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TACKLING MODERN SLAVERY THROUGH HUMAN RIGHTS DUE DILIGENCE

About this guidance

This document has been prepared by CORE with contributions from Anti-Slavery International, Business and Human Rights Resource Centre (BHRRC) and Unicef UK. It is one of four briefings designed to provide information for businesses reporting under the Transparency in Supply Chains clause in the Modern Slavery Act 2015. The other briefings can be found here and include: *Recommended Content for a Modern Slavery Statement; Modern Slavery Reporting: Weak and Notable Practice and Engaging with Companies on Modern Slavery – A Breifing for Investors.*

These briefings are intended to supplement and should be read alongside Beyond Compliance: Effective Reporting under the Modern Slavery Act, the civil society guide for commercial organisations on the transparency in supply chains clause.

Introduction

The UK Modern Slavery Act (2015) requires commercial organisations operating in the UK with an annual turnover of more than £36m to produce a statement setting out the steps they have taken during the financial year to ensure that slavery and human trafficking is not taking place in their business operations and supply chains.

The law does not prescribe the exact content of a company's modern slavery statements, however, it does provide a list of areas for organisations to consider including in their report. This includes disclosure of any due diligence processes in relation to slavery and human trafficking in its business operations and supply chains.

A robust modern slavery statement should be developed and presented in the context of a company's ongoing human rights due diligence process. Yet initial analyses of modern slavery statements indicate that social auditing remains the default approach to assessing and monitoring risks in the supply chain, despite its known limitations in detecting modern slavery risks. [1]

This briefing seeks to provide an introductory overview of human rights due diligence, to support companies to identify and respond effectively to modern slavery risks in their operations and supply chains.

1. For example see Business and Human Rights Resource Centre and CORE "Analysis of early statements" March 2016 and Ergon Associates "Reporting On Modern Slavery: The First Hundred Statements - March 2016"

What is Human Rights Due Diligence?

Most companies will be familiar with due diligence as a risk-management procedure. The concept of human rights due diligence (HRDD) was introduced by the UN Guiding Principles on Business and Human Rights – universally regarded as the global benchmark for responsible business conduct – to describe an ongoing process that all companies should undertake in order to identify, prevent, mitigate and account for how they address their impacts on human rights.

Where companies undertake human rights due diligence, human rights impacts are more likely to be detected (including those linked to the activities of third parties), findings are more likely to be reported, human rights experts are more likely to be engaged and the effectiveness of actions taken in response to identified issues is more likely to be monitored.

UN Guiding Principle on Business and Human Rights:

"The process [of human rights due diligence] should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

(a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;

(b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;

(c) Should be ongoing, recognising that the human rights risks may change over time as the business enterprise's operations and operating context evolve."
(United Nations, 2011)

How Does HRDD Differ from Audit?

Social audits have long been companies' primary means of conducting checks on the treatment of workers, but they are largely ineffective in leading to sustained improvements in working hours, overtime, wage levels and freedom of association, let alone in detecting modern slavery. HRDD moves business firmly away from a reactive approach to human rights, towards a proactive approach where it is a company's responsibility to seek out and address actual or potential negative impacts that their activities may have on individuals and communities.

The failure of social auditing to identify human rights abuses has been the subject of exhaustive research and is broadly accepted by social compliance professionals.[2] The collapse of the Rana Plaza garment factory in Bangladesh in 2013 and the Guardian's exposé of forced labour and trafficking in Thailand's shrimp industry in 2014 took place within certified, audited supply chains. [3] In 2016 in the UK, Mohammed Rafiq became the first company owner to be convicted of human trafficking. His firm Kozee Sleep and its subsidiary Layzee Sleep supplied British retailers including Next Plc, the John Lewis Partnership and Dunelm Mill, all three of which, despite carrying out regular ethical audits, failed to spot any wrongdoing.

2. See for example Richard M. Locke, *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy* (New York: Cambridge University Press, 2013) is based on years of empirical research across industry sectors and countries, including direct access to audit data provided by several leading companies.
3. Ethical Audits and the Supply Chains of Global Corporations, The University of Sheffield, January 2016

The following table explores some of the limitations of audit and outlines how the human rights due diligence approach addresses the weaknesses.

AUDIT	HUMAN RIGHTS DUE DILIGENCE
Suppliers don't disclose accurate information, undermining the value andvalidity of data gathered.	Direct engagement with stakeholders on the ground, including: people who are or may be affected by business activities; trade unions; and NGO representatives. This provides companies with a 360-degree overview of human rights risks.
A focus on supplier compliance with company policies and national laws (mainly labour rights) may result in some adverse human rights impacts being missed. This is especially relevant where company operations and supply chains extend to countries with weak governance, where national laws fall short of international standards on human and labour rights.	Human rights impact assessments are performed against a baseline of international human rights standards. This gives companies a more comprehensive understanding of areas for improvement. Engagement with external experts results in a deeper level of context-specific risk analysis than companies can typically produce on their own or via an auditing firm.
Suppliers often lack capacity to implement corrective action plans in a sustainable way.	Human rights due diligence requires ongoing engagement, negotiation and collaboration. Supporting suppliers to build their own capacity to manage human rights risks is integral to this.
Root causes are often overlooked and suppliers are left to deal with systemic challenges that are beyond their direct control.	Individual companies cannot, and are not expected to resolve complex human rights challenges alone, but instead should work with others to tackle systemic issues including through advocacy toward governments on improved worker protections.
The links between companies' operating practices (such as procurement and recruitment) and working conditions in the supply chain are not considered.	Companies must recognise their own role in contributing to adverse impacts on workers. Internal business processes and practices such as production volumes and timeframes must be reviewed to avoid placing suppliers under undue pressure.
Site visits are often limited to top tier suppliers, despite a higher likelihood of risks being present in lower tiers where there is little visibility and where the most vulnerable and socially excluded people work.	Full supply chain visibility is required in order to understand where risks may lie and which issues to prioritise for remediation. This means understanding how products and commodities are being sourced beyond first or second tier suppliers.
Focus on pass/fail criteria, and rarely identify opportunities for companies to support human rights, for example through investment in vocational training programmes for vulnerable and marginalised young people.	Less focus on audit findings, more on a continuous process of engagement and improvement. Highlights the opportunities for companies to leverage their resources, skills and innovative approaches to ensure that the core business supports the advancement of human rights.
Issues are often not identified until they have already escalated.	The ongoing nature of human rights due diligence and engagement with internal and external stakeholders serves as an early warning system for potential issues that could occur at any point in a company's value chain if timely action is not taken.
Worker interviews are often limited to their workplace experience.	Human rights challenges are linked to both working and living conditions of workers. Understanding the role played by intermediaries such as recruiters and agents helps to identify which workers in supply chains are most vulnerable to exploitation.

Undertaking Human Rights Due Diligence

Human rights due diligence is comprised of the following key steps:

1

Assessing actual and potential human rights impacts that a company's own activities may cause or contribute to; or which may be directly linked to its operations, products or services by its business relationships or supply chains. This requires engaging with internal and external stakeholders, including people who are affected or likely to be affected by a company's activities and the organisations that represent them i.e. NGOs, trade unions and community leaders.

Starting questions:

- Are there ways that our business is affecting, or could affect people negatively? For instance, could requiring high-volume orders to be delivered in a short timeframe lead to abuse of workers?
- Who do we need to speak to, to find out what the issues are?
- Can we join / learn from initiatives that are already underway in our sector to address human rights issues?

2

Integrating and acting on the findings by developing clear action plans to prevent and mitigate adverse human rights impacts including modern slavery. Action plans should be developed with input from external stakeholders and may include activities such as training or capacity building for suppliers and employees, as well as a review of business strategies.

Starting questions:

- What do we need to do as a company to prevent adverse impacts?
- What immediate action can we take and what longer-term plans do we need to make?
- How do we make sure that in seeking to do the right thing, we don't make the problem worse?

3

Tracking responses through the development of specific performance indicators, feedback from stakeholders and developing an understanding of how and why an adverse impact occurred. Timeframes for monitoring progress (i.e. periodic reviews) are also helpful indicators of whether procedures are effective in bringing about change.

Starting questions:

- What are people telling us about the root causes of these adverse impacts?
- What can we do to address these causes?
- Have we identified specific changes that we can make to prevent problems? How long do we think these changes will take to implement?

4

Explaining how impacts are addressed, to account for the practical implementation of human rights due diligence. For example, businesses could indicate an instance where a risk was recognised and rectified in accordance with company protocols, and supported by internal learning and change in practices and operations.

Starting questions:

- What did we do to address the problem? Did this have the intended effect? Were there any unanticipated consequences?
- What did we learn?
- What would we repeat or do differently in future? How can we share this learning within the company, our sector and with stake holders?