The UK Modern Slavery Act: Transparency through Disclosure in Global Governance

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Transparency through disclosure has become a key legitimation strategy for global governance actors and institutions (Fluck and McCarthy 2016). In the face of seemingly intractable global challenges like climate change, human rights abuse, and modern slavery, multinational corporations and intergovernmental organisations have been subjected to increasing expectations when it comes to the voluntary disclosure of their accounts and actions. Indeed, transparency has been touted as a crucial democratising force in global governance (Buchanan and Keohane 2006). And increasingly, governments are showing a willingness to legislate to achieve this (LeBaron & Rümkorf 2017a).

The 2015 UK Modern Slavery Act (henceforth 'the Act') is a flagship piece of legislation in this area. Aimed at tackling forced labour and slavery in UK businesses and their supply chains, the Government has touted the Act as 'world-leading' (UK Government 30 June 2018). In the words of the UK's Prime Minister Theresa May:

It has delivered enhanced protection and support for victims and a world-leading transparency requirement on businesses to show that modern slavery is not taking place in their companies or their supply chains (UK Government 31 July 2016).

Indeed, other countries have begun using the Act as a model to develop their own legislation. But can this approach be effective in reducing worker exploitation worldwide? This is an important question to ask because the legislative strategy of using voluntary disclosure to combat extreme forms of exploitation along supply chains has been gaining in popularity across sectors and jurisdictions, despite there being little evidence of its effectiveness to date (Phillips et al 2018; LeBaron & Ruhmkorf 2017a, 2017b). The time to ask this question is now, as the Act is currently undergoing an independent review within Parliament (UK Government 30 June 2018) and the Home Affairs Select Committee is currently benchmarking progress made since the passing of the Act and considering next steps (Parliament 2018).

This brief article is meant as a primer on the current state of the 2015 UK Modern Slavery Act, but the lessons here may also be applicable to the multitude of transparency regulations that have become the go-to form of corporate governance worldwide. In line with the empirical evidence to date, we argue that this type of transparency regulation – in its contemporary incarnation – is too weak a tool to bring about the changes necessary to eradicate labour abuse in global supply chains. At present, this type of regulation does more to serve large corporate interests than it does to address the suffering of vulnerable workers employed along global supply chains. But, it does not need to stay this way. If the goal is to eradicate worker exploitation, then initiatives like the Modern Slavery Act could be strengthened so they were more fit for purpose. We offer a number of straightforward suggestions to increase the effectiveness of the Act in steering corporate responsibility for forced labour in supply chains.

History of the UK Modern Slavery Act

The Act was established in 2015 with the intention of eradicating modern slavery in the UK, following a 2013 Government estimate that there are between 10,000 and 13,000 potential victims of modern slavery in the country (UK Government 2017). While strengthening government systems to detect and address modern slavery within the UK was the central focus of the Act, an important clause (Section 54) sought to address forced labour, slavery, and human trafficking within the global supply chains of UK companies.

The ‘Transparency in Supply Chains Clause’ applies to all ‘commercial organisations’ with an annual turnover of £36 million or more. These large organisations are required to prepare a slavery and human trafficking statement for each financial year. The terms of the statement are loosely defined; company statements need to outline what steps the company has taken to ensure its supply chains are free of forced labour and slavery-like conditions. The statement must appear prominently on its website and be signed off by upper management. However, companies are not required by the Act to detail their exact policies or outcomes of any anti-slavery actions that they take. In fact, organisations are permitted to report that they’ve done nothing at all. There is no liability (extraterritorial or otherwise) for the company when it comes to the practices of their suppliers, and there is no provision for enforcement of the Clause.

Consistent with the assumptions underpinning transparency legislation more broadly, the lack of enforcement provision within the bill seems to be underpinned by a hope that the bill would be ‘enforced’ by NGOs and others civil society ‘watchdogs’ who would monitor corporate reporting and constitute enough of a latent risk to companies’ reputations to incentivize action on this. But, to date, as we detail further below, only a fraction of companies covered under the Act have complied (CORE 2017; Ergon 2017), and even amongst the companies that have reported, there’s little reason for optimism that the Act is bringing about the change in corporate practice needed to tackle forced labour in global supply chains. In short, there is mounting evidence that the Act is falling short of its aims.

Rationale for Disclosure Legislation

There are very good reasons to focus on improving transparency in global governance through disclosure legislation.

Today, large swathes of global trade and production – and associated labour and environmental practices – are not governed by states, but rather by multinational corporations (MNCs) at the helm of global supply chains. Corporations are afforded high levels of secrecy with respect to their organisational and purchasing practices. Because their governance power is exercised through private law mechanisms like commercial contracts (Cutler and Dietz 2017) and enforced through privatized industry-led mechanisms like ethical auditing and certification schemes (LeBaron et al 2017a) there is limited public oversight and accountability. Due to this relative secrecy of organisational practices and the complexity of global production, balancing information asymmetries between large companies and the public is a sensible strategy for governments and civil society (Fluck and McCarthy 2016). In the past, it has largely fallen upon advocacy groups to provide the public with the information they need to make informed choices through their consumption decisions (Bloomfield 2014). Thus, the introduction of legislation to this effect should be welcomed.

As John Ruggie, Berthold Beitz Professor in Human Rights and International Affairs at Harvard’s Kennedy School of Government and a key architect of the UN Global Compact has argued, voluntary regulation of this sort can act as a learning tool, opening up space for dialogue wherein concepts can be defined and best practices can be shared (Ruggie 2004).

By providing information and encouraging dialogue, civil society has a developing history of attempting to change the practices of ‘lead firms’ in global supply chains (Gereffi et al. 2001; Bartley 2015). The strategy is straightforward: get powerful firms onside by shining a light on their sourcing practices, then use their buying power to incentivise change along their global supply chains (Bloomfield 2017a, 2017b).

With this in mind, the addition of disclosure legislation seems sensible in theory. But, there are some significant problems with its current incarnation.

Problems

The two most critical shortcomings with the Act are that: 1) nobody is checking whether companies are complying with it or not, and non-compliance carries no consequences; and 2) the Act doesn’t require companies to report on the indicators that matter most when it comes to reducing the vulnerability of workers to forced labour in global supply chains.

In the first case, as it stands, companies have free rein when choosing what they report on (or even whether to report at all). Civil society coalition CORE estimates that 12,000 to 17,000 companies are within the scope of the Act (CORE 2017) and, at the time of writing, just over 6,000 companies had published statements on the Modern Slavery Registry website. Many of these statements are of low quality and a significant number of them do not even comply with the requirements of the Act (Ergon 2017; CORE 2017; UK Modern Slavery Registry website). As mentioned, there is no financial or legal penalty for non-compliance and little evidence to suggest that consumers are using these statements to inform purchasing decisions.

In the second case, companies rarely report on the issues that matter most. Many Modern Slavery Act statements focus on: philanthropic activities; bilateral partnerships with NGOs to address social issues; policies about forced labour (eg. codes of conduct) and private initiatives to 'monitor' compliance (eg. private auditing); and the ethical certifications and voluntary multi-stakeholder initiatives a company subscribes to. Such activities are welcome; yet, there is very little evidence to suggest they are effective in tackling the worst forms of worker exploitation. Rather, there is a growing body of evidence that suggests that industry-led voluntary initiatives like ethical certification and private auditing are ineffective tools to detect and address forced labour (LeBaron 2018; Bartley 2018). Reporting on these initiatives therefore provides no guarantee that labour conditions will be any better within a supply chain.

Statements also tend to focus on the portions of supply chains that are the least likely to be impacted by forced labour. Most of the anti-slavery efforts that companies are reporting on are directed towards first-tier suppliers (see also Stevenson & Cole 2018). Yet, a growing body of research reveals that forced labour is most common amongst the outsourced sub-tiers of both product and labour supply chains (Allain et al 2013; Crane et al 2017; LeBaron 2018; Soundararajan et al 2018). Rather than using the growing body of research and data on the patterns of forced labour in supply chains to inform their analysis of specific risks and reporting on those risks, most company statements contain general commitments to human rights and slavery free supply chains. Where risks of forced labour are acknowledged– such as in in sub-tiers of labour supply chains– companies often claim that such risks lie outside of their sphere of influence.

It is important to note that it has never been easier for companies to assess the risks of forced labour within their operations and supply chains. There is a growing body of research that documents the factors that render workers vulnerable to forced labour in various countries and sectors, as well as the business pressures that create demand for forced labour among certain types of businesses (cf. Crane 2013; LeBaron et al 2017b; LeBaron 2018). In addition, there is a sizable pool of research published by government agencies and civil society organizations documenting the presence and patterns of forced labor in various sectors and geographic locations. The US Department of Labor, for instance, releases an annual list of Goods Produced by Child Labor or Forced Labor, while Verité has published a Forced Labor Commodity Atlas. In addition, as rich and powerful organizations, MNCs certainly have the resources to conduct their own research. Many no doubt have; yet, this is rarely included within modern slavery statements.

The lack of concrete and specific information on the risks and problems of forced labour relevant to the products companies sell makes it challenging to assess the credibility and effectiveness of company efforts. To give just one example, a recent in-depth study of the business of forced labour within global tea supply chains (LeBaron 2018; LeBaron and Gore 2018) found that the key indicators of vulnerability to forced labour in the tea industry include: the underpayment of workers by tea producers; tea producers' under-provision of services for workers' basic needs like electricity, water, and toilets; and debt bondage amongst workers at the base of their supply chains. Other important indicators for the presence of forced labour in the sector include lead firms' (i.e. brands) low-cost, thin margin payments to suppliers, and high gaps between minimum wage and the reality of what workers actually get paid – because we know low prices put downward pressure on wages. There is little mention of such risks in tea company modern slavery reporting. For instance, the 2016/2017 modern slavery statement by Tata Global Beverages GB Limited (who manufacture 'Tetley' branded tea) focuses on relevant policies within its Code of Conduct; participation in private certification schemes and partnerships; and training (Tata Global Beverages 2017).

Current strategies sometimes appear designed to facilitate business as usual while reducing the risk faced by and protecting reputations of large, lead firms. With approaches based solely on narratives of crime and illegality, voluntary disclosure may simply obscure the structural inequalities that create the conditions under which exploitation takes place. And, importantly, companies are not reporting on the *effectiveness* of their efforts to tackle forced labour and related forms of worker exploitation, including where in the supply chain their efforts are focused and why.

Solutions

In a recent ILO report, Phillips, LeBaron, and Wallin (2018) put forward a number of sensible recommendations for improving the effectiveness of modern slavery legislation, which could conceivably be used at a model for similar transparency-focused legislation in other areas of global governance. Here, we'll summarize and build upon a few of their key recommendations.

Perhaps most importantly, it is necessary to move toward a focus on measuring the *effectiveness* of current approaches, rather than more general reporting on initiatives that may or may not be effective. This requires establishing a standardised set of indicators to report on, so that reporting is consistent across companies. Without such standardised reporting, we will not be able to adequately compare across different companies and industries, nor can we compare across time in the same company to measure for improvements as companies progress along their 'journeys' in relation to forced labour. Companies should be reporting, for instance, on: the patterns, prevalence, and risks of forced labour within their supply chains, including the most relevant indicators of forced labour in their sector(s) and industry; specifying which portions of their supply chain are most at risk, which segments of their workforce are most vulnerable, and where their efforts to tackle these issues are focused; and on the effectiveness of the actions they are taking (eg. ethical auditing and certification) to address these risks. They should provide supporting documentation, so that civil society, government, and the public can assess the credibility of their reports.

Relatedly, creating a robust enforcement provision within the Act is necessary. The most effective way of enforcing the Act would be to legislate financial penalties for non-compliance and dedicate Government effort and resources to enforcement. Pressure in the form of publishing a list of companies that still need to publish statements and to incentivise more specific reporting in terms of where abuses are found and where each company's efforts are targeted would also be helpful.

More stringent forms of corporate liability — such as the imposition of extraterritorial criminal liability as is used in relation to corporate financial misconduct such as bribery (LeBaron & Ruhmkorf 2017a, 2017b), or introducing shared or joint liability to cover the supply chains of firms sourcing and trading globally (LeBaron and Gore 2018)– would also considerably strengthen the Act.

Other practical measures include creating a public database of all statements made by companies and an independent review of these statements, as well as applying the 'Transparency in Supply Chains Clause' to all public procurement to establish best practices.

Addressing the Critics

Inevitably, voices from the business community will claim that such changes would be far too onerous for UK businesses (LeBaron & Rühmkorf 2017b). These arguments may find some traction in policy making circles, not least because such standardised reporting will indeed be onerous, especially at first. But it is important to remember that similar arguments were made about mandatory corporate financial disclosure by publicly traded companies in the United States before this became standard practice worldwide. Fung *et al.* (2007) explain how it took a series of crises, beginning with the 1929 stock market crash that sparked the Great Depression, to open up the political space to force this legislation through. Even then, there were compromises made and the legislation was ratcheted up over time as the need arose. Now, it seems ludicrous to think it could be any other way – that investors could possibly make investment decisions without having regular, robust, standardised, and required reporting of company financial information in quarterly and annual reports. Given the evolving expectations in similarly targeted transparency legislation, it shouldn't seem so far fetched to expect the same when it comes to reporting on working conditions in globe spanning supply chains to reduce risk to workers, investors, and the general public. And indeed, corporations have never had more cash in the bank to invest in addressing these problems.

Conclusions

It is to be somewhat expected that strengthening the Act will take place in fits and starts, mostly in response to changes in the political environment and when worker exploitation is more or less in the public spotlight. But patience comes with its own set of dangers. The immediate danger is that the serious exploitation of the estimated 24.9 million people experiencing forced labour will continue unabated (ILO et al 2017: 10). For them, changes cannot come soon enough. The longer-term danger is that the Act becomes just another transparency initiative that relies on voluntary, self-reporting. Such initiatives, without appropriate directives, monitoring and enforcement, are at risk of simply reinforcing CSR and similar types of private sector-led governance as legitimate means through which to tackle the failings of corporate governance (LeBaron & Rühmkorf 2017a). But, as of now, there is very little evidence that such approaches can be effective at eradicating practices that we know are detrimental to people and the planet.

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