

CHILD LABOUR EVERYBODY'S BUSINESS



A REPORT BY CATALYST AUSTRALIA

CATALYST»

ABOUT CATALYST

Catalyst is a not for profit policy network established in 2007. We work closely with trade unions, non-government organisations and academics to promote social and economic equality and improved standards of corporate social responsibility. Our founding principle is to produce work that promotes good lives, good work and good communities.



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1. OVERVIEW AND RESEARCH APPROACH

1.1 INTRODUCTION

At first sight child labour may not appear to be a material issue for Australian companies and investors: Australia has labour laws that prescribe the minimum school-leaving and employment age. Australia also has a rich tradition in worker representation and a trade union movement active in advancing labour rights. However Australia is not an island when purchasing goods and services, and global markets for labour no longer align with national borders.

Today many companies operate through complex global supply chains.* The globalisation of business can provide opportunities for economic and social development; however, outsourcing labour without oversight can lead to worker exploitation, particularly as much of the production takes place in countries that are out of reach of Australia's national employment laws.

While there may be an 'out of sight, out of mind' approach to worker rights in the developing world, the issue of child labour is much harder for companies to ignore. Spurred on by civil society pressure[†] and global conventions underpinning the rights of children, the global movement to eradicate child labour has gained significant pace over recent years. These approaches are often reactive and have been in response to finding children working in supply chains. But increasingly, global unions and non-government organisations (NGOs) have joined companies and investors to find ways to minimise the risks of child labour in global supply chains.

This report looks at those efforts. It draws on extensive expert opinion and interviews to highlight steps that are being taken and challenges confronted along the way. It is a unique report in the Australian context, in that its central goal is not to expose bad behaviour but to inform and embolden companies and investors who want to take action about this issue with an evidence base upon which to act. The report brings to life the substantial work being done by unions and NGOs that can assist and guide those efforts. Above all, it is hoped the report supports more effective collaboration and partnerships between civil society, companies, and investors in the global fight against child labour.

1.2 AN ISSUE FOR AUSTRALIAN BUSINESS AND INVESTORS

The fragmentation of global production and trade has dramatically increased the length and complexity of supply chains, in which goods and services are produced and purchased both domestically and overseas. The Organisation for Economic Co-operation and Development (OECD) estimates that over half of the world's manufactured imports are intermediate goods, which are goods used as inputs in the production of other goods, such as partly finished goods.¹ Frequently these components are sourced from different parts of the globe.

Australia has not bucked this trend: six Asian countries comprise Australia's top ten trading partners². From January to February 2014, the import of goods rose to \$22,671m, \$9,951m of which is in intermediate goods and \$6,898m in consumption goods.³ Furthermore, in 2013 over half (53.1 percent) of Australia's imported goods came from the Asia-Pacific region.⁴ With over half of Australia's imports coming from countries in a region that has the largest absolute number of child labourers, child labour is a major human rights risk for Australian companies, investors and consumers.

* The focus of this report is on global supply chains. These are also referred to as global supply networks, global value chains, or global production chains.

† 'Civil society' is a term used to capture the role of trade unions, non-government and socially minded organisations.

1.3 THE EXTENT OF THE PROBLEM

In 2013, the International Labour Organisation (ILO) adopted the goal of eliminating the worst forms of child labour by 2016. It is estimated that the global number of child labourers has declined by 33 percent since 2000, from 246 million to 168 million. However over half of child labourers, 85 million children, remain engaged in hazardous work that endangers their health, safety and moral development.⁵

Child labour is most likely to be found in the agricultural sector (98 million children, or 59 percent of all child labourers). The services sector and the industry sector account for 54 million and 12 million child labourers respectively, the majority of whom are in the informal economy. Industry sectors that are of most relevance to child labour are construction, mining and manufacturing. Sub-Saharan Africa is the region with the highest incidence of child labour in terms of the proportion of the population, at over 21 percent. The largest absolute number of child labourers is found in the Asia-Pacific region: almost 78 million individuals.⁶

While child labour can impact on producers and consumers across the entire economic spectrum through the intricacies of global supply chains, there is no doubt that child labour is more prevalent in specific sectors. The significance of the agricultural sector was noted, while other sectors include the manufacturing sector, particularly textiles, clothing and footwear, and the primary materials industry, mining specifically. It is clear however that any unskilled form of manufacturing or processing of source materials can involve the use of child labour.

1.4 RESEARCH APPROACH AND METHODOLOGY

Catalyst engaged sustainability experts Banarra Consulting to develop a survey tool to gather the views of companies and civil society groups about their approaches to child labour. Interviews were conducted in April and May 2014. Participants included individuals and organisations with a track record or commitment to improving human rights and addressing child labour in global supply chains. A list can be found in Appendix A. The survey questionnaires are attached in Appendix B.

The response rate to the request for interviews varied. Non-government and trade union organisations participated enthusiastically. They provided a rich source of insight and experience about problems they are encountering, and steps that they see as crucial in the fight to eradicate child labour. A number of these participants have engaged with companies on this topic and commented knowledgeably on measures that they saw as effective.

On the other hand the response of Australian companies was extremely disappointing. One company provided extensive and valuable insights through a formal interview on a confidential basis. A few others stated they were positive about the research, but cited other priorities making them unable to provide input at this time. As an alternative, Catalyst invited select companies to complete a brief anonymous online survey. This reaped no results.

The lack of company involvement underlines the sensitivities of child labour in Australia and demonstrates a general reluctance by companies to engage with stakeholders about labour and human rights issues. It reinforces perceptions about the relatively unsophisticated approach of Australian companies on Environment, Social and Governance (ESG) issues, a perception that distinguishes Australian companies from their global counterparts.

Investors play an increasingly important role in influencing a company's approach to labour practices and human rights. An additional part of the research looked at steps being taken by investors to manage child labour and human rights risks. It was notable that interviewed investors did engage with companies on child labour issues. Their views on these issues were captured through a number of select interviews and a desktop audit of information published by global leaders, and where possible, follow-up discussions with those leaders. Typically investors respond to risks such as child labour through their ESG policies, which provide a mandate to engage with companies on this and other issues.

One of the important findings of this research is the difficulty in engaging collaboratively on child labour issues. Investors and companies may nominate preferred non-government groups to consult with, but there is no enduring architecture through which to bring all players together to advance their common goals. The Responsible Investment Association Australasia is one such hub, as is the Ethical Trading Initiative that operates in the UK and Europe. Other models, explored in chapter 5 of the report include investor and workers capital organisations. The case studies show that active investment approaches can provide the impetus to respond proactively when accompanied by collaborative local and global initiatives.

A resource guide issued with this report looks at Codes and Conventions and explains their strengths and limitations in dealing with child labour and other human rights issues.

2. CIVIL SOCIETY PERSPECTIVES: WHAT'S WORKING AND WHAT NEEDS IMPROVEMENT

This section unpacks the rich commentary provided by those interviewed for this project. It includes the perspectives of global and Australian trade union and non-governmental organisation (NGO) leaders. These organisations are active in the fight against child labour, and the commentary captures initiatives both local and at far reaches of the globe.

The interview questions are attached as Appendix B and the responses have been organised thematically in part 2.2, so as to highlight commonality of views. Many initiatives aimed at eliminating child labour were discussed: global governance frameworks, national legislation, self-regulation through industry initiatives, and companies auditing their supply chains. Furthermore, the respondents commented on the role of civil society and the use of multi-stakeholder efforts. While it is difficult to synthesise such a wealth of expertise, five themes emerged across the spectrum of responses.

2.1 MAIN THEMES AND FINDINGS

- **Legal enforcement and trade unions underpin everything.**

While active government involvement through legally enforceable standards is preferred, merely having laws against child labour does not stop it. An essential finding from this research is that child labour risks will be less pronounced in jurisdictions where workers are allowed to organise freely and there are effective, representative trade unions. To be clear, child labour and other labour rights breaches are most likely to occur in areas where organised labour and NGOs are suppressed, underrepresented, or have little capacity and expertise. Any stakeholder that is serious about tackling child labour must therefore be serious about enforcing broader labour rights and supporting a free trade union movement.

- **There are significant shortcomings associated with global coordination.**

While noting that efforts are increasingly organised at the global level, participants highlighted the disconnect between globally recognised conventions and their local or national effect, whether through legislative or self-regulatory enforcement mechanisms. This underlines the need for closer alignment of initiatives at all levels. There is also a need to address shortcomings of legislative and regulatory frameworks, for example when child labour occurs outside of legal frameworks, such as in the informal economy.

- **Avoid a “one size fits all” approach.**

The local implementation of international standards requires pragmatic mapping of the landscape, to see whose attention stakeholders can get, who they can influence and what approaches best suit the local country and industry context. In particular, the adoption of sector approaches to child labour can provide models for other sectors, but these must be contextualised to suit specific industry and country circumstances.

- **Due diligence must be about responsibility, not just risk.**

Scrutinising potential business partners prior to entering into contractual obligations is an important way to ensure business partnerships do not pose risks to companies through exposure to child labour. Because of due diligence, the notion of business responsibility and mitigation of adverse impacts takes a distinctive precautionary turn, away from merely auditing existing activities in core operations and supply chains towards promoting, protecting and advancing the rights of children. In this way, companies can have a transformative role in jurisdictions in which they operate.

- **Distinctive partnerships work better for companies than going it alone.**

The findings were clear that companies must avoid going at it alone, and instead flag their concerns and consult stakeholders that can help to establish whether child labour is an issue in the geographical context or the specific sector where they are operating. They must also draw on civil society expertise about how to gather information that goes beyond standard auditing procedures. Importantly, in this way companies can build on leading practice, and the monitoring of child labour becomes compliance-led rather than being standards based. Put differently, there is no need for companies to reinvent the wheel; they should instead rely on existing knowledge.

2.2 CIVIL SOCIETY: PERSPECTIVES, EXPERIENCE AND VIEWS

Global governance and frameworks

Evidence gathered during the interviews showed that internationally coordinated governance frameworks are important in countering the adverse effects of globalisation. Although considered useful as an overarching approach in eliminating child labour, it was the view of respondents that existing governance should be operationalised locally. It was further argued that the usefulness of governance depends on whether it is accompanied by enforcement and accountability mechanisms.

Many of the governance initiatives operate under the banner of the United Nations, most notably the International Labour Organization (ILO) and the two Conventions that are directly aimed at addressing child labour, namely No.138 (*the minimum age for admission to employment and work*) and No.182 (*the worst forms of child labour*). Respondents mention these Conventions as authoritative definitions but highlighted caveats. Specifically the distinction between “hazardous work” and “light work” and the possible exceptions for developing countries leave room for interpretation, for example in the deliberate or unintentional misframing of child labour as children or youth working.

“[...] it’s nice for a young person to have a job, but child labour is an abuse, it is a human rights abuse, it’s not children working, it’s not youth employment, it’s a certain type of abuse of human rights that occurs in a specific situation where somebody under a certain age is performing work, or hazardous work. Child labour is always an abuse, by definition.”

It was also pointed out that although the ILO Conventions are widely regarded as “sound but high level”, the existence of high-level initiatives does not guarantee local take-up and enforcement. An additional point here is that “what’s needed is not another one size fits all prescriptive reporting requirement, but contextual guidelines, principles and approaches”.

Apart from these governance initiatives there are many other frameworks such as the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the ILO International Programme on the Elimination of Child Labour (IPEC), and the Child Labour Platform (CLP) – now merged with the UN Global Compact’s Labor Working Group. These initiatives aim to operationalise approaches to child labour and have been developed using the input of business as well as civil society. These tools and benchmarks are discussed in the *Codes and Benchmarks* resource document accompanying this report.

The strengths and limits of national legislation

While many respondents felt overall that national legislation is crucial, views varied about its effectiveness and reliability. A number of concerns were raised about this, the most notable criticism among interview respondents related to the fact that even though labour laws might be on the books, “ [...] they are entirely ignored by the vast majority of businesses, there is no compliance, no enforcement”.

It also became clear that there is a conflicting dynamic between countries that say they have labour laws, but yet are signatories of free trade zone agreements where free worker organisation and trade unions are suppressed. Academic research has also pointed to the necessity to go beyond simply assessing legal enforcement when evaluating the effectiveness of national laws, and stress the importance of legislation providing avenues for workers to flag concerns.⁷

If national legislation is clear in its intentions and definitions, then businesses and other parties should draw on it for guidance. In general however, the existence of national legislation alone was not seen to offer a consistent and solid base for remediation of labour malpractices across jurisdictions, particularly as this is reliant on the role of government in putting resources into enforcing legislative standards. Thus, when looking for measures to support the eradication of child labour, national laws need to be assessed critically and steps should be taken to investigate whether, and to what extent, laws are enforced. An important part of assessing this is whether workers are able to express their concerns.

As such, apart from merely relying on enforcement through legislative demands, the incentive for adherence to ethical labour practices comes from industries and companies as well, following pressure from NGOs or not, and requires a critical and proactive approach that goes beyond purely adhering to and trusting local laws.

Industry initiatives and voluntary standards

Voluntary industry-led initiatives can take many forms, including industry certification systems, or other industry-wide voluntary codes and benchmarks. These share the attribute of having no legislative basis and of not being backed by authoritative institutions other than the industry body itself. In general, interview respondents expressed ambivalence about the efficiency of addressing child labour through such mechanisms, and the closed circuit nature of industry-led initiatives was specifically mentioned as a major downside. While initiatives occasionally do include stakeholder consultation, companies often see them as a competitive tool “enabling the majority of players in the industry to be certified, knocking out the worst performers [by] setting modest standards to which most of the industry can qualify.” Because of the lack of worker participation, such initiatives are perceived to be “[...] more about the industry window dressing rather than anything of real substance.”

There is also little optimism that companies are changing their practices through sustainability reporting. It was felt that disclosures currently do not seem to be driving change but instead are used as public relations tools for companies to make themselves look good. In addition to this the guidelines, frameworks and standards often have a general nature, meaning that their operational value is limited as they do not take the shape of ready-made tools applicable across different contexts and industries. As well few companies report on how signing on to conventions is operationalised across the business.

Despite this critique, it was also noted that voluntary standards or guidelines can be useful in the absence of government regulation. In these situations they may provide a pathway towards mandatory measures, as explained by one respondent, who noted that industries will usually only agree to a mandatory standard after the voluntary standard reaches a certain degree of penetration throughout the sector: “Voluntary standards [...] can be a positive force for change where the government is manifestly incapable or unwilling to act.”

Overall, although voluntary initiatives may be regarded as potentially useful overarching approaches to responsible business practices, they are criticised for not being legally binding. This argument is illustrated by the statement that the private sector should have an obligation to ensure there are no human rights violations in their operations, rather than only having the *responsibility* to do so.

Self-regulating measures

Closely related to industry initiatives and adhering to voluntary standards are self-regulating approaches taken by companies that involve adopting internal codes or policies concerning child labour. The frequently heard critique on this approach was that internal codes and policies are commonly unaccompanied by action, while the documents themselves stand in isolation from the circumstances.

"The main issue is still the self-regulating approach to CSR, be it child labour or any other issue. There may be some form of social auditing, but that is not very credible as long as there is no worker participation element to it. That has been the main mistake made in regard to CSR over the last decades."

Another example of ineffective self-regulation in the form of internal codes and policies is the fact that companies might not be able to apply these in certain jurisdictions. For example, if a company operates in a country where "[...] migrant workers cannot join a labour union and your code or policy relies on freedom of association, it's meaningless."

Thus for internal codes and policies to be meaningful, they cannot be segregated from the real world. Companies need to work with stakeholders to create change and give practical value to policy commitments. Importantly, these efforts must aim to transcend merely creating 'shared values' statements. It was pointed out that the idea of shared values is often wrongfully accompanied by the notion of 'shared responsibility'. However there is no shared responsibility among stakeholders, rather, companies should be accountable for their actions. Put differently: "[...] if everyone is responsible than no one is responsible".

Other efforts by companies that are considered ineffective include the reliance on donations to charities or other support programs for children, without addressing the negative impact of their own activities on the lives of children. Companies do not make up for human rights abuses by giving money to charity. One respondent quoted Professor John Ruggie, who twice served as a UN senior official and was responsible for ground-breaking work on business, labour and human rights. Ruggie observed, "[...] there is no equivalent to buying carbon offsets in human rights, philanthropic good deeds do not compensate for infringing on human rights."

Auditing beyond the first tier

Another important yet flawed part of the self-regulating activities of companies is the auditing of activities throughout the supply chain. The respondents view the supply chain audit efforts undertaken by companies as largely symbolic, often not venturing beyond the publishing of mission statements. In those cases where supply chains were being practically monitored, mechanisms were deemed to be ineffective and subject to misuse and manipulation.

"[...] unless there is a genuine multi-stakeholder body that is accrediting those supply chains, audit procedures are not worth the paper they are written on. If a company is monitoring its own supply chain or in fact paying a private firm to monitor for it, that is open to exploitation."

Where there has been progress in auditing supply chains, the focus has been largely limited to first tier factories and suppliers. The interviewees pointed out that the concept of tiers is increasingly outdated, describing it as belonging to the "social auditing supply chain days". It was argued that companies should not limit responsibility to tiers, but instead have overall responsibility for their activities across all levels of their operations.

Larger companies were described as being increasingly, yet modestly, mindful of activities in their supply chains, but respondents also expressed doubts about the extent to which companies are really aware of what is going on. For example, there is a difference between companies that have their own employees overseas and those that work through agents.

"If you are talking about Australian companies who operate internationally, directly, I think the standard will be quite high [...] when we are talking about supply chains and sub-contractors, that is where you get into the issue of having a very unclear relationship with what the standards are in other countries and what is acceptable and what is not."

There is a widespread view that companies need to examine supply chains in human rights terms and perform a risk analysis that takes child labour into account. This notion of due diligence has been propelled forward by the OECD Guidelines for Multinational Enterprises, as well by John Ruggie's UN Guiding Principles for Business and Human Rights.

The interview respondents made it clear that companies have "legal and moral responsibility for every step of their supply chain", all the way to the production and sourcing of materials. Disappointingly, the responsibility for monitoring supply chains is something that "most companies [...] don't take seriously". The amount of effort that companies were putting into solving the problem in their supply chains was described as questionable and the view was put forward that companies were engaging in "modest" rather than "stringent" efforts. This was confirmed by other respondents as well: "[...] retailers have not put any effort into assuring their supply chain or they have engaged in make believe practices."

Civil society's role and potential

Respect for trade unions and the right for workers to organise freely are of crucial importance in the fight against child labour, and are considered to be a critical safeguard. To advance these principles, civil society groups rely on a strong local representative base and on support from global organisations. However, free worker organisation in the guise of trade unions or other initiatives that promote workers' rights is not permitted everywhere.

Respondents therefore pointed out that it is important to take a pragmatic approach towards the conditions surrounding child labour in specific contexts. For example, it was noted that partnerships with governments are less likely to be an effective strategy in situations where workers lack freedom to organise. In these cases, civil society organisations must seek alternative ways to realise labour rights, such as exposure campaigns.

It is indisputable that civil society pressure has been the single most important fact to drive change and to draw attention to child labour. This pressure can take many forms, and these were widely canvassed by respondents. A frequently recurring strategy was reputational damage campaigns, which are deemed most effective in targeting larger companies and specifically those that produce consumer goods. These campaigns provide a strong opportunity to make businesses and the public aware of child labour issues.

Apart from publicly criticising companies, civil society organisations also play a direct role in resolving child labour issues, for example through initiatives in education. Similarly, organisations such as GoodWeave⁸, Global March Against Child Labour⁹ and the International Labour Rights Forum¹⁰ aim to create public awareness, while simultaneously lobbying governments and businesses. Although publicly shaming companies can be an effective approach, collaborative efforts can also be useful: "Most companies don't understand human rights, get frightened by it and child rights. There is a need to campaign, but also to hold their hand."

In order to ensure that there are enforceable labour rights in multi-lateral trade agreements, global unions especially continue to be on the forefront. For example, in the negotiations concerning the Trans-Pacific Partnership (Free Trade) Agreement (TPPA), trade unions are extensively lobbying for the contents of the joint chapter on labour rights. Their aim is to establish enforceable commitments linked to the eight ILO labour rights Conventions, and to achieve a non-derogation position, which means no labour law shall be weakened to promote trade and investment. These matters go to the heart of civil society, and are essential in efforts to prevent and remediate child labour.

Interview respondents also noted a few caveats in relation to the activities of civil society regarding child labour, most notably concerning funding models. It was argued that, unlike trade unions, some NGOs are dependent on donations from business enterprise to carry out their work. The danger in such a funding model lies in giving donors a pass, while these companies do not address the direct impacts of their own activities.

The importance of multi-stakeholder collaboration

Collaboration between multiple stakeholders was another stand-out theme in the interviews. The respondents mentioned the importance of formal partnerships, which usually take the shape of tripartite processes between government, workers and employers, providing opportunities for comments and discussion.

An example of multi-stakeholder collaboration involved the ILO convening and facilitating meetings between buyers and suppliers. This was explained by one respondent as critical in promoting understanding of the different pressures and constraints that buyers and suppliers are confronted with. An example was given of a situation where suppliers were able to explain to buyers how their cost structure was impacting on working conditions, in other words: demands for low cost goods can turn suppliers towards exploitative labour practices and result in the use of child labour.

Other mentioned multi-stakeholder initiatives were the Ethical Trading Initiative¹¹, which comprises companies, trade unions and NGOs that collaborate to secure workers' rights around the globe, and well as the International Cocoa Initiative¹², which involves NGOs, trade unions, cocoa farmers and the major chocolate brand companies in addressing the problem of child labour. The latter initiative was mentioned with some ambivalence, as one respondent regretted the lack of worker involvement.

"Most companies are willing to engage and look into child labour issues and try to remedy them in an isolated way from everything else, whereas we find it essential that the worker participation part is there and that mechanisms for industrial relations are being developed to find solutions."

As such, it can be seen multi-stakeholder collaboration in itself is not considered to be a silver bullet. Specifically concerning the cocoa industry in West Africa, it was also mentioned that although there is a degree of co-operation, "[...] no one is putting in the amount of resources that will change things."

Hence, instead of establishing partnership for the sake of establishing partnerships, there is a need to take contextual elements into account, such as the specificities of the industries, communities, legislative frameworks, geographical regions, and interests of the stakeholders involved. Only in this way can partnerships be productive, and can sufficient leverage be created to effectively deal with child labour issues.

3. HOW ARE AUSTRALIAN COMPANIES RESPONDING?

As outlined in Chapter 1, Catalyst had difficulty in engaging with companies throughout this research report.[‡] Even though a dozen companies with expertise and an interest in this topic were identified and approached for interview, only one had time to commit. While this was disappointing, it was heartening that civil society and investors interviewed were able to comment knowledgeably about how companies were responding to child labour.

The authors consider the lack of company participation to reflect sensitivities, as companies are often caught off guard in ‘naming and shaming’ type research and campaigns. Such exposure campaigns are important in drawing attention to exploitative practices but can constrain partnership approaches as outlined below. As well, Australian companies are considered to have a relatively unsophisticated approach to engagement in human rights and labour issues.

3.1 CIVIL SOCIETY – PARTNER OR ACTIVIST?

It is clear from the analysis in the previous section that civil society groups see their role as central in raising awareness about child labour and in leading responses to achieve its eradication. Participants were critical of the attempts made by some companies in response to child labour and saw their role as vital to holding companies to account. Some supported engagement, but saw a point at which an assessment needed to be made about whether companies were genuine in their efforts. Where this was not the case, it was felt civil society engagement should be withdrawn.

“Our experiences with any of these initiatives are very disappointing and have been across the board. [...] As long as it’s a child labour closed circuit, self-regulating system and an exchange of best practices only but not on measures taken to act upon any identified risk, it is not necessarily something that we want to invest our time in.”

Exposure campaigns were seen uniformly by those interviewed as important in drawing attention to child labour and are often the only way that the issue can be raised.

“I think reputational damage is more significant for companies that produce consumer goods [...] I do think there is more of an opportunity for civil society in the relationship they have with businesses, in engaging with companies, influence them, make them aware, and help to position them as leaders in that space.”

Indeed the company interviewed for this research saw such exposure as having an important role in forcing companies to act, particularly in circumstances where a company may not be aware of, or not be taking steps to eliminate, child labour in its supply chain. At the same time, a civil society respondent noted such campaigns can imply that a company is actively exploiting child labour and stated, “[...] no company really wants to be in this situation.” However, often a company found itself in this situation because it “[...] was not doing enough”.

The company respondent noted the inherent tensions between an activist and partnership approach in engaging with civil society groups. That is, a company may understand civil society groups in publicly exposing child labour – but will often experience difficulties in shifting the relationship with civil society from this activist model, towards the sort of partnership and meaningful engagement that will help companies work with others to limit their future exposure. Companies’ negative attitudes towards trade unions can also inhibit a partnership approach.

[‡] It is noted that ‘companies’ are referred to in this section as a homogenous group, but in reality companies respond in a variety of ways towards child labour and other human rights risks.

3.2 REMEDIATING OR CUTTING AND RUNNING?

Companies can play an emancipatory role to improve human rights by advancing and respecting the rights of the child. Additionally - or alternatively - companies may adopt a risk management approach to limit the threat of exposure, for example by avoiding certain markets or suppliers. Companies' responses to child labour in supply chains fluctuate between cutting existing ties with certain businesses or markets, and engaging with businesses or suppliers to lift their game. When taking the cutting and running approach, companies lose the chance to act as an emancipatory force by setting a higher standard for labour rights.

However in some places child labour is endemic and a company has to make a judgement about whether they want to work with a supplier to become a force for good. One respondent stated that companies need to “[...] build suppliers that will behave ethically”.

At some point however, companies need to assess whether suppliers “get it,” and if attitudes don’t change, a company “having done all things” might discontinue the supplier relationship.

Companies can draw on substantial guidance in adopting remediation and prevention programs from global and local trade unions and non-government organisations. Guidelines, such as the *Impact Operational Procedures for the Remediation of Child Labour in industrial contexts*, note that “[...] successful remediation requires a holistic, multi-stakeholder approach” and “[...] in every case, the interests of the child need to come first.”¹³

In providing an example of a company responding through remediation, one respondent explained what happened when a company found child labour in its supply chain:

“What [the company] did was they talked us through what they were planning to do and the approach they were taking to make sure it was in line with best practice, we gave them a few guidance points of what they might do and how they might execute that [...] and put in place remediation efforts”

Childhood education plays an important role in both the prevention and remediation of child labour. One of the respondents explained that a lot of their work had a “preventative focus”, and that their programs focus on “[...] livelihood development and providing education opportunities.” Apart from preventing child labour, education can also play a role in remediation of child labour. One of the interviewees provided an example of empowering and mobilising school children in rural regions of developing countries. The children engaged with companies by flooding them with letters and drawings, after which the company contacted the schools and the organisation who put this action together in order to address the issue.

“We just finished an ideas competition on child labour free zones. We approached schools and child labourers to present projects and activities on how to achieve child labour free zones in their regions. They identified products that involve child labour, and approached companies which they knew used child labour.”

One company targeted in this campaign “[...] initially did not want to meet with union representatives, until there were too many protests from children and schools and it became an issue in the media.”

3.3 MYTHS AND MISUNDERSTANDINGS

Civil society respondents raised several myths and misunderstandings that they felt undermined the fight against child labour. It was felt to be crucial that companies understood the limiting effect of such perceptions.

- An attitude that child labour is only an issue for developing countries, and not for Australia and other developed countries. That is, Australian companies do not have responsibility beyond their borders. This is an outdated view in the light of how modern businesses function through global supply chains.
- A misunderstanding that global initiatives and national legislation have nearly made child labour a thing of the past, and that signing-on to these tools alone is an adequate signal that the issue is being addressed. While substantial progress has been made over the past decades, there is a need for continued vigilance.
- Child labour is often considered as occurring in isolated industries and geographical regions. While child labour is more dominant in certain sectors and regions than others, it can afflict any poverty stricken community and any sector that relies on unskilled labour.

- The distinction between children working in industrial or in smaller settings is often misunderstood or misused. The most obvious of these misconceptions is the view that children in agriculture are largely working to support the family farms. This leads to the trivialisation of child labour and can implicitly justify children working. It also undermines the rights of children to a childhood.
- That self-regulatory standards or donations to charities are effective in offsetting the impact of child labour. These can enable companies to overlook the impact of their own activities.

“Would any brand tolerate child labour? No. I think that is very clear. Do they know what is going on and how much effort do they put into finding out what is going on, that is much more a question. Most companies are on a journey, partly because supply chains change, the issues evolve, whether it is child labour or living wage, it is not a static ‘pass-fail’ mentality, it is about what are you doing, how are you breaking your frontiers, what are you learning, how are you sharing that, what are you doing to tackle issues when you see them. The general sense is that Australian companies are early in that journey.”

3.4 SUPPLY CHAIN CHALLENGES

Few disagreed that companies face great challenges in managing the social and human rights dimensions of global supply chains. There were several specific challenges that civil society respondents felt companies should address, as follows:

- A lack of effective business activism and use of leverage to deal with child labour issues in developing countries.
- While dealing with child labour issues, companies often limit their focus to first tier suppliers where child labour is less likely to occur.
- Instead of severing ties with suppliers, which results in greater poverty, there is a need for strategies that minimise adverse impact, for example through paying school fees and finding employment for the parents.
- There is a need to shift from a standards-based approach to child labour towards a compliance-based approach and to follow this up with robust enforcement measures at a global, national and local level.
- Risk is defined narrowly and focused on reputational risk for the business enterprise of having child labour in a supply chain. Instead companies should focus on the risks of human rights abuses in developing countries.

3.5 HOW WELL DO AUSTRALIAN COMPANIES DISCLOSE THEIR APPROACH TO CHILD LABOUR?

Companies will often disclose their approach to child labour when asked by investors (see chapter 4), but few commit publicly to policies relating to child labour. This may reflect the uncertainty in actually knowing whether child labour exists throughout a supply chain, but public commitments and policies can be an important measure through which companies are held accountable.

To evaluate Australian companies' approach, Catalyst undertook a review of the reporting and disclosures of the Australian Securities Exchange (ASX) top 50 companies. This interrogated websites, Annual and Sustainability Reports and similar public material. It found that 28 of the top 50 ASX companies said nothing about child labour. A further 15 companies made only a generic or passive statement that gave no details of any action, policy or strategy in place. In total the public policies of 43 of 50 leading companies on this important issue were sparse or non-existent.

It is important to note that some companies only operate in Australia, so they do not see child labour as a material issue for their business. This may be why they do not reference it in reports. At the same time, the global nature of most businesses means that even when a company is not directly involved in overseas production, they may source products from overseas that could be made with child labour.

4. AUSTRALIAN INVESTORS AND CHILD LABOUR

This chapter looks at the responsible investment landscape in Australia and introduces the approaches to child labour. It draws from research and interviews with Australian investors to capture their insights and experiences in screening for child labour. It is noted below that child labour is in the very early stages of integration into a responsible investment approach. While Catalyst found great interest in steps that could be taken to best improve this and other human rights issues, it found many Australian investors appear to be undertaking this task without a full understanding of leading initiatives overseas, and without appropriate engagement with local and global trade unions and non-government organisations.

This underlines the need for greater investor/civil society/company collaboration and partnerships – a theme that has been persistently emphasised in Catalyst research over many years. A notable feature of the Australian landscape is that there is no ‘safe place’ where these issues can be collectively and collaboratively discussed. Australia lacks an Ethical Trading Initiative or similar coordinated non-government presence. It also lacks an activist workers capital framework to campaign for certain principles around human rights issues such as child labour. Such issues are beyond the scope of this report, but are critical to taking its findings forward in an effective and systematic way.

As a result typical engagement between investors and companies is often focused around a mutual commercial interest. In these situations, a company may take modest steps to appease investors who raise a red flag, while rejecting greater transparency through public disclosures to consumers and other interest groups about their approach to child labour or other human rights issues. Investors therefore need to be mindful of the extent and depth of company commitments, and engage with trade union and non-government bodies to independently assess them.

4.1 RESPONSIBLE INVESTMENT IN AUSTRALIA

Australia's responsible investment industry is established and growing; however the level of sophistication by which it is applied varies greatly across retail and institutional investors. As responsible investment is a known concept, Australian investors do not need to be convinced of the importance of taking a long-term view in their investment outlook. They accept that active ownership is part of their obligations as custodians of funds; that Environment, Social and Governance (ESG) factors do have an impact on the financial viability of an investment, and that divestment is a last resort for achieving real change. Australian investors agree that global codes and benchmarks on human rights, labour standards, and the rights of a child are accepted codes for benchmarking ESG issues.

The peak industry body, the Responsible Investment Association Australasia (RIAA), publishes a benchmark review each year indicating the prevalence of responsible investment across the industry in all of its forms.¹⁴ In 2012, Australian responsible investment funds, including socially responsible and ethical funds, as well as funds with above average¹⁵ ESG integration, were valued at \$135.4 billion or 14.5 percent of total assets under management (\$934 billion).¹⁶ By December 2013, the industry represented 16 percent or \$152 billion.¹⁷

According to the Global Sustainable Investment Alliance, in January 2013 the global figure for assets incorporating ESG is US\$ 13.6 trillion or 21.8 percent of total assets under management. Countries included Australia, the US, Canada, Japan, Europe, the other Asian countries and Africa. Europe is the largest group, holding 65 percent of the total, followed by the US and Canada who together with Europe make up 96 percent of the total.¹⁸

RIAA identifies several types of responsible investment used in Australia and globally. These include:

- Screening - for positive or negative investments according to a responsible investment charter.
- Best of sector - choosing companies with the best ESG integration.
- Thematic investment - portfolios with only investments based on a theme, such as 'free from child labour'.
- Impact investing - targeted investing in business and funds solving an issue of ESG.
- ESG integration - into the investment decision-making process. Like the United Nations Principles for Responsible Investment (UN PRI).
- Engagement with companies on ESG matters.
- Shareholder activism - taking action with voting rights and shareholder resolutions to raise responsible investment matters with the board of a company.¹⁹
- Norms-based screening - only investing in companies that accept and apply the internationally accepted norms for operating multinationals, such as respecting UN standards e.g. excluding cluster munitions as it contravenes the UN Convention (more common in Europe).²⁰

The most common form of responsible investment in Australia today is ESG integration, making up 89 percent of the strategies applied in 2012.²¹ Its usual form is assessing mainstream investments for ESG risks and avoiding exclusions, under the guidance of the portfolio's investment manager, whether internal or external. Screening is the next most popular strategy among Australian investors, making up 8 percent. Shareholder activism and engagement, themed investing and impact investing make up the other strategies. The RIAA found in their 2013 report that the ESG group included a small number of funds that are active in their ownership and engage with corporations, as well as using shareholder voting to champion their ESG goals.²²

"ESG knowledge is used to inform the analysis of risk, innovation, operating performance, competitive and strategic positioning, quality of management, corporate culture and governance and to enhance financial valuation, portfolio construction, engagement and voting practices." ²³

Many funds now provide investment products that exclusively offer an investment portfolio based on specific ESG requirements, or ethical considerations, in superannuation, green property and community investment funds. There are currently over 100 products available in Australia and New Zealand.²⁴

The global picture is different from Australia in that the most common responsible investing strategy is screening. Exclusionary screening is more commonplace and applied to US\$ 8.3 trillion in assets. The next most popular strategy is ESG integration (US\$6.2 trillion) followed by corporate engagement/shareholder action (US\$4.7 trillion).²⁵

4.2 WHAT ESG ISSUES ARE AUSTRALIAN INVESTORS FOCUSED ON?

Australian investors use various different ways to exercise their active ownership. As a result there is no one model but rather numerous methods by which to administer a responsible investment agenda. Funds can internally manage their investments or use external fund managers or brokers, or a mix of these, to assess for ESG risks. There are several service providers in Australia who offer retail or institutional investor members the service of assistance with ESG integration, active ownership support and knowledge-gathering on specific ESG matters. Some of these groups also offer investor collaboration among their members.

Some funds have complex internal structures where responsible investment strategies are engaged as a function external to the investment managers. Or in other cases, an asset owner may use an external fund manager for responsible investment risk assessment. The communication between the two groups with competing priorities, namely financial versus non-financial risk assessment, needs to be strong to achieve responsible investment priorities. Therefore, support from the highest levels of the fund is critical to getting it into an investment manager's agenda. The case presenting the non-financial risks must be made with quality information that is often not compatible with internal systems for analysis and programs used for assessing financial risk. These can be hurdles within investment funds.

The structure of the fund determines the model a fund uses to exercise its active ownership. For example a fund may not have the expertise or resources to engage directly with all companies on all issues of interest. Instead they would use an external service to engage with companies. This unfortunately removes the direct relationship with the company, and asset owners must find a way to develop an ongoing relationship with the company and monitor the issues to achieve their goals.

Knowledge gathering on the various ESG issues is another area of expertise that asset owners may not have the resources to develop. Collaborating with external stakeholders, research service providers, NGOs, trade unions, in-country contacts, global partners and other investors is critical to obtain good quality data for making sound non-financial risk assessment.

Funds integrate ESG to varying degrees. The basic level includes adopting a policy publicly at board level, requesting consideration of ESG as well as financial considerations in a portfolio, and reporting on this periodically. The above average level of integration includes the basics, as well as a dedicated responsible investment officer who monitors the work of the fund managers, whether internal or external, raises issues with the fund manager, pursues active engagement with a company, via fund managers or together, to raise ESG concerns, and continues engagement and monitoring until problems are resolved, or result in divestment if deemed to be a major risk.

Full transparency and reporting of matters must also accompany active ownership activities. As well, voting or proxy voting and investor collaboration is expected of above average performers. As identified by the RIAA, there are few in this category in Australia, however the group is growing: it increased by 33 percent between 2011 and 2012.²⁶

"Neither corporate advocacy or shareholder engagement have been taken on widely in Australia yet, although proportionally, funds under management with corporate advocacy as a primary approach have increased by 33 percent."

Australian investors generally have little difficulty getting access to companies to raise concerns. The commercial relationship supports active engagement in the form of a partnership. If access was difficult, an investor would consider this a 'red flag' concern in terms of the company's governance structure and levels of disclosure. Some funds have strict guidelines on their engagement strategies and markers that indicate how far to take an issue before considering divestment.²⁷ For example if the matter is an issue of conduct, then engagement would be the first step. But if the investor had clear screening guidelines not invest in, for example, companies contributing to tobacco production, then the investor would recommend divesting instead of engagement.

There is evidence that Australian investors address other varied ESG matters. The RIAA lists the health risks of tobacco; the social impacts of problem gambling; logging of old growth forests; the nuclear fuel cycle; armaments; and the environment.²⁸ Human rights and child labour issues are yet to appear as central to a fund's responsible investment agenda.

4.3 ACTIVE OWNERSHIP, CHILD LABOUR AND HUMAN RIGHTS

Globally and in Australia it seems to be accepted that issues like child labour are important at the highest levels of government and throughout the various international codes of the United Nations and the Organisation for Economic Co-operation and Development (OECD). However there is almost no publicly available information about Australian investors applying responsible investment strategies or exercising active ownership directly in regard to the elimination of child labour.

There is little evidence that the elimination of child labour appears in the policy, mission or beliefs statement of any Australian investors. Some however do mention that they aim to eliminate risks associated with human rights abuses and labour relations and standards.²⁹ No evidence can be cited on reporting the issue, advocating to regulatory bodies, engaging with companies, collaborating with other investors, trade unions or NGOs, or divesting from companies found to be contributing to child labour.

There is also little to no publicly available information to support evidence of Australian investors initiating child labour-related shareholder resolutions or proxy voting. Rather, research shows that this form of activism is not as common in Australia as it is in the UK and US. In Australia, such efforts often address governance issues relating to remuneration and director elections. Environmental resolutions have been on the increase and Australia brought forward its first specific climate change resolution in 2011.³⁰

Fuller information is not publicly available due to a lack of quality data for investors on child labour, a lack of reporting on engagements to eliminate child labour due to the commercial relationship of engagements with companies, and the desire to avoid reputational exposure. Underdeveloped policy, insufficient disclosure and integration of monitoring and assessing ESG are further factors that inhibit the free flow of information about child labour exposure. These gaps are exacerbated by the fragmentation of ESG issues and the difficulty funds have in prioritising them. These limitations were made clear by the Australian Council of Superannuation Investors (ACSI) in 2012, finding several impediments to integrating ESG into investment analysis, including difficulty in quantifying ESG factors, a lack of clear direction from asset owners and a concern about the quality of ESG data³¹

In 2011, the ACSI published research specifically on supply chain sourcing and Australian Securities Exchange (ASX) 200 companies, to inform members of the low level of activity of Australian companies in this area. The report noted very few Australian companies report on sustainability risk.³² ACSI produced a further paper examining supply chain sourcing and labour risk in consumer goods, which also reflected their previous findings. Australian companies are doing very little to monitor their supply chains for risk of human rights and labour rights abuses. The report identifies that the increased sourcing by Australian companies in regions and industries considered at high risk of child labour, greatly increases the chances of Australian investors being exposed to association with human rights abuses, involving reputational, political and legal risk.³³

"The majority of companies in the Food and Beverage, Food and Staples retailing, Consumer Durables and Retail sub-sectors are likely to be sourcing from locations with exposure to LHR issues [...] Investors should therefore expect these companies to evidence sound controls to manage these risks."³⁴ ACSI goes on to offer suggestions to member investors on how to engage with high risk companies to properly manage this risk.³⁵

Since the release of the report there has not been any further action reported by the ACSI as follow-up, such as company engagements on behalf of ACSI or individual members. That said, investors looking into child labour in their supply chain would be wise to prioritise those companies operating in geographical areas and industries more likely to be exposed to child labour. For example in Australia, retailers are engaged in more and more direct sourcing in offering their own brands, and this places them at higher risk of involvement in child labour if it is found within the supply chain.

Doubtless, other work may be going on among investors and companies regarding child labour issues. The difficulty is the public sharing of these matters due to reputational damage and the clear commercial relationship between investors and companies. However, collaboration on such issues is critical to advancing the responsible investment agenda in Australia. With the varying levels of responsible investment strategy among investors there is plenty to learn from each other. Funds that have dedicated the resources and implemented an above-average strategy for risk reduction on matters such as child labour could assist fellow investors, or indeed collaborate for support, to add further pressure to corporations to move towards positive and permanent outcomes.

4.4 GOING FORWARD WITH INVESTOR ENGAGEMENT ON CHILD LABOUR

Discovering child labour in Australian and international corporations as evidenced by this report is a hot issue currently emerging. Investors would be wise to be proactive as opposed to reacting when issues are eventually discovered.

This requires the adoption of clear and transparent policies at the highest levels, which are supported by a sophisticated system for engagement with companies, including monitoring and reporting regularly on progress towards meeting goals.

Working together is key

- The partnership between a shareholder and a company is unique and is free of the tension that exists in the activist relationship between an NGO and a company. It is recommended that investors take the opportunity to converse about goals and outcomes.
- Investors are urged to collaborate to increase experience and knowledge-sharing, and to constantly improve active ownership methods to effect real change. Several investors may be owners of the same company and by uniting can have greater influence on it. Disclosure on company ownership is recommended.
- Investors should collaborate with other investors and stakeholders to share expertise and build quality data around issues. Drawing on the expertise of trade unions and NGOs for field information, combined with internal investigations or local contacts, can help develop solid knowledge-gathering. Such groups often bring media attention when releasing reports, which assists investors in highlighting reasons for company engagement, while collaboration with experts in the field will help find solutions.
- It is important to survey members and clients about which ESG issues are important to them. Funds can survey their members or clients for support in prioritising ESG issues.
- Robust internal systems are essential.

When choosing a target issue, such as child labour, investors should:

- define the parameters by which success can be measured;
- set a realistic time frame;
- evaluate an investor's sphere of influence over a company to establish what can be asked of them.

In addressing child labour, an investor may be best advised to:

- ask a company to ensure independent monitoring of the supply chain and partnerships;
- ask for full disclosure of the findings;
- request regular reporting;
- set realistic and considered long-term time frames, acknowledging the complexity of child labour issues.

Use and further develop investor tools through collaboration

Several existing approaches can guide investors towards active ownership and focus on child labour. For example, the US Department of Labour lists goods most likely to be produced by child labour, while the Ethical Trading Initiative, as explained in the report's resources section 'Codes and International Conventions', provides a model for collaboration. The Committee for Workers Capital raises questions for company engagement on forced and child labour. Investor collaborations, such as SHARE's investor collaboration on Uzbek Cotton are also instructive. The next chapter further outlines some of these best practice investor initiatives.

It is important to note that active ownership can be exercised in many ways. Using several methods is often the best approach, as each corporate engagement will be different. For example:

- In developing policy and choosing ESG issues to focus on, funds could rely on international codes for support. Promoting and adhering to ILO Labour standards, OECD Guidelines and the UN Global Compact sends a clear message to corporations and other investors on your position.
- It is notable that many Australian investors do not have minimum standards, except for governance matters, before they invest in a company. Investors could consider establishing a set of investor

expectations for companies to adhere to, as does the Norwegian sovereign wealth fund's investment arm Norges Bank Investment Management (NBIM), as outlined in the next chapter.

- When the investment portfolio is too large to assess all companies for all ESG factors, funds can focus mainly on high-risk geographical areas and industries known for ESG violations. Selection of companies using a home bias or choosing market leaders is a strategy adopted by other responsible investors.³⁶
- Results can take years to achieve and investors with a long-term investment view can take the time to see their commitments though. This requires investors to commit the resources and funding to fulfilling long-term goals, and to test the bona fides of companies by regularly monitoring compliance – a task best undertaken by independent third parties. This helps ensure that the publicly stated commitment to the principle of eliminating child labour is genuine.

Generally, disclosure and responsible governance are good indicators of the company's operations and this should correlate with human right issues. Poor governance within a company, or a lack of transparency about ESG issues, would indicate potential for other risks further down its supply chain and partnerships.

4.5 GAPS IN SUPPORT FOR AUSTRALIAN INVESTORS AND FUTURE CONSIDERATIONS

The research has flagged several questions for investors. These are outlined below.

- It is difficult to access quality information on child labour issues.
- There is no Australian history of examples of investors actively and publicly engaging with corporations, nor any dedicated organisation offering guidance on child labour for investors. Much of the guidance developed is for companies to deal with child labour.
- There's a lack of collaboration in Australia on specific issues like child labour. The UNPRI offers a clearing house but perhaps there could be a space for investors to gather in Australia (the RIAA are developing this idea), or a group for Australian companies, trade unions, NGOs and investors to come together, such as the English-run Ethical Trading Initiative.
- ESG matters are often reacted to, rather than proactively dealt with. Resources of time allocation and money must be built into investment analysis to make meaningful changes.
- Investment funds need to move beyond reporting and policy and raise their standard for ESG integration to an above average level.
- Internally, asset owners and companies need senior management to champion the issue. If there is someone at a decision-making level who will accept personal responsibility, then the issue has a much greater chance of being resolved.
- Investors who engage with corporations are often told that it is the first time someone has raised the issue with them. Thus investors need to increase their engagement strategy to raise matters, and apply a 'please explain' level of pressure on an otherwise ignorant or complacent corporation.

5. BEST PRACTICE INVESTOR ACTIONS ON CHILD LABOUR

This chapter presents three comprehensive case studies to show how leading global investors are taking decisive action in their response to child labour. The case studies show that the first step is to commit to a strong and strategic approach to managing risk, and support this through the use of tools, a consistent framework and collaboration with partners, and most importantly, by decisive leadership from within funds. As well as demonstrating that effective action is possible on complex supply chain issues, such as child labour, the case studies should provide much needed guidance to Australian funds with a desire to be more active in managing the risks of child labour.

5.1 COMMITTEE ON WORKERS' CAPITAL

The Committee on Workers' Capital (CWC) is an international network of labour unions focused on the responsible investment of workers capital.³⁷ The group not only includes trade unions but also is directly linked to workers' superannuation or pension funds, the Trade Union Advisory Committee to the OECD and responsible investment shareholder groups such as SHARE Canada. The CWC works on five focal points: Shareholder Activism, Trustee Education, Economically Targeted Investment, Regulation and Policy, and Institutional Initiatives.³⁸

The CWC has developed various tools, produced research to support members and trains trustees to be active owners of workers' capital. Members are supported and encouraged to 'ask the difficult questions' of asset managers to ensure their investments are not exposed to unnecessary Environmental Social and Governance (ESG) risk. For example, CWC members participating in a trustee forum have identified several 'red flag' responses from asset managers that indicate either inexperience with responsible investment, lack of enthusiasm to engage, or a disbelief in responsible investment matters in the investment universe.³⁹ Trustees or shareholders can assess the responses from their asset managers, and their attitude to responsible investment, and therefore judge the level of exposure to risk on these matters for their investments.

Broader ESG initiatives

In addition to passing on skills to members to integrate ESG at the fund level, the CWC coordinates campaigns around issues of concern to members and helps them to participate. Issue specific initiatives targeted by the CWC in the past include trade and human rights in Burma, labour rights violations in Deutsche Telekom/T-Mobile USA, executive compensation, labour disputes with BHP Billiton Australia, and most recently the Accord on Fire and Building Safety in Bangladesh.⁴⁰

The CWC produces research and coordinates initiatives among its members to progress active ownership based on research findings. Several recent studies include CEO Pay Watch, Occupational Health and Safety and a global proxy voting review of key votes important to workers.⁴¹

Focus on child labour

In 2010, the CWC chose to focus on forced labour including child labour as an international initiative for investors to take forward to companies as a key area of concern. They developed two research papers to support their working groups in raising the issues. The goals of the initiative are to raise awareness of child labour and forced labour with institutional investors, share information on how to engage with companies on the issue, share information on previous efforts, work collaboratively, and move companies to improve their risk management strategies.⁴²

The first paper on forced and child labour assists investors to build their knowledge on the issue. Investors are given facts on how the issue constitutes a risk to investment. It identifies the legal frameworks or international codes that are breached when child labour and forced labour is allowed. It equips investors at trustee or institutional investor level to identify geographical areas and industries with a high degree of exposure to forced and child labour. The paper presents the challenges in raising the issue with asset managers and companies. To complete the briefing paper the CWC includes a call to action with several suggestions at fund level, as well as tips for raising child labour and forced labour with companies.⁴³

The key finding of the paper, particularly in relation to child labour, is that it is a global problem that investors are likely to be exposed to within the investment universe. Child labour is prevalent in specific industries and in geographical locations. This can help asset owners to prioritise particular areas of their investment portfolio for analysis for exposure to child labour.⁴⁴

There is global agreement at the highest levels of government and among multinational enterprises for the abolition of the worst forms of child labour. There is also often a legal case against child labour, which together creates a significant risk to companies associated with it. Investors supporting these companies are exposed to political, reputational, profitability, legal and regulatory risk.⁴⁵

Getting the issue on the investor agenda

Child labour as a human rights issue has to compete with a very busy responsible investment agenda. Getting the issue on the table at fund level is the first challenge, and therefore key strategies are building knowledge and making a credible case for why child labour is an investment risk. Instead of proactively addressing ESG matters, many investors react to issues instead. The paper cites the example of investors becoming more aware of ESG issues following the financial crisis. Collaborating with other investors on this issue is another way of raising its level of priority.⁴⁶

Too much and varying quality of information presents a challenge to investors. In addition, there is no single place for investors to find information on ESG issues. The paper raises relevant questions: "What are the information needs of investors who wish to consider forced labour as part of their investment decision-making process? What mechanisms should be fostered so as to meet these needs in a timely and actionable way?"⁴⁷

There is genuine agreement in the global investment community that there is a case for ESG matters having a financial impact on companies. Quantifying this however continues to present problems for investors engaged in responsible investment. In addition, the paper raises the question "are all ESG matters important to the fair presentation of a company's financial condition and operational performance?" and "Are there aspects of child labour that are considered crucial? How can they best be quantified?"⁴⁸ These social metrics continue to present a challenge to responsible investors.

The paper suggests that looking at supply chain issues concerning child and forced labour can be daunting for investors due to the scale and scope of the problem. Prioritising known high-risk areas and industries begins to limit the scope. There are also some tools out there that can assist in breaking down the analysis, for example the US Department of Labor is required to "monitor and combat child and forced labour". The Department must produce a list of all goods it believes to have been manufactured by child labour.⁴⁹

Five Action Points

Completing the paper, the CWC suggests five points for action to take on child labour as well as matters to raise directly with companies. The five points they suggest are:

1. Assess your risks: exposure to child labour, how are these risks assessed and what is the strategy?
2. Take a public position: at the highest levels of the fund take a position and report on it.
3. Communicate with plan members: gain their feedback and commitment, be transparent.
4. Engage with companies directly: explain the risk and request specific measures to ensure they are not complicit or contributing to child labour.
5. Share information and network with other trustees and investors.

The CWC has also developed a list of questions for investors to ask companies specifically to determine exposure to forced and child labour. These have been annexed to the report (Appendix C).

The CWC highlights a specific case study on the Cocoa industry and actions taken by NBIM and APG, a Dutch pension fund, to address issues of child labour. The next stages of the CWC's investor initiative on forced and child labour will involve working with institutional investors on improving corporate policies and practices in the consumer goods sector.⁵⁰

Critique

The case studies supplied by the CWC on forced and child labour form a very small sample of investor work in this area. Therefore, it is difficult to draw too many conclusions from the work evidenced in the paper. There is room for further analysis of new cases and interviews. In addition, the slow moving nature of this work also lends itself to follow-up of existing works to provide a more full picture of successes and challenges. The CWC suggest further analysis of quantitative techniques, including the impact of investor action and media exposés on share price.⁵¹

5.2 SHARE

SHARE is a Canadian based responsible investment service and a member of the CWC. SHARE is responsible for the coordination of the Secretariat of the CWC.⁵² It works with pension funds, mutual funds, foundations, faith-based organisations and asset managers.⁵³ SHARE offers services such as research and guidance materials that help investors integrate ESG issues into their investment decisions. They are also involved with policy and law reform proposals, and proxy voting recommendations.⁵⁴

SHARE has been particularly engaged in assisting clients to incorporate good systems into their funds for the ongoing assessment of ESG risks. Without a good system, crucial issues cannot be raised effectively. Sophisticated tools have been developed to break down the steps.⁵⁵

They identify the following points:

- Achieving ‘buy in’ at board level.
- Trustees gaining support from members by engaging with them on important issues as well as reporting and keeping them informed.
- Policy on responsible investment needs to be adopted publicly at the highest level. It should include resources dedicated to making responsible investment risk assessments.
- Quality investment managers skilled at responsible investment risk management are essential as they are often the people who engage with companies.
- Owning the proxy votes and setting up proxy vote positions on governance, executive pay and human rights abuses, environmental risk etc.
- Having a set of agreed engagement practices with inbuilt annual reviews, monitoring, and reporting transparency.⁵⁶

Successes in implementation

SHARE is also involved in a range of active ownership strategies. It specifically supports clients in:

- Proxy voting advice and reporting how SHARE’s member funds voted on issues including on responsible investment and human rights.⁵⁷
- Shareholder resolutions: creating resolutions and supporting institutional investors at AGMs, including child labour concerns.⁵⁸
- Company engagement/regulatory engagement.
- Investor collaboration, including with NGOs.
- Training of trustees.

SHARE Case Study: Uzbek Cotton

SHARE engages in investor initiatives and has recently been involved in championing child labour issues in the cotton industry in Uzbekistan. As part of a network that began in 2007⁵⁹, SHARE are working with the As you Sow Foundation, along with US and UK civil society groups and other investors, to end forced and child labour practices in the Uzbek cotton harvest. SHARE’s goals include bringing in new investors to offer support, and engaging with Canadian retailers to analyse their supply chain sourcing, to ultimately boycott the use of Uzbek cotton until child labour and forced labour is eliminated.⁶⁰

“The investor coalition is writing to companies urging them to trace the source of cotton in their supply chains and to instruct suppliers not to use cotton harvested in Uzbekistan.”⁶¹

In 2013, the campaign achieved a milestone of success after years of campaigning. Last year's harvest did not use children under the age of 15 for the first time, however there was still forced labour involved.⁶² The group believe that the pressure applied by 140 companies around the world to boycott Uzbek cotton has led to this success.

A survey performed by the Responsible Sourcing Network (RSN), which SHARE are part of, measured additional outcomes by companies to date:

- 35 percent of the 49 companies surveyed by RSN have a robust policy on the issue.
- Almost 41 percent require their suppliers to trace the country of origin of the cotton they use.
- Only 12 percent have established independent auditing of the cotton spinners/mills in their supply chain.⁶³

SHARE advocates that further work for institutional investors on this issue should include engaging with companies to:

"[...] adopt more robust practices to trace the source of cotton in their supply chains and eliminate Uzbek cotton where it is found, to be more transparent about their commitments, practices and challenges when reporting publicly, and to work with other companies and stakeholders to advocate for an end to forced labour in the cotton industry worldwide."

To date, SHARE continue to work on the campaign and are engaging with four of the biggest clothing companies in Canada, where progress is being made and engagement continues. Kevin Thomas, the Director of Shareholder Engagement at SHARE, explains that they are also holding webinar information sessions in collaboration with other funds and speakers from the cotton campaign, to address trade unions and encourage member pension funds to join the network.

"Investor advocacy for a global product boycott is rare; however, as demonstrated in the case of apartheid in South Africa, boycotts can be effective in initiating change. Clothing retailers and brands are particularly responsive to concerns regarding supply chain labour standards because of the anti-sweatshop campaigns of the 1990s. To date, many of the companies that suffered both investor and consumer pressure on the sweatshop issue are industry leaders in addressing child labour in Uzbekistan."⁶⁴

Critique

SHARE is approaching active ownership on a myriad of issues and using many methods to achieve results for its members. Raising matters of child labour among other ESG issues with corporations has its challenges, which include the following:

- The need to collaborate with others for expertise and solidarity.
- Getting the responsible investment risk assessment structures in place within your investment fund as a basis to carry out thorough and lengthy campaigns with companies to achieve change.
- Focusing on several activities to get the message across and influence change.

5.3 NORGE'S BANK INVESTMENT MANAGEMENT

Three separate groups administer the Norwegian Government's sovereign wealth fund, called the Government Pension Fund Global (GPFG). Funds are managed by the Norges Bank (Norway's central bank), which internally has an investment management section called Norges Bank Investment Management (NBIM) responsible for the active ownership of the fund. The other two groups governing the fund are the Ministry of Finance and the Council of Ethics. The Ministry owns the fund on behalf of the Norwegian people. It sets investment guidelines and risk limits, overseeing the GPFG's activities. The Council of Ethics advises on ESG risks, according to the Ethical Guidelines.⁶⁵

The GPFG are asset owners who derive their funds from the sale of Norway's petroleum assets and its total assets are currently valued at NOK 5110 billion or around USD 855 billion dollars (first quarter 2014).⁶⁶ It is one of the largest sovereign wealth funds and pension funds in the world, accounting for around one percent of total global equities markets.⁶⁷

GPFG's Responsible Investment Policy

GPFG has a broad and diverse share portfolio. It aims not to have a controlling stake in the companies it invests in. The average investment allocation is between less than one and ten percent. The GPFG is renowned for its transparent, responsible investment practices, which are determined by the 'Ethical Guidelines' established by the Ministry of Finance.⁶⁸ The obligations of the fund, as stated by the Ministry of Finance are that "[...] it should be managed with a view to achieving a high return for the benefit of future generations, and there should be respect for the fundamental rights of those affected by the companies in which the Fund invests."⁶⁹

The NBIM is responsible for the active ownership of investments. It measures its financial and non-financial decisions in line with the fund's Ethical Guidelines as well as the UN Global Compact, and the OECD Guidelines for Corporate Governance and Multinational Corporations.⁷⁰ NBIM advises the Bank on ESG matters and on the purchase, reduction or divestment of an asset.

NBIM takes active ownership seriously and is transparent about all matters concerning its responsibility, such as making shareholder voting records available on their website in Norwegian and English. They use all the tools of active ownership, including engagements with companies and other investors, shareholder voting and proposals, regulatory dialogue and dialogues with recognised experts in global standards. Positive and negative screening strategies are applied as well as divestment.

"2013 saw more than 2,300 meetings between representatives of the fund and companies' management, and we voted at more than 9,500 shareholder meetings. We have clear expectations of companies in areas such as corporate governance, shareholder rights, social issues and the environment."⁷¹

NBIM's Investor Expectations on Children's Rights

In 2006, the Executive board of the Norges Bank agreed in their corporate governance strategy to focus on child labour and recognised it as a risk to their investment portfolio.⁷² This strategy included the evaluation of portfolio companies including their subsidiaries and supply chain, "[...] to the extent that these can reasonably be controlled or influenced by the companies in which NBIM is a direct shareholder"⁷³. In 2007, NBIM released their 'Investor Expectations on Children's Rights' publication and an annual survey on the disclosure of matters relating to child labour.⁷⁴ The UN Convention on the Rights of the Child and ILO's Conventions on child labour form the basis of the expectations.⁷⁵

Companies identified to be in high risk geographical areas and in industries commonly using child labour are requested to meet the fund's expectations as identified in the publication. These include:

- Child labour policy
- Continuous risk analysis
- Preventive and corrective action plans and programs
- Supply chain management systems
- Monitoring systems
- Performance reporting
- Integration of the potential economic impact of social issues into the company's strategic business planning
- Transparent and well-functioning governance structure.⁷⁶

The NBIM use the publication as a form of conversation-starter in an engagement with companies. Each year they also survey companies in the portfolio exposed to high risk of child labour, and rank each company out of 10 for their reporting on child labour issues. The top companies are published for their leading example. Each year more companies have been surveyed and fewer companies are receiving a low score. Findings of the reports are used to prioritise dialogues with companies in order to improve their scores.⁷⁷ The annual survey is an indication of what companies are reporting on and making public, however it is not used as a measure of companies' attitudes and actions towards child labour.

Working Collaboratively

NBIM is developing an internal database of information on individual companies, countries and industry sectors including mapping best practice on dealing with child labour. They source data from all means, globally and locally, including external sources, particularly engaging with stakeholders, voting records, internal analyses and more to strengthen their knowledge.⁷⁸

"When it comes to social issues relating to companies' activities, we find natural stakeholders among their employees, those working in their supply chains, investors, the local population where the companies operate, purchasers of the companies' products and services, NGOs, politicians, experts and specialists. These stakeholders can often have different priorities, views and approaches, but often their interests coincide, and sharing knowledge and experience can be useful either way."⁷⁹

NBIM have made it their goal to work with other investors to champion their expectations on child labour. As a member of the UNPRI and being committed to working collaboratively with other investors, the fund uses the Clearinghouse as a place for communicating with other investors on their model for engaging with companies on child labour. The fund also works with other shareholders to support or propose matters at company annual general meetings (AGMs). There is often a point of engagement with a company both before an AGM on a proposal, and after an AGM if the proposal was given. NBIM considers this a key moment to engage with a company, which clarifies how the company chooses to handle the matter.⁸⁰

Case Histories: NBIM's ongoing engagement

NBIM has several cases where they have actively engaged with companies on child labour issues with varying results. Three significant cases are the ongoing engagement with the chocolate industry, the Monsanto case and the divestment from Zuari Agro Chemical seed production in India.

The chocolate Industry

Child labour in the cocoa plantations of West Africa continues to be a problem. After nearly a decade of empty commitments to reform by the world's leading chocolate manufacturers, NBIM teamed up with APG, a Dutch pension fund, to engage with the industry leaders to say it was not good enough. In 2008, they issued their demands to the companies to ensure the quality of their cocoa and ensure it is produced responsibly. The investors laid out their expectation of the companies to monitor their supply chain and report on the conditions for the farmers where the cocoa was sourced indirectly or directly.⁸¹ With little progress being made, in May 2010, the funds issued a public statement to the chocolate industry to put in place concrete measures and set targets to abolish child labour in their supply chains.⁸² APG went on to directly engage with Nestlé regarding improved supply chain monitoring.⁸³ NBIM have not made further statements on progress in this area.

Monsanto and hybrid cotton seed production

Investigations in 2005 and 2006 by the Council of Ethics discovered that US company Monsanto was contributing to child labour in the hybrid cottonseed industry in India. The Council of Ethics found this to be a risk to the GPGF's investment and recommended divestment from the company. However subsequently, a request was made by the Norges Bank to engage with the company at board level with the aim of improving the situation, which was agreed by the Ministry of Finance.⁸⁴

The Bank held a series of meetings with the company, where the company agreed at its highest levels to look into and report on the situation of child labour. The company confirmed that they have a 'zero tolerance' policy on child labour. Over 2007, the company took many steps to eliminate the use of child labour including monitoring, training, setting up internal structures at head office and locally to monitor human rights abuses. Additionally the company acted to influence a business partner working in the industry to also take steps to introduce a policy against child labour, and monitoring of it. The company agreed to initiate an industry-based group with the support of NBIM to make their initiatives an industry standard. The fund was satisfied with the progress made by the company and agreed to continue dialogue in 2008 and onwards. The company was removed from the exclusion list.

In 2009, the global industry body for plant science 'CropLife International,' of which Monsanto is a member, adopted an industry standard to prohibit the use of child labour by suppliers or business partners in the supply chain.⁸⁵ NBIM was named as a driving force behind the standard. "This cooperative effort will probably increase the possibility of achieving adequate monitoring of the child labour situation on the ground."⁸⁶

Zuari Agro Chemical seed, India

This portfolio company, of which GPFG owned 1.5 percent of its shares, was found to be contributing to the worst forms of child labour by the Council of Ethics in 2013. After two years of monitoring and investigating the company, it found 20-30 percent of the work force to be child labour. The company does not directly cultivate the seed, however it is under the commission and supervision of the company. The Council of Ethics believe the company has a close working relationship with the farm and thus is responsible for systematically contributing to the worst forms of child labour, based on the nature of the work.

The fund did not receive a response from the company on its first engagement by letter. After the fund sent a second letter, the company denied any child labour after conducting its own inspections, however it was unable to provide any details to the Council of Ethics. The company stated that all contracts stipulate that cultivators must not use child labour. It also stated it had no control over suppliers or contractors. The Council of Ethics sent further information for the company to respond to, and found the response equally unacceptable. In March of 2013, the Council of Ethics recommended and achieved GPFG's divestment from the company.⁸⁷

Critique

NBIM have identified two elements critical to monitoring child labour and children's rights. These are collaboration between companies in the same industry and regions on codes of conduct, monitoring and auditing; and assuring the high quality external monitoring and auditing.⁸⁸ "Work on children's rights at NBIM is a matter of being 'patiently impatient'. On the one hand, NBIM demands improvements that are visible in the short term and can be seen in companies' results from year to year. At the same time, NBIM and other players need to be aware that improvements often take time. The infrastructure is complex; in many places, child labour is an integral part of the economy; overly rapid change could actually make things worse for the children; and it can take time for changes to have an effect. It helps here that NBIM has a long-term investment horizon. We signal to companies that we, as shareholders, plan to work on this issue for many years to come, and that we wish to contribute to lasting solutions, not short-term publicity campaigns."⁸⁹

Key findings

- **Method for choosing the target for raising the concern:** no exact science, relationship to country of investor or market leaders
- **How to frame the issue to investors:** focus on reputational and other investment risks, not on the human rights abuse.
- **How to focus the proposal or 'request' to the company:** investors raised matters indirectly by requesting disclosure of information that would then lead to further constructive evidence about child labour or labour abuses. They also made a request to ensure sustainability and quality of supply by identifying methods for monitoring this and the conditions of labour.
- **Methods of engagement with companies:** engagements are company specific. A mixed strategy works best. No one method is strong enough in itself. Shareholder proposals created public pressure and helped draw attention to matters, as did media and industry bodies buy in. Some investors followed an established methodology as per their responsible investment engagement strategy. Divestment was always regarded as the last step.
- **Work in collaboration:** involve other key investors to raise the stakes of the claim with the company. Each stakeholder brings something valuable to the initiative, e.g. trade unions can deliver key contacts. Regulators have a role to play, particularly in areas of disclosure.
- **How to measure your impact:** measure close to the sphere of influence and count the results with companies, rather than thinking about freeing children from child labour. Be willing to sustain engagement over several years and devote time and resources to doing so. Continuously monitor.
- **Challenges and gaps in resources:** Access to quality information about child labour in some countries is difficult to get. It's necessary to work collaboratively with others like NGOs, ILO and an in-country contact. Global supply chains are complicated and difficult to navigate but that's not an excuse for failure.

CONCLUSION

The insightful views from civil society respondents and active investors have demonstrated that while valuable work is being done to abolish child labour, we are only at the beginning of the journey.

The drastic redefinition of global production, where frequently invisible supply chains underpin economic activity, requires an active response to the accompanying challenges. This report has focused on one such challenge - child labour.

The expert interviews, research and analysis has shown that action is possible, that guidance, frameworks, collaborative and activist models do exist to drive change, and that there is a determined community that acknowledges that unprecedented global economic activity is not just about opportunities but equally about responsibilities.

Trade unions and non-governmental organisations are at the forefront of the drive for change. Increasingly, they are joined by investors who are taking steps to manage the risks associated with exploitation.

The avenues of resistance and catalysts for change outlined in this report are promising, but require extraordinary effort and commitment by all parties, and recognition that there is no definite outcome or end state of global governance. One exploited child will always be one too many, and new challenges will continue to arise, demanding new strategies for change and ongoing vigilance.

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APPENDIX A - List of individuals interviewed

Amy Schwebel

Senior Research Officer
Australian Council of Trade Unions.

Dwight Justice

Policy Advisor
International Trade Union Confederation.

Jeroen Beirart

Project Coordinator Forced Labour and Trafficking
International Trade Union Confederation.

Pablo Berrutti

Head of Responsible Investment Asia Pacific
Colonial First State Global Asset Management.

Peter Colley

National Research Director
Mining & Energy Division
Construction, Forestry, Mining & Energy Union.

Peter McAllister

Executive Director
Ethical Trading Initiative.

Manfred Brinkmann

Coordinator of international affairs
German Education and Science Workers' Union (Gewerkschaft Erziehung und Wissenschaft).

Mark Zirnsak

Director, Justice & International Mission
Synod of Victoria and Tasmania
Uniting Church in Australia.

Melissa Stewart

Senior Advisor
Child Protection & Trafficking in Persons
World Vision Australia.

Nat Burke

Policy Advisor Government & Multilaterals
World Vision Australia.

Michele O'Neil

National Secretary
Textile Clothing & Footwear Union of Australia

Ruth Dearnly

Public Advocacy Manager
World Vision Australia.

Sue Longley

International Officer, Agriculture and Plantations
International Union of Food workers

AustralianSuper

APPENDIX B - Survey questionnaire

Understanding the NGO's purpose and role in relation to child labour

Purpose: Understand the areas where this specific NGO can provide expertise/insights, also for future collaboration

- To provide us with some context, could you give us a brief overview of [INCLUDE NGO NAME] including what you stand for/do in relation to child labour or human rights more broadly? Has your organisation ever been involved in a child labour campaign? If so how was it received?
- With what stakeholders do you work in this space? (E.g. Australian/overseas companies, their suppliers, government, civil society, community organisations, etc.) How so?
- In what geographical locations do you work/focus on in relation to child labour?
- What are your role and responsibilities at [INCLUDE NGO NAME]?

Establishing the context for child labour

Purpose: Get insight into 'the world of child labour', common definitions, and how it applies to Australian companies

- What is your definition of child labour? What is it based on? (I.e. which, if any, international standard or conventions)
- What differences are there in defining child labour and what are the implications?
- How does child labour relate to child work and young workers?
- Are there any misconceptions on what child labour is? What impacts do you believe this has?
- If you think about Australian companies, how relevant or material is child labour to them? (E.g. which particular industries or sectors are most exposed?)
- What do you base this decision on (whether or not it is relevant to them)?
- How does child labour potentially affect such companies? (E.g. is it in relation to their own overseas operations, their local business partners or their supply chain?)

What is and isn't working?

Purpose: Understand, at a high level, what goes well and where challenges exist

- In terms of addressing child labour, how active are relevant Australian companies in this space? Is it topical/part of the conversation at all?
- Do you think Australian companies understand child labour and are well prepared to manage their exposure to the issue?
- Can you provide an overview of the historical development of the issue of child labour to now? Is there a trend of it becoming part of Australian companies' agenda's?
- In terms of addressing child labour, what if any, examples of good practice have you seen by (Australian or international) companies? (E.g. in relation to investigation or remediation) Please explain, including:

What was the issue?

What area of child labour management does this concern? (E.g. formalising commitments and taking a public position on child labour, identifying child labour, working with suppliers or other stakeholders on child labour, responding to child labour through a remediation process, etc.)

What did the company/organisation do about it?

How did it go about responding? (E.g. was it a public response, a partnership with an NGO, etc.)

To what extent did this involve collaboration with other stakeholders, and how important was this?

What was the outcome?

What were the factors contributing to the success (E.g. senior-level buy-in/leadership, grass roots approach, collaboration with other stakeholders, etc.)

- From your experience, what are the key challenges in relation to child labour that Australian companies struggle with? Where is the most pressing need for improvement of performance?
- What, if any, examples of an ineffective/'wrong' response have you seen by (Australian or international) companies?
 - What was the issue? How did the issue get exposed? (E.g. national news, social media, etc.)
 - What did the company/organisation do about it (that wasn't efficient/right')?
 - How did it go about responding (that wasn't efficient/right')?
 - What were the consequences?
 - What were the contributing factors (e.g. senior-level buy-in/leadership, grass roots approach, collaboration with other stakeholders, etc.)?

What guidance is available and what's missing

Purpose: Identify existing guidance/support channels and where there are gaps and hence, opportunities for the Catalyst Guidance to close such gaps

- In your view, how comprehensive are the guidelines, standards and other supporting resources currently available on child labour and how companies can address this issue?
- Are there any key resources you are aware of that you could point us to?
- What aspects of child labour are currently overlooked in the available resources, where are there gaps that should be filled?
- Do you think a good practice guide aimed at Australian companies would be valuable? In your view, what aspects/content should a child labour good practice guide focus on to be useful?
- Beyond such a guide (i.e. a document), is there anything that you think would be useful to support companies get better at it? (E.g. support from NGOs/better collaboration; more external guidance; a body that monitors performance, etc.)
- Is there anything NGOs would find useful in terms of support or resources?

APPENDIX C - Investor questionnaire

Recommendations for engaging companies on forced labour

Depending on which stage investors begin their engagement, some questions may be more critical than others. A set of recommended questions that institutional investors can use to engage companies in their portfolio on the issue of forced labour is provided here.

Determining exposure to forced labour

- What is the company's exposure to forced labour?
- Is the company aware of the forced labour conditions in its supply chain products and the countries they are sourced from?

Ensuring adequate policies on forced labour

- Does the company have a policy banning the use of forced labour?
- Does the policy include respect for worker representation, principles of non-discrimination, minimum age, regular and direct payment of wages and does it prohibit the confiscation of personal documents and the use of violence and intimidation?
- Does the company's supply chain labour standards policy cover forced labour?
- Is the supply chain policy embodied in all contracts with joint venture partners, suppliers and subcontractors, including external employment agencies?

Implementation of policies on forced labour

- Are the company's management systems for implementing its forced labour policy comprehensive?
- How are employees informed of their rights in all stages of the supply chain?
- Is compliance with the company's policy on forced labour monitored with the involvement of independent trade unions?

- What procedures are in place to remedy any non-compliance found?
- Specifically, does the company have an action plan to provide for the release and rehabilitation of forced labour survivors? Do these plans cover effective and adequate compensation for forced labour survivors?
- Is the company part of a multi-stakeholder initiative that could help manage forced labour in its supply chain?
- Is the company open to observing best practices on the contributing factors to forced labour?
- How are the company's management systems for supply chain labour standards integrated with its procurement management systems?
- Does the company report publicly on this issue, in particular on the amount and type of non-compliance found with its policy?
- Does the company seek feedback from trade unions about the content of its report?

Relationships with suppliers

- Does the company have long-term relationships with its suppliers?
- How does the company communicate this policy to suppliers?
- Does the company audit suppliers against this policy? If so how often?
- Does the company provide training and capacity building on labour standards to its suppliers?
- Does the company ensure that the costs of complying with labour standards are not unfairly passed on to producers in economically developing countries?

RESOURCE - A REVIEW OF INTERNATIONAL CODES AND CONVENTIONS

Definitions of child labour differ greatly among non-government organisations (NGOs), trade unions, governments and corporations according to culture, age and the nature of work. The very definition of 'child' and 'labour' at a national and international level causes difficulty for investors and companies working across international borders, which regard child labour as a breach of their social responsibilities, and for civil society groups who raise allegations of such a breach. Corporations and governments may choose to adopt codes or international benchmarks according to their Environmental, Social and Governance (ESG) goals and the nature of their business. Regardless of these goals, there is a widely accepted understanding that:

"Child labour is work that deprives children of their childhood, their potential and their dignity. It is work that exceeds a minimum number of hours; work that is mentally, physically, socially or morally dangerous and harmful to children; and work that interferes with their schooling."⁹⁰ Therefore, this report does not seek to include light work such as work performed after school or vocational training in its definition of child labour.

1.1 ILO CONVENTIONS ON CHILD LABOUR

Of all codes, descriptions and benchmarks on child labour, the International Labour Organization's (ILO) Conventions are regarded as high-level standards by governments, labour organisations and in the corporate world.⁹¹ The ILO Conventions on child labour form the foundations of most other codes such as the OECD Guidelines for Multinational Enterprises⁹² and the Global Compact⁹³. Rating agencies and corporations frequently use these standards as their departure point for the 'social' measurements in their ESG policies.⁹⁴ NGO survey respondents also refer primarily to both the child labour Conventions.

The ILO Conventions on child labour are the most widely adopted of all the ILO Conventions, with over 95.1 percent of member states ratifying No. 182 on the worst forms of child labour, and 88 percent ratifying No. 138 on minimum age for admission to employment.⁹⁵

In recognising their importance, the ILO has a dedicated division focusing on the elimination of child labour, named the International Programme on the Elimination of Child Labour (IPEC). The program was established in 1992 and aims to build the capacity of countries to ultimately eliminate child labour. IPEC is currently working in 88 countries and is the biggest operational program in the ILO.⁹⁶

ILO Convention No. 182 on the worst forms of child labour, 1999

This Convention applies to all children under the age of 18 and concerns the prohibition and elimination of the worst forms of child labour described as:

- (a) "All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

- (c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”⁹⁷

This Convention brings together elements from the ILO Convention on forced labour (1930) and the UN Convention on the rights of a child (1989).⁹⁸ It considers the importance of free basic education to children and the elimination of poverty. The Convention acknowledges that poverty pressures families into letting their children being engaged in work.

This Convention is so widely accepted by the international community that nations, corporations and trade unions have adopted it at an unprecedented rate. In a report by Education International on ‘Child Labour and Education for All’ it is stated: “The ratification rate has been the fastest ever in the history of the ILO. It took only two years to reach 100 ratifications and three more years to get to 150. As of October 2013, there are 177 ratifications of this Convention.”⁹⁹ Australia ratified this ILO Convention in 2006.

ILO Convention No.138 Minimum Age Convention, 1973

ILO Convention No. 138 concerns the minimum age for the commencement of employment:

“Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.”

Furthermore the Convention states that “[...] The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. [...] The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.”¹⁰⁰

Other provisions within the Convention allow governments, companies and trade unions to consult with the ILO and be guided by their national laws to set an alternative minimum age depending on certain conditions, such as educational facilities, health and safety, morals of the children and training. This Convention has been adapted over many years to recognise the differences in culture and types of work, and now includes many varied definitions of minimum age and types of work.¹⁰¹

Several countries have not ratified this Convention. They cover roughly 30 percent of the world population and include Australia, India, Canada, Mexico, New Zealand and the US to name a few.¹⁰² One of the reasons for not ratifying the Convention is its prescriptive nature, which can cause difficulty in adhering to the code.¹⁰³ Some nations like New Zealand and Australia do not have a minimum age for employment, but enshrine working conditions in labour laws, and address age concerns at work in terms of minimum age of attendance at school that forbids working during school hours.¹⁰⁴

Since the introduction of Convention 182 in 1999, some member states believe that ratifying No. 138 is not as important in tackling the real issues in child labour.¹⁰⁵ “[...] it is clear at the moment the priority of the Organisation [ILO] is represented by the worst forms of child labour. Accordingly, ILO activities concentrate on this issue and Convention 138 has lost a significant part of its importance.”¹⁰⁶

ILO Declaration on Fundamental Principles and Rights at Work

Both ILO child labour Conventions are further enabled under the ILO Declaration on the Fundamental Principles and Rights at Work. These include four base principles:

- Freedom of association and the effective recognition of the right to collective bargaining
- Elimination of all forms of forced or compulsory labour
- Effective abolition of child labour
- Elimination of discrimination in respect of employment and occupation¹⁰⁷

The ILO reconfirmed the primacy of these Conventions in a 1998 Declaration which stated that all Member States of the ILO are, by virtue of membership of the organisation, obliged to “respect, to promote and to realize, in good faith” the fundamental rights established in these Conventions.

Obligations for signatories

The ILO is an agency of the United Nations (UN) that specialises in labour relations and the organisation of work. It has a unique structure within the UN system, being a tripartite body that gives voice to employers' and workers' organisations as well as national governments. The organisation has enacted various international laws (or 'Conventions') comprising global standards for work and social policy that are implemented at the national level, subject to ILO 'supervision'.¹⁰⁸ Member states are required, according to supervisory arrangements, to report regularly on implementation.¹⁰⁹ Australia has ratified 63 of the 189 ILO Conventions, and seven of the eight core Conventions. It has not ratified the minimum age Convention.

The ILO's tripartite structure means that trade unions can take a complaint about labour rights breaches through the ILO enforcement and/or supervision mechanism. This involves a national peak union body making a complaint to the ILO's Governing Body for assessment and review by its Committee of Experts.¹¹⁰ It is not possible to bring a complaint against a particular employer, but rather against the nation state that is failing to implement the ILO principles and basic work rights within its jurisdiction. However, this mechanism has been used in the context of trade union campaigns against particular companies (an example is the UNI Global Union campaign against multinational employer G4S).¹¹¹

Critique

Both core standards are not legally binding in all states, and they are hard to enforce considering the high levels of non-compliance around the world and the limited capacity of the ILO or the international community to penalise breaches.¹¹² The ILO's powers for enforcing the standards are largely 'persuasive'.¹¹³ The ILO's supervisory mechanisms, while not legally binding or enforceable, can be used by trade unions and civil society groups for applying political pressure to nation states and business organisations in response to a breach.¹¹⁴ The wide ranging interpretations of the definitions of 'child' and 'hazardous' work reflected in national laws make it difficult to raise instances of child labour even in countries that have adopted the two child labour Conventions.

1.2 UN GUIDING PRINCIPLES ON BUSINESSES AND HUMAN RIGHTS

The UN Guiding Principles on Business and Human Rights (UNGPs) enact existing international laws by identifying and clarifying the State and corporate responsibilities for practically working to achieve human rights. They are the result of six years of research and extensive consultations requested by the United Nations Human Rights Commission and led by Harvard University's Professor John Ruggie, and are sometimes colloquially referred to as the 'Ruggie Principles'. The UNGPs are relevant for the abolition and prevention of child labour as the rights of children are enshrined in the protection of Human Rights and fundamental freedoms. The guidelines offer concrete and practical applications for governments and corporations to follow in detail.

The principles specifically spell out obligations by the state and corporations in three pillars:

1. "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
2. The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
3. The need for rights and obligations to be matched to appropriate and effective remedies when breached."¹¹⁵

"These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure."¹¹⁶ In 2011, the UN Human Rights Commission endorsed the Principles unanimously. Even before they were endorsed by the UNHRC, there was already a groundswell of support for the Principles due to the substantial consultation with governments, business and civil society groups.¹¹⁷

There are several parts in the UNGPs that are helpful to the protection of children and prevention of child labour such as the obligation specified in principle 2: "States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations."¹¹⁸ They also go further to suggest that it would be good practice to take steps to "prevent abuse abroad by business enterprises within their jurisdiction." i.e.: parent companies. These clear provisions provide a chain of authority for grievance reporting of identified instances of child labour to be raised with the governments concerned.

The UNGPs describe a business operation's obligations to cover human rights impacts through not only its own operations but also those that may be linked to it through services, products or business relationships.¹¹⁹ It also suggests processes for the prevention of abuses and monitoring of child labour within a company. The UNGPs state: "The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed [...] Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve."¹²⁰

The third pillar of the principles is about finding a remedy when breaches occur. Principle 25 states: "As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy."¹²¹

The UNGPs offer practical suggestions for both the State and Corporations on what could be considered a grievance, various grievance procedures, possible remedies, reducing barriers that lead to the denial of access, as well as promoting the systems for people to access such mechanisms and support for them. "Simply put, they must provide genuine remedies for victims of human rights violations by companies and must not amount to communications or political exercises. Operational-level mechanisms should be based on engagement and dialogue with the stakeholder groups whose rights they seek to remedy."¹²²

The UNGPs are supported by UN agencies including the Global Compact and the UNPRI. The OECD Guidelines for Multinational Corporations have incorporated the principles into their guidelines. With the overwhelming support for these practical and concrete principles, there is a new scope for those raising instances of child labour to rely on the principles to facilitate raising matters and seeking remediation for breaches with governments and corporations. This includes the important supply chain, labour hire and partnered operations of companies where child labour is more often found.

Critique

A UNGPs Working Group has been established to assist states, enterprises and NGOs to work on the implementation of the UNGPs as well as on individual cases of alleged human rights violations and abuses.¹²³ As at March 2014 the Working Group has received 19 complaints of human rights abuses, 16 of which have been made public.¹²⁴ Of these, none appear to contain child labour abuses. It is still early days for the Working Group to display clear results, present the challenges they face, and even demonstrate the nature of the service they can provide for those seeking support.

There is no enforcement mechanism for the UNGPs but by their nature, they seek to source a 'remedy' for each incident. These of course are dependent on the complainant's ability to get their case heard and promoted for action to occur.

1.3 UN CONVENTION ON THE RIGHTS OF THE CHILD

A Convention on the Rights of the Child (CRC) is a visionary code of some 54 points giving specific rights to children as individuals and as members of their own families and community. It covers persons up to the age of 18 years and describes rights and responsibilities as being dependant on the developmental stage of the child and being age appropriate.

The Convention is founded on four fundamental principles:

- “Non-discrimination. Children should neither benefit nor suffer because of their race, colour, gender, language, religion, national, social or ethnic origin, or because of any political or other opinion; because of their caste, property or birth status; or because they are disabled.”
- The best interests of the child. Laws and actions affecting children should put their best interests first and benefit them in the best possible way.
- Survival, development and protection. The authorities in each country must protect children and help ensure their full development — physically, spiritually, morally and socially.
- Participation. Children have a right to have their say in decisions that affect them and to have their opinions taken into account.”¹²⁵

Although child labour is not specifically mentioned within the text of the Convention, the spirit of the CRC definitely opposes the worst forms of child labour. Further reading of the application of the CRC in a business context specifically identifies the need to eliminate child labour in order to uphold the rights of children.¹²⁶

In 2013, the CRC published a General Comment incorporating the application of the Convention on the Rights of a Child with the UN Guiding Principles for Business and Human Rights. Similarly to the UNGPs, it specifies the obligations of the State and business for upholding the rights of children. The publication is consistent with the various other international codes and benchmarks for the human rights of children including the ILO's Conventions 182 and 138.¹²⁷ It specifically mentions that global business should be mindful of their subsidiaries, suppliers etc. as it is ‘rarely the case’ that a single company is behind the positive or negative impact on children’s rights.¹²⁸

The CRC General Comment expects the State to go beyond its own territory to protect children’s rights. In addition, it states that actions and measures must endeavour to go beyond the eradication of child labour and move towards achieving a respect for all children’s rights.¹²⁹ The Convention states that it applies at all times, particularly during conflict or emergencies when the potential for abuse of children is heightened.¹³⁰

Obligations of Signatories

A 1989, the Convention on the Rights of a Child became one of the ten core international human rights instruments.¹³¹ Ratified by more countries than any other human rights treaty, it provides a common legal framework and consistent ethical reference from which standards can be measured and met. Only the USA, Somalia and South Sudan have not ratified the Convention.¹³² The USA has various objections to the treaty that it continues to work through internally.¹³³ Somalia does not have a government that can ratify the treaty and South Sudan is only two years old as a country and is yet to ratify.¹³⁴

Signatories commit to align all of their national laws, administration and measures to ensure the ‘full realisation’ of children’s rights.¹³⁵ Ratifying states also commit to reporting to the CRC within the first two years of signing and every five years after that.¹³⁶

Critique

A Committee of independent experts, set up by the CRC, assesses the countries’ progress in achieving all of the rights of the child, and issues comments to encourage measures to be taken. The CRC Committee will not receive complaints from citizens nor monitor individual cases of human rights abuses against a child. It does however encourage contributions and invites the participation of Children’s Rights advocates in the reporting and monitoring process for all signatories. Governments are also encouraged to submit contributions from all sectors of their communities. This inclusive reporting is unique to the CRC.¹³⁷

UNICEF is the specialised UN agency charged with the implementation of the CRC. It continuously runs programs and participates in the elimination of child labour across the globe, including a focus on awareness-raising and education programs in India in the cotton fields.¹³⁸ UNICEF receives funding from various corporations. For example, they are funded by and work with IKEA in a partnership of more than 10 years in various parts of the world against child labour.¹³⁹ There is little evidence within the partnership of what IKEA is doing within its own supply chain and within its enterprise, toward the eradication of child labour.

1.4 UN GLOBAL COMPACT

The United Nations Global Compact is a voluntary mechanism that business organisations can choose to participate in to improve their performance against social and environmental indicators, and to demonstrate their commitment to 'corporate social responsibility'. Established in 2000, the Compact now has more than 10,000 participants from over 145 countries, making it the largest voluntary corporate responsibility initiative in the world.¹⁴⁰ Participants in the Compact include:

- Companies, whose actions it seeks to influence;
- Governments, labour, civil society organisations; and
- The United Nations, as convener and facilitator.

The Compact enables these participants to engage with each other, to negotiate and implement policies to change the companies' business practices, in line with ten principles that are derived from various international treaties and agreements including:

- The Universal Declaration of Human Rights
- The International Labour Organization's Declaration on Fundamental Principles and Rights at Work (including Conventions 182 and 138 on child labour)
- The Rio Declaration on Environment and Development
- The United Nations Convention Against Corruption.

The effective abolition of child labour is Principle 5 in the Labour category of the ten principles.

The Compact uses the ILO Conventions No.138 and 182 as their foundations for defining child labour. They encourage participants to raise awareness of the causes and consequences, determining if child labour is a problem in the business, looking at higher risk areas in regions, industries or supply chains, and consulting with external organisations to investigate.¹⁴¹

The Compact offers tools and advice on how to uphold commitments to this principle. The Compact website gives a basic list of actions that can be taken in the workplace and community to prevent child labour. This list has been backed up by a more thorough publication *Children's rights and business principles* developed in 2012, in partnership with UNICEF and Save the Children. These ten principles are a guide for business on a range of actions to be taken regarding issues such as the elimination of child labour, decent work for young workers, parents and caregivers, the protection and safety of children in business operations, and respect in marketing and advertising.¹⁴² There are no case studies available to the public at this stage of how business enterprises have used this guide.

- The Compact has developed various other tools for helping to uphold Principle 5 and abolish Child Labour. These include:
- In 2011 and 2012, the compact hosted several webinars for members on 'Children in hazardous work', 'Eradicating forced labour in global supply chains' and 'Let's end child labour'. Presented by various people including IPEC, they offer information on the topic and an analysis of business contributions to the problems.¹⁴³

Child Labour Platform - is a forum open to companies and relevant organisations to share experiences and lessons for dealing with child labour. It delivers training and support to members and links local and international initiatives. The International Programme on the Elimination of Child Labour (IPEC), the International Trade Union Confederation (ITUC) and the International Organisation of Employers (IOE) are contributing to the Platform.¹⁴⁴

- 'Human Rights and Business Dilemmas Forum' on child labour in supply chains is an interactive website presenting real life business dilemmas and cases studies on various topics, as well as an online forum open to readers to post comments to explore the issues. Each dilemma topic explains the issue, common real life scenarios, and specifically those in emerging economies, risks to business, suggestions for responsible business actions and resources and finally a background to the topic. It is linked to other child labour resources, websites and initiatives.¹⁴⁵
 - The Sustainable Supply Chains: resources and practices website - aims to bring together useful resources on initiatives, codes, and standards on the topic to make it easier to navigate for businesses interested in information on sustainability issues including human rights and labour. Although there are several initiatives and resources for these topics there are no specific references to children's rights.¹⁴⁶
- The Compact's Human Rights Working Group endorsed the 'Good Practice Notes' on community engagement and investment for human rights in supply chains.
- The Notes aim to explain some of the critical advantages, pitfalls and good practices related to engaging with and investing in suppliers' communities."¹⁴⁷

In 2011, the Global Compact endorsed the UN Guiding Principles on Business and Human Rights: "[...] the UN Guiding Principles provide further conceptual and operational clarity for the two human rights principles championed by the Global Compact [principle 1 and 2]. They reinforce the Global Compact and provide an authoritative framework for participants in implementing this commitment, including guidance on putting in place robust policies and procedures, and communicating annually with stakeholders about progress."¹⁴⁸

Obligations of signatories

Reporting under the UN Global Compact takes two forms. *The Communication on Progress* (COP) is an annual reporting mechanism through which companies supply information about how they comply with the ten principles, and where they are not in compliance, how they are improving their practices. Failure to report can result in changes to status and possible expulsion. The *Global Compact Annual Review* is the Compact's survey of corporate participants, assessing the extent to which they are: implementing the ten principles; taking action in support of broader UN goals and issues; and engaging with the Compact locally and globally.

In addition to these reporting mechanisms, the Compact convenes geographically based 'local networks' for dialogue between participants; and coordinates 'engagement opportunities'. Engagement opportunities include information and skill sharing, as well as active collaborations between participants for advancing particular objectives associated with the Ten Principles.[§]

Critique

The most common criticisms of the Compact are that its principles are unhelpful and that it is unenforceable.¹⁴⁹ It is argued, in some cases, that the principles are too vague and difficult to implement. In others, for example, labour rights, the principles go no further than international law, with which businesses must comply in any case. Regarding enforcement and accountability, the Compact relies on companies offering information about their progress. The Compact is unable to penalise non-compliance.

It has been argued that the Compact 'provides a venue for opportunistic companies to make grandiose statements of corporate citizenship without worrying about being called to account for their actions'.¹⁵⁰ Amnesty International has expressed concern about the lack of transparency and lack of enforcement measures to ensure that companies stick to their commitments under the Compact.¹⁵¹ Advocates of the Compact argue that it is not set up to be a certification instrument, or a tool to regulate its participants, but rather it is intended to generate dialogue and provide learning opportunities for participants.¹⁵² Independent empirical research on the effect of the Compact is limited, and how much it contributes to improving corporate conduct remains unclear.¹⁵³

Although membership of the Compact is not by itself an indicator of strong ESG performance,¹⁵⁴ it can signal willingness to learn about ways to better integrate ESG issues into a company's activities. SRI investors and other stakeholders might also consider using a company's membership of the Compact as a lever for encouraging improved behaviour, if it is clearly failing to meet the standards set in the Principles.

1.5 ETHICAL TRADING INITIATIVE BASE CODE

The Ethical Trading Initiative is an alliance of companies; trade unions and NGOs committed to promoting workers' rights internationally and the British Government supports it. The group includes retailers and brands that make a commitment to being responsible for suppliers of their products, and to collaborate with them to improve working conditions. The Australian Food and Grocery Council work with this group. Companies adopt the labour code requiring suppliers to work towards improvements in conditions. Among the nine points, the fourth refers to child labour. It states: "Child labour shall not be used."

- 4.1** There shall be no new recruitment of child labour.
- 4.2** Companies shall develop or participate in and contribute to policies and programs that provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child; "child" and "child labour" being defined in the appendices.
- 4.3** Children and young persons under 18 shall not be employed at night or in hazardous conditions.
- 4.4** These policies and procedures shall conform to the provisions of the relevant ILO standards.¹⁵⁵

Obligations of signatories

Corporate members must commit to implement the goals of the ETI, which require companies to make ethical trade part of their core business practise; continuously improve working conditions and support suppliers to do the same; and to be transparent and accurate in reporting activities.¹⁵⁶ Companies must also participate in ETI projects involving partners such as NGOs and unions.

A member's performance is measured on actions taken in their supply chain and the reporting of such actions including:

- Who is driving the company's ethical trade strategy;
- How much money they have spent on ethical trade activities;
- What training they have given to staff and suppliers;
- What progress they have made in integrating ethical trade into their business practices;
- How they assess working conditions at their suppliers' worksites;
- How they ensure that any improvements requested of their suppliers have been made.
- Concrete changes to workers' conditions are recorded.¹⁵⁷

The ETI expects annual reporting and conducts random visits to companies and their supply chain operators to validate the reports of at least 20 percent of members. Failure to meet membership obligations will result in an investigation, followed by an improvement notice or suspension.

Critique

Company codes such as the ETI Base Codes are naturally built on consensus due to their voluntary nature and the need to break through the underlying tensions of the commercial relationship. Working towards consensus naturally slows the pace of outcomes, which is often the criticism that comes from external operators.¹⁵⁸

Researchers Barrientos and Smith looked at the outcomes of the ETI and its work with companies in 2007, and concluded that there was greater compliance to legislated entitlement, rather than with social rights like the empowering of workers to negotiate their own improvements. Improvements were achieved at the technocratic level of code compliance "[...] which does not challenge embedded business practices or social relations that undermine labour practices." Improvements concerning health and safety, minimum wages, health insurance, pension deductions and reduced working hours were recorded.¹⁵⁹

Social benefits for workers such as freedom of association, elimination of discrimination, union building and enterprise bargaining were less likely to be achieved under the Base Code. Barrientos and Smith did note that the implementation of the Base Code did reduce the occurrence of child labour in the supply chain, but they also note that there is room for improvement in systems for measurement of the outcomes of code compliance.¹⁶⁰ Lastly, they found that companies in the ETI were more likely to implement the code on their own rather than in collaboration with their union and NGO partners who are part of the ETI. This meant that workers in the supply chain were often not aware of the Code and of their rights under it, and therefore failed to claim these entitlements.¹⁶¹

1.6 OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The OECD Guidelines for Multinational Enterprises, established in 1976 and updated in 2011, are addressed to businesses headquartered and/or operating in OECD member countries and other participating or adhering jurisdictions.¹⁶² Governments are bound, by their membership in the OECD, to apply the Guidelines, and some other governments have voluntarily adopted them. Child labour is specifically addressed in the Guidelines in section five on Employment and Industrial Relations. The Guidelines state that multinationals should: "Contribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency."¹⁶³

Further explanation of the Guidelines highlights their intention to mirror the ILO's four fundamental principles. The Guidelines also encourages multinationals to positively commit to the abolition of child labour by alleviating poverty by paying living wages, offering high quality jobs and increasing economic growth, as well as raising the standards of education for children.¹⁶⁴ The Guidelines incorporated the UN Guiding Principles on Business and Human Rights into its text in 2011, and relies on its 'protect, respect and remedy' goals for the implementation of the Guidelines.¹⁶⁵

Obligations of Signatories and Enforcement

Signatories are obliged to follow the Guidelines or complaints may be brought against companies and lodged with the OECD. A complaint can be brought either in the country where a company has its headquarters, or in a country where a breach of the Guidelines has been alleged. The Guidelines apply to all entities of a multinational enterprise as well as business partners including suppliers, sub-contractors and franchises.¹⁶⁶ As one of the few mechanisms available to nation-states and civil society organisations for enforcing cross-border corporate responsibility requirements,¹⁶⁷ the Guidelines serve as recommendations from governments to business regarding:

- Employment and Industrial Relations
- Human Rights (new in the 2011 edition)
- Environment
- Combating Bribery, Bribe Solicitation and Extortion
- Consumer Interests
- Competition
- Science and Technology
- Disclosure and
- Taxation.

The Guidelines are just one among many measures of corporate conduct, but they are one of the few comprehensive codes that governments have endorsed multilaterally and agreed to promote.¹⁶⁸ The Guidelines are not enforceable against companies in courts, except where matters covered by the Guidelines are regulated by national law. However, governments are bound to promote adherence to the Guidelines within their own jurisdictions, and they set up 'National Contact Points' (NCPs) for this purpose.¹⁶⁹ Procedures for this are of varying quality and vigour depending on the particular NCP.¹⁷⁰

NCPs can facilitate mediation and conciliation for resolving ‘specific instances’ of breaches of the Guidelines by a particular company, either in the country where the breach took place, or where the company is headquartered.¹⁷¹ Once a determination is made in a case, the decision is communicated to the parties and made public via the NCP and the OECD secretariat.¹⁷² OECD Watch, an international civil society organisation, reported that since 2000 there have been 13 cases filed with the OECD National Contact Points based on Guideline: Version 2000 Chapter IV Paragraph IV.1 Subparagraph IV.1.B on the effective abolition of child labour. Of these cases, three were rejected and ten concluded, of which eight were considered satisfactory outcomes, however they were related to the same complaint in eight different countries.¹⁷³

The dispute resolution procedure was little used until the 2000s. In recent years, reported disputes have increased and it appears that NCPs are more actively enforcing the Guidelines.¹⁷⁴ Around 300 cases have been brought before NCPs under the Guidelines, as at 2012.¹⁷⁵ The Trade Union Advisory Committee (TUAC) of the OECD provides extensive resources to trade unions, to help them bring cases under the OECD Guidelines to defend workers’ rights and promote responsible business conduct.¹⁷⁶ TUAC reports that 145 cases have been brought by trade unions as at 2012. Most of these cases addressed employment relations, but often also a range of other issues including human rights, bribery, environmental protection, consumer rights and taxation.¹⁷⁷ According to TUAC, roughly one third of these cases have been resolved with a ‘positive outcome’.¹⁷⁸

Critique

There has been little academic or empirical work assessing the impact and application of the Guidelines. The vague language, lack of legal enforceability and evidence of inconsistency in the enforcement approaches of different NCPs are criticised.¹⁷⁹ There are also indications that companies are given greater access to the NCPs in the dispute resolution process, and that the location of NCPs in the industry departments of many governments predisposes them to favour commercial interests.¹⁸⁰ An independent review of the UK’s NCP found various problems including:

- No clear procedure or time limits for decision-making
- An unequal treatment of parties to disputes
- A heavy burden on complainants
- A lack of resources to investigate
- A lack of transparency regarding process
- A narrow application of the Guidelines
- Unwillingness to declare breaches of the Guidelines.¹⁸¹

This report influenced a review and restructure of the UK NCP. Despite some shortcomings, trade unions and NGOs have made worthwhile use of the NCP dispute resolution mechanism. It has been argued that the NCP process is ideal for people or groups with limited power and/or resources to compel companies to respond to ESG concerns. It helps to ‘level the playing field’ in international business by establishing consistent transnational standards for corporate conduct and a mechanism for their enforcement.¹⁸² The 2011 review and update clarified some of the ambiguities regarding applicability of the Guidelines, and have strengthened the provisions on human rights, and the dispute resolution mechanism.¹⁸³ The effects of these very recent changes are not yet clear.

1.7 UN PRINCIPLES FOR RESPONSIBLE INVESTMENT

The United Nations Principles for Responsible Investment (UNPRI) were developed in 2006. The six principles are ‘aspirational’ commitments that investors and other relevant organisations may voluntarily sign. UNPRI signatories are driven by the view that ESG issues are relevant to the financial value and performance of investments over the medium to long term, and that this should inform investors in asset allocation, stock selection, portfolio construction, shareholder engagement and voting.¹⁸⁴

The Six Principles

- Principle 1:** We will incorporate ESG issues into investment analysis and decision-making processes.
- Principle 2:** We will be active owners and incorporate ESG issues into our ownership policies and practices.
- Principle 3:** We will seek appropriate disclosure on ESG issues by the entities in which we invest.
- Principle 4:** We will promote acceptance and implementation of the Principles within the investment industry.
- Principle 5:** We will work together to enhance our effectiveness in implementing the Principles.
- Principle 6:** We will each report on our activities and progress towards implementing the Principles.

UNPRI signatories now number 1,260 and, as at 2014, represented over USD34 trillion assets under management.¹⁸⁵ Signatories fall into three groups:

- **Asset owners** - 274 signatories including pension funds, sovereign wealth funds, endowments and insurance. (Australia -34 signatories)
- **Investment managers** - 801 signatories including third party asset managers such as banks, private equity firms, hedge funds. (Australia -78 signatories)
- **Professional service partners** - 185 signatories that provide support services to asset owners or managers such as ratings agencies. (Australia -17 signatories)¹⁸⁶

The organisation describes itself as an international network of investors, with the objective of supporting signatories to incorporate ESG issues into their investment decision-making and ownership practices.¹⁸⁷

The UNPRI offers various support and implementation services including:

- Publication of guidance documents on ESG matters;¹⁸⁸
- A private ‘Clearinghouse’ where members can meet online to exchange information and/or case studies, and to collaborate to engage with companies whose conduct may not meet certain ESG criteria. The Clearinghouse has enabled hundreds of signatories to engage with almost 1,500 companies;¹⁸⁹
- A research community (the Academic Network) to support the work of the UNPRI. It organises an annual conference and sponsors the Responsible Investment ‘Knowledge Platform’;¹⁹⁰
- Reporting and assessment – all asset owner and investment manager signatories are required, as a condition of their membership, to submit a report each year detailing their Responsible Investment activities.

In many ways, the UNPRI is similar to the Global Compact, in that it operates as a learning, information and skill-sharing initiative, as well as creating opportunities and structures for collaboration between participants. The Principles themselves demand few concrete commitments or actions from signatories.¹⁹¹

The UNPRI and Child Labour

The UNPRI has coordinated work among signatories specifically on child labour for various different initiatives within their work program. Although some of the work within the UNPRI is confidential and ongoing, some initiatives can be exemplified as follows:

Initiative on labour standards in agricultural supply chains

This is an ongoing project to continue into 2015, and therefore outcomes have not been released. It is a private investor engagement initiative with global food and beverage producers, processors and retailers. The objectives of the engagement are to improve disclosure and improve the implementation of labour codes. Investors ask companies to:

- Clearly communicate expectations to suppliers,
- Understand risks,
- Embed social goals into their core business systems,
- Report on social responsibility progress,
- Engage stakeholders and
- Engage workers

UNPRI Clearinghouse projects

This engagement between signatories and solar companies to improve disclosure and implementation of ESG issues included signing up to working conditions free from child labour. The engagement resulted in the following: "Eleven of fourteen companies have a code of conduct in place at their manufacturing operations to ensure that working conditions are free from child or forced labor, provide a safe and healthy living environment, and comply with local laws for collective bargaining, working hours, discrimination, and compensation."¹⁹² Twelve of the 14 companies extended this code to include their suppliers.¹⁹³

Signatories of the PRI such as SHARE Canada joined the Uzbek cotton campaign against forced and child labour which was led by the Responsible Sourcing Network, which is ongoing. However it achieved the outcome that children under 15 were no longer forced to participate in the 2013 cotton harvest.¹⁹⁴

This year the Clearinghouse brought together investors on an initiative around new legislation to be included in the UK modern slavery bill. Investors called for listed companies with a gross turnover larger than £100m to be required to disclose their actions towards the eradication of slavery, human trafficking, forced and child labour in their supply chains. Reporting of activities is to be in annual reports and publicly on their websites. Several large UK companies have joined the investors' initiative.¹⁹⁵

Development of guidance

UNPRI signatories participated in the development of an investor guide on business and human rights called *Investing the Rights Way: A Guide for Investors on Business and Human Rights*. Included in the guide are notes suggesting investors should focus on the elimination of child labour in supply chains, and continue to participate in a steering committee of the child labour platform, which aims to share the best practices of businesses in the elimination of child labour. The platform is based on the UN Guiding Principles and aims to develop recommendations for investors.¹⁹⁶

Critique

The UNPRI has been criticised by various commentators for its failure to impose substantive requirements on investors and other signatories, noting that "[...] financial institutions can sign up to the UNPRI without first having to demonstrate that they meet special performance thresholds". It is suggested that the "[...] credibility of the principles would be greatly enhanced if it functioned closer to a certification scheme, where only the most socially responsible financiers could join the club".¹⁹⁷

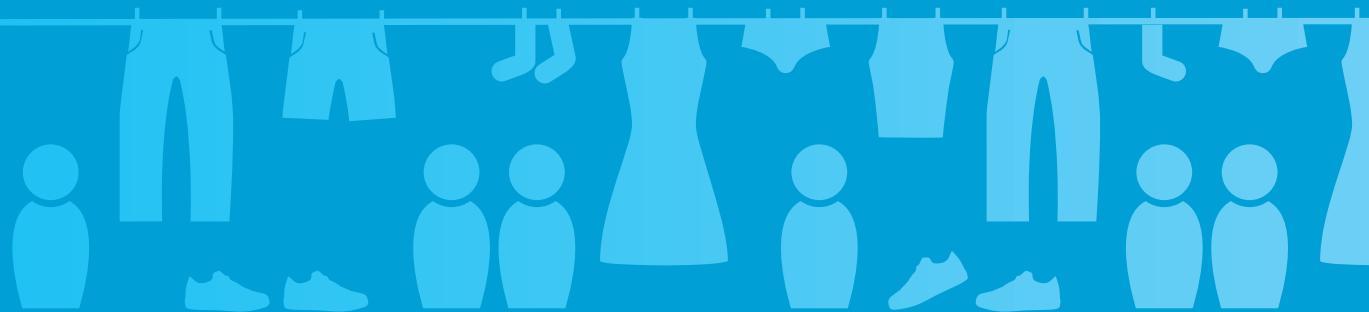
The 2008 Responsible Investment Benchmark Report for the Responsible Investment Association of Australasia appears to confirm these deficiencies. It found that while the number of Australian UNPRI signatories was substantial, only two small firms had ‘fully integrated’ ESG factors into their mainstream investment process.¹⁹⁸ These findings were supported by Mercer Investment Consulting, which concluded in 2009 that only about one in ten Australian equity managers achieved an ESG rating of a ‘good standard’, while 56 percent were ranked as ‘less than adequate’.¹⁹⁹ These criticisms persist, with the UNPRI described in 2011 as a ‘brand-enhancer’ providing a socially responsible gloss for investors, but requiring little in return.²⁰⁰

Alternatively, some research evaluating the UNPRI’s first five years of operation made findings that are more positive.²⁰¹ It found a positive association between investor commitment to the UNPRI signatories and the ESG ratings of the companies they own.²⁰² The same research finds that investors value the UNPRI initiative for its ‘societal and pragmatic legitimacy, normative power and coalition building’.²⁰³ However, it should be noted that these research findings might be limited, as they rely heavily on information provided by interested parties. What is particularly interesting about the UNPRI, as opposed to mechanisms like the Global Compact, is that it creates opportunities for direct engagement with companies regarding their ESG performance; and for collective engagements through its clearinghouse mechanism.

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