there is no responsibility under the UN Guiding Principles for a business to provide for or contribute to a remedy where the company has neither caused nor contributed to an impact but is directly linked to the impact, the UN Guiding Principles take the position that they apply to 'all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure' and that business 'may take a role' in enabling remediation, and should 'establish or participate in effective operational-level grievance mechanisms'.<sup>148</sup>

Similarly, the OECD Due Diligence Guidance for Responsible Business Conduct advocates that all businesses (not just leading multinationals) need to demonstrate their responsible business conduct credentials.<sup>149</sup> Endorsed by 34 OECD member states as well as other governments, this guidance provides practical suggestions and recommendations to help enterprises avoid and address adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance that may be associated with their operations, supply chains and other business relationships.

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147. For details of the enforcement action taken against HSBC and BNP Paribas, see US Department of Justice, 'HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement', press release, 11 December 2012, <<https://www.justice.gov/opa/pr/hsbc-holdings-plc-and-hsbc-bank-usa-na-admit-anti-money-laundering-and-sanctions-violations>>, accessed 9 November 2018; US Department of Justice, 'BNP Paribas Agrees to Plead Guilty and to Pay \$8.9 Billion for Illegally Processing Financial Transactions for Countries Subject to U.S. Economic Sanctions', press release, 30 June 2014, <<https://www.justice.gov/opa/pr/bnp-paribas-agrees-plead-guilty-and-pay-89-billion-illegally-processing-financial>>, accessed 9 November 2018.

148. OHCHR, 'Guiding Principles', pp. 1, 24–25, 31.

149. OECD, 'OECD Due Diligence Guidance for Responsible Business Conduct'.

**Box 4:** Promoting Responsible Business Conduct (RBC) in the Financial Sector

The OECD's 2011 MNE Guidelines include the expectation that 'businesses avoid and address adverse impacts that they cause, or contribute to, and seek to prevent or mitigate adverse impacts directly linked to their products, operations or services by a business relationship'.

Recognising that while investment institutions can 'cause or contribute to adverse impacts through their own activities, just like any other enterprise', the OECD also acknowledges that there is a further dimension to assess, namely that an investor and its investment have a significantly different relationship than that of a typical supply-chain buyer and seller. Put simply, an investor can 'seek to influence the investee through ownership'.

Thus, in 2017, the OECD produced an extensive publication to help institutional investors implement the due diligence recommendations proposed by its MNE Guidelines. As the MNE Guidelines themselves do not specifically reference the financial sector, this publication endeavours to interpret the MNE Guidelines to assist investors in 'avoid[ing] negative impacts of their investments on society and the environment, but also [to] avoid financial and reputational risks, respond to expectations of their clients and beneficiaries and contribute to global goals on climate and sustainable development'.

One important point underlined by the publication is that due diligence of company activities should be continuous and ongoing to monitor for adverse impacts, rather than simply being undertaken prior to an initial investment. Furthermore, the OECD advocates for the active management of issues once they are identified. In contrast to the due diligence typically undertaken by financial institutions that aims to identify financial risk, these guidelines for institutional investors argue that due diligence should be used to avoid and respond to responsible business conduct risks.

The distant nature of the relationship between an investor and their investment may make it challenging to effect change; however, the OECD recommends that enterprises 'acting alone or in co-operation with other entities, as appropriate, ... use their leverage to influence the entity causing the adverse impact to prevent or mitigate that impact'.

In sum, the OECD believes that by carrying out appropriate due diligence, of sufficient depth and scope, on a continuing basis, 'investors will not only enhance their risk management processes but help promote RBC globally'.

*Sources: OECD, OECD Guidelines for Multinational Enterprises; OECD, 'Responsible Business Conduct for Institutional Investors'.*

A number of financial institutions have made overarching commitments to human rights.<sup>150</sup> For example, in its 2017 modern slavery statement, Standard Chartered Bank notes that '[w]here

150. UN Guiding Principles Reporting Framework, 'View Disclosures', <<https://www.ungpreporting.org/database-analysis/explore-disclosures/>>, accessed 8 October 2018.

we identify that we have caused or contributed to adverse impacts, we endeavour to address these by providing remedy or cooperating in the remediation process'.<sup>151</sup> It also notes that the bank's 'broad footprint gives [it] the opportunity to raise awareness of modern slavery in a wide range of markets and industries'.<sup>152</sup>

Furthermore, Citibank states:

We evaluate human rights risks that could arise across our value chain, including in our operations and in our clients' operations, ranging from data protection and privacy to discrimination in lending. However, we have determined that our most salient human rights risks are those related to our financing of client activities that might impact people in local communities, including workers and vulnerable groups.<sup>153</sup>

With this in mind, there is a clear opportunity for the financial sector to take greater responsibility for encouraging more positive efforts to combat modern slavery and human trafficking via their client relationships, in order to come more closely into line with the trajectory of relevant expectations on business and the private sector.

## Enhance Due Diligence: Process and Data

Modern slavery covers a complex set of interrelated issues across a spectrum of criminality and exploitation. These can often be 'red flags' of suspicion rather than binary indicators of slavery. As indicated by the ILO, '[t]he presence of a single indicator in a given situation may in some cases imply the existence of forced labour. However, in other cases you may need to look for several indicators which, taken together, point to a forced labour case'.<sup>154</sup> There is a clear need for more complete data to support banking due diligence that often relies on generic country and industry risk assessments, as well as cursory reviews of clients' policies and procedures without engaging with their staff or operations on the ground.

For example, banks should explore the requirement of 'beyond audit' methods of client supply-chain due diligence, to uncover potential modern slavery and human-trafficking risks. These emerging due diligence approaches focus on better and more direct engagement with workers and communities both through technological advances, leveraging mobile and online technology to simplify collection and sharing of direct feedback on workplace conditions, and through more participatory audit methodologies. Participatory audits target more insecure and vulnerable workers to ensure they have a voice and can also include interviews with workers outside their place of work or with local NGOs and communities.<sup>155</sup>

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151. Standard Chartered Bank, '2017 Modern Slavery Statement', 2017, p. 2.

152. *Ibid.*

153. Citibank, 'Global Citizenship Report 2017', 2018, p. 47.

154. ILO, 'ILO Indicators of Forced Labour', 1 October 2012.

155. Stephanie Barrientos and Catherine Dolan (eds), *Ethical Sourcing in the Global Food System* (London: Routledge, 2006).

These approaches generate a need for improved dialogue between employers, workers and their representatives, aimed at building trust and eliciting authentic responses.

Banks can also be more explicit in their analysis of clients' social risks. For example, ABN Amro has started to include tailor-made questions in its due diligence processes focused on high-risk enforced labour areas. Companies are asked if they have foreign subsidiaries that are involved in the recruitment process, if recruitment agencies they work with are certified, and if labour agreements are drafted in the employee's native language.<sup>156</sup> Herein lies a challenge for financial institutions, but which cuts across all sectors: it is very difficult to know what questions to ask about the most acute issues in every sector if the companies themselves in those sectors are still grappling with them. As will be explored later in this chapter, industry as well as cross-sector collaboration is an excellent mechanism for expanding understanding of these issues.

Corporate lending due diligence, where the nature of the activity may not be known, may require more focus on understanding the basics of client-management systems in place to know and show how people may be affected by commercial operations. Modern slavery is often the result of poor business practices – short-term approaches to profit maximisation, downward commercial pressures, outsourcing, lack of visibility, management and lack of adherence to the rule of law – including implementation of labour standards.

The work of the Norwegian Council on Ethics, providing guidance on whether the Government Pension Fund's investment in specified companies is inconsistent with its ethical guidelines, provides a useful reference point. In 2017 they recommended excluding Polish property development company Atal SA from the fund, due to its use of a subcontractor which had used North Korean workers at Atal's construction sites. As well as deciding whether there was an unacceptable risk that Atal 'contributes to or is responsible for serious or systematic human rights violations', the Council on Ethics also referred to the UN Guiding Principles in the verification process to check whether the company had in place the right measures to prevent violations in the future.<sup>157</sup>

Supplier questionnaires – used by clients and in banks' own operations – that are typically high-level and broad in scope can be enhanced with additional, more specific questions aimed at gathering practical and concrete modern slavery-related information. These could include:

- What percentage of the workforce is directly employed and on the company payroll rather than provided by sub-contractors or labour and recruitment agencies?
- What percentage of the workforce are migrant workers?

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156. van Dijk, de Haas and Zandvliet, 'Banks and Human Trafficking'.

157. Council on Ethics, 'Recommendation to Exclude Atal SA from the Government Pension Fund Global', 25 August 2017, p. 1, <<https://etikkradet.no/files/2018/01/Recommendation-Atal-SA-20473.pdf>>, accessed 22 August 2018.

Banks can also take advantage of more creative methods of illuminating risk, such as using remote-sensing technology and data points to help identify specific locations with increased forced labour risks.<sup>158</sup> Examples of such locations might include a cocoa plantation that is more than 10 miles from the nearest school (as it is likely that children who would otherwise have to travel long distances to school will be found working on the plantation instead)<sup>159</sup> or remote regions associated with illegal logging, where people and communities lacking social support can become vulnerable to labour exploitation and slave-like practices.<sup>160</sup>

In addition to the more detailed work that the financial sector can undertake itself, public rankings of corporate practices with regard to human rights and modern slavery are starting to emerge.<sup>161</sup> These endeavour to create positive competition, inform investor decisions and encourage businesses and markets to operate more responsibly and with more transparency with regard to their commitment to addressing social risks.

While these benchmarking initiatives are still currently focused on leading manufacturing, retail and extractive companies, there is the opportunity to extend the benchmarks to the financial sector to assess company performance. Benchmark progress reports claim that ‘benchmarking transparency generates accountability for action’,<sup>162</sup> while also recognising that ‘the “average performer” is a “poor performer”’.<sup>163</sup> They also state that ‘there is a lack of board level leadership on human rights within many of the largest and most identifiable companies in the world’.<sup>164</sup>

Finally, although the recognition of limited data related to modern slavery and human trafficking is starting to propagate data initiatives, there is a lack of agreed metrics, risk indicators and a codified framework into and from which organisations can feed and draw information. There is an urgent need for those with data, such as civil society organisations, and those that rely on data for due diligence purposes, such as businesses, to work together to identify and agree on what metrics would support identification of modern slavery risk as well as best-practice indicators for monitoring progress. Organisations need to find mechanisms for sharing data such as the Data Hub,<sup>165</sup> which is based on human-trafficking data from the Counter-Trafficking Data Collaborative contributed to by multiple agencies. Portals, such as The Alliance 8.7 Knowledge

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158. World Resources Institute, ‘Global Forest Watch’, <<http://www.wri.org/our-work/project/global-forest-watch>>, accessed 20 August 2018.

159. Author interview with NGO representative, London, 23 July 2018.

160. Thais Lazzeri, ‘Investigation Reveals Slave Labor Conditions in Brazil’s Timber Industry’, *Mongabay*, 13 March 2017, <<https://news.mongabay.com/2017/03/investigation-reveals-slave-labor-conditions-in-brazils-timber-industry/>>, accessed 6 November 2018.

161. Including Corporate Human Rights Benchmark and KnowTheChain.

162. Corporate Human Rights Benchmark, ‘Progress Report’, p. 2.

163. *Ibid.*

164. *Ibid.*

165. Polaris, ‘Global Modern Slavery Data Hub Launches’, press release, 28 November 2017, <<https://polarisproject.org/news/press-releases/global-modern-slavery-data-hub-launches>>, accessed 20 August 2018.

Platform, should include not only data relating to human-trafficking cases, but also indicator data that can help pinpoint higher prevalence of, or vulnerability to, modern slavery risk.<sup>166</sup>

## Improve Internal Organisation

The financial crime compliance departments of banks use increasingly sophisticated datasets, analytics tools and specialist sources to support their transaction monitoring and sanctions screening checks, which include adverse media checks that are carried out to investigate suspicions of client involvement in modern slavery and human trafficking.<sup>167</sup>

Although internal methodologies are confidential, interview data collected as part of the research for this paper indicates that financial crime compliance and E&S teams most often work independently of one another.<sup>168</sup> Thus, the rigorous and ongoing checks applied via transaction monitoring and client screening in response to AML regulatory requirements are rarely leveraged by or cross-referenced for due diligence related to clients' supply-chain activity prior to or during the life of a lending relationship. Practices may vary greatly between banks. Different departmental objectives (such as prima facie illegality versus human rights due diligence) and binary processes versus more subjective analysis present challenges in aligning tools with procedures.

However, to the extent that financial institutions are willing to undertake due diligence in support of strengthening systemic integrity – rather than purely as a defensive measure – greater integration between the due diligence undertaken by compliance and E&S teams could deliver significant benefits. This would serve to support thinly staffed E&S teams, avoid missed opportunities or duplication of efforts, and improve overall understanding of modern slavery and human trafficking across the whole institution, including front line relationship management staff.

## Harness Client Leverage

A key strand of this paper is that the financial sector has the ability and position with its clients to encourage positive changes in approaches to social risks – including modern slavery and human trafficking. This concept is broadly termed 'leverage', and in some fields within the

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166. Another example is Freedom Collaborative's online service platform to facilitate connectivity, knowledge-sharing and cross-border cooperation among anti-trafficking stakeholders, see Liberty Shared, 'Freedom Collaborative', <<https://www.libertyglobal.ngo/freedomcollaborative/>>, accessed 3 October 2018.

167. Organisations such as Liberty Shared are increasingly tapping into the appetite of banks' financial crime compliance departments for specific and typology-based information to support their transaction monitoring and customer screening work.

168. Authors' interviews with a range of experts from civil society and the banking industry, March–May 2018; input from consultation workshop held at RUSI in support of the research for this paper, London, 19 June 2018.

financial sector – in particular corporate lending and investment management – this leverage is already used to positively influence the activities of clients or investees.

Underlining this position, the OECD's guidelines for Responsible Business Conduct for Institutional Investors strongly emphasise the value investors can derive from leverage, and the broad range of leverage options available, including 'direct engagement with investee companies ... directing capital towards responsible investee companies over time, involvement in industry initiatives targeting certain RBC risks, collective action on specific geographic or company-specific issues, etc'.<sup>169</sup> See Box 5 for further information about the use of leverage by institutional investors.

The extent to which this ability to leverage client relationships extends more broadly across the financial sector has been much discussed. Some voices within the financial sector say that the leverage a financial institution has over its client is often over-represented and that there are restrictions based on what information they can share, considering client confidentiality and anti-trust obligations, which need to be better understood in practical terms.<sup>170</sup> NGOs, civil society and modern slavery experts argue that other opportunities to increase leverage are available.<sup>171</sup>

Furthermore, the extent of this leverage depends on the nature of the financial relationship. Experts suggest that different business lines within the financial sector will offer varying degrees of leverage according to their shareholding, relationship, type of financing, and depth and length of relationship.<sup>172</sup>

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169. OECD, 'Responsible Business Conduct for Institutional Investors', p. 11.

170. Authors' interviews with representatives from the banking sector, London, 29 March 2018, and telephone, 26 April 2018.

171. More information on leverage is included in CDC Group, DFID, EBRD and IFC, 'Managing Risks Associated with Modern Slavery: A Good Practice Note for the Private Sector', Draft for public consultation, 3 August 2018.

172. Authors' interviews with banking professionals, London, 27 March 2018; telephone, 26 April 2018. These concepts are also discussed in the forthcoming OECD, 'Due Diligence for Responsible Business Conduct in General Corporate Lending and Securities Underwriting: Key Considerations for Implementing the OECD Guidelines for Multinational Enterprises', scheduled for launch in March 2019.

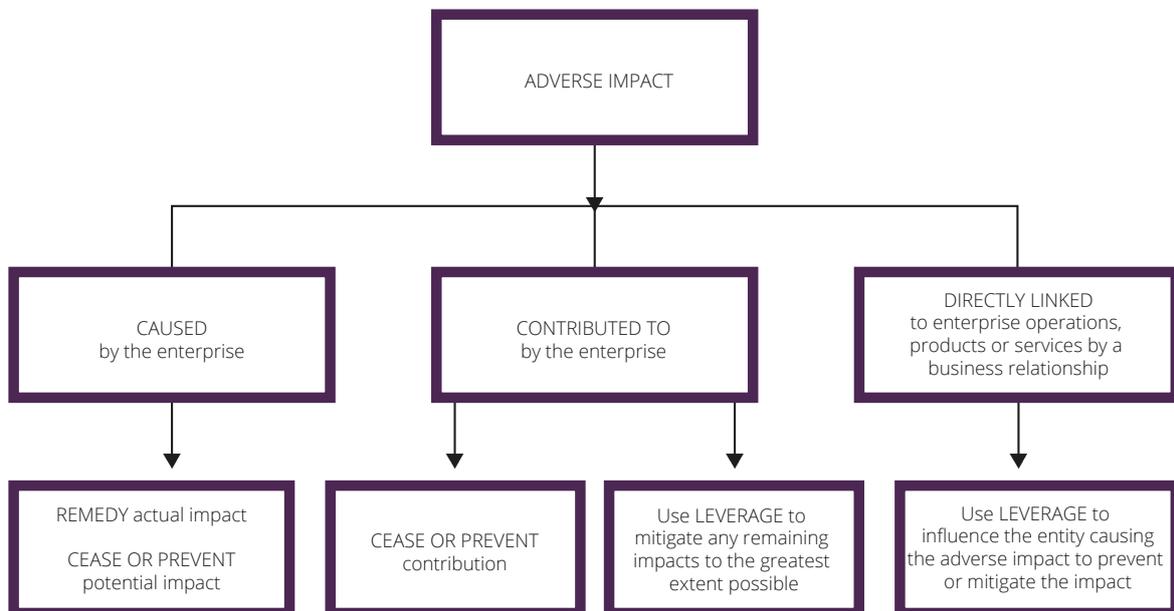
**Box 5: Encouraging Investors to Use Leverage**

The OECD guidelines for institutional investors provide an overview of the various response options depending on the nature of the financial relationship, noting that '[w]here actual or potential adverse impacts are identified, investors should seek to understand their relationship to them'. The relationship between causing, contributing and direct linkage will determine whether there is a direct responsibility to address the issue and/or to provide access to remedy. Figure 3 provides an overview of the possible responses.

This expectation on institutional investors to intervene 'is not intended to shift responsibility from the entity causing or contributing to an adverse impact to the enterprise with which it has a business relationship' and the OECD recognises that there is a limit on the extent to which a company's business relationships create responsibility. Nevertheless, the company 'should seek to influence or encourage that entity to prevent or mitigate the adverse impacts'.

Source: OECD, 'Responsible Business Conduct for Institutional Investors', pp. 12, 34.

**Figure 3: Addressing Adverse Impacts Under the OECD Guidelines for MNEs**



Source: OECD, 'Responsible Business Conduct for Institutional Investors', p. 35.

The research carried out for this paper suggests that there are several ways in which others in the financial sector – including banks – can take advantage of leverage, following the lead of the investment management community. These include:

- Including leverage points within the risk management process;
- Working to common industry best practice; and
- Cross-sector collaboration.

### **Including Leverage Points Within the Risk-Management Process**

Financial institutions should ensure that robust and timely due diligence specific to modern slavery risks is integrated into any transaction process and that clients are aware of this pre-transaction requirement. Raising human rights issues early on in the process is key. Human rights language and clear expectations should also be incorporated into contractual language.

Documenting the client's own due diligence and remediation processes not only demonstrates the level of a client's management information system maturity and preparation should an issue occur, but also enables the financial institution to promptly deploy a response in such an event. Provision of access to remedy is a key point within the UN Guiding Principles and an area acknowledged to be less developed, especially given that within a financial sector context this is normally the responsibility of the client.<sup>173</sup> Remedy may include 'apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition'.<sup>174</sup> Incentives to provide effective grievance mechanisms can be further strengthened through including expectations in contracts and codes of conduct or offering review, guidance on or even provision of a grievance mechanism, such as a hotline.<sup>175</sup>

### **Work to Common Industry Best Practice**

Alignment behind industry initiatives such as the Equator Principles, the Thun Group or sectoral initiatives such as the Roundtable for Sustainable Palm Oil<sup>176</sup> mobilises the market power of

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173. OHCHR, 'Guiding Principles', p. 27.

174. *Ibid.*

175. Shift, 'Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights', Shift Workshop Report No. 5, May 2014.

176. The Roundtable for Sustainable Palm Oil is a not-for-profit that was established to promote the growth and use of certified palm oil. It brings together a range of stakeholders and has created global standards including environmental and social criteria which must be met to produce Certified Sustainable Palm Oil (CSPO). However, the Dutch Banking Association process has recognised that RSPO, like many certification schemes, has gaps when it comes to assessing human rights risks, so is not a solution on its own.

leading companies behind clear and consistent messaging that avoids confusion and can create greater momentum and accelerate awareness raising in wider global supply chains.<sup>177</sup>

Business principles aimed at responsible investment such as the Principles for Investment in Sustainable Wild-Caught Fisheries (the Fisheries Principles) are designed to combine financial and industry initiatives to provide investors with guidance and investment frameworks focused on E&S issues material to the sector. They align with the IFC Performance Standards and the UN Principles of Responsible Investment and are designed to advance the SDGs.

Many financial organisations claim to have built up their own bespoke due diligence processes;<sup>178</sup> however, lack of industry transparency means that external validation of these processes is not possible. Continued pressure to reveal their methods may cause leading businesses to align instead with a transparent industry standard, even if it is potentially less robust than an approach developed in-house. In the short term, leading banks could supplement a transparent industry standard with their own programmes. Proponents of transparency suggest that over time, such an approach will lead to increased consistency and improvements in industry-wide standards.

### **Cross-Sector Collaboration**

Beyond the collaboration undertaken by banks aimed at strengthening their financial crime compliance capabilities, for example, the work undertaken to support public–private partnerships such as the Bankers’ Alliance Against Trafficking and the UK’s JMLIT, there is a lack of meaningful and impactful industry collaboration related to modern slavery and human trafficking. Furthermore, with the notable exception of the Equator Principles and the Dutch Banking Sector Agreement,<sup>179</sup> there seems to be a lack of creativity and a high degree of caution to capitalise on the position the financial sector has, in a collaborative fashion, as a provider of financial services to clients.

Client confidentiality is often cited as an obstacle to collaboration.<sup>180</sup> However, collaboration should not require reporting of clients to authorities or the sharing of information with other banks and should not present an insurmountable barrier, as illustrated by successes in a range of other industry and multi-stakeholder collaborative initiatives. The variety of initiatives illustrate the complex environment for tackling modern slavery issues. These may be focused on an industry response in sectors highlighted as prone to modern slavery (such as the seafood

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177. Sustainable finance work is also being conducted under the membership organisation umbrellas of the various Sustainable Investment and Finance Associations (SIF) organisations – UKSIF, USSIF, NORSIF, etc. – that provide platforms for those in the finance industry committed to sustainable and responsible finance and connect business, policymakers and the public.

178. Authors’ interview with representative from banking sector, London, 29 March 2018.

179. SER, *Dutch Banking Sector Agreement on International Responsible Business Conduct Regarding Human Rights*.

180. Authors’ interview with banking professional, London, 29 March 2018; input from consultation workshop held at RUSI in support of the research for this paper, London, 19 June 2018.

industry) or recognising the parallels between corrupt practices in recruitment and the types of red flags associated with human trafficking and forced labour, or more simply bringing business stakeholders together to discuss ways to prevent or monitor modern slavery.<sup>181</sup> Some of these varied collaborations include:

- The Seafood Ethics Action Alliance,<sup>182</sup> established to provide a forum for collective pre-competitive action for the UK seafood industry.<sup>183</sup>
- The Global Business Network on Forced Labour convened by the ILO for business networks to share information on how to prevent and mitigate the risk of forced labour and human trafficking in their operations and supply chains.<sup>184</sup>
- The Leadership Group for Responsible Recruitment: a collaboration between leading companies and expert organisations to drive positive change in the way that migrant workers are recruited – noting it as a core component of modern slavery.<sup>185</sup>
- The Consumer Goods Forum’s Sustainable Supply Chain Initiative (SSCI)<sup>186</sup> to benchmark and provide guidance on third-party auditing and certification schemes.
- The Modern Slavery Taskforce, now also convening fashion industry signatories to work together with the Gangmasters and Labour Abuse Authority (GLAA) and others to root out criminality and shine a light on hidden victims.<sup>187</sup>

As these examples reveal, no one organisation holds all of the information needed to identify and prevent issues of modern slavery. Collaboration can be an effective and efficient method to ‘scale-up action, transform markets, get ahead of regulation and ensure continued

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181. United Nations Office on Drugs and Crime, ‘The Role of Recruitment Fees and Abusive and Fraudulent Practices of Recruitment Agencies in Trafficking in Persons’, 2015.

182. Seafish, ‘Seafood Ethics Action Alliance’, <<http://www.seafish.org/responsible-sourcing/ethics-in-seafood/seafood-ethics-action-alliance>>, accessed 20 August 2018.

183. ‘Pre-competitive collaboration’ is a term that refers to when ‘competitors share early stages of research that benefit all’, Steven Weber, *The Success of Open Source* (Cambridge, MA: Harvard University Press, 2005), p. 21.

184. ILO, ‘ILO Global Business Network on Forced Labour’, <[https://www.ilo.org/actemp/areas-of-work/WCMS\\_632434/lang--en/index.htm](https://www.ilo.org/actemp/areas-of-work/WCMS_632434/lang--en/index.htm)>, accessed 20 August 2018.

185. Responsible Recruitment Gateway, ‘Leadership Group for Responsible Recruitment’, <<https://www.ihrb.org/employerpays/leadership-group-for-responsible-recruitment>>, accessed 20 August 2018.

186. The Consumer Goods Forum, ‘Sustainable Supply Chain Initiative’, <<https://www.theconsumergoodsforum.com/initiatives/sustainable-supply-chain-initiative/>>, accessed 20 August 2018.

187. The Modern Slavery Taskforce was created by UK Prime Minister Theresa May to discuss how to better identify and tackle forced labour in business supply chains: Gov.uk, ‘UK Fashion Brands Take Action to Tackle Modern Slavery’, press release, 12 November 2018, <<https://www.gov.uk/government/news/uk-fashion-brands-take-action-to-tackle-modern-slavery>>, accessed 24 November 2018.

competitiveness'.<sup>188</sup> The financial sector should take advantage of the existing forums focused on modern slavery in general and the financial dimension in particular, such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, and Liberty Shared and The Mekong Club's work with private sector actors to generate genuine and inclusive cross-sector collaboration.

Without meaningful cross-sector collaboration – as seen developing in other industries – the financial sector will continue to miss opportunities to use its leverage with clients to respond to modern slavery and human trafficking.

While these preceding points look specifically at ways that the financial sector can increase its leverage with stakeholders to encourage positive changes in client operations and processes, there are also other mechanisms where the sector can positively impact the fight against modern slavery. These include:

- Improving sectoral culture;
- Leveraging choke points; and
- Creating positive impact in tackling modern slavery and human trafficking.

## Improve Financial Sector Culture

Since the financial crisis of 2008, the culture of the financial sector has been closely scrutinised. For example, in the UK, the Banking Standards Board was created 'to promote high standards of behaviour and competence across UK banks and building societies'.<sup>189</sup> The financial sector is often criticised for its short-term views, engendering a culture focused on near-term returns that prioritises commercial factors at the expense or to the detriment of ethical consideration. The EU High-Level Expert Group on Sustainable Finance notes that 'sustainability cannot develop in a context where investment is dominated by short-term considerations'.<sup>190</sup> This mismatch in time horizons is deeply embedded into the financial system, exacerbated by increasing pressure on business to deliver strong short-term results despite growing evidence that long-term-focused companies outperform their shorter-term peers on a range of key economic and financial metrics.<sup>191</sup>

Where potential labour exploitation and modern slavery risks are not classified as financially material this fails to recognise not only the differences between materiality and saliency as key constructs of human rights due diligence, but also the role of business to respect human rights

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188. University of Cambridge and Ecofys, 'Better Partnerships: Understanding and Increasing the Impact of Private Sector Cooperative Initiatives', August 2015, p. 4.

189. Banking Standards Board, 'What is the BSB?', <<https://www.bankingstandardsboard.org.uk/what-is-the-bsb/>>, accessed 16 August 2018.

190. EU High-Level Expert Group on Sustainable Finance, 'Financing a Sustainable European Economy', p. 45.

191. McKinsey Global Institute, 'Measuring the Economic Impact of Short-Termism', February 2017.

– focusing on impacts on people, not business. In addition, this approach fails to recognise risks that could be more expensive in the long term due to litigation, reputation loss and need for business reform. Despite a growing push to recognise E&S risk assessment within fiduciary duties, there are still multiple cases where risk analysis does not extend beyond financial materiality, meaning that businesses potentially profit from an exploitative model. There is an opportunity for a cultural and operational shift to recognise E&S risk assessment within fiduciary duties and to price that risk accordingly.<sup>192</sup>

Some, such as Unilever CEO Paul Polman, who abolished quarterly reports and earnings guidance as one of his first actions as CEO in 2009 and also takes an active role in shareholder selection,<sup>193</sup> argue for a revolutionary approach. The incentives and culture that currently prevail encourage a focus on cost cutting, including labour costs and labour outsourcing, which in turn fuels vulnerability to issues such as labour exploitation.

However, there is limited evidence beyond a few exceptions – such as exclusions, an approach most often used as a last resort where client engagement fails<sup>194</sup> – that leading banks are willing to bear these costs, preferring to push responsibility down the supply chain to their clients, until publicity causes them to act.<sup>195</sup> In fact, benchmarking against the UN Guiding Principles, undertaken by Dutch NGO BankTrack, indicates poor implementation by the banking sector with '[m]any laggards; no true leaders', with over half of the 30 banks assessed scoring between 0 and 3 out of a possible 12 points, showing little or no evidence of human rights due diligence.<sup>196</sup>

There is therefore an opportunity for the sector to move together to create the policies, processes and tools that address the current culture deficit.

## Leverage Choke Points

Thus far, the opportunities identified for the financial sector to influence and accelerate responses to modern slavery and human trafficking have been linked to actions that financial institutions can undertake themselves. However, as actors operating in a regulated market, financial institutions are subject to a range of standards, norms and guidelines that have the potential to act as choke points for enforcing systemic changes.

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192. Sullivan et al., 'Fiduciary Duty in the 21<sup>st</sup> Century'.

193. Andy Boynton, 'Unilever's Paul Polman: CEOs Can't Be "Slaves" to Shareholders', *Forbes*, 20 July 2015.

194. For example, see Standard Chartered Bank, 'Prohibited Activities List', <<https://www.sc.com/en/sustainability/position-statements/prohibited-activities/>>, accessed 17 August 2018.

195. This approach is often used as a last resort with engagement on issues encouraged in the first instance.

196. Ryan Brightwell and BankTrack, 'Banking with Principles? Benchmarking Banks Against the UN Guiding Principles on Business and Human Rights', 2<sup>nd</sup> Edition, June 2016, p. 3.

For example, opportunities are afforded by leveraging the listing criteria required by stock exchanges, through which financial institutions bring their clients to market to raise capital from third-party investors, as well as legislation such as the EU Non-Financial Reporting Directive<sup>197</sup> and the new reporting requirements with respect to the publication of Section 172 statements under the UK Companies Act, established in the Companies (Miscellaneous Reporting) Regulations 2018, providing inter alia details of a company's engagement with suppliers, customers and others with which it has a business relationship.<sup>198</sup>

Equity and bond offerings seeking legitimacy and targeting the widest possible investor base are typically listed on a leading stock exchange. To ensure consistent standards, stock exchanges apply listing rules that, among other things, impose disclosure requirements. Thus, the central role played by exchanges provides them with an opportunity to leverage their position and, via disclosure requirements, encourage higher standards for those that use their services: both the companies that are listed as well as the advisers (bankers and lawyers) that support these transactions.

Reacting to this opportunity, the Sustainable Stock Exchanges Initiative (SSE) was launched by the UN Secretary General in 2009. It is a UN Partnership Programme between the UN Conference on Trade and Development (UNCTAD), the UN Global Compact, the UN Environment Programme – Finance Initiative (UNEP FI), and the Principles for Responsible Investment (PRI). It convenes partner exchanges from around the world to 'promote responsible investment in sustainable development and advance corporate performance on environmental, social and governance issues'.<sup>199</sup>

However, disappointingly, underlining the challenge faced in expanding the E&S agenda to embrace social issues such as modern slavery and human trafficking, to date the SSE has engaged almost exclusively with 'green' issues and gender equality, with no obvious engagement in modern slavery- or human trafficking-related initiatives. Likewise, its Model Guidance on Reporting ESG Information to Investors makes no mention of modern slavery or human trafficking.<sup>200</sup> Supplementing this work, in 2015, the World Federation of Exchanges Sustainability Working Group published its guidance and recommendations in this field including only limited references to forced labour and human rights.<sup>201</sup> Finally, while leading global

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197. European Parliament and the Council of the European Union, 'Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 Amending Directive 2013/34/EU as Regards Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups', *Official Journal of the European Union* (L330/1, 15 November 2014).

198. 'The Companies (Miscellaneous Reporting) Regulations 2018 (UK)'.

199. Sustainable Stock Exchanges Initiative (SSE), 'About the SSE', <<http://www.sseinitiative.org/about/about-the-sse/>>, accessed 29 June 2018.

200. SSE, 'Model Guidance on Reporting ESG Information to Investors: A Voluntary Tool for Stock Exchanges to Guide Issuers', 2015.

201. World Federation of Exchanges (WFE), 'WFE Sustainability Working Group: Exchange Guidance & Recommendation', 2015, <<http://www.sseinitiative.org/wp-content/uploads/2015/11/WFE-ESG->

exchanges, such as the London Stock Exchange, publish ESG reporting guidance for issuers to assist with investor communications,<sup>202</sup> modern slavery and human trafficking are barely featured and data provided by the SSE suggests that very few stock exchanges – an exception being Johannesburg – require ESG reporting as a listing rule.<sup>203</sup>

This is not to say that companies are not forced to disclose and thus respond to their human rights challenges. For example, according to the stock exchange listing document, in 2011 Human Rights Watch wrote to China Nonferrous Mining Corporation Limited while it was preparing for its global stock offering to be listed on the Hong Kong Stock Exchange, alleging abuses of labour rights at the company's subsidiaries in Zambia.<sup>204</sup> The company rejected the accusations but did include disclosure in the offering document of the policies and procedures it had in place at the time. It also engaged an external consultant to review and improve the company's health and safety standards.

While this example does not apply precisely to the narrow field of human trafficking and modern slavery, it does indicate the extent to which the disclosure requirements of stock exchanges can lead to positive action by those companies seeking listings and suggests that greater engagement by choke-point actors such as stock exchanges could deliver a material impact on standards.

## Driving Positive Impact Through Products and Services

The financial sector is well placed to serve both the demand side (relating to responsible investment and responsible lending) and the supply side (linked to issues such as financial inclusion, bank account provisions and financial literacy) of decent work for all as part of the 2030 Agenda for Sustainable Development. Specifically, Goal 8 promotes 'inclusive and sustainable economic growth, [full and productive] employment and decent work for all'.<sup>205</sup>

This recognises that aside from the key points addressed in this paper regarding the roles and responsibilities of the financial sector to identify, mitigate and prevent issues of modern slavery and human trafficking, there are other mechanisms that can prevent individuals falling victim to exploitation in the first place. Goal 8 specifically recognises the importance and role of the financial sector and access to financial services. Goal 8.10 calls for the strengthening of 'the capacity of domestic financial institutions to encourage and expand access to banking,

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Recommendation-Guidance-Oct-2015.pdf>, accessed 29 June 2018.

202. London Stock Exchange Group, 'Revealing the Full Picture: Your Guide to ESG Reporting', January 2018.

203. 12 out of 82 exchanges, see SSE, '2016 Report on Progress', 2016, pp. 11–16.

204. China Nonferrous Mining Corporation Limited, 'Global Offering', 20 June 2012, pp. 50, 187–88.

205. UN Sustainable Development Goals Fund, 'Goal 8: Decent Work and Economic Growth', <<http://www.sdgfund.org/goal-8-decent-work-and-economic-growth>>, accessed 27 October 2018.

insurance and financial services for all'<sup>206</sup> as a factor in helping offset vulnerabilities that can lead to forced labour.<sup>207</sup>

In particular, micro-credit and micro-insurance schemes are noted as playing an important complementary role in making sure that vulnerable families are able to avoid falling victim to debt bondage, through the provision of access to the financial market that will enable them to hedge against some of the risks they face.<sup>208</sup>

Companies, and those that lend to them, can take steps to promote and verify financial inclusion measures, including ensuring that workers have financial education and independence. These approaches are evident in social protection measures where, for example, in recognition of the risks of modern slavery in the Thai seafood sector, the Department of Labour Protection and Welfare issued a Notification on the Format of Employment Contracts in Sea Fishing Jobs requiring that wages must be paid monthly to employees via a bank account and that all fees be paid by employers.<sup>209</sup> This is arguably an area where banking sector products can support human rights and where some banks are already thinking about how to use resources in 'creative ways to protect human rights'.<sup>210</sup>

But banks and their clients must also be wary of unintended consequences. For example, a focus on environmental issues, such as that promoted by the movement to a low-carbon economy, can create far-reaching social issues as it may leave not only 'stranded assets' but also 'stranded' workers and communities left without jobs and therefore vulnerable to labour exploitation as well as modern slavery and human trafficking.<sup>211</sup> Investing in a 'Just Transition' to a more environmentally sustainable model, as supported by the ILO and the UN Framework Convention on Climate Change, which also balances social and labour issues is a key element of a responsible financial sector.<sup>212</sup> By building recognition of decent work into Just Transition

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206. UN Sustainable Development Goals, 'Goal 8: Decent Work and Economic Growth. Promote Inclusive and Sustainable Economic Growth, Employment and Decent Work for All – Goal 8 Targets', <<https://www.un.org/sustainabledevelopment/economic-growth/>>, accessed 27 October 2018.

207. ILO and Walk Free Foundation, *Global Estimates of Modern Slavery*, p. 50.

208. *Ibid.*, pp. 50–51.

209. Ministry of Social Development and Human Security, 'Thailand's Country Report on Anti-Human Trafficking Response', 1 January – 31 December 2017, p. 13.

210. Citi, '2015 Citi Global Citizenship Report', Human Rights 6.3, <<http://www.citigroup.com/citi/about/citizenship/>>, accessed 7 November 2018.

211. Stranded assets refer to investments that can no longer earn a return even though they have not reached the end of their useful life.

212. Nick Robins, Vonda Brunsting and David Wood, 'Investing in a Just Transition: Why Investors Need to Integrate a Social Dimension into Their Climate Strategies and How They Could Take Action', Policy Insight, Grantham Research Institute on Climate Change and the Environment and the Centre for Climate Change Economics and Policy, June 2018; ILO, *Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All* (Geneva: ILO, 2015); UN

programmes, the existing enthusiasm of the financial sector on environmental issues can be leveraged and further cases of human trafficking and labour exploitation potentially avoided.

As this chapter has highlighted, there are a number of significant opportunities for the financial sector to address modern slavery issues through increased engagement with clients, prospective clients and stakeholders that go beyond the current narrow focus applied to the topic via financial crime compliance departments.

These include:

- Ensuring expectations placed on the financial sector – and in turn the expectations it places on its clients – are clearly articulated and consistent with global norms such as the UN Guiding Principles;
- Developing or enhancing industry frameworks such as the Equator Principles to more fully align with the UN Guiding Principles;
- Embedding holistic and effective due diligence processes across all E&S risk issues, not merely those related to the environment;
- Recognising process efficiencies through working with internal colleagues and sharing expertise, using new tools and risk-assessment mechanisms;
- Collaborating more closely with government, civil society and peers;
- Harnessing the leverage that the provision of financial services offers over clients;
- Exploiting the levers and choke points – such as stock exchange listing criteria – that can encourage more proactive action against modern slavery by financial sector clients; and
- Working with others to create standard definitions and codified frameworks for modern slavery reporting.



# Conclusions and Recommendations

**I**N REVIEWING THE role of the financial sector in tackling modern slavery and human trafficking, this paper has explored the cultural, operational and definitional challenges the sector faces in implementing a UN Guiding Principles-based approach towards respecting human rights. While recognising the challenges linked to the removed nature and length of the chain of responsibility from financial institutions to real impact on human rights, it has considered the opportunities for enhanced due diligence and leverage of client relationships to contribute more fully – beyond the current financial crime compliance-focused response – to the global effort to tackle modern slavery and human trafficking.

The progress that has been made by the financial sector through financial crime compliance initiatives and the commitment shown by the sector to addressing environmental risks in client supply chains indicates that the financial sector is certainly capable of further, productive and effective engagement with the issues of modern slavery and human trafficking.

While the financial sector has made unequivocal statements regarding respect for human rights, fears of liability and reputation risk, operational challenges and the ongoing focus on efforts to define ‘contribution’ and ‘linkage’ have hampered the speed of progress on the real opportunity, namely how the sector can lead or support prevention, mitigation and remediation of issues.

Lack of enforcement, guidance, collaboration and access to data are hampering progress and require more pragmatic regulatory, infrastructure and stakeholder support to enable the financial sector to contribute to the fullest extent possible to what has become a systemic issue in both the developed and the developing world.

There are also opportunities for the sector itself to take a more proactive and forward-thinking stance. Enhancements to due diligence processes; greater engagement with clients to ensure expectations are clear; organisational improvements; provision of access to finance; and incentivisation through the design of products and services such as positive loan conditions can all contribute to a more effective outcome.

This paper has considered ways in which the financial sector – via its corporate banking and lending operations – can more fully support global efforts to combat modern slavery and human trafficking. The authors therefore offer the following summary recommendations for the financial sector, supplemented by recommendations for other stakeholders that are seeking greater engagement from the financial sector in the fight against modern slavery and human trafficking.

## Recommendations for the Financial Sector

### 1. Take Responsibility

- 1.1 Start with a 'do no harm' approach, including monitoring, managing and mitigating harm.
- 1.2 Move beyond challenges of definition of responsibility by working with peers and other stakeholders to develop a framework or spectrum, including case studies and broad indicative factors, to better illustrate the cause, contribute, linkage continuum and any associated suggestions regarding remedy.
- 1.3 Drive awareness and understanding of the issue through:
  - Client leverage and influence exerted through robust due diligence and expectation setting, including through benchmarking and shared portfolio reviews.
  - Public and clear commitments to address negative human rights caused by their commercial activity.
  - Encouraging and supporting good practice in client processes, such as appointing E&S managers and focusing on social impacts.

### 2. Strengthen Due Diligence

- 2.1 Extend due diligence requirements into client supply chains to better identify where modern slavery risks and issues occur.
- 2.2 Incorporate data, mechanisms, techniques, tailored questions and worker engagement tools in own or client due diligence that allow for more nuanced and contextual analysis of risk and specific risk indicators (beyond compliance checklists and considerations of financial materiality).
- 2.3 Identify and use proxy datasets to fill gaps in traditional modern slavery-related data sources.
- 2.4 Ensure due diligence incorporates opportunities for ongoing regular and/or proactive checks through the lifetime of the relationship, such as those conducted more frequently by financial crime compliance teams.

### 3. Improve Organisational Efficiencies

- 3.1 Ensure adequate skilling and resourcing of E&S risk teams.
- 3.2 Allow sufficient timeframes for due diligence, including expert investigations and monitoring, where required, with clear decision points before lending and service decisions are made or renewed.

- 3.3 Improve internal data and information sharing through creation of cross-functional modern slavery or human rights teams, to allow for greater integration of due diligence methodologies between E&S risk and financial crime compliance teams.
- 3.4 Ensure modern slavery and human trafficking are explicitly included in 'know your customer' processes due to potential links to money-laundering risk.

#### **4. Improve Modern Slavery Reporting**

- 4.1 Improve quality and breadth of banking sector modern slavery reporting to drive transparency on sector performance.
- 4.2 Monitor and influence clients regarding transparency and reporting within their own business and supply chains to support effectiveness of due diligence undertaken by banks.

#### **5. Collaborate**

- 5.1 Seek to create more public-private partnerships including: financial sector-focused collaborations such as the replication of the Dutch Banking Sector Agreement provisions in other jurisdictions.
- 5.2 Move beyond informal and ad hoc collaboration to create a recognised E&S risk information-sharing forum to agree on key principles, due diligence focus and remediation responses as well as share details of modern slavery concerns and identified transgressions.
- 5.3 Join leading cross-sector forums on modern slavery to share anonymised and aggregated data and learn best practice with other leading companies that face modern slavery and human-trafficking risks in their client portfolios or supply chains.

In addition, and to support greater financial sector progress, the following further recommendations are offered for other stakeholders.

## **Recommendations for Policymakers**

### **1. Define Standards**

- 1.1 Create clear and standardised definitions of modern slavery factors, risks and metrics to support identification, measurement and monitoring.

- 1.2 Create a standard that moves beyond ESG, separating social and labour standards issues, which currently combine social and community issues with labour law violations.

## **2. Drive Transparency**

- 2.1 Support transparency initiatives by making data for due diligence more accessible – including a government-hosted publicly accessible repository of modern slavery statements, and prosecution and enforcement data to aid business and civil society in identifying risks.
- 2.2 Share relevant information relating to regulation, law enforcement and labour violations within national agencies to improve understanding of modern slavery and human trafficking and provide key resulting outputs to the financial sector.
- 2.3 Pool and share information internationally to augment picture of cross-border risks and crimes of modern slavery and human trafficking.
- 2.4 Produce modern slavery statements for government functions to highlight key risks, impacts and opportunities.

## **3. Provide Guidance**

- 3.1 Provide specific guidance for the financial sector on modern slavery due diligence and the application of the UN Guiding Principles to client supply chains, clarify the extent to which the financial sector is responsible for client supply chain due diligence, and apply leverage to client relationships to address social risks.
- 3.2 Global policy bodies, such as the G20 and the Financial Stability Board, that have embraced and supported finance-related elements of the SDGs, such as financial inclusion, should more actively recognise the ability of the financial sector to contribute to the global effort to tackle human rights abuses such as modern slavery, and should lend their influence to the uptake of the UN Guiding Principles.
- 3.3 Provide greater clarity for the financial sector on national legislation (such as the UK Modern Slavery Act) including clarity on strategic objectives, best practice annual modern slavery statements and case studies of positive outcomes.

## **4. Review and Enforce Accountability**

- 4.1 Enforce modern slavery legislation with financial penalties for non-reporting.
- 4.2 Prosecute modern slavery cases to show commitment and highlight financial risks to both companies and their financiers.

- 4.3 Review legislation to include an offence of corporate failure to prevent modern slavery (such as applied to bribery in the UK Bribery Act),<sup>213</sup> requiring companies to prove that they have adequate procedures in place to prevent modern slavery.

## **5. Leverage Choke Points**

- 5.1 Capitalise on forums such as stock exchanges by encouraging inclusion of modern slavery factors in listing criteria and E&S reporting requirements.

# Recommendations for Civil Society

## **1. Encourage Transparency**

- 1.1 Encourage transparency of the quality of modern slavery reporting in the financial sector by undertaking sector analysis.

## **2. Drive Sector Accountability**

- 2.1 Increase monitoring of financial institution lending decisions and highlight and hold to account for any links to modern slavery and human trafficking.

## **3. Provide Guidance**

- 3.1 Provide industry sector guidance highlighting best/worst practice in different sectors, clearly indicating operational considerations for the banking community.

## **4. Support Access to Data**

- 4.1 Exploit existing data and research (including on the ground support, victim insights, case study management and typologies work) to assist financial sector due diligence.
- 4.2 Collaborate on existing initiatives to create systems and technology to allow the sharing of anonymised data.

## **5. Collaborate**

- 5.1 Increase engagement with the financial sector by including banks in industry, country or thematic forums in programme formulation and delivery.

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213. 'Bribery Act 2010 (UK).'



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