

# LIBERTY ASIA

TO PREVENT  
HUMAN TRAFFICKING

March 2018

A world map in a light grey tone with white outlines for continents and countries. The Southeast Asian region, including countries like Thailand, Vietnam, Laos, Cambodia, Myanmar, Indonesia, and the Philippines, is highlighted in a dark blue color. The title 'Modern day slavery in numbers' is centered over the map in a large, bold, black font.

# Modern day slavery in numbers

There are estimated **40.3 million** people in modern slavery around the world.

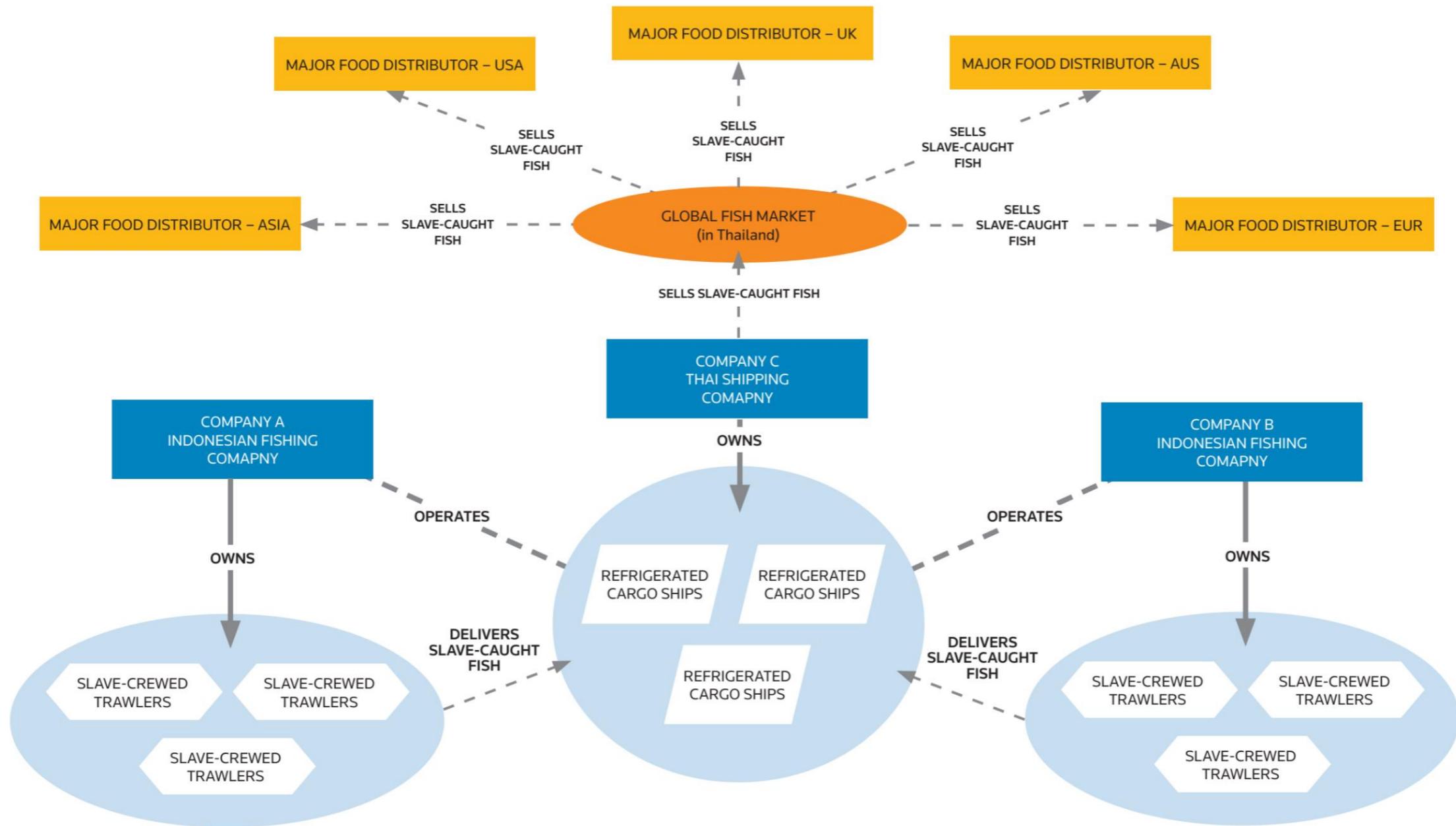
Of these 40.3 million victims, **24.9 million** people were in forced labour (16 million in forced labour in the private economy, 4.8 million in forced sexual exploitation, and 4 million in state-imposed forced labour). **15.4 million** people were living in a forced marriage to which they had not consented.

For forced labour specifically, it is estimated that the profits are highest in Asia (US\$51.8 billion) out of the estimated total illegal profits of US\$150 billion per year.

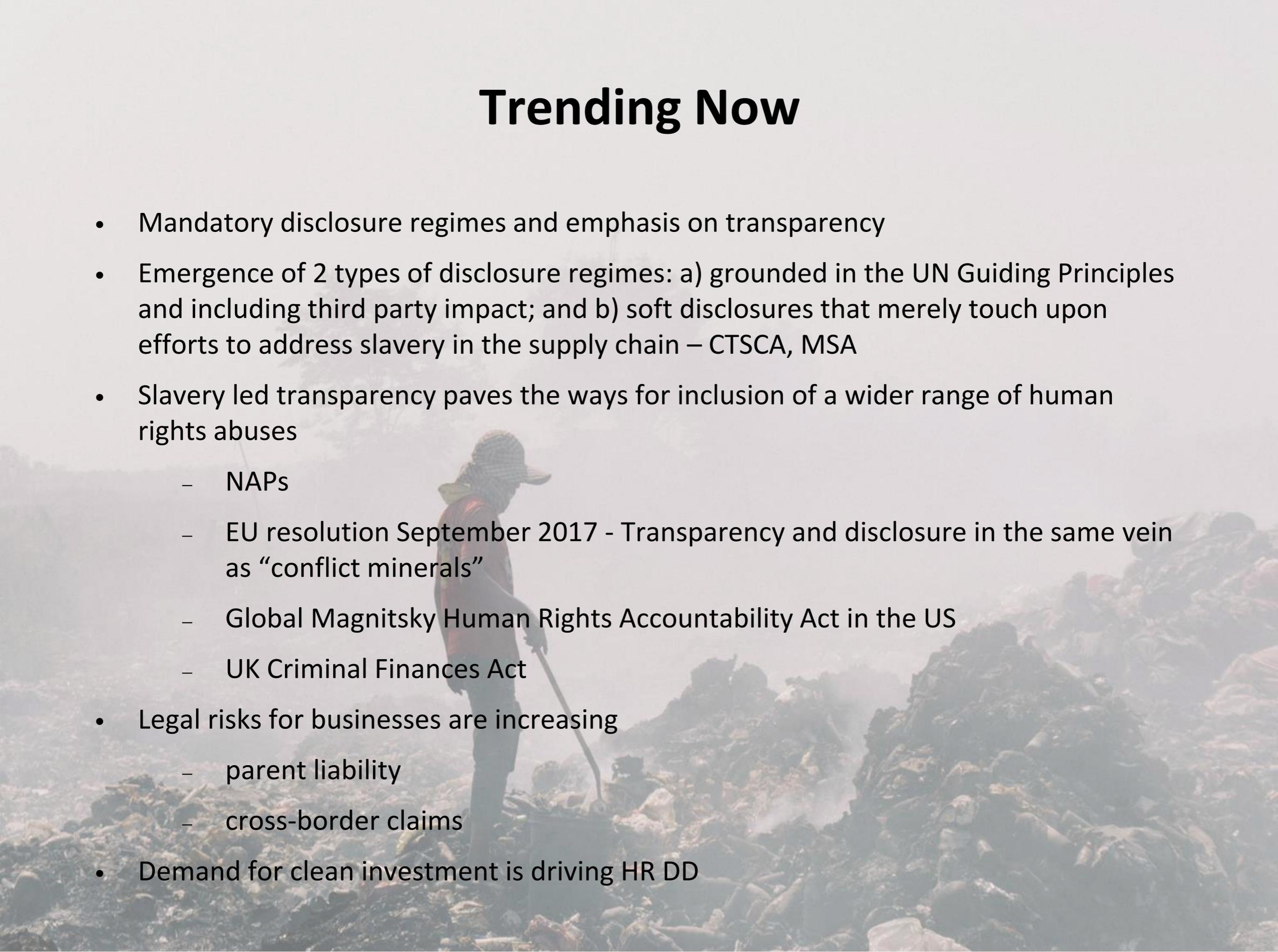
# Pirate Fishing, Slavery and Third Party Risk Thomson Reuters (2016)

## ARE SLAVES CATCHING THE FISH YOU BUY?

### CASE STUDY 1: THIRD PARTY RISK IN THE ARAFURA SEA



# Trending Now

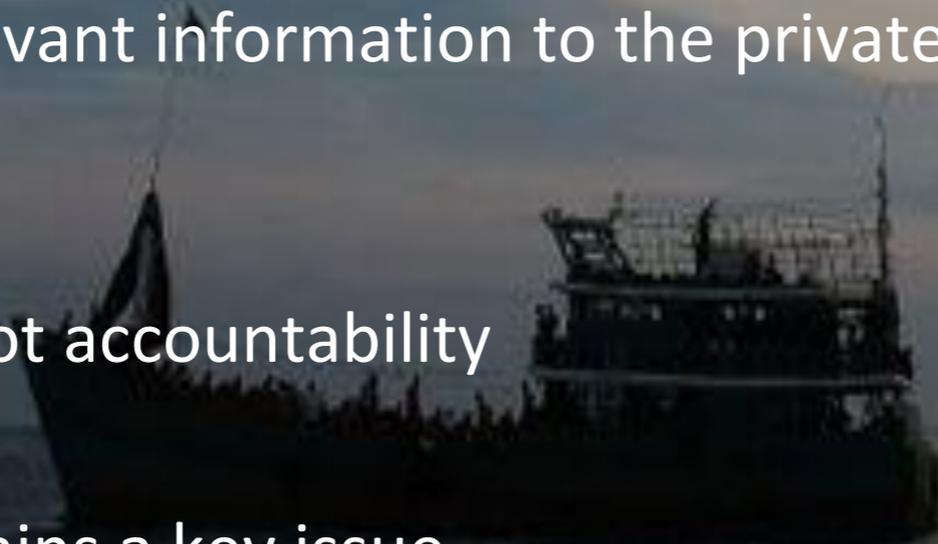
- Mandatory disclosure regimes and emphasis on transparency
  - Emergence of 2 types of disclosure regimes: a) grounded in the UN Guiding Principles and including third party impact; and b) soft disclosures that merely touch upon efforts to address slavery in the supply chain – CTSCA, MSA
  - Slavery led transparency paves the ways for inclusion of a wider range of human rights abuses
    - NAPs
    - EU resolution September 2017 - Transparency and disclosure in the same vein as “conflict minerals”
    - Global Magnitsky Human Rights Accountability Act in the US
    - UK Criminal Finances Act
  - Legal risks for businesses are increasing
    - parent liability
    - cross-border claims
  - Demand for clean investment is driving HR DD
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# Ground Breaking Accountability Laws in France

- The “Duty of Vigilance” law goes beyond disclosure obligations of other countries such as the UK Modern Slavery Act or the California Transparency in Supply Chains Act.
- The ‘vigilance’ obligation requires French companies to map the risks throughout their supply chains and with all of the companies that they directly or indirectly control. Companies must, in particular, deal with risks related to their suppliers and sub-contractors with whom the company has an established business relationship.
- Right of action against French parent company for any third party aggrieved by actions of any part of the supply chain.
- Similar laws being contemplated in the Netherlands and Switzerland.

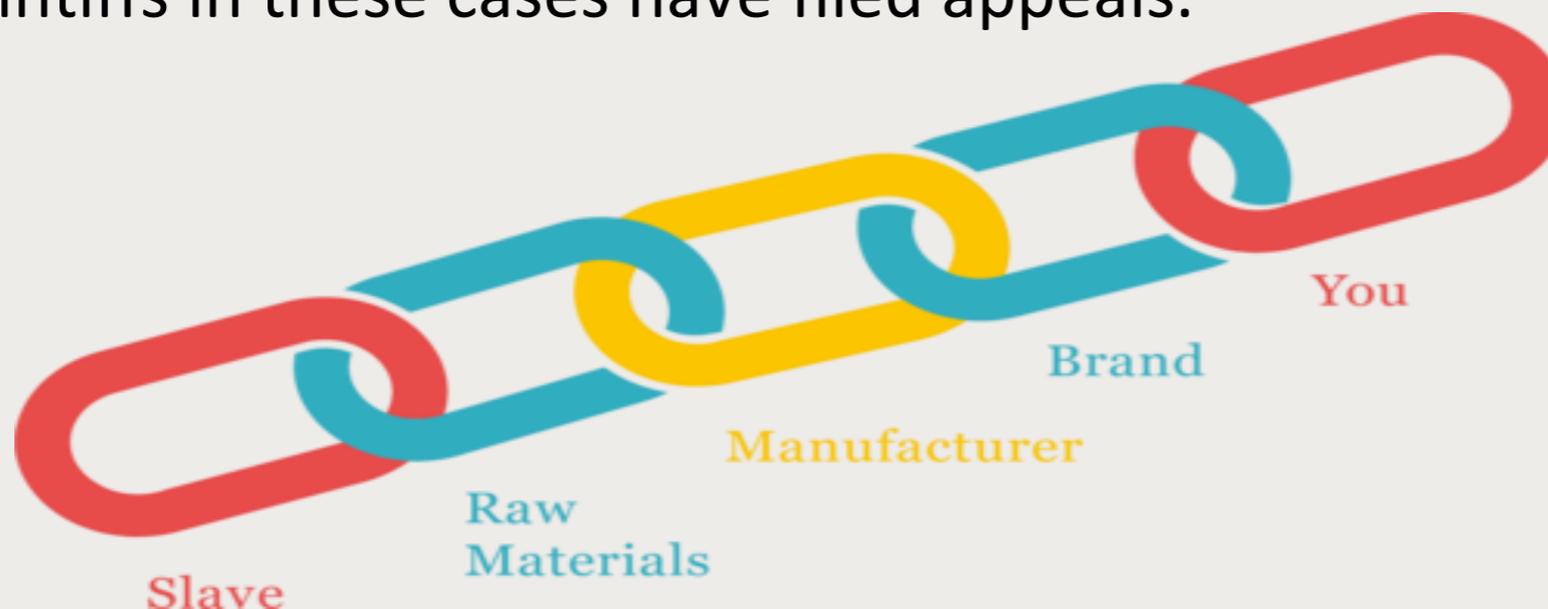
# Response to enhanced transparency

- Leverage for many cross-cutting conversations
- Legal action (often initiated by consumers)
- Alliance building across stakeholders
- CSOs continue to strive to find ways to communicate relevant information to the private sector
- Transparency is not accountability
- Remediation remains a key issue



# When Transparency Is Not Enough: Class Action Litigation

- Several class actions against companies in California - Monica Sud v. Costco Wholesale Corp., Barber v. Nestle USA, Hodsdon v. Mars, Inc. et al, Dana v. Hershey Co., Wirth et al v. Mars Inc. et al.
- Legal grounds based on the defendant companies' purported failure to disclose to California consumers the use of forced labor or the "likelihood of forced labor" in supply chains.
- So far the consumer protection-based approach to supply chain accountability litigation has not been successful. Nonetheless, several of the plaintiffs in these cases have filed appeals.



# Limitations on accountability

- Seven victims filed a complaint to a US federal court in California against Phatthana Seafood and S.S. Frozen, which supplied shrimp products to U.S. distributors Wales & Co. Universe Ltd. and Rubicon Resources LLC.
- The civil lawsuit accused the US and Thai firms of knowingly profiting from the villagers' working conditions and violating the Trafficking Victims Protection Act.
- Limitations on accountability for seafood supply chains continue where the supply chain of a company is owned by that company...
- The lawsuit was dismissed. The victims have launched an appeal.

# Corporate Liability and Human Rights Obligations

Developments in various jurisdictions recently regarding civil and criminal liability for corporate involvement in human rights abuses committed abroad.

## US

In *Jesner v. Arab Bank*, the Supreme Court will decide whether the Alien Tort Statute (ATS) categorically forecloses corporate liability for terrorism financing.

## UK

In *Lungowe and Ors. v. Vedanta Resources Plc and Konkola Copper Mines Plc*, the UK court held that a parent company's duty of care could extend to a person affected by the operations of its subsidiary.

## Canada

In *Araya v. Nevsun Resources Ltd*, Nevsun appealed to the Supreme Court to throw out the lower court ruling which allowed the lawsuit for modern slavery and alleged violations of international human rights to be heard in Canada. However, courts have agreed to hear the lawsuits against a Canadian parent company of a foreign subsidiary in *Garcia v. Tahoe Resources Inc.*

## France

Recent criminal indictments of former executives of LafargeHolcim in France for alleged complicity in gross human rights violations in Syria.

# Latest case of criminal liability for corporate-related human rights abuses

- Reports of violations of workers' fundamental rights in SAMSUNG's factories in China and South Korea.
- NGOs in France have filed a lawsuit for misleading advertising regarding the company's published statements which guarantee the strict respect for workers' rights throughout the production chain. The group even states that it aims "to become one of the most ethical companies in the world".
- An effort to use French courts to hold multinationals to account for alleged wrongdoing, and to push for an international treaty against corporate abuses.

# **The very first watchdog: Canadian Ombudsperson for Responsible Enterprise**

- An independent watchdog mandated to monitor, independently investigate claims of human rights abuses by Canadian companies operating abroad, recommend remedy and monitor its implementation
- Can refer any evidence of possible criminal wrongdoing to police
- Can recommend sanctions against transgressors, including withdrawing Export Development Canada financial support
- Initially target the mining, oil and gas, and garment sectors, but is expected to be expanded to other industries within a year

# Raising labor standards through trade: The Generalized System of Preferences (GSP)

- A trade program, codified under the Trade Act of 1974, that conditionally allows 120 developing countries to export thousands of products to the US duty free.
- However, enforcement of the GSP qualification criteria has been weak.
- The two bills have been recently introduced to reform the GSP – **Labor Rights for Development Act** and **the Anti-Trafficking Trade Act**
- The Labor Rights for Development Act would strengthen enforcement and oversight to ensure GSP beneficiary countries meet basic labor standards, including protecting the rights to freedom of association and collective bargaining, preventing the use of forced and child labor, and providing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.
- The Anti-Trafficking Trade Act would prohibit countries on Tier 3 in the TIP report from receiving duty-free benefits under the GSP.

# Building the bridges

- The need for actionable information that is granular and sector focused
- Bringing the front line to the front desk
- Get your house in order....time is running out!

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