



23 June 2021

Joint Standing Committee on Foreign Affairs, Defence and Trade – Human Rights Sub-Committee

Inquiry into certain aspects of the Department of Foreign Affairs and Trade Annual Report 2019-20 - child and forced marriage

Response to Question Posed by Committee

The Hon Kevin Andrews MP

Chair of the Human Rights Sub-Committee

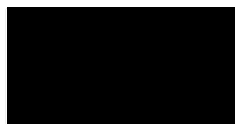
Dear Mr Andrews,

Thank you again for providing Walk Free with the opportunity to make a submission to this Inquiry and appear at the public hearing on 18 June 2021.

Walk Free has prepared additional information in the following document in relation to the Committee's question, taken on notice, of *whether and what nations have already embedded human rights clauses into their free trade agreements*.

We reiterate that Walk Free are pleased to assist the Committee in any way as you pursue your terms of reference. We eagerly anticipate the Committee's Report and Government response to this much needed inquiry.

Best regards,



Grace Forrest

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Lisa Singh

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Walk Free





Human Rights in Free Trade Agreements

Since the 1990s, human rights clauses have been progressively included within free trade agreements (FTAs),¹ on topics including labour rights, gender equality, and environment protection.² A non-exhaustive list of human rights clauses used by the European Union (EU), the US, and Canada is provided below. Given these precedents, and the Australian Government's recent similar actions, a natural progression for the Australian Government will be to include clauses addressing child and forced marriage within all trade agreements.

European Union

In 2009, the EU adopted a common approach in its strategy on trade deals with third countries, to progressively incorporate political clauses in such agreements, including clauses related to human rights.³ The stated purpose of this common approach is to *"[assert] the EU's fundamental values and political principles; [enhance] the effectiveness of EU policies of which the clauses constitute a tool; [ensure] coherence vis-à-vis third countries; [and strengthen] the EU's negotiating stance."*⁴ These clauses were specifically incorporated to allow the EU to unilaterally suspend an FTA, in part or in full, in the event of human rights abuses by a third country.⁵ However, until recent developments in 2020, the EU did not appear to have the appetite to enforce more stringent enforcement clauses in a trade context: to date, the EU has not suspended trade agreements due to human rights abuses, but has suspended meetings and technical cooperation facilities.⁶

Further, in 2020, a labour complaint pursuant to the EU-Korea FTA was lodged by the EU.⁷ The complaint was the first enforcement measure of its kind under the EU's "new generation" of trade agreements which impose stronger requirements on trading partners relating to their domestic social and labour protections.⁸ After a period of consultation between the nations, the outstanding issues were referred to a jointly appointed panel of experts to resolve the dispute.⁹ The issues at the core of the dispute related to South Korea's alleged failure to take action to respect, promote, and realise core labour standards, including the ratification of the fundamental International Labour Organization (ILO) Conventions No. 87 and 98 concerning freedom of association, and Conventions No. 29 and 105 concerning forced labour.¹⁰

Notably, in their decision published in January 2021, the panel of experts did not find that South Korea fell below the legal standard required in the FTA by failing to make continued and sustained efforts to implement fundamental ILO Conventions.¹¹ Rather, the panel found that South Korea had breached its obligations to respect, promote, and realise fundamental rights because specific provisions of its domestic law, specifically the *Trade Union and Labour Relations Adjustment Act*, were inconsistent with the fundamental right of freedom of association as understood by the ILO Constitution.¹² Nevertheless, on 20 April 2021, South Korea ratified ILO Conventions 87, 98, and 29, and the instruments will come into force in South Korea in April 2022.¹³

United States

To date, the US has 20 FTAs in force, of which 19 agreements include labour provisions.¹⁴ The US boasts one of the earliest trade agreements that incorporated labour issues – the North American Free Trade Agreement (NAFTA) between the United States (US), Canada and Mexico, which was entered into force



on 1 January 1994.¹⁵ Although not included within the main text, a legally binding side agreement incorporated labour principles into the NAFTA, including provisions on inspections, collective bargaining, and dispute resolution.¹⁶ The NAFTA has subsequently been replaced by the US-Mexico-Canada Agreement which entered into force in July 2020.¹⁷

Progressively, across four 'generations' of agreements, US FTAs have incorporated stronger obligations on labour clauses either within the main text of agreements, or in side agreements.¹⁸ Since 2007, this included requiring other countries to adapt and maintain fundamental labour rights, and following 2009, included monitoring and enforcement provisions.¹⁹ Non-compliance with these clauses can result in trade sanctions and dispute resolution procedures.²⁰ However, the anticipated fifth generation of trade agreement, embodied within the Trans-Pacific Partnership (TPP) deal,²¹ was abandoned in a lame-duck sitting of congress in 2016.²² The TPP sought to include enforcement obligations within FTAs which would safeguard essential labour rights, discouraged trade in goods produced by forced and child labour, and established mechanisms to remedy violations.²³ It is anticipated that new administration under President Biden will seek to return to the TPP model, with stronger protections on labour and environmental protections.²⁴

In comparison to the EU, the US has a relatively long history of taking action to enforce labour obligations: the US has issued Public Reports pursuant to FTAs with Dominican Republic and Central America, Colombia, and Peru in relation to labour rights.²⁵ For example, the 2013 Public Report under the Dominican Republic-Central America-US FTA alleged a number of labour abuses in the Dominican Republic sugar sector.²⁶ A review of the Public Report by the US Office of Trade and Labour Affairs (OTLA) found significant concerns that labour laws regarding minimum wages, hours of work, occupational health and safety, minimum age of work, elimination of child labour, and prohibitions on forced labour had been violated.²⁷ OTLA made a range of recommendations to the Dominican Republic to improve the working conditions in the sugar sector, and noted it would engage with the Government of the Dominican Republic to implement the recommendations.²⁸ Several subsequent reviews have analysed whether the Dominican Republic has implemented the recommendations of the Public Report review. In the 2018 Sixth Periodic Review, the following positive steps were continuing to be taken by the Dominican Republic:

- Improving systems to record hours of work and wages owing;
- Ensuring workers are provided with personal safety equipment and potable water;
- Enhancing systems that ensure workers understand their right to a weekly 36-hour rest period and use these entitlements;
- Raising awareness campaigns on worker rights in Spanish and Haitian Creole;
- Ensuring employment contracts are written and provided to workers; and
- Publicly announcing the minimum wage in Spanish and Haitian Creole in places where sugar workers frequent, such as housing centres and pay stations.²⁹

Canada



Throughout its foreign trade diplomacy, Canada seeks to “foster a commitment to human rights, freedom, democracy and the rule of law”³⁰ and recent Canadian agreements have included the following (non-exhaustive) provisions:

- An obligation to implement fundamental ILO principles;
- Formal dispute resolution processes for violations of core labour rights; and
- Requirements for parties raise public awareness on domestic labour law rights.³¹

Labour rights provisions are legally binding within Canadian FTAs, and a failure to comply can result in financial penalties.³²

Canada utilises its FTAs to work collaboratively with partners to address labour rights concerns. For example, under the Canada and Colombia FTA which provides for mutual human rights impact assessments in both territories annually,³³ several periodic reviews of human rights concerns in Colombia have been investigated.³⁴ However, this annual reporting mechanism has previously been criticised for being opaque, by not providing public details of alleged human rights abuses and the links to relevant trade measures.³⁵

Canada has also taken action on incorporating gender equality initiatives within FTAs. In 2020, Canada, together with Chile and New Zealand, signed the first Global Trade and Gender Arrangement (GTGA).³⁶ The GTGA sets out and strengthens provisions related to gender equality within a trade context.³⁷ Notably, while the GTGA does not explicitly refer to child or forced marriage within its provisions, it does go some way to address root causes of child and forced marriage through its focus on economic empowerment of women and girls.

Australia's Commitment to Human Rights in Trade Agreements

To date, Australia is a party to 15 FTAs with 26 countries.³⁸ Historically, Australia received criticism for an apparent reluctance to incorporate ‘non-trade issues’ within trade agreements.³⁹ Yet more recent trade agreements, such as Peru-Australia FTA in force as of 2020, incorporated provisions on labour rights, including on the elimination of forced labour and abolition of child labour, within the agreement.⁴⁰ Further, Australia ratified the TPP in 2018, which required parties have acceptable labour laws safeguarding acceptable work conditions, including hours of work, minimum wages, and safety standards.⁴¹ The TPP also identified the protection of vulnerable workers and promotion of gender equality as some key areas for further cooperation between the parties.⁴²

Walk Free welcomes this positive progress toward utilising FTAs as tool to further human rights issues, and considers that the Australian Government should build on this by incorporating provisions within FTAs that address issues related to child and forced marriage.



Endnotes

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