



Submission to the Supply Chain Consultation: Government of Canada

June 2019

Scoping Questions

In your view, which sectors are most at risk of labour exploitation?

Sectors providing goods produced in high-risk countries, due to offshoring or international commodity trading, are likely to have the highest risk of labour exploitation in their supply chains.

Our research has found that higher risks are associated with cost-driven industries where there are labour shortages, seasonal work, low wages, low entry-level qualifications and use of informal labour. e.g. agriculture, construction, social care.

Do you currently have any data or information about labour exploitation (child labour, forced labour, human trafficking or other) through Canadian supply chains?

In 2018 we collected data on conditions analogous to slavery in Brazilian-UK beef and timber supply chains. Despite under-resourced labour inspection cases of slavery were recorded in Brazil between 2015-17 (for beef) and 2010-16 (for timber). Slavery was found to be endemic in both commodities supply chains. It is highly likely that cases of slavery persist in Brazilian cattle ranching supply chains.

In 2015 Canada imported 4.62% of its timber from Brazil (source: WITS), beef is currently ineligible for import.

In your opinion, what challenges do Canadian companies face with respect to ensuring their supply chains are free of labour exploitation? If you are affiliated with a company, are there specific challenges your company has faced?

Mapping supply chains is a challenge for companies. For goods, it is not easy to link suspected cases of exploitation/ human rights abuse to specific products and upstream commodities/raw materials. Outsourcing creates more difficulty for companies in managing risk and liability. This is exacerbated in cases of informal supplier relationships and use of informal labour or third-party labour providers. Our ongoing research examines challenges companies face in taking action on labour exploitation in supply chains

In your opinion, what are the current or anticipated costs or other implications associated with transparency reporting or due diligence through supply chains?

Companies are already conducting due diligence checks and monitoring in their supply chains for other purposes. Implementing additional measures around labour exploitation incurs little cost beyond initial setup and staff training.

Greater supply chain transparency benefits companies and advances supply chain practice, for example for resilience and supplier engagement. Human rights due diligence requirements would also level the playing field and avoid undercutting competitors on labour conditions.

To your knowledge, which existing internationally recognised voluntary and /or industry-led guidelines or compliance/ standard certification are the most effective to combat labour exploitation in Canadian supply chains?

- ✓ UN Guiding Principles on Business and Human Rights
- ✓ ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
- ✓ OECD Guidelines for Multinational Enterprises
- ✓ OECD Due Diligence Guidance for Responsible Business Conduct

- ✓ Other:

In the timber sector, Forest Stewardship Council forest certification standards seem to be effective in raising standards among some forestry suppliers. Our research into Brazilian timber supply chains suggests that they are most appropriate where suppliers are close to meeting the required norms, where supportive national legislation is also in place and where there is an active civil society.

Are there processes in place (within your industry/ company) to mitigate or address labour exploitation if it is encountered? Please specify:

In our research on Brazilian-UK beef and timber supply chains, we found that companies tend to implement modern slavery prevention in their human resources management (mainly in service industries), procurement (for example in supplier selection criteria and contractual terms), and right to work on site procedures and site/staff inductions.

How could the Government of Canada work with businesses and other partners in assessing and addressing labour exploitation in their supply chains? How can businesses best be supported through this process?

The Government of Canada could:

1. Ensure that human rights provisions are included in all future trade agreements (there is precedent with NAFTA);
2. Publish guidance on the assessment of labour exploitation;
3. Introduce incentives and sanctions to encourage business to take action; and
4. Establish mechanism for monitoring action taken by companies. Canada should harmonise its approach to assessments, guidance and regulations with that of other states.

Should the Government of Canada be aware of other considerations?

1. The legislative and regulatory response should extend beyond the issue of child labour to cover other forms of labour exploitation and human rights abuses in supply chains.
2. Action to tackle labour exploitation in supply chains should be required from both public and private sector entities.

Survey Questions

Do current actions and initiatives in Canada go far enough to prevent and address labour exploitation through global supply chains?

No

If additional measures were taken in Canada to address labour exploitation in supply chains, should they address:

Child Labour and Forced Labour (as defined by the ILO)

Trafficking in Persons (as defined in Canada's Criminal Code)

Other human rights abuses or violations

Working conditions

Environmental impact of business operations

The ways in which women and girls are differently affected by labour exploitation- including a gender responsive approach

✓ **All of the above**

Other

What else should be addressed by additional measures

Special protections for migrant and seasonal workers, refugees and asylum seekers.

Should the Government of Canada pursue further measures to raise the business community's awareness of labour exploitation in supply chains, and provide guidance on ways to identify and address risks?

Yes

Should 'transparency reporting' be required from businesses?

A 'transparency reporting requirement could require business entities operating in Canada and potentially Canadian owned (or registered) business entities operating abroad to report annually on their actions to assess the risk of labour exploitation in their operations and supply chains.

Yes

What are the advantages or disadvantages of this option?

Transparency reporting without more does not require companies to take action to prevent or mitigate risks of human rights abuses. The disadvantage of this approach as seen in the UK is its limited effectiveness in changing company behaviour.

A key advantage of increased transparency and TISC reporting is that it can facilitate greater corporate accountability.

Should 'due diligence' be required from businesses?

A 'due diligence' requirement could mandate businesses operating in Canada and Canadian owned (or registered) businesses operating abroad to report annually on their actions to address labour exploitation in their operations and supply chains.

Yes

What are the advantages or disadvantages of this option?

Canada should require companies to perform 'human rights due diligence' as distinguished from 'ordinary' due diligence. The former focuses on the impact of the company's actions on rights holders, is continuous in nature and applies equally to all companies (rather than being discretionary in nature).

The clear advantage of a human rights due diligence ('HRDD') approach (over TISC reporting requirements) is that HRDD requires companies to take action to prevent or mitigate the risk of human rights violations and to remedy harms.

Which criteria could be used to determine the threshold for company size with respect to possible legislative requirements for businesses?

Annual revenue/ Number of Employees/ Other

Other - Legislative requirements on labour exploitation should be imposed on all companies providing goods or services in Canada. The extent of measures may vary based on company revenue however the requirement to respect labour rights should not be optional for any companies based on either revenue or number of employees.

The UNGPs provide that all companies regardless of size have a responsibility to respect all human rights. SMEs are important actors. In 2018 in the UK 99% of all companies were SMEs.

Should transparency reporting or due diligence requirements apply to both goods and services?

Yes

Please elaborate:

Labour exploitation is a risk within the supply chains of companies that provide both goods and services. The industry around employment and recruitment agencies are at a high risk for abuses especially among migrant and seasonal workers as well as workers with irregular immigration status who are more vulnerable to exploitation. In the UK there is evidence that low skill jobs e.g. in agriculture, social care and hand car washes have higher risks of exploitation.

Should transparency reporting or due diligence requirements apply to the entire corporate structure of a business, including its entire supply chain?

Please elaborate:

All companies should take steps to identify, prevent and mitigate those risks and communicate about it. UNGP 14 notes that the means by which companies meet their responsibility to respect HR may vary and are proportional to, among other factors, its size. Understanding its salient HR issues will help it to prioritise actions. Issues concerning a company's duty of care and parent co liability are being explored through litigation in UK courts.

How could the Government of Canada ensure that businesses are compliant with transparency or due diligence requirements?

The Government of Canada should include both penalties (fines, civil liability) and incentives (eligibility for public contracts or export finance) for compliance. Canada should expand and adapt the approach in its existing Enhanced CSR Strategy that creates a penalty for companies failing to participate in NCP, by extending this to inaction on labour exploitation. 'Naming and shaming' may be an effective measure for some companies however, with little to no impact on non-consumer facing entities, it is limited in scope.

What would be the most effective way to publicly report on efforts to address labour exploitation?

The reporting requirement should be imposed alongside a requirement for companies to take action (i.e. taking a human rights due diligence approach). Reports should be lodged in a government resourced central repository and published in a prominent place on a company's website. Canada should support a harmonised approach to any reporting requirements so as to reduce the burden on companies that may be required to report in multiple jurisdictions. This could facilitate mutual recognition of reports.

What could 'good practices' look like for businesses to address potential labour exploitation in their supply chains?

Business should take a human rights due diligence approach to addressing risks and incidents of exploitation. Capabilities to identify, prevent or mitigate risks and remedy violations should be developed at firm, supplier and business-non-business partnership levels. Identify risks: monitor, triangulate indicators and data sources, targeted investigation. Take action: respond to drivers where appropriate e.g. child labour. Remedy: engage in multi-stakeholder initiatives, community-centred approaches, supplier development and capacity building.

What are some of the critical influencing factors, or challenges, of which the Government of Canada should be aware?

Labour exploitation is greatest where-worker protections are weak or unenforced; high percentage of working poor in the geographical area; employment opportunities are limited or one/few employers dominate the market; agent-based recruitment is used; social acceptance or ambivalence toward worker exploitation; widespread discrimination of certain groups; a disproportionately high percentage of migrants or minorities at low levels of workforce; and production activities located in conflict zones.

Are there any other legislative or non-legislative options that should be considered?

1. Mandatory human rights due diligence legislation that:
 - (a) requires companies to take action to prevent or mitigate risks of negative human rights impacts including those associated with labour exploitation;
 - (b) requires companies to report on the action that they have taken; and
 - (c) imposes penalties for failure to comply and provides incentives for compliance.
2. Dedicated domestic monitoring mechanism.
3. A central, government resourced, publicly available repository for statements.