



10 GOVERNMENT ACTIONS FOR CORPORATE ACCOUNTABILITY THAT WORKS FOR WORKERS

1. Place the protection of workers' rights and their access to justice at the core of responses to human trafficking and forced labour.
2. Incorporate transparency in supply chains legislation in a wider corporate accountability framework where labour laws designed to prevent exploitation are central.
3. Require public agencies, as well as companies, to carry out due diligence and report on the impact of their operations on workers in global supply chains.
4. Develop meaningful transparency reporting criteria for companies and public agencies and enforce reporting.
5. Use Government buying power to protect the human rights of people in global supply chains through requirements for public contracts and penalties for non-compliance.
6. Introduce joint and several liability, allowing all workers to claim compensation or take legal action against lead companies and subcontractors.
7. Establish labour-market-wide labour inspection that is adequately resourced to proactively enforce labour rights.
8. Establish legal and practical barriers to the diversion of labour inspectorates' duties to immigration control activities.
9. Protect the rights of migrant workers, regardless of their status, by ensuring their access to justice and by reviewing all immigration schemes for the impact on worker vulnerability.
10. Remove legal and practical barriers to unionisation.

SEEING THROUGH TRANSPARENCY: A FLEX BLUEPRINT FOR WORKER-CENTRED CORPORATE ACCOUNTABILITY TO PREVENT HUMAN TRAFFICKING FOR LABOUR EXPLOITATION

How can we ensure that corporate accountability works for workers? This blueprint locates supply chains legislation designed to tackle human trafficking and forced labour in a broader corporate accountability framework. Stakeholders from trade unions, business, academia and civil society alike agree that mandatory transparency legislation is an important piece of the corporate accountability puzzle, but that additional action is required to effectively prevent human trafficking for labour exploitation. This blueprint argues that Governments' prevention efforts cannot stop at transparency legislation.

The blueprint captures the voices of trade unions, business, academics and civil society, in a call for a comprehensive approach to strengthen workers' rights to prevent human trafficking for labour exploitation. It sets out steps for Governments to develop a corporate accountability framework which levels the playing field for business and protects all workers' rights.

NATIONAL LABOUR RIGHTS FRAMEWORK

'The legal framework has improved, now the problem is implementation.'⁵ When labour rights protections are strong, labour abuses can be prevented or identified before they risk developing into severe exploitation of the type found in human trafficking, forced labour, slavery and servitude. The ILO Forced Labour Protocol⁶ in particular requires Governments to address 'factors that heighten the risks of forced or compulsory labour', including by undertaking efforts to ensure that labour laws designed to prevent exploitation apply to all workers and all sectors of the economy.⁷ Governments should adopt labour laws designed to prevent severe exploitation, including regulating working hours, pay, self-employment, limiting and strictly monitoring the use of so called 'flexible' employment statuses such as zero-hour contracts.



LABOUR MARKET ENFORCEMENT

'The lack of enforcement of labour rights is the problem.'¹¹ The enforcement of labour laws prevents labour abuses from developing into severe exploitation. The ILO Forced Labour Protocol requires Governments to strengthen labour inspection systems to prevent human trafficking for forced or compulsory labour. Workplace inspections create a level playing field for companies and hold unscrupulous employers to account. A proactive approach, such as licensing labour providers and companies, is essential to ensure that the workers most at risk of exploitation, including those with insecure immigration status, have access to justice. To effectively enforce workers' rights, labour inspectorates must be adequately resourced, at least meeting the ILO target of one inspector for every 10,000 workers.



ACCESS TO REMEDY

'Much more should be done to ensure victims are supported.'¹⁴ Many people who have suffered human trafficking, forced labour and/or labour abuses face considerable barriers to accessing justice. A comprehensive corporate accountability framework should include easily accessible routes to remedy for labour abuses such as withholding of wages,¹⁵ including non-payment of holiday pay. Such abuses are known to put workers at risk of severe exploitation if left unchecked. Access to justice 'relies on access to legal assistance and support'¹⁶ and Governments should ensure that this is available to all workers in order to prevent human trafficking, forced labour, slavery and servitude.



RIGHTS OF MIGRANT WORKERS

'We need enforcement, but it must come with protections for migrant workers'.¹² Migrant workers are placed at particular risk of exploitation where there are legal or practical barriers to them accessing labour rights. If migrant workers are unable to access justice, due to barriers such as fear of deportation due to immigration status or restricted rights to remedy, companies are not effectively held accountable for their actions. This acts as a major barrier to tackling the root causes of exploitation, and can mean the victims of exploitation are penalized whilst the perpetrators act with impunity.



TRANSPARENCY LEGISLATION

'There's as much undisclosed as disclosed'.¹ Mandatory transparency legislation is an important part of effective human trafficking and forced labour prevention when:

- Companies are required to meaningfully report on their due diligence procedures, instances of human trafficking, forced labour, slavery and servitude and company responses to breaches of labour rights, including remediation;
- Reporting is monitored and enforced;
- Public bodies are covered by the reporting requirement;
- Companies are made criminally liable for human trafficking, forced labour, slavery and servitude offences committed by themselves or their suppliers/agents, but provided a defence where they have a) produced a transparency report and b) have in place adequate measures to address human trafficking, forced labour, slavery and servitude in their supply chains.²



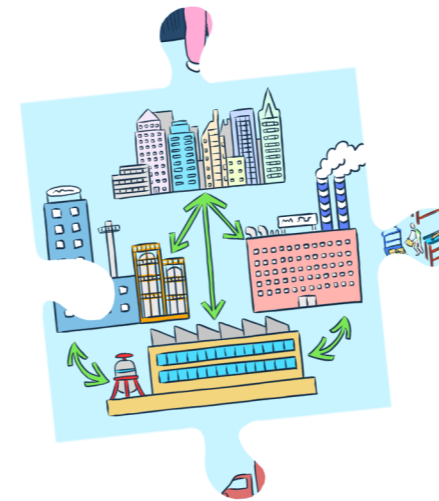
PUBLIC PROCUREMENT

'It's the responsibility of the Government to look at their own supply chain'.³ Governments have considerable buying power and should not only take responsibility for protecting the human rights of the people producing public goods and offering services but also lead the way when calling for corporate accountability. Public agencies should be required to report under mandatory transparency legislation. They should have a legal obligation to consider labour standards in their buying decisions, to exclude suppliers when necessary and to penalise companies that act in breach of their contract. Public buyers should incentivize company participation in relevant binding agreements between trade unions, lead companies and employers through public procurement policies.⁴



JOINT & SEVERAL LIABILITY

'If corporate accountability is to be meaningful it has to support joint and several liability'.⁸ To ensure that complex supply chains are exploitation free, Governments should introduce statutory joint liability and statutory criminal liability for breaches of labour law. Governments should lead the way by incentivizing public suppliers to establish liability through contractual agreement, in particular through binding agreements between lead companies, employers and trade unions.



Statutory joint liability

Joint and several liability establishes workers' right to remedies in situations where a lead contractor outsources work to an employer who then violates the labour rights of their workers.

Statutory criminal liability

Supply chains legislation should establish 'extraterritorial corporate criminal liability' and include sanctions for non-compliance.⁹ This way lead contractors can be held criminally liable for human trafficking, forced labour, slavery and servitude offences committed by themselves or their suppliers/agents.

Contractual liability

Binding agreements between lead companies, employers and trade unions establish joint liability through contractual agreement. Governments should incentivize companies' participation in such agreements through public procurement policies.¹⁰

TRADE UNIONS & COMMUNITY ORGANISATIONS

'Placing workers' voices at the centre is the best use of our leverage'.¹³ Freedom of association and collective bargaining must be at the heart of any effective framework that aims to hold companies accountable for their actions. Legislation or practice that creates barriers to freedom of association contradicts global efforts to tackle human trafficking, forced labour, slavery and servitude through corporate accountability. Downward pressure on prices is a core driver of severe exploitation and should be tackled through effective collective bargaining. Migrant and community organisations provide important support to workers and can help them overcome barriers to accessing justice.



¹ Anonymised source to FLEX, 2018. | ² Genevieve LeBaron and Andreas Rühmkorf, 'Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance', Global Policy, 8(3), 2017, pp. 15-28; FLEX Submission to the Australian Government's Modern Slavery in Supply Chains Reporting Requirement Public Consultation, 2017. | ³ UK company representative to FLEX, 2018. | ⁴ The Bangladesh Accord is an example of such an agreement. | ⁵ Bangladesh trade union federation to FLEX, 2018. | ⁶ Protocol of 2014 to the Forced Labour Convention, 1930. | ⁷ International Labour Organisation, Protocol of 204 to the Forced Labour Convention, 1930, Article 2. | ⁸ Dr Jean Jenkins (Cardiff Business School) to FLEX, 2018. | ⁹ Ibid; UK Bribery Act 2010. | ¹⁰ Ibid. | ¹¹ Anonymised source to FLEX, 2018. | ¹² UK company representative to FLEX, 2018. | ¹³ UK company representative to FLEX, 2018. | ¹⁴ UK company representative to FLEX, 2018. | ¹⁵ Increasingly defined by the UK GLAA as 'wage theft', see <http://www.glaa.gov.uk/media/3563/glaa-licensing-standards-consultation-may-2018.pdf>. | ¹⁶ FLEX, 'Guide to Legal Remedies for Victims of Trafficking for Labour Exploitation, updated version 2017.