

# FULL DISCLOSURE:

## *Towards Better Modern Slavery Reporting*

MARCH 2019



**ICAR**



INTERNATIONAL CORPORATE  
ACCOUNTABILITY ROUNDTABLE

**FOCUS ON  
LABOUR  
EXPLOITATION**

# ABOUT THE AUTHORS



## ICAR

The International Corporate Accountability Roundtable (ICAR) harnesses the collective power of progressive organizations to push governments to create and enforce rules over corporations that promote human rights and reduce inequality.



## FLEX

Focus on Labour Exploitation (FLEX) works to end human trafficking for labor exploitation. To achieve this, FLEX works to prevent labor abuses, protect the rights of trafficked persons, and promote best practice responses to human trafficking for labor exploitation through research, advocacy and awareness raising. FLEX is a registered charity based in the U.K.

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## METHODOLOGY

The findings of this report were developed following desk-based research, including a literature review and a review and analysis of about 30 selected company statements under both the California Transparency in Supply Chains Act and the United Kingdom's Modern Slavery Act. In addition to desk-based research, ICAR and FLEX conducted 28 interviews in the fall of 2018, which included 10 interviews with companies, 15 with civil society organizations (CSOs) including trade unions, and 3 with governments. We also received feedback from two investor groups. Additionally, ICAR and FLEX hosted two consultations that included stakeholders who had already been interviewed and several we had been unable to interview individually. In November 2018, FLEX and ICAR hosted a consultation in London, which included 3 company representatives, 10 CSOs including trade unions, 1 investor, and 4 government representatives. In our December 2018 consultation in Washington, D.C., ICAR and FLEX hosted 2 company representatives, 13 CSOs, and 5 government representatives. All stakeholder interviews were conducted on a confidential basis, and the consultations were held under Chatham House rules; thus, stakeholders' observations reflected below are not attributed to a specific person or any organization. The report below reflects information gathered from the research and the consultations.

## EXECUTIVE SUMMARY

Corporate human rights reporting is a commonly expected practice and is increasingly becoming a legal requirement for businesses. Under the international framework of the United Nations Guiding Principles on Business and Human Rights (UNGPs), states should “encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.”<sup>1</sup> In the past few years, several countries have passed laws that mandate companies disclose their policies and practices aimed specifically at preventing forced labor and human trafficking in their supply chains. The first such disclosure law, the Transparency in Supply Chains Act, was passed in California in 2010. In 2015, the United Kingdom passed the Modern Slavery Act (U.K. MSA), a comprehensive law that seeks to eradicate modern slavery and includes a transparency provision for businesses that improves upon the base model laid out in the California Act. The Australian government passed a modern slavery law in December of 2018, and similar bills have also been introduced in Canada and the United States. Other jurisdictions have passed or are exploring legislation mandating that companies conduct human rights due diligence and report on such efforts. In this context, it is crucial to assess how effective modern slavery transparency legislation has been, as well as to identify ways to ensure reporting practices have the intended impact.

At their core, these laws have tried to improve corporate reporting and business practices that could increase the risks of forced labor. Examining the record after several years since their passage, the results overall are disappointing. The laws appear to have had some positive outcomes, including increased awareness of the problem of forced labor and human trafficking in global supply chains, notably among company

executives. This increased awareness has led some companies to allocate more resources to tackling these issues. Company reporting has also improved access to corporate information and strengthened the ability of external stakeholders to provide guidance to companies as well as to measure company performance on these issues year-on-year.

However, existing reporting requirements have failed to achieve their core aim: to induce businesses to meaningfully address and adequately report on their efforts to tackle forced labor and human trafficking in their supply chains. Our research has shown that compliance with these laws has been inconsistent, and that the breadth and quality of information companies disclose is insufficient and does not reflect serious efforts to tackle the problem. Additionally, the information included in modern slavery statements has not been adequate to enable civil society to effectively monitor company performance nor engage meaningfully with them. Reporting is meaningful only when companies have taken effective action to identify, prevent, mitigate, and address the human rights impacts of their business activities and when these actions result in tangible improvements to rights-holders. This can only be achieved if reporting is outcomes-oriented and based on identifying concrete risks of forced labor and human trafficking within corporate supply chains.

Through analysis of company statements, engagement with stakeholders, and desk-based research, we have identified the key provisions in existing modern slavery reporting laws that appear to have had an impact on corporate practices, including requiring companies to publish their statements on the homepage of their websites with a clearly visible link on the home page; requiring board or executive level sign off on any such statements; and requiring governments to establish independent bodies to provide guidance for companies and review company statements. We have also identified gaps in existing legislation that should be improved upon in new laws or through amendments to existing statutes, including broadening the scope of applicability to include a greater range of companies; establishing mandatory reporting criteria and thorough guidance in collaboration with stakeholders, including CSOs, trade unions, investors and companies; introducing better monitoring and enforcement mechanisms; and developing incentives to encourage practices that go above and beyond the legal requirements. Ultimately, mandatory human rights due diligence that includes liability is increasingly being recognised by activists, CSOs, trade unions, and progressively by legislatures and some governments as more effective in preventing forced labor, as well as other human rights abuses, in supply chains. A full list of our recommendations can be found in the conclusion.



# INTRODUCTION

There are an estimated 24.9 million people in forced labor around the globe, of which 16 million are exploited in the private economy.<sup>2</sup> Forced labor refers to situations in which persons are coerced to work through the use of violence or intimidation, and can take various forms including debt-bondage and human trafficking.<sup>3</sup> These situations are often interchangeably referred to as modern slavery. Forced labor is found in every country and every sector of activity. Forced labor can be imposed by state authorities as well as private actors, including in the complex global supply chains of multinational companies. Forced labor and human trafficking generates an estimated \$150 billion USD in illicit profits annually,<sup>4</sup> in contrast to the approximately \$124 million USD governments around the globe spend to combat it.<sup>5</sup> When compared to the estimated 24.9 million people enslaved, the 7,045 trafficking prosecutions reported by global law enforcement in 2017 is alarmingly low. Further, just five percent of these convictions were related to labor trafficking cases.<sup>6</sup> Forced labor and human trafficking remain global plights for which there is shockingly little accountability.

A growing number of national laws and international guidelines address forced labor around the globe by requiring business enterprises to report on the actions they have taken to prevent, address, and mitigate the risks of forced labor and human trafficking in their global operations. This international regulatory landscape reflects the increasing priority that governments and the public place on scrutinizing labor practices in corporate supply chains. For example, since 2004, Brazil has published a “dirty list” that discloses companies that are engaged in illicit labor practices and subsequently banned from accessing public financing.<sup>7</sup> And in 2016, the United States amended a 1930’s law that bans the importation of any products made with forced labor in an effort to close a loophole in the law.<sup>8</sup>

In the past decade, modern slavery disclosure laws have also been enacted in the United States (U.S.), the United Kingdom (U.K.), and Australia. Several other jurisdictions are exploring the possibility of introducing similar requirements, while others are assessing the possibility of moving towards mandatory human rights due diligence legislation.

Existing modern slavery transparency frameworks largely focus on the role of corporate reporting in preventing and mitigating forced labor and human trafficking in supply chains. Companies that report publicly on key aspects of their supply chain benefit from a set of mutually reinforcing results including improved reputation, greater operational efficiency, improved compliance and increased access to capital.<sup>9</sup>

In today’s global context, supply chains are long and complex. Eliminating forced labor and human trafficking within these supply chains will require effective laws, policies and regulations and an integrated multi-sector approach. One of the goals associated

with requiring businesses to be transparent about their supply chains is to identify suppliers that use forced labor and to then encourage businesses to leverage their relationships with those suppliers to improve working conditions. This can involve government and civil society stakeholders as well as lead companies.

As an increasing number of governments seek to introduce modern slavery legislation the time is ripe to evaluate existing legislation for its ability to provide transparency and accountability for the risks of exploitation in global supply chains. This report analyzes existing legal frameworks that mandate corporate reporting on modern slavery and provides recommendations to governments that are exploring new legislation. It also examines the current state of corporate reporting under existing legal frameworks and sets out elements for better and more impactful disclosure.

The recommendations laid out in the report also aim to strengthen company efforts to identify and mitigate potential risks of forced labor, and provide government, investors, civil society and workers the necessary insight into their supply chains.

## I. THE CASE FOR IMPROVED CORPORATE REPORTING

While corporate human rights reporting is now a commonly expected practice as well as a legal requirement, both the authors and readers of these reports have increasingly expressed concern about their value and impact.<sup>10</sup> In this section, we outline why better corporate human rights reporting is important and needed. We highlight how it can benefit different stakeholders, including by driving better corporate human rights performance and increased respect for human rights.

### The Rise of Corporate Human Rights Reporting

Corporate human rights reporting has long been expected of companies under various international standards, frameworks and national initiatives. Under the international framework of the UNGPs, states should “encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.”<sup>11</sup> The UNGPs instruct companies to have in place “[a] human rights due diligence process to identify, prevent, mitigate and account for how they address” their adverse human right impact.<sup>12</sup> Additionally, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises state that enterprises “should ensure that timely and accurate information is disclosed on all

material matters regarding their activities, structure, financial situation, performance, ownership and governance.”<sup>13</sup> A number of companies reference and acknowledge the UNGPs and OECD Guidelines on their websites and tie their sustainability or human rights policies directly to these international frameworks.<sup>14</sup>

At their core, these guidelines encourage, but do not legally bind, business enterprises to have policies and processes through which they “know and show” that they respect human rights in practice.<sup>15</sup> Under this framework, “showing” involves companies communicating the human rights impact of their activities and the measures taken to address identified negative impacts.<sup>16</sup> One rationale for this is that the information provided will enable external stakeholders to more effectively monitor and hold companies to account, information they would not normally have access to without the corporate human rights reporting.

Companies have long faced mandatory financial corporate reporting requirements, but the requirement of mandatory non-financial corporate reporting requirements is more recent.<sup>17</sup> The expectation that companies provide non-financial corporate information, such as on environmental, social, and governance (ESG) issues, including human rights, is becoming more widespread. This expectation stems in part from stock markets and investor pressure and has increasingly been bolstered by government mandated disclosure requirements.<sup>18</sup> In fact, as of 2017, seventy-eight percent of the world’s 250 largest companies disclosed non-financial data in their annual financial reports.<sup>19</sup> Additionally, upwards of 400 instruments in 64 countries now require companies to report on their human rights performance, including in relation to human trafficking and forced labor.<sup>20</sup>

Global stock markets have also taken a stand in mandating or strongly encouraging corporate reporting on human rights issues<sup>21</sup> and investors are increasingly prioritizing sustainability in their decisions. Since 2016, assets under management in the United States invested in socially responsible investments (SRIs) rose by 38 percent, and now total \$12 trillion USD.<sup>22</sup> Companies that do not adopt these expectations may find themselves with less access to capital than the companies who have set up corporate reporting mechanisms.

## The Importance of *Meaningful* Reporting

Corporate human rights reporting is often viewed as a means to an end. It is the result of complex internal processes on the part of businesses, and its end result, namely disclosure, provides important insights to an array of different actors who use it for different purposes. Corporate human rights reporting done right, i.e., meaningful reporting, holds potential for a wide range of stakeholders.

Corporate human rights reporting is an opportunity for businesses to demonstrate their commitment to and efforts to fulfil their responsibility to respect human rights. Meaningful reporting allows companies to show that they have undertaken serious action to identify, prevent, mitigate, and address the human rights impacts of their business activities. Taking the final step in that responsibility, companies must then communicate their efforts taken by publishing well-informed reports, which will maximize the benefits to their business including by improving reputation, increasing operational efficiency and leading to greater access to capital.

The actions that companies take internally to identify information that they should report on may result in better disclosure. Meaningful reporting should provide the insights into a company's business model, operations, and practices that are necessary to provide a basis for informed conversations about the company's human rights risks and performance. Companies that conduct thorough human rights due diligence will improve their own understanding of the risks their business and sourcing practices may pose to workers and other stakeholders in their global supply chains. When a business understands these risks, it will be better equipped to: prevent them from materializing, mitigate them when they are identified, and remedy harms that have occurred. Thus, better reporting may potentially reduce human rights violations in a company's supply chain and, ultimately, result in better business human rights performance.

Better reporting may also strengthen the ability of external stakeholders to monitor companies' performance and progress in this area. Meaningful disclosure allows external stakeholders to both praise or expose companies for their human rights records, and to "name and shame" or "name and fame" them. With the information disclosed in meaningful human rights reports, CSOs can provide guidance to companies on how to better their business and sourcing practices, and also to help companies to engage workers for maximum visibility into their supply chain and efficient management of risks therein. Meaningful reporting, or lack thereof, also provides the government necessary insight into a company's regulatory compliance, which can lead to better labor market enforcement and provide opportunity to level the playing field for responsible businesses.

Additionally, meaningful disclosure is important for investors, who increasingly base investment decisions on information included in corporate human rights related disclosures.<sup>23</sup> This may be particularly important where the money investors are seeking to place in companies is tied to a set of values to which the investor must adhere. Adequate disclosure may also enable more informed conversations between investors and their investees and contribute to investors fulfilling their own responsibility to respect human rights. As per the UNGPs and the OECD guidance on Responsible Business Conduct for Institutional Investors, investors are expected to identify and address human rights risks and impacts in their investment portfolios and use their leverage to influence investee companies to respect human rights.<sup>24</sup>

**“Investors are increasingly connecting reporting to better forecasting of long-term sustainability and sustainable growth. In addition to the business case, many investors represent money that comes with a set of values behind what people want to invest in.”**

*– Investor Group Representative*

While more meaningful reporting is beneficial to companies, it is also useful to external stakeholders because it provides them with information to which they would not otherwise have access. Companies have information about their business and sourcing practices that governments need in order to perform their regulatory and monitoring functions. Civil society also require this information to be able to engage with affected workers in order to provide true transparency. Meaningful disclosure can contribute to strengthening check and balance systems, by improving access to information and participation. Additionally, CSOs and trade unions may use the information disclosed to further empower workers to assert their rights. Reporting can be a step towards this empowerment and towards equalizing this power imbalance, but reports must contain information that is useful to those stakeholders for any equalization to be realized. Finally, trade unions may use supply chain information to further promote the right to collective bargaining in non-unionized portions of the supply chain and help the workers they represent to seek improvements in their working conditions, fair compensation, or the remedying of harms they have already experienced.

In this section we have shown the potential benefits of corporate human rights reporting done correctly. We have seen that meaningful reporting can be useful for a variety of stakeholders, and that it ultimately can contribute to better respect for human rights. However, corporate reporting can only be meaningful if its driven by effective transparency legislation and results from effective human rights due diligence processes on the part of companies, as we explore in the next sections.

## II. CORPORATE REPORTING ON MODERN SLAVERY: WHERE WE ARE

With several countries enacting modern slavery reporting requirements in the past few years, and several others considering the introduction of similar requirements, it is important to take stock of the effectiveness of existing reporting requirements to date. In this section, we highlight the successes and shortcomings of existing modern slavery reporting requirements, as well as the positives and gaps in current reporting practices under such laws.

### A. Current Legislation and Legislative Developments

The slow but steady push to pass modern slavery reporting requirements began in 2010, with the passage of the California Transparency in Supply Chains Act. The United Kingdom Modern Slavery Act (U.K. MSA) 2015 includes a transparency in supply chains (TISC) provision that built upon the basic model of the California Act. In December of 2018, Australia built on the U.K. model and passed its own modern slavery law. While the different iterations of these transparency laws have become more robust over time, there remain significant gaps in each of them, which partly account for their limited success. At the same time, several countries continue to show interest in this type of legislation, while others have enacted or are currently considering a variety of supply chain laws and regulations.

#### California Transparency in Supply Chains Act

The first modern slavery disclosure law was passed by the California state legislature in 2010. The **California Transparency in Supply Chains Act (CTSCA)** requires all retailers and manufacturers with global annual gross receipts of \$100 million USD that “do business” in California to disclose on their websites any action they are taking to “eradicate slavery and human trafficking from [their] direct supply chain[s] for tangible goods for sale.”<sup>25</sup> Company disclosures must include information on actions taken, if any, on these four topics: 1) verification, 2) audits, 3) internal accountability, and 4) training. The required disclosures are to be posted on the company’s website with a “conspicuous and easily understood link” to the required information on the website’s homepage.<sup>26</sup>

Since the law came into effect in 2012, a number of deficiencies in the CTSCA legislation have become apparent. First, the Act only requires companies to report

once to be in compliance, rather than mandating annual transparency reports on their efforts to combat forced labor and human trafficking in their supply chains.<sup>27</sup> Additionally, the monetary threshold of \$100 million USD in global annual gross receipts excludes medium sized companies that are also at a high risk of having forced labor and human trafficking in their supply chains. This high monetary threshold coupled with the requirement that the company be designated with the state as a “retail seller or manufacturer” has left companies confused as to whom the law applies.<sup>28</sup> The law also allows companies to report that they do not take any efforts in each of these areas, meaning that a company is under no real pressure to take any steps towards identifying instances or risks of forced labor and human trafficking in their supply chains. Beyond this, the Act does not require that companies take any action to mitigate, address, or remedy instances of forced labor or human trafficking; the requirement is simply that companies report. Our research findings show that companies that sought to comply with the CTSCA felt that governmental guidance on the topic was both delayed, as it was not released until the fourth year of the law’s implementation, and unhelpful.<sup>29</sup> Finally, the law does not make the government responsible for enforcement or monitoring of company compliance. The Act only empowers the California Attorney General to compel non-reporting companies through injunction, but no company to date has been compelled to report in this manner.

## United Kingdom Modern Slavery Act

In 2015, the **United Kingdom** passed the **Modern Slavery Act (U.K. MSA)**, that brings disparate trafficking, forced labor, and slavery offenses into one piece of legislation under the title “modern slavery”, creates a U.K. Independent Anti-Slavery Commissioner, and establishes corporate reporting on modern slavery in supply chains.<sup>30</sup> The U.K. MSA includes Section 54, “transparency in supply chains etc” covering corporate reporting on modern slavery.<sup>31</sup> The U.K. MSA improves upon the basic model laid out in the CTSCA in a number of ways. It expands on the CTSCA by requiring all commercial entities that supply goods or services, carry out business or part of a business in the U.K., and whose annual turnover is £36 million GBP or more, to produce an annual modern slavery statement on steps taken to assess and to manage the risk of slavery and human trafficking in their global supply chains.<sup>32</sup> The U.K. MSA applies to all large businesses, not just retailers and manufacturers, wherever located, carrying on business, or part of a business, in the United Kingdom. Statements must be published on the company’s website, with a link to the statement in a prominent place on the company’s homepage. Statements must also be approved by the board of directors, or someone with equivalent authority. The U.K. MSA provides several suggestions as to the type of information a company’s modern slavery statement may include but does not prescribe that the statement include any particular information. The U.K. MSA also established an independent Anti-Slavery

Commissioner who, in addition to other responsibilities, is expected to work with the private sector to develop tools and guidance to help companies comply with the law.<sup>33</sup>

Several years of implementation of the U.K. MSA has revealed various shortcomings. The U.K. MSA left unaddressed many of the problems in the CTSCA, such as: the lack of a list of companies to whom the law applies; the lack of a central repository of statements that is managed and updated by the government; the lack of a requirement that companies take action if/when they identify forced labor and human trafficking in their supply chains; and the lack of effective monitoring and enforcement mechanisms.<sup>34</sup> Stakeholders that were consulted also complained about the lack of a requirement in the U.K. MSA for the government to report on its efforts to combat modern slavery in its procurement activities. In December 2018, the U.K. government announced that it would publish its own transparency statement in 2019, detailing the steps it is taking to identify and prevent slavery in the U.K. government's supply chains.<sup>35</sup>

The U.K. government initiated an independent review of the U.K. MSA in 2018, chaired by Baroness Butler-Sloss, Frank Field MP and Maria Miller MP.<sup>36</sup> In January 2019, a second interim report focusing on the transparency in supply chains requirement of the U.K. MSA was published.<sup>37</sup> The report makes clear that government must take steps to make businesses take this legislation more seriously. In 2017, 43 percent of the FTSE 100 (the London Stock Exchange) failed to comply with the law,<sup>38</sup> alongside 42 percent of the top 100 companies awarded government contracts.<sup>39</sup> The report recognizes that too many businesses continue to treat compliance with this legislation as discretionary rather than obligatory. To address this, the report recommends that the law be amended to develop penalties against non-compliant companies; introduce a central state-run repository for statements; remove section 54(4)b which allows companies to be legally compliant with the law simply by stating that they have done nothing to address the issue; make it mandatory to cover specific areas of the business, instead of advisable to do so; and extend section 54 to the public sector so that public procurement can also be used to tackle modern slavery and human trafficking in supply chains. More specifically, the review suggested establishing a more ambitious enforcement model with four stages of government enforcement for non-compliance: "initial warnings, fines (as a percentage of turnover), court summons, and director disqualification."<sup>40</sup> Our research suggests that implementing the second interim report's recommendations, in particular in relation to enforcement, would engender stronger compliance with the law.

### **Australian Modern Slavery Act**

The most recent modern slavery law was passed by the Australian Federal Government in December of 2018. The **Australian Modern Slavery Act** (Australian MSA) applies



to business entities (including not-for-profits and universities) based, or operating, in Australia, with an annual consolidated revenue of at least \$100 million AUD, requiring them to publish annual public statements on modern slavery in their operations and supply chains.<sup>41</sup> The Australian MSA will be applicable to an estimated 3,000 companies and other entities, and is also the first modern slavery disclosure law to impose reporting obligations on the federal government and its agencies.<sup>42</sup> The Act includes mandatory reporting criteria and requires reporting entities to provide information about their structure, operations and supply chains; potential modern slavery risks; actions taken to assess and address these risks; and an assessment of the effectiveness of their actions. The Act does not include penalties for non-compliance. Therefore, the government's strongest accountability mechanism will be to "name and shame" entities that do not report. The government will also maintain a repository of the statements submitted in compliance with the law, and require the Minister to prepare an annual compliance report to be tabled before Parliament, which will include a list of companies that have not complied.<sup>43</sup> The Australian government has committed to provide support and comprehensive guidance to businesses, to be developed in consultation with businesses and civil society. The government also committed to conducting a review of the Act three years into its implementation.

Like the modern slavery disclosure laws before it, the Australian MSA was not passed without its own shortcomings. While the government has said that it may "name and shame" non-reporting companies, there remain no real incentives to comply beyond reputational damage for these entities. The Act does not include a provision that precludes non-compliant companies from public tender contracts, nor does it allow for financial penalties to induce company compliance. Unlike the U.K. MSA, the Act fails to establish an Anti-Slavery Commissioner, or something akin to this position, who is meant to work with businesses to implement the law. Finally, like the other existing MSAs, the Australian MSA does not explicitly mandate human rights due diligence or any other form of action on the part of companies— the requirement remains simply to report.<sup>44</sup>

In addition, the Australian state of **New South Wales** (NSW) adopted a Modern Slavery Act in June 2018 which applies to commercial organizations with NSW employees that supply goods or services for profit and have an annual turnover above \$50 million AUD. The NSW Act requires reporting entities to file an annual modern slavery statement and has broadly equivalent provisions to the U.K. and Australian Acts with the exception that it includes financial penalties (up to \$1.1 million AUD) for a failure to meet the reporting requirements. Penalties will however not apply to entities that are covered by the federal Modern Slavery Act. The NSW Act contains a provision establishing an Anti-Slavery Commissioner to oversee the implementation of the Act. The NSW Act will come into effect in July 2019 once the government issues additional regulations to accompany the implementation of the Act.<sup>45</sup>

## Common Gaps in Existing Modern Slavery Laws

### *Threshold*

Current modern slavery laws are too narrow in scope because of the high monetary thresholds that have been set. The Australian MSA only applies to companies “which have an annual consolidated revenue of at least than \$100 million AUD”<sup>46</sup>, which only covers a very limited number of entities. Similarly, the CTSCA encompasses companies that “have annual worldwide gross receipt exceeding \$100 million USD;” yet, this Act is even more limited in scope because the reporting requirement only applies to those companies that “identify as a retail seller or manufacturer on [their California] tax returns.”<sup>47</sup> With monetary thresholds set this high, the reporting requirements only cover large companies. And while the U.K. has the lowest monetary threshold, at £36 Million GBP in annual turnover, this high of a requirement still leaves out many medium sized enterprises. Many of the stakeholders interviewed for this report, including several businesses, noted that existing legislation focuses too acutely on large companies. This complaint seemed to stem from the feeling that existing regulations are only being “enforced” upon larger and consumer facing companies, which usually have longer term reporting programs. These companies tend to have high name recognition and are more easily swayed by the threat of reputational damage.

### *Monitoring Compliance*

Existing modern slavery legislation lacks tools for monitoring compliance and assessing the information being published in companies’ statements. The lack of such mechanisms was a common refrain among all stakeholders interviewed for this report. U.K. civil society representatives, in particular, were quick to point out the ways in which they and their peers had been fulfilling what they believe to be U.K. government responsibilities to monitor compliance with the law and evaluate company statements under the MSA. One clear example of civil society taking on the role of monitor is the Business and Human Rights Resource Centre’s (BHRRC) modern slavery registry, a website that acts as a common repository of published corporate statements that is run and updated by BHRRC.<sup>48</sup> Members of civil society we interviewed noted that the expectation that civil society fulfill government roles to monitor and assess statements is untenable. Most civil society members who spoke on this topic noted the lack of monetary and personnel resources of CSOs and urged the government to take charge and actually evaluate which companies are in compliance with the law.

### *Lack of Enforcement Mechanism*

During the stakeholder interviews and consultations conducted in the framework of this research project, one of the most frequently noted deficiencies of existing modern

slavery disclosure laws was the lack of enforcement mechanisms for imposition on non-compliant companies. At present, none of the existing modern slavery laws provide for consequences or sanctions as a result of the failure to report. Both the CTCSA and the U.K. MSA can be enforced through injunction (by which companies could be compelled to report), but so far this mechanism has not been used under the authority of either act. Representatives from businesses, CSOs and governments alike noted that without any real penalties, companies still have little incentive to report beyond reputational damage.

## Recent and Ongoing Legislative Developments

### *Countries Considering Modern Slavery Legislation*

As the implementation of existing modern slavery legislation continues to be closely watched, and while some laws are being reviewed, other jurisdictions are considering their own modern slavery or supply chain disclosure bills. Recently, such discussions have been taking place in Hong Kong, the United States, Canada, and Norway.

In October of 2018, the Business Supply Chain Transparency on Trafficking and Slavery Act of 2018 (H.R. 7089) was put before the U.S. House of Representatives for consideration.<sup>49</sup> The law would require certain companies to disclose information describing any measures the company has taken to identify and address conditions of forced labor, slavery, human trafficking, and the worst forms of child labor within the company's supply chains. The annual report would be posted on the company's website and that of the Securities Exchange Commission. Unfortunately, there was no action on the bill during the 115th Congress.<sup>50</sup> At the time of publication, the bill was not yet reintroduced for consideration in 2019.

Parliamentarians in Hong Kong also introduced a draft Modern Slavery Bill in 2017, which was largely based on the U.K. MSA model.<sup>51</sup> The bill was discussed in a hearing of the Panel on Security of the Legislative Council in June 2018.<sup>52</sup> The Hong Kong Government indicated that it did not support the Draft Bill, considering the existing legal framework to be adequate and effective.<sup>53</sup>

In Canada, a study on child labor in supply chains was launched in November 2017 by the Subcommittee on International Human Rights of the House of Commons Standing Committee on Foreign Affairs and International Development. The Subcommittee published its findings in October 2018, and recommended the Government of Canada to “develop legislative and policy initiatives that motivate businesses to eliminate the use of any form of child labour in their global supply chains. . . .”<sup>54</sup> In February 2019, the government issued its official response to the parliamentary report, and indicated that it would “begin a process in 2019 to consult on possible supply chain legislation.”<sup>55</sup>

In parallel, a Modern Slavery Bill was tabled in the Canadian House of Commons in December 2018,<sup>56</sup> which would require companies that have assets over \$20 million CAD and revenue over \$40 million CAD to publicly release a report every year detailing what they have done to ensure their supply chains are transparent and free of goods and materials fully or partially produced by child or forced labor. The bill would also give the Canadian Border Service Agency the power to ban these products and impose fines up to \$250,000 CAD.

In Norway, a special secretary was recently created to look into a potential TISC legislation. An initial inquiry is currently being conducted and is due in December 2019.<sup>57</sup>

### ***Other Relevant Legislative Developments***

Several recent legislative developments are important to mention to inform policy-makers considering enacting legislation to address adverse human rights impacts in supply chains. In this section we will describe a number of relevant legislative models reflecting international best practice, some already in place and others currently being discussed, which mandate differing levels of corporate disclosure and propose a variety of compliance mechanisms to achieve this.

There are several relevant U.S. laws that target practices in supply chains. For example, **section 1502 of the Dodd Frank Act (2010)**,<sup>58</sup> creates a reporting requirement for publicly traded companies in the United States with products containing specific conflict minerals. The purpose of this provision is to provide greater transparency about how the trade in minerals is potentially fuelling and funding the armed struggle in the Democratic Republic of the Congo. Functionally, it relies on the adverse reputational impact of such a disclosure rather than mandating penalties for actually sourcing minerals from conflict-afflicted regions.<sup>59</sup> The United States also has the **Tariff Act of 1930** (s307 amended in 2016), which applies to all U.S. importers and allows the government to apply a temporary withholding or conclusive ban of goods that are suspected to be the result of forced or child labour, and the **Federal Acquisitions Regulations** (subpart 22.17 amended in 2015), which requires qualifying government contractors and subcontractors to certify that they have made efforts to ensure their supply chain is free from forced labor and human trafficking. Failure to comply with these laws may result in a termination of the procurement contract.

The European Union has passed a non-financial reporting law that is broader in scope than existing modern slavery statutes. The **European Union's Directive 2014/95/EU** (EU Directive) requires companies with more than 500 employees to report on how they manage human rights risks,<sup>60</sup> including in their supply chains.<sup>61</sup> Specifically, companies must provide a description of their relevant policies, including due diligence processes, the outcomes of those policies, principal human rights risks, how

they are managed, and key performance indicators. The EU non-financial reporting directive is broader than the U.K. MSA and CTSCA in that it applies to all human rights impacts, not just slavery and trafficking, and mandates specific information that must be reported. Yet like existing modern slavery reporting requirements, this EU Directive does not actually require companies to undertake due diligence.<sup>62</sup> Recent studies examining one year of reporting under of the EU non-financial reporting directive have shown that the current level of disclosure is insufficient, and have called for the legislation to clarify disclosure requirements.<sup>63</sup> The EU has also adopted the **Conflict Minerals Regulation of 2017** which reflects the Dodd-Frank Act and targets importers of minerals or metals containing tin, tungsten, tantalum or gold, to provide annual reports about the impact of their sourcing practices on human rights.

The **2017 French Duty of Vigilance Law**<sup>64</sup> stands apart from the laws discussed above because it is broader in scope and requires all companies to which the law is applicable to undertake due diligence broadly across all human rights and other concerns in their supply chains, not just modern slavery practices, and incorporates concrete compliance mechanisms. It also differs significantly from the above laws by utilizing human rights due diligence (or vigilance) as a key mechanism for improving respect for human rights in supply chains. The broad purpose of the law is to require relevant businesses to identify risks and prevent serious violations of human rights and fundamental freedoms to better protect the health and safety of both people and the environment. The law sets out the broad parameters of what adequate vigilance should look like and includes compliance mechanisms that incorporate the imposition of an injunctive order to comply with the due diligence requirements and provides for potential civil liability claims if the failure to comply causes harm to a third party. However, the French law is narrower in its application in that it only applies to France's largest companies, as determined by the number of employees, estimated to be approximately 300 businesses.

The Dutch parliament is currently considering a new **Child Labor Due Diligence law** (Wet Zorgplicht Kinderarbeid, 2017)<sup>65</sup> that will require companies selling products or services to Dutch end-users to identify whether child labor is present in their supply chain and, if this is the case, to develop a plan of action to address it and issue a due diligence statement. Companies covered by this law would be required to submit a statement to a regulatory authority, and if the regulatory authority determines that a company has not conducted due diligence in accordance with the legislation, the regulator will provide the company with legally binding instructions and a time frame for execution. If these instructions are not followed, the company can be fined. If a company is fined twice within five years, the next violation can lead to imprisonment of the responsible director. At its most serious, failing to follow the law can lead to imprisonment and fines of € 750,000 (about \$848,000 USD) or 10 per cent of the company's annual turnover.<sup>66</sup> This law is less about public reporting requirements,

and more about mandating human rights due diligence. As such, there is no annual requirement to publish a report.

In Switzerland, the **Responsible Business Initiative** (a popular federal initiative launched in 2016 by more than 80 civil society organizations) and its **Counter-Proposal** (which was approved by the first chamber of the Swiss Parliament, the National Council, in June 2018) aim to create a legal basis for companies headquartered in Switzerland to respect human and environmental rights.<sup>67</sup> The Counter-Proposal received the support of some of the Swiss business community and of the former UN Secretary-General's Special Representative for Business and Human Rights, John Ruggie. It is narrower than the original initiative, as it only applies to companies that exceed two of the following: 500 employees, total assets CHF40 million, and annual sales of CHF80 million. The Counter-Proposal calls for mandatory due diligence and for companies to be liable for the activities of its subsidiaries and injuries to life, limb or property. In March 2019, the Second Chamber of the Swiss Parliament (Council of States) decided not to enter into deliberation on the Counter-Proposal, which will be sent back to the First Chamber.<sup>68</sup> The referendum (*votation*) on the Responsible Business Initiative is likely to be conducted in February 2020 at the earliest.<sup>69</sup>

In February 2019, a German newspaper reported that the German Federal Ministry for Economic Cooperation and Development (BMZ) had drafted a bill seeking to address German companies' impacts in their supply chains.<sup>70</sup> In its current version, the draft law includes a mandatory human rights due diligence element, a relatively broad coverage, and possible penalties in case of non-compliance.<sup>71</sup> Certain German businesses, such as the textile company Kik, have expressed their support for mandatory human rights due diligence legislation.<sup>72</sup> The possibility of introducing further legislation is however dependent on prior assessment of human rights due diligence practices by German companies. The government indicated its readiness to consider legislative measures should the goal of having at least 50 percent of large German companies incorporating human rights due diligence processes not be achieved by 2020.

Several other European countries are discussing or taking steps towards developing mandatory human rights due diligence legislation, such as in Finland, the Netherlands, Austria, Italy, and Luxembourg.<sup>73</sup>

## B. The Current State of Corporate Reporting: Positives and Gaps

The initial years of company reporting under existing legal frameworks have revealed common gaps in the information that businesses include in their reports. This section

analyses the current state of reporting under the CTSCA and the U.K. MSA. It first details the positive outcomes resulting from corporate reporting, then identifies and discusses common shortcomings.

## **The Positives of Reporting to Date**

### ***Increased Awareness of Forced Labor and Human Trafficking in Supply Chains***

Despite criticism that each piece of modern slavery or transparency in supply chain (TISC) legislation has faced, our research shows and other reports confirm that many critics remain pleased that the laws have fostered greater conversation around modern slavery amongst businesses, investors, CSOs, trade unions, and the public at large.<sup>74</sup> The passage of TISC and modern slavery laws has led to a general heightened awareness of the issues relating to modern slavery in global supply chains. In particular, increased attention to these issues has brought more companies into the business and human rights realm and has led to more companies learning about and responding to the issues of forced labor and human trafficking in global supply chains.

Mandatory reporting requirements put pressure on companies to develop a plan to assess the risk of forced labor and the steps they are taking to address them throughout their supply chains. This conversation and increased awareness of modern slavery in supply chains has been powerful, particularly for companies that were not already undertaking steps to identify and address issues relating to forced labor and human trafficking in their global supply chains. The more companies that begin to examine the risks and particular instances of forced labor and human trafficking, the closer we will be to eliminating forced labor in the private sector. This is progress toward what many have called the “race to the top” effect of modern slavery legislation. Some companies described in positive terms the requirement to report on these issues, as they feel that reporting contributes to “level the playing field” for businesses and creates a so-called “race to the top” mentality for companies that take their reporting responsibilities seriously. As one company representative noted “a rising tide lifts all boats, and we shouldn’t underestimate that.” However, the only way to achieve the benefits of a “rising tide” and a “level-playing field” is for an increased number of companies to report on these issues.

### ***Executive- Level Attention and Resource Increases for Corporate Sustainability Teams***

Several of the companies that were consulted for this project mentioned that modern slavery legislation has forced the issue of reporting on forced labor and human trafficking up the chain of command to business executives; they noted that this new, or heightened, interest from the top of companies has allowed Corporate Social

Responsibility and Sustainability officers to create and implement new anti-trafficking policies and programming. One company representative we interviewed said that the reporting requirement fostered greater engagement within and among different teams in their organization, such as between the sustainability and sourcing teams, and that “CEO buy-in was a huge driver of [this] awareness raising and cross-team dialogue.” Clearly, the attention of top-level executives is often the basis for corporate momentum on addressing these issues.

Executive-level attention to compliance with modern slavery laws and the issues of forced labor and human trafficking in supply chains has often led to an increase in corporate resources being funneled to address these issues. Company representatives that we interviewed confirmed that their departments were better funded and allocated more resources as a result of new and elevated discussions on modern slavery within their companies. Research from the Ethical Trading Initiative (ETI) and our own interviews have shown that “[m]ore resources were allocated to address modern slavery when senior leaders were personally engaged.”<sup>75</sup>

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**“Our budget on ethical trade has increased because we have to do this reporting and shareholders are interested in us doing the job properly, so [they are] interested in the company pushing more resources toward reporting.”**

– *Company Representative*

Another company representative noted that mandatory reporting drove more resources to fund her sustainability team’s initiatives as well and provided her team with an inaugural opportunity to conduct mapping she had desired to conduct for some time. These examples demonstrate that when attention to issues, such as modern slavery, becomes a top priority for those in charge, those working on these issues inside companies are given more room and resources to actually identify and address problems in their company’s supply chain.



### ***Increased Access to Corporate Information***

Modern slavery statements provide non-corporate stakeholders with information they would not otherwise have and a unique venue through which to learn about company policies and practices. While some civil society representatives dispute the value in policy-oriented disclosure, CSOs must first understand what is in company policies to evaluate the effectiveness of that policy or to use it as a leverage tool to push companies to change policies and practices. Company and consultant stakeholders interviewed for this report commonly offered the refrain that it takes time for companies to respond to changes in reporting requirements and to adopt structures and mechanisms for reporting. This adjustment time may provide an explanation for why many companies' first and second year modern slavery statements have been focused more on outlining and publishing their policies, rather than explaining how their policies are implemented. From a civil society standpoint, policy information remains valuable in that it is information about company practice and culture that is otherwise unavailable, but policy information must be complemented with further explanation of policy implementation, supply chain mapping, and other topics, which are discussed later in this report.

### ***Tracking Corporate Performance***

Where modern slavery acts have mandated annual reporting, CSOs, trade unions, and investors have been better equipped to track companies' performance in addressing modern slavery year-on-year. Tracking performance has enabled those stakeholders to help businesses improve their analyses and practices where appropriate. According to ICAR and the CORE Coalition's submission to the Australian MSA inquiry, "[r]equiring this disclosure annually is key as it enables comparison from one year to the next, which allows stakeholders to identify companies that are improving their practices and those that are not."<sup>76</sup> For example, Ergon, a business and human rights research and consulting services firm, published a report in October of 2018 in which they compared 150 company statements across two reporting periods. It found that while reporting on company policies to address modern slavery is strong, "the quality of reporting in terms of content, scope and detail has remained the same with no appreciable change in quality. This finding holds across nearly all the topics recommended to be covered in statements and is disappointing if reporting is regarded as a true reflection of enhanced activity."<sup>77</sup>

While improvements in quality of statements year-on-year are still quite rare, a few companies that take seriously their responsibility to report under existing modern slavery legislation have provided improved information each year since their first statements were published.

## MARKS & SPENCER

**2015/16:** M&S describes relevant policies and its Global Sourcing Principles but provides little information about identified risks.<sup>1</sup>

**2016/17:** M&S expounds on its policies, governance structure, and strategy for addressing modern slavery;<sup>2</sup> describes its engagement with civil society groups and affected stakeholders; and identifies numerous examples of product-based and geographical risks of modern slavery in its supply chain that it planned to continue to monitor.<sup>3</sup>

**2017/18:** M&S details new initiatives with expert CSOs to conduct human rights impact assessments, the process through which it identified the impacts, and the outcomes of the assessment, including a description of the risks identified through case studies and the changes in company practice as a result of the assessment.<sup>4</sup>

Each year M&S used key performance indicators (KPIs) to set and document annual goals and to measure their own progress.

In some instances, it appears that these improvements come as a direct result of company engagement with other stakeholder groups to better understand what the latter would like to see in published reports.

### *Value to Investors*

Finally, the increased interest of investors in modern slavery reporting has helped to incentivize companies to report under new and emerging modern slavery disclosure laws. Investors are paying closer attention to the information that companies are including in their reports and are increasingly connecting reporting to better forecasting of long-term sustainability and sustainable growth. As of 2018, more than one in every four dollars under professional management is invested in socially responsible investments (SRIs),<sup>78</sup> an increase of 38 percent in the past three years. Our interviews confirmed that both companies and investment firms are recognizing the power of increased investor interest in human rights disclosures more broadly. Investors interviewed for this report also stressed that from now on companies that are not addressing modern slavery in their supply chains will increasingly face scrutiny from investors for not doing so and may face barriers in accessing capital.

## The Gaps in Reporting to Date

**“We need the basic elements of real transparency, including the mapping of a company’s risks, followed by a thoughtful and specific discussion of the risks.”**

– *Civil Society Representative*

### **Compliance**

The gaps mentioned below only apply to companies that have been reporting under existing legislation. Many companies that fall within the legal parameters of the law are not reporting at all. These companies are often non-consumer facing or are otherwise insulated from the reputational damage that can be brought upon a company for not reporting. A high-level of non-compliance is reflected in the Business and Human Rights Resource Centre’s (BHRRC) review of FTSE 100 companies. In 2018, BHRRC reported that approximately half of the 11,000 to 18,000 companies estimated by the U.K. Government to fall under the requirements of the U.K. MSA have published statements.<sup>79</sup> The report explains further that many companies have reported once but have failed to publish annual statements, and that some have recycled statements without making updates for the current reporting year.<sup>80</sup> Consequently, a lack of enforcement on the part of the government has allowed non-reporting companies to fly under the radar. These companies are often hard to identify because no jurisdiction with a modern slavery law currently publishes a list of companies to which the legislation applies; therefore, CSOs and trade unions who might normally call attention to non-reporting companies find it much more difficult to do so and companies are less likely to comply without any threat of penalty.

A key rationale for transparency reporting is to encourage companies to build on existing reports so as to show continuous improvement and dedication to eradicating forced labor and human trafficking. However, analysis comparing the U.K. MSA reports of 150 companies between 2017 and 2018 found that only 54 percent had produced a new statement.<sup>81</sup> Among those who had produced an updated statement, only 58 percent incorporated substantial changes, while a significant minority (42 percent) had made no or only minimal changes.<sup>82</sup> Additionally, as Ergon Associates’ latest report on modern slavery statements notes, “[o]f course, companies cannot be expected

to renew their due diligence processes on modern slavery every year, but we might expect reporting on new initiatives or disclosure of the results from risk assessments . . .” that took place over the last reporting period.<sup>83</sup> If businesses do not include in their statements the steps they have taken to address forced labor and human trafficking in the last reporting period, it is impossible to track progress; and one may assume that companies’ recycling of statements is a sign of having made no progress in the year.

Even where companies appear to be in compliance with the law, sometimes they are not. One stakeholder from the civil society consulting world noted that she has seen instances of businesses farming out executive level sign-offs to the regional heads of companies. This stakeholder noted that “executive signoffs on company statements are increasingly done at the regional level, rather than at the level of the headquarters because companies see this as another way to limit their liability” in the event that legal battles ensue. Other stakeholders seemed unaware of this issue but noted that it was not consistent with the spirit of modern slavery reporting requirements and called for a renewed push for someone at the global level to sign-off on statements to ensure that the liability and responsibility for supply chains lies ultimately at the global level.

### ***Lack of Substantive and Specific Information***

A review of over thirty statements under the U.K. MSA and the CTSCA revealed, and our interviews confirmed, that modern slavery reporting remains primarily a tick-the-box exercise. At present, modern slavery and TISC statements are excessively focused on describing company policies, rather than demonstrating how these policies are being implemented, the effectiveness of the policies, and what is being revealed through their implementation.<sup>84</sup> The lack of information beyond policies prevents other stakeholders from truly understanding how businesses identify, respond to, and remediate risks and instances of forced labor and human trafficking in their supply chains. These deficiencies in reporting prevent CSOs, trade unions, and investors from providing feedback and guidance to companies in instances where their practices may be contributing to human rights harms in their supply chains. Currently, with the exception of only a few companies, statements do not address how their policies are being implemented; if their policies have helped them to identify risks or instances of forced labor and human trafficking in their supply chains; how their policies have helped them to change their supply chain activities to mitigate the risks identified; or in what ways their company has provided remedy to victims of confirmed cases of forced labor and human trafficking in their supply chain. In order to facilitate meaningful reporting, companies should explain in detail how their policies and processes work in practice and describe how they are being carried out.

Where companies are reporting under existing legislation, they speak more vaguely about general risks of forced labor and human trafficking in supply chains, rather than speaking about the specific risks of forced labor and human trafficking in their

own supply chain.<sup>85</sup> Analysis of company statements to date show that many failed to report on risks associated within specific sectors or in relation to specific products. Research into reporting by electronics sector companies reveals that only 23 out of 79 (29 percent) of the statements analyzed demonstrated awareness of sector-specific risks of forced labor and human trafficking, such as those related to the sourcing of raw material and production of electronics.<sup>86</sup> Another study that looked at statements of companies operating in sectors or sourcing materials associated with a heightened risk of forced labor and human trafficking found that almost two-thirds did not make reference to sector or product-specific risks.<sup>87</sup> For example, companies will mention that migrant laborers are vulnerable to forced labor and human trafficking in global supply chains, but they do not address how migrant laborers in their supply chains- or in specific countries from which they source- might be more at risk of forced labor and human trafficking as a result of how they do business. Where statements do discuss specific instances, they generally speak to instances of non-compliance with a company's code of conduct. When these non-compliances are identified, companies will generally report that they took remedial steps, but frequently do not describe the remedial steps or whether and how they ensured that those steps would help to prevent reoccurrence in the future.

Unfortunately, detailed information on risk assessment and mitigation processes is rare.<sup>88</sup> As one stakeholder noted: "the biggest information gap relates to how [companies] did their due diligence, how they assessed risks and addressed them."<sup>89</sup> In fact, most companies neglect to discuss how they identify risks in their supply chains and which of the risks are the most pressing or salient. A commonly-cited 2017 report from the U.K. Joint Committee on Human Rights on the operation of the Modern Slavery Act highlighted that 35 percent of statements under the Modern Slavery Act did not discuss risk assessment processes, and two-thirds of statements did not identify priority risks; most companies were simply disclosing general information about their existing policies.<sup>90</sup> Companies generally do not identify their business practices and sourcing decisions as drivers of risks of forced labor and human trafficking in their supply chains. Additionally, most companies do not address how the countries from which they source and in which their products are manufactured may present risks of forced labor and human trafficking in their supply chains, specifically where operating countries have weak legal structures. The box below provides one of the better examples of how a company identified and discussed risks of modern slavery in its supply chains in its modern slavery statements.

## ASOS

### How ASOS Determines Risk<sup>5</sup>

“ASOS recognises that there is a risk of modern slavery in any area of our business where there is:

- Migrant labor (country to country or within a country)
- High presence of vulnerable populations (such as refugees/ethnic minorities)
- Young workers and risk of child labor
- Contract, agency and temporary workers
- Women workers
- Outsourced human resources function

ASOS’ approach to risk assessment comprises of desk-based research, supply chain mapping and audit, as well as focused due diligence and stakeholder engagement. In particular, we have partnered with Anti-Slavery International, which act as our ‘critical friend’, helping to ensure that our human rights due diligence process is robust and that we are continuously reviewing and mitigating new risks in our supply chain.”

### ASOS’s Risk Identification and Steps Taken<sup>6</sup>

“ASOS’ due diligence processes have identified a number of potential modern slavery risks that could be present within our business operations and supply chain. **These risks have been summarised in the table below, along with preventative steps taken and a set of commitments based on gaps apparent in ASOS’ existing programmes.** We have worked with Anti-Slavery International throughout the process. These are our particular focus areas.”

### 2018’s Focus Areas Included

- Migrant Labor
- Refugee Labor
- Child Labor and Young Workers
- Contract, Agency and Temporary Workers
- Women Workers
- Outsourced HR Functions
- Third-Party Brands

### ***Lack of Incentive to Go Above and Beyond the Requirement***

Where companies are reporting, there is currently a wide variety in quality and information covered in published modern slavery and TISC statements. What gets included in these statements is greatly affected by an individual company's approach to their responsibilities under any of the MSAs. If a company is most worried about legal compliance, rather than about adhering to the spirit of the law, it will likely read the government guidance and will seek to follow it closely. In the case of the CTSCA, our review of company statements has shown that companies are primarily concerned with fulfilling the government mandate that their statements cover their actions on verification, audits, certification, internal accountability, and training. Very few companies that published statements under the CTSCA went beyond these categories. It appears that where a company publishes a joint statement, under the U.K. MSA and CTSCA, it is much more likely to go beyond the prescribed categories of the CTSCA. In the case of the U.K. MSA, we saw more of a variety in the topics covered because the U.K. government guidance was not as clear in terms of what topics should be covered in a statement; the MSA simply provides topics about which companies "may" publish information. Several companies we interviewed noted that a lack of governmental guidance or a lack of concrete or quality governmental guidance left them guessing as to what information was most pertinent to include in their statements. Some companies felt that the CTSCA was too limiting in its prescribed categories, while the U.K. MSA did not give enough guidance. At the same time, other companies said that compliance was made much easier given the existing litany of government and CSO guidance.

### ***Company Approach to Statement Drafting***

Additionally, to whom a company assigns the task of reporting can affect the information that is included in a published modern slavery statement. During our consultations, participants discussed how a modern slavery statement drafted by either a Corporate Social Responsibility or Sustainability officer, in-house counsel, or a marketing person would be vastly different from one another because of the focus of each person's job. One can quickly discern a company's commitment to reporting on their supply chain activities by understanding its corporate structure and to whom it tasks the drafting of its modern slavery statement. Even where companies have some sort of sustainability department, that department's ability to create and implement programs will vary depending on whether the company empowers it to do so.

When looking further into why businesses task different actors with oversight of their statements, we learned that businesses have a fear of legal liability as a result of reporting. Companies stated that they worry that putting more information in the hands of the public could leave them vulnerable to increased legal liability. This fear can be better contextualized by looking two court cases that have emerged as a result of increased disclosures.<sup>91</sup>

Because of the way that companies approach their statements and the information that they decide to include, CSOs we have spoken with have explained that the information currently being made available by companies is not detailed enough to be useful and is not currently being used by frontline organizations or workers. One civil society representative explained that the information is not being used because it is of poor quality. Thus, the information included in statements to date has had little impact on preventing forced labor in these supply chains.

These gaps are reflective of the way in which companies view the perceived benefits of reporting and risk of accountability if they do not fully comply. When asked, many companies said they had already become accustomed to various reporting requirements and expectations, so this additional report did not change reporting or businesses practices for them. This shows a lack of understanding and attention to the issue of modern slavery reporting on the part of companies. As the next section will explore, most companies do not see their own practices as a cause of forced labor or human trafficking in their supply chains; they therefore fail to take any action to change the way in which they approach their sourcing or requests for production. This gap shows the need for outcomes oriented and risk-based reporting.

### III. TOWARDS OUTCOMES ORIENTED AND RISK-BASED REPORTING: WHERE WE WANT TO BE

#### A. Corporate Practices for Better Reporting

Following the gaps identified in existing modern slavery legislation and current reporting, this section looks at the type of information that companies should include in their reports that would on the one hand indicate they have undertaken effective internal processes for identifying and mitigating the risks of forced labor and human trafficking, and on the other would provide external stakeholders an adequate basis for assessing company due diligence.



## Understanding Forced Labor and Human Trafficking

Our interviews with a wide range of stakeholders confirm that effective reporting on due diligence must begin with a proper understanding of the factors driving forced labor and human trafficking. Unfortunately, forced labor and human trafficking tend to be framed in both international and domestic anti-trafficking responses as largely random occurrences resulting from the actions of criminal individuals or networks.<sup>92</sup> Framing criminality as the main driver of forced labor and human trafficking allows states and business to identify and address only one subsection of cases, while remaining silent on, or even reproducing, conditions that lead to routine forms of labor abuse.<sup>93</sup> Rather than occurring primarily as a consequence of criminal activity, our research and stakeholder interviews underscore that forced labor and human trafficking arise out of a context of widespread labor abuse and exploitation. Research shows that where labor abuses such as non-payment of minimum wage, unfair dismissals, forced and unpaid overtime, denial of benefits, and denial of the rights of freedom of association and collective bargaining are prevalent and left unchecked, more severe exploitation often develops.<sup>94</sup> Forced labor and human trafficking are thus positioned at one end of a continuum of work standards that range from decent work through to minor labor standards violations all the way to extreme exploitation and are driven by many of the same dynamics and drivers.<sup>95</sup> Addressing forced labor and human trafficking primarily within a criminal justice framework also ignores the systemic drivers of labor abuse and exploitation, such as government policies and company practices, leaving these drivers of risk unaddressed.<sup>96</sup>

The necessity of addressing the full spectrum of labor abuse and exploitation was echoed by several research respondents. One government stakeholder stated:

**“There is a gap in business knowledge about lower-level abuses, and the focus is very much on modern slavery. Does [only reporting on modern slavery offences] mean that the eye has been taken off of low-level exploitation? Only focusing on the serious cases allows business to ignore the low-level cases. You need to look at the end to end continuum of exploitation.”**

– *Government Representative*

Effective human rights due diligence around forced labor and human trafficking must thus begin with a proper conceptualization of and understanding of the broader factors driving labor exploitation, a perspective requiring companies to shift their efforts from identifying and reacting to individual instances of forced labor and human trafficking to adopting systemic measures to prevent violations in the first place.

Companies should also be aware that women and girls are differently and disproportionately affected by forced labor and human trafficking. According to 2017 data, over 70 percent of victims of modern slavery are women.<sup>97</sup> In this context, businesses should integrate a gender-sensitive approach when seeking to address forced labor and human trafficking in their supply chains, including by conducting gender-sensitive human rights due diligence, collecting and disclosing gender disaggregated data, and providing gender-sensitive training to their staff.<sup>98</sup>

## Identifying Risks

### *Mapping Suppliers*

Companies must have a clear picture of their entire business supply chains, including where their suppliers and subcontractors operate, what they produce, how the work is performed, and by whom, in order to comprehensively identify and address risks of forced labor and human trafficking in their business operations. In other words, they need to have a comprehensive understanding of their business operations down to the lowest rank of their supply chain. And while many companies have mapped and reported on their direct (tier one) suppliers, it is much rarer for companies to go beyond the first tier.<sup>99</sup> As a result, companies cannot effectively know the risks present in their supply chains. As one government representative put it, they simply “don’t know what exploitative practices might be taking place,” and therefore are undermining their business operations. According to a civil society stakeholder interviewed for this report, “even companies who have incorporated [codes and compliance programs] in operating procedures will still confront modern slavery because they don’t fully understand and control their supply chains. Buyers may have a sense of their first tier [suppliers] but have no idea beyond that.”

Supply chain mapping is crucial for transparency reporting to be effective, yet it can be a resource and time-intensive process. A number of company representatives interviewed for this report noted that their companies had been unable as of yet to fully map their suppliers beyond the first tier. Some were critical of what they saw as the prioritization of supply chain mapping over effective action and remedy, saying they felt that “there is too much risk mapping going on. . . too many resources go into mapping -companies are obsessed with mapping and don’t deliver any action.” They felt a more productive approach in the short term, especially for companies that have particularly complex or long supply chains, would be for companies to prioritize their

efforts, while working systematically and progressively to build a more complete picture of each tier of suppliers over time. However, to make sure continuous progress is made towards full transparency on suppliers, companies should report on why and how they have prioritized certain actions over others, as well as the timeframe in which they intend to complete their supplier mapping.

Reporting on the drivers of risks identified is not only a learning process for the company itself, but also encourages peer learning and enables outside stakeholders to better engage with and, when necessary, hold companies to account. As one stakeholder noted: “The data that some companies are providing about the areas of risk and communities of risk is being used by other organizations to inform the due diligence activity they are taking at a local level.” Mapping and reporting on supply chains provides a critical basis for CSOs, trade unions, regulators and other outside stakeholders to monitor, evaluate, and work with companies to provide guidance and training on identifying, mitigating and preventing forced labor. According to one trade union representative, one of the most important things for a company to do is to report fully on their supply chain by providing a full list of their suppliers. For example, in the apparel sector, the Transparency Pledge Coalition (a group of nine labor and human rights organizations) advocates for companies to align their disclosures with the Transparency Pledge, which represents a common minimum standard for corporate disclosures.<sup>100</sup> In areas where there is the greatest risk, this would enable outside stakeholders, particularly CSOs operating locally, to take action.

While it is most critical for companies to disclose thorough information regarding suppliers in regions and sectors that are at greatest risk for having forced labor, there are few examples of full disclosure on the specifics of a company’s supply chain being required. The Mandatory Clothing Retailer Code in New South Wales, Australia, provides one example.

## Mandatory Clothing Retailer Code in New South Wales, Australia

The New South Wales (NSW) Mandatory Retailer Code applies to all retailers, wherever they are based, who sell clothing products within NSW that have been manufactured or altered in Australia.<sup>101</sup> It also applies to all suppliers and their contractors, wherever they are based, that supply NSW retailers with such clothing products.

Under the code, retailers and suppliers must include mandatory terms in their contracts that require contractors and subcontractors in the chain to inform them where and under what conditions goods are produced, including (a) all the addresses where work is performed; (b) whether outworkers are used; (c) the name and address of each outworker and the employer of the outworker; (d) the name and address of each contractor engaged by the supplier; and (e) the number and type of clothing products made under the agreement.<sup>102</sup> Retailers at the top of supply chains are also required to record this information for work performed under all contracts for the supply of clothing products at every level of the supply chain, and to disclose it regularly and on request to the state enforcement agency and relevant trade union.<sup>103</sup>

These obligations mean that clothing retailers are unable to deny knowledge of what happens in their supply chain beyond tier one of their supply chain. In addition, the dramatically increased transparency of the supply chain has allowed regulators, including the state and trade unions, to secure compliance on pay and conditions, health and safety standards, and worker compensation.<sup>104</sup>

### ***Risks Linked to Products and Services***

In addition to mapping their suppliers, companies need to be looking in detail at the risks associated with the nature of the sector they are engaged in and types of product and services produced. Companies should be asking questions such as “how does the fact that we are sourcing tomatoes from Italy define our risk?”. As one government stakeholder noted: “Statements that aren’t particularly good might say something generic about ‘we’ve assessed our risk,’ while the best statements outline which sectors, which countries, which groups are at risk, and that’s very valuable information.”

### ***Risks Linked to the Workforce***

A key part of identifying what makes certain products or services more high-risk than others is understanding the characteristics of the workforce making the products or providing the services. No group of workers is inherently more vulnerable than another; it is social, economic and political injustices, as well as company employment practices, that create vulnerability. Companies need to examine how both structural and created vulnerability, even if unintended, can lead to higher risk of labor exploitation and take steps to mitigate this. Many common business practices unintentionally create a culture of vulnerability for workers. For example, in the apparel sector, there is an expectation of fast turnaround on orders, last minute changes and demands that lead suppliers to subcontract their work. In these instances, suppliers may rely on unregulated labor recruiters to quickly hire an adequate workforce to complete these orders on time. These practices are common in many other sectors as well.

A labor force that draws heavily on marginalized and generally vulnerable populations, including women, migrants, ethnic minorities, refugees, and other marginalized groups, will be more prone to labor exploitation, including the most extreme forms. The same is true of workers in non-standard forms of work, such as dependent or false self-employment, zero-hours contracts, and temporary, informal, on-call or agency-based work. While non-standard forms of work can offer advantages for both businesses dealing with fluctuating demand for goods and services and for workers dealing with the demands of modern life, they can also lead to the weakening of rights and protections for workers and increase the risk of forced labor and human trafficking. Workers in non-standard forms of work tend to have fewer workplace rights or protections. Combined with low pay, irregular hours and the possibility of losing work at short or no notice, non-standard and precarious forms of work render workers increasingly dependent on their employers and powerless to access the few workplace rights they have. Workers who are part of disadvantaged or marginalized groups also tend to be over-represented in non-standard forms of work, thus adding to their vulnerability.<sup>105</sup>

Companies should be providing detailed information on the nature of their workforce, including the ratio of direct versus outsourced or contracted employees, permanent versus temporary or seasonal workers, and who in their workforce may be made vulnerable by external factors, such as restrictive immigration policies or pervasive poverty or gender inequality. They should also explain what steps are being taken to assess and mitigate the risks their workers face.

## *Reporting on Business Models and Practices that Drive Risk*

**“What do you do when you identify that the way you do business is creating the risk? That really is at the absolute heart of it. The way that businesses operate . . . creates a lot of these risks. They would have to make very radical changes to business models and employment relationships [to address these risks].”**

*– Civil Society Representative*

The interviews conducted for this research revealed that a significant proportion of stakeholders felt that companies also need to examine and report on how their own business models and operating practices might be driving labor abuses and exploitation, including severe cases of forced labor and human trafficking. Research has identified a number of characteristics of business models and structures of global supply chains that may cause labor abuses, leading in some cases to forced labor and human trafficking.<sup>106</sup> These are some of the key features that companies at the top of the supply chain must take responsibility for and address:

**Sourcing practices.** Due to their position in the supply chain, lead firms generally have disproportionate power to dictate terms and conditions to suppliers and exert downward pressure on prices.<sup>107</sup> When lead firms put unsustainable pressure on suppliers to cut costs and delivery times, suppliers often pass risk and uncertainty onto workers by introducing insecure or precarious working arrangements, such as agency work and zero hours contracts, or engage in risky practices like unauthorized product or labor subcontracting.<sup>108</sup> Companies need to address how their sourcing practices may put pressure on suppliers and work with the latter to find sustainable solutions that do not compromise the rights of workers.

**Piece rate payments and unrealistic productivity targets.** Paying a fixed amount for each unit produced or action performed, regardless of time spent on the job, can lead to workers being unable to earn a decent wage or the legal daily minimum wage in a regular workday if productivity target are set too high.<sup>109</sup> It can also have negative health effects as workers try to speed up their production, skip breaks or extend their working hours in order to earn a living wage. Piece work has also been linked to sexual harassment and other abuse, as it can create power relations that enable supervisors

to demand bribes in exchange for a positive report or assessment of a person's work performance.<sup>110</sup> In the worst cases these employment practices result in extreme labor abuse, potentially leading to forced labor.

**Complex, extensive, and non-transparent product and labor supply chains.** The risk of forced labor and human trafficking increases as the number of layers and sub-contractors involved in a supply chain increases. The length and complexity of supply chains can make it difficult for lead firms to monitor and to enforce labor standards, particularly at the furthest reaches of the supply chain.<sup>111</sup> Business may be unaware of the labor abuses occurring in a highly devolved system, or may use the complexity of their supply chain as a way of denying knowledge of and responsibility for such practices.<sup>112</sup> Labor subcontracting can also obscure responsibility for working conditions and create barriers to remedying abuse, leaving workers with little means to address problems and claim their rights.<sup>113</sup>

**Reliance on labor intermediaries (recruiters, agents, or labor providers).**<sup>114</sup> Extensive use of labor intermediaries to recruit, hire, or manage suppliers' workforces increases the likelihood of forced labor and human trafficking for labor exploitation.<sup>115</sup> The triangular employment relationship created by the use of labor intermediaries creates a business incentive to cut labor costs.<sup>116</sup> Labor providers' profit margins are determined by the difference between what they can charge their client (the employer or other intermediary) and what they pay the worker. Some intermediaries find themselves in a difficult position where they have limited control over what they can charge the client, so to maintain profit margins they reduce the sum paid to workers.<sup>117</sup> Some labor intermediaries minimize labor costs by further outsourcing to yet other labor providers with lower labor costs, including informal operators; using bogus self-employment schemes to bypass usual employer obligations, such as social security payments; and charging workers for ancillary services such as accommodation or transportation.<sup>118</sup>

Secondly, where lead firms have little oversight of labor providers and state regulation of labor intermediaries is limited, workers may be misinformed or deceived about the nature and/or conditions of the job for which they are recruited, or pay substantial fees to cover recruitment costs, leading to debt. Debt is a major driver of forced labor and trafficking for labor exploitation, as traffickers often use this to exploit workers.

### ***Risks Stemming from the Operating Environment***

The legal, regulatory, social, and business environments in which companies operate are critical factors in shaping labor standards and the potential for labor abuses.<sup>119</sup> Relevant factors include poor labor standards or limited state capacity to monitor and enforce workers' rights; poverty, inequality and discrimination; limited or no regulation of recruitment agencies and other labor intermediaries; restrictions on

freedom of association and collective bargaining, or a lack of strong and representative workers' organizations; and restrictive immigration policies (see box below for more details), among others. Company assessment of the risks of forced labor and human trafficking must take these broad factors into account when strategizing how to address and mitigate harm. Effective strategies may benefit from partnerships with a variety of stakeholders, including state bodies, trade unions, civil society actors, and trade associations.

### **Restrictive immigration policies as a driver of forced labor and human trafficking**

Immigration policies that limit the rights and entitlements, employment options, or the movement of migrant workers can create conditions in which forced labor and human trafficking thrive.<sup>120</sup> Harmful policies include those that tie workers' visas to a particular employer, making it difficult for them to leave or report an exploitative situation; limit workers' access to legal and administrative systems, for instance not allowing migrants to remain in country to settle employment disputes; restrict recourse to public funds, such as unemployment or homelessness assistance; and restrict migrant workers' right to organize or join trade unions. Employers may use the power-imbalance created by restrictive immigration policies to exploit workers, while workers may find it difficult to leave or report abusive or exploitative employment situations.

The criminalization of undocumented workers and the failure to separate labor market enforcement from immigration enforcement also create conditions in which migrant workers, regardless of their immigration status, are made more vulnerable to forced labor and human trafficking.<sup>121</sup> Where workers fear arrest or imprisonment, employers may leverage a migrant worker's status to exploit them by threatening to report the individual to immigration authorities if they complain about the labor abuse or try to leave. Irregular migrant status can also lead to workers accepting any employment, including employment where they might be exploited, because their employment options are limited.

Companies should be reporting on whether or not workers in their supply chains enjoy freedom of association and collective bargaining. These are fundamental workplace rights, rooted in the International Labour Organization (ILO) Constitution and reaffirmed in the ILO Declaration on Fundamental Principles and Rights at Work. The inability on the part of workers to exercise their labor rights is recognized as increasing



the risks of labor abuse and exploitation, as workers have little leverage vis-à-vis their employers, and limited means to report of abuses.

## Stakeholder Engagement

Some company representatives interviewed stressed the importance of working in partnership with local team members as well as CSOs and trade unions in order for reporting to be effective. However, according to some CSOs interviewed, very few companies do this: “Instead of engaging with workers, unions, or CSOs to get a sense of the local context, risk identification is very much audit based.” The prevalence of audit-based risk identification systems has been criticized in other research,<sup>120</sup> and identified as largely inefficient to prevent and address human rights violations in supply chains. Engaging with CSOs on the ground who have built relationships and trust with workers can provide companies with a more comprehensive picture of their supply chain practices and the effectiveness of their policies. Relevant stakeholders’ input, such as that of workers, CSOs and unions, should be sought by businesses when they design, implement and assess the effectiveness of measures to identify, prevent, and address risks of forced labor and human trafficking.

## Assessing Effectiveness of Corporate Responses to Modern Slavery

Effective reporting also requires companies and external stakeholders to assess whether the actions they take to mitigate forced labor and human trafficking in their supply chains are having an impact. This, in turn, requires companies to have baseline data about the scale of their risks of forced labor and human trafficking.<sup>121</sup> The broad consensus is that not enough is being done to understand how businesses can actually and effectively assess the impacts of their risk response actions. According to one civil society organization, “[r]eporting as it stands I find quite meagre to get a sense of companies’ efforts in relation to forced labor and how effective these efforts are. The effectiveness of due diligence is defined by the extent to which salient risks are mitigated and prevented, and reporting at the moment doesn’t do that.”

One way to achieve this would be for companies to have identified key performance indicators (KPIs) against which to measure progress. One such KPI suggested by participants interviewed for this research is the number of workplaces in a company supply chain that have collective bargaining agreements or that have recognized trade union representation. However, this element of reporting is one of the weakest aspects of most statements, with 86 percent of the 150 U.K. MSA statements analyzed in one study not including any detail on KPIs.<sup>122</sup>

Another way to measure effectiveness would be for companies to disclose case studies or examples of where forced labor and human trafficking have been identified in their businesses or supply chains and any actions taken to address these. This was highlighted as a key component of reporting by a number of research participants. Remedy is about what corrective action a company takes in cases where forced labor or human trafficking is found or where suppliers have not complied with standards set to prevent and address forced labor and human trafficking, including what compensation or support has been provided to workers affected. While many companies publish statements stressing their commitment to addressing forced labor and human trafficking in their supply chains and policies put in place to such effect, most are failing to disclose what actions they have taken or would take where such cases are found, as well as what the outcomes of these measures were. This was echoed by the majority of civil society respondents interviewed for this research: “Remedy is totally absent, remedy is not even on companies’ radar, they are not there yet.” Research on company reports from the electronics sector echo these findings, noting that few companies even disclose whether a grievance mechanisms is available to workers.<sup>123</sup> Though perhaps less systematic than measuring progress against KPIs, disclosing case studies on remedy would enable external stakeholders to qualitatively assess the effectiveness of company actions and the extent to which they are having a true impact for workers.

### **Report on Challenges and Long-Term Plans**

Stakeholders participating in this research highlighted that companies should be reporting not only on what they are currently doing, but what specific actions they plan to take in the future to address risks they have identified but have been unable as of yet to address. This would communicate the challenges of, for example, fully mapping risks in complex supply chains potentially spanning several sectors and countries, and outlining a detailed plan to reach this goal over time. Recognizing that setting up and communicating these action plans takes time, it would benefit companies in the long run by enabling external stakeholders to provide better guidance to companies based on their specific risks, and to push for improved policies and practices.

## B. Elements for Better Transparency Legislation

In addition to the actions that businesses should be taking to improve their reporting, governments must amend or create transparency legislation to create a governance structure that supports adequate reporting and facilitates effective monitoring and enforcement. They should look to replicate the basic elements of existing modern slavery reporting requirements, including:

- requiring companies to publish annual modern slavery statements;
- ensuring that the reporting requirement applies to companies' full supply chains and not just the top tier suppliers;
- requiring executive or board level sign off on modern slavery statements to be published on companies' homepages; and
- ensuring that the law applies extraterritorially to all companies carrying out business in the country.<sup>124</sup>

Governments should also follow the example set by the United Kingdom and Australia, and mandate and set a timeframe to review modern slavery laws, assessing the effectiveness and potential improvements to the law. Such review should be conducted in consultation with relevant stakeholders, including businesses and civil society organizations.

Governments can build on the successes of existing legislation by making changes that will help ensure that businesses can identify and address forced labor and human trafficking in their supply chains and governments are able to hold them to account when they do not adequately act on these issues. This section lays out improvements that can be made on existing models to improve the efficacy of modern slavery reporting requirements.

### Expanded Scope and Coverage

Countries looking to pass modern slavery transparency laws should consider placing monetary thresholds at least low enough as to ensure coverage of all large and medium-sized enterprises. The threshold can be lowered at a later stage, such as during the revision of the law, in order to progressively cover more companies. Strong government guidance and support should be provided to facilitate compliance with the requirement, including by smaller companies. The application of these laws to a broader set of companies would better achieve the goal of leveling the playing field for businesses, one of the objectives of modern slavery disclosure laws. Today, companies

that go beyond the strict requirements of mandatory disclosure laws are sometimes criticized on account of the information they reveal, while other (usually smaller and non-consumer facing) businesses can fly under the radar by not conducting any kind of mapping and not reporting. Additionally, the risks of forced labor and human trafficking are not exclusive to the supply chains of the world's largest companies; "[t]he risk of modern slavery exists for all companies, regardless of size."<sup>125</sup> Therefore, reporting under modern slavery laws should, as much as possible, be required of more companies, not fewer.

Governments should also ensure that modern slavery legislation adequately responds to forced labor and human trafficking's different and disproportionate impact on women and girls. These laws must include a gender-sensitive approach to identify contemporary forms of slavery, take gender-responsive measures to prevent and mitigate slavery, and provide gender-transformative remedies whenever needed.<sup>126</sup>

In addition, governments should also ensure that public bodies are required to report on their supply chain activities under modern slavery reporting requirement. The risk of modern slavery in supply chains applies equally when the consumer is a government, and governments have an obligation to address slavery and trafficking-related risks in their supply chains.<sup>127</sup> UNGPs 5 and 6 clarify that the State duty to protect extends to situations where governments enter into commercial relationships with businesses, including through public procurement.<sup>128</sup> Thus, any government seeking to introduce a modern slavery reporting requirement should lead by example and report on their efforts to address the issues of forced labor and human trafficking in their own supply chains and public procurement activities.

Future disclosure legislation should eventually be broadened to focus on all human rights risks in a supply chain, rather than only on modern slavery. Some of the company stakeholders interviewed stated that they felt disproportionate resources were being given to the issue of modern slavery as a result of new legal requirements, and that other supply chain issues were being ignored. The limitation in the scope of required reporting has been called out by a number of groups, including businesses, civil society, and government. Some company representatives expressed that they felt an annual human rights impact report would be more beneficial than one that singularly focuses on issues relating to modern slavery. In fact, the U.K. Joint Committee on Human Rights suggested in a 2018 report that companies should be required to report on the ILO Core Labor Obligations. This would cover the following issues: freedom of association and the right to collectively bargain; forced and compulsory labor; child labor; and discrimination in the workplace.<sup>129</sup> A further discussion of the expansion of these laws and the pivot toward mandatory human rights due diligence laws is below.

## Mandatory Reporting Criteria

Modern slavery reporting requirements should include specific reporting criteria that companies must be required to address in their annual reports. These criteria should be developed in collaboration with key stakeholders, including civil society and business. Requiring that companies report on a specific list of topics will allow for consistency and comparison across companies' statements, as there are presently significant disparities in the information disclosed by companies. Reporting on specific topics will also allow external stakeholders to identify best practice and to compare a company's progress in those areas year-on-year, even where companies do not have to or do not disclose their own tracking mechanisms, such as KPIs. Specific categories should be representative of a minimum level of information that businesses should disclose. An essential element of what companies should be mandated to report on is their human rights due diligence efforts. Government guidance should encourage businesses to provide information beyond the mandated reporting criteria.

In addition, governments should remove, or not include, provisions that allow companies to report that they have taken no steps to prevent and address forced labor and human trafficking in their supply chains over a given reporting period.

## Monitoring and Assessment Mechanisms

Representatives from each interviewed group expressed the need for governments to create and publish a list of companies required to comply with modern slavery reporting requirements, as well as to create and run a central repository of modern slavery statements easily accessible to the public free of charge. These practices should be replicated by each country looking to pass new modern slavery legislation and should be included in the amendments to existing laws. Governments publishing a list of entities required to report and maintaining a central repository for modern slavery statements would facilitate external stakeholders' monitoring of compliance and assessment of statements and allow them to praise or call out reporting or lack thereof by concerned entities, compare and track companies' progress, identify best practice, and hold companies to account. In addition, such measures are likely to lead to better compliance with the law and to contribute to improving the quality of disclosure. It would encourage a "race to the top" among companies and help ensure that those falling within the requirement are aware of their obligation to report. Companies should nonetheless remain responsible for determining whether they are required to comply with the law, and non-inclusion in the list should not be regarded as waving this responsibility.<sup>130</sup> Companies should be required to clearly date their modern slavery statements and upload them directly onto the central registry.<sup>131</sup>

The Australian MSA provides for another interesting monitoring measure: in addition to establishing a government-run public repository of modern slavery statements, it provides for a retrospective list of non-compliant companies to be tabled in parliament each year.<sup>132</sup>

Additionally, many stakeholders expressed concern at the lack of a system for verification or assessment of what is included in published modern slavery statements. None of the existing modern slavery laws provide for government infrastructure and funding to conduct verification efforts on published statements. At the moment, the only way to monitor existing modern slavery statements is through investigation by trade unions and civil society. Such monitoring and assessment should mainly be conducted by a public organization. An independent oversight mechanism or body should be created to report on compliance and review company statements. It should be adequately resourced to perform these functions.

### **Enforcement Mechanisms**

While the need for stronger enforcement mechanisms for existing modern slavery reporting requirement is widely acknowledged, there is no general consensus on how best to enforce reporting requirements. Mechanisms to ensure corporate compliance with human rights may be offered both in the form of positive inducements (such as compliance being a necessary qualification for public procurement contracts) and negative deterrents (such as fines). Given the low levels of compliance seen so far in relation to the CTSCA and the U.K. MSA, the research underscores the need for states to incorporate legal inducements and penalties in their compliance toolbox.

Several civil society organizations, such as ICAR and the Corporate Responsibility Coalition (CORE Coalition), have called for governments to “create and employ sanctions for: 1) failing to report; 2) submitting an inadequate report (e.g. one that is not signed and/or approved or posted on the company’s homepage); 3) failure to report on mandatory due diligence measures; and 4) failure to conduct mandatory due diligence measures.”<sup>133</sup> However, as noted above, governments that wish to introduce sanctions for non-compliance will have to provide the necessary political infrastructure and funding to carry out appropriate monitoring and evaluation of company statements. The second interim report of the Independent Review of the U.K. MSA also recommends that governments progressively strengthen the sanctions regime and take a gradual approach to enforce compliance, from warnings, to fines, court summons and directors’ disqualification.<sup>134</sup>

In its 2017 report the U.K. Joint Human Rights Committee recommends legislation that would impose a duty on all companies to prevent human rights abuses, as well as an offence of failure to prevent such abuses. In their proposal all companies, including

parent companies, would be held liable for the failure to prevent human rights abuses throughout their supply chain. Companies that had conducted effective human rights due diligence could use this in their defense, although the Committee recommends that the burden of proof fall on companies to demonstrate that they had done so. The Committee’s recommendations also provide for remedies against parent companies and their subsidiaries when abuses did occur, including both civil and criminal remedies.<sup>135</sup>

ICAR and FLEX also advocate that governments connect company eligibility for public procurement contracts to compliance with modern slavery reporting requirements. Other CSOs have also called for laws to include provisions that preclude businesses that do not report— thereby being in “violation” of modern slavery laws— from government procurement bidding. They see this as both a “carrot” and a “stick” in that compliance allows a company to stay in the pool of applicants who may be awarded government contracts, while non-compliance will preclude a company from being awarded a government procurement contract.

### **Access to Remedy**

Governments should also ensure that victims of modern slavery have access to remedy. They can discharge this responsibility by including a civil cause of action in modern slavery reporting requirements to ensure that victims of modern slavery in global supply chains have access to remedy. ICAR and CORE have suggested that governments include provisions that are similar to the Trafficking Victims Protection Act in the United States, which

**enables victims of human trafficking or forced labour to bring a civil action against whomever “knowingly benefits, financially or by receiving anything of value, from participation in a venture which that person knew or should have known” was engaged in peonage, forced labour, involuntary servitude, unlawful conduct with respect to documents, and human trafficking.**<sup>136</sup>

Providing victims with a cause of action under these laws will provide another avenue for them to seek remedy when they are harmed by corporate actors. Given that victims of human trafficking have difficulty accessing remedy, governments should provide a civil cause of action similar to that in the TVPA.

## Guidance

Governments should develop guidance for companies on how to comply with modern slavery reporting requirements. Such guidance should be developed in consultation with all relevant stakeholder groups, including businesses, civil society, workers, and trade unions. While there were significant differences of view among stakeholders regarding what should be included in government guidance, there was nevertheless general consensus that guidance should be published and widely disseminated, and that it should be published prior to the law taking effect.<sup>137</sup> Government guidance should be developed in consultation with relevant stakeholders to ensure that reporting contains meaningful and useful information. Some companies that were interviewed for this report stated that government guidance was not prescriptive enough, or did not provide enough examples of what companies should include in their statements, to be helpful in their reporting process. At the same time, civil society stakeholders were critical of overly prescriptive guidance, saying that companies tend to rely too heavily on prescriptive or template guidance, which leads to the prevalence of fill-in-the-blank statements, rather than thoughtful reporting on the actions that the company took to understand and address forced labor and human trafficking in its supply chains. CSOs called for governments to include in their guidance documentation the recommendation that companies undertake human rights due diligence in order to most effectively understand and address the issues related to modern slavery.<sup>138</sup> Where companies undertake such efforts, they are better equipped to report on what risks they identify, how they have mitigated those risks, and how they have remedied harms that have already occurred and worked to ensure they will not be repeated. Government guidance should include a mandated list of information that companies are expected to include in statements. The guidance should, at minimum, suggest including information on companies' risk assessment processes; on any stakeholder engagement conducted; on risks of forced labor found in companies' supply chains and on steps taken to address these; on the effectiveness of such response; and on efforts to be taken over the long term.

Additionally, government guidance can act as a means for regulators to better evaluate statements. According to one expert, "The law should include clear guidance for companies on what and how they report to enable the production of consistent and comparable reports that can be measured and improvements tracked over time."<sup>139</sup> This level of clear guidance would help businesses to know what information is desired in their statements and would prevent them from picking and choosing what information they should include. Since the passage of the first modern slavery and TISC legislation, government agencies and international organizations have been developing guidance for companies and compiling helpful statistics on the prevalence of forced labor and human trafficking that may be helpful to companies as they seek to understand the risk of these issues in their own supply chains. Companies can use these guides to



identify what information should be included in their reports, as well as what risks may relate to specific commodities they produce or countries from which they source.

Some existing guidance that companies may find useful includes:

- U.K. civil society guidance for commercial organizations on how the U.K. MSA’s transparency in supply chain clause;<sup>140</sup>
- U.S Department of Labor Comply Chain,<sup>141</sup> which includes tools for companies to assess risk in their supply chains;
- U.S. Department of State Responsible Sourcing Tool,<sup>142</sup> which provides resources to government contractors to avoid forced labor through their recruitment process and throughout their supply chain;
- OECD Guidelines for Multinational Enterprises,<sup>143</sup> which provides guidance on due diligence for companies in OECD member states, and additional guidance by sector;<sup>144</sup>
- OECD Due Diligence Guidance for Responsible Business Conduct, which provides guidance on general human rights due diligence;<sup>145</sup>
- U.S. Department of Labor List of Goods Produced with Forced or Child Labor,<sup>146</sup> which helps companies assess which portions of their supply chain are most at risk;
- U.S. Department of State Trafficking in Persons report,<sup>147</sup> which helps companies determine where their operations may be at greatest risk; and
- OSCE Compendium of relevant reference materials and resources on ethical sourcing and prevention of trafficking in human beings for labor exploitation in supply chains.<sup>148</sup>

### **The Push for Mandatory Human Rights Due Diligence**

While modern slavery reporting requirements are one channel through which countries can strengthen corporate human rights accountability, and more broadly can introduce businesses to the concept of conducting human rights due diligence, they are not broad enough to adequately address the breadth and complexity of human rights risks in global supply chains. This type of legislation—which only mandates reporting on one particular issue, does not explicitly mandates the conducting of human rights due diligence, and does not include civil liability or a private cause of action when victims’ human rights have been infringed upon—is only a first step towards improved human rights respect in global supply chains. Ultimately, to reduce these negative impacts, governments should mandate that companies undertake

human rights due diligence efforts in accordance with their responsibility to respect human rights under the UNGPs.<sup>149</sup>

The UNGPs describe human rights due diligence as policies and processes “to identify, prevent, mitigate and account for how they address their impacts on human rights.”<sup>150</sup> GP 17 suggests that businesses’ human rights due diligence processes “include assessing actual and potential human rights impacts, integrating and acting upon findings, tracking responses, and communicating how impacts are addressed.”<sup>151</sup> The UNGPs further state that human rights due diligence processes should be ongoing, evolving as a business evolves, and conducted in consultation with external stakeholders, including direct consultation with potentially affected stakeholders.<sup>152</sup> The UN Working Group on business and human rights recently wrote on the topic of human rights due diligence that “[d]ue diligence is the primary expectation of behaviour for any business with respect to its responsibilities concerning the adverse impacts on human rights that it causes, contributes to or to which it is directly linked . . . [I]t is fundamental as a way of informing what any business enterprise should do to meet its responsibility to respect human rights.”<sup>153</sup> While this core understanding of the concept of human rights due diligence remain true, the debate over what human rights due diligence looks like in practice continues. In light of this debate, a number of international CSOs have contributed to the conversation with policy papers on the initial results of implementation of the French Duty of Vigilance Law<sup>154</sup> and key features of human rights due diligence legislation.<sup>155</sup>

As the practical scope and operation of human rights due diligence is debated, there remains apparent a clear need for and momentum in favor of legal frameworks that push beyond modern slavery reporting requirements. Increasingly, CSOs and other stakeholders are pushing governments to forego the incremental approach of passing modern slavery reporting requirements, instead, working to pass mandatory human rights due diligence laws that cover the full spectrum of internationally recognized human rights.

If the trend continues as it has in the last few years, we will likely see an increase in concerted efforts to pass mandatory human rights due diligence laws.

## IV. CONCLUSIONS AND RECOMMENDATIONS

### Conclusion

Forced labor and human trafficking are some of the most egregious human rights violations found in today's complex global supply chains. In this report we have examined one model of legislation aimed at scrutinizing labor practices in supply chains, namely modern slavery reporting requirements. Our analysis has shown that while existing modern slavery laws have led to some improvements, they have not had sufficient impact. There remain significant gaps in the laws themselves, as well as in the practice of reporting, which account for this limited success. Based on in-depth legal analysis and wide stakeholder consultation, we have outlined a series of measures which could help improve both the legislation and the reporting under such laws.

It will take a set of complementary policies and regulations, as well as a multi-sector approach including companies, governments, civil society and other stakeholders all working together to eliminate forced labor and human trafficking. Requiring companies to publicly disclose their policies and practices to prevent forced labor and human trafficking in their supply chains is only a first step. Companies will need robust due diligence plans including a process to identify, prevent and remediate forced labor in their supply chains. These plans should also include working with civil society to provide guidance and training, and to gain insights into workers at all levels of their supply chain.

Modern slavery reporting requirements are only one of the policy tools that can be used to address forced labor and human trafficking in global supply chains. These laws need to be accompanied by additional legal and policy tools to truly be effective. Some of these tools include strong domestic labor laws and strong labor inspectorates, access to remedy, allocation of adequate resources to guide good corporate reporting and evaluation of reporting, and the promotion of collective bargaining.

Countries that wish to make the greatest impact towards eradicating forced labor and human trafficking from global supply chains should pass mandatory human rights due diligence legislation that includes liability in order to ensure that businesses are carrying out the evaluative processes necessary to identify the issues in their own supply chains and to meaningfully report on what actions they are taking to stomp out modern slavery in their supply chains.

## Recommendations for Improved Modern Slavery Reporting Requirements

### Recommendations to Governments:

#### *Pass modern slavery legislation that:*

- Mandates that a company's annual statement be due every year at the end of the company's fiscal cycle, and that it be published on the homepage of a company's website and be visible and easily accessible;
- Requires statements to be signed off at the executive level at company headquarters, and encourages companies to name a designated board member to be personally accountable for the production of the statement;
- Applies to all companies carrying out business in the country;
- Establishes a monetary threshold that covers large and medium-sized companies. This threshold can be lowered during successive amendments to the law such that it progressively covers a broader range of companies;
- Requires that public entities publish annual statements on their commercial contracts, including their supply chain activities;
- Develops specific and mandatory reporting criteria in collaboration with key stakeholders, including both companies and civil society, covering at minimum companies' human rights due diligence activities for the reporting period;
- Requires a company's annual statement to cover its full operations, including its entire supply chain and business relationships;
- Removes provisions that allow companies to report that they have taken no steps to tackle forced labor and human trafficking;
- Includes consequences for noncompliance, such as financial penalties, corporate liability and excluding non-compliant companies from public procurement;
- Adequately responds to forced labor and human trafficking's different and disproportionate impact on women and girls; and
- Mandates and sets a timeframe for evaluation and review of the law.

### ***Government Enforcement and Monitoring***

- Governments should bear the primary responsibility for enforcing and monitoring modern slavery disclosures;
- Governments must publish a list of companies required to report under the law;
- Governments should create and regularly update an easily accessible central registry collecting modern slavery statements published year by year;
- Governments should establish an independent body or entity to monitor compliance and the quality of disclosure, as well as progress in disclosure; and
- Governments should issue thorough guidance on disclosure and due diligence requirements, which should be created and updated after collaboration and consultation with labor, trafficking, human rights, and corporate responsibility experts. Guidance can include examples of the information companies are expected to provide in their statement.

### **Recommendations to Companies**

- Companies must determine whether they are required to comply under modern slavery reporting requirements, regardless of inclusion or not in government-issued lists of companies falling under the scope of legislation;
- Reporting on modern slavery should be integrated into companies' annual sustainability reports. Reporting on modern slavery should be regarded as part of other regulatory and governance obligations;
- Companies should report both on their policies and processes in place to respond to risks of forced labor, as well as on the outcomes and results of such measures, and on long-term plans to continue to respond to such risks;
- Reporting should be based on risks and include all risks identified including those that arise from a company's own business model and supply chain practices;
- Companies' risk assessments should be gender-sensitive and take into account patterns, prevalence, and structural conditions enabling forced labor and human trafficking;
- Companies should engage with relevant stakeholders including CSOs, trade

unions, and workers when designing, implementing and assessing the effectiveness of measures to identify, prevent, and address risks of forced labor and human trafficking; and

- Amongst other criteria, the following information should be included in company statements:
  - » A map of their supply chain in geographic areas at highest risk for forced labor, including factory names and addresses, information about the segments of their workforce that is most likely to be affected including second and third tier suppliers and contractors;
  - » Description of due diligence and risk assessment processes, including thorough and comprehensive mapping of risks. Risk mapping should be conducted through consultation with external stakeholders, including local civil society organizations and trade unions;
  - » A description made up of quantitative and qualitative analysis of how a company's policies and processes were implemented and how effective they have been;
  - » Information on identified risks of forced labor or human trafficking and the actions taken in response, as well as about the plan to prevent further occurrences in the future; and
  - » Information about remedial actions taken.

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- i. The full name of all authorized production units and processing facilities.
  - ii. The site addresses.
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  - v. Worker numbers at each site.
- Companies will publish the above information in a spreadsheet or other searchable format.”).
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