

# A call for a UK Business, Human Rights and Environment Act

## Executive Summary

Anti-Slavery International is **calling for the introduction of a new UK Business, Human Rights and Environment Act to create a corporate duty to prevent negative human rights and environmental impacts**, mandating companies, financial institutions and the public sector operating in the UK to **conduct human rights and environmental due diligence (HREDD)** across their operations, subsidiaries, and value chains. This briefing document outlines the rationale behind this call, as well as the elements that the proposed law must include to prevent modern slavery in UK supply chains.

Globally, including in the UK, businesses are responsible for human rights abuses in their supply chains. Adverse human rights impacts, including modern slavery, can occur at any level of a supply chain. Voluntary corporate social responsibility initiatives have failed to protect people from modern slavery, as slavery tainted goods and services still find their way into our every-day purchases.

In 2015, as a welcome step to address modern slavery, the UK introduced the landmark Modern Slavery Act, with the Transparency in Supply Chains Clause (TISC). However, **the past five years of implementing the TISC have shown that it is simply not enough**, having failed to drive tangible positive systemic change in supply chains and for workers. Ultimately, transparency and reporting legislation is insufficient to drive change in corporate behaviour, ensure corporations abide by the same standards, and prevent modern slavery.

There is an urgent **need for new binding standards which benefit all workers and their communities**. Without effective policies and practices in place, companies and the public sector may continue to be profiting from, or linked to, forced labour, trafficking, or other severe labour abuses. Stronger laws with accountability measures and paths for remedy are essential.

Over the past few years, **support has been increasing from policymakers, business, investors, and the general public** for legislation that makes businesses legally responsible for respecting the rights of workers in their supply chains. Moreover, a number of countries around the world, as well as the EU, have started to act upon the need to implement stronger laws. They have adopted or have started to consider legislation that embeds elements of HREDD into their legislative framework. **Failure on the part of the UK to keep step with global developments on this issue would create an uneven playing field between UK businesses and their global counterparts.**

### **A new Business, Human Rights and Environment Act would:**

- **Compel businesses to undertake human rights and environmental due diligence.** Companies, financial institutions and the public sector would be required to identify, prevent, mitigate, and account for human rights abuses, including modern slavery, and environmental damage caused by their operations, subsidiaries, and value chains. Companies would need to proactively take action to prevent these risks, including by addressing the impact of their own business models.

- **Help to level the playing field** between businesses and provide clarity and certainty on legal obligations. Currently, businesses taking appropriate steps to respect the human rights of their workers face considerable disadvantages against competitors profiting from lower costs gained through the exploitation of workers. A new law is key to ensuring that efforts by companies to address modern slavery risks in their supply chains are not undercut by the lack of a uniform standard of conduct applying to all business actors.
- **Hold companies and other organisations accountable** for failure to prevent abuses through liability provisions. The inclusion of strong accountability measures and liability provisions are fundamental to compel effective action on modern slavery.
- **Enable victims of abuses, including modern slavery, to access justice.** Currently, victims of modern slavery in UK company and public sector supply chains face enormous obstacles to access remedies or justice. The new law would provide victims of abuses with clear paths to access these.

### Recommendations to the UK Government for reforming regulation:

Principal elements of a Business, Human Rights and Environment Act must include:

- The obligation to **respect all internationally recognised human rights and environmental standards.**
- A scope that covers a **broad range of commercial and other non-commercial organisations**, no matter their size or sector, and **the entirety of the value chain.**
- The obligation to identify, cease, prevent, mitigate, monitor and account for human rights and environmental adverse impacts through an **ongoing due diligence process.**
- The **provision for or cooperation in the remediation of adverse impacts** in their global value chains and within their operations and business.
- Mandatory and **meaningful engagement with stakeholders** who are affected by companies' activities.
- The obligation to publish a **forward-looking plan** and an assessment of the effectiveness of actions taken, as well as **supply chain disclosure** requirements.
- **Liability for harm, loss and damage arising from their failure to prevent adverse human rights and environmental impacts** of their domestic and international operations, products and services including in their supply and value chains.

A Business, Human Rights and Environment Act should be complemented with a **wider mix of additional measures** in order to eradicate the existence of modern slavery in UK supply chains. These measures should include strengthening current legislation, improving domestic enforcement of labour rights and protection of migrant workers, and introducing import controls on forced labour goods and other relevant trade and development policies.

**The UK must now make sure it plays its part in addressing forced labour in supply chains, aligning UK policy with global developments and the growing consensus on the need for mandatory due diligence laws.**

# A call for a UK Business, Human Rights and Environment Act

January 2022

## 1. Introduction

Globally, including in the UK, **businesses are responsible for human rights abuses that occur in their value chains, including modern slavery**. However, voluntary corporate social responsibility initiatives have failed to protect people from modern slavery. In 2015, the UK Government introduced the landmark Modern Slavery Act, with the Transparency in Supply Chains Clause (TISC). TISC requires businesses trading in the UK, with a global turnover of over £36 million, to publish an annual Modern Slavery Statement. Although TISC has improved awareness of modern slavery by UK businesses, the past five years of the law's implementation have shown that this is simply not enough to drive change by business.

Under the current UK laws, **companies operating in the UK are not compelled to take meaningful action to prevent or remedy modern slavery**. It is extremely difficult to hold companies to account for harms in their value chains, and victims of modern slavery face enormous obstacles in accessing justice.

Anti-Slavery International is now **calling for the introduction of a new UK Business, Human Rights and Environment Act to create a corporate duty to prevent negative human rights and environmental impacts**, mandating companies, financial institutions and the public sector operating in the UK to conduct human rights and environmental due diligence (HREDD) across their operations, subsidiaries and value chains.

This law would require companies and financial institutions to identify, prevent, mitigate and account for human rights abuses, including modern slavery, and environmental damage caused by their operations, subsidiaries and value chains. It would oblige companies to proactively take action to prevent these risks, including by addressing the impacts of their own business models. The new law must also hold UK companies accountable if they fail to prevent human rights abuses and environmental harm, and enable victims of abuses to access justice and remedy. This law should be **modelled on the civil and criminal duties to prevent tax evasion and bribery found in the UK Criminal Finances Act 2017 and the Bribery Act 2010**.

Throughout 2021, the calls for a new UK legislative approach to prevent corporate human rights abuses and environmental harm grew. Civil society, trade unions, businesses, MPs and the public are all now calling for the UK to introduce a mandatory human rights and environmental due diligence law. Following a year where the UK has chaired the G7 and COP26, we hope the UK Government will meet its commitments and show global leadership by introducing the proposed UK Business, Human Rights and Environment Act.

This briefing document gives an overview of the rationale behind our legislative call. It outlines the UK's current lack of mechanisms to hold companies accountable for a failure to prevent abuses, the need to level the playing field between businesses, as well as the urgency for guaranteeing access to justice for victims of corporate abuses. We end by providing a series of recommendations to ensure the UK plays its part in addressing forced labour in value chains. This includes both the principal elements of the proposed law and a wider mix of additional measures.

## 2. Background: Modern slavery in UK value chains

Global supply chains are very complex. They encompass all business functions required to produce and deliver goods and services in our global economy. **Adverse human rights impacts, including modern slavery, can occur at any level of a supply chain:** from first tier direct suppliers, all the way to people working at raw material level, for example harvesting crops on farms, mining metals, or in the processing of raw materials.

In 2017, the International Labour Organization (ILO) estimated 40.3 million people are in modern slavery at any given time, including 24.9 million in forced labour across the world.<sup>1</sup> More than 60 per cent of people in forced labour are exploited in the private sector, likely linked to the value chains of international businesses providing goods to global markets, including the UK. In the UK, forced labour remains the top exploitation type identified by the Modern Slavery Helpline.<sup>2</sup>

**Forced labour, being the most common form of modern slavery, is also the most extreme form of labour exploitation.** It is sometimes associated with physical violence, but often occurs through more insidious means such as deception, coercion and debt bondage. Socially excluded groups, such as many minorities, migrants, women and girls, are often at greater risk of forced labour. Furthermore, one in four victims of modern slavery are children under the age of 18, numbering 10 million.<sup>3</sup>

Many root causes of forced labour are systemic – linked to poverty, discrimination, social exclusion and weak rule of law. However, **corporate practices and business operations in global value chains often contribute to the demand for forced labour.**<sup>4</sup> The constant search for low prices and high profits, the drive for ever quicker turnaround of products, the move to sub-contracted rather than directly employed labour, and the reliance on weak monitoring approaches, coupled with ongoing restrictions to freedom of association, all increase the risk of modern slavery.

**The COVID-19 crisis has further exposed the burden of risk carried by workers in value chains, underscoring current gaps in UK legislation around corporate legal accountability.** During the pandemic, workers have faced heightened risks of labour exploitation and modern slavery in industries and services, such as food, PPE production, and delivery. Further, in industries with disrupted demand such as apparel, many UK businesses cancelled orders, delayed payments and required discounts from suppliers,<sup>5</sup> meaning workers had to, and continue to, fight for months of unpaid wages from these employers. According to research by the Clean Clothes Campaign, garment workers lost more than US\$11.8 billion globally in unpaid income and severance from March 2020 to March 2021.<sup>6</sup> COVID-19 had a disproportionate impact on migrant workers<sup>7</sup> and women too,<sup>8</sup> who represent the majority of workers in the garment manufacturing industry.

### Top Glove: appalling conditions in factories supplying PPE to the UK

Unsurprisingly, global demand for PPE increased during the pandemic. Malaysia supplies the majority of medical gloves used by the NHS, the single biggest purchaser of gloves in the world. Substantial evidence of forced labour can be found within the Malaysian medical gloves industry, and this increased during the pandemic.<sup>9</sup> Top Glove, a Malaysian PPE company, is the biggest manufacturer of rubber gloves in the world for multiple brands which supply the NHS. During the pandemic, workers at Top Glove allegedly worked 12-hour days, six days a week, with some earning as little as £7 per day.<sup>10</sup> Social audits had been undertaken at Top Glove, yet the auditing firm<sup>11</sup> alleged there was no forced labour in the facility, underscoring the inadequacy of audits to identify modern slavery risks. The abuses led the USA to impose an import ban on PPE from Top Glove in July 2020. However, in the UK, imports from Top Glove increased by 314 per cent between January and July 2020.<sup>12</sup> Similarly, the UK has allegedly been sourcing PPE made with forced labour from the Uyghur Region<sup>13</sup> and North Korea.<sup>14</sup> The existence of forced labour within the sector reveals that the procurement systems used by the NHS and UK Government are insufficient.<sup>15</sup>

As the UK emerges and recovers from Covid-19, there is an urgent need for new binding standards that benefit all workers and their communities. Without effective policies and practices in place to prevent and mitigate risks, companies and the public sector may continue to be profiting from or linked to forced labour, trafficking or other severe labour abuses through their business activities.

### 3. The current legal approach: The Transparency in Supply Chains provision of the UK Modern Slavery Act

The Transparency in Supply Chains (TISC) provision of the Modern Slavery Act 2015 was a welcome step to address modern slavery. TISC requires all businesses trading in the UK with a global turnover of more than £36 million to publish an annual Modern Slavery Statement. A modern slavery statement should establish the steps a company has taken to ensure there is no modern slavery in their own business or in their supply chains.

Since its introduction, TISC has arguably improved awareness of modern slavery among UK businesses, particularly in sectors such as fashion, food retail and construction.<sup>16</sup> Among investors, TISC has seemingly contributed to an increase in the attention paid to modern slavery risks in national and global supply chains, showing senior management that this is a serious issue.<sup>17</sup> It has also driven the creation of a number of multi-stakeholder initiatives and industry action to understand and address modern slavery risks.

However, despite these benefits, TISC is simply not enough. Five years since its introduction, TISC has not led to tangible, positive changes to modern slavery in supply chains and for the workers they employ.

As a reporting and transparency obligation in nature, **TISC's focus is solely on disclosure of information. Crucially, TISC does not compel companies to take action to prevent, mitigate or remedy modern slavery.**

It is also estimated that approximately 40 per cent of the companies covered by the law are not even complying with it.<sup>18</sup> From the companies that have responded, the response has varied tremendously.<sup>19</sup> Some companies have responded meaningfully, providing detailed information on their supply chain structures, their due diligence processes to identify and address risks, and, in rare instances, concrete instances of modern slavery in their supply chains.

However, the majority have approached TISC as a compliance exercise, meeting only the basic legal requirements of the law in terms of disclosure. Overall, evidence suggests that this reporting obligation has seen little impact on most companies' behaviour, beyond the yearly publication of a modern slavery statement.<sup>20</sup> Crucially, companies can comply with TISC without altering the commercial practices that lead to modern slavery and exploitation.

#### What's happening in practice?

KnowTheChain is an initiative that benchmarks current corporate practices, evaluating companies' efforts to assess forced labour risks in their supply chains. KnowTheChain's research has proven the discord between companies' policy commitments and their implementation in practice:

- **Grievance mechanisms of UK companies:** Data based on 10 UK-headquartered companies from the apparel & footwear and food & beverage sectors shows that 80 per cent of the companies disclosed having grievance mechanisms available to suppliers' workers. However, only 40 per cent disclosed data on the use of such grievance mechanisms. It is unclear whether the mechanisms are effective, and whether workers know the mechanisms exist, how to use them, and trust them.
- **Recruitment fees in global businesses:** Assessing the policies and their implementation around the exploitation of migrant workers in 180 of the largest global companies in high-risk sectors across the electronics, food and apparel sectors,<sup>21</sup> more than 50 per cent of companies are disclosing policies prohibiting worker-paid<sup>1</sup> recruitment fees<sup>22</sup> in their supply chains. However, with regards to implementing these policies, the bar appears to be far too low as just 13 per cent disclose such evidence. This evidence could include proving that companies are taking the necessary steps to ensure remedy for migrant workers, such as repayment of recruitment fees. Overall, the prevention of exploitative recruitment and employment conditions remains the exception rather than the rule.

<sup>1</sup> Workers are often made to bear the costs of their recruitment expenses. These costs and the interest on loans taken out to pay them can leave workers in situations of debt bondage.

Furthermore, TISC has **no mechanism to hold companies accountable for a failure to address modern slavery risks, or to enable victims of modern slavery in a company's supply chain to access remedy or justice.**

Following calls to improve the UK's legal framework on corporate accountability, in September 2020 the Government committed to strengthen TISC.<sup>23</sup> This included by extending TISC to the public sector, introducing mandatory reporting requirements and a new single reporting deadline. In January 2021, it was further confirmed that financial sanctions would be introduced 'for businesses that do not comply with their transparency obligations'.<sup>24</sup> It remains unclear when these changes will be passed into law.

Although these proposed changes to TISC are welcome, a more ambitious approach is needed to drive effective action on modern slavery. Under the current improvements, companies will still only be sanctioned for failing to publish a statement, but not for failing to prevent, mitigate and remediate modern slavery in their supply chain.

### **Uyghur forced labour: A case study in the weakness of TISC**

The Chinese Government has detained an estimated 1-1.8 million Uyghurs, Kazakhs and other Muslim and Turkic-majority peoples in the Xinjiang Uyghur Autonomous Region (Uyghur Region). This is the largest internment of a religious and ethnic minority group since the Second World War, and forced labour is a key part of the system of persecution. Many Uyghurs and other Turkic and Muslim-majority peoples have also been forcibly transferred to factories in other areas of China. The abuses have been determined crimes against humanity and genocide by legal and human rights experts, the US Government, and several national parliaments. The end of these atrocities is not in sight.

**The UK Overseas Business Risk guidance<sup>2</sup> has noted the risk of Uyghur forced labour being present in the cotton industry, textiles, automobiles, electronics and polysilicon – a key material for solar panels.<sup>25</sup> UK companies are directly profiting from this forced labour in various sectors, in particular textiles and solar, due to the global reach of Chinese supply chains.** China is the

biggest exporter of textiles in the world. 84 per cent of cotton produced in China originates in the Uyghur Region and 20 per cent of the world's total cotton comes from the region. The USA has, as a result, introduced an import ban on cotton from the Uyghur Region. There is no equivalent ban in the UK, and recent research<sup>26</sup> has shown that dozens of well-known international brands, including UK companies such as Tesco and River Island, are at risk of using cotton that is produced or processed by Uyghur forced labour.

Further, it is estimated that up to 97 per cent of all solar panels globally could be linked to Uyghur forced labour, due to China's importance globally in polysilicon production.<sup>27</sup> In the UK specifically, some estimates state 40 per cent of the solar industry is potentially linked to forced labour in the Uyghur Region.<sup>28</sup>

With its focus on disclosure alone, TISC does not compel meaningful action by companies to address linkages to these egregious abuses. The weakness of TISC in relation to corporate linkages to Uyghur abuses has been recognised by UK MPs:

"The Modern Slavery Act is out of date, has no teeth, and we do not accept that businesses should be excused from doing basic due diligence to guarantee that their supply chains are fully transparent and free from forced labour and slavery." 'Uyghur forced labour in Xinjiang and UK value chains', Business Select Committee, March 2021.<sup>29</sup>

**The weakness of the Modern Slavery Act in relation to the Uyghur abuses crudely demonstrates the urgency for new legislation which mandates businesses to address risks through human rights and environmental due diligence, and holds companies accountable for a failure to prevent abuses.** If meaningfully enforced, such legislation would require companies to map and trace the risks of being linked to Uyghur forced labour through their supply chain, employing all reasonable measures to do so, and ceasing relationships where such links are found. Furthermore, it would have a significant 'levelling the playing field' effect, requiring all companies to take meaningful steps, rather than the patchwork of efforts currently seen.

<sup>2</sup> The UK Government provides information for UK businesses on political, economic and security risks when trading overseas through their UK Overseas Business Risk guidance, which can be accessed here: <https://www.gov.uk/government/collections/overseas-business-risk>

## 4. The UK law we need: a Business, Human Rights and Environment Act

Ultimately, transparency and reporting legislation is not enough to drive change in corporate behaviour, ensure corporations abide by the same standards, and prevent modern slavery. Around the world, there is a growing recognition of the need for more robust legislation to hold businesses to account.

The UK urgently needs a new **Business, Human Rights and Environment Act** which introduces a corporate duty to prevent human rights abuses and environmental harms. This law would:

- a. Compel businesses to undertake human rights and environmental due diligence** to identify, address, prevent, mitigate and remedy harms in their operations and value chains;
- b. Hold companies and other organisations accountable** for a failure to prevent abuses through liability provisions;
- c. Help to level the playing field** between businesses and provide clarity and certainty on legal obligations;
- d. Enable victims of abuses, including modern slavery, to access justice.**

### a. Human rights and environmental due diligence

**Relevant due diligence legislation would focus on businesses taking responsibility for the impact of their actions throughout their domestic and international operations, products and services across their value chains.** The UN Guiding Principles on Business and Human Rights (UNGPs)<sup>30</sup> – the relevant international standard the UK has committed to implement – sets out businesses' responsibilities to respect human rights, requiring both policy commitment and due diligence "in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts", including "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed".

**A due diligence obligation must cover all internationally recognised human rights and environmental standards.** Isolating a due diligence obligation to modern slavery alone will be insufficient to bring about meaningful efforts to address the root causes and drivers of modern slavery. Modern slavery does not occur in isolation from other human rights abuses, but sits within a spectrum of abuses, such as lack of payment of minimum wages, restrictions to freedom of association, forced overtime or gender-based violence. If a company is not proactively taking action to examine the impacts of its purchasing practices and respect basic labour rights in its value chain, including ensuring workers can join trade unions and are being paid a living wage, then it is not taking effective action to prevent modern slavery.

Similarly, a due diligence obligation must include an obligation to prevent, mitigate and remedy environmental harms, including climate change impacts. Connections between the environment and human rights have increasingly been recognised by governments, courts, international organisations and societies.<sup>31</sup> This is also demonstrated by the unique and disproportionate ways in which climate change and other forms of environmental damage impact vulnerable and marginalised groups, including increasing vulnerability to modern slavery. By introducing due diligence requirements for both human rights and environmental impacts, it provides consistency and legal clarity, to enable businesses to take comprehensive, effective and adaptable due diligence action to address their negative impacts.

### b. Accountability measures with strong liability provisions

**The inclusion of strong accountability measures and liability provisions are fundamental to promote effective action on modern slavery.** Most businesses lack the willingness to actively address the root causes of human rights violations. There is a need for a law that, through accountability measures, places the focus on the need for abuses to be prevented in the first place.

Research comparing the impact of transparency legislation, which establishes reporting requirements such as in TISC, and bribery legislation, which establishes corporate criminal offences, found that transparency legislation had little impact on corporate policies and practices. In contrast, the research found that bribery

legislation did yield meaningful changes in corporate policies and practices to prevent bribery in supply chains.<sup>32</sup> Without liability provisions, therefore, it is unlikely that businesses will substantially change their behaviour.

### An effective legal model

Our recommendation is for the due diligence obligation to have accountability measures modelled on the duties to prevent tax evasion and bribery found in the Criminal Finances Act 2017 and the Bribery Act 2010. This model has been found legally feasible by the British Institute of International and Comparative Law (BIICL).<sup>33</sup>

Such a law would incentivise companies to take action to prevent abuse from happening, by undertaking reasonable human rights and environmental due diligence, and hold companies accountable if they failed to do so. Companies could be held liable in a UK court for harm, loss and damage arising from their failure to prevent harmful impacts. Evidence that they had put in place reasonable due diligence, for example by exerting leverage with suppliers, to mitigate and prevent harm could form part of their defence.

This would distinguish from other options of a “mandatory human rights and environmental due diligence law”, which could risk creating tick-box obligations around the due diligence process, or incentivising companies to simply disengage from higher-risk contexts. By placing the onus on a failure to prevent abuses through reasonable due diligence, the focus is instead on achieving positive outcomes.

### c. Levelling the playing field

As outlined above, some companies have used the transparency requirements in TISC as an opportunity to advance discussion and action on human rights due diligence. However, many companies have not.<sup>34</sup> This puts those businesses putting the resources and actions in place to respect the human rights of their workers at considerable disadvantages against their competitors, which are operating with lower costs due to the exploitation of workers, for example through abusive purchasing practices.

**A new law compelling due diligence with accountability provisions is key to make sure that efforts by companies to address modern slavery risks in their value chains are not undercut by the lack of a uniform standard of conduct applying to all business actors.** This is one of the reasons why 36 companies, investors and business associations have publicly come out in support of due diligence laws in the UK<sup>35</sup> ([page 9](#)) that would drive a ‘race-to-the-top’ among the industry and would help to rebalance power between workers and companies.

## Labour exploitation in Leicester and the case of Boohoo

For years, the underpayment of workers in garment factories in Leicester has been well documented. Hourly rates of £3 per hour are common.<sup>36</sup> Even though garment workers were being paid way below the UK's legal minimum wage, salary increases from 18–30 per cent had been proposed for senior executives at Boohoo.<sup>37</sup>

Due to increased online shopping, Boohoo was successful during the coronavirus pandemic and saw a share increase of 22 per cent.<sup>38</sup> Yet while Boohoo shareholders enjoyed such success, research found that, in contrast, workers in Boohoo's supply chain were victims of exploitation. Factories remained open during lockdown, but without providing hand sanitiser or PPE.<sup>39</sup> Workers showing symptoms of COVID-19, and even those who tested positive, were told to continue coming into work and to remain silent about their test results with the threat of losing their jobs.<sup>40</sup> There were also allegations indicating forced labour at these factories, such as migrant workers who had their documents retained by their employers.<sup>41</sup> Migrant workers will often fear speaking out due to worries about deportation or investigation and are therefore more likely to accept poor working conditions without formal contracts.<sup>42</sup>

Following the exposés of summer 2020, Boohoo commissioned an independent review into the company's Leicester supply chain.<sup>43</sup> The review concluded that Boohoo had “not felt any real sense of responsibility for the factory workers in Leicester because they are largely invisible to them”. The review found that Boohoo's monitoring of its Leicester supply chain had been inadequate for many years and that senior Board members had known about examples of seriously unacceptable working conditions.

Notably, **the review found no evidence that Boohoo's actions constituted criminal wrongdoing, and that Boohoo had complied with its responsibilities under TISC.<sup>44</sup> The fact that Boohoo could technically comply with current UK law despite the situation in Leicester shows the law's flaws and failings.** Furthermore, other UK fashion companies had, in this same time period, been going beyond statutory requirements to address the exploitation risks in Leicester,<sup>3</sup> emphasising that there is no level playing field between companies that take steps to respect the rights of workers, and those that do not.

Furthermore, the review found that “there may be evidence of breaches of the UN Guiding Principles on Business and Human Rights”, but that “it has no force of law in the UK and thus a breach could not by and of itself amount to the commission of a criminal offence”.<sup>45</sup> According to a separate legal opinion commissioned in 2021, “Boohoo could have been found liable for breaches of the Guiding Principles under mandatory human rights due diligence/UK ‘failure to prevent’ legislation in the form of the BIICL Model Legal Provision, had such legislation been in place during the relevant period of time.”<sup>46</sup> This legal opinion shows the difference a Business, Human Rights and Environment Act, modelled on the Bribery Act, could make.

Boohoo is now undertaking a programme to improve workers' rights. However, it should not have taken years of NGO and media exposés to drive this change in the company's behaviour.

<sup>3</sup> In 2014, a group of UK fashion retailers developed an “audit and improvement” programme called Fast Forward, in response to the concerns of exploitative practices in UK fashion manufacturing going undetected by existing social compliance audits. Anti-Slavery International is unable to comment on the efficacy of this programme. However, notably, Boohoo did not join this programme until mid-2021.  
<https://www.fastforwarduk.org/public-statement-by-fast-forward-regarding-issues-highlighted-within-the-leicester-garment-industry-9th-july-2020/>

## d. Access to remedy and justice

As outlined by the UNGPs, workers and any victims of corporate harm should be able to access remedy in two ways: through the courts (judicial remedy) and through non-judicial mechanisms.<sup>4</sup>

**Currently, victims of modern slavery in UK supply chains face enormous obstacles to accessing remedies or justice.** As an example, KnowTheChain data<sup>47</sup> shows that eight out of 10 UK companies assessed had received allegations of forced labour in their supply chains and only one of the 10 companies disclosed providing remedy for the workers affected in the allegation. None mentioned engaging with affected stakeholders as part of their response to the allegation, and none disclosed evidence indicating that any remedy provided was satisfactory to the workers.

Barriers to judicial redress in UK courts are particularly high. Notably, the “burden of proof” currently rests with the victim rather than the company in question, requiring the victim to prove the company’s alleged failures and their connection to the harm they suffered. It has proved largely impossible for modern slavery victims to hold UK companies accountable in court for abuses abroad. Efforts by victims to sue corporations in the latter’s home states are often obstructed by rules of conflict of laws.<sup>48</sup>

### Barriers to justice. The case of Okpabi vs Shell.

A key barrier to justice for victims of any human rights or environmental abuses committed abroad, where the harm has been caused by or linked to a UK company, has been establishing whether English courts have jurisdiction where a subsidiary of a UK parent company has committed harms abroad.<sup>49</sup>

In a landmark case against Shell, approximately 50,000 claimants from the Niger Delta region of Nigeria were affected by terrible environmental destruction resulting from oil spills.<sup>50</sup> The UK Supreme Court determined that the Nigerian victims were able to sue Shell, the parent company, in English courts even though the damage was caused by its Nigerian subsidiary. However, the case is not yet won – the UK High Court may still send the case back to the Nigerian courts.<sup>51</sup>

Okpabi v Shell confirms the Supreme Court’s previous decision in Lungowe v Vedanta; here a village’s land and waterways were poisoned as a result of mining pollution where the mine was owned by KCM, a Zambian subsidiary of Vedanta.<sup>52</sup> In this case, the Supreme Court allowed the villagers to pursue their case against the British parent company, Vedanta, in the UK courts, rather than making them pursue the matter against KCM in the Zambian courts.<sup>53</sup>

The development with these cases is commendable.<sup>54</sup> However, we do not yet know if this case will be successful and it has not been adjudicated on its merits. Overall, to date enormous challenges to access justice remain. Such barriers would arguably be even greater for modern slavery victims, where the harm tends to occur in a company’s supply chain. In such cases, companies continue to evade responsibility for the harm that takes place in their supplier’s entity, despite the significant leverage they likely have over suppliers, for example due to being a supplier’s primary customer. Further down a supply chain, supply chains’ opaqueness can hinder the possibility to establish links with the ultimate buyer, making it harder for victims and their representatives to bring UK companies to court.

**The barriers to taking cases to court against UK companies underscore the urgent need for a new law to enable better access to justice. It is important that workers and communities that are victims of human rights and environmental abuses can bring cases to UK courts.** The law must also ensure that all barriers and obstacles are removed, crucially including reversing the “burden of proof” so that it instead rests on the company to show its due diligence has been appropriate and adequate and that it has taken all necessary steps to prevent the harm from happening in the first place. Notably, the reversal of the burden of proof forms part of the UK Bribery Act.

<sup>4</sup> A Non-Judicial Grievance Mechanism (NJGM) is a formal, non-legal complaint process that can be used by individuals, workers, communities and civil society organisations that are affected by corporate harm. There are both state and non-state based NJGM, such as National Human Rights Institutions, Ombudsperson offices, National Contact Points (NCPs) under the OECD Guidelines for Multinational Enterprises, etc. <https://globalnaps.org/issue/non-judicial-grievance-mechanisms/>

## Growing support for Mandatory Human Rights and Environmental Due Diligence Laws

Over the past few years there has been growing support from policymakers, leading businesses, investors and the general public to make businesses legally responsible for respecting the rights of workers in their value chains.

### a. Government and parliament support

The UK's Global Resource Initiative (GRI) Taskforce, a taskforce of leaders from business and environmental organisations sponsored by the Department for Environment, Food & Rural Affairs (DEFRA), the Department for Business, Energy & Industrial Strategy (BEIS), and the Foreign, Commonwealth & Development Office (FCDO), has urged the UK Government to introduce a mandatory due diligence obligation covering both human rights and environmental risks and impacts. The GRI recommends to initially focus on forests and land conversion, before extending to wider impacts.<sup>55</sup> A 2017 report from the UK Parliament's Joint Committee on Human Rights also recommended that "the Government bring forward legislation to impose a duty on all companies to prevent human rights abuses...[which] would require all companies to put in place effective human rights due diligence processes [...] both for their subsidiaries and across their whole supply chain".<sup>56</sup>

In July 2021, in its inquiry on "Xinjiang Detention Camps" the Parliament's Foreign Affairs Committee recommended not just the imposition of punitive fines for non-compliance with the reporting elements of the Modern Slavery Act, but it also recommended the Government "introduce new legislation that will create a legal requirement for businesses and public sector bodies to take concrete measures to prevent and remove the use of forced labour in their value chains. This new duty should be backed up by meaningful sanctions and penalties for non-compliance".<sup>57</sup>

### b. Business and investor support

In October 2021, 36 leading businesses, investors, business associations and initiatives operating in the UK, including the British Retail Consortium, the Ethical Trading Initiative, John Lewis & Partners, Nestle, ASOS, Primark and Aviva released a public statement calling for the UK Government to urgently bring forward ambitious primary legislation to mandate companies to carry out human rights and environmental due diligence (HREDD). In their statement, the organisations also state that, in order to level the playing field in practice, this legal requirement will need to be accompanied by strong enough consequences that ensure businesses carry out HREDD and that victims have access to justice.

Further, the 2020 study 'A UK Failure to Prevent Mechanism for Corporate Human Rights Harms' by the BIICL found that UK businesses would support legislation that penalises companies failing to prevent human rights harms, indicating that additional regulation may bring benefits to business through providing legal certainty and levelling the playing field, holding competitors and suppliers to the same standards. 75 per cent of businesses surveyed by the BIICL disagreed with the statement "existing law provides business with clarity about what are corporate human rights obligations".<sup>58</sup>

### **ASOS calls for mandatory human rights due diligence legislation with liability**

In a 2021 opinion piece<sup>59</sup> by ASOS, the large UK retailer called for the UK to adopt legislation which keeps the UK at the forefront of world-leading Environmental Social Governance (ESG) regulation. ASOS called for making human rights due diligence mandatory, requiring UK-based businesses to "report on their efforts to mitigate risk and protect people in supply chains globally", and to reinforce this through creating liability for companies who fail to prevent human rights harms. ASOS specifically endorsed the BIICL study<sup>60</sup> on the Bribery Act as setting a model for best practice UK legislation.

### c. Public support

A recently launched public petition,<sup>61</sup> with more than 43,000 signatures as per January 2022, is calling on the UK Parliament to support a Business, Human Rights and Environment Act against human rights abuses and environmental destruction in value chains.

Public opinion also appears to support new rules to hold companies accountable. Polling by the think tank 'Onward' in 2019 found that two-thirds of people across all ages support punishing companies<sup>62</sup> that do not act responsibly. Other polling has found that most younger Brexit voters<sup>63</sup> want big business regulation to increase (45 per cent) versus a minority (7 per cent) who want less, and that two-thirds<sup>64</sup> of people want the government to intervene to create a fairer economy after COVID-19.

## 5. Non-UK developments to introduce mandatory due diligence legislation

Several states around the world have started to act on the need to implement laws that drive companies to effectively address modern slavery in their value chains. **Over the past few years, a number of countries, as well as the EU, have adopted or started to consider legislation that embeds elements of HREDD into their legislative framework.**

Adopting a leading position on mandatory HREDD, the EU is set to introduce a legislative proposal<sup>65</sup> in 2022 requiring companies operating within the EU to prevent, and reduce the risk of, negative human rights and environmental impacts to workers and communities in their operations and supply chains through mandatory due diligence. This not only provides a model for this sort of action, it will directly affect UK business. The law is expected to cover all companies operating in the EU market, which includes exports from the UK to any EU Member State. From the EU's perspective, in 2020 the UK accounted for 9.8 per cent of EU import of goods, making the UK its third largest trading partner.<sup>66</sup> In July 2021, the value of UK exports to the EU was £14.3bn.<sup>67</sup> This could be the potential volume of UK-EU trade that would need to comply with this upcoming EU regulation, depending on the thresholds applied in the EU law.

Further, at national level, a number of European countries have introduced, or are considering introducing, HREDD laws.<sup>68</sup> Calls for mandatory human rights due diligence are also beginning in Canada<sup>69</sup> and the USA.<sup>70</sup> In the coming years, we expect more countries to join the list of nations that have included corporate accountability laws intended to protect people from modern slavery and other human rights abuses and environmental harm.

### Current due diligence laws and legislative proposals around the world:

- The [French law](#) on the duty of vigilance of parent and outsourcing companies
- The [German law](#) on the corporate duty of care in supply chains
- The [Norwegian law](#) on business transparency and human rights and decent working conditions
- The [Dutch parliamentary proposal](#) on responsible and sustainable international business conduct
- The [Austrian parliamentary proposal](#) for a supply chain law
- The [Belgian parliamentary proposal](#) on the corporate duty of vigilance and care in value chains
- The [Swiss Indirect Counter-Proposal](#) by the Swiss Parliament to the citizen Responsible Business Initiative

**The UK must keep step with global developments on this issue. A failure to do so would lose the UK its former global leadership on the issue of modern slavery, as well as risk making the playing field between businesses operating in the UK even more “unlevel”.**

## 6. Recommendations to the UK Government for reforming regulation

The UK must now ensure it plays its part in addressing forced labour in value chains, aligning UK policy with international developments and growing business consensus on the need for mandatory due diligence laws. The UK Government should introduce a new **UK Business, Human Rights and Environment Act**. Under this law, companies would have to take action to prevent human rights abuses and environmental harm through carrying out human rights and environmental due diligence.

### Principal elements of a Business, Human Rights and Environment Act

- Commercial and other organisations must have an obligation to respect all **internationally recognised human rights, including the promotion of all labour rights standards and protection from contemporary forms of slavery, as well as adhering to all relevant environmental standards** in their own operations, in their global value chains and within their business relationships. Business relationships should include suppliers, contractors and sub-contractors, joint venture partners, franchises and business customers etc.
- To ensure it is fully effective, the law would need to cover a **broad range of commercial and other non-commercial organisations, no matter their size or sector**, including large, listed corporations, but also non-listed companies and small and medium-sized enterprises, as human rights abuses can occur in their value chains too. The law should also include public sector bodies, along with those using public procurement and other public bodies providing financial and other support to businesses, such as export credit agencies, development agencies and development finance institutions, while recognising that accountability provisions for the public sector may differ.
- Commercial and other organisations must have an obligation to identify, cease, prevent, mitigate, monitor and account for potential and actual adverse human rights and environmental impacts through an **ongoing due diligence process**, in accordance with existing international due diligence standards. This must include **identifying and addressing how their business models and decisions, such as trading and purchasing practices, risk creating or contributing to actual and potential negative human rights and environmental impacts**, including modern slavery.
- There must be an obligation to respect human rights and the environment across the **entire value chain**, as extreme forms of human rights violations, such as forced labour, can occur at any stage of the value chain, from the raw materials to the production of goods and the delivery of services.
- Business enterprises must provide for or cooperate in the **remediation of adverse impacts** in their global value chains and within their operations and business. Remedies may include, but are not limited to, financial or non-financial compensation, reinstatement, apologies, restitution, rehabilitation, contribution to investigation, as well as the prevention of additional harm through, for example, guarantees of non-repetition.
- There must be **mandatory and meaningful engagement with stakeholders**, who are affected by companies' activities. This engagement must target trade unions, workers and communities, including local, indigenous and marginalised groups, who may face barriers to participation in other processes. Workers and their organisations need also to be given a meaningful role in implementing and monitoring mHREDD.
- Commercial and other organisations must **publish a forward-looking plan** describing the procedures to be adopted in the forthcoming financial year, and an assessment of the effectiveness of actions taken in the previous financial year. Commercial and other organisations, and their senior managers, should be subject to a civil penalty if they fail to develop, implement and publish a due diligence plan within a reasonable time, or publish a misleading or inadequate plan.
- The law should establish **supply chain disclosure requirements, including the origin of raw materials**, and disclosure of information such as verifiable information on workers and wages and benefits paid.

- Commercial and other organisations should be held **liable for harm, loss and damage arising from their failure to prevent adverse human rights and environmental impacts** of their domestic and international operations, products and services including in value chains. **It could be a defence from liability for damage or loss, unless otherwise specified, for commercial and other organisations to prove that they acted with due care** to prevent human rights and environmental impacts. Commercial and other organisations, and their senior managers, shall be subject to a criminal penalty if they fail to prevent serious human rights or environmental impacts. Such penalties would be modelled on the civil and criminal duties to prevent tax evasion and bribery found in the UK Criminal Finances Act 2017 and the Bribery Act 2010.
- **Audit reports and certification schemes**, as well as membership in industry or multi-stakeholder initiatives for dialogue and learning, **should not be considered evidence of due diligence**.

### A call for meaningful consultations in the design of the law

To ensure that law and policy translate into best practice, national, local and grassroots organisations working with people affected by corporate abuses and environmental harm must be part of the conversation. These actors work closely with workers and communities whose trust they have gained over time. Local NGOs and trade unions hold key knowledge of and expertise in what needs to happen on the ground. Taking into account practical realities on the ground contributes to the effectiveness of designed and implemented legislation. It is essential that the UK seeks avenues to engage these actors across the world and ensures the voices of workers and affected communities are brought into designing the laws that must protect them.

*“The best and only way to properly understand corporate human rights risks is to understand the qualitative perspectives of rightsholders who experience them.”*

**Linda Alkalash, Executive Director at Tamkeen, a Jordanian non-governmental organisation that works on promoting the principles of human rights.**

## Complementary measures

It is important to recognise that a Business, Human Rights and Environment Act is not a ‘silver bullet’ that will eradicate the existence of modern slavery in UK value chains, and therefore it needs to be complemented with a **wider mix of additional measures**.

### 1. Strengthen current legislation

While the UK Government should focus its efforts on introducing a Business, Human Rights and Environmental Act, work should also be undertaken to **reform the existing TISC clause of the Modern Slavery Act. This should be done through the addition of accountability measures, such as sanctions for false reporting or failure to report**. In September 2020, the Home Office published its response to the TISC consultation, committing to the introduction of sanctions for non-compliance.<sup>71</sup> More than a year later, we would still like to see the UK Government effectively implement this commitment.

### 2. Import controls

The UK Government should in parallel **introduce import controls to block or seize the imports of goods made in whole, in-part or transported with forced labour**. Anti-Slavery International believes that the two approaches, a Business, Human Rights and Environment Act and import controls, are complementary and should be introduced in parallel. We believe that import controls should be designed considering factors on remedy, unintended consequences, transparency and enforcement.<sup>72</sup> Anti-Slavery International particularly views the use of import controls as being a powerful additional enforcement mechanism in cases of state-imposed forced labour ([see Uyghur case study in page 4](#)).

### 3. Regulation of the garment industry

The UK Government should proceed with considerations to **introduce a Garment Adjudicator, which, comparable to existing legislation in the grocery sector**, would regulate large retailers' relationships with their suppliers, and thereby address abusive purchasing practices.<sup>73</sup>

### 4. Improved labour market enforcement and inspections

The UK Government should also **implement a more comprehensive policy approach to preventing labour exploitation within the UK, including improved labour market inspection and enforcement**.<sup>74</sup> The enforcement strategy should recognise the continuum between labour abuses, such as a failure to pay the National Minimum Wage, which can develop into more severe forms of exploitation, for example due to debt accumulation heightening vulnerability to deception and abuse. There needs to be a separation of powers between labour enforcement bodies and the Home Office's immigration controls, including by ending the practice of joint operations, immigration raids under the guise of safeguarding and on reporting undocumented workers.<sup>5</sup>

### 5. Migrant workers

The UK Government should take steps to **reduce migrant workers' vulnerability to exploitation and forced labour**. These measures should include ensuring that visas are not limited to a particular employer or sector; that workers are never charged any recruitment fees or costs; and that migrants who have been exploited can seek remedies and are not themselves criminalised due to their irregular immigration status, as above.

### 6. Trade, development and foreign policies

Finally, as the UK Government examines its trade and development policies and approaches following Brexit and secures new trade agreements, it must **ensure that the advancement of human rights and environmental protections, including the prevention of modern slavery, are at the centre of all trade, development and foreign policies and agreements and their implementation**, for example including the use of the UK's Global Human Rights Sanctions regimes.<sup>6</sup>

## 7. Conclusion

Current UK policy and legislation remains insufficient to adequately compel UK companies to take meaningful action to prevent modern slavery in their value chains. Therefore, a new Business, Human Rights and Environment Act should be introduced to establish a corporate duty to prevent human rights abuses and environmental harm, and effective access to remedy and justice.

Such legislation would also:

- Be in line with the UK's commitments under the G7 June 2021 communiqué on forced labour;
- Contribute to the Sustainable Development Goals by making human rights and responsible business practice central to broader business and trade policies;
- Expand the availability of decent work and directly contribute to the reduction of poverty;
- Retain the UK's position as a world leader in preventing modern slavery in global value chains.

<sup>5</sup> This recommendation is based on evidence of the increase in immigration enforcement measures (including raids and joint operations) during the past decade: "Since 2010, local level enforcement measures have been extended in order to create a 'hostile environment' for people without secure immigration status in the UK. This has included new measures to reduce access to private rentals, driving licenses and bank accounts, and the contentious 2013 'go home vans' initiative by the Home Office". Migration Exchange, Taking Stock and Facing the Future, April 2020. Retrieved from: <https://global-dialogue.org/taking-stock-and-facing-the-future/>

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