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A call for pan-European action to tackle forced labour and child labour in global supply chains

Anti-Slavery International
June 2018

Summary

The complex nature of global supply chains brings an increased risk of human rights violations, with forced and child labour being amongst the most serious. While some European Union (EU) member states, such as France, the Netherlands and the UK, have introduced or are considering introducing regulation on business and human rights, a systematic, pan-European approach to tackling forced and child labour in global supply chains that would have large scale impact appears absent from EU policy.

On 12th September 2017, Members of the European Parliament (MEPs) voted in favour of a resolution ‘on the impact of trade and EU policies on global value chains,’ calling on the European Commission to consider proposals for corporate due diligence for companies operating both within and outside the EU. Furthermore, on 13th March 2018, MEPs voted in favour of a resolution calling on the European Commission and EU Council to support binding and enforceable measures in EU trade agreements and trade policy to promote and protect women’s rights. These resolutions followed the Green Card initiative, launched by eight EU national parliaments calling for legislative action.

Moving forward, the European Commission should heed EU Parliamentarians’ calls and move to introduce new legislation to establish a coherent European response to forced labour and child labour in international supply chains that sets out clearly the human rights due diligence responsibilities of businesses. The EU, as the world’s largest trading bloc, needs to show the needed leadership to marshal the learning of businesses and their resources to identify the causes of serious human rights violations and how these may be resolved.

Cotton: from the farmer to the consumer



Introduction

In 2017 the International Labour Organization (ILO) estimated that 25 million people are in forced labour across the world, over 60% of them exploited in the private sector, likely linked to the supply chains of international businesses providing goods to the markets of the Northern hemisphere, including the EU. Forced labour is the most common element of modern slavery – which affects over 40 million people globally (70% of them women) – and the most extreme form of exploitation. It is sometimes associated with physical violence, but often occurs through more insidious means, such as deception, coercion and debt bondage. Socially excluded groups (such as minorities and migrants) and women and girls are often at greater risk of forced labour. Furthermore, one in four victims of modern slavery are children under the age of 18, numbering 10 million. In total, 152 million children globally (about 1 in 10) labour in hazardous conditions, endangering their health, and many are outside education systems.

Many of the causes of forced and child labour are systemic, arising because national and international laws, policies and practices governing employment, trade and production are insufficient to protect the human rights of workers. As such, it is difficult, but not impossible, for businesses to respect the human rights of workers – as required by the UN Guiding Principles on Business and Human Rights (UNGPs) and envisaged in the UN's Sustainable Development Goals – if the governments of the countries from which they source are not also doing their duty. Hence, uncoordinated or piecemeal responses by individual businesses are unlikely to have a significant impact upon the root causes of serious human rights abuses. In fact, such approaches could put businesses at considerable disadvantage if their competitors are obtaining unfair advantage by availing of the lower costs provided by the exploitation of workers. To redress such a systemic problem requires trans-national regulation that establishes basic standards for all businesses.

Any business in today's global economy is exposed to the risk of forced and child labour in their operations. For example, 77% of companies operating in the UK think there is a likelihood of modern slavery occurring in their supply chains.¹ In part this is because the constant search for low input prices and high profits, the drive for ever lower prices and shorter lead times, and the move to sub-contracted rather than directly employed labour, all are factors increasing the risk of worker exploitation and modern slavery.

Recent developments

UNGPs Principle 2 explains that *'states should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.'* The commentary further states that *'there are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses.'*² State responsibilities cannot be met without extra-territorial legislation to uphold human rights principles, including in relation to their corporate citizens. Recent years have seen a number of significant national and extra-territorial initiatives in this direction.

1. 2016 survey of 71 brands and retailers, including in-depth interviews with 25 companies, by the Ethical Trading Initiative and Hult Business School.

2. https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

Recent initiatives

Examples of national legal and policy initiatives

- **2010 California Transparency in Supply Chains Act** requires all businesses trading in California and with a turnover of over USD 60 million to report on efforts to combat slavery.
- **2015 UK Modern Slavery Act** requires all commercial organisations (including charities) trading in the UK and with a turnover of £36 million or more to publish an annual statement on what they are doing to eliminate slavery from their supply chains.
- **2017 French Duty of Vigilance law** makes human rights due diligence responsibilities for large multi-national businesses obligatory, including a requirement to produce and publish a due diligence plan.
- **Proposed Dutch legislation on child labour due diligence** would require companies to conduct due diligence as to whether child labour is occurring in their own operations or in their supply chains.
- **The Australian Government** is expected to introduce legislation to Parliament in the second half of 2018 to enact a Modern Slavery law, including supply chain transparency provisions.
- **Proposed amendments to the Swiss constitution** to require mandatory human rights due diligence for companies based in Switzerland are currently under discussion.
- **Germany's 2016 National Action Plan** leaves the door open for legislative reform though the proposed introduction of human rights due diligence requirements in 2020.
- **Italy's 2016 National Action Plan** announces a comprehensive review of the existing commercial and civil law to assess and evaluate legislative reform introducing provisions such as the 'duty of care' or due diligence for companies.
- **In 2018 the Dutch Covenant for Sustainable Apparel and Textile (Textile Covenant) and the German Partnership for Sustainable Textiles (Textile Alliance)** signed a partnership agreement with the objective of supporting companies in implementing due diligence by harmonising sustainability requirements.
- **The 2018 UNGP baseline assessment of the Swedish National Action Plan**, commissioned by the Swedish Minister for Trade, recommends that the government look into binding human rights due diligence requirements for Swedish companies.

Examples of EU initiatives

- **2010 EU Timber regulation** lays out due diligence requirements for EU operators placing timber or timber products on the European market.
- **2014 EU Non-Financial Disclosure Directive** requires European companies with more than 500 employees to disclose information on policies, results and risks concerning environmental, social and labour-related matters, respect for human rights, anti-corruption and bribery issues.
- **2017 EU regulation on Conflict Minerals** lays down mandatory supply chain due diligence obligations for EU companies importing gold, tin, tantalum and tungsten from conflict-affected and high-risk areas.
- **European Commission's 2018 Action Plan on Financing Sustainable Growth** commits the European Commission to assess the possible need to require corporate boards to develop and disclose a sustainability strategy, including appropriate due diligence throughout their supply chains.

Towards a new generation of global supply chain regulation

Tackling forced and child labour in global supply chains requires more than single state efforts, or efforts limited to a single sector or generic human rights reporting. Sector regulation and generic reporting legislation, such as the Non-Financial Disclosure Directive and Conflict Mineral and Timber Regulations, provide a solid base, but are on their own insufficient to bring the full potential of the EU to bear on the challenge of ending forced and child labour.

For instance, the Non-Financial Disclosure Directive requires 'large' businesses to make statements in their management reports on their performance on a range of social, legal and environmental issues. This is a useful law, however it is left to individual companies to identify those issues they feel are the greatest risks. As such, it is inadequate to marshal the attention of all business to resolve specific issues that have already been identified (such as forced labour in international supply chains). Instead, it is more likely to dissipate attention and action across a range of issues that will vary from business to business depending on the whims of executives, the company's level of knowledge about the issue and their sense of risk. In other words, the Directive is likely to facilitate information gathering, rather than providing leadership to resolve and address fundamental human rights abuses.

A new generation of global supply chain regulation requires both mandatory transparency and due diligence, to ensure that businesses take responsibility for the impact of their actions and channel resources into pro-actively tackling the root causes of abuses such as forced and child labour throughout their operations.

Businesses increasingly speak out in favour of mandatory supply chains disclosure and due diligence, indicating to states that regulation in this area helps foster responsible business practice. For example, a number of Dutch businesses, including Nestle Nederland and Tony's Chocolonely, publicly supported proposed Dutch child labour legislation; the Groupement des Entreprises Multinationales (GEM), representing over 90 multinational companies, has recently taken a constructive position on the proposal to require human rights due diligence by Swiss businesses; and the UK Modern Slavery Act was a result of lobbying of the UK government by businesses involved in the Ethical Trading Initiative and the British Retail Consortium. These businesses recognised that their efforts towards ethical practices were undermined by competitors who were able to undercut them by adopting exploitative labour practices and wished for increased regulation in order to 'level the playing field'. At the same time, many are calling for coherence in disclosure and due diligence requirements, rather than diverse and divergent national level regulation.

Supply chain transparency vs due diligence approaches

■ **Supply chain transparency** provisions tend to focus on public reporting of origins of raw materials and goods in business supply chains and operations. They provide stakeholders with an overview of business operations and an assessment of the human rights risks in supply chains. While not a panacea, the extant transparency legislation has helped elevate the issue of human rights within businesses and expanded discourse on the issue. Consequently, many consumer-oriented businesses have begun to consider what they can do to address forced and child labour in their supply chains. However, transparency regulations usually do not obligate businesses to take action to address adverse human rights impacts or to pro-actively identify them. They are first and foremost about some measure of disclosure. For example, the UK Modern Slavery Act requires companies only to disclose the steps they are taking to prevent slavery in their supply chains. Therefore, a company that states that it is taking no steps to counter slavery is still compliant with the law. While some companies have used transparency measures as an opportunity to advance discussion on human rights due diligence, many have not.

Although mandatory disclosure regulation is a prerequisite for due diligence in supply chains, it is insufficient on its own to achieve decent work.

■ **Due diligence** focuses on businesses taking responsibility for the impact of their actions throughout their operations. The UNGPs set out businesses responsibility to respect human rights, requiring both policy commitment and due diligence *‘in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts,’* including *‘assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.’* In practice this means, for example, examining the impacts of purchasing practices on the wages of workers, or the effect of subcontracting on reduced control over working conditions of individual workers.

The EU role

The EU has sought to build a single market which upholds social standards including the rights of workers. However, the pressure to secure competitive advantage, particularly in manufacturing and commodities, leads European businesses to search for reduced costs that are often based on extreme levels of exploitation. Given that forced and child labour affect so many parts of supply chains, the failure to develop robust and effective measures to eliminate these abuses also puts European consumers in the insidious position of being implicated in international systems of slavery when they shop. For example, Thai fisheries’ supply chains, most notoriously that of prawns found on the shelves of major European supermarkets, are rife with forced labour of migrant workers³; Southern India garment workshops supplying many prominent European retailers have been found to be staffed by the forced labour of girls and young women⁴; and debt bondage and child labour is prominent in Indian quarries producing stone found in many European households.⁵

Recommendations for the European Union

The EU and its member states are in a unique position to assume global leadership on law and policy to reduce forced and child labour in international supply chains and set standards with a wide-ranging impact. As the world's largest single market, founded on the principles of democracy, human rights and rule of law, the EU has considerable potential to transform the current political economy by the enactment of pan-European legislation. In order to realise full potential on this issue, the EU should, as a priority, take the following steps.

1. Introduce mandatory human rights due diligence in business supply chains and operations, including a specific focus on forced and child labour, for all businesses operating in Europe with a turnover greater than an agreed threshold.

This regulation should require businesses to:

- a) set out a risk analysis of forced and child labour in their supply chains and operations;
- b) examine why those risks exist (in terms of government policy, business practice etc.);
- c) explain what the business is doing to mitigate the risks;
- d) set out the system of industrial relations adopted by the business in its operations and supply chain, including policies and practices on freedom of association and collective bargaining;
- e) set out the grievance procedures in place to remedy any human rights impacts upon workers;
- f) set out how adverse human rights impacts are tracked and reported within the business.

Such legislation should cover all internationally recognised human rights and labour standards. Furthermore, this regulation should apply to all businesses (rather than confined to specific sectors), since underlying causes of forced and child labour risks in a specific economy will affect all businesses working in that economy and individual business supply chains span multiple sectors. In addition, the regulation should include a monitoring mechanism and proportionate sanctions for non-compliance.

2. Strengthen the EU's harmonised customs data framework by taking steps, similar to those required by the US Trade Enforcement and Facilitation Act, and move to exclude goods tainted with child and forced labour from EU markets.

The EU should take the following steps to improve transparency and supplement due diligence requirements:

- a) Initiate amendments to the Union Customs Code to clarify that customs data is not confidential and should be publicly disclosed;
- b) Amend customs related regulations to ensure that all companies that import goods into the EU disclose to EU customs authorities important information, including the name and address of the manufacturer.

3. <https://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour>.

4. <https://ethicaltrade.org/subject/sumangali>.

5. <http://www.indianet.nl/pdf/TheDarkSitesOfGranite-abstract.pdf>.

Conclusion

Anti-Slavery's analysis shows that cases of forced and child labour occur across supply chains of all goods and services and that it is not possible to isolate and eradicate slavery industry by industry. History has shown that to redress the moral and material challenges resulting from human rights violations requires robust and imaginative regulatory action and policy-making. Current EU policy and legislation is insufficient to adequately tackle this problem. Therefore, new legislation should be introduced to establish clear human rights due diligence requirements in supply chains. Such legislation would also contribute to obtaining the Sustainable Development Goals by making labour rights and responsible business practice central to broader business and trade policies; expand the availability of decent work and directly contribute to the reduction of poverty; and position Europe as a world leader in tackling forced labour and child labour in global supply chains.



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