

From Policies to Impacts: Analysing Modern Slavery Risks in Portfolio Companies

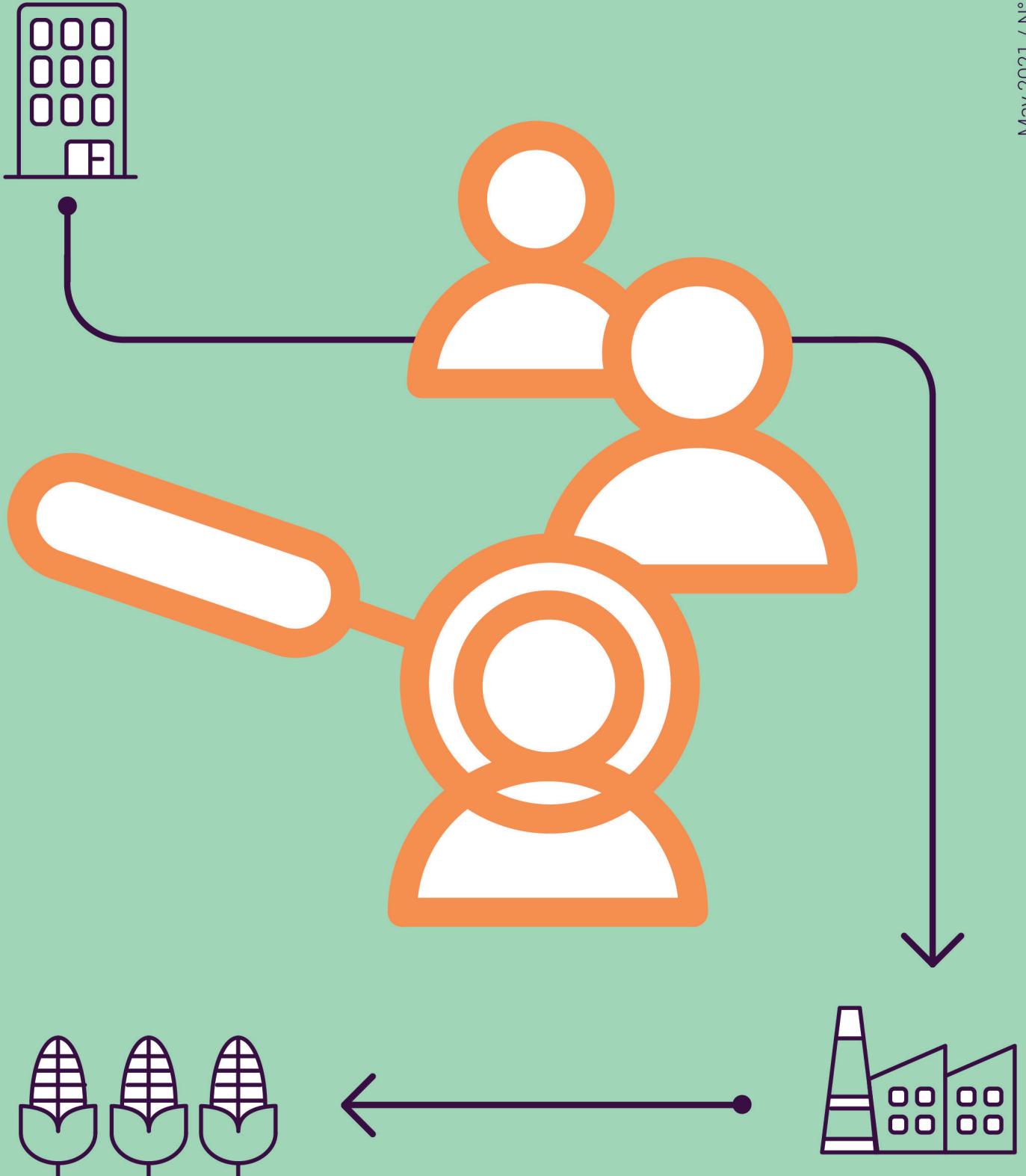


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Executive Summary

As a result of the progressive legalization of international business and human rights “soft law” standards, the “S” of “ESG” is no longer an optional criterion for investors to include in their decision-making process, but it is becoming part of their normative duty to respect human rights. In this report, the International Federation for Human Rights (FIDH) gives investors tools to identify and address human rights risks, including modern slavery risks, in their investment portfolios, from the perspective of an international human rights organization working with its members and communities around the world to protect human rights from corporate abuses. Since 2001, FIDH has been working in partnership with La Banque Postale Asset Management (LBPAM) on its own responsible investment fund (SRI Human Rights Fund). FIDH has developed a human rights methodology in order to assess which companies are suitable to join the investment portfolio. As part of the Moving the Market Initiative, FIDH has revised its existing human rights evaluation methodology to include performance tools that can facilitate assessment of modern slavery and has used this updated methodology to analyse a list of companies in four sectors: Tourism, Construction, Food and Beverage, and Textile and Footwear. The conclusions of this analysis are presented in this report, including a specific description of the results per sector, with a focus on modern slavery, along with the identification of transversal risk areas which relate to some of the root causes of modern slavery.

The sectoral analysis shows that there is still a big gap between companies’ human rights policies and practices, and the impacts on rights holders the ground. While companies in Tourism and Construction, show certain awareness of concepts such as “modern slavery,” “modern slavery risk assessments,” or “human rights due diligence,” proper integration of these concepts into the companies’ governance structure, processes, and supply chain is still missing. On the other hand, even if companies in the Food and Beverage, and Textile and Footwear sectors had overall higher scores in our analysis, compared to the other two sectors, we have generally observed discrepancies between the modern slavery commitments and risk mitigation measures adopted by parent companies, and the concrete impacts and situations reported by workers and other rights holders. In order to rectify these discrepancies, social and human rights indicators used by investors when analysing companies in their portfolios should not exclusively assess if companies have in place human rights policies, suppliers’ codes of conducts, and other human rights commitments. Investors should assess the congruence of the policies and the practices.

The report also shows that the work that Civil Society Organizations (CSOs) and human rights defenders carry out by documenting, advocating, and litigating against companies for human rights abuses happening in their operations and supply chains, plays a critical watchdog role and leads to companies putting in place specific policies, programs, and processes to prevent and mitigate the impacts on the ground. Investors have a duty to assess to what extent the companies in their investment portfolios value civic space, how they address the impacts on human rights defenders, and how they react to the existence of voices critical of their operations.

In order for investors to analyse the discrepancies between the companies’ policies and the practices and impacts on the ground, FIDH has identified a list of transversal areas that investors should pay attention to, when analysing how companies in their portfolios address modern slavery risks:

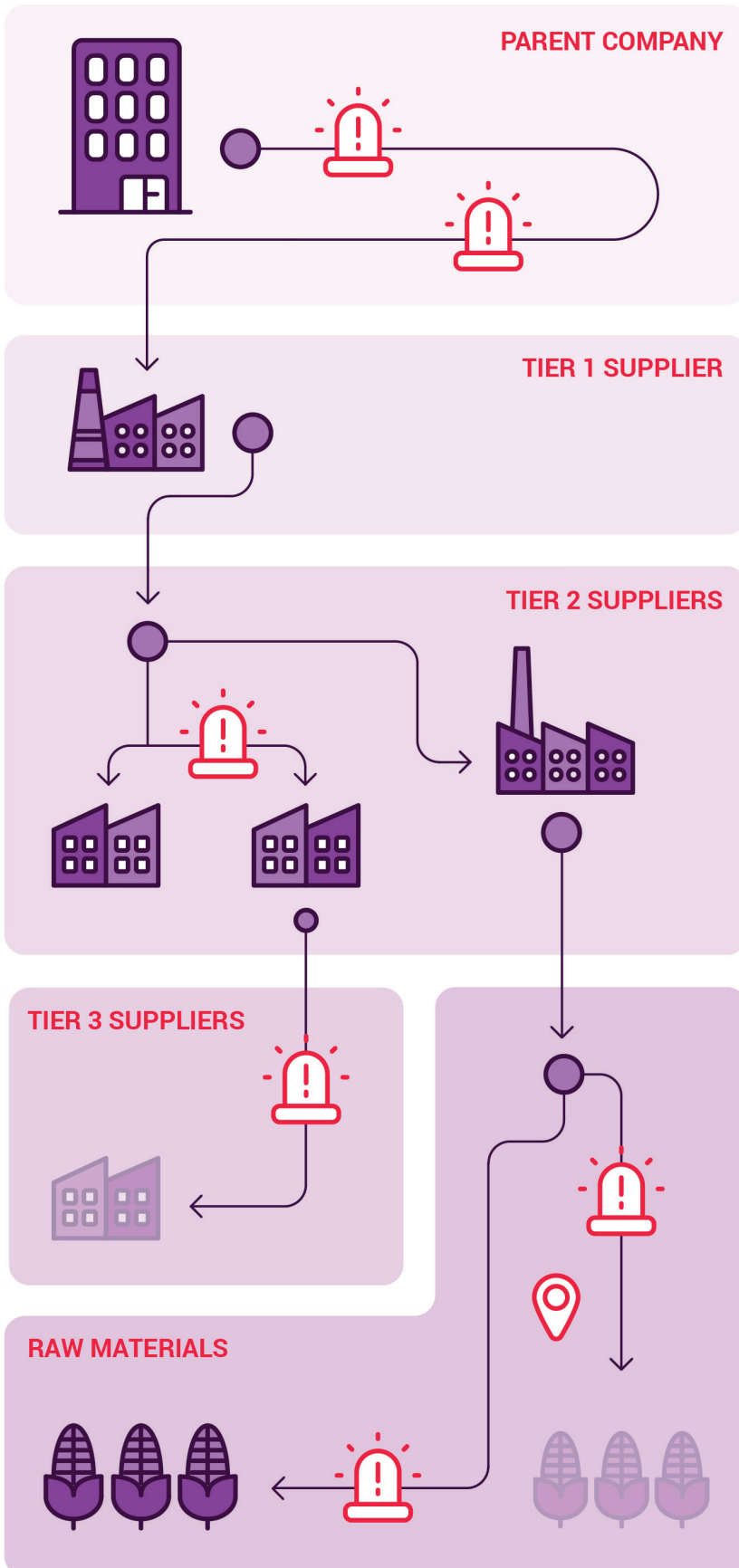
- Investors should analyse the locations of the companies’ operations and suppliers, to identify high-risk countries (e.g. countries in conflict, countries with weak labor laws or crackdown of unions) and compare it with the applicability of the companies’ human rights commitments and the effectiveness of the human rights’ due diligence processes.
- Investors should examine whether the companies in their portfolios are mapping their supply chains, tracing raw materials and disclosing this data. Moreover, investors should look for information that shows how companies are preventing and mitigating the risks of forced labour throughout the supply chain, beginning with policies that are cascaded to lower tiers of the supply chains and processes, to check whether and how suppliers are carrying out this requirement. Investors should also verify that companies have human rights due diligence processes that cover the whole supply chain, in accordance with the traceability exercise.
- Investors should look at how companies put in place effective measures to implement human

rights commitments and prevent and mitigate modern slavery risks. In order to do this, investors should not only look for top-down practices such as certifications of raw materials, or social audits systems of their suppliers. Investors should also use indicators that analyse whether companies have programs or processes in place that involve working with suppliers and rights-holders on the ground, to find more effective, participatory, and sustainable solutions.

- Investors should also examine if the companies reflect on their own buying practices and business procedures, and how these affect labor rights through the supply chain, and if the companies have taken steps to modify these practices.
- Investors should verify whether the companies in their portfolios meaningfully engage with rights holders, CSOs and human rights defenders, especially those that work on the ground and those who are vocal in opposing companies' operations, during their human rights risk assessments and human rights due diligence processes.
- With regards to ethical recruitment of workers, investors need to look for indicators that show, not only the commitments but also how companies have implemented the policies and practices on the ground to ensure the effectiveness of these commitments, especially if recruitment is done cross-border.
- Access to justice for human rights abuses committed by corporations remains one of the key challenges that victims face. If victims use judicial mechanisms and other State-based grievance mechanisms, investors should analyse whether corporations are aggravating the barriers for victims by, for example: using strategic lawsuits against public participation (SLAPPs), hiding or putting up barriers to access the evidence, or putting pressure on communities.

MODERN SLAVERY RISKS IN PORTFOLIO COMPANIES: RED SIGNALS FOR INVESTORS

Analyzing gaps between modern slavery policies and impacts to rights holders



Preventive and mitigating measures for modern slavery risks, based exclusively on social audits and certifications



Using **buying practices and other business processes** such as deficient forecasting, poor payment terms, unfair penalties, short-term contracts or low and/or volatile pricing, among others



Modern slavery **commitments are not cascaded** throughout the supply chain



Operating, having subsidiaries or suppliers in **risk countries**



Complex, long and non-transparent supply chains



Top-down approach to engagement with rights holders



Use of **employment agencies to hire low-wage workers**, especially migrant workers



Lack of effective remedy

Glossary

ACT	Action, Collaboration, Transformation agreement
BHRRC	Business and Human Rights Resource Centre
ESG	Environmental, Social and Governance
CSO	Civil Society Organization
FIDH	International Federation for Human Rights
HRD	Human Rights Defender
ILO	International Labour Organization
LBPAM	La Banque Postale Asset Management
MSI	Multi-Stakeholder Initiative
NCP	National Contact Points
NGO	Non-Governmental Organization
OECD	Organization for Economic Co-operation and Development
OMCT	World Organisation Against Torture (Organisation mondiale contre la torture)
SLAPP	Strategic lawsuit against public participation
SRI	Social Responsible Investment
UDHR	The Universal Declaration of Human Rights
UNGPs	United Nations Guiding Principles on Business and Human Rights

Introduction

The Covid-19 pandemic has aggravated the already extremely unequal distribution of wealth within society. Globalization was not worked for the benefit of all, and a few economic actors, including in the financial sector, have accumulated increasing power in the past decades. At the same time, communities and human rights defenders on the ground struggle to obtain redress for the abuses of their human rights by corporate actors and their financiers. FIDH works with these communities around the world to ensure corporate accountability and to improve victims' access to justice through documentation, advocacy, and litigation. For many years, we have documented and denounced how financial actors are involved in human rights abuses through their investments, and have insisted on the need for these actors to comply with their international responsibility to respect human rights.¹

Investors already have well-defined international responsibilities and obligations to respect human rights. The UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises, and the OECD guidance on Responsible Business Conduct for Institutional Investors provide the normative international framework which stipulates that investors, like other business enterprises, have a responsibility to respect human rights, no matter where they occur. This means that investors should identify and address human rights risks and impacts in their investment portfolios, and use their leverage to influence investee companies to respect human rights. Investors must, therefore, also conduct human rights due diligence procedures. Moreover, according to International Human Rights and Humanitarian Law and some national criminal legislation, investors could be held legally liable if, through their investments, they knowingly contribute to or cause human rights abuses that amount to international crimes.²

In addition, we are witnessing a phenomenon whereby international "soft law" standards are being progressively legalized through national, regional, and international norms. The UK Modern Slavery Act, the French "Duty of Vigilance" law, the European Initiative on Sustainable Corporate Governance, and the negotiations for a United Nations Legally Binding Instrument on transnational companies and other business enterprises and human rights, are all examples of this rapid trend. As a result of these initiatives, the responsibility of investors to respect human rights is becoming a legal obligation.

Since 2001, FIDH has been working in partnership with La Banque Postale Asset Management (LBPAM) on making investors aware of their responsibility to respect human rights, as part of their investment strategies. Within this framework, FIDH and LBPAM have created a responsible investment fund (the SRI Human Rights Fund,³ formerly the Liberty and Solidarity Fund) for which FIDH determines the stocks and bonds that form part of the investment universe, according to a methodology of qualitative analysis of the impacts on human rights by the companies and States concerned.⁴ This is a unique example of a partnership between a human rights organization and an investor that is focused on improving respect for human rights by companies and States. Discussions concerning measurement of the human rights performance of companies for investment purposes rarely involve human rights NGOs with expertise at the local and national level. In its nearly twenty-year history, the SRI Human Rights Fund, along with the partnership between FIDH and LBPAM, provides an example of how a human rights approach to investment, based on the expertise of an NGO, can be used to analyse, select, and engage with companies, while also trying to ensure a competitive financial performance.

1. See, for example, the report that FIDH and other organizations published on the involvement of French companies in light-rail construction in Israeli settlements in East Jerusalem, including the French banks who financed these companies. FIDH et al., "Israeli settlements in East Jerusalem: three French companies involved in light-rail construction" (2018), <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/israeli-settlements-in-east-jerusalem-3-french-companies-involved-in>. See, also, the criminal complaint by nine Sudanese victims, supported by FIDH and Project Expedite Justice, against BNP Paribas for its alleged complicity in crimes against humanity, torture, and genocide that took place in Sudan, as well as financial offences. FIDH, "Sudanese victims ask French judges to investigate BNP Paribas' role in atrocities" (September 2019), <https://www.fidh.org/en/region/Africa/sudan/sudanese-victims-ask-french-judges-to-investigate-bnp-paribas-role-in>.

2. FIDH, "Sudanese victims ask French judges to investigate BNP Paribas' role in atrocities" (September 2019), <https://www.fidh.org/en/region/Africa/sudan/sudanese-victims-ask-french-judges-to-investigate-bnp-paribas-role-in>

3. LBPAM, SRI Human Rights Funds, <https://www.labanquepostale-am.fr/nos-fonds/detail-fonds/id/1116?fund=FDH&isin=FR0000004962&laposte=>.

4. For an explanation of the methodology used for State Bonds, and the results of the last assessment, see, FIDH, "States under the Spotlight: Incorporating Human Rights into Investment Strategies: 2020 Non-Financial Rating of the 27 EU Member States and United Kingdom" (February 2021), <https://www.fidh.org/en/issues/globalisation-human-rights/incorporating-human-rights-into-investment-strategies-2020-non>.

Human rights indicators are often considered as part of the “S” of the Environmental, Social, and Governance (ESG) criteria. These criteria are becoming an increasingly important factor in strategic decision-making for many investors.⁵ More and more we come across online articles analysing why ESG investing is “on the rise.” However, of the three areas, the “S” is sometimes overlooked, and human rights criteria deemed less important than, for example, environmental ones. However, as a result of the normative initiatives described above, it is clear that the “S” in “ESG” is no longer an optional criterion for investors to include in their decision-making process, but is rather an integral part of their normative duty to respect human rights. The questions that then arise are these: how should investors do this, and what is the place of international human rights organizations in this process?

Our work with LBPAM has allowed us to develop an expertise in how to design and develop human rights indicators, to be used by investors as part of their analysis of the companies in their portfolios, by using our experience working with communities on the ground. It is essential that these indicators ensure the quality of the human rights data, so that they don’t become mere checklists of corporate policies which do not capture the reality of their human rights impacts.

ESG methodologies which include human rights indicators normally look at issues such as: Does the company have a Human Rights Policy? Does the company have a Suppliers’ Code of Conduct? Does the company include modern slavery issues in its policies, or have a dedicated Modern Slavery Policy? Does the company carry out social audits on suppliers? Does the company carry out materiality assessments? Does the company report on its gender pay gap? For many of these questions, limited yes/no answers are all that is provided, and a more in-depth human-based analysis of the quality of the human rights policies and processes is not correctly carried out. And even with such detailed analysis, for some severe human rights impacts, such as modern slavery and child labour, having human rights policies and audit-based processes is not enough, and does not ensure that these impacts will not result from the operations or supply chain of the company.

Indeed, modern slavery is also driven by the business and the supply chain structure of certain sectors. Therefore, if investors want to correctly assess the risks of modern slavery in their funds, and engage with companies to strengthen modern slavery responses, a more comprehensive analysis of not only the policies and processes, but also of certain issues such as purchasing practices, business structure, and countries of operations and supply chains, needs to be done.

In this report, FIDH presents the results of its recent work on sustainable investment, and on issues such as forced labour and modern slavery, carried out thanks to the Moving the Market Initiative.⁶ The conclusions of this analysis are presented here, including a specific description of the results per sector, with a focus on modern slavery, along with the identification of transversal risk areas which relate to some of the root causes of modern slavery.

The objective of this report is to give investors tools to identify and address human rights risks, including modern slavery risks, in their investment portfolios, from the perspective of an international human rights organization working with its members and communities around the world to protect human rights from corporate abuses.

The results of our work on this topic show in an analytic way something that we have observed on the ground for many years: that there is still a big gap between companies’ human rights policies and their practices. This conclusion of course reinforces our alarm regarding the discrepancies that exist between the companies’ headquarters and internal processes, and the situation on the ground. It is clear from our assessment that companies fail to “walk the talk,” and that their commitments are not implemented through programs and processes on the ground that involve external stakeholders. Investors have a huge role to play in rectifying this discrepancy: they should improve the indicators they take into account when assessing companies; be more critical regarding how companies are effectively putting in place their commitments; and engage and consult with rights-holders and organizations on the ground in the design and implementation of preventive and mitigating measures.

5. On March 2021, Blackrock, the world’s largest asset manager, said it will “ask companies in which it holds stakes to identify and show how they intend to prevent human rights abuses, and provide ‘robust’ disclosures about those practices,” Saijel Kishan, Annie Massa, “BlackRock to Press Companies on Human Rights and Nature,” *Bloomberg Green* (March 2021), <https://www.bloomberg.com/news/articles/2021-03-18/blackrock-to-press-companies-on-human-rights-and-nature>.

6. The Freedom Fund, “Moving the Market initiative announces first round of grants to shift investor approaches to social impacts” (April 2020), <https://humanityunited.org/moving-the-market-initiative-announces-first-round-of-grants/#:~:text=Through%20a%20pooled%20fund%2C%20the,impacts%20in%20investment%20decision%2Dmaking>.

Moreover, the report shows that the work that Civil Society Organizations (CSOs) and human rights defenders carry out by documenting, advocating, and litigating against companies for human rights abuses happening in their operations and supply chains, plays a critical watchdog role. As a result of the exposure and public denunciations that follow credible allegations of human rights abuses, some companies react by putting in place specific policies, programs, and processes to prevent and mitigate the impacts on the ground. Indeed, many of the advancements detected in the different sectors are a result of civil society's exposure and denunciation of the serious human rights abuses that were taking place on the ground in certain countries and areas. In this moment in time, when the Covid-19 pandemic has aggravated⁷ the already-increasing threats to civic space and human rights defenders, investors have a duty to take this factor in account and assess to what extent the companies in their investment portfolios value civic space, how they address the impacts on human rights defenders, and more specifically how they react to the existence of voices critical of their operations, since those are precisely the voices that the company needs to heed and amplify.⁸

1.2 Methodology

FIDH has developed a human rights methodology in order to assess which companies are suitable to join the investment portfolio of the socially responsible fund SRI Human Rights Fund, that has in partnership with of LBPAM. As part of the Moving the Market initiative, FIDH has revised its existing human rights evaluation methodology to include performance tools that can facilitate assessment of modern slavery by fund managers.⁹ The updated methodology has then been used to evaluate 40 business across LBPAM funds, in four sectors: Tourism, Construction, Food and Beverage, and Textile and Footwear. The updated methodology is confidential and not meant to be publicly available. In this report, however, we wish to identify some lessons from this analysis, and share them with investors and other shareholders in order to present certain conclusions that could help to advance human rights protection in those sectors, and to support and guide investors' initiatives in this respect. We acknowledge that the pool of companies analysed is relatively small and that this analysis does not cover all the companies operating in the mentioned sectors. Nevertheless, we believe that the general trends and risks that we have observed in our analysis, as well as the limitations we have faced due to the lack of public data bearing on certain indicators, can serve as an illustration for other investors to guide them in their analysis and engagement with portfolio companies. This report therefore is not meant to be a public rating of those companies, and for this reason it will not contain specific information about the companies assessed.

In our analysis, we have used only public data, including from the following sources: companies (e.g. policies, sustainability and annual reports, press notes); online newspapers; reports from FIDH; alerts from the Observatory of Human Rights Defenders of FIDH and the World Organisation Against Torture; reports from other civil society organizations (CSOs); and reports from international organizations (e.g. the International Labour Organization), and the Business and Human Rights Resource Centre database. Firstly, a summary of the results of each sector is provided, with a specific focus on modern slavery. Afterwards, a series of transversal risk areas are identified, which relate to some of the root causes of modern slavery. A set of recommendations for investors is also included at the end of the report, to guide them during their human rights analysis of companies in their portfolios, as well as in their follow-up engagement.

7. Mary Lawlor, Special Rapporteur on the situation of human rights defenders, "Report of the Special Rapporteur on the situation of human rights defenders" (A/75/165), United Nations General Assembly (July 2020), <https://undocs.org/en/A/75/165>.

8. For further guidance, see, Investor Alliance for Human Rights, Business & Human Rights Resource Centre, and International Service for Human Rights, "Safeguarding Human Rights Defenders: Practical Guidance for Investors" (April 2020), https://media.business-humanrights.org/media/documents/files/Safeguarding_Human_Rights_Defenders_Practical_Guidance_for_Investors_FINAL_0.pdf.

9. The updated methodology is divided into four sections. In the first section FIDH assesses what are the accusations against the company for causing, contributing or being directly linked to serious human rights abuses, and how has the company reacted to these accusations. The second section is a more detailed analysis of the company's human rights policies, processes (including due diligence process and grievance mechanisms), as well as areas/countries of operations and supply chain. The third section consists of more in-depth sector specific questions. Finally, as part of the Moving the market initiative, a fourth section was included which comprises modern slavery related questions, including policies, due diligence processes, risk management systems, traceability and transparency efforts and ethical recruitment policies and practices, among others.

2. Sector Snapshot: The Gaps Between Commitments and Impacts on the Ground

2.1 Tourism

*“Our contracts set out working hours but we are, in fact, paid by the room. We’re sometimes asked to do 45 rooms within a seven-hour day, which is physically impossible. We have no choice but to work overtime, but it doesn’t appear on our payslips. What if we refuse to finish the rooms? What if we complain? They tell us there are hundreds of other women ready and waiting to take our place.”*¹⁰ These testimonies of hotel workers in France are representative of a corporate culture based on exploitative work practices, which is common in the tourism sector. These same words could have been spoken by workers in hotels in Spain,¹¹ the UK,¹² Canada,¹³ Qatar,¹⁴ or Thailand,¹⁵ just to name a few. Apart from working long hours and receiving low wages, these workers sometimes face increased labour instability due to their legal status as outsourced workers. Housekeepers are especially vulnerable, since they also face high rates of sexual harassment, which they suffer in silence for fear of retaliation, since customers are rarely held to account.¹⁶

These are just some of the human rights abuses happening in the tourism industry and still, companies in this sector showed particularly bad results in our analysis, with a larger gap between the most advanced company and the least advanced. The development of human rights and modern slavery policies and practices we have observed is very uneven, and there is a notable difference between countries. Over the last five years, very few companies have not received accusations of causing, contributing, or being directly linked to significant human rights abuses. The most frequent human rights abuses are the following:



Accusations of union-busting activities, unfairly terminating union representatives, not recognizing unions, and not allowing employees to access unions.



Accusations of precarious working conditions, especially in relation to housekeeping staff. These allegations include, among other things: staff not being paid for all the hours they work, sexual harassment, continual pressure to hit punishing and unrealistic productivity targets, and discriminatory practices. In many cases, these abuses were linked to situations of forced labour and human trafficking, especially when they involve migrant workers, who face further layers of abuse such as: payment of recruitment fees, restricted freedom of movement, withholding of documentation, or restricted freedom of association.



Allegations of being directly linked to violations of the rights of local communities and the rights of indigenous communities, including land rights. NGOs have denounced hotels for being linked to land-grabbing, and for blocking access to the sea for local families and fishermen, among other abuses.

10. Clément Dechamps, “You don’t ask for power, you grab it!”—in Paris, migrant housekeeping staff are taking on a hotel giant,” *Equal Times* (September 2020), <https://www.equaltimes.org/you-don-t-ask-for-power-you-grab?lang=es#.YGDnLLQzbBI>.

11. Ana Isabel Fernández López, José Manuel Betanzos Martín, “Las Kellys en la encrucijada (y II),” *El Salto* (March 2021), <https://www.elsaltodiario.com/el-jornal-andaluz/kellys-en-encrucijada-i>.

12. Unite the Union, “Unite says Premier Inn more like a ‘sweat shop’ than family friendly hotel” (February 2018), <https://www.unitetheunion.org/news-events/news/2018/february/unite-says-premier-inn-more-like-a-sweat-shop-than-family-friendly-hotel>.

13. Oxfam Canada, “Tourism Dirty Secret: The exploitation of Hotel Housekeepers” (2017), <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620355/rr-tourisms-dirty-secret-171017-en.pdf?sequence=1&isAllowed=y>.

14. Business and Human Rights Resource Centre, “Inhospitable: How hotels in Qatar & the UAE are failing migrant workers” (February 2019), <https://www.business-humanrights.org/en/from-us/briefings/inhospitable-how-hotels-in-qatar-the-uae-are-failing-migrant-workers>.

15. Katie Nguyen, “Thai hotels accused of poor pay, ill-treatment of migrant staff,” *Thomson Reuters Foundation* (December 2015), <https://www.reuters.com/article/thailand-tourism-exploitation-idUSL8N13Y3H620151209>.

16. Oxfam Canada, “Tourism Dirty Secret: The exploitation of Hotel Housekeepers” (2017), p 3, <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620355/rr-tourisms-dirty-secret-171017-en.pdf?sequence=1&isAllowed=y>. Ana Isabel Fernández López, José Manuel Betanzos Martín, “Las Kellys en la encrucijada (y II),” *El Salto* (March 2021), <https://www.elsaltodiario.com/el-jornal-andaluz/kellys-en-encrucijada-i>.



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Despite the serious nature and the large number of allegations they have faced, still few companies have dedicated human rights policies. Moreover, responses to these accusations often do not lead to effective remedy for affected rights-holders. This is also reflected in the model of grievance mechanisms generally used by the companies. While it is common to find some type of whistle-blowing mechanism or hotline, those are more rarely accessible to employees in the supply chain, or to other rights-holders such as community members. In general, it is also difficult to find comprehensive data on the complaints handled through these mechanisms, or to ascertain whether these complaints were human rights-related. This also reinforces the claims that human rights CSOs have made for some time about company-based grievance mechanisms and their effectiveness, in which they have denounced problems with identifying, accessing, and using such mechanisms in practice (see analysis in section 3).¹⁷ As FIDH has often pointed out,¹⁸ there is no accountability for human rights abuses by corporations without access to justice and remedy for the victims, and company-based grievance mechanisms are not designed to achieve this objective.

Modern slavery¹⁹ is one of the most severe human rights abuses happening in the tourism sector,²⁰ and yet the industry is just starting to take steps to address it, and only in a very uneven and limited way.

17. United Nations High Commissioner for Human Rights, "Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms" (A/HRC/44/32) (May 2020), <https://undocs.org/A/HRC/44/32> para 4.

18. FIDH, "A Matter of Justice: How European Legislation Can Make a Difference Experiences and views from around the world on how to establish meaningful EU rules on corporate accountability" (December 2020), p 40, <https://www.fidh.org/en/issues/human-rights-defenders/eu-due-diligence-legislation-organisations-affected-by-european>.

19. In this report, modern slavery and forced labour are used indistinctly. According to the ILO Forced Labour Convention, 1930 (No. 29), forced or compulsory labour is: "all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily." ILO Convention No. 29 has been complemented by the Protocol of 2014 to the Forced Labour Convention, 1930 and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203). As the ILO states, the forced labour definition encompasses: "traditional practices of forced labour, such as vestiges of slavery or slave-like practices, and various forms of debt bondage, as well as new forms of forced labour that have emerged in recent decades, such as human trafficking." ILO, "What is forced labour, modern slavery and human trafficking", <https://www.ilo.org/global/topics/forced-labour/definition/lang-en/index.htm#:~:text=According%20to%20the%20ILO%20Forced,offered%20himself%20or%20herself%20voluntarily.%22>

20. See, among others: International Labour Office, "Sectoral Studies on Decent Work in Global Supply Chains Comparative Analysis of Good Practices by Multinational Enterprises in Promoting Decent Work in Global Supply Chains" (2015), https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_467295.pdf; the work of the organization Stop Slavery Hotel Industry Network, <https://www.stopslaverynetwork.org>; Minderoo Foundation's Walk Free Initiative, WikiRate, Business & Human Rights Resource Centre, Australian National University, "Beyond compliance in the hotel sector: A review of UK Modern Slavery Act statement" (2019), https://media.business-humanrights.org/media/documents/files/2632_MSA-statements.V8_FNL.pdf.

Many companies in the tourism sector today include a commitment with respect to forced labour and human trafficking in their codes of ethics and human rights policies, but few have dedicated modern slavery policies. In relation to the supply chain, many companies include a commitment with respect to forced labour and human trafficking in their suppliers' codes of conduct, but only a few require their suppliers to sign the commitments, or else the commitments are simply included as contractual clauses. An increasing number of companies are **part of the initiative The Code, and have signed the ECPAT Code (Eradicating Child Prostitution Abuse and Trafficking). However, few also include a commitment related to the fight against sex trafficking.** Often the codes set "expectations," but are not mandatory requirements for suppliers.



*For Investors: Our experience tells us that when analysing whether a company has commitments to respect human rights in its supply chain, **it is not enough** to simply check whether the company has a suppliers' code of conduct, or something similar. Investors should also analyse the wording used by companies in their code, and whether the requirements for suppliers are also part of the contracts with suppliers. In many cases, these codes are considered mere "guidance" for suppliers, and not mandatory contractual requirements. In other cases, the codes are mandatory, but the wording used in them is very vague (e.g. "take steps to," "make best efforts to," "expect"). Finally, there are cases where this information is not clear from the company's disclosures. Investors should then engage with companies to understand what the level of enforceability of their requirements for suppliers is.*

The effectiveness of modern slavery commitments is also limited by the **complexity of hotels' ownership, management, and franchise models.** As explained by the ILO, hotel companies are moving away "from a real estate-based business model (owned or leased) to fee-based business models, through management contracts, and more importantly, franchising models."²¹ Many companies in this sector today follow a franchising model, where the brands lend their name and certain standards to third parties.²² These standards, however, do not include human rights policies and modern slavery commitments. Indeed, the complication with this choice is that rarely do commitments and policies apply to all of the company's operations (either owned, managed, or franchised hotels). In some cases, it is possible to find some clarifications concerning the limited scope of the application of the commitments, but in others, the scope of application of the commitments and policies is not mentioned, thus obscuring the extent of its coverage.

The risk is that companies will use business models that shield them from scrutiny, or from commitment to human rights. This is a factor that needs to be taken into careful consideration by investors when they analyse a company's business model, but also by decision-makers, with respect to the scope of application of binding initiatives (see analysis below).



For Investors: We highlight that in order for a human rights commitment to be effective, it should be, at the very least, adapted to the business structure of the company. The limited applicability of human rights commitments due to the use of the franchise model, for instance, leaves a big protection gap. In many cases, these franchises are located in countries where the risk of forced labour is high, thus leaving workers unprotected. It is essential to look at the business structure of a company, and to compare it with its governance model and the applicability of its human rights commitments, when deciding in which company to invest.

Modern slavery policies are rarely put into practice. Companies in the hotel sector run the risk of not correctly identifying the presence of forced labour in their operations and in their supply chains. In

21. International Labour Office, "Sectoral Studies on Decent Work in Global Supply Chains Comparative Analysis of Good Practices by Multinational Enterprises in Promoting Decent Work in Global Supply Chains" (2015), p. 55, https://www.ilo.org/wcmsp5/groups/public/--ed_dialogue/--sector/documents/publication/wcms_467295.pdf.

22. Archana Kotecha, *Liberty Shared*, James Hargrove, *Orrick*, "Modern Slavery and the Hotel Industry. Best Practice Guidance for Franchising" (February 2019), <https://www.business-humanrights.org/en/latest-news/modern-slavery-and-the-hotel-industry-best-practice-guidance-for-franchising>.

relation **to human rights due diligence processes**, the disclosure of having conducted some sort of human rights due diligence process is not common; sometimes companies only weigh certain human rights risks as part of a wider risk-mapping process. This is a sign that the concept of “human rights due diligence” has still not been mainstreamed. We have observed few specific modern slavery risk assessments, and when they are present their quality varies, as do the methodologies used, along with the stakeholders consulted. **Worryingly, it is not common to find companies which disclose having engaged with rights-holders or organizations that work on the ground, in countries with a high risk of forced labour. This could be read as a sign of a top-down approach that companies still use when addressing human rights impacts.** Assessments are usually carried out from the companies’ desks in their home countries, using databases or, at best, CSO reports. **There seems to be little engagement with employees in franchises or supply chains, or with local organizations and human rights defenders working on the ground, although these are the voices that should be consulted first when attempting to understand where the risks of modern slavery lie.**

This lack of consultation is aggravated by the opacity of information regarding specific modern slavery risks, as identified by these assessments. It not easy to find detailed information on the countries and populations at risk of modern slavery. **In our observation, even the companies that conduct specific modern slavery risk assessments still limit their assessments to those countries where there has been a greater focus by CSOs in their reports.²³ This also is a sign that the work of CSOs is crucial, and needs to be preserved and protected, because thanks to their documentation, advocacy, and litigation strategies, they push companies to address human rights risks on the ground.**



For Investors: When analysing how companies identify modern slavery risks, it is important to look at the scope of their impact/risk assessments. While companies might need to prioritize certain countries because they are considered “high risk,” modern slavery in the tourism sector is not present only in Gulf countries, but in many other regions too. Investors should look at how companies demonstrate that they are taking steps to progressively analyse their operations and supply chains in other regions, specifically those regions with a prevalent migrant workforce, and regions where fundamental labour rights (such as freedom of association or collective bargaining) are not protected by national or local laws.

Another problem we have identified is the lack of efforts to **map supply chains**, contractors, business partners, and labour and recruitment agencies, coupled with a **complete lack of transparency** around this. Supply chains in the tourism sector are complex,²⁴ and it is not common to find companies that disclose having started a process to map and understand their supply chains, and to identify where the risks of modern slavery are found. Without a proper understanding of the supply chain, companies will not be able to correctly prevent, mitigate, and remedy modern slavery.

Once the impacts have been identified, companies need to put in place measures to prevent, mitigate, and remedy these impacts. Here too, it is rare to find specific information on measures put in place, and that are linked to the specific modern slavery risks identified. These measures are mainly risk assessments, trainings, and audits. The effectiveness of these type of measures is questionable, since they include no consideration of how the structure of the company, the coverage of the policies, the types of contracts, or the low wages can be a driving cause of modern slavery.

Finally, some companies are starting to include in their policies commitments with regard to ethical recruitment, through prohibitions on charging **recruitment fees, on withholding the documentation of workers, or on other restrictions of movement**. This is a positive step, yet there are only a few instances where we have observed concrete actions focused on ethical recruitment, such as: specific risk assessments focused on migrant workers, requiring outsourcing and recruitment agencies to comply with human rights standards, or demonstrating that the company pays for travel expenses

23. Among others, see: Business and Human Rights Resource Centre, “Inhospitable: How hotels in Qatar & the UAE are failing migrant workers” (February 2019), <https://www.business-humanrights.org/en/from-us/briefings/inhospitable-how-hotels-in-qatar-the-uae-are-failing-migrant-workers>; IHRB, “Promoting Fair Recruitment and Employment - A Guidance Tool for Hotels in Qatar” (September 2020), <https://www.ihrb.org/focus-areas/migrant-workers/report-promoting-fair-recruitment-and-employment-hotels-qatar>.

24. Minderoo Foundation’s Walk Free Initiative, WikiRate, Business & Human Rights Resource Centre, Australian National University, “Beyond compliance in the hotel sector: A review of UK Modern Slavery Act statement” (2019), p 2, https://media.business-humanrights.org/media/documents/files/2632_MSA-statements.V8_FNL.pdf.

for migrant workers. These examples can be used by investors when engaging with companies, to show that commitments should be followed by specific programs, and by processes on the ground to implement them.²⁵

So while there seems to be a certain awareness of concepts such as “modern slavery,” “modern slavery risk assessments,” or “human rights due diligence,” we can say that proper integration of these concepts into the companies’ governance structure, processes, and supply chain is still missing.

The same weaknesses that have been observed in relation to modern slavery, are applicable to other human rights impacts. For example, with regard to **land rights, local communities’ rights, or indigenous people’s rights**, it is difficult to find policies which include these rights as part of their human rights commitments, with specific reference to free, prior and informed consent.

There is also a general area of concern in this sector: **the weak protection of the rights to collective bargaining and freedom of association**. It is very rare to find straightforward wording stating that the company commits to respect the rights of all workers to freedom of association and collective bargaining in its own operations and in its supply chain, and that when these rights are restricted by law, to respect the right of all to form and join equivalent worker bodies. Commitment to these rights is usually limited to national legislation. This is especially worrying since many companies in this sector have faced accusations of violating union members’ rights. On a more positive note, we also found some interesting initiatives that can be highlighted, such as the use of a global framework agreement signed with unions, centred on freedom of association and collective bargaining, and which applies to all operations, including franchises. While we won’t disclose the name of the company, we wanted to present this example as a positive step that companies can make.

Finally, on the issue of **sexual harassment in the workplace**, which is an endemic problem in the hotel sector²⁶: while many companies include the prohibition of harassment in their codes of conduct or human rights policies, few disclose what processes they have in place to prevent, mitigate, and address this risk with concrete actions and programs in specific locations, or by adapting the programs to the local realities.

2.2 Construction

In February 2021, *The Guardian* published an alarming article in which it reported that since the 2022 FIFA World Cup was awarded to Qatar, 6,500 migrant workers have died.²⁷ These workers came from India, Pakistan, Nepal, Bangladesh, and Sri Lanka to work on the construction of different infrastructure projects for the event. While very few of these deaths are officially recognized as “workplace accidents,” there is evident suspicion regarding the validity of this data, due to the lack of “transparency, rigor and detail in recording deaths in Qatar.”²⁸ As shocking as this data might seem, it should not come as a surprise, taking into account the longstanding denunciations by CSOs of the conditions of migrant

25. For guidance on responsible recruitment in the tourism sector, see: IHRB, “Promoting Fair Recruitment and Employment - A Guidance Tool for Hotels in Qatar” (September 2020), <https://www.ihrb.org/focus-areas/migrant-workers/report-promoting-fair-recruitment-and-employment-hotels-qatar>; Stop Slavery Hotel Industry Network, “Framework for working with suppliers: mitigating risk of modern slavery” (August 2019), https://www.stopslaverynetwork.org/wp-content/uploads/2018/03/SF17_SHIN_framework_dec17-11-links-RGB-min-1.pdf; Sustainable Hospitality Alliance, “Guidelines for Checking Recruitment Agencies,” <https://sustainablehospitalityalliance.org/resource/guidelines-for-checking-recruitment-agencies>.

26. See, for example: Alexandra Topping, “Sexual harassment rampant in hospitality industry, survey finds,” *The Guardian* (January 2018), <https://www.theguardian.com/world/2018/jan/24/sexual-harassment-rampant-hospitality-industry-unite-survey-finds>; Roundtable Human Rights in Tourism, FocusRight, “Human Rights Impact Assessment Thailand & Myanmar” (March 2020), <https://media.business-humanrights.org/media/documents/files/documents/human-rights-impact-assessment-thailand-myanmar-en-1013.pdf>; Nordic Union, “Report on sexual harassment. Overview of research on Sexual Harassment in the Nordic Hotel, restaurant and Tourism Industry” (2016), <https://www.nordichrct.org/nyheder/report-on-sexual-harassment>.

27. Pete Pattison, Niamh McIntyre, Imran Mukhtar in Islamabad, Nikhil Eapen in Bangalore, Imran Mukhtar in Islamabad, Md Owassim Uddin Bhuyan in Dhaka, Udwab Bhattarai in Kathmandu and Aanya Piyari in Colombo, “Revealed: 6,500 migrant workers have died in Qatar since World Cup awarded,” *The Guardian* (February 2021), <https://www.theguardian.com/global-development/2021/feb/23/revealed-migrant-worker-deaths-qatar-fifa-world-cup-2022>.

28. Ibid.

workers in the construction sector in Gulf countries, especially Qatar.²⁹ Their situation has gotten worse as a result of the pandemic, and reports have condemned the fact that, for example, workers at the World Cup stadiums went unpaid for months.³⁰ These workers are, in many cases, victims of forced labour. But even after the sustained accusations from CSOs, we have observed that companies in the construction sector have made few advances in addressing their human rights impacts. As in tourism, companies in this sector had particularly bad results in our analysis. Very few have not faced accusations in the last five years of causing, contributing to, or being directly linked to human rights abuses—in the majority of cases severe abuses. The most frequent **human rights abuses** found in the sector are the following:



Accusations of union-busting, violating union members' rights, dismissing union leaders and union activists that protest company's decisions, and blacklisting trade unionists, among other abuses.



Accusations of precarious working conditions in their operations and subsidiaries. These allegations include, among other things: precarious living conditions (tightly packed and unsanitary), violations of health and safety rights, and low wages. The companies also face allegations of forced labour and human trafficking in relation to migrant workers working at their construction sites. The following situations have been reported: workers entering employment with high levels of debt bondage, restricted freedom of movement, passport confiscation, erratic or reduced payment of wages, lack of overtime payment, and threats of arrest or deportation.



Accusations of being directly linked to violations of the rights of local communities and indigenous populations, including violations of land rights (including the right to free, prior, and informed consent), the rights to food and water, and the right to development.



Accusations of either running prison and detention centres, where people are subjected to cruel and degrading conditions, or of profiting from public policies of mass incarceration and detention of migrants, through the construction of these prisons and detention centres.

29. See, for example: BHRRC, "World Cup & Expo 2020 Construction: COVID-19 & Risks to Migrant Workers in Qatar & the UAE" (April 2020), <https://www.business-humanrights.org/en/from-us/briefings/world-cup-expo-2020-construction-covid-19-risks-to-migrant-workers-in-qatar-the-uae/>; BHRRC, "Migrant Workers at Risk: Trends in Gulf Construction 2018-2019" (March 2020), <https://www.business-humanrights.org/en/from-us/briefings/migrant-workers-at-risk-trends-in-gulf-construction-2018-2019/>; BHRRC, "On Shaky Ground: Migrant Workers' Rights in Qatar & UAE Construction" (January 2019), <https://www.business-humanrights.org/en/from-us/briefings/on-shaky-ground-migrant-workers-rights-in-qatar-uae-construction/>; BHRRC, "A Human Rights Primer for Business: Understanding Risks to Construction Workers in the Middle East" (June 2018), <https://www.business-humanrights.org/en/from-us/briefings/a-human-rights-primer-for-business-understanding-risks-to-construction-workers-in-the-middle-east/>; DanWatch, "Human rights at construction sites" (September 2021), <https://danwatch.dk/dw-content/uploads/2017/10/Human-rights-at-construction-sites.pdf>; Amnesty International, "The Ugly Side of the Beautiful Game. Exploitation of migrant workers on Qatar 2022 World Cup Site" (January 2016), <https://www.amnesty.org/download/Documents/MDE2235482016ENGLISH.PDF>.

30. Amnesty International, "Qatar: Migrant workers unpaid for months of work on FIFA World Cup stadium" (June 2020), https://www.amnesty.org/en/latest/news/2020/06/qatar-migrant-workers-unpaid-for-months-fifa-world-cup-stadium/?utm_source=dlvr.it.



While it is common to find in this sector that companies have whistle-blowing mechanisms or hotlines available for their employees, these mechanisms are not normally open to other parties such as employees of contractors or subcontractors, or members of communities. There is also a general lack of disclosure of data, and of examples of the human rights complaints handled through these mechanisms. We have observed, however, that there is a higher level of litigation and use of other State-based non-judicial bodies against construction companies since, in some cases, the complaints end up in national and transnational legal cases or at National Contact Points (NCP).³¹ However, **through the use of judicial and other state-based non-judicial bodies, victims face multiple procedural barriers which preclude them to obtain effective redress.**³² **The attitude and strategies that companies put in place when receiving judicial and other types of complaints, such as using strategic lawsuits against public participation (SLAPPs), hiding or putting many barriers to access the evidence or putting pressure on communities, are one key source of these barriers. Investors should analyze if the companies in their portfolios are aggravating the barriers for victims using these types of strategies.**³³

Construction is the sector with the second-highest risk for modern slavery,³⁴ and yet we have observed that the efforts made by construction companies to address this risk are inadequate, and that specific measures and commitments related to migrant workers are lacking.

While it is common to find commitments with respect to forced labour and human trafficking in the companies' human right policies or their Corporate Social Responsibility and ethics codes, it is not always the case that these commitments are also applicable to suppliers and contractors. This is very problematic, since the sector has a preference for the outsourcing model, and therefore, contractors

31. A National Contact Point (NCP) is a Government-supported office whose core duty is to advance the effectiveness of the OECD Guidelines. See: <https://www.oecdwatch.org/oecd-ncps/national-contact-points-ncps>.

32. Dr. Axel Marx and others, "Access to legal remedies for victims of corporate human rights abuses in third countries", *European Parliament DROI Committee* (February 2019), [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU\(2019\)603475_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU(2019)603475_EN.pdf); Gwynne Skinner and others, "The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business", *European Coalition for Corporate Justice*, (December 2013), <https://corporatejustice.org/eccj-publications/49-the-third-pillar-access-to-judicial-remedies-for-human-rights-violations-by-transnational-business>

33. See other corporate strategies to avoid responsibility for human rights abuses in "Harmful Strategies", in the Mind the Gap project, available at: <https://www.mindthegap.ngo/>

34. Know the Chain, "Investor Snapshot: Forced Labor in the Construction Sector"; ILO, Global estimates of modern slavery: forced labour and forced marriage" (2017), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_586127.pdf.

and subcontractors carry out the majority of the operations. Indeed, **supply chains in the construction sector are complex, long, and difficult to trace.**³⁵ Outsourcing is the preferred model for major contractors, which implies using long tiers of subcontractors. Therefore, the effectiveness of the human rights policies and processes depends heavily on the requirements imposed on suppliers, and on the obligation to cascade these requirements onto their own suppliers, contractors, and business partners. We have observed that this is still a key weakness of the construction sector. **While companies might have stronger and clearer human rights commitments for their own operations, these commitments are watered down in contexts where these rights are not recognized by national law, or when applied to suppliers, or when cascaded onto lower tiers of the supply chain.** In some cases, companies include certain wording related to cascading the requirements throughout the supply chain. However, as these types of clauses vary greatly, it is not always clear whether these commitments are mandatory or just imply a general expectation. It is also difficult to find information on how the companies verify that their own suppliers/contractors are cascading the commitments onto their own business partners. **Companies should not avoid their responsibilities with respect to human rights by using supply chain structures that render the commitments ineffective, due to the amount of subcontracting activity. And if they decide to use these types of business models, they should at least adapt their commitments to make them mandatory throughout the supply chain, so that workers are still protected** (see section 3 of this report).



For Investors: We have already pointed out in this report that human rights commitments should be adapted to different supply chain structures and geographies. In the construction sector, the application of companies' commitments to lower tiers of the supply chain is a key element in analysing the effectiveness of these commitments. It is important that investors look at the wording included in the clauses that describe the requirements applicable to suppliers and contractors, but also at their obligation to cascade their commitments. It is also important to look for disclosure on how the company verifies that their suppliers/contractors are making sure their own business partners abide by the commitments.

We have also detected an important gap between the companies' commitments and practices with respect to modern slavery. Few companies disclose having conducted human rights impact assessments with a focus on modern slavery, and disclosure regarding the methodology used and the results of the assessments is very limited. We have observed very few cases where companies provide a detailed description of the human rights impacted, the internal and external stakeholders consulted, or the related preventive and mitigating measures. These assessments are normally focused on Gulf countries, which, as was the case with the tourism sector, have received more attention from reports, and more advocacy efforts by CSOs. **This is again evidence of the importance of maintaining and preserving the civic space, where rights-holders and CSOs can voice critical concerns against companies' operations, which might then lead to companies putting in place preventive and mitigating measures.**

Few companies in this sector prohibit charging recruitment fees, the withholding of documentation, or other restrictions on the movements of workers, in their operations and supply chains. Moreover, it is very uncommon for these requirements to apply to recruitment agencies too, which play an important role in this sector.³⁶ **These frameworks of incomplete policies result in the migrant workers in supply chains being unprotected, even by companies' own policies.** On rare occasions we have observed concrete and detailed actions to have been undertaken to prevent different modern slavery risks. These have included addressing the process of recruiting migrant workers—both in the home country of workers and in the host countries—including measures to reinforce freedom of association and collective bargaining, and measures to improve working conditions.

35. Know the Chain, "Investor Snapshot: Forced Labor in the Construction Sector" (2018), https://knowthechain.org/wp-content/uploads/KTC_Construction_brief.pdf; CIOB, "Building a fairer system: tackling modern slavery in construction supply chains" (July 2016), <https://www.ciob.org/industry/research/Building-Fairer-System-Tackling-modern-slavery-construction-supply-chains>; CIOB, "Construction and the Modern Slavery Act: Tackling exploitation in the UK" (May 2018), https://www.ciob.org/sites/default/files/Construction%20and%20the%20Modern%20Slavery%20Act_0.pdf.

36. For an analysis on migrant workers in the construction sector, see, e.g.: ILO, "Migrant Work & Employment in the Construction Sector" (2016), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_538487.pdf.

Another problem that we have identified is the lack of efforts from construction companies to carry out an in-depth root cause analysis of modern slavery risks, which is crucial in the construction sector. **It is not a coincidence that this is the sector with the second-highest risk for forced labour. A number of systematic factors underlie this statistic, including: the business model is mainly based on outsourcing, with a high reliance on recruitment and labour agencies; margins for contractors and subcontractors are extremely low; average wages are close to (or lower) than minimum wage; migrant workers make up a high percentage of the workforce; and it is common to find payment systems in which contractors are not obliged to pay subcontractors until they have received payment from the client, consequently delaying payment of wages.**³⁷

A first step in analysing the root causes is for companies to map their supply chain, from Tier 1 suppliers, contractors, and business partners to raw materials, and to disclose these efforts to establish traceability.³⁸ Indeed, companies also face modern slavery risks at the end of their supply chains, because they use materials which are produced with forced labour, such as bricks, cement, steel, or timber.³⁹ In the construction sector though, it is rare to find companies that have mapped and disclosed their supply chains, including requiring their suppliers of materials to disclose the origin of those products.



For Investors: Our study leads us to conclude that a correct root cause analysis, coupled with an understanding of the supply chain and the business model, is essential to addressing modern slavery risks in all sectors, but especially in construction. Since this practice is still very rare in the construction sector, investors would hardly ever find this information in public reports, and therefore, they should use their leverage and private engagement with companies to push them to develop this type of analysis and to disclose the results.

With regard to other human rights impacts, we have observed that companies in the construction sector have an uneven development of policies and practices, depending on the area.

In general, companies include health and safety commitments either in their codes of conducts, or in specific policies. However, in relation to suppliers and subcontractors, the requirements are broader and less clear. In some cases, the content of the clauses included in contracts with suppliers and subcontractors are not public. Some few companies make reference to specific standards (such as ISO 9001, ISO 14001, ISO 45001, etc.) that are applicable to their own operations and their suppliers, contractors, and subcontractors, but these commitments do not generally apply to lower tiers of the supply chain.

In relation to the rights to **freedom of association and to collective bargaining**, the recognition of these rights is normally limited to national laws, and only in few cases do companies mention, very broadly, that they would “promote dialogue” when these rights are not recognized by local laws. In our observation, companies that have global framework agreements with unions limit the scope of these agreements to their own operations, and therefore, employees of contractors and subcontractors are not covered. As a result of this patchy framework of commitments, many workers in the construction sector are left unprotected.

Finally, it is rare to find commitments to respect land rights, the rights of indigenous peoples, or the rights of local communities, and the existing commitments do not normally make reference to International Human Rights Law (such as the ILO Convention 169 on Indigenous and Tribal Peoples Convention, or the United Nations Declaration on the Rights of Indigenous Peoples). We noticed the same problem with regard to the issue of **security and human rights. It is difficult to find commitments in this area, and it is even less common that these commitments make reference to** international recognized frameworks, such as the Voluntary Principles on Security and Human Rights.

37. Know the Chain, “Investor Snapshot: Forced Labor in the Construction Sector” (2018), https://knowthechain.org/wp-content/uploads/KTC_Construction_brief.pdf; CIOB, “Building a fairer system: tackling modern slavery in construction supply chains” (July 2016), <https://www.ciob.org/industry/research/Building-Fairer-System-Tackling-modern-slavery-construction-supply-chains>; CIOB, “Construction and the Modern Slavery Act: Tackling exploitation in the UK” (May 2018), https://www.ciob.org/sites/default/files/Construction%20and%20the%20Modern%20Slavery%20Act_0.pdf.

38. See, for example, different materials and guidance published by the initiative Stronger Together with respect to construction, <https://www.stronger2gether.org/construction>.

39. Verité, Responsible Sourcing Tool, Visualize the risk, “Construction,” <https://www.responsiblesourcingtool.org/visualizerisk>.

2.3 Food and Beverage

“ Laura, 36, worked at the Finoagro farm in Ipanguaçu, which grows mangos for many supermarkets in Europe and the USA. Laura was employed on a 45- day fixed-term contract, tasked with selecting mangos and cleaning. She reported that she was one of the first to be dismissed as production started to fall, and told researchers that she was laid off after only four weeks. Laura explained that her brief experience of employment was marked by pressures, worries and humiliations meted out to her and other women workers, who are treated harshly, with supervisors at times showing disdain. Laura and other workers at the farm told researchers that the most frequent complaint was the lack of freedom to take toilet breaks or go for a drink of water.”⁴⁰ This is just one of the testimonies collected in a recent Oxfam briefing paper on the conditions on tropical fruit farms in North-East Brazil. The food and beverage sector is indeed known for the serious human rights abuses that happen in its supply chains. Child labour in cocoa farms,⁴¹ forced labour in the fishing industry,⁴² and land grabs in the sugar supply chain⁴³ are just a few of them. While companies in the food and beverage sector had overall higher scores in our analysis, compared to construction or tourism, companies still face continuous accusations **of severe human rights abuses** happening in their operations and supply chains. It is common for companies to source raw materials from high-risk locations, in countries where basic labour rights are not respected. Apart from allegations of violations of the rights to freedom of association and to collective bargaining, and of the right of local communities to access water, the most frequent human rights abuses are the following:



Accusations of contributing or being directly linked to child labour in their supply chains



Accusations of contributing or being directly linked to forced labour and human trafficking in their supply chains



Accusations of being directly linked to violations of the land rights (including the right to free, prior, and informed consent) of indigenous communities and local communities in their supply chains



Accusations of causing, contributing to, or being directly linked to poor working conditions in their operations and their supply chains, including cases of long hours, failure to pay wages, forced overtime, low safety standards, and exposure to chemicals and pesticides in their supply chains

40. Peter Williams, “Sweet and Sour: An investigation of conditions on tropical fruit farms in North-East Brazil”, *Oxfam*, (October 2019), p 20, <https://policy-practice.oxfam.org/resources/sweet-and-sour-an-investigation-of-conditions-on-tropical-fruit-farms-in-north-620875/>

41. Oliver Balch, “Mars, Nestlé and Hershey to face child slavery lawsuit in US,” *The Guardian* (February 2021), <https://www.theguardian.com/global-development/2021/feb/12/mars-nestle-and-hershey-to-face-landmark-child-slavery-lawsuit-in-us>.

42. Human Rights Watch, “Hidden Chains: Rights Abuses and Forced Labor in Thailand’s Fishing Industry” (2018), https://www.hrw.org/sites/default/files/report_pdf/thailand0118_report_web.pdf.

43. Oxfam, “Sugar Rush: Land rights and the supply chains of the biggest food and beverage companies” (October 2013), <https://policy-practice.oxfam.org/resources/sugar-rush-land-rights-and-the-supply-chains-of-the-biggest-food-and-beverage-c-302505>.



In our analysis, we found that some companies in this sector show higher engagement, when addressing human rights accusations, than companies in construction or tourism. But this engagement is generally limited to responding publicly to the allegations, and to putting certain measures in place such as updating policies, creating programs on the ground, or participating in Multi-Stakeholder Initiatives (MSIs).

While it is common to find that companies have grievance mechanisms in place, those are rarely accessible to external rights-holders (such as community members), or to workers in the supply chain. Moreover, there is a general lack of disclosure of the details of human rights complaints processes through company mechanisms, including any remedy provided, with the exception of a few companies that disclose information about complaints they received from their palm oil supply chains.

It is common that companies claim that they are not causing or contributing to the human rights abuses but they are just directly linked to them because they happen down in the supply chain and so they do not participate (nor try to exercise leverage) to provide remedy to affected rights holders.⁴⁴ As a result, when abuses happen in the supply chain, effective remedy to victims is rarely provided.



For Investors: We found that in some cases, multinational food and beverage companies that rank high in public business and human rights rankings, and in ESG rankings, still face continuous accusations of being directly linked to serious human rights abuses. It is therefore particularly important for investors to ask companies to be transparent about the accusations and complaints received, and about how the company has engaged with affected rights-holders on the ground. It is not enough for a company to be transparent about the complaints in one of their multiple supply chains (e.g. palm oil). Transparency should be applicable to all supply chains.

44. Office of the United Nations High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect, Remedy Framework (2011), Fundamental principle 22: "Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes." In the commentary to Principle 22, the UNGPs clarify "Where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so."

But all in all, as with other sectors, our analysis led us to the conclusion that company-based grievance mechanisms are not generally designed to provide effective remedy for victims, and, therefore, that States should guarantee access to justice and remedy for victims of corporate abuses through State-based judicial mechanisms. Rights-holders, CSOs, and human rights defenders have resorted to justice in different cases, to demand effective remedy from food and beverage companies for the serious human rights abuses happening in their supply chains.⁴⁵ In October 2020, for example, eighteen groups, including FIDH, together with a group of international human rights organizations, submitted amicus briefs to the United States Supreme Court in the *Nestlé USA v. Doe I* case.⁴⁶ We supported the respondents, a group of plaintiffs from Mali who allege that they were trafficked as children into Côte d'Ivoire, and forced to work on cocoa farms without pay. The plaintiffs argue that under the Alien Tort Statute, Nestlé USA and Cargill should be liable for aiding and abetting child trafficking in their supply chains, and that the United States is an appropriate forum for such a dispute.⁴⁷ As part of the amicus brief, the Grant & Eisenhofer ESG Institute submitted a brief in support of respondents, but also “on behalf of investors and investment managers committed to fostering ESG principles in investing.”⁴⁸ As the Institute pointed out, “Potential corporate liability under the Alien Tort Statute for human rights abuses, environmental harm, and other ESG transgressions committed abroad would encourage publicly-traded U.S. corporations to elevate their standards and adhere to ESG goals. Investors focused on ESG strategies, and indeed all investors, would benefit by knowing that a powerful deterrent remains in place to ensure that companies act responsibly and ethically.”⁴⁹



*For Investors: We believe that investors should advocate for strong regulatory frameworks on corporate liability. It is on the investors benefit to have a strong and protective legal system for rights holders to hold corporations accountable for the human rights abuses happening in their operations and supply chains. Moreover, when legislation on corporate human rights due diligence is being introduced in different parliaments, investors should advocate for these regulations to also hold corporations liable for the harm that they or their de facto controlled entities cause or contribute to.*⁵⁰

Some of the most severe human rights abuses happening in the food and beverage sector, including modern slavery, take place at the end of the supply chain.⁵¹ Indeed, modern slavery is an endemic problem in food and beverage supply chains. The ILO estimates that 12% percent of global forced labour cases take place in agriculture and fishing.⁵² As of September 30, 2020, the List of Goods Produced by Child Labor or Forced Labor published by the U.S. Department of Labor comprises 155 goods from 77 countries.⁵³ As a result, the question of how food and beverage companies cascade their commitments throughout the supply chain is key.⁵⁴

45. For more information on corporate liability, see FIDH, “Corporate Accountability for Human Rights Abuses. A Guide for Victims and NGOs on Recourse Mechanisms” (2016), https://www.fidh.org/IMG/pdf/corporate_accountability_guide_version_web.pdf. The guide will be updated and transformed into an online guide in 2021.

46. Corporate Accountability Lab, “Amicus Roundup: Eighteen Briefs Filed in Support of Child Trafficking Victims in Nestlé USA v. Doe I” (November 2020), <https://corpaccountabilitylab.org/calblog/2020/11/13/amicus-roundup-eighteen-briefs-filed-in-support-of-child-trafficking-victims-in-nestle-usa-v-doe-i>.

47. Ibid

48. Brief of Grant & Eisenhofer ESG Institute as Amicus Curiae in support of respondent, *Nestlé USA v. Doe I*, Supreme Court of the United States, p. 2, https://www.supremecourt.gov/DocketPDF/19/19-416/158409/20201021150400149_40231%20pdf%20Layfield.pdf.

49. Ibid, p. 23.

50. FIDH, “A Matter of Justice: How European Legislation Can Make a Difference Experiences and views from around the world on how to establish meaningful EU rules on corporate accountability” (December 2020), p 40, <https://www.fidh.org/en/issues/human-rights-defenders/eu-due-diligence-legislation-organisations-affected-by-european>.

51. A small sample of these impacts: Oxfam, “Ripe for change: Ending human suffering in supermarket supply chains” (June 2018), <https://policy-practice.oxfam.org/resources/ripe-for-change-ending-human-suffering-in-supermarket-supply-chains-620418/>; Repórter Brasil, “Slave Labor in the Brazilian Cocoa” (November 2020), <https://reporterbrasil.org.br/wp-content/uploads/2020/10/Monitor-6-Cacau-EN.pdf>; Oxfam India, “Human Cost of Sugar: A Farm-to-Mill Assessment of Sugar Supply Chain in Uttar Pradesh” (2018), <https://www.oxfamindia.org/sites/default/files/2018-11/HUMAN%20COST%20OF%20SUGAR-A%20FARM%20TO%20MILLS%20ASSESSMENT%20OF%20THE%20SUGAR%20VALUE%20CHAIN%20IN%20U.P.%2020.pdf>.

52. ILO, Global estimates of modern slavery: forced labour and forced marriage” (2017), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_586127.pdf

53. US Department of Labor, “List of Goods Produced by Child Labor or Forced Labor” (2020), <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

54. See Know the Chain, “2020 Food and Beverage Benchmark Findings Report,” <https://knowthechain.org/wp-content/uploads/2020-KTC-FB-Benchmark-Report.pdf>.

Generally, companies in the food and beverage sector include in their commitments regarding **forced labour and human trafficking, commitments applicable to their operations and supply chains**. These commitments are usually included in the suppliers' codes of conduct, which, in many cases, are mandatory and part of the contracts signed with suppliers. However, when it comes to cascading the commitments throughout the supply chain, the strength of the requirements varies. Very few companies included wording in the suppliers' codes of conduct which is clear and constitutes a mandatory requirement for suppliers.

We have observed that **there is still a big gap between the policies on paper, and the situations on the ground**. It is frequent to find that companies conduct risk assessments which look at modern slavery issues, either as part of wider human rights risk assessments, or else as specific assessments focused on this area. Nevertheless, the quality of these assessments varies, and there is a general tendency to used desk-based methodologies, with no or almost no input from rights-holders and CSOs on the ground.

Supply chains in the food and beverage sector vary depending on the raw material. Sometimes, multinational food and beverage processing companies engage directly with farmers on the ground. But this is not the norm. Generally, different intermediaries stand between the company and the farmer, making it difficult for the commitments to apply effectively in all steps of the supply chain, and for companies to prevent and mitigate modern slavery risks in lower tiers of the supply chain. One of the ways in which companies have traditionally addressed this challenge is through certification schemes created through MSIs (the Roundtable on Sustainable Palm Oil, Fairtrade International, Bonsucro, etc.). However, criticisms of these schemes continue to grow,⁵⁵ and research shows that these schemes are not structured in such a way that human rights abuses are detected at the source.⁵⁶ Some companies are moving away from independent certifications, and have created their own in-house certifications.⁵⁷ But these in-house certifications are still based on social audits, which is one of the key weaknesses of this system.⁵⁸ Regrettably, few companies describe other initiatives that imply working directly with farmers, rights-holders (workers and communities), and other CSOs on the ground in high-risk countries. We have observed **that many companies tend to rely on top-down approaches with regard to human rights impacts, and do not invest in more effective and long-term programs that directly involve rights-holders who are negatively impacted by their activities**.



For Investors: It is important not to rely exclusively on indicators that merely identify the existence of certification schemes, when analysing whether the company is correctly addressing human rights risks. Either way, through independent certifications or their own in-house certifications, social audits have important limitations that call into question their efficacy. Certifications should not be the sole measures put in place by companies to make sure that human rights are respected throughout the supply chain.

The traceability and transparency of supply chains are two important goals that companies in the food and beverage sector should put in place in order to correctly identify, prevent, and mitigate negative human rights impacts. Databases such as Verité's Responsible Sourcing Tool include more than 20 commodities at risk of forced labour and child labour in agricultural supply chains.⁵⁹ In our analysis, we found that traceability efforts are increasingly being made by companies, and, in general, companies are disclosing that they trace some of their raw materials, and have set targets to achieve full traceability. However, transparency is still rare. It is not easy to find detailed information on companies' suppliers.

55. MSI Integrity, "Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance" (2020), <https://www.msi-integrity.org/not-fit-for-purpose>.

56. See, for example: Genevieve LeBaron, "The Global Business of Forced Labour: Report of Findings," Sheffield Political and Economic Research Institute (SPERI), University of Sheffield (2018), p. 48, <http://globalbusinessofforcedlabour.ac.uk/wp-content/uploads/2018/05/Report-of-Findings-Global-Business-of-Forced-Labour.pdf> and other resources at BHRRC, "Beyond Social Auditing," <https://www.business-humanrights.org/en/big-issues/labour-rights/beyond-social-auditing>.

57. Sophie Turner (Leigh Day), "Ethical Certifications: can we really trust them?," *Lexology* (August 2020), <https://www.lexology.com/library/detail.aspx?g=40122181-e603-41e6-aaf0-d2a20ec50964>.

58. Genevieve LeBaron, "The Global Business of Forced Labour: Report of Findings," Sheffield Political and Economic Research Institute (SPERI), University of Sheffield (2018), <http://globalbusinessofforcedlabour.ac.uk/wp-content/uploads/2018/05/Report-of-Findings-Global-Business-of-Forced-Labour.pdf>

59. Verité, Responsible Sourcing Tool, Visualize the risk, "Agriculture," <https://www.responsiblesourcingtool.org/visualizerisk>.

In relation to ethical recruitment, it is frequent to find prohibitions in companies' commitments on charging recruitment fees, on the withholding of documentation, or on other restrictions on workers' rights. **However, the fact that the companies have strong policies on paper, and seem to be conducting risk assessments, does not mean that companies actually put in place measures to make sure that their commitments with respect to ethical recruitment are respected throughout the supply chain.** It is not common for companies to explicitly mention that the commitments are also applicable to recruitment agencies and labour suppliers used by the company or by suppliers. We have observed only a few cases of companies that have started to take steps with regard to ethical recruitment in their supply chains, including by a) training suppliers and recruitment agencies on ethical recruitment practices, b) conducting specific impact assessments on migrant populations, or c) developing assessment programs for agencies or pilot programs that are working on the ground with migrant populations.



For Investors: We have identified a common problem in all sectors, which is the gaps between policies and practices. In sectors such as food and beverage, where commitments with respect to ethical recruitment are more common, it is necessary to look for indicators that show that these commitments are not just empty words. In this sense, the document on Metrics and Disclosure published by the Leadership Group on Responsible Recruitment⁶⁰ provides a good set of indicators for investors to analyse whether the company is effectively addressing this issue. Among other things, investors can look for disclosure regarding the following indicators: the total amount of worker-paid recruitment fees repaid by the employer in the last year, the activities undertaken to understand the full recruitment process in one area, the total number of workers recruited through "responsible" recruitment channels, and the number of recruitment agencies used that are certified by recognized ethical recruitment schemes.

Finally, there seems to be little effort from companies in this sector to analyse how their business model could change to become more sustainable. Practices such as creating long-term engagement programs directly with farmers, renewing the majority of the contracts with suppliers and negotiating prices several months in advance to reduce the risk of global price fluctuations are not easy to find.

The need to rethink how the business model affects or increases the risks of forced labour should also be applied to certification schemes. Some of the certifications that are created through MSIs do not include price premiums. For actors at the end of supply chains, complying with some human rights requirements implies higher costs (e.g. providing personal protective equipment to workers or paying a decent wage).⁶¹ Certifications that do not include price premiums or other contractual benefits transfer the cost of becoming certified to actors at the end of the supply chain. This, coupled with an increasing pressure to lower costs for raw materials, aggravates the pre-existing ineffectiveness of certification schemes. Moreover, for certification schemes that do include price premiums, companies should still analyse and disclose whether these certifications correctly address the problem presented by those business models which constitute a root cause of forced labour. Otherwise, an increase in prices for certified raw materials will not necessarily prevent forced labour and child labour at the end of supply chains.⁶²

In relation to other sector-specific human rights areas, we have ascertained that there are important gaps in the companies' commitments, which leave rights-holders outside of the human rights policies and suppliers' codes of conducts.

For example, while it is common to find prohibitions on **child labour** in the companies' codes of ethics for their own operations and their supply chain, it is not always the case that companies include a

60. Leadership Group on Responsible Recruitment, "Metrics and Disclosure for the LGRR," https://www.ihrb.org/uploads/member-uploads/LGRR_Metrics_Disclosure_-_2020-2022.pdf.

61. Business and Human Rights Clinic Columbia University, "The Impact of Bonsucro on Human Rights in the Sugarcane Sector. A Focus on India" (2019), http://www.humanrightscolumbia.org/sites/default/files/Bonsucro%20Report_FINAL%20DEC%2017%2C%202019.pdf.

62. Genevieve LeBaron, "The Global Business of Forced Labour: Report of Findings," Sheffield Political and Economic Research Institute (SPERI), University of Sheffield (2018), <http://globalbusinessofforcedlabour.ac.uk/wp-content/uploads/2018/05/Report-of-Findings-Global-Business-of-Forced-Labour.pdf>

definition of child labour, or that they make reference to international standards. This limits the scope of the prohibition to national regulations.

With respect to **land rights, while there is an increasing number of companies that include commitments in respect to this area in their codes of conduct, such commitments are still not the norm.**

Finally, it is difficult to find companies that mention a standard of zero tolerance for attacks against **human rights defenders** in their human rights policies or suppliers' codes of conduct, and it is even more rare that companies include human rights defenders as part of their due diligence process, or report measures taken to prevent and mitigate negative impacts in this area. FIDH has been working on this problem since 1997, through the work of the Observatory for the Protection of Human Rights Defenders.⁶³ One of the priority areas for action, indeed, is land and environmental rights defenders, many of them small-scale farmers and indigenous community leaders. In 2020, the Business and Human Rights Resource Centre tracked 572 attacks against defenders working on business-related human rights issues.⁶⁴ More than a third of all cases originated from a lack of consultation or a failure to secure the free, prior, and informed consent of affected communities. From a sector perspective, agribusiness represents 24% of all cases, and is the second most dangerous sector for human rights defenders, after mining.



For Investors: In the case of companies in the food and beverage sector, since it is a particularly risky sector for human rights defenders, investors need to conduct enhanced due diligence and pay attention to how companies in their portfolios are addressing the impacts on human rights defenders. Specifically, they should verify that companies include human rights and environmental defenders as part of their human rights commitments for their operations and supply chains, and as part of their human rights due diligence process.⁶⁵

2.4 Textile and Footwear

As we signalled at the beginning of the pandemic, there was a worrying trend of massive layoffs and violations of labour rights, in particular in sectors that rely on complex supply chains such as the garment industry, where a majority of the workforce is employed by suppliers.⁶⁶ Indeed, as reported by the Business and Human Rights Resource Center (BHRRC), “millions of vulnerable workers in the garment industry have been denied full wages legally owed to them for work already completed due to order cancellations, non-payment and other harmful commercial practices by brands during the COVID-19 pandemic.”⁶⁷ This has resulted from the cancelation of orders by brands, as well as from demands on suppliers for discounts. The inherent problems derived from the business model of global textile supply chains have been aggravated during the Covid-19 pandemic, and while workers in supply chains face increasing labour rights abuses, “most major fashion brands are once again turning profits—in some cases unprecedented profits—having already recovered from the initial disruption caused by the

63. Link to website: <https://www.fidh.org/en/issues/human-rights-defenders>; see, for example: FIDH Observatory Annual Report, “We are not afraid, Land rights defenders: attacked for confronting unbridled development,” (2014), https://www.fidh.org/IMG/pdf/obs_2014-uk-web2.pdf.

64. BHRRC, “In the line of fire: Increased legal protection needed as attacks against business & human rights defenders mount in 2020” (March 2021), <https://www.business-humanrights.org/en/from-us/briefings/line-fire-increased-legal-protection-needed-attacks-against-business-human-rights-defenders-mount-2020>.

65. For further guidance, see: Investor Alliance for Human Rights, Business & Human Rights Resource Centre, and International Service for Human Rights, “Safeguarding Human Rights Defenders: Practical Guidance for Investors; Global Witness, The Business Case For Protecting Land And Environmental Defenders And Indigenous Communities’ Rights To Land And Resources” (April 2020), <https://www.globalwitness.org/en/campaigns/environmental-activists/responsible-sourcing>.

66. FIDH, “Don’t wash your hands of human rights obligations - Corporate due diligence in times of COVID-19 and lessons for the future” (April 2020), <https://www.fidh.org/en/issues/globalisation-human-rights/don-t-wash-your-hands-of-human-rights-obligations-corporate-due>.

67. BHRRC, “Wage theft and pandemic profits: The right to a living wage for garment workers” (March 2021), <https://www.business-humanrights.org/en/from-us/briefings/wage-theft-and-pandemic-profits-the-right-to-a-living-wage-for-garment-workers>.

pandemic.”⁶⁸ **These systematic human rights abuses in the textile sector point to the ineffectiveness of human rights policies throughout the supply chain of companies.** Indeed, while companies in the textile sector have overall more advanced policies and practices with respect to human rights and forced labour, compared to tourism or construction, **the supply chain structures of companies in this sector present high human rights risks, with an important percentage of the supply chains situated in countries with particularly weak labour laws or with frequent crackdowns on labour unions. This results in continuous accusations against companies in this sector for causing, contributing to, or being directly linked to severe human rights abuses.** The most frequent human rights abuses are the following:



Accusations of causing, contributing to, or being directly linked to union-busting, violating union members’ rights, or the dismissal of union leaders and union activists that protest companies’ decisions.



Accusations of contributing or being directly linked to forced labour and human trafficking in the different tiers of the supply chains.



Accusations of contributing or being directly linked to theft of wages and poor wages, including wages below legal minimum wage.



Accusations of contributing or being directly linked to poor working conditions and other labour rights abuses in their operations and supply chains, including cases of excessive hours to meet unreasonably tight delivery schedules, unpaid work, unpaid overtime, precarious working contracts, low safety standards, and illegal employment.

68. Ibid



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Sometimes, companies provide public responses to accusations, engaging with suppliers and local unions to find solutions to the problems, and leveraging their position to foster dialogue with suppliers. However, we have observed that the preferred approach to dealing with human rights impacts on the supply chain is based on audits and corrective action plans, after non-compliance issues are found. When complainants argue that companies are contributing to the human rights abuses, and therefore have a direct responsibility to provide remedy, companies tend to elaborate a defence distancing themselves from the abuses, arguing that they are just “directly linked” to them.⁶⁹ Hence, companies generally use behind business structures to avoid recognizing their responsibility regarding the human rights abuses happening in their supply chain. While it is common to find whistleblowing mechanisms or hotlines for the employees in their operations, it is not frequent for these mechanisms to be opened to rights-holders in the supply chains. It is difficult to find detailed information on the human rights complaints handled through these mechanisms.

The risk of modern slavery in the textile sector is “pervasive and endemic at each stage of production, occurring across continents, in supply chains from fast fashion to luxury brands.”⁷⁰ Modern slavery risks have been identified in, among others, production of the following raw materials: cotton, leather, silk, and wool.⁷¹

On paper, companies in this sector generally show more comprehensive human rights commitments, which include a prohibition on forced labour and human trafficking in their operations and through the supply chain, but these commitments are not always cascaded throughout the supply chains in practice, which entails particular risks due to the structure of textile supply chains. One of the key challenges of this sector is the complex and non-transparent supply chains,⁷² made up of

69. See footnote 44, above.

70. Know the Chain, “2018 Apparel and Footwear benchmark findings report,” https://knowthechain.org/wp-content/uploads/KTC_AF_2018_.pdf.

71. Verité, Responsible Sourcing Tool, Visualize the risk, “Textile and Apparel,” <https://www.responsiblesourcingtool.org/visualizerisk>.

72. Verité, Responsible Sourcing Tool, “Textile and Apparel Industry profile report” (2017), https://www.responsiblesourcingtool.org/download/reports/JTIP_ExecutiveOrder_Report_2017_06.pdf#page=129.

subcontracting layers and of homeworkers, who fill some of the orders that suppliers receive. **Notwithstanding the increasing awareness within the sector of the need to cascade commitments throughout the supply chain, there is still need for improvement regarding the oversight that companies have of the subcontracting activity of their suppliers, since some of the most severe human rights impacts happening in the textile sector take place in these subcontracting factories or in regard to homeworkers.** Therefore, it is essential for companies to manage this risk. Few companies explicitly mention in their codes for suppliers that any subcontracting activity must be authorized in advance, and that suppliers are responsible for making sure that the human rights requirements in the code are also met by subcontractors. Also, few companies also mention home work as part of the subcontracting modalities, nor require suppliers to provide transparency regarding the locations and working conditions of homeworkers.



For Investors: Human rights abuses linked to subcontracting factories and homeworkers in the textile and footwear sector are not just a problem occurring in the supply chains of low-cost fashion brands. Reports of poor working conditions of thousands of low-paid homeworkers in Italy creating garments for well-known luxury brands⁷³ show that this is an inherent problem within the sector due to the supply chain structure. Investors should not only look at whether brands are committing to cascade the requirements throughout the supply chain but should also analyse whether they have mechanisms in place to manage the subcontracting activity of their suppliers, and should understand the additional challenges that arise with homeworkers. Moreover, brands should also be transparent about their supply chains, and when disclosing the names of their suppliers, they should also include subcontractors.

The issue of traceability within the supply chain is an area where companies in the textile sector are making increasing efforts. However, there is still much need for improvement. When disclosing how and if they trace their supply chains, companies rarely disclose the level of traceability achieved or the means they have used. **This is also reflected in the lack of transparency in the companies' supply chains. Few companies publish the list of their first-tier suppliers, and even fewer their second-tier suppliers.** With regard to the **traceability of raw materials**, it is common to find companies that have set up at least one target for one raw material, but the traceability exercise is not always linked to a broader strategy for understanding the supply chain and the human rights risks present within it.

In relation to the responsibility to conduct **human rights due diligence processes**, it is frequent to find that companies disclose that they conduct such processes, but the quality varies greatly. It is not always the case that the due diligence processes include specific modern slavery risk assessments, and the level of transparency regarding the methodology used by companies, and the specific risks identified, is low.

The **United Nations Guiding Principles on Business and Human Rights (UNGPs)** are very clear on the need to meaningfully consult and engage with affected groups and other relevant stakeholders during the due diligence process.⁷⁴ This point is a clear area of weakness in all sectors, including the textile sector. While many companies have partnerships with sectoral sustainability groups, MSIs, consultancies, or CSOs, few of them actually mention including rights-holders, affected groups, unions, and civil society organizations working with communities on the ground as part of their risk assessment process, or as part of their preventive and mitigating measures.

73. Elizabeth Paton and Milena Lazazzera, "Inside Italy's Shadow Economy," *The New York Times* (September 2018), <https://www.nytimes.com/2018/09/20/fashion/italy-luxury-shadow-economy.html>.

74. Office of the United Nations High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect, Remedy Framework (2011), Fundamental principles 18 and 20, among others.



For Investors: There is a tendency within multinational companies to engage only with international organizations (e.g. the ILO) or international CSOs on human rights issues, and assume that this dialogue fulfills their responsibility to meaningfully engage with relevant stakeholders. While these types of organizations can provide a global vision in certain human rights areas, it is fundamental that investors analyse whether companies engage directly with organizations and rights-holders on the ground, especially those pertaining to vulnerable or marginalized communities, and with a gender perspective. Particular attention must be paid to human rights defenders.

We have detected that this lack of meaningful engagement with rights-holders affects also the type of preventive and mitigating measures that companies put in place to address modern slavery risks. Companies generally rely on audits, trainings, and certifications to address modern slavery risks and other human rights risks in their supply chains. **The limits of social audits in the textile sector are well known, and have consistently been flagged by FIDH.⁷⁵ These general measures do not suffice, and do not prevent certain structural human rights impacts from occurring in lower tiers of the supply chain, such as modern slavery, child labour, or discrimination.⁷⁶** Few companies disclose other types of actions focused on addressing root causes of modern slavery, such as: prohibiting sourcing certain raw materials from countries with a high risk of forced labour, analysing their own purchasing practices to understand how they impact labour standards in suppliers, isolating labour costs in contracts with suppliers, setting traceability targets linked to human rights commitments, or creating outreach programs to engage with lower tiers of the supply chain, among others. As we discussed at the beginning of the analysis of the textile industry, the current business model of multinational textile companies leads to negative human rights impacts in the supply chain. A better understanding of how its buying practices affect the rights of workers in the supply chain is essential to address the root causes of modern slavery.

Finally, companies in the textile industry are starting to take steps with regard to responsible recruitment of workers, but these remain in an initial phase, with commitments and policies not being implemented with corresponding practices.

We have observed that the problem of lack of meaningful consultation and engagement with rights-holders is also present with other human rights risks to which textile companies are vulnerable. For example, with regard to sexual harassment in textile supply chains,⁷⁷ while many companies include specific prohibitions on this topic in their suppliers' codes of conduct, companies rarely identify this risk in their supply chains. Moreover, very few companies, apart from including this issue in regular audits, also engage with local organizations and women workers on the ground to implement specific measures to prevent this impact, with a gender perspective.

75. See FIDH, "Behind the showroom: the hidden reality of India's garment workers" (April 2014), https://www.fidh.org/IMG/pdf/india_garment_workers_report_2014.pdf; FIDH and China Labour Bulletin, "China's workers are calling for a change. What role should brands play?" (May 2013), https://www.fidh.org/IMG/pdf/rapport_chinese_workers-uk-hd3.pdf; FIDH, "Bangladesh: Labour Rights in the Supply Chain and Corporate Social Responsibility" (June 2008), <https://www.fidh.org/IMG/pdf/bg062008en.pdf>.

76. See, for example, the report of Clean Clothes Campaign, "Fig Leaf for Fashion. How social auditing protects brands and fails workers," (September 2019), <https://cleanclothes.org/file-repository/figleaf-for-fashion.pdf/view>.

77. FIDH had already documented this salient human rights abuse in April 2014 in its report, "Behind the showroom: the hidden reality of India's garment workers." Sexual harassment and discrimination against women in textile supply chains is still an ongoing issue and is not being correctly addressed by brands. As an example of other cases, see these recent articles, on sexual assaults in jeans factories, and on the killing of a female worker in a textile factory in Tamil Nadu after months of harassment, respectively: Annie Kelly, "Fashion's dirty secret: how sexual assault took hold in jeans factories," *The Guardian* (August 20, 2020), <https://www.theguardian.com/news/2020/aug/20/fashion-industry-jeans-lesotho-garment-factory-workers-sexual-violence>; Annie Kelly, "Worker at H&M supply factory was killed after months of harassment, claims family," *The Guardian* (February 2021), <https://www.theguardian.com/global-development/2021/feb/01/worker-at-hm-supply-factory-was-killed-after-months-of-harassment-claims-family>. For other reports on the gender dimension of workers' treatment, see also the Gender, Business and Human Rights portal of the Business and Human Rights Resource Centre, <https://www.business-humanrights.org/en/big-issues/gender-business-human-rights/research-analysis>.

With respect to living wage, there are increasing number of companies which indicate in their policies that salaries must provide an adequate standard of living for employees. However, while some companies include a definition of what constitutes an adequate standard of living, others simply include a general formulation, which limits the effectiveness of the commitment. Moreover, it is even less frequent for companies to disclose the specific measures they put in place, including in **dialogue with unions to reach agreements on living wage or changing their purchasing practices to ensure living wage in their supply chains**

In relation to the rights to freedom of association and collective bargaining in textile supply chains, it is common for companies to include these rights in their suppliers' codes of conduct, and to mention that it is part of their audits. Moreover, some also require their suppliers to respect the right of all workers in their operations, and require that workers in their supply chain be permitted to form and join equivalent worker bodies when these rights are restricted under law. But again, when it comes to identifying these rights in their due diligence process, very few companies that mention this area as an impact in their supply chains, disclose examples of engagements with local unions in countries with weak labour laws. This is particularly concerning, since an important percentage of the supply chains of textile companies are situated in countries with particularly weak labour laws or whose governments impose crackdowns on labour unions. Only a few companies disclose being signatories of the Accord on Fire and Building Safety in Bangladesh, but even fewer mention having signed other enforceable labour rights agreements, and/or a global framework agreement with trade unions or workers' organizations.

3. Transversal Risk Areas: How Investors Can Take Steps to Analyse the Root Causes of Modern Slavery in Portfolio Companies

One of the key challenges for investors when addressing systemic human rights abuses embedded in certain business sectors, such as modern slavery in tourism, construction, food and beverage, and textile and footwear, is to look for information on how the company is addressing the root causes of these abuses. This is not a simple task, since it requires doing a comprehensive in-depth analysis and, in many cases, companies do not disclose publicly the necessary information, or else this information is difficult to find.

FIDH has identified a list of transversal areas that investors should pay attention to, when analysing how companies in their portfolios address modern slavery risks. These areas have been described briefly during the previous section, within each sectoral analysis. In this section, these cross-cutting risks, which are present in all four sectors, will be summarized.

A. Operating, or having subsidiaries or an important part of the supply chain in risk-prone countries

In February 2021, a military coup in Myanmar ousted the civilian government of Aung San Suu Kyi. After the coup, workers and trade union leaders from Myanmar's garment industry started organizing protests and strikes,⁷⁸ and some of these workers have been killed during the strikes and protests.⁷⁹ Multinational fashion companies have reacted to this situation in different ways, some by suspending new orders, for instance, and others by releasing statements condemning the coup but not taking any other steps. Workers are calling for "new international sanctions and for major multinational companies with factories in Myanmar to bolster protections for workers taking part in the resistance," and for multinational to pressure factories not to fire those who miss work due to their involvement in the movement. In their words: *"Some workers have been fired, or had their salaries cut. Among those fired are pregnant women, women with young children, and women who are breadwinners of the family. The rent issue, combined with the factories letting go of these workers, put them in a dire situation financially. The ILO Commission stipulates that owners cannot pressure workers. Workers are free to exercise their rights. We want people to pressure brands such as Adidas, Zara, and H&M to ensure that workers are guaranteed their rights to protest."*⁸⁰

This recent case exemplifies how companies should adapt and enhance their human rights policies and procedures when maintaining or operating subsidiaries in risk-prone countries. As such, some of the first areas that investors should evaluate are the company's locations (including operations, subsidiaries, franchises, etc.), and the company's suppliers' locations. This information, especially with regard to suppliers, is not always easy to find. Special attention should be paid to whether the majority (or an important stake) of the company's operations, subsidiaries, or franchises, or of the company's suppliers, are located in the least developed or developing countries; in countries with particularly weak labour laws or which engage in crackdowns on labour unions⁸¹; or in regions or countries that could be

78. Ethan Paul, "Fast fashion and Myanmar – why garment workers are protesting, how brands have responded, and the unrest's potential impact on consumers," *South China Morning Post* (March 2021), <https://www.scmp.com/lifestyle/fashion-beauty/article/3126532/fast-fashion-and-myanmar-why-garment-workers-are>.

79. BHRRC, "Myanmar: Garment worker publicly executed and 70 arrested after factory owner calls in military following dispute over wages" (March 2021), <https://www.business-humanrights.org/en/latest-news/myanmar-garment-worker-publicly-executed-and-70-arrested-after-factory-owner-calls-in-military-following-dispute-over-wages>.

80. Ethan Paul, "Fast fashion and Myanmar – why garment workers are protesting, how brands have responded, and the unrest's potential impact on consumers," *South China Morning Post* (March 2021), <https://www.scmp.com/lifestyle/fashion-beauty/article/3126532/fast-fashion-and-myanmar-why-garment-workers-are>.

81. In this regard, see, for example, the ITUC Global Rights Index, <https://www.ituc-csi.org/ituc-global-rights-index-2020?lang=en>.

classified as conflict-affected, as occupied territories, or as weak governance zones.⁸²

As the UNGPs state in Principle 23: *"In all contexts, business enterprises should: (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate,"* which means that, *"Although particular country and local contexts may affect the human rights risks of an enterprise's activities and business relationships, all business enterprises have the same responsibility to respect human rights wherever they operate. Where the domestic context renders it impossible to meet this responsibility fully, business enterprises are expected to respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard."*⁸³

Moreover, in conflict countries, the International Committee of the Red Cross (ICRC) points out that "international humanitarian law obliges states and all actors connected to a situation of armed conflict. Consequently, whereas states and organized armed groups have primary responsibility for the application of international humanitarian law, an enterprise that pursues activities closely related to an armed conflict must also respect international humanitarian norms."⁸⁴ And as recalled by the UN Working Group on Business and Human Rights, "international humanitarian law ... binds State and non-State actors, including businesses, as well as individual managers and staff of businesses whose activities are closely linked to an armed conflict."⁸⁵

Operating in these countries means that the company needs to have stronger human rights commitments that are in line with International Human Rights Law and International Humanitarian Law, and that are applicable throughout the supply chain and to the different business structures. These commitments should cover all the weak regulatory areas present in the country. For example, if the country is a conflict-affected area, the company should have a specific policy or commitment regarding conducting business in conflict-affected areas, and a thorough, robust, and enhanced due diligence process.⁸⁶ This enhanced due diligence should include a gender perspective as well as consultations with CSOs, international bodies (such as the Office of the High Commissioner on Human Rights), and communities on the ground, as a pre-requisite to beginning business activity.⁸⁷ In cases where companies cannot put in place measures to prevent or address negative impacts, companies should not operate or have business relations with companies operating in conflict-affected areas.⁸⁸ Indeed, when the company risks causing or contributing to serious human rights abuses that are considered crimes under International Law, the company is thereby exposed to

82. The concept of "conflict-affected area" is broad. It does not only include situations of armed conflict, occupation, annexation or armed violence, but also post-conflict situations and contexts of social unrest, which can seem peaceful but are prone to conflict, see International Alert, "Human rights due diligence in conflict-affected settings," (2018), pp 10-13, https://www.international-alert.org/sites/default/files/Economy_HumanRightsDueDiligenceGuidance_EN_2018.pdf. Investors can use different rankings that clarify sensitive country areas, such as: The World Bank, Classification of Fragile and Conflict-Affected Situations, available at: <https://www.worldbank.org/en/topic/fragilityconflictviolence/brief/harmonized-list-of-fragile-situations>; Heidelberg Institute for International Conflict Research, Conflict Barometer, available at: <https://hiik.de/conflict-barometer/current-version/?lang=en>; Vision of Humanity, Global Peace Index, available at: <http://visionofhumanity.org/indexes/global-peace-index/>; The Geneva Academy, Rule of Law in Armed Conflicts, available at: <http://www.rulac.org/>

83. Office of the United Nations High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect, Remedy Framework (2011), Fundamental principle 23, Commentary.

84. ICRC, "Business and International Humanitarian Law - An Introduction to The Rights and Obligations of Business Enterprises Under International Humanitarian," (December 2006), https://www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf.

85. UN Working Group on Business and Human Rights, "Business, human rights and conflict-affected regions: towards heightened action" (A/75/212) (July 2020), <https://undocs.org/en/A/75/212>.

86. The enhanced human rights due diligence for businesses operating or plan to operate in conflict-affected areas includes more immediate effective preventive measures, such as divestment and disengagement policies and actions. See Al-Haq, ESCR-Net, FIDH, SOMO and Trocaire, Joint oral statement on Prevention, Fifth session of the of the Working group on transnational corporations and other business enterprises with respect to human rights (IGWG), (October 2019), <https://www.fidh.org/en/issues/globalisation-human-rights/fidh-advocates-for-the-adoption-of-an-international-legally-binding>

87. Al-Haq, ALTSEAN-Burma, AWID, CIHRS, ESCR-Net, FIDH, WILPF, ACCA, SOMO, "Oral Statement, Fourth Session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG)" (October 2018), https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session4/Al-HaqArticles1_14_15.docx.

88. FIDH, "A Matter of Justice: How European Legislation Can Make a Difference Experiences and views from around the world on how to establish meaningful EU rules on corporate accountability," (December 2020), pp 36-37 https://www.fidh.org/IMG/pdf/loi_vigi763angweb.pdf; FIDH and others, "Israeli settlements in East Jerusalem: 3 French companies involved in light-rail construction" (2018), <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/israeli-settlements-in-east-jerusalem-3-french-companies-involved-in>; UN Working Group on Business and Human Rights, "Business, human rights and conflict-affected regions: towards heightened action" (A/75/212) (July 2020), <https://undocs.org/en/A/75/212>.

liability for the commission of, or complicity in crimes.⁸⁹ In this context, companies should also have disengagement processes in place.⁹⁰

Investors should also analyze if the company operates or has a large number of suppliers operating in a country where the core labor rights, such as the rights to freedom of association and collective bargaining, are not recognized. If this is the case, the company should commit to respect these rights and require its suppliers to do the same, including the right of all workers to form and join equivalent worker bodies. The company should also develop specific programs and initiatives on the ground to push for these rights to be respected in its operations and supply chains. Moreover, the company will need to have in place specific human rights due diligence processes which include those locations, as well as a stronger governance system and grievance mechanism.

In our analysis, we observed that many of the companies' operations and/or subsidiaries in all four sectors are located in high-risk countries. However, due to the general lack of transparency of supply chains in all four sectors, these risks cannot be fully evaluated by external analysts based on public information. Moreover, in general, there is no correspondence between companies' exposure to risks derived from their presence in or links to these countries, and the coverage of their human rights commitments and processes. For example, companies in the tourism sector might have many franchises in high-risk countries, but their human rights commitments are not applicable to those franchises. Companies in the construction sector could operate in risk countries, but due to the excessive subcontracting activity, the commitments are not applicable to the different tiers. Finally, companies in textile and footwear and in food and beverage sector generally have suppliers located in risk countries, but commitments are not always cascaded through the supply chain.

Investors should therefore be very attentive and evaluate the company's locations (including operations, subsidiaries, franchises, etc.) and the company's suppliers' location, and compare them with the coverage of the companies' commitments, policies, and due diligence processes.⁹¹

B. Complex, long, and non-transparent supply chains

During the first months of 2021, the United States issued different Withhold Release Orders ("WROs") in respect to certain goods produced by specific companies in the Xinjiang Uyghur Autonomous Region of China, due to reports which showed that these goods were linked to forced labour, torture, and political indoctrination of the Muslim minority of this region. Different reports have linked many multinational textile corporations with the abuses happening at the end of their supply chains in Xinjiang.⁹² When faced with allegations of being directly linked to forced labor in Xinjiang, while some few brands publicly committed to the requirements of the Call to Action of the Coalition to End Uyghur Forced Labor⁹³ including identifying and mapping their suppliers and sub-suppliers, others made empty declarations or remained silent on the issue of Uyghur forced labor.⁹⁴ Later, after facing retaliation by the Chinese government over their statements against the use of forced Uyghur labour, several brands removed their own policies against forced labour from their websites or even reaffirmed their use of Xinjiang cotton, showing that they place profits over human rights.⁹⁵

The human rights abuses happening in Xinjiang, and their links with many of the companies in the textile and footwear sector, show the need for investors to push for increased transparency in supply

89. FIDH and others, "Israeli settlements in East Jerusalem: 3 French companies involved in light-rail construction" (2018), pp22-26, <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/israeli-settlements-in-east-jerusalem-3-french-companies-involved-in>

90. SOMO, "Should I stay or should I go? Exploring the role of disengagement in human rights due diligence", (April 2016), <https://www.somo.nl/should-i-stay-or-should-i-go-2/>

91. In case an investor is interested in learning more about the specific questions and indicators, please do not hesitate to reach out to us to learn more on FIDH methodology.

92. For more information, see the Australian Strategic Policy Institute, "Uyghurs for Sale"; Center for Strategic and International Studies, "Connecting the Dots in Xinjiang: Forced Labor, Forced Assimilation, and Western Supply Chains" (October 2019), <https://www.csis.org/analysis/connecting-dots-xinjiang-forced-labor-forced-assimilation-and-western-supply-chains>.

93. See Call to Action of the Coalition to End Uyghur Forced Labor (<https://enduyghurforcedlabour.org/call-to-action/>)

94. Coalition to End Forced Labour in the Uyghur Region, An Open Letter to the Fashion and Home-Furnishing Industries, (March 2021), <https://enduyghurforcedlabour.org/news/an-open-letter-to-the-fashion-and-home-furnishing-industries/>

95. Coalition to End Forced Labour in the Uyghur Region, Coalition to End Forced Labour in the Uyghur Region Warns Corporations Not to Trade their Human Rights Principles for Market Access, (March 2021), <https://enduyghurforcedlabour.org/news/press-release-coalition-to-end-forced-labour-in-the-uyghur-region-warns-corporations-not-to-trade-their-human-rights-principles-for-market-access/>

chains. Investors should identify whether companies are correctly addressing the risk of modern slavery throughout their supply chains. The more complex and obscure the supply chain is, the higher the risk for workers to be protected through laws, collective agreements, or companies' commitments. Also, the higher the complexity, the higher the risk that a company will be directly linked to situations of modern slavery, as a result of unknown business practices which are, therefore, unaddressed.⁹⁶ It is clear from the UNGPs that if the company is directly linked to a human rights abuse, either knowingly or un-knowingly, the company has a responsibility to prevent and mitigate those impacts.⁹⁷

In our analysis, we have found that traceability and transparency of supply chains is still a common weakness present in all sectors. Companies in the textile and footwear and food and beverage sectors are making increasing efforts to address this issue, but companies in construction and tourism have not generally taken steps to address this. Investors should therefore analyse whether the companies in their portfolios are mapping their supply chains, tracing raw materials (especially those at higher risk for forced labour), and disclosing this data. Moreover, investors should look for information that shows how companies are preventing and mitigating the risks of forced labour throughout the supply chain, beginning with policies that are cascaded to lower tiers of the supply chains and processes, to check whether and how suppliers are carrying out this requirement. Finally, investors should verify that companies have human rights due diligence processes that cover the whole supply chain, in accordance with the traceability exercise.⁹⁸

C. Use of employment agencies to hire low-wage workers

Testimonies of victims of forced labour in the UK construction sector exemplify how workers are trapped in these situations through unethical recruitment practices: *"Bohai, who is now in his early fifties and speaking to me through a translator, was unable to contact his family back in China. His bosses instructed him to destroy his passport. He was only allowed outside when he was driven to work at building sites, where he laboured from 5am until 8pm or 9pm each day" (...)* *"Teodor realised something was wrong. The family that had brought him had taken his ID: 'They told me I was supposed to work for them for two weeks without getting paid, in order to pay them back' [for the journey]."*⁹⁹ This reality exemplifies the vulnerabilities inherent in certain recruitment process.

As we have seen in our analysis, a common characteristic of all four sectors is the tendency to use labour providers or recruitment agencies to hire low-paid workers. These workers, in many cases, are also victims of modern slavery. These risks increase when recruitment is carried out cross-border, since migrant workers suffer heightened vulnerabilities, including "deception about the nature and conditions of work; retention of passports; illegal wage deductions; debt bondage linked to repayment of recruitment fees; threats if workers want to leave their employers, coupled with fears of subsequent expulsion from a country."¹⁰⁰

The use of public or private employment agencies, if done in a regulated and controlled manner, could facilitate the "efficient and equitable functioning of labour markets by matching available jobs with suitably qualified workers."¹⁰¹ However, there are significant risks derived from the use of these agencies in contexts where they are not regulated, where labour and other human rights commitments do not apply to their contracts, and where companies do not have oversight of the agencies' practices, and yet the companies are being used to recruit low-paid labourers.

While commitments regarding recruitment fees, the withholding of documentation, and any type of restriction on the movement of employees, are increasingly being included in companies' policies, the

96. Shift, Business Model Red Flag: Commodities with unclear provenance and visibility to impacts on workers or communities, page 4, https://shiftproject.org/wp-content/uploads/2016/01/14_Shift_VRP_BMBF.pdf

97. The UNGPs in the Fundamental Principle 13 define the responsibility to respect human rights of business enterprises. The responsibility of businesses in relation to adverse human rights impacts which they cause, contribute or are directly linked to does not depend on the knowledge of the business of those impacts.

98. For other indicators, also see: Know the Chain, "Benchmark Methodology Food and Beverage," "Benchmark Methodology Apparel and Footwear," "Subset of Indicators," <https://knowthechain.org/benchmark-methodology>; Corporate Human Rights Benchmark, "Methodology for the Agricultural Products, Apparel and Extractives industries" (2020), <https://www.corporatebenchmark.org/chrb-methodology>.

99. Layli Foroudi, "Forced labour in the UK: 'I tried to escape ... they cut my finger off,' Construction workers are particularly vulnerable to exploitation, from withheld wages to trafficking," *The Financial Times* (July 2018), <https://www.ft.com/content/f7ae5cf8-8f94-11e8-b639-7680cedcc421>.

100. ILO, "Fair Recruitment," <https://www.ilo.org/global/topics/fair-recruitment/lang-en/index.htm>.

101. Ibid.

tourism and construction sector are still lagging, compared to the food and beverage and textile and footwear sectors. Moreover, even within the latter, still very few companies actually disclose having developed programs or processes to implement these commitments. Therefore, there is still a gap between companies' policies and practices.¹⁰²

Investors need to look for indicators that show, not only the commitments with regard to ethical recruitment, but also how companies have implemented the policies and practices on the ground to ensure the effectiveness of these commitments, especially if recruitment is done cross-border. As pointed out before in the report, the Leadership Group on Responsible Recruitment, includes a comprehensive list of indicators in its "Metrics and Disclosure for the LGRR" document.¹⁰³ Moreover, investors should check how the practices are then translated into specific impacts for rights holders, by looking for evidence, on, for example, paying back recruitment fees to workers, or including the workers voice in monitoring mechanisms.¹⁰⁴

D. The top-down approach to engagement with stakeholders

When addressing the human rights abuses and impacts of companies, particularly the most serious ones such as modern slavery, companies in all sectors have a tendency to follow a top-down approach, and are rarely open to listening to communities and human rights defenders on the ground, especially if the latter are critical of the companies' operations. This approach is particularly problematic, and affects all the steps of the human rights due diligence process, as well as the way the companies design their grievance mechanisms.

To begin with, companies rarely meaningfully involve and listen to stakeholders and CSOs working on the ground during their risk assessment processes. Afterwards, when designing preventive and mitigating measures, few companies truly engage with these stakeholders either. Moreover, companies tend to participate in MSIs which might or might not include certification schemes. MSIs have also been criticized because they "largely exclude rights holders from their governing bodies and implementation."¹⁰⁵ The premise of MSIs is that CSOs can effectively provide oversight and represent rights-holders, but the "decision-making rules and practices, along with differences in resources and capacity between CSOs and other stakeholders, can compromise CSOs' engagement as equal and effective partners."¹⁰⁶ Finally, companies rarely ever include affected rights-holders (or worker representatives) in the design and functioning of grievance mechanisms. This makes the effectiveness and legitimacy of these mechanisms particularly questionable.

As shown in this analysis, CSOs and human rights defenders play a critical role in documenting, advocating, and litigating against companies for human rights abuses happening in their operations and supply chains. Thanks to their work, some companies react to allegations of modern slavery, putting in place specific policies, programs, and processes to prevent and mitigate the impacts on the ground. Indeed, it is not a coincidence that the most advanced practices in all sectors are found in countries where CSOs have played an active role in naming and shaming companies (e.g. Gulf countries for tourism and construction, or Bangladesh, China, and India for textiles), or in relation to specific raw materials where the pressure from CSOs has been highest (e.g. palm oil and cocoa). And yet companies often look at the work of CSOs as a problem, rather than as an opportunity to improve, or as a value to be preserved and protected. As stated in the UNGPs, human rights defenders have a key role as watchdogs, as advocates, and as a voice for affected rights-holders.¹⁰⁷ Yet in too many cases, civil society, communities, their representatives, and human rights defenders working

102. A recent study by Know the Chain has shown similar results: Know the Chain, "Responsible Recruitment of Migrant Workers" (2021), <https://knowthechain.org/responsible-recruitment>.

103. Leadership Group on Responsible Recruitment, "Metrics and Disclosure for the LGRR," https://www.ihrb.org/uploads/member-uploads/LGRR_Metrics_Disclosure_-_2020-2022.pdf.

104. Know the Chain, Responsible Recruitment of Migrant Workers, (2021), <https://knowthechain.org/responsible-recruitment/>; Rende Taylor, Lisa M, AM Soto Bernal, M Taylor, and J Basedow, Repayment of Recruitment Fees to Workers: 4 Emerging Best Practices, Issara Institute, (2021), https://44f2713d-a205-4701-bba3-8d419653b4b6.filesusr.com/ugd/5bf36e_78f519119d904e16b77ba4d37ba3d1ab.pdf

105. MSI Integrity, "Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance. Key insights" (2020), <https://www.msi-integrity.org/not-fit-for-purpose/key-insights>.

106. MSI Integrity, "Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance. Key insights" (2020), <https://www.msi-integrity.org/not-fit-for-purpose/key-insights>.

107. Office of the United Nations High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect, Remedy Framework (2011), Fundamental principle 18

to denounce corporate human rights abuses face retaliation and repression, and see their lives and freedom or those of their families put in danger.¹⁰⁸

*“On September 20, 2019, Ms. Chhim Sithar, the President of the Khmer Employees’ Labour Rights Support Union of NagaWorld, Cambodia’s largest hotel and casino, was dismissed from her employment as reprisal for representing approximately 4,000 NagaWorld workers to demand better working conditions and reasonable wage increases. (...) Based on previous experience, NagaWorld has a history of union discrimination for which complaints were filed with the International Labour Organisation (ILO) for abuses of core conventions. The ILO later issued recommendations to the government of Cambodia. Termination of Ms. Chhim Sithar’s contract caused hundreds of workers to protest and demand the reinstatement of their leader, but the company initially refused to do so. On January 11, 2020, Ms. Chhim Sithar was reinstated after a two-day strike by thousands of NagaWorld workers.”*¹⁰⁹ This case, included in the latest report on the situation of human rights defenders in Cambodia by the Observatory for the Protection of Human Rights Defenders, exemplifies how companies tend to address relations and engagement with human rights defenders, that is to say by considering them as a problem rather than as valid and key interlocutors.

When engaging with civil society, companies tend to engage with international CSOs and other international organizations (such as the ILO), instead of engaging directly with affected rights-holders or organizations working on the ground, exemplifying again this “top-down” approach, employed even when engaging with external stakeholders. Companies should engage and consult with affected rights-holders on the ground during the entire human rights due diligence process, including during the drafting of modern slavery policies and risk assessments, the design of preventive and mitigating measures, and the design and operation of grievance mechanisms including those who strongly oppose to the company’s operations. Civil society is not a unified voice, and companies should appreciate the diversity of voices, including the barriers that human rights defenders face. Building relationships of trust and confidential channels to communicate with local human rights defenders is thus of key importance.

In our analysis, we have observed a lack of meaningful engagement and consultation with rights-holders, human rights defenders, and CSOs on the ground, in all sectors. FIDH and its member organizations have systematically highlighted the essential role of human rights defenders, and the increased vulnerability they face in the business and human rights sphere.¹¹⁰ Investors should therefore analyse how the companies in their portfolios are meaningfully engaging and consulting with affected rights-holders on the ground in countries with a high risk of forced labour and human trafficking, during all the steps of due diligence processes. These engagements should include human rights defenders as key stakeholders, in order to understand their concerns and the related human rights impacts. Investors should look for companies’ processes that identify, prevent, mitigate, and ensure accountability for the actual and/or potential negative human rights impacts faced by defenders.

108. BHRRC, “In the line of fire: Increased legal protection needed as attacks against business & human rights defenders mount in 2020” (March 2021), <https://www.business-humanrights.org/en/from-us/briefings/line-fire-increased-legal-protection-needed-attacks-against-business-human-rights-defenders-mount-2020>; The Observatory for the Protection of Human Rights Defenders, “Peru, Undermining Rights: The erosion of human rights by economic interests” (February 2021), <https://www.fidh.org/IMG/pdf/obs-peruunderminingrights-en-250221-fv.pdf>; FIDH and others, “The criminalization of human rights defenders in the context of industrial projects: a regional phenomenon in Latin America” (2016), <https://www.fidh.org/en/region/americas/criminalization-of-human-rights-defenders-an-alarming-phenomenon-in>; Observatory for the Protection of Human Rights Defenders (FIDH-OMCT), “Down, but not out: ‘Repression of human rights defenders in Cambodia’ (2020), <https://www.fidh.org/en/issues/human-rights-defenders/report-cambodian-civil-society-faces-intensified-restrictions-and>; FIDH Observatory Annual Report, “We are not afraid, Land rights defenders: attacked for confronting unbridled development,”(2014) https://www.fidh.org/IMG/pdf/obs_2014-uk-web2.pdf.

109. Observatory for the Protection of Human Rights Defenders (FIDH-OMCT), “Down, but not out: Repression of human rights defenders in Cambodia” (2020), <https://www.fidh.org/en/issues/human-rights-defenders/report-cambodian-civil-society-faces-intensified-restrictions-and>.

110. FIDH has published different reports which include recommendations for companies with respect to human rights defenders. These reports have focused on the mining and oil and gas sectors, but they are also applicable to companies in the tourism, construction, textile and footwear, and food and beverage sectors: FIDH, Global and Justiça nos Trilhos, Brazil, “How much are human rights worth in the Brazilian mining and steel industry?” (2011), <https://www.fidh.org/en/region/americas/brazil/9662-how-much-are-human-rights-worth-in-the-brazilian-mining-and-steel-industry>; FIDH, PASO, CCAJAR, “The Human Cost of Oil: A Human Rights Impact Assessment on the Activities of Pacific Exploration & Production Corp. in Puerto Gaitan” (2016), <https://www.fidh.org/en/region/americas/colombia/oil-extraction-in-colombia-report-reveals-the-human-and-environmental>; FIDH, FHRl, “New Oil, Same Business? At a Crossroads to Avert Catastrophe in Uganda” (2020), <https://www.fidh.org/en/region/Africa/uganda/companies-must-take-action-to-respect-rights-of-communities-at-risk>.

E. Preventive and mitigating measures based exclusively on audits and certifications

*"Mistrust begets mistrust, bad intentions beget bad intentions. Everyone is working against each other, everyone is working counter to the end goal, and the loser in the whole process is employees. That is the "audit cycle" that almost everyone in the industry is fully aware of."*¹¹¹ These words express very clearly the problem that CSOs have been denouncing for years with respect to the social audit system that companies put in place with suppliers to address human rights risks. Social audits are not enough and do not prevent certain structural human rights impacts happening in supply chains, such as modern slavery, child labor or discrimination. For example, despite having undergone 28 audits in 2017-18 "by customers and 3rd party auditors, in accordance with internationally recognized standards which include SA8000, ICS, SMETA, SER, BSCI as well as our customers' own high standards"¹¹², Top Glove was accused of exploiting migrants in its factories, who were allegedly subjected to forced labour, forced overtime, debt bondage, withheld wages and passport confiscation.¹¹³

Audits are also the basis of certification schemes, widely used by companies. But, as mentioned in before in this report, neither social audits nor certification schemes are structured in a way in which modern slavery can be detected and addressed on the ground.¹¹⁴ Indeed, the relationship between the companies or the suppliers as clients, and the audit firms as service providers, can create incentives for auditors not to report abuses: "You have an industry of ethical auditors out there now who will find nothing if you pay them to go and find nothing."¹¹⁵ Some companies are moving away from independent certifications and have created their own in-house certification.¹¹⁶ But these in-house certifications are still based on social audits, which is one of the key weaknesses of this system.¹¹⁷

In our analysis we observed that audits are still the main measure used by companies in all sectors, to prevent and mitigate modern slavery risks. In the case of food and beverage, textile and footwear sectors, companies also tend to rely on certification schemes to address environmental and social risks of their raw materials. Indeed, rarely companies disclose other type of measures, which involve a true collaboration with suppliers based on meaningful consultation and engagement with workers.

It is therefore important that investors do not to rely exclusively on indicators that look for certification schemes or social audits, when analyzing whether the company is correctly addressing modern slavery risks in its supply chains. Either way, through independent certifications, their own in-house certifications, internal social audits or audits by third parties, the audit system presents important limits that question their efficacy. Certifications and audits should not be the solely measure put in place by companies to make sure that the human rights are respected throughout the supply chain.

111. LeBaron, Lister and Dauvergne quote one of their interviewees in 'The new gatekeeper: Ethical audits as a mechanism of global value chain governance', in A. Claire Cutler and Thomas Dietz, eds., *The Politics of Private Transnational Governance* by Contract, London and New York: Routledge, (2017), p109, https://www.researchgate.net/profile/Dauvergne-Peter/publication/323540489_Ethical_audits_as_a_mechanism_of_global_value_chain_governance/links/5a9af1afaca2721e3f301653/Ethical-audits-as-a-mechanism-of-global-value-chain-governance.pdf

112. Peter Bengtsen, Clean Gloves, Dirty Practices: Debt Bondage in Malaysia's Rubber Glove Industry, *The Diplomat*, (November 2019), <https://thediplomat.com/2019/11/clean-gloves-dirty-practices-debt-bondage-in-malaysias-rubber-glove-industry/>

113. Hannah Ellis-Petersen, NHS rubber gloves made in Malaysian factories linked with forced labour, *The Guardian*, (December 2018), <https://www.theguardian.com/global-development/2018/dec/09/nhs-rubber-gloves-made-in-malaysian-factories-accused-of-forced-labour>

114. See FIDH, "Behind the showroom: the hidden reality of India's garment workers" (April 2014), https://www.fidh.org/IMG/pdf/india_garment_workers_report_2014.pdf; FIDH and China Labour Bulletin, "China's workers are calling for a change. What role should brands play?" (May 2013), https://www.fidh.org/IMG/pdf/rapport_chinese_workers-uk-hd3.pdf; FIDH, "Bangladesh: Labour Rights in the Supply Chain and Corporate Social Responsibility" (June 2008), <https://www.fidh.org/IMG/pdf/bg062008en.pdf>; Genevieve LeBaron, "The Global Business of Forced Labour: Report of Findings," Sheffield Political and Economic Research Institute (SPERI), University of Sheffield (2018), <http://globalbusinessofforcedlabour.ac.uk/wp-content/uploads/2018/05/Report-of-Findings-Global-Business-of-Forced-Labour.pdf>; BHRRC, "Beyond Social Auditing," <https://www.business-humanrights.org/en/big-issues/labour-rights/beyond-social-auditing>.

115. LeBaron, Lister and Dauvergne quote Aidan McQuade of Anti-Slavery International, in 'The new gatekeeper: Ethical audits as a mechanism of global value chain governance'

116. Sophie Turner (Leigh day), Ethical Certifications: can we really trust them?, Lexology, August 2020, <https://www.lexology.com/library/detail.aspx?g=40122181-e603-41e6-aaf0-d2a20ec50964>

117. Genevieve LeBaron, "The Global Business of Forced Labour: Report of Findings," Sheffield Political and Economic Research Institute (SPERI), University of Sheffield (2018), p. 48, <http://globalbusinessofforcedlabour.ac.uk/wp-content/uploads/2018/05/Report-of-Findings-Global-Business-of-Forced-Labour.pdf>; BHRRC, "Beyond Social Auditing," <https://www.business-humanrights.org/en/big-issues/labour-rights/beyond-social-auditing>.

F. Buying practices and other business processes

When designing preventive and mitigating measures to address the risk of modern slavery in their supply chains, companies tend to draw on the premise that the root cause of modern slavery is the harmful practices undertaken by their suppliers. As such, the measures put in place by companies are focused on investigating whether their suppliers and contractors are complying with labour requirements, through social audits or by certifying certain risky commodities. This approach is rooted in the idea that the origin of modern slavery in supply chains lies exclusively in “unscrupulous” suppliers, contractors, and business patterns that exploit workers. While these actors have an important share of responsibility, the different buying practices and business processes pushed downstream by multinational companies into their supply chains are also one of the key root causes of this abuse.

If we take for example the hotel sector, companies are increasingly outsourcing certain services, such as cleaning personnel, and pushing down their costs. Neither the amount of work, nor the pressure on the workers, is reduced by this stratagem.¹¹⁸ Workers are then hired by the hour through labour agencies, with very low wages and less contractual stability. This situation is a breeding ground for modern slavery, and the responsibility for it does not lie exclusively with labour agencies, but with the hotel companies too.

The same can be said for the other sectors. In textile and footwear, “low purchase prices and shorter times for manufacturing products, coupled with poor forecasting, unfair penalties, and poor payment terms, exacerbate risks for labour violations in factories.”¹¹⁹ In agribusiness, short-term contracts, and low and/or volatile pricing for commodities put pressure on suppliers to cut costs.¹²⁰ Finally, in construction, the extremely low margins for contractors and subcontractors, and the payment systems in which contractors are not obliged to pay subcontractors until they have received payment from the client, increase the risks of modern slavery.¹²¹

Therefore, when addressing modern slavery risks, companies should, first of all, **think how their own buying practices or business processes are increasing these risks, and put measures in place to change them.** This circles back to the “top-down” approach used by companies to address modern slavery and other serious human rights abuses.

We have observed initial steps being made by companies in the food and beverage and textile and footwear sectors to understand the impacts of their own buying processes, but these are still very rare, and are clearly not sufficient. In construction and tourism, this exercise is even less frequent. Investors should analyse whether companies have a process in place to evaluate internal business procedures and practices that might lead to forced labour and human trafficking in the supply chain, and which include an evaluation of their own buying practices and policies.¹²² Moreover, investors should check whether companies have put in place measures to address these practices, and have linked these measures to the prevention or mitigation of modern slavery in their operations and supply chains.

118. Minderoo Foundation’s Walk Free Initiative, WikiRate, Business & Human Rights Resource Centre, Australian National University, “Beyond compliance in the hotel sector: A review of UK Modern Slavery Act statement,” p. 10; or see, for example, the work done by the Spanish association of chambermaids “Las Kellys,” <https://laskellys.wordpress.com/quienes-somos>.

119. HRW, “Paying for a Bus Ticket and Expecting to Fly. How Apparel Brand Purchasing Practices Drive Labor Abuses” (2019), <https://www.hrw.org/report/2019/04/23/paying-bus-ticket-and-expecting-fly/how-apparel-brand-purchasing-practices-drive>; Ethical Trading Initiative, “Company purchasing practices,” <https://www.ethicaltrade.org/issues/company-purchasing-practices>.

120. Oxfam, “Shining a Spotlight: A critical assessment of food and beverage companies’ delivery of sustainability commitments” (2021), <https://policy-practice.oxfam.org/resources/shining-a-spotlight-a-critical-assessment-of-food-and-beverage-companies-delive-621163>; Oxfam, “From risk to resilience: A good practice guide for food retailers addressing human rights in their supply chains” (2020), <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621029/dp-from-risk-to-resilience-210720-en.pdf;jsessionid=7DCFD09CF0C59B6ABAC5244E18F2BB48?sequence=1>.

121. Know the Chain, “Investor Snapshot: Forced Labor in the Construction Sector”; CIOB, “Building a fairer system: tackling modern slavery in construction supply chains”; CIOB, “Construction and the Modern Slavery Act: Tackling exploitation in the UK.”

122. Some indicators can be found in the following methodologies: Know the Chain, “Benchmark Methodology Food and Beverage,” “Benchmark Methodology Apparel and Footwear,” “Subset of Indicators”; Corporate Human Rights Benchmark “Methodology for the Agricultural Products, Apparel and Extractives industries” (2020); UN Global Compact, “Decent Work Toolkit” (2019), <https://www.unglobalcompact.org/take-action/sustainableprocurement>; Oxfam, “Shining a Spotlight: A critical assessment of food and beverage companies”; Ethical Trading Initiative, “Guide to buying responsibly” (2017), <https://www.ethicaltrade.org/resources/guide-to-buying-responsibly>.

G. Lack of effective remedy

FIDH has often claimed that there is no accountability for human rights abuses by corporations without access to justice and remedy for the victims.¹²³ As part of this sectoral analysis, we have observed that company-based grievance mechanisms are generally not designed to achieve this objective. Company-based grievance mechanisms are not normally designed to handle human rights complaints. Moreover, they are rarely accessible to all rights-holders in the operations and supply chains of companies. Finally, there is a general lack of transparency regarding the complaints received through these mechanisms, in all four sectors.

In the food and beverage and textile and footwear sectors, some companies show a certain level of engagement with stakeholders when responding publicly to accusations of human rights abuses in their operations and supply chains. However, generally, companies shield themselves in supply chain structures to argue that they are not causing the human rights abuses but they are just “directly linked” to them,¹²⁴ and so they do not participate (nor try to exercise leverage) in providing remedy to affected rights-holders.

Since these mechanisms are not designed to provide effective remedy, investors should advocate for regulations which guarantee access to justice and remedy for victims of corporate abuses through State-based judicial mechanisms.¹²⁵ As argued by the Grant & Eisenhofer ESG Institute in their amicus brief in the *Nestlé USA v. Doe I* case, it is to investors’ benefit to have a strong and protective legal system for rights-holders to hold corporations accountable for the human rights abuses happening in their operations and supply chains.¹²⁶

However, even through the use of courts and other State-based non-judicial bodies, victims face multiple procedural barriers which preclude them from obtaining effective redress. One key source of these barriers is the attitude of companies with respect to the accusations. An illustrative example of these barriers is the Thammakaset cases filed against human rights defenders and workers in Thailand, and which have been denounced by FIDH. Since 2016, “*Thai poultry company Thammakaset Co., Ltd. has filed a total of 39 criminal and civil cases against 23 defendants, including human rights defenders, workers, and journalists, for alleged defamation of the company. The complaints stemmed from the defendants’ documentation, communication, and advocacy in connection with labour rights violations allegedly committed by Thammakaset. In addition to the cases detailed below, Thammakaset has filed an unknown number of criminal complaints to the police against other individuals.*”¹²⁷ This type of strategy, called strategic lawsuits against public participation (SLAPPs), is increasingly being used by companies against CSOs, human rights defenders, and rights-holders, to silence their voices.¹²⁸

When analysing the companies in their portfolios, investors should examine what the reaction of corporations is, when faced with judicial complaints for human rights abuses in their operations and supply chains. It is important to observe whether corporations are cooperating in good faith with these mechanisms, or if, on the contrary, they aggravate the barriers for victims by, for example: using SLAPPs, hiding or putting up barriers to access evidence, or putting pressure on communities.

123. FIDH, “A Matter of Justice: How European Legislation Can Make a Difference Experiences and views from around the world on how to establish meaningful EU rules on corporate accountability,” (December 2020), p 40, https://www.fidh.org/IMG/pdf/loi_vigi763angweb.pdf;

124. See footnote 40, above.

125. FIDH, “A Matter of Justice: How European Legislation Can Make a Difference Experiences and views from around the world on how to establish meaningful EU rules on corporate accountability,” (December 2020), pp 40-41, https://www.fidh.org/IMG/pdf/loi_vigi763angweb.pdf;

126. Brief of Grant & Eisenhofer ESG Institute as Amicus Curiae in support of respondent, *Nestlé USA v. Doe I*, Supreme Court of the United States, p. 23, https://www.supremecourt.gov/DocketPDF/19/19-416/158409/20201021150400149_40231%20pdf%20Layfield.pdf.

127. FIDH, “Thailand: Thammakaset Watch” (February 2020), <https://www.fidh.org/en/issues/human-rights-defenders/thailand-thammakaset-watch>.

128. BHRRC, “Strategic lawsuits against public participation (SLAPPs) are on the rise, while resistance around the world mounts” (June 2020), <https://www.business-humanrights.org/en/latest-news/strategic-lawsuits-against-public-participation-slapps-are-on-the-rise-while-resistance-around-the-world-mounts>.

4. Conclusions

The observations made as a result of our analysis support what FIDH has been denouncing for years: that there is still a yawning gap between companies' human rights policies and their practices. Rights-holders on the ground experience a completely different reality from the commitments embodied in human rights policies. Moreover, companies often use complex corporate and supply chain structures to avoid responsibility for the human rights abuses happening in their subsidiaries, franchises, and supply chains. As a result, to correctly comply with their responsibility to respect human rights through their investments, investors need to take into account the following recommendations:

- Social and human rights indicators used by investors when analysing companies in their portfolios should not exclusively assess if companies have in place human rights policies, suppliers' codes of conducts, and other human rights commitments. Investors should **assess the congruence of the policies and the practices.**
- Investors should analyze the applicability of the companies' human rights commitments and the effectiveness of the human rights' due diligence processes, comparing their scope to the companies' business structure, supply chain structure, and the locations of the companies' operations and suppliers.
- When looking at how companies put in place measures to implement human rights commitments, investors should not only look for top-down practices such as certifications of raw materials, or social audits systems of their suppliers. Investors should first check if the company is reflecting on their own buying practices and business procedures, and how these affect labor rights through the supply chain, and if the company has taken steps to modify these practices. Investors should also **use indicators that analyse whether companies have programs or processes in place that involve working with suppliers and rights-holders on the ground, to find more effective, participatory, and sustainable solutions.** These measures will depend on the specific abuse (land rights, gender discrimination, modern slavery, child labour, etc.), and should be designed through an inclusive and meaningful engagement with affected rights-holders and different CSOs working on the ground.
- **Access to justice** for human rights abuses committed by corporations remains one of the key challenges that victims face. If victims use judicial mechanisms and other State-based grievance mechanisms, investors should analyse whether corporations are aggravating the barriers for victims by, for example: using strategic lawsuits against public participation (SLAPPs), hiding or putting up barriers to access the evidence, or putting pressure on communities.
- **CSOs, NGOs, and human rights defenders play a critical role** in documenting, analysing, denouncing, and confronting human rights abuses by corporations. Investors should verify whether the companies in their portfolios meaningfully engage with these stakeholders, especially those that work on the ground and those who are vocal in opposing companies' operations, during their human rights risk assessments and human rights due diligence processes. Moreover, investors should include indicators in their methodologies that assess the level of respect by companies for human rights defenders or, conversely, their implication, direct or indirect, in practices of retaliation, repression, and violence.

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FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

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