

Making the Ethical Grade: From Transparency to Action on Modern Slavery



By
Aran Spivey, Senior Analyst
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The UK's 2015 Modern Slavery Act (MSA) is rightly seen as a ground-breaking piece of legislation, designed to fight modern slavery and ensure that victims have the right support and protection. The Act recognised the prevalence of modern slavery in business operations and supply chains, and consequently, the need for the private sector to take action. Section 54, 'Transparency in supply chains' or 'TISC', ensures that commercial organisations demonstrate their assessment of risk and commitment to action through a mandatory slavery and human trafficking statement.

Rightfully, companies have started to engage with the practice of writing a statement, with many now on their third iteration of reporting. Compliance levels remain variable, and even some of the Government's own key suppliers are not adherent to the Act, as Sancroft's recent report with Tussell explored.¹ NGOs are publishing benchmarks and pressing for better disclosures, and a recent independent review² of the Act has called for deeper engagement on the issue from business. Common criticisms of the TISC provision include the lack of enforcement powers, and the basic tick-box compliance approach that it leads many firms to take.

These criticisms were responded to in early June, when Theresa May spoke at the International Labour Organisation (ILO) in Geneva. Here, May renewed her own personal commitment to the topic of modern slavery, but also announced new measures to strengthen the Modern Slavery Act. Amongst other initiatives, May announced a central repository for modern slavery statements, and more stringent public procurement measures. John Morrison, Chief Executive of the Institute for Human Rights and Business, notes that a strengthening of UK legislation would go some way to securing a legacy for the Prime Minister other than simply a Brexit impasse.³

The new measures announced by May should put modern slavery back on the radar of large organisations, but being on the radar isn't enough. The annual round of statement writing is by no means becoming futile, but modern slavery statement writing should not be seen as going above and beyond regarding engagement with human rights risks in a company's supply chain. It is, undoubtedly, the baseline.

Producing a modern slavery statement requires a basic level of engagement to ensure that progress on engagement on modern slavery risk over the past twelve months is properly captured, but how can companies who are now comfortable at this begin to lead on human rights integration? The discourse is moving towards broader Human Rights Due Diligence (HRDD), which requires active and ongoing identification, integration,

¹ <https://sancroft.com/2019/05/20/the-sancroft-tussell-report-eliminating-modern-slavery-in-public-procurement/>

² <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>

³ <https://www.linkedin.com/pulse/end-slavery-legacy-theresa-may-john-morrison/>

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tracking and communication of human rights risks. Under the direction of the UN Guiding Principles on Business and Human Rights, it can be said that ‘human rights due diligence provides the backbone of the day-to-day activities of a business enterprise in translating into practice its responsibility to respect human rights.’ The UN goes on to say, ‘it is a way for the enterprise to proactively manage the potential and actual risks of adverse impacts on the rights and dignity of people.’⁴ Stakeholders are expecting more than basic transparency - firms must be proactive in managing risk. This proactivity from business is becoming more important than ever, with governments across the globe developing their own variants of legislation.

The Business and Human Rights Resource Centre (BHRRC) is one organisation leading the charge on calling for mandatory human rights due diligence. Its blog series looks across the globe to unpack emerging legislation on business and human rights.⁵ Canada and Hong Kong⁶ are weighing up modern slavery legislation similar to the UK’s precedent, whilst nations right across Europe are looking at other kinds of human rights due diligence. The BHRRC notes, ‘Until recently, legal developments have put an emphasis on promoting transparency, but there is growing momentum worldwide to require companies to undertake human rights due diligence. France was the first country to adopt such a requirement under its Duty of Vigilance law, followed by the Netherlands with due diligence focused on child labour, and now various other governments are considering legislative proposals including Austria, Switzerland, and Luxembourg’.⁷

Supply chain transparency is at a crossroads. In the UK, modern slavery statements have become a compliance exercise for the largest companies, yet it remains to be seen what the direction of travel is for these firms. Even where the low baseline of compliance is currently being met, unless firms take a more sustained and integrated approach to assessing modern slavery in their supply chains, there will not be the level of engagement that is needed to stamp out forced labour. In particular, companies should better understand how they can move from compliance to leadership through a human rights due diligence approach.

Proliferating legislation is helping to shape developments, and we are now seeing a race to the top. On this basis, it is important to take stock of where the UK MSA is at, and how it compares to other similar pieces of legislation;

- The six recommended areas of engagement, including policies, due diligence, and effectiveness in the TISC provision are useful parameters but this is by no means as robust as the French Duty of Vigilance Law, which demands ‘a formalised, accessible, transparent, exhaustive and sincere Plan.’⁸ Total, the oil and gas giant, is accused of breaching this law through its Ugandan operations in a landmark claim.⁹
- The UK MSA is predicated on NGO and Third Sector pressure ensuring scrutiny, but there are no penalties for non-compliance. The recent Dutch child labour due diligence legislation bucks this trend

⁴ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/224/87/PDF/N1822487.pdf?OpenElement>

⁵ <https://www.business-humanrights.org/en/mandatory-due-diligence/blog-series-towards-mandatory-human-rights-due-diligence>

⁶ <http://news.trust.org/item/20190221150531-ztivid/>

⁷ <https://www.reuters.com/article/us-hongkong-trafficking-lawmaking/hong-kong-lawmaker-vows-fresh-push-for-uk-style-anti-slavery-law-idUSKCN1P30PR>

⁸ <https://www.business-humanrights.org/en/national-movements-for-mandatory-human-rights-due-diligence-in-european-countries>

⁹ https://www.asso-sherpa.org/wp-content/uploads/2019/02/Sherpa_VPRG_EN_WEB-ilovepdf-compressed.pdf

⁹ <https://uk.reuters.com/article/uk-total-uganda-ngos/campaign-groups-accuse-total-of-breaching-french-corporate-duty-law-in-uganda-idUKKCN1TQ1P3>

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of impunity, with it being the first legislation of its kind to introduce criminal sanctions. This begins with a symbolic 4,100 euro fine, potentially rising to 83,000 euro and four years imprisonment for sustained non-compliance.¹⁰

- A central repository for statements in the UK will be most welcome, but the recent Australian bill already allows for this.¹¹

In short, there are learnings to be taken from growing legislation. The UK MSA should be strengthened, but this must be viewed in light of a movement towards mandatory human rights due diligence. In order to meet the expectations of stakeholders, and to really address the issue of modern slavery in supply chains, a systematic due diligence approach on business operations is required.

The CORE Coalition recently published a briefing note with its recommendations for Government regarding the independent review of the Modern Slavery Act.¹² These three key demands encompass what the UK needs to do for it to remain a leader in tackling the horrors of forced labour;

- Take immediate steps to strengthen the regulation; specifically, by mandating companies to report on the six areas currently suggested in the Act, introducing meaningful sanctions for failure to report and extending the reporting requirement to the public sector.
- Implement a more comprehensive policy approach to tackling modern slavery in supply chains, including improved labour market inspection and enforcement.
- Begin the process of introducing mandatory human rights due diligence, in order for the UK to remain a leader on ensuring responsible business conduct.

The final point is a vital one, and where the conversation on transparency has moved to. Firms who do not publish a compliant modern slavery statement in the UK are showing flagrant disregard, but no longer is a compliant statement enough to meet the expectations of stakeholders.

Proliferating legislation means that companies with complex operations across geographies must pay close attention to developments, but the trend towards mandatory human rights due diligence is as compelling. A growing list of corporations are backing this,¹³ and a more recent development is the interest of investors in the topic.¹⁴ This sustained attention will deepen further as yet more abuses and human rights scandals are uncovered in the supply chains of every day products.¹⁵

As Theresa May said in Geneva, this is becoming an issue of commercial viability. The outgoing Prime Minister said, 'I want to call on ordinary shoppers the world over to vote with their wallets. To shun those companies that do not make the ethical grade. And instead support their rivals who take an active role in fighting modern

¹⁰ <https://www.business-humanrights.org/sites/default/files/documents/FAQChild%20Labour%20Due%20Diligence%20Law.pdf>

¹¹ <https://www.legislation.gov.au/Details/C2018A00153>

¹² https://corporate-responsibility.org/wp-content/uploads/2019/06/MSA-Review-Joint-Briefing_FINAL_180619.pdf

¹³ <https://www.business-humanrights.org/en/list-of-large-businesses-associations-that-support-human-rights-due-diligence-regulation>

¹⁴ <https://www.business-humanrights.org/en/investors-representing-13-trillion-call-on-govts-to-make-human-rights-due-diligence-mandatory-throughout-investment-lifecycle>

¹⁵ For example: <https://www.theguardian.com/world/2019/jun/20/tomatoes-italy-mafia-migrant-labour-modern-slavery>

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slavery.' An 'active role,' as May describes it, requires sustained engagement, self-reflection, and a strategic focus on risk. Companies should see mandatory human rights due diligence as the right way forward, and begin to prepare for this.

Sancroft has extensive experience in supporting our clients on the topic of business and human rights. We can help you to;

- Understand your direct and indirect human rights risks
- Embed human rights considerations throughout your business
- Report on human rights, including through your modern slavery statement
- Undertake robust human rights due diligence
- Drive the human rights discussion through thought leadership