

Dear Sir or Madam:

Re: FAST response to UN Working Group on Business and Human Rights ESG and BHR Questionnaire

1. I am writing in response to the UN Working Group on Business and Human Rights' (UN WG on BHRs) request for input on the questions that will be addressed in its report to be presented to the 56th session of the Human Rights Council. I write on behalf of the Finance Against Slavery and Trafficking (FAST) initiative, managed by the United Nations University Centre for Policy Research (UNU-CPR). First, this submission introduces FAST. Second, it explains the relevance of FAST's work to the UN WG on BHRs' forthcoming report on ESG and human rights. Third, we address some key questions raised in the UN WG on BHRs' questionnaire for stakeholders and offer insights from FAST relevant to this consultation.

United Nations University Initiative for Finance Against Slavery and Trafficking ('FAST')

2. FAST (www.fastinitiative.org) is a multi-stakeholder initiative started in 2018 by UNU-CPR and funded by public and private sector actors. It works to mobilize the financial sector against modern slavery and human trafficking.

3. FAST commenced with a Financial Sector Commission on Modern Slavery and Human Trafficking. The Commission operated between September 2018 and September 2019. The Commission consisted of 25 leaders from finance, anti-slavery, business and human rights, and government. The Commission conducted consultations with experts from around the world, representing the finance sector, government, and civil society.

4. In September 2019 the Commission published [*Unlocking Potential: A Blueprint to Mobilize Finance Against Slavery and Trafficking*](#) (the 'FAST Blueprint'). The *Blueprint* provides extensive analysis of the challenges and opportunities for finance to address modern slavery and human trafficking. Its recommendations align with the UN Guiding Principles on Business and Human Rights (UNGPs) and relevant OECD Guidance.

5. The *FAST Blueprint* provides detailed recommendations for steps financial sector actors – both public and private – can take to address slavery and trafficking. These are framed in terms of five FAST Goals, against which the *Blueprint* identifies 30 Actions that should be undertaken to mobilize the financial sector. Goal 1 – *compliance with laws against modern slavery and human trafficking*; Goal 2 – *knowing and showing modern slavery and human trafficking risks*; Goal 3 – *using leverage creatively to mitigate and address modern slavery and human trafficking risks*; and Goal 4 – *providing and enabling effective remedy for modern slavery and human trafficking harms*, are particularly relevant to the UN WG on BHRs' consideration of ESG and how to strengthen the sustainable finance framework in line with international human rights and labour standards and principles.

6. Given the extensive research and consultation that underpinned the *FAST Blueprint*, this submission draws on the *Blueprint* as a source of insight into challenges and opportunities facing financial sector actors, and emerging practices, when addressing this particular set of human rights harms. This submission also draws on the substantial body of work FAST has produced since the publication of the *Blueprint* as well as its plans for future work in the area of ESG and modern slavery.

7. FAST is now undertaking a broad range of activities with financial sector actors to implement the *Blueprint*. This includes collaborative action with institutional investors, banks, and financial regulators in several jurisdictions, intended both to implement the *Blueprint* and to help these entities learn what effective action to address modern slavery and human trafficking requires. Additional details on these actions can be found on the FAST website, www.fastinitiative.org.

ESG and human rights standards

8. According to the OECD, “The investment community has come to consider ESG as an investment approach that seeks to incorporate greater and more consistent information regarding material environmental, social, and governance developments, risks and opportunities, into asset allocation and risk management decisions, so as to generate sustainable, long-term financial returns”.¹

ESG and human rights due diligence (HRDD) are different approaches to human rights risks. ESG is typically focused on financially-material risks to investors whereas HRDD is focused on risks to rights-holders. The exception in ESG investing are impact investors. These investors do not see financial returns as their primary objective.

The recent FAST, Modern Slavery and Human Rights Policy and Evidence Centre, and Bingham Centre for the Rule of Law report, [*Accelerating Change: The Potential of Capital Market Actors in Addressing Modern Slavery*](#) (the ‘*Accelerating Change*’ report), notes that “interviewed investors cited reputational risk and financial return as the top drivers to address social risks, with most seeing regulation as a crucial factor in guiding their actions ... On the other hand, impact investors mentioned being driven by positive impact and saw no trade-offs with financial materiality”.

There is currently no multilateral treaty that obligates States parties to mandate a human rights-based approach to ESG investing. However, investors interviewed by FAST and the Bingham Centre for the Rule of Law stated that they generally incorporate international ESG reporting standards and tools, often developed in the Global North. Investors in African countries mostly referred to using the International Finance Corporation (IFC) Performance Standards, as well as the IFC’s Policy and Performance Standards on Environmental and Social Sustainability, as their primary source for ESG disclosure requirements by investee companies. Other capital market actors referred to the Global Reporting Initiative (GRI), the ILO, and the UN Guiding Principles on Business and Human Rights.

9. The *Accelerating Change* report was based in part on interviews with asset managers, including private equity funds and impact investors, and asset owners (banks, pension funds, and endowment funds).

The report found that investors that try to address human rights issues in their investments largely focus on human rights policies rather than human rights practices. While the evidence review for the report found that the majority of investors were able to influence change in investees’ policies, there was not as much evidence on influencing outcomes in terms of reducing the incidents of modern slavery. The report suggests that some possible reasons for this may be that data on human rights outcomes are harder to measure or they may not be available to investors.

¹ ESG Investing: Practices, Progress and Challenges (Paris: OECD, 2020), <https://www.oecd.org/finance/ESG-Investing-Practices-Progress-Challenges.pdf>

State regulation of ESG investments

10. FAST, the United Nations Sustainable Stock Exchanges (SSE) Initiative, and Walk Free will soon publish a report that reviews 70 stock exchange ESG disclosure guidance documents for references to key terms related to modern slavery. The report also considers reporting requirements on modern slavery in different jurisdictions that shape the content of stock exchange ESG guidance documents. These regulations require disclosure of the management of social issues including human rights and modern slavery.

While financial regulators are increasingly mandating sustainability reporting, including human rights disclosures, most of these regulations are not aligned with the UNGPs nor do they require disclosure of the type of data on modern slavery that would help investors better understand the human rights impacts of their investee companies and the companies in their value chains.

To support States in developing regulations that would help equip investors with the information they need to make better decisions on human rights and modern slavery matters, the Inter-Agency Coordination Group against Trafficking in Persons (ICAT), led by FAST, is developing an issue brief on sustainable finance and trafficking in persons (TIP) that will include recommendations on TIP metrics that States should include in these regulations. We anticipate that the issue brief and recommendations will be published by June 2024.

11. The issue of false or misleading claims by businesses and investors is a significant challenge for States that are attempting to promote responsible business conduct and protect the human rights of workers and other vulnerable populations in global value chains. While there may not be a fail-proof solution, there are provisions that can be included in regulations to encourage accurate disclosures.

Such provisions could include mandatory grievance mechanisms aligned with the UNGP effectiveness criteria; mandatory third-party audits of submitted information; worker verification of business claims, where possible and with adequate safeguards and protection mechanisms; civil penalties for inaccurate or incomplete information and criminal penalties for intentionally submitting false information or intentionally omitting material information; and mandatory oversight and approval of disclosures by senior management (“C-Suite”) and the board of directors.

Investors and the corporate responsibility to respect human rights

12. According to the *Accelerating Change* report, asset managers and asset owners that participate in investment coalitions are more likely to engage with their investee companies on human rights issues such as modern slavery. Notable examples include the ‘Find It, Fix It, Prevent It Coalition’ in the UK which was initiated by CCLA Investment Management in 2019, and Investors Against Slavery and Trafficking Asia-Pacific (IAST-APAC) which is an investor-led, multistakeholder project comprised of 42 investors with AU\$9.4 trillion in Assets Under Management. Walk Free and FAST support investor members as knowledge partners and Walk Free is the Secretariat.

13. Investment coalitions help asset managers and asset owners increase their understanding of the UNGPs and their responsibility to respect human rights. As noted above, the investors in these coalitions are more likely to engage with investee companies on modern slavery and related issues.

For more information about the activities of IAST-APAC, see their 2022-2023 Annual Report here: <https://cdn.iastapac.org/content/uploads/2023/09/12060203/IAST-APAC-Annual-Report-2023.pdf>.

14. The *Accelerating Change* report found that investors' leverage can depend on investment strategy, asset class, management involvement, and share of investment.

Private equity firms noted that having a seat on the board of directors allows them to demand action plans, provide resources for policy development, hire social risk specialists, and validate their requirements through on-site visits.

Investors' decisions to monitor and engage with companies post-investment is largely based on asset size. All three pension funds interviewed for the report stated that they engage with companies based on their ESG priority areas and/or asset size (i.e. the top 10 largest companies in their portfolio).

15. Meaningful stakeholder consultation is critical to an effective, human rights-based, response to modern slavery risks and impacts in investors' operations and value chains. However, the *Accelerating Change* report found that nascent ESG management systems, lack of financial and human resources, and in some cases the unwillingness of investee companies to provide data, make it difficult for investors to monitor the conduct of all companies in their value chain.

Limited human resources also force some investors to make difficult choices about which company engagement efforts to prioritize, and for how long, in the absence of behaviour change.

The report also found that while some investors recognize the importance of engaging with civil society organizations and survivors of modern slavery, most do not do so. Lack of knowledge on which organizations to engage, especially in the Global South, and limited resources, contribute to this lack of meaningful engagement.

16. Stock exchanges are gatekeepers to capital for public companies. Their influence on listed companies and ability to facilitate more socially responsible investments make them a pivotal actor in global efforts to end forced labour, human trafficking, and other forms of modern slavery.

Stock exchanges and their regulators have the potential to strengthen business respect for human rights through ESG guidance documents, mandatory sustainability reporting regulations, and listing rules. The forthcoming FAST, SSE, and Walk Free report, *Modern Slavery: Analysis of Coverage in Exchange Disclosure Guidance*, reveals that while guidance to issuers on disclosure about modern slavery and related issues is becoming a market practice, there are several areas for improvement and significant variations across exchanges and jurisdictions. References to modern slavery related terms are primarily focused on the different forms of modern slavery rather than indicators or warning signs that modern slavery may be occurring, and the practices companies should take to effectively address modern slavery.

The FAST, SSE, and Walk Free report outlines several ways stock exchanges can strengthen their ESG guidance documents:

- Provide more detailed guidance on specific practices or other warning signs that can constitute modern slavery and which are crucial for companies to assess and address; this approach could be particularly useful for listed companies that are new to the topic.
- Extend social metrics that address freedom of association, collective bargaining and other fundamental human rights beyond the operations of listed companies to their entire value chains.
- Conduct a risk assessment of the potential exposure in their marketplace to human rights violations and risk for modern slavery – to help identify whether existing guidance needs to be expanded or dedicated guidance needs to be developed.
- Consider expanded or dedicated guidance on: modern slavery elements and indicators; positive indicators and red flags for other fundamental rights at work; good risk management practice for employees and suppliers; and remediation frameworks, grievances, and remedy.

Exchanges can also follow promising models already in operation. The Stock Exchange of Thailand (SET), for instance, working with FAST and Walk Free, published the first (and as yet only) disclosure guidance specifically on modern slavery, the [Guidance on Modern Slavery Risks for Thai Businesses](#) which sets out the definition of modern slavery; identifies the risks that modern slavery cases pose to business; examines specific modern slavery risks in the eight industries represented on the SET; and provides a detailed checklist for modern slavery risk management.

Investors and remediation through non-State based mechanisms

17. Australia’s ANZ Bank was the first large commercial bank in the world to launch a grievance mechanism to evaluate and respond to human rights related complaints associated with its corporate lending customers. ABN AMRO, a Dutch bank, is in the process of developing its own grievance mechanism. FAST is not aware of any asset managers or asset owners that have developed grievance mechanisms for individuals or communities affected by the business in which the investor has invested.

Recommendations to States, businesses, investors, and stock exchanges

18. FAST encourages States, businesses, investors, and stock exchanges to consider the findings and recommendations in the FAST *Blueprint*, the *Accelerating Change* report, the forthcoming FAST, SSE, and Walk Free report, the SET *Guidance on Modern Slavery Risks for Thai Businesses*, and the forthcoming ICAT issue brief on sustainable finance and trafficking in persons.

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19. In closing, FAST wishes to thank the UN WG on BHRs for its important work on the financial sector and business and human rights. We appreciate the opportunity to share our insights and views and look forward to continued cooperation on mobilizing the financial sector, including investors, to tackle modern slavery. ESG has the potential to transform the global economy and protect countless people from modern slavery. Building a sustainable finance framework aligned with international human rights standards and principles will be instrumental to realizing this potential.

Yours sincerely,
Andy Shen, FAST Government and Multilateral Organizations Lead