

CORE



HAUSFELD & CO^{LLP}



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Submission to the Parliamentary Joint Committee on the draft Modern Slavery Bill

Introduction

The CORE Coalition is an authoritative and influential network of NGOs, academics, trade unions and legal experts which brings together the widest range of experience and expertise on UK corporate accountability in relation to international development, the environment and human rights. Our aim is to reduce business-related human rights and environmental abuses by making sure companies can be held to account for their impacts both at home and abroad, and to guarantee access to justice for people adversely affected by corporate activity.

CORE welcomes the draft Bill and the opportunity to submit evidence to the Joint Committee. Our collective organisational expertise on this topic relates to labour rights impacts in the supply chains of UK-linked companies. Several member organisations have more than a decade's experience of participating in a variety of voluntary and statutory mechanisms that aim to improve labour rights standards internationally. To date, voluntary mechanisms have proved ineffective in tackling slavery and forced labour in the supply chain. The Bill therefore presents an important opportunity to introduce much-needed legislative measures as a necessary first step to improving corporate transparency and accountability for the most serious labour rights violations in the supply chain.

Responses to questions in the call for evidence

1. Would the draft Bill be effective in reducing the incidence of, and preventing modern slavery?

- 1.1 The draft Bill focuses on the human-trafficking to the UK. The Bill would be significantly strengthened if it was accompanied by a commitment to assess the labour market conditions that create the demand for modern forms of slavery and to take steps to review and address these. Slave *labour* is the dominant form of slavery internationally. To reduce the incidence of slavery the drivers for cheap, easily exploitable labour need to be understood and addressed. So long as companies are allowed to avoid taking the necessary measures to identify and root out forms of slavery in their supply chains, a 'pull factor' will ensure the continuation of human trafficking regardless of the proposed legislation.
- 1.2 We believe that without measures designed to provide greater transparency about the risks and incidence of modern slavery in UK-linked company supply chains, and the steps that companies are taking to address these, the draft Bill will be only partially effective in reducing the incidence of, and preventing modern slavery.
- 1.3 While there is a role for voluntary mechanisms in improving labour rights, experience over several decades shows that reliance on a purely voluntary approach has not been effective in

ensuring that UK-linked companies meet minimum labour standards throughout their international supply chains. The continuing, life-threatening conditions faced by garment supply chain workers in Bangladesh represent one example of this gap between industry codes and the real situation on the ground.

- 1.4 The failure to address the situation effectively through other measures requires the UK government to introduce legislation. In the absence of appropriate legislative measures, laggard companies will continue to mismanage supply chains. This creates a situation where the most exploitative labour conditions are tolerated and where is little prospect of a significant reduction in incidences of modern slavery.

2. Are there other provisions which should be included in the draft Bill?

- 2.1 In October 2013, revisions to the Companies Act 2006 entered into force, requiring all UK quoted companies to include in their annual reports information about human rights issues, including information about company policies and the effectiveness of those policies.
- 2.2 We recommend that the draft Bill builds on this measure, by including provisions requiring all UK quoted companies to include information in their annual reports on the due diligence policies and processes they undertake to identify and address the risks and incidences of slavery and forced labour in their supply chains, and the effectiveness and outcomes of those policies and processes. Such a measure would be wholly consistent with the UK government's commitment to implement the UN Guiding Principles on Business and Human Rights (UNGPs), and its expectation that companies behave in line with the UNGPs throughout their supply chains.
- 2.3 The information provided would be consistent with the nature and context of the company's operations. If the company's annual report did not contain information on its due diligence policies and processes, it would state which of kinds of information it did not contain and why.
- 2.4 In accordance with its remit and powers under the Companies Act 2006, the Financial Reporting Council would enquire into cases where it appears that the reporting requirements set out above have not been followed.
- 2.5 The application of this measure to UK quoted companies is consistent with the scope of existing narrative reporting requirements under the Companies Act 2006. Large UK companies trading in California are already required to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale, under the California Supply Chains Transparency Act. Additionally, companies which are members of voluntary initiatives based on the ILO Core Conventions, such as the Ethical Trading Initiative and SAI Global are expected to implement due diligence measures. Therefore for many companies there would be no significant extra burden in including such provisions on due diligence reporting in the draft Bill, especially in the sectors where the risks of slavery and forced labour are greatest.
- 2.6 Legislation would start to level the playing field and raise standards across the board, benefitting companies that are currently making disclosures and taking steps to improve their supply chain management. Laggard companies of significant size (which are competitors of businesses operating to higher standards) will not disclose unless required to do so. The benefits of disclosure are twofold. Firstly, company management is better informed through the data collection process of the risks they need to address in their supply chain. Secondly, key stakeholders are able to ask more informed questions of companies about how their supply chains are managed.

3. What non-legislative action needs to be taken to ensure effective implementation of the draft Bill?

3.1 Government should support the development of good-quality guidance, developed via multi-stakeholder processes to assist companies to implement the new reporting requirement outlined above. Companies should also be referred to existing guidance, for example the freedom of association guidance produced in 2013 by the Ethical Trading Initiative in response to the UNGPs. Freedom of association is an important 'enabling' right to prevent exploitative practices in the workplace, protecting workers by provide a means by which to raise concerns.

3.2 We recommend that companies are guided to implement and report on the following measures, which will enable them to assess and demonstrate the way in which they manage their sourcing activities:

- a) Their assessment of what the living wage should be in the key labour intensive stages of production in their supply chains, per country.
- b) The percentage of workers in their supply chains who are paid a living wage.
- c) The percentage of workplaces in their supply chain which are covered by a credible collective bargaining agreement or good quality worker-management negotiation.
- d) How the incentive structures that are in place for both buyers and suppliers reward good working conditions.

While some of this data is already collected by some companies, such as those that are members of the Ethical Trading Initiative, it is not necessarily in the public domain.

3.3 Government should further incentivise companies to:

- Ensure that workers understand, and are able to defend their rights via recognition of freedom of association and collective bargaining, and that they have a credible grievance mechanism through which to report abuses, such as dangerous working conditions, and are empowered to use this. The government needs to make clear that it is not acceptable for UK businesses to benefit from supply chains which are serviced and subsidised by slave labour.
- Treat labour rights in the supply chain as a quality control issue, and place the same emphasis on it as other aspects of quality control of products; i.e. if a product has slave labour in its supply chain, then it should be viewed as defective.
- Impose contractual requirements on their suppliers that reflect international standards, with suitable penalties for non-compliance. Companies should communicate to their suppliers a requirement to achieve ILO core labour standards in their workplaces. Specifically, companies should purchase from suppliers which meet core labour standards. Where no such suppliers are available, purchasers should make it a condition of contract that over a fixed time period, a supplier will meet ILO labour standards. Suppliers who show no intention or ability to improve, despite being offered support by the purchaser, should not be rewarded with further business, since this undermines suppliers with good standards and drives a race to the bottom.

4. Does the draft Bill achieve its objectives effectively and fairly?

4.1 The draft Bill rightly aims to reduce modern slavery in the UK. However, deficiencies in the supply chain policies of companies operating in the UK are also likely to be linked to their

contribution to slave labour conditions abroad. If the Bill is to address the issue systemically, it needs to ensure that UK businesses are not responsible for sustaining and benefiting from slavery overseas. This would not only be fair and conducive to a level playing field, but also in keeping with the ILO core conventions.

4.2 Emphasis should be placed on pooling analysis from relevant government departments and from statutory bodies to understand the drivers of modern slavery, and on action to reduce the demand for modern slavery. The effectiveness of the Bill will be undermined if these underlying issues are not addressed.

4.3 The UK government must ensure that it responds to the existing evidence base on modern slavery, most of which consists of relatively small-scale academic studies. The Joseph Rowntree Foundation in their programme on forced labour in the UK has commissioned studies pointing to forced labour in sectors including: cleaning; construction; care work and domestic work; catering and hospitality; and food production and processing.¹ Other one-off investigations have included the TUC-led Commission on Vulnerable Employment (TUC, 2008) and the Equality and Human Rights Commission (EHRC) inquiry into conditions in meat and poultry processing in England and Wales (EHRC, 2010). All the above tend to suggest that the scale of forced labour may be significantly higher than the anticipated number of cases prosecuted as criminal offences. By focusing on law enforcement to the exclusion of addressing the failure of certain sectors of industry to root out modern forms of slavery from their supply chains, the government risks bypassing a key part of the problem.

4.4 Without the use of indicators of modern slavery, it is unclear how cases other than the most severe and obvious will be identified. Studies commissioned by the Joseph Rowntree Foundation have identified the following indicators:

- Threats or actual physical harm to the worker;
- Restriction of movement and confinement, to the workplace or to a limited area;
- Debt bondage, where the worker works to pay off debt or a loan, and is not paid for his or her services;
- The employer may provide food and accommodation at such inflated prices that the worker cannot escape the debt;
- Withholding of wages or excessive wage reductions that violate previously made agreements;
- Retention of passports and identify documents, so that the worker cannot leave or prove his/her identify and status;
- Threat of denunciation to the authorities, where the worker has an irregular immigration status.

The measures in the draft Bill would be made more effective, with regard to both prevention and enforcement, by the incorporation of such indicators, either in the Bill itself or in accompanying guidance.

5. Does the draft Bill provide for adequate safeguarding of survivors of slavery and trafficking?

¹ See for example Dwyer et al., 2011; Allanby et al., 2011; Kagan et al., 2011; Scott et al, 2012

- 5.1 Survivors of slavery and trafficking have the right to an effective remedy, whether the abuse they have experienced has occurred in the UK or overseas.
- 5.2 In practical terms, it remains very difficult for victims of UK-linked corporate malpractice overseas to access remedy, including in the event of serious human rights abuses.² To address this, the UK government must ensure that people who have been adversely affected by the activities of UK-linked companies can hold those companies to account in the UK, both through the courts and via accessible, effective non-judicial mechanisms which can provide effective remedy.
- 5.3 We recommend that in addition to measures introduced in the draft Bill, the UK government proceeds with the review of access to remedy set out in its UNGPs national implementation plan. This should include assessing the steps required to provide access to effective judicial remedy and non-judicial remedy.

6. How could the proposals for the Anti-Slavery Commissioner be improved?

- 6.1 The Anti-Slavery Commissioner should be independent, reporting directly to Parliament in order to ensure that it can be an impetus to government action. As currently proposed in the draft Bill, the Commissioner would report to the Home Secretary, which we regard as an unsatisfactory arrangement.
- 6.2 It is vital that the Commissioner has sufficient resources and powers to be effective. Currently the effectiveness of some enforcement bodies has been undermined due to insufficient funding and inadequate powers.
- 6.3 We recommend that the Commissioner has the necessary powers and authority to:
- a) Review the drivers of slavery and forced labour in the supply chain, in order to better understand the source of the demand for cheap, easily exploitable labour.
 - b) Inform the government of any necessary changes to public policy and its own enforcement powers. Early experience from the Gangmasters' Licensing Authority was that additional enforcement powers were required for successful operation, and certain sectors needed to be particularly targeted because of their significant role in using labour contractors.
 - c) Convene and support multi-stakeholder processes, particularly in the sectors with labour intensive stages of production, where it is known that labour rights are frequently violated, and where it is likely workers experience forced labour conditions including involuntary overtime. Such processes should have at their centre the experiences of workers and the improvements that they would like to see made. Some existing supply chain codes of conduct are "top-down"/purchaser-driven and have been implemented through a reliance on audits. This has had the unintended consequence of driving labour rights abuses underground, rather than leading to an improvement in working conditions. This should be avoided in future.

ENDS

² See Corporate Responsibility Coalition and LSE, 2009, 'Reality of Rights: Barriers to accessing remedies when business operates beyond borders'